HOUSE OF LORDS
European Union Committee

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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 23 January 2016 - 31 May 2016

EU INTERNAL MARKET SUB-COMMITTEE

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ACCESSIBILITY OF PUBLIC SECTOR BODIES' WEBSITES (17344/12)

Letter from Matt Hancock MP, Minister for the Cabinet Office and Paymaster General, to the Chairman

In the last Parliament, the European Commission proposed a Directive on the accessibility of public sector bodies' websites. My predecessor, Lord Maude, had ministerial responsibility for this Directive and last wrote to you on 28 March 2013; this is my first update to the committees since becoming Minister for Cabinet Office in May 2015.

I apologise for not having written to the committees sooner. As you know, this Directive has been dormant for some time. It was only in the Luxembourg presidency at the end of 2015 that a focus was placed back on this Directive. Post-election, and with a new impetus to act, I sought to renew our collective approach to this proposal. This has taken some time to agree we sought clarity from the

Commission on the practical implementation of these proposals. I wanted to ensure clarity about this Directive before presenting an update to the committee.

HISTORIC POSITION

When my predecessor last wrote, our position was to support the Directive as we believed the UK was already going beyond the requirements set out in the Directive. It has been the policy of successive governments to adhere to the WCAG 2.0 standard in the public sector, though this is not enshrined in law. The legal basis for accessibility in the UK is not based on standards but instead on duties to make 'reasonable adjustments' to make services accessible to people with disabilities.

PROGRESS TO DATE

Council discussions stalled on this Directive for some time. My predecessor hoped the Latvian Presidency might renew interest in this Directive, but this did not happen. Council Working Group negotiations restarted and progressed rapidly from October to December 2015; the Luxembourg presidency agreed a mandate at COREPER to begin informal trilogues with the European Parliament in December 2015. The UK did not support the mandate at this time because we did not have an agreed position to do so and because of policy concerns set out in detail below.

We've been working with other member states and the Commission to ensure that:

— web accessibility is considered in a way that is agnostic of the device used to access websites and their content

— the definition of 'public sector bodies' which the standard applies to is practical and clear

— the types of content that must adhere to the standard (such as documents and time-based media) can reasonably be made accessible, and where they cannot, that they are excluded from the scope of the Directive

— the transposition dates are reasonable and achievable for implementation

— any monitoring and reporting requirements were achievable, practical and grounded in repeatable and robust processes

— the use of delegated acts and associated standards was limited to ensure appropriate powers are conferred to the Commission in this area

A number of these concerns have now been addressed in Council negotiations. I'm hopeful that we can maintain them in the informal trilogues and beyond. A number of areas continue to be a concern, however; I have detailed these below.

DEFINITION OF 'PUBLIC SECTOR BODIES'

The government does not believe the current definition of "public sector bodies" is appropriate. This broad definition of 'public sector bodies' is legally unclear, open to interpretation and could significantly increase the economic burden on the UK.

To be clear, the UK should live up to its existing commitments and legal requirements in respect of people with disabilities; but nationally these obligations are framed in the context of 'reasonable adjustments'. If we are to move away from the concept of reasonable adjustments, which are based on individual user need, towards a hard rule of applying standards for web accessibility that we monitor and enforce, we must have clarity about what constitutes a public sector body.

The government would like to see a scope that is clear - that means limiting the applicability of the Directive to central, local and devolved government. Given the Commission's belief that implementing this Directive will create a multiplier effect in the broader digital services industry, this does not water down the intent, but instead helps to clarify it so that we know what action we need to take

COMPLIANCE, MONITORING AND REPORTING

The need for a clear definition of 'public sector bodies' is further highlighted in relation to compliance, monitoring and enforcement. The Directive asks member states to establish a regime to assess how well they are meeting the new standards. Whilst a good objective, it is unachievable in its proposed form because:

1. without a clear scope (e.g. without a clear definition of 'public sector body') we cannot assess the UK's compliance with the standards in the Directive
2. the technology and assessment techniques to achieve monitoring of web accessibility simply don't exist at a scale that make this objective possible to achieve without significant financial cost to public sector institutions

Separately, the standard which this Directive will bring into force requires compliance to be absolute. In order to be compliant with that standard, a website must meet or exceed all of the listed criteria and remain compliant at all times. Whilst this is technically possible, it is practically unachievable.

RELATION TO THE EUROPEAN ACCESSIBILITY ACT

In previous correspondence, the committee noted the potential overlaps with the European Accessibility Act (EAA). At the time, the Commission's plans were unclear about when the Act might actually be published - it now has been.

The Department for Business, Innovation and Skills already submitted an Explanatory Memorandum on the EAA to Parliament earlier this year on 13 January 2015. Broadly, the overlaps of this Directive with the EAA are minimal. The only significant overlap is that the accessibility standard being introduced for websites in the EAA is the same standard being referenced in this Directive. At this time, they should be seen as complementary, rather than overlapping in nature.

Given how negotiations on this Directive have progressed, our position should now be to only support this Directive if the concerns I have highlighted above can be addressed. I will keep you informed on progress ahead of this proposal returning to the Council of Ministers for further discussion or agreement.

7 March 2016

Letter from Matt Hancock MP to the Chairman

I wrote to the Committee on 7 March 2016 regarding this Directive. I have also written to Sir William Cash and the European Scrutiny Committee, and wanted to separately update you on progress since my last letter.

NEGOTIATIONS TO DATE

The Netherlands Presidency have now conducted two informal trilogues with the Parliament. To inform these discussions the Presidency produced two draft texts - the first in December and the second in February.

The latter has now been partially released into the public domain.

The concerns I laid out in my previous letter were twofold:

1. the definition of 'public sector bodies' was legally unclear
2. the compliance and monitoring regime proposed is likely to be unachievable at scale given current technology constraints and costs
3.

For the definition of 'public sector bodies', I am confident that the second mandate addresses our concerns. The introduction of new text around proportionality of the measures in that mandate means this Directive applies only to central, local and devolved government. This scope is both legally clear, and provides a scope that can be effectively monitored and reported on.

We are already working with the Commission to develop a sustainable and technically feasible solution to the question of monitoring and reporting.

In its second informal trilogue, the Presidency has agreed, based on a request by the European Parliament, to consider extending the scope of the draft proposal to include mobile applications ('apps') and to seek the views of the Member States. The Presidency has subsequently brought forward a proposal to the Working Groups for consideration.

We support the intent of this proposal, we believe that the same accessibility considerations that apply to websites should apply to 'apps' where they are being used to deliver equivalent services, but are seeking to ensure the technical feasibility of a wider application of the Directive.

The Presidency intends to hold a further informal trialogue this month and we anticipate a further discussion at COREPER before that, in the week beginning 18 April 2016. If that discussion leads to further substantive changes, I will update the Committees. If we are provided with a further draft text at that stage I am happy to provide you with a copy subject to the normal caveats about its use and distribution.

We are working on the contingency that this may be the final set of informal trilogues and that Ministers will consider this text at the next Telecoms Council on 25 May - that of course is subject to the outcome of these further discussions. Assuming the outstanding policy concerns can be addressed in the remaining informal trilogues, I am of the view that the UK should support the Directive at that time.

6 April 2016

Letter from Matt Hancock MP to the Chairman

I wrote to the Committee on 5 April 2016 regarding this Directive, which remains under scrutiny. A final text agreed at trilogue may emerge during recess and will not be available for you to examine before it is put to vote in Council.

PROGRESS IN NEGOTIATIONS DURING APRIL 2015

In my previous letter I highlighted two remaining points of contention in the Council position: the definition of 'public sector body' and the compliance and monitoring regime. I am satisfied that, in the Council's proposed text, the definition of public sector body is now sufficiently clear due to cross-referencing the Public Procurement Directive and the inclusion of text affirming the Proportionality Principle and exemptions for Disproportionate Burden. I believe the use of the examination procedure to agree the compliance and monitoring mechanism will ensure that the correct technical expertise will be utilised in its development and fitness for purpose will be assured.

The Netherlands Presidency continues to discuss the content of the Directive informally with the Parliament as the Council Working Party comes to agreement on a text. There remain a number of issues of conflict between the EP's ambitions for the Directive and various Member States' experts' opinions. These are:

— The scope of the Directive and the bodies it will cover; the EP is pushing for a wider definition of the public sector and privately owned utility companies.

— The content covered, including intranet and extranet documents and use of an 'on demand system' to request documents not automatically falling within scope but not expressly exempt, caveated by a protection from disproportionate burden.

— A requirement on MSs to name the body responsible for enforcement.

— Use of delegated rather than implementing acts to set and update the technical standards.

UK officials have seen a memo drafted by the rapporteur proposing the EP's primary and fallback positions. Whilst their primary position crosses multiple UK red lines, their fallback positions are agreeable in all but one instance. This is the use of delegated acts to update the technical standard (as

opposed to their primary position to use delegated acts to set and update the standard). Alongside the UK, a substantial blocking minority of Member States to oppose the use of delegated acts for any part of this Directive.

TIMELINE AND NEED FOR SCRUTINY WAIVER

The Presidency intends for the Directive to be discussed at Telecoms Council on 26 May and to begin and conclude formal trilogue negotiations in the weeks leading up to Council. Should the trilogues be successful, and the Directive presented for political agreement, there will not be another opportunity for the committee to examine an uncaveated text. Accordingly, I am requesting a scrutiny waiver. The Presidency has worked closely and openly with the Council Working Group and is aware of the red lines of the UK and others in our blocking minority. I do not believe that the Presidency will present a text for the Directive that does not have broadchurch support among Member States. As such, the Directive may not be presented to Council at all in May but I believe that the Council text as it stands, or with the amendments necessary to accommodate the EP's fallback position should have the government's support and that the UK should vote in favour.

I am copying this letter to Les Saunders, John Mackenzie and Daniel Lowe in the Cabinet Office and Joanna Huddleston in UKREP.

28 April 2016

Letter from the Chairman to Matt Hancock MP

Thank you for your three letters dated 7 March, 6 April and 28 April 2016 on the above proposal. These were considered by the EU Internal Market Sub-Committee at its meeting on 5 May 2016.

We welcome your updates on the progress of negotiations on this proposal. We note that the two remaining concerns for the Government have, on the whole, been addressed.

However, we also note that the European Parliament is still pushing for some amendments to the proposal which could affect these two issues and raise a number of other concerns.

For this reason, we found your description of the European Parliament's 'primary' and 'fall-back positions' helpful.

We note that the Government would wish to support the adoption of a final text on this proposal at the Telecommunications Council on 26 May. We have agreed to grant a scrutiny waiver for this meeting on the condition that the final proposed text remains faithful the proposal outlined in your last letter –particularly in relation to the definition of a public sector body and the use of Implementing rather than Delegated Acts. The proposal will remain under scrutiny pending an update on the outcome of this meeting.

In closing, you note that this proposal is complementary to the Commission's current proposal for an Accessibility Act. Do you think the negotiations on this Directive could helpfully inform forthcoming negotiations on the Accessibility Act, in particular the inclusion of mobile applications?

We look forward to a reply to this letter in due course.

5 May 2016

Letter from Matt Hancock MP to the Chairman

In your letter of 5 May 2016 you granted a scrutiny waiver on the Public Bodies Websites Accessibility Directive for the 26 May Telecoms Council. This waiver was contingent on the definition of public body and the non-use of delegated acts. Whilst the Presidency secured agreement with the Parliament on the definition of Public Sector Body, the use of delegated acts was not ruled out entirely.

In order to reach a compromise with the European Parliament (EP) negotiators, including on the reduced scope of the Directive in not applying to banks or all NGOs, the Presidency agreed to the use of delegated acts in the updating, but not setting of the technical standard. Our key principle against the use of delegated acts was that the Commission had not shown adequate technical

expertise on this dossier. As such we have secured that the technical standard will initially be agreed by the examination procedure, allowing for maximum input from Member States and our technical experts. Whilst the UK would prefer implementing acts in all cases, use of the examination procedure will ensure as sound a basis as possible. The risk that an updated standard will be unfit for purpose is minimised as it will not be able to deviate too far from a robust foundation.

Were the UK to oppose this compromise we would find ourselves alone, thus unable to change this agreed text. Given the minimal risk of a poor updated standard, and several key victories on the setting of the standard, my assessment is that this is an acceptable compromise to make. Given our strong support of the Directive's aims and other provisions I believe the text as a whole should receive our support. I would be grateful if you could modify the scrutiny waiver to accept the use of delegated acts in the updating of the standard.

You also asked if our experiences in negotiating this directive could helpfully inform the forthcoming negotiations on the Accessibility Act. The Netherlands Presidency has been helpfully transparent in explaining the positions and motivation of the EP, as have our own contacts in the Parliament. We now better understand the EP's intentions and policy objectives which will allow the UK to prepare better, tighter arguments where our positions deviate. We also have a good understanding of Member States' positions within the Council, which will help us be more targeted in our alliance building and allow us to start earlier. In particular, we can, in general, support accessibility measures being applied to mobile apps, having learned of the importance of apps to disabled users and having learned something of timelines for updating that will minimise burdens to industry. My officials are in regular contact with counterparts in the Department for Business, Innovation and Skills and will share these lessons learned as attention shifts to the Accessibility Act.

17 May 2016

Letter from the Chairman to Matt Hancock MP

Thank you for your letter dated 17 May, on the above proposal. This was considered via correspondence by the Committee between 19-23 May.

We appreciate your efforts to keep us informed of developments in negotiations on this proposal, and for explaining the compromise put forward by the Presidency to stipulate the use of Delegated Acts to update accessibility standards for public sector body. In line with your request, we have agreed to amend the terms of our scrutiny waiver to accept the use of Delegated Acts in the updating of these technical standards.

We would welcome an update on the outcome of discussions on this proposal at the Telecommunications Council from 25-26 May. At this juncture, if the proposal is finally agreed, we would expect to clear the proposal from scrutiny.

We were grateful for your description of the steps the Government is taking to prepare for negotiations on the Accessibility Directive and to share the lessons learned from negotiations on this proposal.

24 May 2016

ACCESSIBILITY REQUIREMENTS FOR PRODUCTS AND SERVICES (14799/15)

Letter from the Chairman to Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) regarding the proposed European Accessibility Directive, which the Internal Market Sub-Committee considered at its meeting on 8 February 2016.

Having taken legal advice, our initial assessment is that the Commission's proposal is not in breach of the principle of subsidiarity. The Commission's Impact Assessment provides a wide range of evidence of fragmentation of the single market in terms of accessibility requirements, and we find the argument that divergence is likely to increase in future persuasive, given that all EU Member States are

signatories of the UN Convention on the Rights of Persons with Disabilities (UNCRPD). If the Government believes that the Commission's evidence base is weak, we would welcome more detailed information regarding its concerns in order to better inform our assessment.

You note that the Commission's analysis rests heavily on the extent to which regulatory fragmentation in accessibility requirements is problematic. The economic modelling in the Commission's Impact Assessment suggests that the cost to businesses and governments of operating in an increasingly fragmented regulatory environment will amount to €20 billion per annum by 2020. The Commission's modelling projects that adopting a more coordinated approach to meeting these standards will reduce the cost of compliance by €9 billion per annum or 45 per cent. Does the Government believe that this modelling is flawed? If so, we would welcome further detail of its concerns.

In your Explanatory Memorandum you observe that "there are currently no accessibility standards in the UK Equality Act in relation to manufactured goods (although there are some obligations on service providers)". Here, we note that Article 9 of the UNCRPD sets out various obligations incumbent on the signatories as regards accessibility. These extend to the "identification and elimination of obstacles and barriers to accessibility" within a range of goods and services. The Convention also requires signatories to "promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost." To what extent do you consider the Commission's proposals to be consistent with these aims? We would also be grateful for an account of what the Government has done, and is doing, to improve accessibility in the specific range of goods and services that the Commission has identified.

We note that the Government's assessment of this proposal is framed primarily in terms of the cost to business, and less so in terms of the impact that these proposals would have on people with disabilities. How has the latter impact been assessed and balanced against the concerns that the Government raises?

In terms of the impact on business, we agree with you that the 'disproportionate burden' clause, which will reduce the burden on SMEs, is a welcome inclusion. We also welcome that an extended six year compliance period is envisaged, which is said to reflect the life cycles of the products in question. Nonetheless, your EM suggests that the Directive will require all ATMs to be updated in order to meet the requirements of the Directive. Which other products does the Government estimate will need to be altered in accordance with this Directive outside of their normal product life cycle? Do you believe that the Commission's proposals are problematic for every good and service in relation to which intervention is proposed or only to a number of them?

We would also appreciate any information that you can provide us with about whether the Commission, in developing its proposals, considered foreseeable technological advances such as the 'Internet of Things'. For example, if smartphones were able to communicate with ATMs, they might be able to perform some of the functions that are envisaged, such as providing a person with information through another sensory channel. Whilst we cannot expect everyone with a disability to own a smartphone, it is important that such developments are given due weight.

Your EM noted that the Government was concerned that the proposal might conflict with the EU Audio Visual Media Services Directive. Can you explain in more detail why the Government believes this to be the case?

We would be grateful if you could provide us with a summary of the other Member States' opinion of this proposal, as well as any further information about the Dutch Presidency's intentions regarding this file.

We would also welcome a summary of the results of the Government's consultation, including the specific stakeholders who were engaged and a summary of their views.

We look forward to receiving a response to this letter in due course.

9 February 2016

Letter from Baroness Neville-Rolfe to the Chairman

Thank you for your letter dated 9 February 2016 requesting further information on the implications of the draft Accessibility Directive (2015/0278). I am sorry for my delayed response, but as you can see, the proposal is quite complex and requires consultation with other departments.

The main objective of the proposal is to support Member States in their obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) with regards to the accessibility of products and services. The proposal aims to enhance the proper functioning of the internal market and remove barriers to the free movement of accessible products and services within the European Union. The Government is committed to ensuring persons with disabilities are able to access products and services in the sectors identified in these proposals and beyond. We have put in place appropriate levels of regulation to ensure that products and services entering the market are suitably accessible without the need for an overly burdensome regulatory framework. We refer to a number of specific measures taken by Government to improve accessibility in a range of areas in annex A.

I outline below responses to your individual points and queries.

CONCERNS AROUND THE IMPACT ASSESSMENT (IA) AND ECONOMIC MODELLING

The Government's biggest concern with the IA is the date of some of its source material and assumptions, which is six or more years old (from 2011 or earlier). This has meant that the IA does not take into account technological developments in recent years and the proliferation of smart technology, in particular smart phones. In addition, HMG are concerned that the IA has not been through the more rigorous Impact Assessment Board procedures, which were only introduced recently. The UK has raised these concerns with the Commission on more than one occasion but have not so far received a response recognising these concerns or suggestions about how to address them.

More specifically, our analysis suggests the benefit calculations included in the Commission's Impact Assessment (IA) are likely to be an overestimate. This is largely because of the broad assumptions used and a lack of sufficient sensitivity analysis undertaken.

The cost/benefit calculations take two different approaches depending on the data available for products and services. There is either a top down approach, which calculates the size of the market affected, making some assumptions of the accessibility costs as a proportion of market size, and then looks to see how many countries might have regulations for the product or service concerned. A correction factor is then applied to represent the likelihood that the regulations in different countries will be similar or differ (100% implies all different, 0% all the same).

The correction factors are detailed on page 62 of the IA and show that nearly half are at the 100%, implying that every country will require different adjustments, with the others falling between 25-30%. These factors are based on various different views and whilst some sensitivity analysis is applied this is very limited and is a key factor in determining future costs, along with an assumption about how many countries will regulate the given product or service. There are some very broad assumptions included in here, such as development costs as a share of turnover, accessibility costs as a share of development costs, and operating expenditure as a share of development costs to get a figure for ongoing development costs. Moreover, the IA does not spell out where these have come from or set out how these might vary by product, size of firm, or sector. As the discussion in Annex I of the consultation responses suggests, accessibility costs are low or even non-existent for some products and high for others. The accessibility costs are in many cases estimated as 1% of total development costs with no discussion of how this is estimated and no sensitivity analysis. The website accessibility cost calculations are particularly unclear.

Additionally, the administrative burden is assumed to be a one-off cost in relation to supplying information on the accessibility features of the product or service to either the customer or surveillance authorities. It is assumed to take one 8-hour day (cost of €18/hour) to provide this information but it is unclear whether or how this is applied to each product or service. For some sectors the cost is assumed to be one day per firm and for others it is assumed to be ten days per firm, which appears to be an underestimate.

It is also noted from the discussion of the consultation responses that only 54% of respondents saw a lack of common accessibility standards as a barrier to selling into EU member states, with both lack of enforcement and inter-regional variations being mentioned as additional barriers. These additional barriers would not necessarily be removed by harmonisation as national rules will apply to avoid issues of disproportionate burdens. Given the lack of evidence of a systemic problem, there does not seem to be a clear rationale for regulating at the EU level. If, in time, demonstrable evidence of a systemic single market problem was to come to light HMG would re-examine the issue. However, at the moment EU-level legislation appears to be premature and potentially burdensome on business at a time when growth remains below trend.

UN Convention on the Rights of Persons with Disabilities (UNCRPD)

The UNCRPD contains articles on accessibility (articles 4 and 9) and the UK's position is that the Equality Act 2010 already delivers these requirements through the reasonable adjustments duties. The draft Directive is not inconsistent with the aims of the UNCRPD but there is a question as to whether its requirements go beyond what is required by the Convention, given the introduction of the concept of "functional limitations" in Article 2 – a broad term that goes far beyond the more regularly used definition of "persons with disabilities". In addition, the Committee should note that whilst all Member States are signatories to UNCRPD, as of December 2015 Finland, Ireland, and the Netherlands are in the process of ratifying the Convention.

UK Government efforts on improving accessibility

Annex A details the specific measures taken by Government to improve accessibility in a range of areas, including banking services, transport services, public procurement, audio-visual media services, telephony services, e-commerce and e-books.

Assessment of the impact on persons with disabilities

The Government has, of course, taken into consideration the impact of these proposals on persons with disabilities. As you will see in Annex A, the Government is committed to ensuring persons with disabilities are able to access products and services in the sectors identified in these proposals and beyond. However, these considerations do not necessarily dilute the impact the proposals will have on businesses, which will face considerable cost burdens. In addition, when considering the potential benefits of the draft Directive, HMG understands that its intended effect would be implemented fully in around eight years. This means that any impact on disabled people must be seen in the context of a world almost a decade from now. We are extremely concerned that the proposals as currently drafted will 'lock-in' existing technology and unfairly exclude developing technology, to the detriment of the intended beneficiaries of these proposals.

Products that will require alteration

Products related to banking services and transport services, which will need to be altered to meet the requirements of the draft Directive, often before the end of their normal life cycle, are considered in Annex B.

Technology

As indicated above, HMG does not believe that the current proposals consider the potential impact and implications of new technology and technological advances, such as the one you refer to in your letter, the Internet of Things. The UK will continue to raise these concerns with the Commission and seek the views of other Member States as well as stakeholders in the relevant sectors.

Audio-visual media services

The proposed Directive has the potential to go much further than the existing provisions of the Audio Visual Media Services Directive, and indeed, beyond the provisions the UK has already put in place for television broadcasting.

In our view, accessibility provisions pertaining to audio visual media services are best left to the Audio Visual Media Services Directive as the UK does not get the sense from the Commission's IA that there is a significant horizontal problem to address in this area. Further, this proposal does not appear to have taken into account the on-going review of the Audio Visual Media Services Directive as part of a wider series of actions regarding the digital single market; this review includes the current accessibility requirements.

OTHER MEMBER STATE'S POSITIONS

Many Member States do not yet have a well-developed position on the proposal, in part due to the coordination challenges of the Directive being both cross-cutting and detailed in nature. As such, Departments are engaging with their opposite policy leads in Member States in addition to interactions in working group.

Given that many Member States are still coordinating positions amongst their various Ministries, there is an expectation that there will be no agreement before the Council in June where the Presidency is expected to give a progress report to Ministers. Negotiations will then continue again under the Slovakian Presidency.

CONSULTATION

The Government has not yet carried out a consultation on the draft Directive. We plan to engage with stakeholders once more details have been clarified by the Commission. Once conducted, we will share responses in summary form with the Committee.

As these proposals progress further, I will ensure to keep the committee informed of any significant progress.

ANNEX A
IMPROVING ACCESSIBILITY

The Equality Act 2010 requires service providers to make reasonable adjustments to ensure that disabled people can access their services. The Government is taking a number of steps to improve accessibility in a range of areas which are detailed below.

BANKING SERVICES

Firms comply with the requirements in the Equalities Act (2010) and work is being done to improve accessibility in the banking sector. There is evidence that banks already compete on accessibility. Many major banks in the UK are already offering assisted-service devices (such as Automated Teller Machines (ATMs) and cash deposit machines), accessible branches and websites, and have plans for future developments. There are also industry initiatives to improve accessibility. For example, the financial services industry, together with charities and consumer groups, last year launched a Financial Services Vulnerability Taskforce in order to look proactively at the ways in which institutions can improve the experience of customers who might be in vulnerable circumstances.

TRANSPORT SERVICES

Ministers are committed to enabling disabled people to access the transport services that others take for granted, and aspects covered by the proposed Directive would likely be considered as within the scope of the work supporting this. For instance, access to self-service travel planning and ticketing facilities is likely to become increasingly important as bus and taxi operators become more technologically enabled. Similarly, we know that accessible information on-board buses can make many people feel more confident in using services, and the Department for Transport is looking at the cost-effectiveness of current methods of providing such information.

With relevance to the proposed Directive, the Equality Act 2010 might be applied to ticket vending facilities, audio/visual media and digital media. However, the Equality Act does not apply to products

at their point of manufacture or sale, and no specific requirements are made in relation to the specification of accessible equipment.

The Public Service Vehicle Accessibility Regulations (PSVAR) sets accessibility standards that must be met by buses and coaches designed to carry over twenty-two passengers on local and scheduled routes. This mainly includes standards for the physical accessibility of vehicles for instance, including the provision of wheelchair spaces and ramps, as well as priority seating and strategically placed handholds. The only provision of some relevance to the proposed Directive concerns the provision of destination and route information on the outside of the vehicle. The existing standard is likely to be consistent with the proposed Directive in some aspects, for example readability of text, but not in all, such as information provided through more than one sensory channel.

