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 1 December 2011 – 6 March 2012

INTERNAL MARKET, ENERGY AND TRANSPORT
(SUB-COMMITTEE B)

CONTENTS

ATHENS PROTOCOL (8663/11) ........................................................................................................................................... 3

AVIATION SAFETY MANAGEMENT SYSTEM FOR EUROPE (16210/11) ........................................................................ 4

BETTER AIRPORTS PACKAGE (18007/11, 18008/11, 18009/11, 18010/11) ................................................................. 4

BIOCIDAL PRODUCTS: PLACING ON THE MARKET AND USE OF (11063/09) .......................................................... 8

CARBON MARKET OVERSIGHT AND EU ETS REGULATIONS (18249/10) ............................................................... 9

CARRIAGE OF RADIOACTIVE MATERIALS (13684/11) ........................................................................................................ 10

COMPETITIVENESS COUNCIL ............................................................................................................................................ 11

CONNECTING EUROPE FACILITY (16176/11, 15629/11, 16006/11, 15813/11) ............................................................ 12

DANISH PRESIDENCY PRIORITIES .................................................................................................................................... 13

DIGITAL SINGLE MARKET FOR E-COMMERCE AND ONLINE SERVICES (5494/12) .................................................. 20

DIGITAL TACHOGRAPH (16842/11) .................................................................................................................................. 21

EARTH MONITORING – GMES (COM (2011) 831) ........................................................................................................... 21

ENERGY COUNCIL ............................................................................................................................................................ 21

ENERGY EFFICIENCY DIRECTIVE (12046/11) .................................................................................................................... 22

EUROPEAN SOCIAL ENTREPRENEURSHIP FUNDS (18491/11) .................................................................................. 23

EXTERNAL ENERGY POLICY (13941/11, 13943/11) .......................................................................................................... 24

FINANCIAL STATEMENTS (13941/11, 13943/11) ............................................................................................................. 24

FUEL QUALITY .................................................................................................................................................................... 25

GALILEO (17844/11) .......................................................................................................................................................... 26

GALILEO: ACCESS TO THE SERVICE OFFERED BY THE GLOBAL NAVIGATION SATELLITE SYSTEM (14701/10) ................................................................................................................................. 27

GENERAL AFFAIRS COUNCIL (16 DECEMBER 2011) ........................................................................................................ 27
GREEN PAPER: TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS (5491/12) ................................................................................................................ 28
HORIZON 2020 (17932/11, 17933/11, 17934/11, 17935/11, 17936/11) .......................................................... 30
INTEGRATED MARITIME POLICY (14284/10) ............................................................................................. 30
THE INTERNAL MARKET INFORMATION SYSTEM: THE IMI REGULATION (13635/11) ......................... 31
ITER PROJECT (2014-2018): SUPPLEMENTARY RESEARCH PROGRAMME (5058/12) ...................... 32
A MARITIME STRATEGY FOR THE ATLANTIC OCEAN AREA (17387/11) ........................................... 34
MINIMUM LEVEL OF TRAINING FOR SEAFARERS (14256/11) ............................................................. 34
NEW LEGISLATIVE FRAMEWORK ALIGNMENT PACKAGE (16983/11, 17265/11, 17266/11,
17268/11, 17269/11, 17271/11, 17272/11, 17274/11, 17275/11, 17277/11) ............................................... 34
NUCLEAR DECOMMISSIONING: BULGARIA, LITHUANIA AND SLOVAKIA ........................................ 35
NUCLEAR SAFETY ASSESSMENT (17496/11) ................................................................................................. 35
OPEN DATA: RE-USE OF PUBLIC SECTOR INFORMATION (18554/11, 18555/11) .......................... 35
PASSENGER RIGHTS COMMUNICATION (18516/11) ........................................................................... 37
PROCUREMENT PACKAGE (18960/11) .......................................................................................................... 37
PROGRAMME FOR THE COMPETITIVENESS OF SMALL AND MEDIUM-SIZED ENTERPRISES
(COSME) (17489/11) ...................................................................................................................................... 39
PUBLIC MOBILE COMMUNICATION NETWORKS WITHIN THE UNION (12666/11, 12639/11) 42
RADIATION PROTECTION (14450/11) ......................................................................................................... 47
RAILWAY PACKAGE (13788/10, 13789/10) ............................................................................................... 48
RECORDING EQUIPMENT IN ROAD TRANSPORTATION (13189/11, 13195/11) ............................ 48
RECREATIONAL CRAFT AND PERSONAL WATERCRAFT (13336/11) ................................................ 50
THE “RESPONSIBLE BUSINESS PACKAGE” AND A STRATEGY FOR CORPORATE SOCIAL
RESPONSIBILITY 2011-2014 (16318/11, 16606/11) .................................................................................. 51
SAFETY OF OIL AND GAS PROSPECTION, EXPLORATION AND PRODUCTION ACTIVITIES
(16175/11) .................................................................................................................................................... 51
SMES: AN ACTION PLAN TO IMPROVE ACCESS TO FINANCE (18619/11) ........................................ 52
SOCIAL BUSINESS INITIATIVE (16628/11) ................................................................................................. 52
SOUND LEVELS OF MOTOR VEHICLES (18633/11) .................................................................................... 53
SULPHUR CONTENT OF MARINE FUELS (12806/11, 13016/11) ............................................................. 53
TELECOMS COUNCIL (13 DECEMBER 2011) ............................................................................................... 54
THE USE OF SECURITY SCANNERS AT EU AIRPORTS (UNNUMBERED) ........................................... 54
TRANS-EUROPEAN ENERGY STRUCTURE (15813/11) ............................................................................. 54
ATHENS PROTOCOL (8663/11)

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

Thank you for your explanatory memorandum 8663/11 of 15 November. The Committee decided to clear the documents from scrutiny.

You asked for our opinion regarding the Decision founded on an Article 81 legal base. We agree that the 2002 Protocol advances the level of protection offered to passengers and goods, and that the amendments secured in recent months safeguard the competences of the United Kingdom in this area. As a result, we support the proposed opt-in.

Our only concern relates to the scrutiny process in this case. You have acknowledged with regret that the documents were not deposited in due course, and we fully accept that the failure to do so was an oversight and not an attempt to circumvent parliamentary scrutiny. Nevertheless, by not submitting an explanatory memorandum within ten days for an instrument subject to an opt-in, the 2008 undertakings made by Baroness Ashton prior to the entry into force of the Lisbon Treaty have been contravened. Furthermore, the texts of both Decisions were approved in Council and sent on to the European Parliament in May 2011. After this point, we consider that further substantive changes would not have been possible, and therefore it is our judgment that such approval constituted an override under the Scrutiny Reserve Resolution. We regret this result and would appreciate your assurance that it will not be repeated in the future.

Your letter notes that the Government will pursue post-adoption opt-in, with the aim of completing the process by the end of the year. However, we understand that this procedure, under Article 4 of Protocol 21 of the Treaties, is more complicated and takes more time than the pre-adoption procedure under Article 3 of the same Protocol, since it involves Article 331(1) TFEU. We would appreciate your views on how you propose to negotiate the hurdles of the post-adoption procedure in time for the deadline you have set.

7 December 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 7 December which indicated that the Committee cleared the Council Decisions concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 from scrutiny and that the Committee supported the proposed opt-in to the Council Decision founded on an Article 81 legal base.

I want to inform the Committee that the Government has now notified the Council and the Commission of its wish to opt in to the Council Decision that is founded on an Article 81 legal base. The UK notified its intention to accept the measure soon after the Council Decision was adopted at Transport Council on 12 December 2011.

Your letter indicates that the Committee has expressed concern about the scrutiny process in this case and is seeking assurance that it will not be repeated in the future.

You will recall from previous correspondence on this dossier that the Council agreed its position at Transport Council on 31 March. At these negotiations it was agreed that Article 81 should be cited as an additional legal base. The Council also agreed to split the Council Decision in two: one Decision with an Article 100 legal base dealing with the transport elements and another Decision with an Article 81 legal base dealing with the justice and home affairs provisions. However the substance of the proposal, from a Justice and Home Affairs perspective, remained unchanged and therefore it is the Government’s view that there was no re-triggering of the UK’s 3 month opt-in period and that as a result of these deliberations the Ashton commitments were not engaged.