In addition, accessibility standards for rail vehicles operated on the interoperable (mainline) network are subject to compliance with the Europe-wide standard set out in Passengers of Reduced Mobility Technical Specification for Interoperability (PRM-TSI), which has its legal application in domestic regulations under the Railways Interoperability Regulations 2011. These regulations transpose the Interoperability Directive. Compliance is required by 1 January 2020 and also applies retrospectively to vehicles that are renewed or upgraded.

Accessibility standards for rail vehicles on the non-mainline network are set out in the Rail Vehicle Accessibility (Non Interoperable Rail System) Regulations 2010. These are the standards set for metros, light rail and trams. Compliance is required by 1 January 2020 and also applies retrospectively to vehicles that are renewed or upgraded.

With regard to wider accessibility, including ticket purchasing, at stations or rail passengers with reduced mobility, the Secretary of State for Transport issues a Code of Practice in relation to Design Standards for Accessible Railway Stations. The Code identifies national and EU standards for all passenger train and station operators and licensed operators, including Network Rail, must follow the Code as a condition of their licence whenever they install, renew, or replace infrastructure or facilities.

The Code contains mandatory EU standards that are contained in the Persons with Reduced Mobility Technical Specification for Interoperability. Where there are no EU standards, the mandatory national standards must be applied. In relation to ticket vending machines, the Code states that at unstaffed stations where vending machines are relied upon for ticketing, an alternative means of ticketing, accessible to visually impaired passengers shall always be available – for example, permitting purchasing either on the train or at the destination. In relation to pre-travel information, the Code states that information regarding the level of accessibility at stations must be freely available and that operating rules shall be made to ensure that information regarding the level of accessibility of all stations is available.

In relation to the aviation sector, Regulation (EC) 1107/2006 governs the rights of passengers with disabilities or reduced mobility while traveling by air, and provides for assistance for these passengers throughout their journey. This includes assistance both at the airport, (from arrival to check-in, security check and boarding, as well as picking up baggage) and in the aircraft during flight. The Government, through the Civil Aviation Authority as the regulator, ensures compliance with the Regulation. The Civil Aviation Authority is further considering the issues relating to the check-in machines.

PUBLIC PROCUREMENT

The new procurement directives, and the UK's implementing regulations, fully support accessibility requirements through the introduction of new wording which was not present in the 2004 EU procurement directives. They promote accessibility requirements, particularly in the area of technical specifications where the directives state accessibility must be a criterion except in duly justified cases. The Commission saw the necessity to include this wording as it acknowledged that accessibility requirements are not applicable in all cases (purchase of paper for example). The directives allow flexibility for the contracting authority to decide what procurements should apply accessibility requirements and, if so, the level these should be to meet end user requirements.

Only three member states have transposed the new public procurement directive, with the UK being

a year in to implementation. It is too soon to judge the impact of the new directives and there is no evidence to suggest the new procurement directives will see further divergence of accessibility standards. Even if there is divergence, there is no evidence to say this is not justified, or will create barriers.

E-COMMERCE

With regards to the accessibility of e-commerce, defined as the online sale of products and services, for those online service in scope of this draft Directive, the Government welcomes the Commission's aim to ensure that these services are accessible to disabled and older citizens. However, HMG has concerns on the demands that, if introduced, these rules could have on SMEs, especially its possible cooling effect on the rollout of new and innovative e-commerce services.

We believe that this initiative on e-commerce services should complement, and not replace long standing industry and Member State initiatives, to improve accessibility of e-commerce websites, as the EU Commission's own impact assessment recognised.

As e-commerce relates to public services, the Government is already making good progress. The establishment of the single domain for Government, GOV.UK, has raised the bar for the public sector in accessible service provision. The Government's service design manual and Digital by Default Service Standard, which sets the standards for digital delivery in central Government, already stipulates that the WCAG 2.0 standard apply to digitally delivered public services.

More broadly, the Government is engaging with the Commission on the related proposed Directive on the Accessibility of Public Sector Bodies Websites. The Minister for Cabinet Office is responsible for this Directive and has written to the Committee separately on this.

The Government believes that, consistent with other areas of UK equality law and with our position on the Directive on Accessibility of Public Sector Bodies Websites, each case should be treated as different and any changes an organisation is required to undertake to make its website accessible should be framed around "reasonable adjustments".

It would be near impossible to estimate the size of the change required to make websites accessible. In general, the costs for doing so will be lower where accessibility is designed in from the start and where organisations have skills in-house to make the change.

AUDIOVISUAL MEDIA SERVICES

The EU Audio Visual Media Services Directive contains specific provision concerning the accessibility of audio-visual media services, requiring Member States to encourage audio visual media service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability. The UK has implemented this provision, and has gone further with respect to television broadcasting, setting specific targets in terms of signing, subtitling and audio description.

TELEPHONY SERVICES

The Government has made some progress in improving accessibility within the telecoms area. Primarily driven by existing legislative provisions, and particularly the Universal Services Directive (USD - 2002/22/EC), the UK Government has advanced the provision of accessible alternatives for disabled end-users of electronic communications, including in the following areas:

— Free directory enquiry service for visually impaired users;

— Various adapted telecoms terminal equipment;

— Adapted public telephones;

— Accessible service information/contracts;

— Special contracts – reduced rates;

— Accessible billing systems;

— Accessible Emergency Services;

— Priority fault repair schemes; and

— Next Generation Text Relay Services (NGTR)

E-BOOKS

HMG recognises the role that the inclusion of e-Books in this Act could play in making such content more accessible to both disabled and ageing citizens. As was recognised in the Commission's impact assessment, the UK has introduced copyright exceptions for disabled persons under specific conditions. Therefore, any initiatives on eBooks should be complementary to this and other industry initiatives in this area.

ANNEX B
PRODUCT ALTERATION
AUTOMATED TELLER MACHINES

The Treasury's assessment is that the requirements of the proposal on ATMs are more prescriptive than the requirements on general banking services. The specificity of the requirements, including for alternative font sizes, colour contrasts, control of volume, may be particularly difficult and costly to implement, as it could render obsolete accessible ATMs that are already on offer or in development. The long life span of ATMs, and the necessary lead time for development, may also contribute to this. Regulation that is not technology neutral may not be future-proofed, possibly preventing companies from capitalising on developments in technology.

HM Treasury have engaged with trade bodies in the banking sector for initial feedback on the proposals. They have highlighted that it is difficult to judge the likely implementation cost (including the timing and cost of upgrades and replacements) without consulting manufacturers, web service providers and IT specialists, whom the banking sector would rely upon to carry out the work needed.

TRANSPORT SERVICES

Weighing against the potential benefit of the draft Directive, HMG understands that a number of costs may be incurred, depending upon how the Directive is intended to be implemented. In particular:

— Transport authorities responsible for providing ticket vending machines (TVMs) may incur additional costs when ticket vending machines (TVMs) are replaced, particularly if the Directive includes existing as well as new products and services, where their manufacturers do not benefit from the cross-border standardisation of requirements. The same would apply to the self-service check-in kiosks at airports if the Directive required the replacement of the kiosks outside their natural life cycle.

— Similar costs may occur in relation to audio/visual media equipment, where it does not currently comply with the draft requirements.

— Whilst standards already exist for the accessibility of websites, this is less true in the case of web and smartphone applications, and in any case where they exist they are not mandatory. Any transport operator providing digital services may therefore incur additional costs from bringing those services into line with accessibility standards, or ensuring that new ones meet them.

— These costs are likely to be magnified considerably if the Directive is to affect existing as well as new products and services. This aspect remains very ambiguous.

At this stage, it is difficult to know for certain whether other products will need to be altered in accordance with the Directive outside of their normal life cycle as HMG has not undertaken thorough analysis of this specific issue. It is likely however, that given the pace of technological change, including the introduction of smart ticketing and contactless payments, that the lifecycle of existing affected

products and services is relatively limited. Websites and apps tend to be upgraded iteratively as operating systems and output requirements evolve, potentially meaning that accessibility considerations can be reflected more quickly, where the underlying approach allows it.

For rail, the proposed Directive's provisions do not appear to conflict with or contradict existing EU and national provisions contained in the Persons with Reduced Mobility Technical Specification and the Secretary of State's Code of Practice on Design Standards for Accessible Stations. They do however go further than these – for example by requiring additional sensory measures on ticket machines. Disabled passengers across all modes currently receive assistance with any part of their journey, including the purchase of tickets.

Rail operators and TVM suppliers are already developing improvements to ticket machines that will provide some, if not all, of the requirements set out in the Directive, for example, remote video assistance would enable information to be available via the machines in a second sensory format. The next 10 years are going to transformative for customers in their experience of ticketing with a likely move towards purchasing their tickets on personal devices like smart phones.

Given the timescale for implementation, it is likely that the natural lifecycle of affected products and services will result in a reduction in the net cost of ensuring that they are accessible in the future.

4 May 2016

AN AVIATION STRATEGY FOR EUROPE (14992/15)

Letter from the Chairman to Robert Goodwill MP, Minister of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum (EM), dated 6 January 2016. This was considered by the EU Internal Market Sub-Committee at their meeting on 8 February 2016, at which we decided to clear this document from scrutiny. However, we would like to seek clarification of a number of points.

We are concerned to note that progress regarding the Single European Sky 2+ package has remained stalled in the Council of Ministers for over a year, because of the Gibraltar issue. What progress does the Government believe can be anticipated on this package and in what timescale? We would welcome an update on actions taken by the Government to resolve this situation, and to expedite the adoption of this important legislative package.

Regarding the Commission's proposal to guard against 'unfair competition' from non-EU airlines, some of which receive government subsidies, by negotiating 'fair competition' clauses into EU comprehensive air transport agreements and amending existing regulation, we note that the Government believes that these concerns would be better addressed through the introduction of "safeguards in multilateral agreements" and that these agreements "need to be couched in terms which are achievable for all parties". Can you explain in more detail the nature of the Government's reservations about the Commission approach, and why the approach advocated by the Government would be more achievable in practice? Furthermore, is the Government confident that the EU negotiating these agreements will secure comparable or better terms for the UK than those that we have negotiated with these countries?

We also note that the Government would support more action than is currently proposed in terms of reforming EU rules on ownership and control of airlines. Can you give us a clearer indication of the reforms that the Government would like to see in this area?

While we welcome the Commission's recognition that the single market in aviation is a key driver of jobs, growth and investment, we also note that greenhouse gas emissions by the aviation sector are significant negative externalities of economic activity in this sector, and a concern for many. In this regard, the Commission's Aviation Strategy recommends that, at the International Civil Aviation Organization Assembly in 2016, EU Member States should pursue "a robust Global Market Based Mechanism to achieve carbon neutral growth from 2020", which should be made operational from 2020 and reviewed over time, as well as "the adoption of a first CO_2 standard for aircraft". Does the Government support these objectives, and will it work with other EU Member States to advocate for

their adoption at ICAO 2016? If not, what approach does the Government intend to take to these negotiations?

I would welcome a response in due course.

9 February 2016

Letter from Robert Goodwill MP to the Chairman

Thank you for your letter, dated 9 February 2016. I welcome your clearance of this document from scrutiny and am writing to respond to your requests for clarification of several points.

SINGLE EUROPEAN SKY (SES) 2+ PACKAGE

It is disappointing that Spain is seeking to deliberately suspend Gibraltar from EU aviation dossiers, including SES 2+ (11501/13). You may recall from my letter of 8 December 2014 on the proposal that the Government took a very firm position at the Transport Council on 3 December 2014 making it clear to the European Commission and the (then) Italian Presidency that Spain's attempts to exclude Gibraltar airport from the SES 2+ proposals were unacceptable to the UK. Since that time, subsequent EU Presidencies have not shown any inclination to take the file to trilogue discussions while the Gibraltar issue remains unresolved.

We remain keen to reach a constructive outcome on the SES 2+ file that respects our red line on the application to Gibraltar. The EU Treaties are clear that Gibraltar should be included in EU aviation legislation – there is no justification for suspending Gibraltar airport. The Government will therefore continue to oppose Spain's attempts to exclude Gibraltar airport from aviation legislation.

The Cordoba Agreement from 2006 with Spain had previously prevented the Gibraltar issue from delaying EU legislation. The UK and Gibraltar continue to uphold this agreement. It is deeply regrettable that Spain has chosen to ignore its own commitments.

We have told Spain, the European Commission and successive EU Presidencies that Gibraltar and the UK are willing to discuss with Spain any compromise solutions that respect our red lines on Gibraltar.

UNFAIR COMPETITION

The Aviation Strategy indicated that the Commission is proposing to negotiate 'fair competition' clauses into EU comprehensive air transport agreements and revise an existing relevant Regulation.

The UK government is supportive of introducing these 'fair competition' clauses into EU comprehensive air transport agreements. These are sometimes also referred to as 'safeguards in multilateral agreements'. The UK has included similar articles in its bilateral agreements where achievable, as have other Member States. The need for such articles in these agreements is not universally recognised across the world; attitudes range from protectionist to extremely liberal. This is why the UK government is urging that articles in multilateral agreements need to be couched in terms which are achievable for all parties, in order to achieve progress and consensus on this issue. We are involved in efforts to secure such safeguards in our bilateral agreements and at a global level through the International Civil Aviation Organisation (ICAO).

As stated in our Explanatory Memorandum, we believe market access and liberalisation bring significant benefits to UK industry and consumers. The Government supports EU comprehensive air services agreements as they would expand market access and liberalisation on a larger geographical scope than that which could be achieved by a bilateral agreement between the UK and a third country.

The Commission is also expected to propose a revision of Regulation 868/2004, which was introduced to combat unfair pricing practices but which has never been used. Once we have seen a concrete legislative proposal from the Commission, the Government will be able to assess whether this would be an effective way of addressing the issue.

OWNERSHIP & CONTROL REFORM

Currently, in order to be defined as an EU airline, an airline cannot be more than 49% owned by a non-EU body. There are similar rules in many countries across the world, including the USA. Aviation is one of the most international of industries but the airline sector has some of the most restrictive rules on international ownership and control. As a next step in increasing the liberalisation of the aviation market, the UK would support the 49% limit being increased or even removed entirely. In other sectors of developed economies, the freedom to invest is considered important to the efficient functioning of the market, and restrictions are relatively rare, subject to compliance with laws on employment, health and safety, competition, etc. The current restrictions have an impact on the extent to which airlines have access to investors and capital, and how the air transport market functions.

AVIATION EMISSIONS

The Government fully supports both of the Commission's objectives in this area. Given the international nature of the aviation sector, the Government's emphasis is on taking strong action at a global level as the best means of addressing CO2 emissions from aviation. To this end, the UK plays a key role in the work of the UN's International Civil Aviation Organisation (ICAO) and supports its goal of carbon-neutral growth for international aviation from 2020.

In February, the UK helped reach agreement with other states in ICAO on a global CO2 standard for aircraft, the first of its kind. The 'new type' and 'in-production' standards agreed, applying from 2020 and 2023 respectively, could save as much as 650 million tonnes of CO2 between 2020 and 2040.

We are also working hard to reach agreement in ICAO on a Global Market-Based Measure to tackle aviation emissions. We want the 2016 Assembly to take a positive decision towards the implementation of a measure from 2020 that is environmentally effective, minimises competitive distortions and is as administratively simple as possible.

17 May 2016

COMMON RULES IN THE FIELD OF CIVIL AVIATION (14991/15)

Letter from the Chairman to Robert Goodwill MP, Minister of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum dated 6 January 2016 in relation to the Commission's proposed changes to the EASA basic regulation. This letter was considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 8 February 2016.

Given the Internal Market Sub-Committee's recent inquiry "*Civilian Use of Drones in the EU*", published on 5 March 2015, we were particularly interested in those elements of the Commission's proposal that related specifically to Remotely Piloted Aircraft Systems (RPAS). Here, we found that the approach outlined by the Commission conformed broadly to the approach advocated in our report, which recommended the creation of an internal market in the EU for the commercial use of RPAS, giving the European Aviation Safety Agency (EASA) a leading role in developing the necessary rules, and - to avoid stifling the emergent RPAS industry - ensuring that any regulation was risk-based and proportionate, and gave Member States a sufficient degree of flexibility in regulating small RPAS to respond to local markets and support growth in the industry.

While the Commission's proposals in relation to RPAS are consistent with these recommendations, we note that they remain extremely general, and that the proposed use of delegated and implementing acts would give EASA significant flexibility in determining the final shape of any regulations. We therefore wish to ask a number of questions.

Assuming the Commission's proposal is adopted by the Council of Ministers, in what ways will the Government and industry remain involved in formulating these more detailed rules over the coming years? What opportunities to influence the proposals will they have?

Given the 'make or break effect' that these proposals could potentially have on RPAS start-ups and existing businesses in the UK and Europe, it is important to ensure that the regulatory framework proposed by EASA is sufficiently flexible and risk-based to encourage innovation in these markets. How confident is the Government, based on its engagement with EASA and other stakeholders, that this will be the case? Is there a significant risk that the regulation could become excessively prescriptive and put EU-based innovators at a competitive disadvantage?

One industry stakeholder we have spoken to expressed reservations about the fact that weight limits will continue to help define the boundaries of the different categories of RPAS. We share these concerns. If RPAS regulation is supposed to be operation-centric and risk-based, it is not clear to us that weight will always be a suitable criterion to determine what level of regulation particular RPAS should be subject to. What is the Government's view on this point? How much flexibility is EASA willing to allow on this point, in your view?

We have also heard concerns that 'Beyond Visual Line of Sight' (BVLOS) drones might be excluded from the 'specific' category, and automatically included in the 'certified' category, which would have a significant impact on the viability of a number of RPAS businesses in the UK and Europe. Does the Government think this is likely, and does it agree with such an approach?

We note that EASA's outline proposals leave significant responsibility to the Member States and national aviation agencies and in terms of the management of the 'open' and 'specific' categories of drones. What are the nature of these responsibilities likely to be? To what extent is the Civil Aviation Authority resourced to deal with this additional responsibility? Has it expressed a view to the Government on this point? In addition, our report noted the important role of the police in enforcing existing regulations on the use of the RPAS. What impact will this proposal have on the role of the police in this regard?

Our report also discussed the issue of insurance for commercial and private use of RPAS. How has the insurance market for RPAS developed since the report's publication? Does this proposal take into account developments in the insurance market?

We understand the Government recently launched its own consultation on the civilian use of drones, and we wish to be kept updated on any developments in this area.

Finally, can you provide us with an indication of the timescales within which EASA can be anticipated to develop its more detailed proposals, and when it is anticipated that these will become applicable? Given the urgency of the safety issues raised by RPAS, are these timescales appropriate in your view?

We would welcome a response within 10 working days.

9 February 2016

Letter from Robert Goodwill MP to the Chairman

Thank you for your letter dated 9 February 2016 in relation to the Commission's proposed changes to the EASA basic regulation. You posed a number of questions in your letter, and I set out answers to these below.

A number of States, including the UK, have indicated that they are opposed to the sweeping use of delegated acts in this Regulation and would much prefer the use of Implementing Acts. Both the Commission and EASA have given reassurances that Member States will continue to help shape future Implementing Rules in this area.

Both my officials and the Civil Aviation Authority are actively involved in the ongoing technical discussions on this evolving regulation. This includes ensuring that the UK industry opinion is taken into account when Implementing Rules are developed. Through these discussions the UK will put forward a strong case for the proposed Implementing Rules to be sufficiently flexible and risk-based, concentrating more on the operation (what you want to do, where you want to do it, how you want to do it) rather than an aircraft weight based approach. But we recognise that the Regulation does not totally exclude the introduction of sub-weight categories within the 'open', 'specific' and 'certification' definitions. The UK will continue to support a risk-based approach based on the operation rather than by weight.

Our understanding as regards Beyond Visual Line Of Sight (BVLOS) operations, is that the vast majority of operations for smaller systems (sub 25kg) will be in the specific category. The more complex systems, predominantly over 150kg, will be in the certified category as these will be typically more akin to manned aviation. However, if a BVLOS operation is predominantly over the sea, or rural areas where there is a relatively small risk to third parties or other aviation stakeholders, then there is no reason why the specific category would not apply irrespective of the weight. We are in discussion with EASA to seek clarity on this point and will look for greater certainty in the Implementing Rules as these are developed.

We recognise that the Civil Aviation Authority will continue to have a significant role in the oversight of remotely piloted aircraft systems. The exact nature and the detail of these responsibilities will be set out in the Implementing Rules, yet to be developed, although there are some hints in the EASA Technical Opinion. We are confident that the CAA will be adequately resourced to meet this challenge. My officials are talking to the CAA about staffing levels and that the CAA has suitably skilled individuals to meet the future requirement. With regards to enforcement, the Department is in discussion with the Home Office, Police and CAA about the division of responsibilities. We are keen to reinforce the point that this is a matter wholly for Member States.

Turning to the matter of insurance, the EASA Technical Opinion says nothing about how they will deal with the issue of insurance. In the UK all commercial operators need to demonstrate that they have adequate third party liability cover before they will receive a permission from the CAA. There are no such requirements on hobbyists or recreational users, although if you belong to a model flying association then you automatically acquire an insurance liability cover. The government is keen to ensure that EASA is taking the insurance issues seriously and my officials will be raising the point directly with EASA in their ongoing discussions.

On the issue of Consultation. I should make clear that the Department has just concluded a three month series of public dialogue events, held in Manchester, Stirling, Newry, Aberystwyth and Salisbury. We are expecting a report in April from the independent facilitators, which we intend to publish in early May. A number of important issues were raised in the public dialogues, which we will address in a wider public consultation to be run in June. The Government intends to publish its strategy on remotely piloted aircraft systems in later this year.

Finally, on the issue of timescales within which EASA may develop its more detailed proposals, the Commission hope to have the Regulation adopted by mid-2017. We would not expect to see the first Implementing Rules adopted and coming into force for several months after that, probably seeing a gradual introduction through 2018 and 2019.

14 March 2016

Letter from the Chairman to Robert Goodwill MP

Thank you for your letter dated 14 March 2016 in relation to the Commission's proposed changes to the EASA basic regulation. This letter was considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 5 May 2016.

We note that the Commission's flexible, operation-centric approach to incorporating RPAS into the European airspace is in line with the Government's views. We also welcome your efforts to engage industry more thoroughly in the development of the detailed Implementing Rules, under the auspices of the cross-government working group, and to ensure that the use of Delegated Acts is kept to a minimum.

Looking forward, you inform us that it will be mid-2017 before a General Approach is agreed in Council, with some Implementing Rules potentially entering into force as late as 2019.

The timescales involved throw into sharp relief the discrepancy between the speed at which RPAS technologies are developing and the comparatively slow pace at which regulators are catching up with industry developments. This leaves us in a difficult interim period, in which it is hard to be confident that public safety is sufficiently protected.

Given these uncertainties, do you consider that high-value locations such as airports and Parliament are adequately protected at the present time? We would also like to know whether, when progress

at EU-level is going to take such a long time, is it acceptable not to make swifter progress on this public safety issue domestically?

We would therefore also be grateful for a clear overview of the different actions that the Government has taken, and plans to take in the immediate future, to address public safety concerns about the misuse of RPAS.

Thank you for your letter following up on our recent evidence session, in which you state that, although Amazon does not provide informational leaflets with drones sold on its platform, they provide an online equivalent whereby a link is highlighted on the screen, pre-purchase. We tested this system and found that, in practice, the link was not brought to the user's attention either prior to or during the purchase process. The link to the relevant documentation is provided on the product web-page in extremely small print, and consumers must identify it themselves if they are to access this information. Is this sufficient, in your view?

We anticipate that we will ask to conduct a further evidence session with you on this subject in late 2016, by which time the Government will be finalising its RPAS Strategy, and a clearer picture will have emerged of the direction of travel at EU level.

In the meantime, we would welcome further updates about any substantial developments in Council negotiations regarding the EASA Regulation, as well as related domestic developments, including any RPAS elements of the Modern Transport Bill and the Government's emerging RPAS Strategy.

We would be grateful for a response within 30 working days.

6 May 2016

DIGITAL SINGLE MARKET: USE OF THE 470-790 MHZ RADIO SPECTRUM BAND (5814/16)

Letter from the Chairman to Ed Vaizey MP, Minister of State for Culture and the Digital Economy, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum dated 22 February 2016 concerning the Commission's proposed decision regarding the use of the 470-790 MHz frequency band in the Union, and for your Supplementary Explanatory Memorandum dated 10 February 2016 on the same subject. These documents were considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 14 March 2016.

We note the Government's view that appropriate EU harmonising legislation with regard to the coordinated change of use of the 700 MHz spectrum to mobile broadband services could be beneficial, but that you also raise concerns about the detail of the proposals.

Regarding the proposed June 2020 deadline, will the Government be advocating that this be changed to the recommendation of the Lamy report (2020 +/- 2 years)? Given the slow rollout of the 800 MHz band in Europe relative to the US, is there a risk that allowing a later deadline might potentially have a detrimental effect on Europe's ability to compete in rapidly emerging digital markets such as the internet of things?

We also note the Government's reservations about the Commission's coverage targets. These were designed to close the digital divide and to ensure that there is high-quality internet connectivity almost everywhere, which will be required to support the emergence of new technologies such as driverless cars—objectives which we support. Does the Government oppose setting coverage obligations per se? What type of targets or obligations, if any, do the Government and Ofcom advocate?

Regarding the proposed changes in the sub-700 MHz band, we note that the Commission has developed the "flexibility option" outlined in the Lamy report, which suggested permitting Member States to widen access to this band to unidirectional wireless broadband services, in addition to digital

terrestrial-television (DTT) broadcasting.[1] We understand that this was partly driven by low and declining levels of DTT radio spectrum use in some Member States, growing media consumption through other devices, and the desire to facilitate innovative new uses of radio spectrum in this band whilst avoiding cross-border interference. We note that DigitalEurope, which comprises a broad range of manufacturers of mobile and broadcasting technologies, and of which TechUK is a member, wrote a paper advocating this approach.[2] We also note that BT, in its response to the Lamy consultation, supported this option.[3]

Nonetheless, we note that the impact of the proposal on the UK's TV white spaces initiative would be significant, and that the Commission has overlooked this impact. We understand that this problem is unique to the UK. Are you aware of any other Member States that permit bi-directional transmission in the sub-700 MHz radio spectrum band?

Do you believe that the Government will be able to secure an exemption from this aspect of the proposals, or modification of their scope, that would allow the UK's white space initiative to continue in its current form? If such an exemption were secured, would the Government be supportive of the proposals in the sub-700 MHz band? If not, what are the Government's further objections?

We also note your concerns about the costs of upgrading transmission apparatus. When we contacted the Commission to try to understand the scale of the discrepancy between the Commission's figures and the Government's, officials suggested that the UK had adopted a different approach to managing these adaptations to other Member States in order to avoid requiring consumers to pay for new equipment, but that this approach was more expensive overall. Is this correct? What costs do comparable Member States such as Germany and France believe they will incur in clearing the 700 MHz band?

We look forward to a response within 15 working days.

15 March 2016

Letter from Ed Vaizey MP to the Chairman

Many thanks for your letter dated 15 March 2016 seeking further information concerning the proposed 700 MHz Decision. I hope the attached will be useful to the Committee.

DEADLINE FOR COMPLETION OF CLEARANCE

I note your concerns that allowing a later deadline for completion of clearance may cause Europe to be less competitive in emerging digital markets such as the internet of things (IoT). While there is some value in setting a date for harmonised clearance of the band, an earlier date is not necessarily better.

Access to spectrum for IoT devices is an important issue, though the extent to which 700 MHz will be relied on for IoT is at present unclear. There would be some risks both from premature and from belated clearance of 700 MHz spectrum; it is not clear to the Government that the balance of these risks is worse for a clearance date of June 2022 than for June 2020. That said, the UK is still seeking to clear the 700 MHz band as soon as possible.

The important date for European markets is likely not to be the spectrum clearance date but the timescale on which networks are rolled out by Mobile Network Operators (MNOs). The faster US rollout of 800 MHz spectrum may not be the best comparison for 700 MHz, because one of the key drivers for early US 4G network rollout was the relatively poor state of 3G networks in the US compared to Europe.

Beyond a certain point, an earlier clearance date would not have any practical impact on network deployment by MNOs, and indeed could lead to decisions to invest in less capable networks because technology uncertainty about next generation networks would be higher. On the other hand, later

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[1] Lamy report on the future use of the UHF band goo.gl/yywS7E
[2] DigitalEurope white paper on supplemental downlink in the UHF band goo.gl/gPuAPc
[3] Organisations Contributions to the consultation on the Lamy report goo.gl/I3Tt4G

network deployment as a result of a very long clearance timetable would mean some benefits of 700 MHz spectrum for Europe were postponed.

COVERAGE TARGETS

The Government is in favour of coverage obligations where appropriate. Both in principle and in practice we think these are better set at Member State level nearer the time at which licences are granted. Ofcom has indicated an intention to consult on coverage obligations for 700 MHz, without setting out at this early stage a view on what its particular proposals might be.

Other Member States have raised concerns about the impact of coverage targets. The Commission have, therefore, removed the references to coverage targets from the latest draft and are now asking Member States to increase the quality and coverage of mobile broadband within national boundaries.

SUPPLEMENTARY DOWNLINK IN THE SUB-700MHZ BAND

The Telecoms Working Group meetings have shown that several Member States believe the Commission should not be determining alternate uses for the 700MHz band. As a result, it currently appears that the UK is likely to be able to avoid adverse impact on white space device use. However, given that TV broadcaster organisations have also expressed concern about whether article 4 offers them the protection it was intended to, it is unclear at this stage what value article 4 adds to the Decision and hence whether there is a case for its continued inclusion.

COST OF CLEARANCE

It is true that a benefit of the UK's approach to 700 MHz clearance is that consumers will not have to pay for new TV reception equipment. However, it is not correct to suggest that the UK has chosen a (much) more expensive overall clearance programme to secure this benefit.

The largest costs for the UK 700MHz Programme will be the necessary changes to the DTT infrastructure. Many of the high-power antennae that currently broadcast in the 700MHz band will need replacing because they aren't designed to transmit at lower frequencies. The frequencies used by many other masts mean that those antennae too will have to change. These costs alone are significantly more than quoted in the Commission's Impact Assessment and would be incurred whether or not an upgrade to DVB-T2 technology took place at the same time.

It is possible that the transmission infrastructure in other Member States already has antennae designed to transmit on a wider range of frequencies (so-called 'broadband antennae'), in which case their costs would be rather lower per transmitter than the UK's.

France and Germany are not comparable countries when it comes to looking at the costs of clearance. In Germany, DTT penetration is approximately 6% and their DTT platform does not carry the same content as the UK. France are mandating an upgrade to DVB-T2 as part of their clearance programme.

29 March 2016

Letter from Ed Vaizey MP to the Chairman

I am writing to summarise the good progress made in Council Working Groups to improve on the Commission's proposed text, and on that basis to seek release from the Committee's scrutiny for this measure.

OVERVIEW

1. The Explanatory Memorandum on the 700 MHz Decision set out the potential benefits from EU legislation but highlighted three main areas of concern for the UK:

— The timescale on which the 700 MHz band would have to be cleared (June 2020 as proposed);

— Whether coverage conditions (e.g. that services needed to cover X% of population) were to be prescribed at EU level; and

— The establishment of new rules for the use of the sub700 MHz band (470694 MHz), which would have limited the use of two-way "white space devices" (WSDs) at frequencies not used by the UK's TV transmitters.

It also noted that the evidence put forward by the European Commission in its impact assessment was insufficient to justify some of the details of the draft Decision in these respects.

2. Negotiation of the text in Council Working Group has amended the text to introduce:

— up to two years' grace period on the June 2020 deadline, thus putting the UK's 700 MHz clearance timetable within the permitted timeframe;

— language on coverage conditions which would require the UK to consider the case for them but crucially leaves to the UK the decision on whether to introduce such conditions; and

— language on sub700 MHz that strikes an appropriate balance between providing some certainty across the EU while not prejudging decisions on the future of the band or unduly restricting Member States' ability to deploy appropriate services in it.

SUBSIDIARITY

3. The Explanatory Memorandum on the 700 MHz Decision identified potential benefits from the coordinated use of 700 MHz spectrum in the EU and that an appropriate Decision could help achieve those benefits.

4. The new draft text adds value by reason of its scale or effect and a reasonable case has been made for coordinated EU action on the (more flexible) timescale involved.

700790 MHz BAND

5. The UK's main priority at this stage is to set a clearance deadline compatible with the

UK's own plans for clearance. Work has already started to adapt the first TV transmitters.

6. The current text would allow the UK to complete any time before June 2022 – compatible with the Government's plan to complete clearance by end 2021 or earlier. It represents a compromise between early movers (France and Germany) and others in a similar position to the UK, as Spain and Poland look to be for example.

7. On coverage obligations, several other Member States took the view, with the UK, that very specific obligations on availability or quality were not appropriate to set at EU level. However, there was insufficient support for deletion of the obligation.

8. The current Article 3 obliges Member States to consider how use of the 700 MHz band could improve coverage and/or quality of mobile broadband services, and whether coverage conditions would help achieve this. Given the potential of the 700 MHz band to be used for coverage, the Government's commitment to improving coverage and Ofcom's announcement in its Digital Communications Review that it would consider coverage obligations on 700 MHz spectrum, this sort of "obligation to consider" seems proportionate. It does not create the sort of subsidiarity issues that we might have been concerned about initially.

SUB700 MHz BAND (470694 MHz) – DTT, PMSE AND DOWNLINK SERVICES

9. The main provision here – that Digital Terrestrial TV (DTT) and wireless audio

(PMSE) services retain their primary authorisation to use the band – is not particularly controversial.

10. The key issue here is about services that share with DTT and PMSE – possibly on a geographical basis (i.e. they use frequencies different from the nearby TV transmitter(s)). As a practical matter they must not interfere with the primary services.

This is particularly important for the UK where around 40% households rely on DTT to receive TV services.

11. There is also a strategic question here: is it appropriate to decide at this point to harmonise this band further within Europe?

12. The controversial element in proposals for the sub700 MHz band is the introduction of services sharing with TV and PMSE on a harmonised basis.

13. Advocates of a "downlink only" element in the decision – principally equipment manufacturers – point to opportunities from innovation by allowing such use. Up to a point this may be true, although it is noted that mobile devices working in the 600 MHz band have already been developed for the US market, so the need for innovation may be more limited than indicated.

14. This is problematic for the UK because of the restriction to downlink only – that is, receiving signals but not sending any data back. As discussed in our EM, the UK has authorised a wider range of devices to operate in the free parts of the band, or TV white spaces as they are known: hence the generic term "White Space Devices" (WSDs). A restriction to noninterfering devices would be more to the point.

15 .It is also problematic because by harmonising a particular technology or set of technology choices in the band, the EU could be seen as prejudging the results of discussions about this band at the global spectrum allocation conference WRC23 and/or in the EU's own 2025 review. TV broadcasters are concerned that such a decision would therefore destabilise their own investment.

16. Unless prohibited by EU action, Member States would still be free to introduce experimental services as long as they did not interfere with other Member States' services, as the UK has already done with WSDs.

17. That being the case, the arguments for Europe-wide action here seem relatively weak. Without it, innovation can continue on a country-by-country basis, with device manufacturers having an incentive to coordinate cross-country activity. But acting now seems premature.

18. Dropping any reference to "downlink only" is therefore a good option.

25 April 2016

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 25 April 2016, which was considered by the EU Internal Market Sub-Committee at its meeting on 5 May 2016.

We note that the proposal as outlined in your letter now appears to address the majority of the UK's concerns and, as a result that the Government would wish to support the adoption of a General Approach at the Telecommunications Council on 26 May. We have agreed to waive the scrutiny reserve (and therefore to grant a 'scrutiny waiver') for this meeting if the proposed text remains faithful to the position outlined in your letter.

However we intend to retain the proposal under scrutiny to take into account developments under trilogue negotiations. We would therefore be grateful for a thorough summary of the outcome of discussions at the Telecoms Council.

In particular, we would welcome a detailed account of the future of the sub-700 MHz band, including any divergence of views amongst Member States. While we wish to protect the UK's TV White Spaces initiative, equipment manufacturers support the "downlink-only" approach proposed by the Commission, because they believe that it would permit increased innovation in this band. It appears to us that there is a tension between the type of localised innovation the TV White Spaces initiative exemplifies and permitting larger-scale innovation across the Single Market. We do not feel that we have yet received sufficient information to determine whether the proposed approach is the optimal one.

DUTCH PRESIDENCY FORWARD LOOK – TRANSPORT (UNNUMBERED)

Letter from Robert Goodwill MP, Minister of State for Transport, Department for Transport, to the Chairman

I am writing to inform you of our expectations for the transport agenda during the Dutch Presidency of the EU Council of Ministers.

The Dutch have an ambitious transport programme. Their priorities are to complete trilogues on the market pillar of the Fourth Railway Package and take forward the Aviation Strategy, but they also have a substantial agenda on maritime and shipping.

The Presidency have scheduled one formal Transport Council on 7 June (Luxembourg) with an innovative joint transport and environment informal Council on 14-15 April (Amsterdam) as well as a range of modal events.

In more detail:

AVIATION

The Commission's Aviation Strategy (EM 14992/15), launched in December 2015, is a clear priority for the Presidency. The Communication on the Strategy was discussed at an Aviation Summit which I attended at Schiphol Airport on 20/21 January, entitled "boosting the competitiveness of European aviation". The main discussion was on the Aviation Strategy with panel sessions and a roundtable debate.

The proposed new EASA Basic Regulation (EM 14991/15) will be the Presidency's legislative focus. Working group discussions have opened and the Presidency may seek a general approach at the June Transport Council.

The Presidency will also begin discussions on mandates for comprehensive aviation agreements with third countries.

The Commission expects to table a proposal to revise Regulation 868/2004 on unfair pricing practices in the spring. The Presidency stand ready to begin discussions on the proposal as soon as it is published, with a possible progress report at the June Transport Council.

MARITIME AND SHIPPING

A wealth of forthcoming maritime proposals in early 2016 means that the Shipping Working Party will be starting discussions on several new legislative files under the Dutch Presidency. This includes the proposal to widen the mandate of the European Maritime Safety Agency (EM 15390/15), published as part of the wider package of measures to improve the EU's external border security and develop a European Borders and Coastguard Agency.

The Presidency are taking forward discussions on a Multi-annual Framework Decision for the Paris MOU on Port State Control (EM 15518/15). They will also be keen to push forward with the Commission's proposals to simplify European Passenger Ship Safety regulations, which will be released in March and which fit well with the Dutch and UK Better Regulation Agendas. The Presidency may seek general approaches at the June Transport Council on this proposal and an expected proposal for a new Directive on Harmonisation of Professional Qualifications for Inland Waterways which will be published in February. The Shipping Working Party will also continue its usual IMO coordination discussions.

The Dutch plan to take forward trilogue discussions on the proposal Ports Services Regulation (EM 10154/13 and EM 13764/14) and are hoping to reach agreement by June. I will write to you separately with details of the latest developments in the European Parliament. The Presidency will also work to take forward trilogues on the proposed Technical Standards for Inland Waterway

Vessels Directive (EM 13717/13), where discussions with the European Parliament will focus on the role of delegated acts.

The Dutch are supporting their maritime programme with a High Level Conference on Short Sea Shipping in Amsterdam on 15 February which will focus on how best to promote short sea shipping, the challenges facing it, and the opportunities that exist. During their Presidency they will want to prioritise dossiers that promote competitiveness and reduce administrative burdens.

In the longer term, preparations will continue on the development of the Commission's planned 2017 Maritime Package, which is likely to coincide with the UK's Presidency.

LAND

The Presidency's main focus is on completing the remaining trilogue process on the market pillar of the Fourth Railway Package (EM 5960/13 & 5985/13) with a strong desire to reach an agreement by Easter.

There will be no live road dossiers under the Dutch Presidency. However, we are still expecting the Commission to adopt its Roads Initiatives towards the end of this year. The planned package will have three pillars: road charging, social dimension, and the internal market. The Commission plans to launch a public consultation on each of the three policy areas imminently, and carry out impact assessments in early 2016. We are continuing to engage to encourage development of a package that supports the UK's objectives on competitiveness, jobs and growth. The package is not expected to feature in the Presidency's programme, although the Dutch have noted that they stand ready to discuss it if necessary.

MOTOR VEHICLE TECHNICAL HARMONISATION

There is likely to be an early agreement in trilogue discussions on Non-Road Mobile Machinery (EM 13690/14), with a positive outcome on the cards for the UK's priority exemption for replacement engines.

We will continue to encourage the search for a position that Member States can support on Transfer of Motor Vehicle Registrations (8794/12). This should produce useful benefits by harmonising and simplifying procedures across the EU for those wishing to re-register their vehicle when they change their country of residence; and reducing the current costs to consumers of driving rented vehicles one way across a border within the EU.

A new Commission proposal for revising the Framework Directive for Motor Vehicles was published on 27 January. In the wake of the VW emissions scandal, this is intended to present a step-change in how the EU approaches market surveillance and enforcement of motor vehicle legislation.

TRANSPORT AND ENVIRONMENT

On real driving emissions (RDE – EM 14506/15), the European Parliament will vote in plenary on 3 February on whether to object to the proposal agreed by Member States in technical committee, which will significantly reduce real world NOx emissions from new diesel cars from 2017, thereby contributing to the EU's air quality goals. Any objection to the RDE Regulation is likely to result in a significant delay to implementation, which in turn will delay benefits to air quality. HMG strongly support the introduction of RDE testing as a vital way to reduce vehicle emissions as soon as possible and we have been lobbying MEPs to try to avert a negative outcome. We will also continue to proactively engage in developing the future RDE packages 3 and 4.

Two of the cross-cutting themes of the Dutch Presidency are innovation and sustainability and in this context the Presidency is preparing a draft declaration on Connected and Autonomous Vehicles (CAVs), which will set out a roadmap for future work in this area. This will be the key transport focus of the joint Transport and Environment Informal Council on 14-15 April. The Council will include a joint session for Transport and Environment Ministers focussing on smart and green solutions for sustainable mobility and the future of transport in Europe. There will also be a separate session on the morning of 15 April on transport decarbonisation, which the Presidency hopes will feed into the

Commission's Communication on decarbonisation of the transport sector, expected to be adopted before the summer.

I hope that this general summary of our expectations is useful. Further information will, of course, be provided to you in the future on each of these dossiers, in line with the usual procedures for Parliamentary scrutiny.

2 February 2016

DWP PRIORITIES DURING THE LUXEMBOURG PRESIDENCY OF THE EU: JANUARY TO JULY 2016 (UNNUMBERED)

Letter from Priti Patel MP, Minister of State for Employment, Department for Work and Pensions, to the Chairman

The Netherlands Presidency of the EU started on 1 January 2016. It is now clearer what business the Presidency is expecting to take forward, so I would like to update you on my Department's plans and priorities over the coming months. This letter sets out the key dossiers that will be progressed.

The Netherlands Presidency work programme is based around 4 priorities: deepening the single market with a focus on its digital dimension; labour mobility, equal pay for equal work in the same place; strengthening the Eurozone, with plans to push forward the European Deposit Insurance Scheme; Freedom Security and Justice, with migration and counter-terrorism.

EMPLOYMENT AND SOCIAL POLICY COUNCIL (EPSCO)

INFORMAL COUNCIL

The informal EPSCO will take place on 19 and 20 April in Amsterdam, and will focus on improving enforcement and cooperation, around the theme of decent work for mobile EU workers and improving mobility.

FORMAL COUNCILS

The two formal EPSCO Councils during the Presidency will be held on 7 March in Brussels and on 16 June in Luxembourg. Although agendas have been circulated for these meetings, the content is likely to change during the run up to each Council.

Your committee will be provided with annotated agendas and the usual written statements before and after each Council meeting. The Dutch have confirmed that their priorities for these meetings will be linked with the labour mobility package, work on the Carcinogenic Substances Directive and poverty reduction.

BUSINESS DURING THE NETHERLANDS PRESIDENCY

EUROPE 2020:

The EPSCO Council in March is expected to adopt the **Joint Employment Report** (JER), the part of the European Semester Annual Growth Survey package that considers employment policies. The JER will then be presented to the Spring European Council. The Presidency also plans for adoption of a set of Council conclusions on the JER. These have been prepared by officials, principally in the EU Employment Committee.

The **Guidelines for the Employment Policies of the Member States** are listed for general approach at the March Council. They are associated with the Broad Guideline for Economic Policies; together they form Integrated Guidelines for Europe 2020. EU Member States take these into account when drafting their policies. The Guidelines were renewed last year and it is proposed the text is maintained for 2016, with a general approach at EPSCO. This is consistent with the previous Employment Guidelines, which were stable for a period of four years.

In June, the Council will be asked to approve **Country Specific Recommendations** (CSR) to each

Member State based on various information they have provided about their progress against EU 2020 priorities in the course of the preceding year, most notably in the National Reform Programmes they submit in the spring. The EPSCO Council will consider CSRs that concern employment and social policies. The UK engages in the Semester process to ensure that the proposals for draft CSRs reflect UK priorities. My officials are also working with HMT to develop the National Reform Programme, setting out progress against CSRs agreed in 2015.

Council Conclusions on Fighting Poverty are also expected at the June EPSCO Council, and will be based on cooperation and exchange of best practice between Member States. Based on the information we have so far, we expect the content of these Conclusions to be aligned to the UK approach.

The Commission has begun work on how to deliver on Juncker's proposal for a "Social Pillar" to strengthen Europe's social dimension. This could involve new indicators as well as proposals for new measures or to modernise existing legislation where gaps are identified. The Commission plans to work with the Employment Committee and the Social Protection Committee on developing ideas. We expect the first stage of consultation to begin in March.

NEW SKILLS AGENDA FOR EUROPE:

During the Netherlands Presidency, the Commission's new Skills Agenda for Europe (announced in their 2016 Work Programme) will be presented to the EPSCO and Education, Youth, Culture and Sport configurations of the Council. We do not expect a firm proposal on this until April/May, but the Commission has indicated their three main priorities: better skills for all; better visibility and use of skills; and better understanding of skills needs. DWP is contributing to a consultation on the Agenda through our membership of the European Network of Public Employment Services (PES) Network, and will work with BIS on coordinating a cross-government response.

LABOUR MOBILITY

We expect the Dutch Presidency to bring forward proposals with the stated aim of supporting labour mobility and tackling abuse of the system through the targeted revision of the 1996 Posting of Workers provision and a revision of the social security rules in Regulation 883/2004. These proposals were originally scheduled for adoption in 2015, but have now been included in the Commission's 2016 Work Programme. We are pleased that the Commission recognises the need to reform EU social security rules and we look forward to considering the detailed proposals when they are announced.

OCCUPATIONAL SAFETY AND HEALTH

The Dutch will also look at carcinogens in the workplace as an occupational safety and health matter. They lobbied in advance of their presidency for a revision of the exposure limits annex of the Carcinogens and Mutagens Directive (2004/37/EC) and we have been informed that the Commission will bring forward proposals to make amendments to the annex during the Dutch Presidency. This will be linked with a presidency conference on tackling work-related cancers. We will be keen to ensure that any proposals for new limits are evidence-based and proportionate and have been subject to a thorough impact assessment.

I hope you find this information helpful.

26 February 2016

EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 6) (14506/15)

Letter from Andrew Jones MP, Parliamentary Under Secretary of State for Transport, Department for Transport, to the Chairman

Thank you for your letter of 8 December 2015, in response to my Explanatory Memorandum of 18

November. You posed a number of questions in your letter, and I set out answers to these below.

WHICH ASPECTS OF THE IMPLEMENTATION OF THE REAL DRIVING EMISSIONS PROPOSAL ARE EXPECTED TO BE THE MOST CHALLENGING, AND WHAT STEPS ARE YOU TAKING TO ADDRESS THEM IN ORDER TO PREVENT DELAYS?

There remain elements of the test procedure which need to be agreed in two further regulatory packages during 2016. Getting agreement on these may be challenging, in particular, agreeing how aggressively the vehicle can be driven during the test, as well as details on how heavily laden the vehicle can be, and how hilly the test route can be. All these aspects have a considerable impact on NO_x emissions.

Achieving agreement on these aspects as early as possible is crucial to ensure that industry has sufficient time to be able to design, develop and engineer durable emissions control systems which meet the requirements. UK government officials are actively developing proposals for these aspects of the legislation with an aim to ensure that the resulting improvements in real world vehicle emissions will enable us to meet our air quality targets.

IN RELATION TO THE UK AIR QUALITY PLAN, BY HOW MUCH DOES THE GOVERNMENT ESTIMATE THE INTRODUCTION OF THESE CONFORMITY FACTORS WILL REDUCE NO_x EMISSIONS IN THE UK'S CITIES AND URBAN AREAS BY 2020?

We expect the RDE agreement to significantly reduce nitrogen oxide (NO_x) emissions and that this will help to reduce concentrations of nitrogen dioxide (NO_2) to meet EU limits under the Ambient Air Quality Directive. Emissions of NO_x from current Euro 6 diesel cars are estimated to be around three times the laboratory emissions test limit in real world conditions, with emerging data suggesting emissions from some vehicles may be much higher. This RDE agreement will reduce emissions to just over twice the limit for new vehicles from 2017 and bring them all into full compliance from 2020, with an additional margin for measurement uncertainties.

The timescale over which RDE will be introduced means that it will have limited impact in bringing forward compliance in many areas of the UK (step 1 sees the introduction of a conformity factor of 2.1 for all new model types in September 2017 and all vehicle registrations in September 2019). The RDE agreement could not be fully incorporated into the modelling for the air quality plans due to time constraints, but has been taken into account in certain areas in London, Birmingham, Leeds and South Wales. The impact of the RDE agreement along with other measures is projected to bring London into compliance with EU limits for NO_2 under the Ambient Air Quality Directive by 2025.

CAN YOU EXPLAIN IN MORE DETAIL HOW THE SYSTEM OF FAMILY TESTING WILL BE CARRIED OUT, AND WHAT OTHER SAFEGUARDS EXIST TO ENSURE A HIGH LEVEL OF COMPLIANCE?

The use of vehicle families is an established approach in the approval of vehicle emissions and is designed to provide satisfactory evidence of compliance without a disproportionate regulatory burden. It essentially recognises the results from tests on a selection of vehicle variants as evidence of compliance of a larger number of vehicles provided they have certain characteristics in common.

For RDE vehicles these common characteristics include:

— The engine must have the same configuration and number of cylinders and use the same fuel

— The engine capacity must not vary by more than 22% for capacities over 1500 cc or 32% for capacities less than 1500cc

— The exhaust after treatment devices, e.g. catalysts and filters, must be of the same type and fitted in the same order.

A minimum number of vehicles must be tested by the type approval authority for a family to be considered valid. For a family of 10 vehicles at least 4 must be tested, a family of 20 would require at least 5 tests. The type approval authority normally selects examples that are likely to represent the worst performers in the family. In addition the vehicles selected for test must include at least one

example of every engine size, each available transmission type and vehicles with the highest and lowest power to weight ratios. This may mean in practice that more than the minimum number may be required to be tested.

The manufacturer is obliged to sign a declaration that all vehicles within a family are compliant and once production begins, the type approval authority may require any example of the family to be selected for test to demonstrate conformity of production, even if it represents an example that was not included in the original type approval tests.

CAN YOU PROVIDE US WITH YOUR FIGURES FOR THE NUMBER OF CARS PRODUCED BY SMALL MANUFACTURERS ACROSS EUROPE, AND WHAT PROPORTION OF THEM ARE DIESEL OR PETROL VEHICLES? CAN YOU ALSO OUTLINE IN MORE DETAIL WHAT PROVISIONS YOU HOPED TO SEE INCLUDED IN THE FINAL TEXT TO REDUCE THE BURDEN ON SMALLER MANUFACTURERS?