It was also agreed at the Transport Council on 31 March to send both Decisions to the European Parliament for their consent once the text had been revised by legal-linguist experts. The revision by the legal-linguist experts is purely on linguistic points to ensure correct translation and correct legal use of language in all the languages of the Community. After revision by the legal-linguists experts, the texts were transmitted by the Council on 3 May to the European Parliament for its consent, this was
however purely a procedural matter and did not represent any change to the position adopted by the Council on 31 March. There was no scope to make any substantial changes after the Transport Council adopted its position on 31 March unless either the European Parliament refused consent, or if following the European Parliament’s consent the proposal was blocked in Council.

While it is the Government’s view that the 2008 undertakings made by Baroness Ashton were not contravened as suggested by the Committee, I note that the Committee would have preferred to have a further Explanatory Memorandum at an earlier stage, and can assure the Committee that we will take this preference into account if similar circumstances arise in the future. I am committed to working closely with the Committee and will seek to provide any information that is necessary to keep the Committee informed.

With regard to your final point relating to the post adoption procedure and the EU’s timetable for accession to the 2002 Protocol, we are confident that the processes will be completed before the EU accedes to the 2002 Protocol. We would expect the Commission to advise of any problems before the EU accedes to the 2002 Protocol. However, we consider it to be unlikely that there will be any such problems; the fact that the UK has notified its intention to opt-in to the Council Decision and that it is working toward ratifying the 2002 Protocol as soon as it is ready to do so, should in our view be sufficient to demonstrate that the “conditions of participation” (the test that the Commission must consider) have been fulfilled. There are not any other valid conditions that we are aware of. The 2002 Protocol as incorporated into EU law will apply from 31 December 2012 – after the UK intends to ratify the instrument itself.

20 December 2011

AVIATION SAFETY MANAGEMENT SYSTEM FOR EUROPE (16210/11)

Letter from the Chairman to the Rt. Hon Theresa Villiers MP, Minister of State, Department for Transport

Thank you for your explanatory memorandum of 10 November, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 12 December. They decided to clear it from scrutiny.

We note that the Government broadly support the content of the Communication and consider that a joint approach by Member States and the EU is the best way of achieving a more proactive European aviation safety management system. We will look forward to scrutinising the various proposals emerging from this Communication as they are published.

13 December 2011

BETTER AIRPORTS PACKAGE (18007/11, 18008/11, 18009/11, 18010/11)

Letter from the Chairman to the Rt. Hon Justine Greening MP, Secretary of State, Department for Transport

Thank you for your explanatory memorandum of 12 January 2012. This package was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 30 January 2012; it was decided to retain it under scrutiny.

We note your view that existing arrangements deliver reasonable levels of efficiency, service and market access, and your concerns that the homogenised standards in these proposals may increase burdens on the UK. The Committee is also concerned about the potential barriers to expansion and trade presented by the package.

In the case of the Regulation on groundhandling services at Union airports, we note your view that additional costs to the UK risk being “significant”, particularly if the proposal results in the UK having to pre-approve groundhandling providers and/or automatically accept approvals issued by other Member States. However, you also point out that the proposed Regulation could present a number of benefits such as providing additional business for UK groundhandling providers, delivering better service standards across the EU and helping with the resolution of problems such as exceptional weather conditions. The Committee would be grateful for more exact estimations of the likely costs of this proposal, and your view on whether these costs would outweigh the benefits to which you refer.

20 December 2011
On the Regulation on the allocation of slots, we note your overall positive approach to the Regulation and your concern that a number of the changes could introduce additional burdens for UK airlines. We were impressed by the Commission’s assertion that this proposal would allow the system to handle 24 million additional passengers, would be worth €5 billion to the European economy, and would create up to 62,000 jobs in the period 2012-2025. The Committee would be grateful for your view on whether these figures are realistic, and to what extent they will impact on the position taken by the UK in the negotiations.

We also note your proposal to introduce changes into the Regulation on the allocation of slots which would secure the provision of air services between regional and London airports. Could you please provide us with more information on what these changes are, whether they are likely to be supported by the Commission and other Member States and what benefits for the UK they are likely to achieve?

Finally, on the Regulation on the introduction of noise-related operating systems, we note that you are considering whether the additional burdens resulting from the Regulation are disproportionate to the issues at stake. The Committee would be grateful for more information on this once your deliberations have been completed.

In addition to these points, the Committee would like to ask for further information on a number of issues related to this package. Firstly, we would be keen to know whether the use of mixed-mode operations is being considered at a European level as a measure for improving airport capacity. Secondly, we would like to know what steps are being taken to encourage better use of regional airports and of alternative methods of transport, such as rail travel. Thirdly, we would be interested to know whether you consider there to be adverse environmental effects as a result of the package, particularly in the case of the amended “use it or lose it” proposals as part of the Regulation on the allocation on slots. Finally, we would like to know how the package is likely to impact on issues of border control and passenger queues.

On these points, we would appreciate a substantive response within the usual 10 days, or as soon as it is possible for you to provide this information.

31 January 2012

Letter from the Rt. Hon Justine Greening MP to the Chairman

Thank you for your letter of 31st January 2012 regarding our Explanatory Memorandum (EM) of 12th January.

You explained that the Lords Sub Committee on the Internal Market, Energy and Transport had decided to retain our EM under scrutiny and that the sub committee had a number of questions. I am writing today to respond to those questions.

GROUNDHANDLING

The Committee asked if the likely costs of the European Commission’s groundhandling proposal might outweigh the potential benefits.

Unfortunately, this is difficult to quantify. With reference to the data, methodology and assumptions used in the Commission’s Impact Assessment (which considered the EU as a whole rather than individual Member States), our economists estimate that the overall potential cost born by UK industry – i.e. airports, airlines and groundhandlers – and therefore passed on to consumers would lie between £10,000-£15,000 every 5 years (i.e. £2000-£3000 per annum). This relies heavily on the assumption that groundhandlers in the UK currently incur administration costs for an airport authorisation that are in line with European averages. However, whilst many European countries already license ground handlers, the UK does not and it seems fair to presume that current administrative costs in the UK would be lower than elsewhere in Europe, although there is no data readily available. Based on the Commission’s data, if we assume that UK groundhandlers and airports currently face no significant administrative costs associated with authorising groundhandlers, then the additional burden on the UK would be around £110,000 every 5 years (£22,000 p/a).

The draft Regulation aspires to both raise quality standards and reduce the cost to airlines of groundhandling (through improved market access and competition). We would expect such benefits to be passed on to consumers - for instance through reduced fares - but these are difficult to quantify. At this stage, it is unclear whether or not such benefits might outweigh any costs. The Commission’s Impact Assessment considers the EU as a whole and envisages that overall administrative costs are

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1 The Commission’s Impact assessment does not quantify benefits
£1.3m lower relative to the baseline (after 5 years) – but, as noted above, it is unlikely that this cost reduction would apply to the UK, as the EU-wide averages used in the calculations may not be representative of the UK.

In practice, we believe that the balance between costs and benefits will vary for different stakeholders, for example:-

— under the draft Regulation as it stands, Member States would be required to set up a national system for approving (i.e. licensing) groundhandling providers. For the majority of Member States that already license groundhandlers, this should not be a burden. However, for the minority – like the UK – that do not currently require licenses, the Government will have to set up a new approval regime from scratch and the cost will, ultimately, be passed on to consumers,

— the draft Regulation includes, amongst other things, new requirements for airports (we have 17 that currently come into the scope) to both set minimum quality standards and report on groundhandlers’ performance against those standards (to Eurocontrol) - these will require administrative effort and, again, the cost will, ultimately, be passed on to consumers,

— UK-based groundhandlers operating extensively in other EU Member States should benefit from improved market access – i.e. more business opportunities - and a harmonised approvals regime ought to be less burdensome that the status quo (because, instead of having to seek separate approvals in multiple Member States, groundhandlers would need just one approval and this would be recognised throughout the EU), however,

— groundhandlers operating exclusively in the UK would not secure any additional business opportunities – the UK market is open already – and would incur additional administrative costs as a result of the need to secure approval,

— airlines could expect to see the cost of their operations to/from UK airports increase as airports and groundhandlers pass on their additional administrative costs. Conversely, where the new Regulation delivered more choice of groundhandling solutions at airports in other EU Member States, groundhandling costs could reduce. The balance of such costs and benefits will depend on the nature of the business – an airline operating a relatively large number of domestic routes stands to gain less than an airline operating a relatively large number of routes to points elsewhere in the EU.

In Council Working Groups to consider the Commission’s proposed groundhandling Regulation, we are pushing to minimise administrative burdens by reducing reporting obligations to what is absolutely necessary and by arguing that approvals/licensing requirements should be voluntary, not mandatory. My officials continue to liaise with UK stakeholders to better understand the impacts of the Commission’s proposal.

SLOT ALLOCATION

In relation to the airport slot proposals, the European Commission appear to have approached the appraisal of options employing standard analytical techniques. The Commission’s approach to assessing the impacts is by and large consistent with other industry studies and indeed economic benefits are calculated in a manner comparable to those that the Department for Transport would employ. Where appropriate the Commission have also taken into account the estimated administrative cost burden to airlines of the proposals, in line with standard appraisal techniques.

When developing the UK’s negotiating position, we will have regard to the Commission’s impact assessment, along with the views of the UK industry. We have already initiated engagement with UK industry representatives and intend to engage further with the UK aviation sector to ascertain an informed understanding of the additional burdens that might be placed on them.

In relation to measures to help to secure the ongoing provision of air services between UK regions and congested London airports, it is open to the UK Government to seek amendments to EU law, such as proposing measures that allow Members States greater scope to ring fence slots or seeking flexibility in the criteria applicable to public service obligations. We are considering what options
exist, but recognise that securing amendments to protect commercially viable air services is likely to be challenging.

NOISE

You asked for more information on whether the additional burdens resulting from the proposed Regulation on Noise Related Operating Restrictions are disproportionate to the issues at stake.

There are a number of areas where the Commission’s proposals imply new burdens:

— the requirement for Member States to designate a competent authority and an appeal body independent of any organisation which could be affected by noise-related action implies a new role for national authorities;
— a more detailed, legally binding, noise management and assessment process which applies even where operating restrictions are not under consideration; and,
— centralisation of aircraft noise performance data.

Of these, the first is the most significant. Currently, airports themselves are the competent authority for drawing up any operating restrictions, as well as for producing noise action plans required under the Environmental Noise Directive (Directive 2002/49/EC). Other than at the three London airports (Heathrow, Gatwick, Stansted) where the Government sets operating restrictions, the only role for national authorities in implementing European noise law is the adoption of airports’ noise action plans, where this function lies with the Secretary of State (in practice Defra’s Secretary of State, acting on advice from DfT Ministers).

As part of our work to develop a new Aviation Policy Framework, we are currently considering our approach to noise regulation and the role of airports in the regulatory framework. We can see some possible advantages to a more independent body playing a role in the process in order to inject greater transparency. We will be consulting on this in March as part of the consultation on the draft Aviation Policy Framework document and one option may be to build on the independent ‘competent authority’ role envisaged under this proposal.

However, because this will inevitably add some costs, we will want to be sure that these requirements only apply to airports with the greatest noise impacts and do not impose a burden where noise is already well managed and is not considered by local communities to be a significant issue.

Regarding the legally binding noise management and assessment process, we will want to ensure that this process aligns closely with the existing process to produce noise action plans every five years and does not duplicate or create inconsistency. Provided these aims can be met, we do not see this requirement as a disproportionate burden.

The centralisation of noise performance data may represent a small additional burden on industry. We will explore this with industry stakeholders but our contacts to date have not suggested that this is a concern.

MIXED-MODE OPERATIONS

We are not aware of any Commission proposals in relation to the use of mixed-mode operations to improve airport capacity.

BETTER USE OF REGIONAL AIRPORTS

The Government is currently developing a sustainable framework for UK aviation which will support economic growth and address aviation’s environmental impacts. We will publish the framework for consultation in March 2012. The Government recognises the important role regional airports play in providing domestic and international connections across the UK and the vital contributions they can make to the economic recovery and growth of regional economies. The Government wants to see the best use of existing airport capacity in the regions. Proposals for expansion at regional airports should be judged on their individual merits, taking careful account of all relevant environmental and economic considerations.
BETTER USE OF ALTERNATIVE MODES SUCH AS RAIL

High speed rail will deliver a significant uplift in rail capacity and faster rail journeys offering an alternative to many domestic aviation journeys. The Y network will be delivered in two phases: Phase one will deliver the London to West Midlands line with a link to Europe via High Speed 1, and phase two will extend the line to Manchester and Leeds and Heathrow airport. High speed trains would be able to continue on existing lines to serve towns and cities not on the dedicated high speed lines.

We estimate that as many as 4.5 million air trips a year would shift onto rail with the Y network in place. However, we recognise that rail will not be feasible for all journeys, particularly for connections to more remote parts of the UK and areas not serviced by rail, so short-haul aviation will continue to play a vital role in supporting economic growth and enabling people to travel for leisure and to visit friends and family.

ENVIRONMENTAL EFFECTS OF AMENDED “USE IT OR LOSE IT RULE”

The Commission’s impact assessment on the airport slot proposals includes a high level assessment of environmental impacts. In relation to the proposed change to the “use it or lose it” rule, in certain circumstances, we suggest that there could be some adverse impact on emissions at the margins where an airline might fly a service with a lower load factor than would otherwise be justified. This could increase the per passenger carbon emissions for the route concerned.

BORDER CONTROL AND PASSENGER QUEUES

Finally, we do not believe that the proposed package will have any impact on issues of border control and passenger queues.

I hope this additional information is useful. I will of course continue to keep the Committee informed of developments on these proposals.

25 February 2012

BIOCIDAL PRODUCTS: PLACING ON THE MARKET AND USE OF (11063/09)

Letter from the Rt. Hon. Chris Grayling, Minister for Employment, Department for Work and Pensions, to the Chairman

Further to my letter of 25 October 2011, I am writing to update you on the latest position on negotiations on the proposed European Regulation concerning the placing on the market and use of biocidal products.

As you know the document was released from scrutiny on 14 December 2010, ahead of Political Agreement in the Environment Council on 20 December 2010. Since then, the Council’s position at first reading was formally transmitted to the European Parliament (EP) during its plenary meeting from 26-29 September 2011. Following intensive informal negotiations between the Council, the European Parliament and the Commission throughout October and November, an informal second reading agreement on the dossier was reached.

I am pleased to report that this informal agreement is favourable for the UK. In particular, several amendments that were proposed by the European Parliament’s Environment, food and public health (ENVI) committee on 4 October, and which would have been problematic for the UK if adopted, have been successfully resisted.

On specific issues:

Pressure from the EP to tighten the exclusion criteria for active substances with certain hazard profiles (e.g. carcinogens and persistent, bioaccumulative and toxic (PBT) substances) has been resisted. Such a measure would have made it much more difficult to approve important biocides such as rodenticides even when there is a strong case that their societal benefits outweigh the risks from their use. Instead, the agreed text maintains a risk-based approach and enables active substances to be approved when not doing so would lead to disproportionate negative impacts for society. The UK has consistently advocated this as a more balanced approach.
Amendments have been resisted which would have made it much easier for Member States to refuse to allow products to be marketed in their territory even when they have been assessed and judged to meet the safety and efficacy criteria in the Regulation. The Regulation will therefore protect the single market in biocides and avoid a situation where some Member States could have unilaterally applied tighter controls than others.