The definition of a small volume manufacturer currently used in the Euro 6 regulation is a vehicle manufacturer whose worldwide annual production is less than 10,000 units. The Commission publishes data on annual registrations in Europe. Analysis of this indicates manufacturers who have less than 10,000 registrations per year in Europe account for less than 0.5% of European registrations and only about 0.1% would be diesels. However, these figures do not distinguish between manufacturers whose total global production is less than the threshold and those who produce more but only register less than 10,000 units in the EU. As a result it is difficult to give precise numbers.

The European Small Volume Car Manufacturers Alliance (ESCA) states that small volume manufacturers typically use the Small Series type approval to access the EU market and that Small Series vehicles represent 0.07% of the total number of vehicles registered in the EU per year with only 10% of these being diesels (or only 0.007% of the European fleet registered in one year). ESCA also highlights that owners of these vehicles typically have average annual mileages of less than 6000 miles. However, depending on how you define a "small manufacturer" this may be an underestimate as small series approval only allows up to 1,000 vehicles of a given type to be registered each year. Manufacturers like Lotus will have some models which will sell in higher volumes.

We are currently working with Aston Martin, McLaren, Lotus and other small volume manufacturers to develop proposals for provisions to be included in the next regulatory package. These manufacturers emphasise that many of their products will already comply with RDE requirements, and are keen to play their part in improving air quality. However they are likely to need provisions relating to how vehicles are grouped into 'families', based on similar powertrain and exhaust aftertreatment characteristics, to ensure the testing burden is not disproportionate. Later phase in dates may also be necessary recognising that they often use mainstream manufacturers engines which may not be available to them with sufficient lead time to meet the proposed dates.

CAN YOU EXPLAIN WHY CO_2 EMISSIONS WILL NOT BE MEASURED THROUGH RDE TESTING?

It is possible to measure CO_2 emissions during an RDE test, however the results could not be used to provide a definitive 'real world' CO_2 emissions figure, or to compare the CO_2 emissions of different vehicles. This is because the RDE test will, by its nature, not provide consistent, accurate and repeatable results. The RDE test procedure only defines boundary conditions for certain parameters within which a valid RDE test must remain. Due to variation in driving styles, terrain, traffic and weather conditions, etc., two RDE tests performed on the same vehicle may yield substantially different CO_2 emissions. For this reason, CO_2 emissions will continue to be assessed using a controlled laboratory test. However the current NEDC test is planned to be replaced by the new World harmonised Light-duty Test Procedure (WLTP) which will significantly reduce the 'gap' between published CO_2 and fuel economy figures and those typically achieved in real world use.

CAN YOU PROVIDE MORE DETAILS REGARDING HOW THE LABORATORY TESTING WILL BE STRENGTHENED AND WHEN PROPOSALS FOR THIS MIGHT COME FORWARD?

The laboratory test is being revised to better represent real driving and to remove potential flexibilities in the current test. Currently the laboratory tests require the vehicle to be driven in a manner which is generally slower and has fewer accelerations or decelerations than would be

experienced on the road. The new test requires the vehicle to be driven more realistically based on a database of typical driving patterns recorded in the UK and other countries.

The removal of flexibilities in the test generally reflects improvements in measuring techniques since the test was first developed allowing tighter tolerances to be specified.

The Commission have indicated that the proposals will be presented in 2017 but we await formal confirmation.

DO YOU HAVE IN MIND A PARTICULAR TIMETABLE FOR THE INTRODUCTION OF MEASURING PARTICULATES?

For heavy duty vehicles the Commission recognise there is uncertainty about the feasibility of measuring particulate numbers and they plan to do a study that they hope will support the application of particulate number measurement to new vehicle types from 2019.

For light duty vehicles the Commission have already completed a 2 year study on particulate number measurement which was positive but showed that measurement accuracy is not as good as for other pollutants. They intend to present a regulatory proposal based on this work by March which could be adopted by the end of the year. They have not yet indicated when this might be applied.

We will consider an appropriate timescale for the introduction of measuring particulates once we have had an opportunity to evaluate the proposals.

CAN YOU PROVIDE MORE INFORMATION ABOUT THE REQUIREMENT FOR MANUFACTURERS TO PROVIDE APPROVAL AUTHORITIES WITH INFORMATION ON "EMISSION CONTROL STRATEGIES", FUEL SYSTEM CONTROLLERS AND MODES OF OPERATION AND EXPLAIN WHETHER YOU BELIEVE IT GOES FAR ENOUGH TO HELP PREVENT A SIMILAR INSTANCE TO THAT OF VW?

The manufacturer must explain how the emission strategy for each vehicle works. They must supply information on the "base" emission strategy, which is the strategy that is used in normal driving, and any "auxiliary" strategy, which is one that is used only under certain driving conditions such as when driving at very high altitudes. For each auxiliary strategy the manufacturer must detail under what conditions it is operational and what parameters are modified compared to the base strategy.

This requirement is already present in European legislation for heavy duty engines, and is being introduced to light vehicles as a direct result of VW. In the event that a manufacturer is discovered to be using an undeclared alternative emission control strategy it will be a clear contravention of this requirement. This, in combination with the introduction of the RDE test itself, will make it very difficult for manufacturers in future to manipulate emissions testing.

WHEN IS THE EUROPEAN PARLIAMENT LIKELY TO CONSIDER THE RDE PROPOSAL?

The Council of Ministers and the European Parliament must both complete their consideration by 23 February. The European Parliament is expected to vote on this proposal in the week commencing 1 February 2016, when it meets in plenary. The Council of Ministers is expected to reach its own decision shortly after the EP plenary, and will have to do so either on 12 February or during the following week to comply with the 23 February deadline. The Council is not expected to oppose adoption of the proposal.

HAS THE GOVERNMENT ENGAGED WITH MEMBERS OF THE EUROPEAN PARLIAMENT ON THIS ISSUE?

The Department for Transport has taken the lead on the development and implementation of an engagement strategy which has included ministers and senior officials across departments engaging with Members of the European Parliament with the aim of ensuring a balanced and well informed discussion in plenary and to support the proposal.

DO YOU BELIEVE IT IS LIKELY TO BE APPROVED?

In the past it has been very rare for Commission proposals to be rejected in this way by the European Parliament, however we believe there is a serious risk that this may occur in this instance. An

objection to the proposal would need an absolute majority (376 MEPs) to be passed. We are working hard to try to avert this possibility.

27 January 2016

Letter from the Chairman to Andrew Jones MP

Thank you for your letter, dated 27 January 2016, which was considered by the EU Internal Market Sub-Committee at its meeting on 8 February 2016.

We welcomed your detailed response to each of the concerns raised in our letter. While we still have some reservations about the safeguards against the use of emissions "cheat devices", and the improvements to laboratory testing for CO_2 emissions, we recognise that these concerns reflect upon the effectiveness of emissions testing more widely, rather than this proposal in particular. We believe this proposal is an improvement to the existing regime and therefore have decided to clear this document from scrutiny. Nonetheless, we hope to be kept informed of developments on this proposal in due course.

We understand that on 3 February 2016, the European Parliament voted to reject an objection motion to this proposal for a Delegated Act and that you are confident the Council will agree to the proposal when it meets during the week of 12 February.

9 February 2016

EMISSIONS FROM ROAD VEHICLES (6202/14)

Letter from the Chairman to Andrew Jones MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your letter of 21 December 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 5 May 2016.

We apologise for the delay in replying to your detailed and informative letter. We are grateful that your letter responds to all of the questions posed in our original letter.

Your letter helpfully explains that negotiations on this proposal have progressed to trilogues. However, it is unclear to us whether the Council of Ministers has formally adopted a position on this proposal, which would provide a mandate for the Presidency to enter into trilogue negotiations. If that is the case, it would be in breach of the scrutiny reserve. If that is not the case, it would be helpful to know why the Presidency adopted a different approach with this proposal.

We note that many aspects of this proposal have been removed, pending further review and investigation by the Commission, in particular the setting of emission limits for nitrogen dioxide and classifying methane as a greenhouse gas. Has the Commission already begun reviewing these two policy areas? When do you think it is likely that they would introduce legislative proposals? Moreover, we note negotiations have not supported increasing the scope of the Regulation to apply to heavier vehicles. We understand that this had the support of industry. When do you think it is likely the Commission will be in a position to bring forward an amended proposal on this issue? What is the Commission and the Government doing to address the uncertainty this will create for manufacturers and consumers?

We look forward to a response to these questions and an update on negotiations in due course.

5 May 2016

Letter from the Chairman to Robert Goodwill MP, Minister of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum dated 11 January 2016 concerning the Commission's proposed amendment to the Regulation establishing a European Maritime Safety Agency and for your Supplementary Explanatory Memorandum dated 10 February 2016. These documents were considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 22 February 2016.

The Government asks whether the Scrutiny Committee considers the UK should opt in to this proposal. On the basis of our inquiry into the Justice and Home Affairs (JHA) opt-in Protocol, our view is that the opt-in Protocol does not apply in the absence of a JHA legal base. Therefore the question of whether or not the UK should opt in does not arise in this case. We refer you for further information to the House of Lords European Union Select Committee's report, "The UK's opt-in Protocol: Implications of the Government's Approach",[4] to which a reply is still outstanding.

However, whilst we do not believe that the Justice and Home Affairs Opt-in applies unless a proposal has a Title V legal base, it is our initial view that the Government has good grounds to argue that Title V legal bases are necessary in this case, although this will depend on the clarifications received from the Commission about the precise nature of the changes that are envisaged.

Overall, we agree with your view that a considered assessment of the potential benefits and concerns the proposal may raise is necessary, and believe that further clarification is required on aspects of the proposal before an informed assessment can be made.

To this end, we would be grateful if you could provide us with some further updates.

Following your further engagement with the Commission and at recent meetings of the Shipping Working Group, can you please update us regarding how, in your view, EMSA's scope and operations would change? What, in practice, would the "coordinating multipurpose operations" amount to?

The practical implications that the proposal would have on the UK Coastguard is also unclear to us. We would be grateful to receive a summary of your discussions with the Maritime and Coastguard Agency (MCA) and the UK Coastguard. Do these organisations have a clear view of what the operational implications of the proposal would be?

We note that there have already been three Shipping Working Group meetings under the Dutch Presidency, at which this proposal was presumably discussed. Can you provide us with a summary of what other Member States' views were in relation to this proposal? In relation to the question of legal bases in particular, we would like to know whether the Government made the case at these meetings that an additional Title V legal base was required, and whether others, particularly Ireland, agreed.

We note that in your Explanatory Memorandum (EM) you accept that the Commission proposal might provide genuine benefits such as capacity sharing and information sharing and that there might be risks of failing to engage, but that these benefits must be balanced against other concerns, such as any impact on the Government's control over the activities and responsibilities of the UK Coastguard, and the UK's right to control its own borders.

Is there reason to believe that this proposal would limit the UK's right or ability to control its own borders? If so, we would be grateful for further information on this important point.

We note that in your Supplementary EM you state that the Government opposes the expansion of EMSA's function. Can you clarify whether the Government has already determined that it is opposed to some aspects of the proposed changes, and, if so, which ones?

We would also be grateful for further detail about the resourcing and financial implications of the proposals. Will there be any additional cost implications beyond those outlined in your EM?

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[4] "The UK's opt-in Protocol: implications of the Government's approach"
http://www.publications.parliament.uk/pa/ld201415/ldselect/ldeucom/136/136.pdf

Has the Government reached an overall assessment of the proposal?

Finally, given that this proposal forms part of a wider package that aims to protect Europe's borders by better co-ordinating the more than 300 civilian and military authorities in the Member States responsible for carrying out coastguard functions, we would also welcome your view regarding the extent to which the proposed changes to the EMSA regulation are necessary to achieve the aims of this wider package. In your view, would scaling back the scope of this proposal substantially impact the effectiveness of the proposed European Border and Coast Guard Agency, and its ability to deal with the migration crisis? What is the view of the Commission and the other Member States on this point?

We look forward to a response within 10 working days.

23 February 2016

Letter from Robert Goodwill MP to the Chairman

Thank you for your letter of 23 February 2016 concerning my Explanatory Memorandum and Supplementary Memorandum on this proposal. I am writing to respond to the points that the Committee has raised.

Your Committee asked for an update on how EMSA's scope and operations would change, and what in practice the "coordinating multipurpose operations" would amount to.

The Commission's proposal envisaged that EMSA's core functions would be extended in four main areas: developing specific resources to create an increased surveillance capability; sharing information with the proposed European Border and Coast Guard Agency, European Fisheries Control Agency and the national authorities of other Member States; capacity building with national authorities through training, exchanges and development of guidelines; and capacity and asset sharing, including through the coordination of joint multi-purpose operations.

We understand that the intent was to enable EMSA to achieve its existing safety, environmental, ship and port facility security mandate more effectively, and at the same time contribute to the wider border protection impetus by enhancing the collection of information by EMSA and enabling such information to be more easily shared with other agencies. For example, the development of surveillance capabilities such as drones could provide a flexible resource that could be used for EMSA tasks such as pollution detection while also providing accurate and timely information that might assist the new European Border and Coast Guard Agency on border control.

The capacity sharing element of the proposal, particularly the coordination of multi-purpose operations, would however be a new role for EMSA that Member States have sought to clarify. Negotiations in working group have led to drafting changes that specify that joint operations coordinated by EMSA could only be in relation to activities falling under EMSA's existing mandate, and that participation in such operations would be voluntary for Member States, as would the concept of asset sharing as a whole. In addition, the Council working group has re-designated these additional tasks as 'ancillary' rather than 'core' tasks of the agency, to mitigate against any diversion of resources and focus from EMSA's main areas of operation.

You asked for a summary of our discussions with the Maritime and Coastguard Agency (MCA) and the HM Coastguard. The MCA (which includes the HM Coastguard) is an Executive Agency of the Department and has therefore been directly involved in the consideration of this proposal. A concern has been the potentially confusing name for the new "European Border and Coast Guard Agency" (the creation of which is part of the wider proposals Home Office are leading on), given that the structure of Member State coastguard functions vary widely, and that in the United Kingdom HM Coastguard has no border control functions. Another concern has been what capacity sharing would mean in practice, and how this might affect cross-boundary operations involving, for example, search and rescue (SAR) where effective arrangements already exist. Other areas of concern have been how these new activities are going to be prioritised when compared to EMSA's other core functions; how and where the new surveillance technology is to be deployed; and the status of any handbook on European co-operation on coastguard functions, guidelines and best practices.

However, subject to the retention of amendments made by the Council working group to the proposal, we do not envisage any operational implications for HM Coastguard, or other UK bodies involved in the coastguard functions – primarily safety and environmental protection – for which HM Coastguard is responsible. Similarly, the UK is not subject to the European Border and Coast Guard Agency Regulation (which builds on the Schengen acquis).

Your Committee asked for a summary of what other Member States' views were in relation to this proposal. Member States have expressed similar views to the UK in the key areas, in particular the need to safeguard EMSA's existing mandate so that any new activities are considered ancillary rather than core functions, and the voluntary nature of capacity sharing and joint operations for Member States. A number of Member States have also pushed for more oversight of these activities through the EMSA Administrative Board, which has also been secured in working group amendments.

The UK has made the case for the addition of an additional Title V legal base given the JHA implications of information sharing in this proposal. Although another Member State also initially questioned whether a transport legal base was sufficient very early on in discussions, this was not sustained and the UK received no support from other Member States or the Commission on its proposal.

Your Committee also asked if there is any reason to believe that this proposal would limit the UK's right or ability to control its own borders. The short answer is that there is not. As mentioned earlier, we do not envisage any operational implications for HM Coastguard, and the UK is not subject to the European Border and Coast Guard Agency Regulation.

The Committee also asked if there will be any additional cost implications beyond those outlined in my Explanatory Memorandum. None are envisaged for the period 2017-2020, with the 87 million euro contribution to EMSA coming directly from the existing EU budget. Beyond 2020 and the end of the current multi-annual financial framework, there is no additional budget currently confirmed, and a discussion would be required as to whether EMSA would need to fund these ongoing tasks from its own budget, from an expanded budget, or whether 'outside' earmarked funding from the wider EU budget would once again be required.

While the amendments made to the text in discussion to date will go some way in scaling back the EMSA proposal, we do not believe that this will substantially impact the effectiveness of the new European Border and Coast Guard Agency, or its ability to deal with the migration crisis.

Finally, the Government has not yet finalised its overall position on this proposal. I will of course keep you informed of our position once this has been completed, and of any further developments in negotiations.

9 March 2016

Letter from Robert Goodwill MP to the Chairman

Further to my letter dated 9 March 2016, I am writing to update your Committee on the progress the UK has made in negotiations on this proposal, to confirm the Government's negotiating objectives, and to request a scrutiny waiver as we now understand that the Presidency plans to seek a General Approach on the proposal at the Justice and Home Affairs Council on 21 April.

Our objectives for the negotiations were primarily threefold: to ensure that the new proposed tasks for the European Maritime Safety Agency (EMSA) were designated as "ancillary tasks" rather than "core tasks" in order to mitigate against any diversion of resources or focus from EMSA's main areas of operation; to ensure that any participation in such operations or activities that require the use of assets or resources should be on a voluntary basis for Member States as, indeed, should the concept of asset sharing as a whole; and to seek the additional inclusion of a Title V legal base in the text of the proposal to reflect that it has Justice and Home Affairs content, arising from the need for information-sharing.

As you will recall from my letter of 9 March, we have secured drafting changes that address our concerns and the overall outcome of the current negotiations has been a success for the UK. The text now specifies that joint operations coordinated by EMSA can only be in relation to activities falling under its existing mandate, and participation in such operations and the concept of asset sharing

as a whole will be voluntary for Member States. In addition, these additional tasks have been re-designated as 'ancillary' rather than 'core' tasks.

In my previous letter I also discussed the UK's view that a Title V legal base should be added to the proposal as a result of its JHA content. The UK made the case for an additional Title V legal base in the proposal, given the Government's view that a substantial proportion of the proposal relates to support and information exchange for border control and law enforcement functions. Nonetheless, we received no support from other Member States or from the Commission on this request as they felt that the JHA content and aim of the proposal was too small to justify a joint legal base. However, the Government still considers that there is JHA content in the proposal and that the UK's opt in is engaged. Therefore, we have decided that we will not opt in to the JHA elements of this proposal in line with the wider European Borders and Coastguard package, which is Schengen-focused. We will lay a Minute Statement to clarify our position at the point of formal adoption.

On this occasion, the Government considered whether there would be any practical or operational disadvantages to not opting in and concluded that there would be none. Whilst we have decided not to opt in to the JHA elements of the proposal, we consider ourselves bound by the remainder of the proposed Regulation, as well as the parent Regulation which it amends. Indeed, the UK is still obliged to provide information to EMSA under other separate measures (for example, the Vessel Traffic Monitoring Directive) and will remain bound to those obligations.

We now understand that the Presidency plans to seek a General Approach at the next Justice and Home Affairs Council meeting on 21 April. It is important to secure a favourable outcome at that meeting to ensure that the changes that the UK has secured in the proposal remain in place and are neither lost nor watered down. We therefore wish to support the current text of the General Approach, a position that is currently supported by enough other Member States to form a qualified majority. If we do not do so, there is a risk that what we have gained so far may be lost which could unhelpfully change the focus of EMSA's activities.

I appreciate that your Committee may not be ready to clear the proposal from scrutiny until the outcome of trilogue negotiations is known. Given the need to protect the gains made in negotiations so far, I would, however, be grateful if you could grant a scrutiny waiver on the proposal ahead of the JHA Council meeting.

12 April 2016

Letter from the Chairman to Robert Goodwill MP

Thank you for your letters dated 9 March and 12 April 2016 concerning the Commission's proposed amendment to the Regulation establishing a European Maritime Safety Agency. These documents were considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 14 April 2016.

The Committee congratulates the Government on the drafting changes secured in negotiations, which appear to address the main policy concerns that have previously been raised about this proposal.

However, the Committee is not willing to grant the Government a scrutiny waiver for the Justice and Home Affairs (JHA) Council that will take place on 21 April 2016.

While we supported the Government in requesting that a Title V legal base be added to this proposal, we note that the Government did not succeed in persuading other Member States to support this addition. Having taken legal advice, our view is that, in the absence of a Title V (JHA) legal base, the Government's assertion that the UK's JHA opt-in applies, and that it intends not to opt in, is in clear breach of the opt-in Protocol. As a consequence, no other Member States will agree with the UK's unilateral assertion that certain elements of this Regulation do not apply to it, and legal uncertainty as to the UK's obligations will arise.

We therefore suggest that the Government either accept that it is bound by the Regulation, having failed to persuade other Member States to agree to add a JHA legal base, or that it seek to challenge the adoption of the Regulation without a JHA legal base before the Court of Justice. The Government should not, however, unilaterally claim that it is not legally bound by certain provisions of the Regulation.

A fuller explanation of the Committee's position on the application of the JHA opt-in Protocol is outlined in our recent report, *The UK's opt-in Protocol: implications of the Government's approach*.[5] We note that the Government has yet to respond to this report.

Finally, we would be grateful for a detailed account of the Government's remaining policy concerns, besides the legal question of whether a Title V legal base should be added, which the Government feels have not been properly resolved.

As you suggest, we wish to continue to scrutinise this important proposal and would be grateful for an update from you following the outcome of the JHA Council.

14 April 2016

EU COMPETITIVENESS COUNCIL - 29 FEBRUARY 2016 (POST-COUNCIL WRITTEN MINISTERIAL STATEMENT) (UNNUMBERED)

Letter from Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport, to the Chairman

The Competitiveness Council met on 29th February. I represented the UK at the meeting.

Please find attached a Post-Council Written Statement on the subject, which is being laid in both Houses.

ATTACHMENT: POST-COUNCIL WRITTEN MINISTERIAL STATEMENT – COMPETITIVENESS COUNCIL COMPETITIVENESS COUNCIL 29TH FEBRUARY

The Competitiveness Council took place in Brussels on Monday 29th February. I represented the UK for the Internal Market and Industry discussion.

The Council started with the 'competitiveness check-up.' The discussion focussed on the issue of scale-up within the European Union. Commissioner Elżbieta Bieńkowska, responsible for the Internal Market and Industry, gave a presentation which highlighted the importance of young firms for job creation. Member States were asked to comment on the challenges faced by firms trying to scale-up and to identify what more could be done at EU and national level to support them.

I led the interventions by Member States, highlighting the action taken by the UK Government to support **SMEs and scale ups**. I drew attention specifically to: Growth Hubs, Enterprise Zones, 'Catapult' centres, and the British Business Bank. I also emphasised that the proposed services passport and better enforcement of single market rules are both areas where the EU could add value.

The following item focussed on the text of Council Conclusions prepared by the Dutch presidency. Commissioner Bieńkowska opened the debate by noting the existing barriers to trade despite the economic evidence that suggests a deeper single market, particularly in services, would bring significant benefits. The Commissioner announced that she would propose a **services passport** by the end of the year. In my intervention I said that the UK supported an ambitious services passport that would tackle disproportionate regulatory barriers. The majority of Member States were supportive and wanted to secure ambitious language on the use of mutual recognition. However, some Member States remained concerned in the absence of a clear proposal from the Commission. As such, the Presidency were required to offer a compromise text, removing reference to mutual recognition and qualifying how regulatory barriers should be tackled as part of the passport. All Member States ultimately accepted this and agreed the conclusions but expressed regret that it had not been possible to agree a more ambitious text.

The next item on the agenda was on the steel industry. This opened with the Commission arguing that both Member States and the EU could help create the environment for the **steel** industry to grow but industry would also need to play its part. The Commission further noted that a record

[5] Lords European Union Select Committee, *The UK's opt-in Protocol: implications of the Government's approach* (24 March 2015) http://www.publications.parliament.uk/pa/ld201415/ldselect/ldeucom/136/136.pdf

number of trade defence measures had been applied on steel cases and the Modernisation of Trade Defence Instruments (MTDI) package would help accelerate future investigations. I along with other Member States intervened strongly to stress that the reduction of trade defence investigations timescales from nine months to seven would not be enough, I went on to say that whilst provisional investigation into cold-rolled steel had been welcome, now was the time for urgent EU action. Several Member States argued that the stalemate on MTDI needed to be broken and that Market Economy Status (MES) for China needed to be considered carefully.

The Presidency concluded that there was agreement in Council that the period for anti-dumping measures should be shortened; access to EU funding should be simplified to facilitate investment in breakthrough technologies; and the burden of regulatory costs, especially for the EU Emissions Trading Scheme, should be significantly reduced for the best performing plants. Presidency Conclusions were later distributed.

The **European Semester** and the implementation of country specific recommendations (CSRs) to tackle barriers to growth were discussed over lunch. Several Member States noted that it was important there was a role for the Competitiveness Council and the High-Level Group on Competitiveness and Growth. The Presidency reported back to Council that it had been a fruitful debate with Member States exchanging experiences and agreeing that effective implementation was indeed important for economic growth.

The afternoon session started with a policy debate on the **circular economy**. The Presidency set out the handling arrangements for the cross cutting Circular Economy Package, which was released in December. They explained that whilst the legislative aspects would primarily be dealt with in Environment Council the Competitiveness Council had an important role to play in examining the proposals and considering the opportunities and challenges created by the proposed Action Plan. The Commission noted that both national and local level engagement would be needed. I intervened to support the ambition behind the Circular Economy Action Plan and stressed that action should be prioritised to ensure ambitious use of voluntary approaches and measures to improve the coherence between existing EU legislation and initiatives. Several other Member States suggested that flexibility was needed to take account of differing Member State circumstances: a one size fits all approach would not be appropriate.

A number of items were discussed briefly under 'any other business.' In a change to the published agenda the **Unitary Patent** and **plant breeders' rights** were discussed before the Council considered the update on the portability legislative proposal and the recently announced "Privacy Shield" agreement between the EU and the United States of America

Commissioner Bienkowska stressed that she was keen to see the Unitary Patent ratified as soon as possible. And in respect to plant breeders' rights the Commissioner stressed that the Commission had no intention of reopening the Biotech Directive.

There was then an update on the **portability of digital content**, Commissioner Günther Oettinger, responsible for the Digital Economy and Society, set out that rapid progress had been made on the proposed legislation. I intervened to welcome the Commission's approach and spoke about the importance of speedy implementation of the portability package, subject to the necessary technical changes.