A proportionate solution has been found for labelling articles treated with biocides, whereby labelling will (other than in special cases) only be required where the manufacturer makes a biocidal claim, for example a chopping board marketed as ‘antibacterial’. This is a significant reduction in scope from the Commission’s original proposal, under which all articles treated with biocides - including underwear, towels, clothes, paper, computer and mobile phone keyboards, refrigerator linings and a vast range of other things – would have had to be labelled to indicate they contained biocides, a position which would have been costly and impractical for UK manufacturers.

A wide scope has been agreed for the new EU authorisation procedure, allowing Union Authorisation for all product types, other than in certain specific cases where there are known sensitivities (e.g. rodenticides or products containing PBT substances). The UK has supported this approach throughout as a means to bring savings to companies marketing products across the EU, by only requiring a single application for authorisation to be made. There is also a sensible phase-in to allow the European Chemicals Agency, who will manage the process, to gradually build capacity.

Overall I believe that the final text represents a balanced package and a successful outcome for the UK. The Government intends to vote in favour of the package when it comes to Council.

In your letter of 15 November 2011 you also ask whether there is any appetite among negotiating parties for a duty to be placed on those who use biocidal products in the service industries to notify those who may utilise their services. This has not been proposed during negotiations, and given that a deal has now been reached it would be too late to advance it. Having considered the issue, I also have concerns that the scope of such a proposal would be extremely wide, covering, for example, restaurants, hotels and hospitals who all use disinfectants and pest control products as part of providing a service. So a new duty to notify customers or patients of products used would be costly and burdensome on businesses without a clear benefit.

NEXT STEPS

The European Parliament will hold a vote in plenary on the package of amendments that constitute the informal agreement. This is expected to happen in January. If the amendments are adopted, they will subsequently be referred to Council for adoption by the Member States. The timetable for adoption in Council has not yet been finalised but it is expected that this will happen in early 2012. The Regulation will subsequently apply from 1 September 2013.

I hope this information is helpful to the Committee.

13 December 2011

CARBON MARKET OVERSIGHT AND EU ETS REGULATIONS (18249/10)

Letter from Gregory Barker MP, Minister of State, Department of Energy and Climate Change, to the Chairman

Earlier this year, I wrote to you about the functioning of the carbon market and undertook to keep the Select Committee informed on developments regarding the European Commission’s work on carbon market oversight. Following publication of proposals from the European Commission in October, I wanted to take this opportunity to update you further.

My earlier letter followed on from the Commission’s December 2010 communication (EM 18249/10), which concluded that a gap exists in the regulation and supervision of the secondary spot market. Subsequently, the Commission undertook an informal consultation exercise to develop options
further. The options included designating carbon allowances as financial instruments, applying certain elements of financial services legislation to them, or creating a bespoke regime for carbon.

On 20 October the Commission published proposals for amending and making regulations under the Markets in Financial Instruments Directive (MiFID) and the Market Abuse Directive (MAD). HM Treasury has submitted more detailed explanatory memorandums on these proposals (EM 15938/11, EM 15939/11, EM 16000/11 and EM 16010/11). If implemented, these proposals would classify carbon allowances as financial instruments and bring the secondary spot carbon market under financial regulation rules. It should be noted that the derivative carbon market, which accounts for around 90% of transactions in the market, is already covered by such rules.

In early engagement with the European Commission my officials have emphasised that we support consideration of appropriate action to improve the regulatory framework of the carbon market. However, we have also stressed that it is important that any regulation is proportionate to the risks and adequately tailored to the particular characteristics and environmental objectives of the carbon market. Otherwise there are clear risks of unintended consequences which could damage the liquidity and efficiency of the market. The UK, alongside France and Germany, have called for the Commission to explain more clearly the benefits of their proposals and to provide greater reassurance that the impacts of the proposals have been fully understood. We will continue to press for this in negotiations, while developing a firmer position in co-operation with colleagues from HMT.

15 December 2011

CARRIAGE OF RADIOACTIVE MATERIALS (13684/11)

Letter from Charles Hendry MP, Minister of State, Department for Energy and Climate Change, to the Chairman

Thank you for your letter dated 24 November 2011 on the Explanatory Memorandum (EM) 13684/11 submitted by the Department of Transport on the 4 October 2011 on the above Commission proposal.

You noted the Sub Committee on Internal Market, Energy and Transport’s concern that the proposal seeks to introduce a new system of reporting without making a persuasive case for its institution and without taking into account national contexts. You also urged Government to call on the commission to outline its case in a more detailed manner and asked for an indication of the likely progress of the proposal in light of our assessment that the proposed system does not add sufficient value.

We believe that the Commission has yet to make a persuasive case as:

— there are existing Environment Agency and Scottish Environment Protection Agency registration schemes for the holders of radioactive material in GB; there is an existing GB wide scheme for the mandatory training and licensing of drivers of vehicles carrying radioactive material; the imposition of another registration scheme for carriers therefore seems to be an unnecessary legislative burden.

— the impact assessment in the EU proposal is incomplete. It only considers the potential cost reduction for those carriers which now have to register in different existing schemes in several EU states; it doesn’t consider the significant additional cost to carriers who only operate in a state which doesn’t have an existing registration scheme, such as GB.

The UK will continue to push back on the Commission’s proposal and will seek to influence its progress, initially through the following means:

— There is a meeting of the EU Standing Working Group on the Transport of Radioactive Material (SWG) in Luxembourg on 9 December. The SWG comprises national experts and its remit is to advise EU officials on matters related to the transport of radioactive material. The proposal for registration of carriers is on the agenda for that meeting. Officials from Office for Nuclear Regulation - Radioactive Material Transport will represent GB at the meeting.

— Office for Nuclear Regulation and DECC are advising the FCO on the UK negotiating position on the EU Basic Safety Standards (BSS) Directive. One
of the recommendations to be proposed to the FCO is that the EU BSS is brought into line with the IAEA BSS as far as its provisions on Radioactive Material Transport are concerned. If that recommendation is adopted by the EU it will mean that it would not be necessary for countries which have adopted the IAEA Regulations for the Safe Transport of Radioactive Materials into their national legislation to implement a carrier registration system. All EU countries are mandated to adopt the IAEA Transport Regulations by existing EU Directives on the Transport of Dangerous Goods.

6 December 2011

Letter from the Chairman to Charles Hendry MP

Thank you for your letter of 6 December 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 12 December. They decided to hold the document under scrutiny.

We are appreciative of you outlining in further detail the nature of your argument as to unnecessary burden, which we supported in our last letter. Your letter references the possibility of seeking to use negotiations on the Basic Safety Standards (BSS) Directive to put in place IAEA standards that would abrogate the need for a carrier registration system. This seems rather an astute way of combining negotiations in order to advance a position we are supportive of. We would urge you to take this idea forward in future negotiations.

Otherwise, we would appreciate an update on the dossier following substantive developments of note. We do not expect a reply within the usual 10 day deadline.

13 December 2011

Letter from Charles Hendry MP to the Chairman

Thank you for your letter dated 13 December 2011, and your support for my proposal to use the forthcoming negotiations on the Basic Safety Standards (BSS) Directive to include a provision in relation to the transport of radiological materials.

My view is that if the draft BSS Directive were to follow the approach to registration of transport activities recommended by the international IAEA basic safety standards for radiological protection, then this unnecessary EU regulation would no longer be required.

It is too early to say how this approach will be received by other Member States as substantive discussions are due to start this month, but I will keep you informed of developments as the negotiations progress.

I am copying this response to recipients of your letter.

16 January 2012

COMPETITIVENESS COUNCIL

Letter from Baroness Wilcox, Parliamentary Secretary for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

I represented the UK on Internal Market and Industry issues on 5 December, and David Willetts, Minister of State for Universities and Science, represented the UK on the Research issues on 6 December at the December 2011 Competitiveness Council in Brussels. Please see attached a Post-Council Written Ministerial Statement on the subject, which will be laid in both Houses on Tuesday 13 December.

9 December 2011

Letter from Baroness Wilcox to the Chairman

I represented the UK at the February 2012 Informal Competitiveness Council in Copenhagen, focused on Horizon 2020 and the Digital Single Market. Please see attached a Post-Council Written Ministerial Statement on the subject [not printed], which will be laid in both Houses on 9 February.
8 February 2012

Letter from Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills, to the Chairman

The EU Competitiveness Council will take place in Brussels on 20 and 21 February 2012. I will represent the UK for the Internal Market and Industry items on 20 February and Andy Lebrecht (Deputy Permanent Representative to the EU) will represent the UK for the Research items on 21 February.

Please see attached a Pre-Council Written Ministerial Statement [not printed] which is being laid in Parliament.

Letter from Norman Lamb MP to the Chairman

I represented the UK on Internal Market and Industry issues on 20 February, and Andy Lebrecht, Deputy Permanent Representative to the EU, represented the UK on the Research issues on 21 February at the February 2012 Competitiveness Council in Brussels. Please see attached a Post-Council Written Ministerial Statement on the subject [not printed], which will be laid in both Houses on Tuesday 28 February.

27 February 2012

CONNECTING EUROPE FACILITY (16176/11, 15629/11, 16006/11, 15813/11)

Letter from the Chairman to Mark Hoban MP, Financial Secretary, HM Treasury

Thank you for your explanatory memoranda of 21 November. May we also thank those officials who gave their time on 19 December for what was a very helpful and informative session.

The documents were considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 23 January 2012; it was decided to retain them under scrutiny.

FUNDING LEVELS

The questions of how to reconcile the EU budget overall is one for the EU Select Committee as part of its inquiry into the Multi-annual Financial Framework. However, the question of resource levels is integral to this proposal, and so we would note our agreement with the proposition that the budget proposed for the Connecting Europe instrument appears too ambitious at a time of budgetary restraint. We nevertheless continue to support reprioritising resources to focus on growth-enhancing areas such as infrastructure.

There are a number of important issues relating to resources that were not addressed during our evidence session owing to the early stage of negotiations; in particular:

— What is your preferred level of expenditure on the instrument?
— What would be your preferred split of resources between transport, energy and telecoms?
— How would important Europe 2020, Digital Agenda and climate change goals be achieved without the proposed level of investment?
— Are you satisfied with the proposed system of interaction between Cohesion Fund and Connecting Europe expenditure, and with cohesion funding only being available to transport projects?

On these points, we would appreciate a substantive response when you are in a position to do so.

FINANCIAL INSTRUMENTS

The proposals aim to involve the private sector in infrastructure investment in a more significant way than has previously been the case. We are supportive of these efforts. We would like to hear more from you regarding the balance proposed between EU funds and private sector funds, and the appropriateness of the proposed balance of risk and benefits between the two in the financial instruments outlined.
CENTRALISED CONTROL AND MANAGEMENT

Both in your EM and your evidence to the Committee, the issue of centralised control by the Commission was raised as a concern. We support strongly efforts to ensure that national competence is respected in the proposal. Indeed, we are particularly concerned by the mandatory requirements imposed on all core transport network infrastructure - we do not feel that such requirements are a compelling example of European added value, and could indeed simply incur abortive costs. This is an issue that the MFF inquiry will also look at further; at this stage we simply stress the importance of robust, effective criteria to ensure that European funding is used for projects that serve true pan-EU aims. We would appreciate being kept fully up-to-date on the Government's position on this issue in as comprehensive a manner as possible.

SUBSIDIARITY AND PROPORTIONALITY

The two questions of subsidiarity and proportionality were raised, but not addressed in detail, during the evidence session we held with officials, owing again to the provisional stage of negotiations and the consequent lack of clarity. We would be grateful for an update on your position in this respect as soon as possible, but do not seek to challenge the proposals on those grounds at this stage.

We realise that the proposals are at an early stage. We are therefore willing to wait until such time as a comprehensive response can be issued, and so do not expect a reply within the usual 10 days. We are also content for separate correspondence with each department on these issues if that is preferred.

24 January 2012

DANISH PRESIDENCY PRIORITIES

Letter from the Rt. Hon Chris Huhne MP, Secretary of State, Department of Energy and Climate Change, to the Chairman

I am writing to inform you of the energy and climate change issues we expect to be dealt with in the Council of Ministers under the Danish Presidency. I would be interested in your views on issues that your Committee considers a particular priority and may want to be kept updated on during the course of the Presidency.

The Presidency has timetabled Energy Councils for 14 February and 15 June and a back-to-back informal Energy and Environment Council on 18/20 April. Climate change issues (where DECC takes the lead) are dealt with at Environment Councils, which are timetabled for 9 March and 11 June.

The Danish Presidency’s main energy priorities are:

— Seeking political agreement of the energy efficiency Directive;
— Making substantial progress on the Regulation on guidelines for trans-European energy infrastructure;
— Adopting conclusions on the 2050 Energy Roadmap;
— Reaching agreement on the Decision on an information exchange mechanism for intergovernmental agreements.

Negotiations of the energy efficiency Directive recommence this month. It is a key priority for the Danish Presidency and they are hoping to reach a First Reading deal with the European Parliament on a revised version of the Directive. We shall be looking for that to retain the ambition of the Commission proposal while addressing Member State concerns about over-prescription. A second priority for the Presidency is to make substantial progress on the energy infrastructure Regulation; it is not impossible that they could also reach a First Reading agreement on this dossier (albeit unlikely given the tight timing). The Presidency is also aiming to reach agreement on the Decision on an information exchange mechanism for intergovernmental agreements.

Negotiations will continue on the Regulation on the safety of offshore oil and gas activities and on the Directive on basic safety standards protecting the health of workers and the general public against the dangers of ionising radiation but we expect limited progress. We expect the Commission to report on the risk and safety assessment (“stress tests”) of nuclear plants at the June Energy Council.

Negotiations will also continue on a number of other nuclear issues:
— Council Regulation establishing a Community system for registration of carriers of radioactive materials.
— Council Regulation on Union support for the nuclear decommissioning assistance programmes in Bulgaria, Lithuania and Slovakia
— Council Regulation establishing an Instrument for Nuclear Safety Cooperation

The Presidency is planning to focus on the 2050 Energy Roadmap at the Informal Energy and Environment Councils in April and to adopt Council conclusions at the June Energy Councils.

We expect the Commission to forward Communications on a strategy for renewable energy and on electricity market design towards the end of the Danish Presidency.

On climate change, the Presidency’s main priority will be to agree follow-up to the Conference of the Parties (COP) to the UN Framework Convention on Climate Change (UNFCCC), held in Durban at the end of 2011. The Presidency aim to agree Council conclusions on follow-up to COP17 at the March Environment Council. They also hope to agree conclusions at the March Environment Council on the 2050 Low-Carbon Economy Roadmap and the milestones it sets out for domestic emissions reductions and to discuss Member State concerns about the Roadmap at the April Environment and Energy Informal Council.

The Presidency’s other priority on climate change will be to take forward work on Land Use Land Use Change and Forestry (LULUCF), with an orientation debate on Commission proposals planned for the June Environment Council.

16 January 2012

Letter from Edward Davey MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills, to the Chairman

The New Year saw the start of the Danish Presidency of the European Council. The Danes are experienced at hosting an EU Presidency and we expect them to be effective. While big issues for the Eurozone continue to dominate, BIS’s priority will continue to be promoting the growth agenda. We expect the informal European Council scheduled later this month to focus on measures to promote growth, as will the March European Council. In the Competitiveness Council, Denmark will focus on the Digital Single Market, a key growth priority for the UK.

Other priorities for the Presidency are legislative proposals on the Multi-annual Financial Framework (MFF) related dossiers. The majority of regulations have now been published and have begun the scrutiny process. BIS have two major interests: Structural and Cohesion Funds (SCF) and Horizon 2020 package (Common Strategic Framework for Research and Innovation). The Danes are aiming to secure partial General Approaches for both proposals by June 2012.