Commissioner Oettinger informed Member States that the draft text of the new **EU-US "Privacy Shield"** agreement had been published. The new agreement would facilitate the transfer of personal data between the EU and the US following the invalidation of the previous "Safe Harbour" agreement. The Privacy Shield would provide updated safeguards, including a more robust framework for citizens to seek redress, and an annual review. The UK did not intervene.

17 March 2016

EU REVIEW OF THE ELECTRONIC COMMUNICATIONS FRAMEWORK (UNNUMBERED)

Letter from the Chairman to Ed Vaizey MP, Minister of State for Culture and the Digital Economy, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for your letter of 17 December 2015, which was considered by the EU Internal Market Sub-Committee at its meeting on 29 February 2016.

The Committee welcomed this early indication of the approach the Government will be taking in relation to the Commission's review of the Telecoms Framework.

This aspect of the Digital Single Market Strategy relates closely to the Committee's forthcoming report on the subject of *Online Platforms and the EU Digital Single Market*, which we will share with you as soon as it is published.

We were slightly concerned to learn that the Government is sceptical about setting very high targets for broadband and mobile data speeds. While we recognise that other technologies will continue to play a role in providing connectivity, our work on the Digital Single Market Strategy has tended to suggest that high speed access is important for the competitiveness of the UK economy. Furthermore, we note that the recent Lords report *Make or Break: The UK's Digital Future,* received evidence suggesting that, on a global scale, the UK's broadband speeds were "stuck in the slow lane" and that we were increasingly "falling behind" other advanced economies.[6] The report concluded that: "We are concerned about the pace of universal internet coverage and the delivery of superfast broadband." We would be grateful if you could provide us with a more detailed account of why the Government is sceptical about setting very high targets for broadband (including Fibre-to-the-Home) and mobile data speeds.

The Committee looks forward to scrutinising elements of the Commission's proposals in this area, starting with its proposals to harmonise the auction of radio spectrum in the coming weeks.

We look forward to a reply in due course.

4 March 2016

FINANCIAL TRANSPARENCY OF PORTS - PORT SERVICES REGULATION (PSR) (10154/13, 13764/14)

Letter from Robert Goodwill MP, Minister of State for Transport, Department for Transport, to the Chairman

I am writing to update you on the latest developments on the proposed port services Regulation.

My letter of 5 January noted that the European Parliament's Transport and Tourism (TRAN) Committee was due to vote on its amendments to the proposal on 25 January. I can now confirm that the vote went forward and TRAN adopted its report on this dossier. The proposed amendments which some MEPs had put forward to reject the proposal were not supported by the TRAN Committee, and in essence TRAN voted in favour of the proposed compromise amendments of the *Rapporteur*, Knut Fleckenstein MEP.

However, in a separate vote the Committee fell short (by a single vote) of the required majority to grant the *Rapporteur* a negotiating mandate. This means that there will be some delay before informal trilogue discussions can take place to try to achieve a First Reading deal between the positions of the Parliament and of the Council. At the time of writing, it is expected that the decision on whether to grant a negotiating mandate will now be considered by the European Parliament in a plenary session, during March. If the Parliament decides against granting a mandate, the proposal will instead move to the second reading process.

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[6] "Make or Break: The UK's Digital Future", 17 February 2015 http://be-wiser.eu/admin/resources/makeorbreak.pdf [external link]

In the meantime, your Committee may find it helpful if I offer some commentary on the TRAN Committee's amendments, in relation to the Council General Approach of October 2014.

In general, the TRAN report moves in a similar direction to the General Approach in several important respects, as compared with the Commission's original Proposal.

It would limit the scope of the second Chapter, and by retitling this as "Organisation of port services", recognizes the primacy of the port as the primary competitive unit, which fits well with the structure of the UK industry.

The scope of this Chapter would exclude pilotage (which under the General Approach would also be excluded by a national derogation). Cargo-handling and passenger services would also continue to be excluded.

The TRAN report greatly dilutes or removes requirements in relation to organization and procurement of port services, in particular by deleting Article 7 and replacing it with Article 6.3a specifying very broad-brush requirements for a selection procedure where the number of providers is limited. The General Approach also much reduces prescriptiveness in this respect as compared with the original Proposal, which was based on the concessions Directive.

The TRAN amendments do not include the competitive market exemption (CME) clauses included in the General Approach. However, a new sub-article is proposed at 6.-1. This would exempt ports which intend to act as internal operators of a service, but are not contracting authorities within the meaning of the procurement Directive (broadly speaking, that is to say, if they are in the private sector) from the remainder of Article 6 on limitation of numbers.

Your Committee may be aware of efforts on behalf of the ports industry to secure a wider set of exemptions based on the procurement Directive definition and may share my disappointment that this did not find its way into the TRAN amendments. The proposed Article 6.-1 is welcome in its own right, however, and establishes the relevance of this definition for the future trilogue negotiations.

The need for the CME in relation to Article 9.3 (internal operator providing the same service at someone else's port) is potentially avoided, in UK circumstances, by limiting the applicability of 9.3 to a port operating under a public service obligation.

Like the General Approach, but by inclusion in an article rather than by recital, the TRAN report would preserve confidential negotiations; and would not confer upon the Commission the power to make Delegated Acts instructing ports how to modulate their charges. It would limit restrictions upon internal operators to the public service obligations scenario.

Also like the General Approach, the TRAN amendments would continue to require greater transparency of public funding, which we regard as a useful precursor to seeking greater stringency on State Aids and hence fairer competition with unsubsidised UK ports.

On consultation, both the TRAN amendments and the General Approach would allow ports greater flexibility than the original Proposal in how to undertake consultation, for example not stipulating that a consultative committee be formed but leaving it to ports to decide how best to discharge the requirement.

TRAN proposes a new recital encouraging EU ports to make provision for pilotage exemption certificates (PECs). This does not directly affect the UK, as we already have this system established, but we broadly support the wider use of PECs with appropriate safety provisions.

Like the General Approach, the TRAN amendments would allow greater flexibility than the original Proposal in relation to supervision (in effect, enforcement). It would avoid the need to create a new regulatory body, and would be more compatible with the UK's devolution settlement.

Many of the TRAN amendments, like the General Approach, therefore eliminate the worst features of the original Proposal. But there remain some areas in which the TRAN text does not meet our objectives. For example, some of the provisions on employment and training would reduce ports' and their suppliers' flexibility, and there are certain safeguards in the General Approach which are not replicated.

Specifically, our provisional assessment is that TRAN amendments to Article 10 would alter transfer of undertakings obligations inappropriately. Such obligations are made under the acquired rights Directive following painstaking negotiations in a wider employment law context. I therefore regard these amendments as problematic both in terms of the legal base and the impact on genuine competition by service providers, as distinct from the transfer of staff from one undertaking to another by acquisition.

TRAN has added a new Article 10a on training and labour protection. In part, these proposed amendments reflect what UK ports, as responsible and safety-conscious employers, already generally do well. However, there are also elements here that could, for example, unreasonably constrain ports' ability to manage fluctuations in demand; or which may have other and probably unintended consequences.

TRAN has not included a counterpart to the recital in the General Approach which confirms that the UK's open port duty is not to be regarded as a public service obligation for the purposes of the Regulation. This is an important point which we intend to secure in future discussions.

The TRAN report has not yet been formally published, but I have asked my officials to notify the Committee Clerks when it is available.

In my assessment, despite the vote on the mandate, the TRAN outcome, and in particular the lack of support for amendments to reject the proposal, confirms the view that this Regulation as a whole is relatively unlikely to be voted down by the wider European Parliament. It is therefore all the more essential that we be fully engaged in future negotiations, and I intend to continue to work hard to influence them.

To that end, my officials will continue to work with the ports industry, not least to provide hard evidence of impacts of proposed amendments, which may be required at short notice, especially if compromise proposals throw up new challenges during the trilogue process.

The Government remains determined to see to it that the vital interests of UK ports and shipping, and of their customers and employees, are safeguarded. As you know, the UK ports industry is decentralized, largely unsubsidized and successful. It has invested to facilitate trade and economic growth and we must ensure that it can continue to do so.

8 February 2016

FOURTH RAILWAY PACKAGE (5855/13, 5960/13, 5985/13)

Letter from Claire Perry MP, Parliamentary Under-Secretary of State for Transport, Department for Transport, to the Chairman

Further to your letter of 15 December 2015, I am writing as requested to update you on progress in trilogue negotiations of the political/market pillar of the Fourth Railway Package. As you will recall, the political/market pillar comprises amendments to Regulation (EC) 1370/2007 (award of public service contracts – 5985/13) and Directive (EU) 2012/34 (access to and management of the railway network – 5960/13).

Following an agreement on the Council's General Approach text at Transport Council in October, "trilogue" negotiations have begun between the European Parliament, Council and European Commission. These aim to reach agreement on amendments to the proposals.

Progress in trilogue negotiations on the market pillar has been slow. Two meetings took place under the Luxembourg Presidency and two under the Dutch Presidency. The earliest point at which an agreement could be reached is April.

The first two trilogues focused on the parties explaining their respective positions. Only in the latter two have possible compromises been developed. Progress has been made in reaching provisional agreement in less controversial areas where there is some common ground between the legislators.

On the PSO Regulation, for the use of Direct Award powers the provisional compromises remain close to the Council's General Approach text. Provisional compromise text looks likely to reduce the

European Parliament's potentially burdensome demand for the creation and maintenance of multimodal public passenger transport plans to a more proportionate requirement for the specification of public service obligations to be consistent with wider public transport policy. On the Governance Directive, provisional agreement has been reached on the independence of the infrastructure manager in respect of the essential functions, traffic management and maintenance planning.

In these areas, the compromises proposed by the Presidency are acceptable.

There remain a number of areas of importance to be resolved. These are as follows:

ON THE PSO REGULATION – 1370/2007:
POWER TO MAKE A DIRECT AWARD OF A RAIL FRANCHISE IN EXCEPTIONAL CIRCUMSTANCES

The General Approach contains a specific power to remap or reschedule franchises and to deal with the consequences of train operator default or the failure of a franchise competition. The European Parliament has raised concerns that this power could be open to abuse by other Member States who wish to keep their railway markets closed.

We have therefore worked with the Presidency to develop potential compromises which address the Parliament's fears about abuse, while ensuring adequate flexibility for the rail franchising programme.

RULES ON THE TERMS AND CONDITIONS OF EMPLOYMENT FOR WORKERS IN THE RAILWAY SECTOR

The European Parliament currently argues that additional EU rules are needed on the terms and conditions of employment for railway workers. The Council position, which we support, is that it is not appropriate to introduce any new requirements which go beyond existing EU and national law.

ON THE GOVERNANCE DIRECTIVE – 2012/34
FURTHER SAFEGUARDS TO PREVENT "VERTICALLY INTEGRATED UNDERTAKINGS" ABUSING THEIR POSITION IN THE MARKET

A vertically integrated undertaking is a company or group of companies which are active in both rail infrastructure management and train operations. The European Parliament has proposed additional safeguards to prevent anticompetitive practices. In the UK, Eurotunnel and Northern Ireland Railways are vertically integrated undertakings. We agree with the EP on the importance of avoiding anticompetitive practices and are working to ensure that proposals remain proportionate and practical.

DIFFERENT RULES FOR OPEN ACCESS ON HIGH SPEED LINES

The European Parliament's position is that there should be no restrictions on open access operators who wish to operate high speed services competing with franchised services. The Council's position, which we support, is that high speed services should be treated consistently with other rail services, as is set out in the General Approach. Any conflicts between open access and franchised services should be decided objectively by the regulator.

Transitional periods for the implementation of both files have yet to be agreed and it is likely that these will not be settled until the very end of the negotiations.

I will update you on any significant further developments in negotiations as they progress.

15 March 2016

Letter from Claire Perry MP to the Chairman

Further to my letter of 15 March 2016, I am writing to update you on progress in trilogue negotiations of the political/market pillar of the Fourth Railway Package and to inform you that formal agreement by the Council and the European Parliament will be reached on both files shortly.

My previous letter outlined several matters which remained to be resolved in trilogue negotiations. Since then, negotiations with the European Parliament have progressed considerably at two further trilogues, and we have been successful in preserving key aspects of the General Approach in the final proposed deal. Below, I set out the results of negotiations on the key outstanding issues, and a broader assessment of the pillar as a whole.

ON THE PSO REGULATION – 1370/2007 (5985/13):
POWER TO MAKE A DIRECT AWARD OF RAIL FRANCHISES

Like the General Approach, the final proposed deal contains two main powers to make direct awards of contracts. These powers will replace the existing, broad power to make direct awards under Article 5(6) of Regulation 1370/2007.

The first power permits the temporary use of direct award where there are exceptional circumstances to justify this. In the proposed deal, these contracts are limited to five years in length and this power cannot be used for successive direct awards for the same services. When using this power, the competent authority must publish its reasons for doing so and notify the European Commission to prevent abuse. This power will provide helpful flexibility to use direct awards in circumstances where a competitive tender is not practical.

The second power allows direct award subject to two criteria. Firstly, that the characteristics of the network concerned justify the use of a direct award – in the proposed deal small Member States and, in the UK, Northern Ireland are deemed to meet this criterion. Secondly, that the use of this direct award would result in improvements in quality of services and/or cost efficiency compared to the previous contract. These contracts can be up to ten years in length. When using this power, the competent authority must publish its reasons and notify the European Commission. The final text differs from the General Approach in requiring each Member State to designate an independent body which could on request assess the franchising authority's decision. This is a proportionate and practical additional safeguard against abuse of this power. It is envisaged that in the UK such an application to assess the authority's reasoning would be by way of an application for judicial review to the Court.

Like the General Approach, the proposed deal makes no changes in respect of the ownership of train-operating companies (TOCs). Therefore, competent authorities, such as the Department for Transport or Transport Scotland, will, subject to domestic legislation, be able to continue to award contracts to publicly or privately owned TOCs.

EMPLOYMENT CONDITIONS IN THE RAILWAY SECTOR

The European Parliament proposed a number of additional requirements related to the employment conditions of workers in the railway sector. These included the introduction of a mandatory scheme for the certification of on-board train staff which could have resulted in additional costs.

These areas did not form part of the Commission's original proposal and no assessment of the costs or benefits of these requirements had been made. The proposed requirements could also have resulted in different requirements for the railway sector compared to other modes, with implications for its competitiveness. For these reasons I did not support these proposals and they have not been included in the proposed deal. Instead, the proposed deal states that competent authorities and operators of public service contracts must comply with relevant existing national and Union law and collective agreements. It also requires competent authorities to include details in tender documents of any requirements related to the transfer of employees under Directive 2001/23/EC (implemented through the Transfer of Undertakings (Protection of Employment) Regulations). It does not introduce new employment requirements specific to the railway sector.

PUBLIC TRANSPORT PLANS

The final compromise text moves away from the European Parliament's potentially burdensome demand for the creation and maintenance of new multimodal public passenger transport plans. Instead, it requires competent authorities to define specifications for public service obligations in line with the principle of proportionality. The specifications must also be consistent with the objectives of

transport policy as developed according to national law. This requirement is unlikely to result in any requirements additional to existing UK legislation.

ROLLING STOCK

The General Approach contained a requirement for competent authorities to assess whether they need to take action to ensure that bidders for public service contracts have fair access to rolling stock. The proposed deal includes an additional requirement for competent authorities to consider the relevant leasing market for rolling stock when carrying out their assessment. The final text also includes a range of optional measures which competent authorities may take to improve access to rolling stock. If the competent authority intends to specify the type of rolling stock required for a contract it must provide details of that rolling stock in the tender documentation.

TRANSITION PERIODS

The new Regulation would be likely to enter into force in late 2017. Not all provisions would apply immediately: the existing, broad power to make direct awards under Article 5(6) of Regulation 1370/2007 would remain in place until 2023.

ON THE GOVERNANCE DIRECTIVE – 2012/34 (5960/13):
FURTHER SAFEGUARDS TO PREVENT "VERTICALLY INTEGRATED UNDERTAKINGS" ABUSING THEIR POSITION IN THE MARKET

A vertically integrated undertaking is a company or group of companies which are active in both rail infrastructure management and train operations. A potential risk with these types of structure is that the infrastructure manager might be incentivised to discriminate against other train companies competing against the group.

The General Approach already included safeguards designed to prevent discrimination of this sort. The proposed deal includes additional requirements to ensure that other companies within the group do not have a decisive influence on the infrastructure manager which could result in discrimination. It will also prevent the infrastructure manager from passing sensitive information to other companies in the group. These measures will reduce the risk that vertically-integrated structures engage in anti-competitive practices. I believe that these measures are proportionate and practical, and that their overall benefits outweigh the limited impact they may have on vertically-integrated structures in the UK.

PROVISIONS TO ENSURE THE IMPARTIALITY OF THE INFRASTRUCTURE MANAGER, INCLUDING IN RESPECT OF CONFLICT OF INTEREST

In addition to the requirements dealing with infrastructure managers in vertically integrated undertakings, the provisions relating to all types of infrastructure manager have been strengthened in the proposed deal. These include a requirement to ensure that the impartiality of board members and senior management of the infrastructure manager is not affected by conflicts of interest. Similarly, decisions on traffic management and maintenance planning must not be affected by conflicts of interest. These changes are unlikely to have an effect in practice in the UK where these are already long established principles, but they may result in a reduced risk of discrimination in other EU Member States.

RULES FOR ACCESS ON HIGH SPEED LINES

The General Approach did not contain specific provisions on high speed rail services. The European Parliament proposed the creation of a different access regime for high speed rail services, which envisaged that there would be no role for the regulator - in the UK the Office of Rail and Road (ORR) - in assessing the impact of new open access high speed services on existing franchises. This was on the basis that more competition "in the market" (between different train operators on the same route) would, in the Parliament's view, have beneficial effects on the development of high speed rail services. However, it would have resulted in the creation of a different regulatory regime for high

speed and other rail services, which could have been difficult to manage in practice, because trains can run on high speed infrastructure for part of their journey and conventional infrastructure for the rest.

The proposed deal contains a specific article about high speed rail services. Affected services would need to run non-stop between two stations separated by at least 200km, on specialised infrastructure and at an average speed of over 250km/h. In the UK no existing rail services are in scope of the definition of "high speed service". Under the proposed deal, if an operator applies to run a new high speed service, as defined above, the regulator would be required to assess its impact on existing rail franchises using the same criteria as will be used for other non-high speed rail services. While there are minor differences in wording in the respective provisions relating to high speed and non-high speed rail, these do not result in any differences in substance and the European Commission will also issue a statement to this effect. I therefore do not expect the provisions relating to high speed to have any effect in practice.

SUMMARY

In its totality, the pillar is a significant single market measure which will benefit the UK in a number of ways. Firstly, UK train companies will now have right to operate domestic passenger services across the entirety of the EU.

The proposed deal moreover recognises the important social and economic benefits that franchise contracts can bring in providing services which would not be provided by the market alone. It includes safeguards to ensure that franchising authorities can continue to deliver those benefits.

As a result of the pillar, competitive tendering will become the default for the awarding of 'Public Service Obligation' contracts across the EU, as it already is in the UK. Franchising authorities nevertheless retain the flexibility to award a contract directly, provided the direct award can be justified against the criteria set out in the Regulation. This flexibility in how franchises can be procured is important in ensuring that the consequences of unexpected events, such as the cancellation of a franchise procurement, can be managed without any disruption to services. It will also allow train services in Northern Ireland to continue to be directly awarded on similar lines as they are currently.

Finally, as set out above, the proposed deal includes additional rules designed to prevent anti-competitive practices, for example in vertically-integrated structures and in the rules governing the impartiality of the infrastructure manager. These are likely to reduce the risk of discrimination against UK train operators active in other EU Member States.

No further changes to the texts are anticipated and a final vote on the political/market pillar of the Fourth Railway Package is expected during June or July. The pillar represents a further, positive opening of the single EU market for passenger rail services and I would wish to support it. I would be grateful if the Committee could clear these proposals from scrutiny, and am, of course, happy to provide any further detail that the Committee may wish to have on the final texts.

On the wider Package, your Committee has already cleared the proposals in the technical pillar (6012/13, 6013/13 and 6014/13) from scrutiny, and I can confirm that no further amendments have been made to the texts since then. We expect final adoption of the technical pillar proposals to take place shortly.

The Package also included non-legislative documents 5855/13 (the accompanying Communication), 6017/13 (a report on progress made towards achieving interoperability of the rail system), and 6020/13 (a report on opening of the market of international rail passenger transport) which I believe that the Committee is holding under scrutiny, and I can confirm that there have been no developments or discussions on these documents.

The Fourth Railway Package has been a significant package of proposals which will go some way towards removing technical and regulatory barriers in the railway sector. Overall, the proposed deals across the whole Package represent a good outcome for the UK in further opening the EU railway market, and I am grateful to the Committee for the interest they have taken in the development and negotiation of these important proposals.

3 May 2016

Letter from the Chairman to Claire Perry MP

Thank you for your letters of 15 March and 3 May, which were considered by the EU Internal Market Sub-Committee at its meeting on 5 May 2016.

Both your letters provide a full and thorough update on the remaining points of contention in negotiations to agree the Market/Political Pillar of the Fourth Railway Package. As outlined in your most recent letter, the final text contains a number of sensible compromises which should support the opening of the railway market across Europe without disrupting existing rail services for passengers. On this basis, we have decided to clear documents 5985/13 and 5960/13 relating to the Market/Political Pillar from scrutiny. We request that you provide us with an update when this Pillar is finally agreed.

We welcome your update on the negotiations relating to other aspects of the Package, including the Technical Pillar. We have decided to clear all the remaining non-legislative documents from scrutiny.

We look forward to a reply to this in due course.

5 May 2016

IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, AGE OR SEXUAL ORIENTATION (9010/15)

Letter from Caroline Dinenage MP, Parliamentary Under Secretary of State for Women, Equalities and Family Justice, Ministry of Justice and Department for Education, to the Chairman

Thank you for your further letter of 15 December 2015 on this draft equal treatment directive. I am sorry for the delay in responding, I wanted to include information about the new Presidency, which I have now received and summarised below.

I can confirm that the Government has not put forward any amendments to the Articles – and specifically their scope - on the topics to which you refer (social security, social housing and health care provision), but this is something we will keep under review.

Following the EPSCO meeting on 8 December, I can confirm that the Council took stock of progress on the draft directive, but there is nothing further to report beyond that.

Finally, you expressed interest in future negotiations. The indications are that under the Dutch Presidency these are expected to proceed on a similar basis and timetable as under the Luxembourg Presidency, with a number of meetings expected to discuss the text. It is, however, too early to judge if further progress is likely to result from these.

I hope this information is helpful.

3 February 2016

IMPROVING THE GENDER BALANCE AMONG NON-EXECUTIVE DIRECTORS OF COMPANIES (16433/12)

Letter from the Chairman to Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for your letter dated 16 December 2015 on the above proposal. This letter was considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 8 February 2016.

We thank you for your summary of the debate that took place regarding this item at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) meeting on 7 December, and for your assessment of the likely future of the proposal under the Dutch Presidency.

We request further updates regarding any developments in relation to this dossier.

9 February 2016

INLAND NAVIGATION: PROFESSIONAL QUALIFICATIONS (6285/16)

Letter from the Chairman to Robert Goodwill MP, Minister of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum of 4 March on the above proposal, which was considered by the EU Internal Market Sub-Committee at its meeting on 28 April 2016.

We understand that the proposal includes a derogation for Member States whose inland waterways are not linked to those of other Member States, and that as is currently the case under the two existing Directives, this derogation would apply to the UK. As a result, we agree with your assessment that this proposal will have a minimal impact on the UK.

We have therefore decided to clear the document from scrutiny.

A response to this letter is not required.

28 April 2016

NON-ROAD MOBILE MACHINERY: EMISSION LIMITS (13690/14)

Letter from the Chairman to Andrew Jones MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your letter dated 14 January 2016 on the above proposal. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 22 February 2016.

We welcome your assurance that the Government has succeeded in maintaining key UK elements in negotiations regarding this regulation. We note your observation that only the question of replacement engines for categories other than rail remains unresolved; however, we gather that an 18 year period was subsequently agreed as a compromise in negotiations between the Council and the Parliament. We therefore anticipate that negotiations will be concluded imminently.

Please note that this letter does not require a response.

23 February 2016

PORT STATE CONTROL (15518/15)

Letter from Robert Goodwill MP, Minister of State for Transport, Department for Transport, to the Chairman

I am writing to provide your Committee with an update on this proposal. I am able to report that negotiations at working group level, most recently on 27 January, have resulted in welcome amendments to the proposal.

Consideration of the proposal began in the Shipping Working Party on 13 January. While other Member States indicated that they share many of the same concerns as us on the content of the proposed Decision there was acceptance that a multi-annual approach is both appropriate and pragmatic in the context of the Paris Memorandum of Understanding ("Paris MoU").

The Shipping Working Party was therefore able to agree a number of revisions to the text which provided greater clarity about the scope of the Decision. These changes bring the decision in line with the Government's view on the application of 218(9).

Some minor revisions were made to the Guiding Principles and Orientations within Annex I of the Decision in order to refine the understanding of the objectives, and we are content with these changes.

Discussions also supported our view that as any other decisions of the PSCC which did not have legal effect would fall outside of the scope of the decision and any coordination of position for those decisions would therefore be subject to agreement by consensus and would not be legally binding.

In addition it has been made clear, within the Recitals, that the form of this Decision is based on the particular working methodologies of the Paris MoU, and therefore the appropriate methods for establishing positions to be adopted on behalf of the Union in other organisations or fora, such as the IMO, must be considered on a case by case basis and take full account of the particularities of those organisations.

No additional problematic points have arisen during the negotiations, and the Government is content with this outcome. Some further informal discussions are anticipated in the next couple of weeks, however these will only deal with minor aspects of drafting and no further substantive changes are expected. No date has yet been set for the Decision to be agreed at Council, however we expect that the Presidency will be in a position to seek agreement in the near future, well ahead of the meeting of the Paris MoU PSC Committee in May.

4 February 2016

Letter from the Chairman to Robert Goodwill MP

Thank you for your Explanatory Memorandum dated 11 January 2016 concerning the EU's position on annual decisions under an international agreement on Port State Control, as well as your subsequent update dated 4 February 2016 following the meeting of the Shipping Working Party. These documents were considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 22 February 2016.