In addition, Galileo, wider space policy, including handling of the Commission’s proposal to place the Global Monitoring for Environment and Security (GMES) (a Defra lead) off budget, COSME and ERASMUS are all likely to be progressed. Progress on the ITER Supplementary Research Programme proposal however, may have to wait until the question of whether it is funded within or without the MFF is resolved. We understand the Commission intend to launch a consultation on the Common Strategic Framework which will set out the key things SCFs should be targeted on to deliver Europe 2020 objectives.

GROWTH

The Danes will work extensively on priority dossiers that contribute towards the growth agenda. Those with a BIS lead are:

i. **Procurement Framework Directive**: a Cabinet Office lead though BIS has an interest. The February Competitiveness Council will have a ministerial exchange of views on the general framework. No progress will be made on either the reciprocity or concessions instruments until the general framework has been agreed.

ii. **EU patent**: the two regulations implementing the enhance co-operation (9224/11 and 9226/11) are likely to be adopted as an ‘A’ point soon after the EP Plenary in February. The Danes are also coordinating negotiations on the unified patent court agreement with a view to reaching consensus.
iii. **Standardisation**: Work on the draft standardisation regulation is progressing in parallel in the European Parliament and Council. Key issues include speeding up standards development while maintaining quality, supporting the growth agenda and maintaining MS role in implementation of the Regulation and the national delegation principle. UK is keen to ensure an appropriate legitimisation process for recognition of ICT technical specifications is put in place and the voluntary, market-led, outcome-focused nature of standardisation is maintained, while enabling all stakeholders to contribute to standards development. There is strong support from other Member States for these positions.

In the European Parliament the review of the Rapporteur’s draft report will be on 27 January with amendments produced by 6 Feb. The amended Regulation will be considered 28-29 February, with a vote at IMCO scheduled for late March. A plenary vote is expected to take place in May. The Danes are eager to have the regulation completed by the end of their Presidency and have an intensive programme of working group meetings scheduled to achieve this.

iv. **Alternative and Online Dispute Resolution (ADR / ODR)**: The aim of the legislative proposals is to improve the functioning of the retail internal market and, more particularly, to enhance redress for consumers. Alternative dispute resolution refers to schemes that are available to help complainants resolve their disputes out of court. The diversity and uneven geographical and sectoral availability of ADR in the EU prevents consumers and business from fully exploiting their potential. Problems with purchased goods or services therefore often go unresolved, meaning that consumers are not obtaining adequate redress. An explanatory memorandum on these proposals was submitted on 15 December 2011 (Council doc nos. 17795/11, 17815/11 and 17968/11). The Presidency is hoping to achieve "general approach" in June 2012 with a view to adoption by the end of 2012.

v. **Accounting Directive**: The Danes want substantial progress, aiming for a Common Approach at the May Competitiveness Council. The Commission aims to reduce the administrative burden for small companies. Simplifying the preparation of financial statements would make these more comparable, clearer and easier to understand. An explanatory memorandum was issued on 30 November.

vi. **Audit**: The Commission published a draft Regulation (16972/11) and an amended Directive (16971/11) which an explanatory memorandum was issued 19 December. The Presidency has planned to hold several working groups meeting with a view to issuing a progress report after the May Competitiveness Council.

In addition, the **Consumer Programme 2014/2020** regulation will commence under the Danish Presidency and a Commission’s communication on a new **Consumer Agenda** will be published March / April where there is likely to be a presentation at the May Competitiveness Council or June EPSCO. It is possible the Commission may publish a legislative proposal on **consumer rights** in relation to digital content in the first half of 2012. If this is the case, it is expected the Danes will commence discussion at Working Group.

We expect a communication in February or March on **collective redress** with a proposal to follow towards the end of the year. We think that this will be general in scope but with a focus on consumer and competition issues. Therefore, Ministry of Justice will lead but with a strong BIS interest.

**TRADE**

The biggest focus for the Danes on trade related issues are:

i. **Free Trade Agreement with Japan**: discussion of the ‘scoping exercise’ will commence during the Spring and will be included in the March FAC Trade discussion. We strongly support the Presidency’s aim to launch negotiations at the EU/Japan summit on 30 June.

ii. **FTAs with India and Singapore**: The Danes are hoping to reach a political agreement on the EU-India FTA at the EU-India Summit in February, which will be challenging, although tariffs could be agreed at the Summit with the rest of the FTA to follow during 2012; Singapore could be concluded by mid 2012 although some difficult issues remain.

iii. **EU/US**: the Presidency will be working on the EU-US relationship, where the priority will be making sure the High Level Working Group prepares the ground for the launch of a new initiative in 2013.

iv. **DCFTAs and European Neighbourhood Policy**: following the approval in December 2011 of negotiating mandates for Deep and Comprehensive Free Trade Agreements with Egypt, Jordan, Morocco and Tunisia, the next step will be scoping missions to assess the
readiness of the countries concerned to enter into negotiations. The first of these is likely to be with Tunisia and Morocco.

v. **Investment agreement**: concluding the regulation establishing the transitional arrangement for Member States’ existing bilateral investment agreements. The Presidency wishes to resume informal trilogue talks with the EP in order to reach an early second reading deal. Both European Scrutiny Committees have retained the draft regulation under scrutiny and we will update them as it becomes clear what the outcome of the trilogue will be.

vi. **Generalised System of Preferences (GSP)**: this proposal has made good progress in securing agreement on the reformed GSP. The Presidency is hoping to considered this item at the Trade FAC, 31 May.

vii. **Trade Omnibus I and II**: two proposals to adapt appropriate trade policy decision-making to the post-Lisbon comitology arrangements. The Presidency is hoping to achieve a first reading agreement, though it’s touch and go at present.

**SMART REGULATION**

The Presidency will be seeking agreement to Conclusions on Smart Regulation at the February Competitiveness Council. These are likely to endorse the Commission’s recent commitments to seek ways of reducing burdens on SMEs and micro-enterprises, and reinforce the importance of involving small businesses in EU policy development and simplification exercises. In addition, they are likely to call on the Commission to follow up its administrative burden reduction programme, which is due to end in 2012, with further efforts to reduce the overall EU regulatory burden.

**EMPLOYMENT**

The Commission is expected to publish two proposals on **Posted Workers** in February. The Presidency has signalled they will be holding discussions on these with a view to possible general approaches in June. Discussions on the **Pregnant Workers Directive** are currently stalled, it is not expected that there will be any movement or further discussion in Council under the Danish Presidency whilst the European Parliament maintains its current position. European Social Partner negotiations on the **Working Time Directive** are continuing through the Danish Presidency. Social Partners have up to 9 months in which to reach agreement from the date of notification to the Commission that they would negotiate (15 November); while these negotiations are in progress the Council has no role.

**RESEARCH**

The Danes’ priorities under the Research agenda relate to the **Horizon 2020** proposals (the successor to the current Framework Programme). These aims are to increase the EU’s focus on Research and Innovation by dealing with major societal challenges, strengthening R&D links between academia and industry, investments in research infrastructure and simplifying the delivery of the programme. The Presidency is aiming to achieve a partial general approach by June 2012. There will probably be discussion at the informal Competitiveness Council on 2 February and formal on 20 February. The Presidency will also be aiming political agreement on the **EIT Strategic Innovation Agenda**.

**SPACE**

**Galileo** and **GMES** develops and implements the **EU space industrial policy**. Negotiations are currently in progress on a regulation on the implementation and exploitation of European satellite navigation systems which will refresh the current regulation on Galileo and EGNOS (European Geostationary Navigation Overlay Service) as the programmes move further into the deployment and exploitation phases which will fall under the next multi-financial framework. The Danes are seeking general agreement at Transport Council in June with final agreement being concluded alongside EU budget talks. HMT lead on the talks into the €7897 funding the Commission in requesting for these programmes. The Commission’s communication on GMES places it off budget. The Danes are seeking to adopt Council conclusions at the Competitiveness Council in February. These are expected to be short, urging the Commission to bring GMES back on budget (without prejudice to the overall MFF envelope) and to bring forward a regulation soon. Overall responsibility sits with
Defra but BIS have a strong interest as we lead on the space component and to drive growth in the downstream sector from exploitation of GMES data.