As the amendments agreed at the Shipping Working Party have addressed the Government's concerns, the Committee is content to clear this document from scrutiny.

Please note that this letter does not require a response.

23 February 2016

POSTING OF WORKERS (6987/16)

Letter from the Chairman to Nick Boles MP, Minister for Employment Affairs, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum dated 23 March 2016 concerning the Commission's proposed revision of the Posting of Workers Directive. This document was considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 21 April 2016.

This proposal raises important questions about how to balance the equal treatment of workers across the EU with competitiveness and free movement in the Single Market. However, your Explanatory Memorandum did not contain an analysis of its policy implications, or the Government's position in response to the Commission's proposal.

We have decided to keep this proposal under scrutiny at least until we have received a fuller exposition of the Government's position – at which point we may also wish to consider requesting a Minister to attend the Sub-Committee.

26 April 2016

Letter from Nick Boles MP to the Chairman

Thank you for your letter of 26 April, to which we shall provide a separate response. I am writing to update the Committee on progress in relation to the Commission's proposal to amend the Directive

on the Posting of Workers. It is now clear that a specific amendment within these proposals has triggered the UK's Justice and Home Affairs (JHA) Opt-in.

This amendment (Article 1 of the proposal) states that workers who are posted for 24 months or longer are deemed to be 'habitually working' in the host Member State. This removes a potential ambiguity in how the Rome I Regulation (which determines the law applicable to contracts) operates on posted workers' employment contracts. It means that the host country's labour market legislation must apply to the employment relationship. Rome I currently states that in the absence of a choice, the law of the worker's home Member State applies by default, even if there is a 'temporary' posting abroad. In essence, the amendment ensures that a posting of 24 months or more is not 'temporary' for the purposes of Rome I. The Government is considering the implications of this and whether to seek a Title V legal base to this amendment as it intends to affect the way existing JHA legislation (Rome I) operates.

The Government considers that this is a JHA obligation, and in accordance with Protocol No 21 on the position of the UK and Ireland in respect of the area of Freedom, Security and Justice annexed to the Treaty on the Functioning of the European Union, the UK's opt-in is therefore triggered. The Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision-making process. In making the decision on this proposal, the Government will have particular regard to whether the proposed amendment will have a specific impact on the UK and whether we support such an amendment to Rome I.

Several Member States during the negotiations of this proposal have raised concerns about the Directive's relationship with the Rome I Regulation. They have also queried the appropriateness of this Directive as a means to propose measures that affect the application of the Rome I Regulation and are seeking clarification of the interplay between the two. We are minded to support this view.

If we opt in the European Council Secretariat must be informed of our decision by 9 June and I would welcome the Committee's views on our intended action before this date.

10 May 2016

Letter from Nick Boles MP to the Chairman

Thank you for your letter of 26 April on the proposal to amend the Directive on the posting of workers in the framework of the provision of services. I write to respond to the points raised in your letter, and also to provide an update on the 'yellow card' procedure.

The Government does not yet have a position on this proposal, as our legal and economic analysis is ongoing. The interaction of the Posting of Workers Directive with other pieces of EU legislation, such as the Posting of Workers Enforcement Directive and Agency Workers Directive, means that it is important to analyse the proposal in this wider context before arriving at a position. The Government will carefully analyse the consequences of proposed amendments for UK businesses, and for workers both posted from and posted to the UK.

The UK has requested further information and clarification from the Commission on areas including wage setting and the proposal's interaction with the Enforcement Directive. **I have attached the UK response to the Dutch Presidency's questionnaire on the Commission's impact assessment (Annex A) [not printed].** The Government is committed to coming to a position based on a thorough consideration of the legal and economic implications of the proposal.

As you may be aware, chambers or parliaments from 11 Member States have now issued Reasoned Opinions on this proposal, and the 'yellow card' procedure has been triggered. The Commission is now considering next steps and may amend, withdraw or maintain the proposal in light of the reasoned opinions. We are awaiting a view from the Dutch Presidency on how they wish to handle negotiations.

The Commons European Scrutiny Committee report of 4 May noted that Council has only published the Outcome of Proceedings for the meeting of 11 April 2016, and requested information on the broad themes and direction of discussion in other Social Questions Working Group discussions on this proposal. Following the presentation of

the proposal and its impact assessment by the Commission, conversation has revolved around the evidence base and methodology of the impact assessment, and the proposal's relationship with Rome I.

I will update the Committee as soon as further information is available. In the meantime, my officials will continue analysing the proposal. **This analysis is necessary to assess the balance struck by the proposal between equal treatment of workers from across the EU and competitiveness and free movement, and reach a position based on thorough consideration of all the proposal's implications.**

I hope that this response is useful to the Committee.

26 May 2016

SHAREHOLDER RIGHTS (8847/14)

Letter from the Chairman to Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for your letter of 18 December 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 8 February 2016.

We were grateful for your summary of the first trilogue meeting regarding this file. Regarding the European Parliament's proposals in relation to country by country reporting, we anticipate that the Commission's Anti-Tax Avoidance Package (ATAP) may provide a more appropriate vehicle for the European Parliament's concerns about country by country tax reporting than the proposed changes to the Shareholder Rights Directive.

We look forward to receiving further updates in due course.

9 February 2016

SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES (8842/14)

Letter from Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport, to the Chairman

In my letter to you of 28 July 2015 I agreed to provide you with an update on this proposal.

Discussions between co-legislators are ongoing. The Council agreed its general approach on the proposal on 28 May 2015, which the UK supported.

It was hoped that by now discussions between the Council, Presidency and Parliament would be underway. However, the European Parliament has yet to agree a position.

The rapporteur held a number of exchanges of views and drafted a second working document in January 2016 that attempted to address specific issues and propose solutions in the form of an amended text. This was presented for consideration at a meeting of the Committee Legal Affairs on 28 January 2016. The document is attached to this letter [not printed].

The working document differs from the general approach agreed by the Council in various respects: in particular, it would limit SUP's to being micro and small enterprises.

While some MEPs welcomed the rapporteur's new approach it was not possible to reach agreement.

We expect the rapporteur to table a formal report in the coming weeks, which will be based on his working document. MEPs on the Committee on Legal Affairs will have an opportunity to table amendments formally before the final report is adopted.

My officials continue to engage with relevant stakeholders on this file. I shall ensure the committee is updated as discussions move forward.

27 April 2016

STEEL: PRESERVING SUSTAINABLE JOBS AND GROWTH IN EUROPE; AND THE ADOPTION OF THE RESEARCH PROGRAMME OF THE RESEARCH FUND FOR COAL AND STEEL (6411/16, 7195/16)

Letter from the Chairman to Anna Soubry MP, Minister for Small Business, Industry and Enterprise, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandums (EMs) on the two Commission documents described above, dated 5 April and 8 March respectively, which were considered by the EU Internal Market Sub-Committee at its meeting on 28 April 2016.

Although these documents relate to separate initiatives, we have decided to consider them together given that they both relate to the steel industry. The Commission's Communication is the more substantial of the two, and it is the main focus of our letter. In opening our letter, firstly, we ask the Government about its view as to the strategic importance of the steel industry to the UK. Does the Government consider the UK's steel industry to be a defence industry?

The Commission published an Action Plan for the steel industry in 2013. This noted that the steel industry faced significant challenges even at this time – including low demand in the EU, increasing energy costs, reliance on imported raw materials, increasing competition and more stringent environmental regulations. Considering many of the underlying causes of the steel crisis were well known, do you think that more could have been done to avoid the current crisis? Do you think that the Commission's previous action plan was sufficiently well implemented?

Given the importance of EU action to address the challenges facing the steel industry, we wish to probe a number of issues, which relate to trade, investment and energy.

TRADE

There are a number of proposed actions that the Commission could take in order to address alleged unfair trading practices undertaken by China. The first is to modernise trade defence tools. Your EM notes that the Government supports "speeding up trade defence investigations and making full use of existing measures." What would the Government recommend as an appropriate shortening of the current nine month investigation period, as a means to sufficiently speed up EU decision-making? What is the Government's position on the Commission's suggested introduction of a prior surveillance system on steel products? Would this be feasible and would it have an impact?

An important part of the Commission's modernisation plans is to introduce a limit on the use of the 'lesser duty' rule. Your EM explains that when the Commission initially brought forward this proposal, the Government opposed it. Is this still the Government's position? Could you describe in more detail the views of other Member States, some of which you note believe the Commission's proposal does not go far enough? What approach does the US adopt? Finally, how does the Government balance the views of steel producers, negatively affected by the 'lesser duty' rule, with the interests of the rest of the economy, which benefits from keeping duties low?

Another factor affecting the Commission's use of trade defences instruments will be China's status in the WTO as either a 'non-market economy' or a 'market economy'. Your EM highlights the Commission's ongoing public consultation on this issue. What is the Government's position on this question? Does the Government plan to respond to the Commission's consultation? What is the view of other Member States?

A key means of addressing the current oversupply of steel in the global market is engaging in bilateral and multilateral discussions with China about its steel production output. How confident are you that bilateral negotiations can deliver firm commitments from China on this question? Do you think that

the Commission is in a position to do this, given its parallel interest in securing future investment with China under the EU-China Investment Agreement?

INVESTMENT

The EU has clear rules which prohibit state aid in the steel sector, in order to ensure even competition across Member States and global competitiveness. Member States can however opt to invest in or nationalise part of a company if its collapse were to raise concerns for national security or lead to significant shocks in the market. Member States are also able to invest in a business on a commercial basis. How does the Government see state aid rules affecting its range of available options to support the steel industry? Does the Government believe that the steel industry should no longer be treated more rigorously under state aid rules than other sectors?

On 21 April, the Government announced that it was willing to take a 25 per cent stake in Tata Steel's UK operations as part of a future rescue deal. Is the Government clear that this would be consistent with the EU's rules on state aid?

Member States are also able to provide funding to steel producers through research and development grants. One option for such funding is through the Research Fund for Coal and Steel. This fund is the subject of your second EM (6411/16). What are the benefits of changing the governance arrangements of the fund in line with that of Horizon 2020? What action is the Government taking to address the concerns raised by stakeholders that this will increase the administrative burden faced by businesses? More broadly, we would also like to know what research funding the Government is currently making available to the steel industry in the UK.

ENERGY

We welcome your support for the Commission's circular economy package, as a means of supporting the steel industry in reusing raw materials. We note your concerns about the Commission's plans to introduce allowances for high carbon emitting industries, such as steel, to ensure that they are able to compete with producers in other countries who have less strict environmental regulations. How has the UK steel industry been affected by the existing carbon emissions regulations and the introduction of the Emissions Trading System? Would it stand to gain or lose if the Commission's proposal was brought in?

We also note that the energy costs in the UK disadvantage UK steel producers in relation to other Member States in the EU and the rest of the world. What action is the Government taking to address this?

CONCLUSIONS

Your Explanatory Memorandum notes that the devolved administrations were consulted in relation to both Commission documents. Given their importance in sustaining a competitive steel industry in the UK, we request to know what engagement the Government has had with the devolved administrations in forming its negotiating position at EU level discussions relating to the steel crisis.

We have decided to retain both documents under scrutiny. We request that your response includes more details about the timing and likely progress of the proposals outlined by the Commission in relation to trade, investment and energy, including proposals which have already been introduced and those which may be forthcoming.

We look forward to a reply to this letter *within 20 working days*.

28 April 2016

Letter from Anna Soubry MP to the Chairman

I am responding to your letter of 28 April following the EU Internal Market Sub-Committee's meeting. You have posed a number of questions related to the above documents. I set these out and answer, in order, below.

GENERAL

1/ WE ASK THE GOVERNMENT ABOUT ITS VIEW AS TO THE STRATEGIC IMPORTANCE OF THE STEEL INDUSTRY TO THE UK. DOES THE GOVERNMENT CONSIDER THE UK'S STEEL INDUSTRY TO BE A DEFENCE INDUSTRY?

The Government considers steel to be a vital strategic industry to the UK. In 2014, steel was worth around £1.7 billion to the economy, and employed 34,500 people. Both the public and private sector depend on steel, with the aerospace, automotive and offshore sectors continuing to present a long term future for speciality steel in the UK.

The UK defence industry is a significant purchaser of UK steel. For example, 95,000 tonnes of British steel was used in the construction of our new Queen Elizabeth Aircraft carriers. The Government has issued specific guidance on procurement for defence contracts. And we continue to work closely with Sheffield Forgemasters to ensure that the company is supported to continue to supply vital military components.

2/ CONSIDERING MANY OF THE UNDERLYING CAUSES OF THE STEEL CRISIS WERE WELL KNOWN, DO YOU THINK THAT MORE COULD HAVE BEEN DONE TO AVOID THE CURRENT CRISIS?

The UK steel sector is dealing with unparalleled global economic conditions. Around the world, production of steel is 30 per cent higher than demand. In China alone, excess steel is 25 times the UK's entire annual production. India, Indonesia and other emerging economies are ramping up production with ready supplies of raw material and low-paid labour. Meanwhile, demand here in Europe has yet to return to pre-crash levels.

It is not just the UK experiencing these job losses. Since 2008 we've seen dozens of plant closures across Europe and the number of workers in steel manufacturing is estimated to have fallen by at least 85,000 across Europe – over 20% of the total workforce.

The Government cannot control the price of steel. However, we have worked closely with the steel industry since the election and have taken clear action to help the industry, delivering on key steel industry asks. We have:

— Secured state aid to compensate for energy costs;

— Secured flexibility over EU emissions regulations;

— Published procurement guidance, so that the true value of UK steel can be taken into account; and we are:

— Tackled unfair trading practises at an EU and an International level.

3/ DO YOU THINK THAT THE COMMISSION'S PREVIOUS ACTION PLAN WAS SUFFICIENTLY WELL IMPLEMENTED?

The EU's 2013 Steel Action Plan (SAP) was an important initiative which focused EU Member States on the problems facing the steel sector at that time.

One of the conclusions of the Extraordinary Competitiveness Council meeting on 9 November 2015 – which the UK called for – was that the implementation of the SAP should be reviewed. Since then we have learned from the Commission that it will not be reviving the plan but we have examined it to see if there are elements of the SAP that can assist the EU steel sector.

We have concluded that although there were some achievements, such as the Commission taking action against unfair trade practices, amending the EU Waste Shipments Regulations to include mandatory inspection plans, and a binding international Climate Change agreement, there is little value to be gained from revisiting this initiative. Rather, we continue to press on the specific areas which we believe will have the most significant benefit for the UK, notably continuing to ensure the EU's trade defence processes are as effective as possible, there is a framework through which industry has access to affordable energy, and that companies can access relevant European funding programmes.

TRADE

4/ WHAT WOULD THE GOVERNMENT RECOMMEND AS AN APPROPRIATE SHORTENING OF THE CURRENT NINE MONTH INVESTIGATION PERIOD, AS A MEANS TO SUFFICIENTLY SPEED UP EU DECISION-MAKING?

The Commission has already undertaken to accelerate investigations by at least one month. It has also indicated scope for accelerating investigations further, perhaps by up to two months overall. The Government believes there is scope for reducing time for imposing provisional measures, and has made some specific suggestions to the Commission for further time savings. We will look at all proposals constructively, though we will also be looking to ensure that, in shortening timeframes, this does not lead to a reduction in the quality of investigations or the stakeholders' ability to make their case to the Commission. Once we see specific proposals from the Commission it will be clearer what timeframe strikes the right balance between speed and high quality investigations.

We have also encouraged the Commission to make full use of the provisions in the existing Regulation to introduce registration of imports. Registration has the effect of providing some relief from the impact of unfair trade up to three months in advance of the introduction of provisional measures. In December 2015, the Commission introduced registration in cases related to both rebar and cold-rolled flat products, having previously used registration in only a handful of cases over the past ten years.

We will continue to work closely with industry in this area, including through discussions of the Steel Council's Working Group on Trade.

5/ WHAT IS THE GOVERNMENT'S POSITION ON THE COMMISSION'S SUGGESTED INTRODUCTION OF A PRIOR SURVEILLANCE SYSTEM ON STEEL PRODUCTS? WOULD THIS BE FEASIBLE AND WOULD IT HAVE AN IMPACT?

The UK has asked the Commission to use all the trade defence tools at its disposal to deal with unfairly-dumped imports of steel into the EU and hopefully this measure will support doing exactly that.

The Commission reintroduced prior surveillance for certain iron and steel products on 1 May 2016. The UK has arrangements in place to ensure the effective implementation of prior surveillance. We are working to ensure this minimises the burden on steel importers and are pressing for a review within a year on the operation and effectiveness of the measure.

6/ AN IMPORTANT PART OF THE COMMISSION'S MODERNISATION PLANS IS TO INTRODUCE A LIMIT ON THE USE OF THE 'LESSER DUTY' RULE. YOUR EM EXPLAINS THAT WHEN THE COMMISSION INITIALLY BROUGHT FORWARD THIS PROPOSAL, THE GOVERNMENT OPPOSED IT. IS THIS STILL THE GOVERNMENT'S POSITION?

The Government welcomed the Commission's initiative to modernise trade defence instruments and the UK played, and will continue to play, a constructive role in discussions on this. However, the Government continues to consider the Lesser Duty Rule (LDR) to be a cornerstone of the EU trade defence system. It provides balance to the system by ensuring duties are sufficient to remove the injury caused to EU industry as a result of dumping and subsidy, but avoids unnecessarily penalising users and consumers. In this way it helps build consensus between producers and users who have different interests, and between different Member States with different priorities, in individual cases.

The evidence in steel cases shows that the LDR works and higher, punitive, duties are not necessary. Duties calculated under the LDR in steel cases have generally been very effective at stemming Chinese imports. In cases involving wire rods, organic coated steel, stainless flat products and welded pipes, duties cut imports by more than 90% almost immediately and they have stayed at a low level ever since. Where duties can be shown to be inadequate to remove injury, there are existing provisions within the EU Regulations which allow for the possibility of revising duties to a higher level.

In other cases, the LDR has saved UK consumers and users significant sums by avoiding unnecessarily high duties. In the solar panel case, duties were set at 48%; without the LDR they would have been 88%. This would have increased the UK import bill by hundreds of millions of pounds and would have caused significant harm to the UK solar sector. The LDR also saved UK consumers of footwear around £700m over the lifetime of measures on that product.

However, there have been some specific cases where we believe that duties could and should have been set higher, such as provisional duties on rebar and cold-rolled flat steel products. We do not believe the LDR was responsible for this. Rather, it resulted from the way the Commission chose to assess the injury to the steel industry in these cases. We have convinced the Commission to look again at its calculations and it is currently considering the evidence provided to it by industry before deciding on the level of duties at the definitive stage in these cases.

7/ COULD YOU DESCRIBE IN MORE DETAIL THE VIEWS OF OTHER MEMBER STATES, SOME OF WHICH YOU NOTE BELIEVE THE COMMISSION'S PROPOSAL DOES NOT GO FAR ENOUGH? WHAT APPROACH DOES THE US ADOPT?

The original Commission package on modernising trade defence instruments included a range of proposals, including, for example, one to suspend the use of the LDR in cases of structural raw materials distortions and anti-subsidy cases. Although the position of Member States will be evolving over time, when the Commission's proposal was last formally discussed in 2014, some Member States favoured more extensive restrictions on the use of the LDR than were being proposed by the Commission, and opposed, or wanted watered-down, some of the other measures proposed by the Commission. Recent discussions suggest that there are a number of Member States that still hold these views.

The US does not operate a lesser duty rule.

8/ FINALLY, HOW DOES THE GOVERNMENT BALANCE THE VIEWS OF STEEL PRODUCERS, NEGATIVELY AFFECTED BY THE 'LESSER DUTY' RULE, WITH THE INTERESTS OF THE REST OF THE ECONOMY, WHICH BENEFITS FROM KEEPING DUTIES LOW?

The LDR sets duties at a level which restores profits to those prevailing under normal conditions of competition. The Government, does not therefore, accept that steel producers are negatively affected by the LDR. It is also important to emphasise that the LDR does not affect duties in all cases and, even where it does, the existence of the LDR does not always result in duties that are low. The Commission's evaluation of its trade defence instruments estimated that the LDR affected duties in about 55% of cases over the period 2000-2010. While each case is different, there are a number of examples of cases where the LDR determined duties but very high levels of duties were imposed. For example, in the welded pipes and tubes case, average duties of 91% were imposed; without the LDR average duties would have been 131%. In the organic coated steel cases, duties of up to 58% were imposed. And in the solar panels case duties of up to 64.5% were imposed. In both cases duties were based on the injury margin.

The Government believes that, properly implemented, the LDR is, itself, a useful mechanism to ensure a reasonable balance between the interests of producers adversely affected by unfair trade and the rest of the economy. The LDR ensures that injury caused by dumping is removed based on raising import prices to a level where the industry, under normal conditions of competition, can earn a reasonable level of profit. To raise prices further than is necessary to offset the harm caused by unfair trade would unnecessarily penalise users.

The Commission's evaluation of trade defence instruments concluded that the level of duties set under the EU Trade Defence Regime was more than adequate to compensate producers from the injury caused by unfair trade and concluded that the EU should retain the LDR.

9/ ANOTHER FACTOR AFFECTING THE COMMISSION'S USE OF TRADE DEFENCES INSTRUMENTS WILL BE CHINA'S STATUS IN THE WTO AS EITHER A 'NON-MARKET ECONOMY' OR A 'MARKET ECONOMY'. YOUR EM HIGHLIGHTS THE COMMISSION'S ONGOING PUBLIC CONSULTATION ON THIS ISSUE. WHAT IS THE GOVERNMENT'S POSITION ON THIS QUESTION? DOES THE GOVERNMENT PLAN TO RESPOND TO THE COMMISSION'S CONSULTATION? WHAT IS THE VIEW OF OTHER MEMBER STATES?

The Government believes it is important that all World Trade Organisation (WTO) members meet their obligations. China's 2001 Protocol of Accession to the WTO removes certain provisions after 15 years, so countries may need to grant China market economy status (MES) when conducting anti-dumping investigations. We recognise there are real concerns about this, and are committed to discussing implementation of the Protocol's requirements with our international partners and look

forward to the Commission's proposals in this area. We are also committed to tackling unfair trade and ensuring that the Commission continues to have the necessary tools available to do this.

The Commission has announced that it is undertaking a detailed assessment of the impact of granting MES. As part of this, the Commission will look at possible measures to mitigate any adverse effects on EU industry. The Government will examine the Commission's proposal and impact assessment carefully in deciding our position.

The UK did not make a formal submission to the public consultation, which ended on 20 April, on China's MES. Officials did however attend the stakeholder event on 17 March. The Government will take a position after the Commission publishes its impact assessment, which will evaluate the impact of all options, including the legal, political, economic and social implications of each, and presents a formal proposal on MES. We are taking and will continue to take a full and active part in any discussions on this in Brussels.

Our understanding is that most other Member States are not adopting a formal position until they see a proposal from the Commission.

10/ A KEY MEANS OF ADDRESSING THE CURRENT OVERSUPPLY OF STEEL IN THE GLOBAL MARKET IS ENGAGING IN BILATERAL AND MULTILATERAL DISCUSSIONS WITH CHINA ABOUT ITS STEEL PRODUCTION OUTPUT. HOW CONFIDENT ARE YOU THAT BILATERAL NEGOTIATIONS CAN DELIVER FIRM COMMITMENTS FROM CHINA ON THIS QUESTION?

Tackling overcapacity is crucial to addressing the global excess supply of steel. But it is clearly a challenging task and there is no quick solution. China has recognised that there is a problem and has made commitments to take action to address overcapacity. However, it is important that we continue to use every means available, bilateral and multilateral, to engage China and others to deliver on those commitments and consider doing more. This includes bilateral contacts, including the Steel Contact Group between the Commission and China, and discussions in the OECD, the G20 and the WTO.

The OECD high level conference on 18 April was an important occasion for the major steel producing nations to have a discussion on the challenges facing the steel industry. The Business Secretary spoke at the conference and held meetings with key economies, including China, the US and the European Commission. The UK played a central role during the conference. Officials are now working with the OECD and other countries on how to identify ways to continue the discussion on these issues and to address the capacity problems. We also remain committed to continuing our constructive and challenging dialogue with China and other steel producing countries.

11/ DO YOU THINK THAT THE COMMISSION IS IN A POSITION TO DO THIS, GIVEN ITS PARALLEL INTEREST IN SECURING FUTURE INVESTMENT WITH CHINA UNDER THE EU-CHINA INVESTMENT AGREEMENT?

There is no link between the two issues. Both the EU and China have an interest in making progress with the Investment Agreement. And although discussions on the steel sector are likely to be challenging, the Government believes the Commission is in a good position to engage in meaningful discussions with China on overcapacity and has continued to do so through the Steel Contact Group and other channels. It is quite normal for the EU, or indeed any country, to be negotiating market opening agreements with a trade partner, while at the same time challenging that partner on other issues.

<u>INVESTMENT</u>

12/ HOW DOES THE GOVERNMENT SEE STATE AID RULES AFFECTING ITS RANGE OF AVAILABLE OPTIONS TO SUPPORT THE STEEL INDUSTRY?

The Government is aware that there are very strict rules regarding state support for the steel industry. In particular, the steel sector cannot receive rescue and restructuring aid or regional aid. This means that it is not possible to intervene to save a steel company which is in difficulty on anything but commercial terms. It also means that any capital intervention would need to be on commercial terms.

However, there are other possibilities available to support the steel industry. Aid can legally be given for environmental protection, research, development and innovation (RD&I) and training. The Government considers that the rules offer scope to help the industry with many of their pressing issues such as energy efficiency.

13/ DOES THE GOVERNMENT BELIEVE THAT THE STEEL INDUSTRY SHOULD NO LONGER BE TREATED MORE RIGOROUSLY UNDER STATE AID RULES THAN OTHER SECTORS?

As noted above, there is a ban on rescue and restructuring aid and capital aid for the steel industry. This is because the European Commission considers that there is currently over capacity in the steel market and therefore there is no reason to keep companies in the market as allowed (for other sectors) under the rescue and restructuring rules. By the same argument, they would not want to allow an increase in capacity for steel companies under the regional aid rules.

The Government has carefully considered the arguments for relaxing the rules during the current crisis. However, we are mindful that if there were to be a relaxation of the rules this would simply lead to Member States keeping inefficient plants in the market and add to over capacity. This would depress prices and be to the detriment of all, including UK companies.

As already noted, there are legitimate ways of supporting the steel industry under the rules, through aid for RD&I, environmental protection and training.

14/ ON 21 APRIL, THE GOVERNMENT ANNOUNCED THAT IT WAS WILLING TO TAKE A 25 PER CENT STAKE IN TATA STEEL'S UK OPERATIONS AS PART OF A FUTURE RESCUE DEAL. IS THE GOVERNMENT CLEAR THAT THIS WOULD BE CONSISTENT WITH THE EU'S RULES ON STATE AID?

The Government made it clear in its announcement that it would be investing on commercial terms. An investment on commercial terms is outside the state aid rules.

15/ MEMBER STATES ARE ALSO ABLE TO PROVIDE FUNDING TO STEEL PRODUCERS THROUGH RESEARCH AND DEVELOPMENT GRANTS. ONE OPTION FOR SUCH FUNDING IS THROUGH THE RESEARCH FUND FOR COAL AND STEEL. THIS FUND IS THE SUBJECT OF YOUR SECOND EM (6411/16). WHAT ARE THE BENEFITS OF CHANGING THE GOVERNANCE ARRANGEMENTS OF THE FUND IN LINE WITH THAT OF HORIZON 2020?

The UK believes that the primary focus in any changes in the governance arrangements of the Research Fund for Coal and Steel (RFCS) should be to ensure that the programme continues to support the competitiveness of those industries, especially in the current difficult market conditions. Changing the governance arrangements in line with that of Horizon 2020 brings the RFCS in line with the conflict of interest and transparency rules governing Horizon 2020. However, legitimate concerns on governance have been raised by a number of parties in response to a BIS consultation with interested parties, and we have reflected these in formal comments sent back to the Commission on 4 May.

16/ WHAT ACTION IS THE GOVERNMENT TAKING TO ADDRESS THE CONCERNS RAISED BY STAKEHOLDERS THAT THIS WILL INCREASE THE ADMINISTRATIVE BURDEN FACED BY BUSINESSES?

Some stakeholders have raised concerns that what they see as additional complexity may lead to increased administrative costs. We have reflected these concerns back to the Commission in formal UK Government comments, seeking clarification on the impact of the changes.

17/ MORE BROADLY, WE WOULD ALSO LIKE TO KNOW WHAT RESEARCH FUNDING THE GOVERNMENT IS CURRENTLY MAKING AVAILABLE TO THE STEEL INDUSTRY IN THE UK.

The Government continues to explore options for ensuring industry has access to funding for research, including through Innovate UK and UK Research and Innovation (UKRI). As examples: over £100m is available through UKRI's grant programme in metals and alloys (previously an EPSRC programme); and Innovate UK has provided just under £4m in grants to Tata Steel and a further £2m for SPECIFIC – an innovation and knowledge centre at Swansea University.

Research funding is also available through the EU's main research funding programme, Horizon 2020, and the European Structural and Investment Funds offer potential to support research and innovation projects across the UK in line with funding priorities agreed with the European Commission.

ENERGY

18/ HOW HAS THE UK STEEL INDUSTRY BEEN AFFECTED BY THE EXISTING CARBON EMISSIONS REGULATIONS AND THE INTRODUCTION OF THE EMISSIONS TRADING SYSTEM?

The EU Emissions Trading System (ETS) has put in place a carbon price which provides a financial incentive for industry to reduce CO2 emissions. However, many industrial sectors, including steel, are provided with free allowances to protect against the risk of carbon leakage, where installations relocate to areas with less ambitious climate policies. With the decline in production in the steel sector, this has resulted in a greater allocation than it needed, with the sector able to sell surplus allowances on the carbon market. In addition to these direct EU ETS costs, steel also faces indirect EU ETS costs added to electricity they buy from generators also covered by the System. For sectors such as steel, these costs are largely mitigated through compensation in line with EU State aid guidelines. To date the steel sector has received £80 million for the indirect costs of the EU Emissions Trading System, the Carbon Price Floor, the Renewables Obligation and the Small Scale Feed in Tariffs.

19/ WOULD IT STAND TO GAIN OR LOSE IF THE COMMISSION'S PROPOSAL WAS BROUGHT IN?

The European Commission has published an Impact Assessment for Phase IV of the ETS, which will run from 2021-2030 (http://ec.europa.eu/clima/policies/ets/revision/docs/impact_assessment_en.pdf [external link]). This assessment estimates that, at EU level, the Iron & steel sector could face direct carbon costs of around €1.5 billion per year on average in Phase IV if the current ETS rules are continued unchanged to 2030 (assuming no pass-through of costs to customers). This is equivalent to around 1% of the sector's turnover.

The UK Government considers that free allocation of EU ETS allowances should be focused on those sectors shown to be most at risk of carbon leakage, including steel. The UK also believes that any changes to the benchmark values by which free allocation of ETS allowances is determined should be grounded in a strong evidence base and accurately reflect the carbon abatement potential of a sector.

20/ WE ALSO NOTE THAT THE ENERGY COSTS IN THE UK DISADVANTAGE UK STEEL PRODUCERS IN RELATION TO OTHER MEMBER STATES IN THE EU AND THE REST OF THE WORLD. WHAT ACTION IS THE GOVERNMENT TAKING TO ADDRESS THIS?

Whilst UK electricity prices are among the highest in the EU, we are working to reduce the cost of electricity to industry, and all consumers. The Government is providing relief to energy intensive industries, such as steel, to mitigate the cost of energy and climate change policy costs on their electricity bills. In total, the relief package (which comprises both compensation and exemption from electricity costs) will save industry over £300 million by the end of this Parliament by providing support for the indirect costs of EU Emissions Trading System, the Carbon Price Floor, the Renewables Obligation and the Small Scale Feed in Tariffs.

The package of exemption and compensation measures will reduce the impact of energy and climate change policies on the energy bills of eligible energy intensive industries by up to around 80% in 2020. The EEF, the body which represents many energy intensive industries, including steel, has said that the Government has taken all possible steps to exempt, or compensate, eligible industries from policy costs on electricity.

We are also addressing the fundamental causes of the UK's relatively high electricity costs – through short-term cost control measures, including the Levy Control Framework actions announced in summer 2015; investment in new energy infrastructure (such as nuclear); and interconnection with French, Belgian and Norwegian networks, which should help to reduce the difference between the electricity prices here and in Continental Europe.

In addition to this, the Government has published Industrial Decarbonisation and Energy Efficiency Roadmaps to 2050 jointly with key sectors, including steel, and these are now being used to prepare action plans which will help support industry's transition to a low-carbon future.

The Steel Council has also established a working group, chaired by Celsa Steel UK, to review the drivers of electricity prices and identify ways of reducing these and ways of increasing energy efficiency. The group consists of representatives from industry, National Grid, and officials from my department and from the Department for Energy and Climate Change. The group will be reporting to the next meeting of the Steel Council.

CONCLUSIONS

21/ GIVEN THEIR IMPORTANCE IN SUSTAINING A COMPETITIVE STEEL INDUSTRY IN THE UK, WE REQUEST TO KNOW WHAT ENGAGEMENT THE GOVERNMENT HAS HAD WITH THE DEVOLVED ADMINISTRATIONS IN FORMING ITS NEGOTIATING POSITION AT EU LEVEL DISCUSSIONS RELATING TO THE STEEL CRISIS.

The UK Government is working very closely at all levels with both the Welsh and Scottish Governments given their important roles in reaching a sustainable solution for the steel sector. Ministers and senior representatives have participated in the Welsh Government and Scottish Government Steel Taskforces. Both the Welsh and Scottish Governments have also been involved in the Steel Summit, the Steel Council and its Working Groups, which are looking to shape the Government's approaches, including in European discussions. Ministers in Whitehall have had constructive and regular engagement with their opposite numbers in Cardiff and Edinburgh, and look forward to similarly productive relationship with the new Welsh and Scottish Governments.

22/ WE REQUEST THAT YOUR RESPONSE INCLUDES MORE DETAILS ABOUT THE TIMING AND LIKELY PROGRESS OF THE PROPOSALS OUTLINED BY THE COMMISSION IN RELATION TO TRADE, INVESTMENT AND ENERGY, INCLUDING PROPOSALS WHICH HAVE ALREADY BEEN INTRODUCED AND THOSE WHICH MAY BE FORTHCOMING.

The discussions on the modernisation of trade defence in the Council are on-going and have been since the first Commission proposal in 2013. We expect them to continue into the next Presidency (Slovakia). Given that there remain significant differences between Member States, it is difficult to predict when, or indeed if, a consensus will emerge around a package of measures. Even if there is consensus, the agreement of the European Parliament would then need to be sought. However, we will fully participate in all discussions on this issue.

On MES, we understand the Commission aims to complete its impact assessment by July and therefore expect a proposal from the Commission around that time or soon after. At the very latest we would expect to see a proposal before December when certain provisions in the WTO accession protocol expire.

With respect to Phase IV of the EU ETS, negotiations in Council are ongoing and expected to conclude in late 2017. The European Parliament is currently discussing its position at the Committee stage, and is expected to reach an EP-wide position in early 2017.

25 May 2016

TELECOMMUNICATIONS COUNCIL – 26TH MAY 2016 - PRE-COUNCIL MINISTERIAL WRITTEN STATEMENT (UNNUMBERED)

Letter from Ed Vaizey MP, Minister of State for Culture and the Digital Economy, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport, to the Chairman

I am pleased to enclose a copy of my written statement to Parliament outlining the agenda items and the positions that I intend to adopt on each of them for the forthcoming Telecommunications Council taking place on 26th May in Brussels.

ANNEX A
MINISTERIAL WRITTEN STATEMENT
WEDNESDAY 25TH MAY 2016
TELECOMMUNICATIONS COUNCIL

The Telecommunications Council will take place in Brussels on 26th May 2016.

The UK's Deputy Permanent Representative to the EU, Shan Morgan, will represent the UK. Below are the agenda items and the positions we intend to adopt.

The first item is for agreement for a General Approach on the Proposal for a Decision on the use of the 470-790MHz frequency band in the Union (First reading - EM 5814/16 + ADD 1 & 2). The UK will support this General Approach. We do not expect any interventions on this item and UK does not intend to intervene.

This item will be followed by a debate on the EU Electronic Communications Regulatory Framework. The debate will be informed by three questions from the Presidency. The UK intervention will include the need to consider regulatory tools in addition to the assessment of significant market power in order to improve connectivity in challenging geographical areas. We will also speak about the importance of protecting national competence with respect to spectrum management and of taking a proportionate approach to the regulation of "over the top" services.

This will be followed by five items under AOB, The first two items are a progress report from the Presidency on Proposal for a Directive of the European on the accessibility to public sector bodies' web-sites (First reading - EM16006/11) and a progress report from the Presidency on measures to ensure a high common level of network and information security across the Union (NIS - First reading - EM6342/13). We do not expect a debate on either of these items. There then follows two further AOB items, both information from the Commission on developments on Internet Governance and the role of digital platforms in the digital economy respectively. We do not currently expect a debate on either of these items.

Finally, under AOB, the Slovakian delegation will inform the Council of their priorities for their forthcoming Presidency before Council adjourns until the next meeting in quarter four 2016.

25 May 2016

TELECOMMUNICATIONS SINGLE MARKET (13555/13)

Letter from Ed Vaizey MP, Minister of State for Culture and the Digital Economy, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport to the Chairman

You may recall that, during our letter exchange during the scrutiny process related to the Connected Continent Regulation (13555/13), I agreed that I should write to your committee when the Body of European Regulators of Electronic Communications (BEREC) published its report on the wholesale roaming market. That report has now been published - Annex A to this letter - and I would like to take this opportunity to provide a fuller update on progress and future actions to ensure that your committee is able to prepare for the scrutiny of the anticipated regulation that will focus on addressing harmonisation of wholesale roaming prices in the European Union (EU).

You may also recall that it is necessary to undertake three further implementing measures. They are:

— A Regulation to address wholesale pricing - subject to the Co-Decision process by Council and the European Parliament;

— An Implementing Act to address policy regarding 'fair-use' - subject to the comitology process by the Communications Committee (COCOM); and

— An Implementing Act to address policy regarding the 'sustainability clause' - also subject to the comitology process by the Communications Committee (COCOM).

COMMISSION PUBLIC CONSULTATION

As part of the implementation exercise, the Commission undertook a public consultation exercise that closed on 18th February. The consultation considered the full range of issues related to the three remaining implementation actions required in order for mobile roaming charges to cease. A number of the questions were technical in nature and aimed largely at the mobile network operators (MNOs) and national regulatory authorities (NRAs) - Ofcom in UK's instance. HMG provided a response that focussed on policy objectives and outcomes in order to achieve the overall outcome of a cessation of roaming charges by June 2017. I attach a copy of that response as Annex B to this letter [not printed].

Following the closure of public consultation, my officials have met with those leading for the Commission and I can confirm that HMG's approach is generally aligned with that of the Commission. Whilst detailed analysis of the responses is still on-going, some immediate headlines from responses show that:

— A majority of respondents favour retention of wholesale caps for voice, SMS and data and single wholesale caps for each applicable across the whole of the EU (as opposed to differing rates for each member state or groups of member states);

— There is little scope to reduce the current caps for voice and SMS, but with more scope to reduce the current data cap (currently at 5 Euro-cents/MB); and

— There was little interest in the 'sustainability' clause (a mechanism by which MNOs can continue to charge a small roaming surcharge should 'free' roaming prove to be economically unviable. This was agreed as part of the Connected Continent Regulation to protect small MNOs).

The Commission's initial analysis was that this was 'good news' in that it provided firm evidence that wholesale data rates could be significantly reduced - some estimates indicate as low as 10% of the current cap.

BEREC REPORT ON THE WHOLESALE ROAMING MARKET

BEREC provided this report in the context of the Commission's public consultation on the review of national wholesale roaming markets, fair use policy and the sustainability mechanism, as referred to in the new Roaming Regulation.

It provides data and an analysis to help in assessing the best regulatory wholesale structure for the implementation of the Regulation, setting out and analysing a range of regulatory scenarios without making recommendations as to the right way to set a wholesale price. The report, however, discusses the best way to implement fair use policies or the sustainability clause.

Unsurprisingly, BEREC found it is hard to disaggregate the different mobile communications services available in domestic and intra-EU markets, since they are often provided as part of a bundle. It uses the Average Retail Revenue per User (ARRPU) figures and information on average consumption for different mobile communications services to compare markets in different countries. ARRPU is a commonly-used measure of company performance in the mobile communications industry. It found that there were differences between national markets, i.e. a 'lack of convergence'.

Other important differences were also noted between countries in users' travel patterns; in particular, some have imbalances between inbound roaming traffic and the traffic generated by their customers when roaming, especially during the tourist season.

It also noted that the current wholesale data caps are high, compared to the charges actually made. For instance, the current wholesale price for data is €0.05 *per* megabyte, whereas the average price actually charged across the EU is about €0.005. Furthermore, a range of different Roam Like at Home (RLAH) or special roaming 'add-ons' are offered by many mobile operators. These are supported by bilateral agreements between mobile network operators. Typical offers are the Three 'Feel at Home' service, which offers surcharge-free roaming for Three customers in eighteen countries, eight of which are EU Member States; and the Vodafone 'EuroTraveller', which gives free roaming in all EU

countries, plus some others, for a flat rate of £2.50 *per* day. To implement the abolition of roaming surcharges, BEREC accepts that lower wholesale caps are needed to ensure that domestic tariffs schemes remain sustainable. However, the report asserts that there is no uniform wholesale tariff that would satisfy those conditions in every Member State and so a trade-off will be necessary between the protection of competition, investment and consumers in the home and visited markets.

TERA ANALYSIS OF WHOLESALE PRICING METHODOLOGIES

You may recall that in addition to the public consultation and tasking BEREC to report, the Commission had tendered consultants to consider the matter of, and advise on an appropriate pricing methodology that will be used to derive the values of any wholesale caps. TERA are due to provide the Commission with their final report at the end of March

However, they have published some initial findings and these are currently being considered by stakeholders. There was some initial concern that TERA's initial methodology was not clear and as a result of this feedback the Commission has undertaken to share the methodology with NRAs to enable them to undertake their own modelling.

It is my intention to undertake further analysis of TERA's report once it becomes available in order to inform my overall policy approach to negotiations.

As part of these three activities, it has been noted that further action on the harmonisation of mobile termination rates (MTR) may be necessary. These are the charges levied by MNOs when a call terminates on a different network to where the call originates. These have been subject to a non-binding Recommendation since 2009, whereby MTRs were placed on a downward glide-path but it has been noted that a number of member states' operators are still charging rates above the recommended price. As this may have a direct impact on ensuring the cessation of mobile roaming charges, the Commission is currently considering what options are available to it. Whilst this is partially addressed within the existing provision covering MTRs in the Connected Continent Regulation - through the use of a weighted EU average - one option may be to introduce a binding Decision on future MTR rates.

HMG CONSULTATION AND LOBBYING

As part of developing our policy approach to the three implementing actions, my officials have been holding meetings with UK MNOs and will continue to do so during the development phase, and once the proposals have been put forward by the Commission. In addition, my officials have reinstated the 'Like-Minded' member states' group so that we can create an alliance to have maximum influence during negotiations within Council that proved invaluable during the negotiations of the Connected Continent Regulation. Finally, liaison with key members of the European Parliament and their officials has been on-going; very important given the Parliament's long-standing championing of the cessation of mobile roaming charges.

FUTURE MILESTONES

The overall timeline should see proposals for all three implementing measures launched under the current Presidency of the Netherlands and conclude under the upcoming Slovak Presidency. It is my ambition to reach a political agreement for the regulation on wholesale pricing at the Telecoms Council, due to be held in December 2016. This would allow MNOs six months in which to implement the changes necessary.

I am aware that it is the intention of the Commission to reach a First Reading deal with regard to the Regulation, with informal Trialogues to run concurrently at the latter stages of the process.

As such, the current milestones in the process are:

— end-March - TERA report on wholesale pricing methodology published

— 15th June '16 - Commission proposed the Regulation on wholesale prices and the Implementing Acts on 'fair use' and 'sustainability'. An Explanatory Memorandum covering the Regulation deposited and beginning of the

scrutiny process. Negotiations commence in Council Working Group on the wholesale regulation.

— August '16 - Progress halts for the Summer break.

— September '16 - Negotiations re-commence following the Summer break. Special meeting of COCOM to consider the Implementing Acts.

— October and November '16 - Special meetings of COCOM to consider and agree the Implementing Acts

— December '16 - Informal Trialogues commence. Request to lift any scrutiny reserves. Political agreement on the Regulation reached at Telecoms Council (date to be confirmed). European Parliament votes in plenary on wholesale Regulation (date to the confirmed)

— January '17 - Formal adoption process completed and MNOs implement necessary changes.

— June '17 - Mobile roaming charges no-longer levied in the EU

I trust that you find this wider update useful and I can confirm it is my intention to deposit an Explanatory Memorandum covering the wholesale regulation once it has been proposed by the Commission in mid-June. I am, however, happy to respond to any immediate queries that your committee may have in the interim.

24 March 2016

THE ANNUAL UNION WORK PROGRAMME FOR EUROPEAN STANDARDISATION FOR 2016 (5186/16)

Letter from the Chairman to Jo Johnson MP, Minister of State for Universities and Science, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum (EM) of 26 January 2016, which was considered by the EU Internal Market Sub-Committee at its meeting on 29 February 2016.

We agree that European standards are important to the functioning of the Single Market, and welcome the attention the Commission has paid to the European standardisation process in both the Single Market Strategy and the Digital Single Market Strategy. As this is a non-legislative document, we have decided to clear this document from scrutiny. Nonetheless, given the growing numbers of initiatives in this area, we request some more information on the following points.

The Commission's standardisation work programme and its Single Market Strategy both discuss the Joint Initiative on Standardisation. The Single Market Strategy describes its aim being to "speed up and better prioritise standard setting across the board". The standardisation work programme notes that the Joint Initiative could be agreed in the first half of 2016. What do you think are likely to be the conclusions of the Joint Initiative, and what implications may these conclusions have for the European Standardisation System and for the standardisation work programme?

The Commission's standardisation work programme also describes the "unexploited potential" of creating standards for services across Europe: currently less than 2 per cent of European standards relate to services. We note the Commission promises to bring forward guidance about how standards for services should be developed. Do you know when the Commission plans to publish such guidance? Do you believe there to be a strong case for greater use of standards in services across the EU and if so, in which sectors do you think such standards would be most welcome?

We note that your EM and the Commission's standardisation work programme draw attention to the issue of transparency in the creation of European standards and the 'inclusivity' of the process for organisations representing industry, consumers and environmentalists. The work programme notes that while a "great effort" has been made to include these groups over the last two years, more could be done. What assessment have you made of the Commission's concerns in this area, and what steps is the Government taking to ensure that British Standards Institute (BSI) is engaging with these

organisations?

Finally, as this item relates to the Digital Single Market Strategy, we would like to draw your attention to our forthcoming report on the subject of *Online platforms and the EU Digital Single Market Strategy,* which may relate to areas in your brief.

We look forward to a reply to this letter in due course.

3 March 2016

Letter from Jo Johnson MP to the Chairman

Thank you for your letter of 3rd March regarding the annual Union Work Programme for European Standardisation. Thank you also for drawing my attention to the forthcoming report on the subject of online platforms and the EU Digital Single Market Strategy. Please see below my responses to the queries you have raised:

JOINT INITIATIVE

The Commission expects the Joint Initiative (JI) document to be a relatively high level 'vision' document that outlines principles and a list of actions to improve European Standardisation. Actions are expected to address:

— the coherence of European standardisation policy;

— specific details about how standards are notified for use in supporting legislation;

— the awareness of standardisation among European and Member State authorities;

— the early notification of industry by the Commission about public policy needs for standards;

— the inclusion of societal stakeholders in standardisation; and improving the links between research, innovation and standardisation.

The actions will subsequently be worked out by a steering committee made up of a broad range of parties in the European Standardisation community (Commission and Member States, Standardisation organisations, industry federations and associations, societal stakeholder groups and other interested parties). The European Commission is planning a signature event for the Joint Initiative (JI) with the Dutch Presidency on 13 June.

British Standards Institution (the UKs' National Standards Body) has been working in the editorial committee for the Joint Initiative (and expects to continue in the steering committee) to make sure that the result will bring benefit to the UK market players who develop and use British Standards, 95% of which are national adoptions of European and international standards.

When the Joint Initiative refers to better prioritisation; we consider that this means prioritisation of public policy needs for standards, specifically European Commission needs. The standardisation bodies in Europe already respond to the needs of the market players in setting priorities for standards development. These priorities do not come from the standardisation bodies, but from business and other stakeholders in their committees. British Standards Institution, for example, has 1200 technical committees, working right across business and industry on international, European and national standards. These committees seek to drive the agenda for standards development.

In the Single Market strategy the Commission has stressed the importance of promoting growth and reducing the burden on businesses. We anticipate that the Commission will want to look at areas where businesses would welcome standards rather than widespread harmonisation, and the UK would support this business led approach. Also in light of the increasing focus on reducing the burden to businesses, it is likely that the Commission will consider the links to other Single Market initiatives and whether any national standards are acting as barriers to businesses. This would also be in line with the Government's Single Market agenda.

SERVICE STANDARDS

The Commission has not yet published the timeline for producing the guidance on service standards. There are currently only a very small number of European standards for services. At the moment, CEN (the independent European Committee for Standardisation) is working on some generic European service standards, for example on issues like how to deal with consumer complaints. It is expected that the Commission guidance will recognise this work. British Standards Institution (BSI) is playing a leading role in this CEN activity.

TRANSPARENCY AND INCLUSIVITY

There have been no specific assessments performed by BIS on the inclusiveness of the standardisation process. BIS has for many years supported the involvement of 'weaker' stakeholders in standardisation in the UK, for example by providing funding to British Standards Institution to support consumer experts and to support the travel of UK experts to overseas technical meetings (which is mainly used by SMEs). In 2015-2016, BIS has supported the continuation of a project underpinning a network of environmental experts in British Standards Institutions' standard developing committees.

British Standards Institution is committed to the inclusiveness of its standardisation processes and seeks a balance of interests in its committees. Through its own resources and through the support from BIS, it seeks to involve less well-represented groups, including organisations representing industry, consumers, and environmentalists as well as trade unions. In 2016 British Standards Institution have the following representation in its standards technical Committees SMEs 350, consumers 170, environmental interests 40 and trade unions 35. EU Regulation 2015/2012 also requires the European Standardisation Organisations and National Standards Bodies to involve these stakeholders and publish annual reports on how this is achieved to the European Commission. British Standards Institution publishes an annual report on how it works with SMEs and provides the chair of both the CEN-CENELEC SME Working Group and the CEN-CENELEC Societal Stakeholders Group, which work towards greater participation of these stakeholders.

8 April 2016

THE INFORMAL COMPETITIVENESS COUNCIL, 27-28 JANUARY 2016 (POST COUNCIL STATEMENT) (UNNUMBERED)

Letter from Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport, to the Chairman

The Informal Competitiveness Council met on 27th- 28th January. The UK was represented by Minister of State Jo Johnson and myself.

Please find attached a post Council Written Statement on the subject, which has been laid in both Houses.

ATTACHMENT: THE INFORMAL COMPETITIVENESS COUNCIL, 27-28 JANUARY 2016 (POST COUNCIL STATEMENT)

The Informal Competitiveness Council took place in Amsterdam on 27th and 28th January. The UK was represented by Minister of State Jo Johnson on day one (Research) and Baroness Neville Rolfe on day two (Internal Market and Industry)

The Research Day began with Bill Gates giving a keynote speech on the importance of public research and development in overcoming global societal challenges. He gave examples of work by the Gates Foundation, including the recently announced work with the UK to expand research into malaria that will see £3bn committed over the next five years. Mr Gates highlighted that clear policies on open access to research could help stimulate innovation.