**INTELLECTUAL PROPERTY**

Legislative proposals on *orphan works* and the move of the EU Observatory on the enforcement of IP rights will progress under the Danes Presidency. An explanatory memorandum on the Observatory (18680/11) was submitted on 13 January for the Committee's consideration. This EM covered the latest compromise text. The European Parliament are expected to vote on the amended regulation in early February and thereafter it is expected as an 'A' point at the Competitiveness Council on 20 February 2012.

The Danes are expecting to launch the Council's consideration of new proposals for *trademark reform* which are due in late March 2012. This will cover a broad range of issues relating to the Community trademark and national registration systems, including increased harmonisation of substantive law and OHIM fees.

**EDUCATION**

The Commission has already published its communication on *Erasmus for all* and an explanatory memorandum (17574/11) was issued on 20 December. The Commission proposes to amalgamate multiple existing programmes in the areas of education, training, youth and sport areas into a new, single programme. The intention is to achieve efficiency gains, reduce administrative costs and burdens and to focus the activities within this new programme on the priorities of the Europe 2020/ Education and Training 2020 strategies. The Danish Presidency hopes to get agreement on the structure of the new programme at the Education Council meeting on 10-11 May.

The Commission has recently published its Draft Joint Report on the implementation of the Strategic Framework for European Cooperation in Education and Training (ET2020). DfE leads though BIS will have an interest. The report will be discussed at the 10 February Education Council.

The Commission’s draft proposal for Council Conclusions regarding a benchmark on employability will be negotiated from February-April, in the expectation that it will be adopted by Ministers at the 10-11 May Education Council meeting.

The Commission is expected to publish a draft Recommendation on the validation of informal and non-formal learning, to be negotiated between February and April for adoption again at the May Education Council meeting.

**COUNCILS**

There will be two Competitiveness Councils during the Danish Presidency: 20-21 February and 30-31 May, both in Brussels. Space Council is likely to be part of the May meeting. An informal Competitiveness Council will also take place on 1-3 February in Copenhagen. There are eight General and Foreign Affairs Councils which are led by the Foreign & Commonwealth Office though two are trade related (16 March and 31 May) for which BIS will take forward. There will be two Education Councils: 10 February (DfE likely to lead) and 10-11 May (BIS lead).

I hope you find the above information useful.

24 January 2012

**Letter from Justine Greening MP, Secretary of State, Department for Transport, to the Chairman**

*I am writing to advise your Committee of the transport issues that are likely to be taken forward under the Danish Presidency.*

**TRANSPORT COUNCIL BUSINESS**

Two Transport Councils are planned, the first in Brussels on 22 March and the second in Luxembourg on 7 June. There are no plans for an informal Council. The headline objectives for the Danish Presidency are to reach agreement in Council on:

— Tachographs and the associated amendment to the driving licence Directive (March)
— Trans-European Networks (March)
— Airport ground handling (March)
— Aviation Noise (“balanced approach”) (June)
— Enforcement of Maritime Labour Convention (June)
— New Galileo governance Regulation (partial agreement) (June)

They will also pursue negotiations with the European Parliament towards agreements on:
— The recast of the first rail package (second reading)
— The EMSA regulation (second reading)
— Seafarer training (STCW) (first reading).

In more detail:

Land Transport

The Danes will seek to resolve the outstanding issues on the proposal to revise the technical specification for tachographs (EM 13195/11). The Council reached a general approach in December on all elements of this proposal except the merger of the driving licence and the driver card. The Commission subsequently published a proposal to amend the driving licences Directive (EM 16842/11) which is consequential to the main proposal. The working group has not yet really engaged with the issues so it is hard to say how the discussions will go.

The Danes will also open discussions with the European Parliament with a view to a second reading agreement on the recast of the first rail package (EM 13789/10).

Trans-European Networks

The proposed TEN-T Regulation (EM 15629/11) revises the criteria for projects to receive funding from the Connecting Europe Facility. But it would also require Member States to ensure that routes on the transport TENs network meet certain criteria. From discussions at the December Council it is clear that some Member States, like the UK, have significant concerns about this element of the proposal. The Danes confirmed they are seeking a General Approach at the March Council, but might move this to June if necessary.

Aviation

The focus of attention will be the airports package (EM 18007/11, 18008/11, 18009/11, 18010/11). The Danes will try to reach a general approach on two elements of the airports package, on groundhandling (in March) and noise (in June). They may also hold a couple of working group meetings on the revision to the slot allocation regulation, with a possible progress report at the June Transport Council.

In the light of international opposition in recent months to the inclusion of aviation in the EU Emissions Trading System (ETS) it is likely that the next six months will see significant engagement between the EU and third countries. There may also some discussion of the implementation of ETS for aviation, to share best practice and resolve any issues that have arisen since aviation’s inclusion in the ETS on 1 January 2012.

The Council is expected to sign off the air transport agreements with Moldova (March) and Israel (June).

Maritime

The Danes will take shipping items at the June Council. They will seek an early second reading agreement with the European Parliament on the proposed amending regulation on the European Maritime Safety Agency (EM 15717/10), which renews and enlarges the mandate for the agency.

The Danes are optimistic that they can reach a first reading agreement with the European Parliament by June on the proposed Directive on Minimum level of training of seafarers (EM 14256/11). The Government will want to ensure our safeguards on costs and privacy are maintained throughout discussions.

Discussions on the forthcoming proposal on provisions of the Maritime Labour Convention will begin once the proposal has been published by the Commission. The proposal is expected to focus on issues under Title V of the International Convention (Compliance and Enforcement). The Danes are hoping for a General Approach in June.
Finally, an evaluation report on the Blue Belt project is expected to be released, although no specific timing has been given. The Danes are supportive of the project, and plan an orientation debate during the June Council.

BUSINESS IN OTHER COUNCILS

Technical Harmonisation

There are currently three technical harmonisation legislative dossiers where DfT leads. These have single market legal bases and fall under the Competitiveness Council.

Type approval and market surveillance of two and three wheel vehicles (EM 14622/10) and agricultural and forestry vehicles (EM 12604/10) have been under negotiation for over a year partly due to their size and technical detail but both could still be the subject of a first reading deal with the European Parliament. While we broadly support the intention of both proposals, which is to simplify processes and reduce costs for both industry and government, we have some significant concerns that the proposals could create additional burdens for industry, and that these were either not quantified or not included at all in the Impact Assessment. However we have not as yet had significant support from other Member States.

The third dossier is a recent proposal to reduce noise levels in motor vehicles (EM 18633/11). This has not yet been discussed in the working group. Our own impact assessment is in hand, but burdens on small volume car manufacturers of high value cars, of which the UK has several, may be a concern.

At present there are no indications that the Danes intend to prioritise any of these dossiers.

Environment dossiers

In addition to discussion of Aviation Emissions Trading (see above) the Environment Council might return to the issue of international maritime and aviation emissions and potential uses of revenues. On biofuels we should expect a potentially controversial legislative proposal for tackling the indirect land use change impacts of biofuels, though timing and content are still very uncertain.

The Environment Council is also handling the Commission proposal on the Sulphur Content of Marine Fuels (EM 12806/11). This aims to turn a 2008 IMO agreement (the revision of MARPOL Annex VI) into EU legislation. Although the Danes hope to achieve a first reading agreement under their Presidency, this may prove harder than expected. The 2008 agreement introduced measures to reduce significantly sulphur dioxide emissions across European waters, in particular in designated Emission Control Areas, currently only in the North and Baltic Seas. However, some Member States bordering these seas are now voicing concern about the impact on their shipping industry.

The Commission are planning to amend the EU Waste Shipment Regulations, which include provisions for the control of the dismantling and recycling of ships. Currently, these regulations are based on the Basel Convention which controls the trans-boundary movements of hazardous waste and its disposal. The EU Regulation includes a prohibition on the export of waste (including ships) to non-OECD countries (the “Basel Ban”). The Commission’s proposed amendment would see ship recycling being based on the new Hong Kong Convention 2009.