This was followed by a discussion on the current environment for innovation; there was a debate about the need for a visible return for taxpayers and a focus on funding excellence in research.

The discussion turned to how the current research funding programme (Horizon 2020) could be improved. A number of suggestions were put forward, including: simplification of the programme process, leading to faster decisions; simplification of state aid rules; encouragement of open innovation; better communication; and better skills support for businesses (for example in marketing) to allow successful innovation.

In the afternoon, the debate focused on how legislation can facilitate research and innovation. The digital revolution and aging populations were noted paradigm shifts that will create both opportunities and threats. To allow opportunities to be grasped the EU must both reduce the amount of regulation and improve the quality of the regulation that remains. Ultimately, EU rules need to be as flexible as, or more flexible than, those of our global competitors.

The Commission confirmed that the number of initiatives in the EU research programme has reduced from 130 in 2014, to 23 this year and that state aid rules have been updated and are more flexible than before. It agreed that efficiency and innovation are the means to create jobs, and that the real challenge for the EU is to develop legislation that can create new opportunities from disruptive technology and innovation.

The Internal Market and Industry Council meeting started with an evening event that brought together Ministers and entrepreneurs who had been invited to the Council by each Member State (the UK invited Mr Riccardo Zacconi, the CEO of King, the computer games developer behind games such as Candy Crush Saga). Gunther Oettinger, Commissioner for the Digital Economy and Society opened the discussion with a speech on the digitising of industry and noted that he would shortly be bringing forward a strategy on this issue in April. During the discussion a number of themes were explored including the wide range of different business models that were being disrupted or created by digitisation. A number of entrepreneurs emphasised the need to make it easier for start-ups to access markets in other Member States. Many of the entrepreneurs also discussed the importance of a skilled workforce, noting that the diversity of talent within Europe was a significant advantage.

The plenary programme started with short speeches by two businesses leaders: Herna Verhagen (CEO, PostNL) and Corinne Vigreux (co-founder of TomTom). They highlighted the importance of digitisation in driving innovation and expansion into new business models, which in turn led to new jobs.

Ministers then held two breakout sessions in small groups focussed on upcoming Commission proposals related to the single market. In the first, on geoblocking (discrimination based on grounds of country of residence), Ministers agreed that it was important to make clear that discrimination has no place but there should not be extra burdens on businesses, and there was broad agreement that the Commission's proposals should cover business-to-business transactions. Vice President Andrus Ansip, responsible for the Digital Single Market, made clear that the proposal was not intended to lead to uniform pricing nor to an obligation for businesses to deliver goods throughout the EU.

The second breakout session focussed on the proposed services passport. The chairs noted that there was consensus that the passport could be useful in reducing barriers to businesses wanting to trade across borders but that it should not lead to additional burdens. There needed to be analysis of the existing barriers and a suggestion that the passport could then be introduced in stages. While it was appropriate to have national rules in some areas, there was a need to increase transparency about different national requirements and potentially to undertake some further harmonisation in certain areas. The UK noted the importance of tackling regulatory barriers as well as administrative ones via the passport initiative. Others noted the relationship between the passport and the proposed analytical framework for assessing the proportionality of regulations on professionals. Commissioner Elżbieta Bieńkowska responsible for Internal Market and Industry noted that she expected to be able to share more detail of the Commission's thinking on the passport soon.

The final agenda item was a plenary discussion on the collaborative economy. The Chair of OuiShare Fest, Francesca Pick, in an invited speech, highlighted the prevalence of cross-border business models in the collaborative economy, but noted that there were challenges of regulatory uncertainty in respect to consumer rights, liability, labour rules, and tax. Many Member States noted the consumer benefits from the new and innovative services being offered. The UK agreed that the collaborative economy could deliver significant benefits to consumers and workers, and could play an important role in opening the labour market to those who might otherwise be excluded. It noted that there was still a need to regulate these businesses, but that regulations may need to be updated so as to enable

these new business models. It highlighted the best practice work done by the UK body, sharing economy UK and their Trustmark initiative, which Vice-President Katainen asked to explore further.

11 February 2016

THE PREVENTION AND DETERRENCE OF UNDECLARED WORK (9008/14)

Letter from David Gauke MP, Financial Secretary, HM Treasury, to the Chairman

Thank you for your correspondence of the 20th November 2015, covering the Committee's views at the final stage of negotiations for text of the EU Platform on Undeclared Work.

In that correspondence, the Committee retained the Platform under scrutiny pending receipt of further information, and granted a scrutiny waiver enabling the UK to vote in favour of the Platform at Council. Subsequently, the text was adopted by the Education Council at a session of the 24th February, and the Decision published in the Official Journal of the European Union on the 15th March. With the process complete I would like to update you on the final agreed position, and respond to your specific queries.

THE LEGAL BASE

You asked for an update on the legal base, specifically the addition of several subclauses from Article 153(1)(a).

The legal base was an area of substantial discussion during the trilogue negotiations, and was the final section of the Platform text to be agreed between European Parliament, Council and Member States. Though this wasn't a 'red line', the UK argued throughout the negotiations that the legal base should be the same as that articulated in the Council General Approach – i.e. Article 153(2)(a), with Article 153(1) points (b), (h) and (j). Although Article 153(2) includes all elements of Article 153(1) by definition, the UK argued that the inclusion of individual points provided clarity as to whether qualified majority or unanimous voting mechanisms would be used when reaching decisions. Furthermore, in the face of opposition from the European Parliament and Commission, the UK argued strongly that Article 153(1)(a) was unnecessary for the Platform, making as it was specific reference to a section of the Union's legal powers that was not relevant to the objectives of combating undeclared work.

A position was agreed whereby no elements of Article 153(1) would be included in the final text. While this was not the UK's preferred position, we have no concerns with this approach on policy grounds. Unanimity on tax policy decisions is not affected by this agreement. As you mention in your letter, this discussion does not affect the main concern of establishing the non-mandatory principle for any outputs of the Platform.

CONSULTATION AND NEXT STEPS

You asked about the consultation process the UK is undertaking, and the likely timetable for when the Platform could become operational.

The first meeting of the Platform is provisionally scheduled for 27th May 2016. Prior to this, HMRC is undertaking an informal consultation process with relevant Government departments to identify potential policy opportunities the Platform could present the UK. This has involved discussions with relevant officials in HMRC, the Department of Business, Innovation and Skills, the Department for Work and Pensions, and the Gangmasters Licensing Authority. This process is ongoing and will run until the first meeting of the Platform. It is expected that interested civil society groups will contribute directly to the Platform through the various forms of membership available, though HMRC is available to discuss issues outside of these formal structures.

Officials have also started conversations with other Member States to identify areas of shared interest. Preliminary discussions suggest establishing mechanisms for data sharing in areas related to undeclared work has the support of a number of Member States and may come up for discussion in early sessions of the Platform. As with all Platform activities, officials will examine any proposal

thoroughly to ensure consistency with the UK's legal framework and wider interests before committing to any activity.

I am grateful to the European Union Committee for its rigorous and constructive contribution to this process.

3 April 2016

Letter from the Chairman to David Gauke MP

Thank you for the letter of 3 April 2016 on the above proposal. It was considered by the EU Internal Market Sub-Committee at its meeting on 21 April 2016.

We welcome your update on the details of final agreed text for this proposal and the proactive steps taken by the Government to make best use of the Platform when it becomes operational.

As this proposal has been adopted, we have decided to clear this document from scrutiny. A response to this letter is not required.

21 April 2016

THIRD COUNTRY ACCESS TO THE EU'S PUBLIC PROCUREMENT MARKET (5752/16)

Letter from the Chairman to Baroness Anelay of St Johns DBE, Minister for Trade and Investment, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum dated 17 February on the above proposal, which was considered by the EU Internal Market Sub-Committee at its meeting on 14 March 2016.

We agree with your assessment that the amended proposal is a welcome improvement on the Commission's last proposal, and we support the deletion of provisions which would have given the Commission powers to close the EU's public procurement markets to third countries which did not reciprocate in allowing foreign tenders for public contracts. The Commission's amended proposal - which includes the introduction of price adjustment measures - appears to be a more flexible and constructive tool to encourage more favourable relations between the EU and third countries. We welcome the requirement for third countries to engage in consultations with the Commission where there are concerns about restrictive and discriminatory practices as an opportunity to constructively negotiate new trade arrangements before the imposition of any penalties.

We also support provisions which provide exceptions from price adjustment measures for SMEs and economic operators from the least developed and some developing countries. We find provisions to suspend price adjustment measures during trade negotiations between the EU and the targeted country pragmatic and an incentive to improve trade relations.

We also welcome stipulations within the amended proposal that the Commission's investigation into a third country's public procurement practices be transparent and its findings made public. However, we are concerned that the process through which the Commission decides to undertake such investigations is unclear. Can you describe in more detail on what grounds and in what circumstances the Commission can decide to investigate allegations of restrictive or discriminatory practices of a third country? How frequently do you reasonably foresee the Commission undertaking such investigations?

We note that the decision to apply price adjustments on all bids from a third country after an investigation has taken place and a consultation has failed could present a significant penalty to a third country and have a large impact on procurement processes for Member States. What oversight will Member States have of the decision to impose price adjustments and over the size of those price adjustments? Your explanatory memorandum noted that this tool was used in other parts of EU legislation and we wondered if there was an example of this process being used elsewhere which might be illustrative.

We are interested in the following description of how the price adjustment measure would work in practice in paragraph 11 of your explanatory memorandum:

"The price adjustment would be applied during the tender assessment process to the price tendered by suppliers with such third country content. The adjustment would not affect the price to be paid under the contract, if awarded to one of those suppliers. Contracts could still be awarded to such suppliers where they offer best value for money and meet the award criteria, despite the price adjustment."

We wish to know what impact you believe this proposal could have, given this qualification? Do you think that if used frequently, price adjustment measures could have the effect of raising the price of contracts overall?

In an effort to reduce the administrative burden on contracting authorities, the proposal presumes that price adjustment measures will apply to all bids from economic operators from targeted third countries unless they prove that 50 per cent of the content of their bid originates from a different country. Nonetheless, we note that the Government remains concerned that this proposal could still place an administrative burden on contracting authorities. Could you describe these concerns in more detail, and inform us of any potential amendments which the Government might put forward on this proposal to address these concerns?

Finally, we understand that while the Council blocked the Commission's previous proposal, the European Parliament did eventually support it, with amendments. What reaction has the European Parliament had to this revised proposal?

Given the outstanding questions raised in this letter, we have decided to retain this document under scrutiny. We recognise that the timetable for this proposal is unclear, but we request to be kept informed of any developments in good time.

We look forward to a reply to this letter in due course.

15 March 2016

UNFAIR BUSINESS-TO-BUSINESS TRADING PRACTICES IN THE FOOD SUPPLY CHAIN (5747/16)

Letter from the Chairman to Anna Soubry MP, Minister for Small Business, Industry and Enterprise, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum dated 11 February 2016 concerning the Commission's report on unfair business-to-business trading practices in the food supply chain. This document was considered by the House of Lords EU Internal Market Sub-Committee at its meeting of 14 April 2016, at which the Committee decided to clear it from scrutiny.

We note your comment that, although this is not a legislative proposal, some of the Commission's suggestions may impact on UK policy on unfair trading practices in the food supply chain. Can you provide us with a summary of what you consider the main impacts are likely to be on the Groceries Supply Code of Practice and the jurisdiction of the Groceries Code Adjudicator?

In particular, we note the Commission's suggestion that regulation of unfair trading practices should apply to the entirety of the food supply chain, whereas the Groceries Code only applies to the 10 largest UK retailers and their relationship with their direct suppliers. Will the Government, or the Competition and Markets Authority, be reviewing whether the scope of the GSCP and the jurisdiction of the GCA should be expanded in this way?

We also note that the Commission's report states that the UK was among those Member States in which only "a few cases" were investigated, whereas others investigated dozens or more. Given the importance of creating effective deterrence, will the Government or the CMA be reviewing whether there ought to be more enforcement activity, and whether fines for non-compliant retailers should be increased? We also support measures to ensure tackling the "fear factor", which may deter smaller suppliers from complaining against large firms on which they are dependent. Does the UK regime offer complainant confidentiality, as suggested by the Commission, or any other measures to help address these concerns?

We look forward to a response at your earliest convenience.

14 April 2016

Letter from Anna Soubry MP to the Chairman

Thank you for your letter of 14 April, following my Explanatory Memorandum of 11 February 2016 concerning the Commission's report on unfair business-to-business trading practices in the food supply chain.

I have responded to each of your questions below. Please do let me know if I have missed anything or if you need further clarification.

CAN YOU PROVIDE A SUMMARY OF WHAT YOU CONSIDER THE MAIN IMPACTS ARE LIKELY TO BE ON THE GROCERIES SUPPLY CODE OF PRACTICE AND THE JURISDICTION OF THE GROCERIES CODE ADJUDICATOR?

The Commission's suggestions that may impact on UK policy in this area are, as you rightly point out, those which concern coverage of regulation in the food supply chain. As the EM explains, regulatory coverage in the UK is limited to the UK's ten largest supermarkets and their direct suppliers. This reflects the findings of the UK's independent competition authorities. If the Commission made policy proposals which required the UK to extend its regulatory coverage across the entire food supply chain, we would need to be convinced that their proposals took full account of UK market conditions and that any extended regulatory coverage was solidly evidence-based and carefully balanced.

WILL THE GOVERNMENT, OR THE COMPETITION AND MARKETS AUTHORITY, BE REVIEWING WHETHER THE SCOPE OF THE GROCERIES CODE AND THE JURISDICTION OF THE GCA SHOULD BE EXPANDED IN THIS WAY?

We are shortly to begin a review of the GCA and, as part of this we plan a call for evidence to invite views on extending the GCA's coverage. If extended coverage is proved to be necessary, it may need to involve the Competition and Markets Authority (if an extension of the current Code is required), or it may require primary legislation (to give the GCA additional powers). However, we would first need to be convinced that further regulatory intervention in the groceries supply chain was required.

WILL THE GOVERNMENT OR THE CMA BE REVIEWING WHETHER THERE OUGHT TO BE MORE ENFORCEMENT ACTIVITY, AND WHETHER FINES FOR NON-COMPLIANT RETAILERS SHOULD BE INCREASED?

Aside from looking at the GCA's coverage, our review will also look at: the performance of the GCA; how much her powers have been exercised; and how effective she has been in enforcing the Code. These aspects of the review are a statutory requirement of the Groceries Code Adjudicator Act 2013 ("the Act") and will cover the period from the creation of the GCA (in June 2013), to 31 March 2016. This will include a public consultation, where stakeholders will be free to raise issues relevant to the GCA's performance, including on the degree of enforcement activity and penalty powers. The outcomes from this review will reflect the views expressed and take into account the strength of the evidence received.

DOES THE UK REGIME OFFER COMPLAINANT CONFIDENTIALITY, AS SUGGESTED BY THE COMMISSION, OR ANY OTHER MEASURES TO HELP ADDRESS THESE CONCERNS?

I can confirm that the UK regime does offer complainant confidentiality. This is covered in section 18 of the Act, which effectively prevents the GCA from identifying any person or party who has raised an issue or complaint with her, without first seeking their consent.

I hope this information answers all your points.

24 April 2016

Letter from the Chairman to Baroness Neville-Rolfe, Parliamentary Under Secretary of State and Minister for Intellectual Property, Department for Business, Innovation and Skills and the Department for Culture, Media and Sport

Thank you for letter of 18 December 2015 responding to our questions about the European Commission's Single Market Strategy. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 8 February 2016.

We look forward to receiving detailed Explanatory Memoranda regarding the Commission's proposed initiatives in this area in due course.

Please note that this letter does not require a response.

9 February 2016

Letter from Baroness Neville-Rolfe to the Chairman

Thank you for your letter of 9 February.

Further to my written ministerial statement sent to you on 9 March I am writing to you to provide you with an update on the Single Market Conclusions adopted at the Competitiveness Council on 29 February. I represented the UK at this meeting.

The conclusions highlight the importance of speedy and ambitious implementation of the actions set out in the Strategy focusing on three key areas which are particularly crucial for creating growth and jobs:

1. Support for SMEs, start-ups and innovative businesses
2. Improvement of services markets
3. Efficient implementation, compliance and enforcement of existing

The Government strongly supports these conclusions and we have been working closely with the Commission, the Dutch Presidency and other Member States to ensure a high level of ambition. In particular, we have pushed hard for agreeing ambitious language on the services markets section, including on the introduction of a services passport.

The debate on the text of the conclusions prepared by the Dutch Presidency concentrated on paragraph 12 of the conclusions which focused specifically on the proposed services passport initiative. Commissioner Bieńkowska opened the debate by setting out that there still remained many barriers to trade in this area whilst the economic evidence suggested that deepening the single market in services would bring significant benefits. She would therefore propose a services passport by the end of the year, after a public consultation and an impact assessment have been carried out.

In my intervention I noted that the UK considered enforcement of existing Single Market legislation important and thus welcomed the Commission's commitment on this. I also emphasised our strong support for an ambitious services passport which should tackle regulatory barriers by using mutual recognition to allow a company already operating in one Member State to operate elsewhere without re-complying with parallel sets of rules.

The great majority of Member States supported high ambition in the area of services, including on the proposal to introduce a services passport. This is reflected in the language of paragraph 11 which clearly stresses the importance of making the EU services markets more competitive; underlying their function as a key pillar for creating growth and jobs and their strong knock-on effects for the competitiveness and productivity of manufacturing industries. However, some Member States remained concerned in the absence of a clear proposal on the services passport from the Commission. The Presidency therefore proposed a compromise text for paragraph 12, removing reference to mutual recognition as part of the services passport (although retaining reference to its use in general) and qualifying how regulatory barriers should be tackled as part of the passport. Council conclusions are reached on a consensus basis, we therefore agreed with the compromise

text; noting the overall ambitious language on services (paragraph 11) and the clear connection between making the EU services sector more competitive and introducing services sectors, as made clear by the words 'in this context' at the beginning of paragraph 12.

On support for SMEs, start-ups, scale-ups and innovative businesses, the conclusions underline the difficulties SMEs face when trying to scale up across the Single Market and, in this context, stress the importance of improving their access to finance. The conclusions also emphasise the opportunities the collaborative economy presents for both consumers and businesses, and the importance of fostering innovation across the EU.

On implementation, compliance and enforcement, the conclusions call on Member States to put more effort into the effective implementation and enforcement of Single Market rules and on the Commission to prioritise smart but firm enforcement actions, including targeting the most economically significant cases of unjustified or disproportionate barriers.

Furthermore, the conclusions emphasise the need to ensure practical delivery in other key areas of the Single Market Strategy, such as the commitments to modernise the European Standardisation System through the Joint initiative on Standardisation and to present an ambitious EU-wide Action Plan to improve mutual recognition in the field of goods. The full text is attached at Annex [not printed].

Going forward, I will continue to provide you with detailed updates on how the individual proposals in the Strategy are progressing.

17 March 2016

Letter from the Chairman to Baroness Neville-Rolfe

Thank you for your letter of 17 March 2016 regarding the Single Market Strategy. This was considered by the EU Internal Market Sub-Committee at its meeting of 28 April.

We retain a strong interest in the Services Passport, as one of the key actions intended to deepen the single market in services. We understand that the Commission intends to launch a consultation on this subject in the coming months and would be grateful if you would provide us with a copy of the Government's response to this consultation in due course, outside the formal scrutiny process.

As we have already cleared this document from scrutiny, this letter does not require a response. However, if you feel that there are any major developments in relation to the Single Market Strategy we would welcome further updates, at your discretion.

28 April 2016

VEHICLE TYPE APPROVAL (5712/16)

Letter from the Chairman to Andrew Jones MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your Explanatory Memorandum dated 25 February 2016, which was considered by the EU Internal Market Sub-Committee at its meeting on 14 April 2016.

We welcome the Commission's broad proposal for a Regulation to reform the type-approval process for vehicles in the Single Market and its provisions to introduce market surveillance and testing of motor vehicles after they have been approved. At this early stage, we think the proposal includes a number of measures which address concerns about the uneven implementation of the existing 'Framework Directive' regarding the type approval process. More pertinently, we think the proposal introduces a number of safeguards to ensure the independence of this process, and therefore goes some way to address the public's loss of confidence in the testing of motor vehicles following the VW scandal. We note that this is a very lengthy proposal, and that the Government is in the process of developing its position on its many Articles. Nonetheless, we thought it worthwhile to ask for further information and clarity on a few points even at this early stage.

As might be expected, we believe it is important to be able to balance the cost of implementing the Commission's proposal with any financial, environmental and social benefits which it should create. However, we note that at present this a difficult calculation to make given the qualitative basis to the Commission's figures and the wide range of possible costs. What is the Government's view of the costs versus the benefits of this proposal?

An important cost of implementing the proposal will surround the requirement for Member States to create a market surveillance authority to undertake testing of vehicles already on the market. In the light of this, we wished to know whether the Government undertakes any market surveillance activities of motor vehicles at the moment, and if so, to be informed of the budget and scale of these activities. At this stage, how do you foresee the market surveillance aspect of the proposal being implemented in the UK?

The Commission's proposal suggests that a levy on manufacturers, collected through a new national fee structure, would be used to finance the additional market surveillance activities undertaken by the Commission. This could mean a significant change in how fees for motor vehicle type-approval are currently collected. Can you describe how fees for type approval are paid at the moment, and what impact the requirement for a national fee structure might have? Building on the Government's view about the size of future market surveillance operations in the UK under this proposed Regulation, how much would the Government expect and propose the levy, collected through the new national fee structure, for manufacturers to be? What affect could this levy have on the price of motor vehicles for consumers?

Article 71 of the Commission's proposal also includes measures to ensure independence between the work of type-approval authorities and technical services. The VCA is the UK's national type-approval authority but also includes technical services as part of its operation. What assessment has the Government made about how this Article could affect the governance and structure of the VCA?

The proposal also includes a suite of new powers for the Commission. Your Explanatory Memorandum said the "Government will need to understand the Commission's justification for additional responsibilities and powers it would have before being able to determine whether this is a part of the proposal which the UK can support." Could you explain in more detail which additional powers the Government thinks may or may not be justified, and tell us why?

We welcome your commitment to consult with the relevant stakeholders on this important proposal. Could you provide more information about when and how the Government plans to undertake this consultation? Given that this proposal affects consumers and environmentalists, in addition to manufacturers, what steps is the Government taking to include the views of these two particular groups?

In the light of the questions raised above, we have decided to retain this document under scrutiny. Your EM explained that the timetable for this proposal remains unclear. We request that you respond to our questions and keep us informed of any developments in negotiations on this proposal in 30 days.

14 April 2016

Letter from Andrew Jones MP to the Chairman

Thank you for your letter of 14 April in response to my Explanatory Memorandum of 25 February. I will start by providing an update on the progress of this proposal. The negotiations in the Council Working Groups are still at an early stage and we have taken part in the discussions of the first 11 chapters out of 17. This first stage of consideration of the documents is likely to conclude in the summer, and I suggest that I write to you again after this to update you on the key changes.

Regarding the costs and benefits of the proposal, I agree with your assessment that it is difficult to ascertain these from the Commission's impact assessment. We have not yet held a detailed discussion of these in the Working Group but it is an area that we, and other Member States, are keen to collectively consider in detail.

We are separately seeking views from UK stakeholders on the impacts. This has initially been from the vehicle industry, via the Society of Motor Manufacturers and Traders, to clarify the costs of the

changes to the type approval processes and administrative measures. The benefits of the proposal are harder to quantify but have at their core a desire to avoid any repetition of the recent VW situation, and to restore public confidence in the robustness of the regulatory system. It is likely to be difficult to produce benefits estimates, due to the large number of ways that non-compliant vehicles may impact on safety or the environment. For this reason our consideration of the impacts will focus on whether there are more cost-effective ways to deliver the desired outcomes of the proposal and if there are ways of refining the policy to maximise the impact it has on non-compliant vehicles. We need to ensure that consumers are at the heart of the system, but do not want unnecessary costs without direct tangible outcomes.

Regarding wider consultation, we have received initial views and representations from some stakeholders with an interest in the type approval system, largely those representing vehicle and parts manufacturers and vehicle converters. We intend to seek the views of other groups urgently after the initial stage of consideration has concluded. We will, of course, take account of your suggestion that we include environmental and consumer groups.

We have recently announced that this year the Department for Transport will be establishing a new programme of market surveillance testing which will seek to ensure that vehicles and associated products entering our markets fully comply with the law[7]. It builds upon existing enforcement activity but will have a much stronger focus on emissions in the next few years, following the Volkswagen emissions scandal. A new unit will be established involving the Department's agencies (DVSA and VCA) who will combine their skills to deliver an effective and complete programme. It will be getting underway before the summer and will quickly increase activity to capture modern cars entering the market and those already on the road. We particularly want to be confident that new cars are meeting the Real Driving Emissions rules from next year. We will publish the results of our market surveillance testing to ensure there is complete transparency. I will be able to share further details as our plans develop. We will be able to draw on our experiences of this new programme in working to ensure the Commission's Market Surveillance proposals are sensible and effective.

I am cautious about any fee generating proposals and expect to be seeking much greater clarity from the Commission about the proposed fee structure for their new surveillance activities. We have not reached a firm position on it and do not expect to do this until after we have seen whether and how it is amended following initial discussions.

You asked about the impact on the VCA of the proposed separation of Technical Services and Type Approval Authorities in Article 71 of the proposal. Article 71 is a new obligation and it is not yet clear how it interacts with Article 72(2) which states that an approval authority can be designated as a Technical Service. We have identified this as an area that we need to seek clarity on in the Working Group. However, the VCA is a leading example of a competent and high performing Type Approval Authority and so we do not think that altering its structure is necessary to achieve the objectives of the proposal.

With regard to the proposed new powers for the Commission, the Government's general position is to only support conferring new powers where they are fully justified. Recent events have shown that a more robust system of oversight could be required and we will be engaging fully to ensure the interests of UK consumers are well protected. I will be able to update you with our views on the specific measures in the proposal once we have completed the initial discussions on the current proposal.

13 May 2016

[7] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-04-25/HCWS700/