We expect the proposal to be published in March or April, so the Danes will not be able to finalise it during their Presidency. DEFRA is the policy lead for the Basel Convention, EU Waste Shipment Regulations and EU strategy for better ship dismantling. DfT are responsible for policy on the Hong Kong Convention and environmental policy in relation to shipping.

Integrated Maritime Policy

The Commission will continue to take forward a number of work strands under the umbrella of an Integrated Maritime Policy (EM 14284/10). In particular, we expect an initiative on Maritime Spatial Planning in mid 2012, for which DEFRA will lead.

COMMISSION ACTIVITY

There are a few additional forthcoming proposals worth noting.

Revision of existing legislation on Road Worthiness Testing – Originally intended to be released in 2011, this proposal is now expected to come out in the first three months of the Danish Presidency. So far we have had no indication from the Danes as to whether they will give the file much priority.
Clean Power for Transport – This is expected to consist of two parts. The first will be a communication on which alternative fuels are considered the most promising. The second will be a legislative proposal, which will focus on infrastructure to guarantee access to alternative fuels across the EU (with an aim of breaking fuel dependency). This proposal is not expected to be released until mid summer, between June and September. We favour a technology-neutral approach to the decarbonisation of road transport, and will resist any suggestions that affect the policies of Member States, including the UK, who have taken the initiative in the deployment of ultra low carbon vehicles.

The Commission-chaired committee on fuel quality will continue to discuss implementing measures under the Fuel Quality Directive, including a greenhouse gas accounting methodology for fossil fuels and treatment of oil sands/natural bitumen (unnumbered EM). The Committee may reach a conclusion over the first half of the year.

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.

7 February 2012

DIGITAL SINGLE MARKET FOR E-COMMERCE AND ONLINE SERVICES (5494/12)

Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, Department for Culture, Media and Sport

Thank you for your explanatory memorandum of 8 February 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 27 February 2012; it was decided to clear the document from scrutiny.

The aims of the document – to increase online safety and security, ensure dispute resolution, develop infrastructure, and ensure a more competitive and convenient online experience – are all in line with moves to develop the digital single market, which we have expressed support for in the past and do so again. Many of the initiatives are either in the process of being scrutinised or will be so in the future. As you make clear, the detail of those proposals will be crucial to success in this area.

The specific aim to double the share of European GDP provided by e-commerce is very ambitious, which we welcome, but we would appreciate your views on the feasibility of such a target, as well as how satisfactorily any shift can be monitored, particularly given the somewhat opaque reasoning given by the Commission in some parts of the Communication. We would also appreciate a more detailed breakdown of the existing e-commerce share of GDP, in order to guide our considerations. We would also like to hear your views as to the possible net impact on high streets and employment levels of such a shift in retail dynamics.

Assessment of the Government’s views on this dossier was made difficult by the manner in which the EM was presented. Normally we scrutinise memoranda which present a coordinated Government position covering the issues raised, but this document simply listed the views of multiple departments with no attempt made to synthesise the positions into a single response or resolve any arising contradictions. In future, we would appreciate more integrated and comprehensive responses on such documents in order to facilitate our scrutiny work.

The document also did not comment on the proposals regarding the sale of medicinal products online, and raised the idea of restricting online purchasing to those aged over 18 without indicating whether this was a policy that the Government would be pursuing. We would appreciate clarification on these points. We would also like to hear your views as to measures that could be put in place as part of this initiative to ensure a responsible attitude by credit card companies in issuing their cards to customers.

I look forward to hearing from you within the usual 10 working days.

28 February 2012
Letter from the Chairman to Mike Penning MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your explanatory memorandum of 7 December 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 23 January 2012. The Committee has decided to hold the document under scrutiny.

You outline that there are several “legal, technical and operational issues”, as well as “elements of incompatibility and ambiguity” which need further consideration. Though we prima facie support your drive to ensure rigour in the development of the proposal, we would appreciate more detail on what these issues are, so as to inform our deliberations.

You also query both cost-benefit case and the likely impact on fraudulent practice, but do not make any concrete claims to either effect. Once the impact assessment process is complete, we would be grateful for more information on your assessment of the Commission’s case in both respects.

These are points which can be addressed as part of the broader consideration of the proposed amendment to Regulation 3821/85, and so we are content to have these points addressed in future correspondence on that proposal. We therefore do not expect a reply within the usual 10 days.

24 January 2012

EARTH MONITORING – GMES (COM (2011) 831)

Letter from the Chairman to the Lord Taylor of Holbeach, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your explanatory memorandum of 27 December 2011. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 30 January. They decided to clear the document from scrutiny.

Firstly, we wish to note our support for the GMES programme given the potential benefits you have outlined in your memorandum. The detail of the programme’s governance will, though, be crucial to realising those benefits. We are supportive of its potential for more effective and robust programme management. We note the contrast between the successes of the GMES programme and the chronic issues that have beset Galileo; we hope that the decision to pursue similar governance structures for both will help to ensure the lessons learned in developing GMES can be applied to any continuing Galileo programme.

We agree with you that any system must be driven by user needs, but we would prefer to wait for firm legislative proposals before appraising the Commission’s position in this respect.

As for funding, we defer consideration at this stage, particularly as you do not comment on the allocation proposed. We would state simply that we are also concerned at the prospect of taking the GMES programme outside of the Multi-annual Financial Framework process; and that we would like to hear your views on funding levels once the legislative proposal comes forward.

Overall, we are content to resume correspondence once the proposed legislation comes forward, and so we do not expect a reply to this letter. We do ask, though, that it is borne in mind when producing correspondence on that proposal.

31 January 2012

ENERGY COUNCIL

Letter from Charles Hendry MP, Minister of State, Department for Energy and Climate Change, to the Chairman

I am pleased to enclose a copy of my written statement to Parliament [not printed] outlining the agenda items for the forthcoming Energy Council in Brussels on 14 February.

6 February 2012
Letter from Charles Hendry MP to the Chairman

I am writing to report discussions at the EU Energy Council in Brussels on 14 February at which I represented the United Kingdom.

Discussions at the Council focused on infrastructure and the contribution of energy policy to the Europe 2020 growth agenda. There was also a lunchtime discussion of the proposed energy efficiency Directive.

The Danish Presidency tabled questions to guide debate on the proposed Regulation on Trans-European Networks for Energy, which is intended to identify which projects will be eligible for streamlined approvals procedures and the possibility of EU funding support. I noted that regional groups were key for the development and identification of these Projects of Common Interest, and that while speeding up permitting was a priority it should be done in a way that respected Member States’ existing competences.

The Council also debated the contribution of energy policy to the Europe 2020 Strategy. This will form the Energy Council’s contribution to the European Semester exercise (the EU initiative to improve economic policy coordination) and will feed into a report to the March European Council.

Over lunch, Ministers discussed the draft energy efficiency Directive and the remaining potential areas of concern, including over the level of prescription and targets. A number of Member States highlighted the importance of having a Directive that could be implemented in practice. Agreement of the measure is a priority for the Danish Presidency.

The Presidency updated Ministers on the state of play of discussions with the European Parliament on the Decision on Transparency of Intergovernmental Agreements. The Council and Parliament were far apart, and the Presidency noted that if progress were to be made, the Council would have to show flexibility. The Commission updated Ministers on the Electricity Co-ordination Group of senior officials, noting that the next meeting would take place in April.

On external relations, the Commission updated the council on the latest situation with the Southern Corridor, gas supplies from Russia and sanctions in Iran.

20 February 2012

ENERGY EFFICIENCY DIRECTIVE (12046/11)

Letter from the Chairman to Gregory Barker MP, Minister of State, Department for Energy and Climate Change

Thank you for your letter of 30 September and your subsequent letter and initial impact assessment of 22 November. They were both considered by the Sub-Committee on the Internal Market, Energy and Transport on 6 February 2012; it was decided to retain this proposal under scrutiny.

As you are aware, we broadly supported the Energy Efficiency Action Plan as a means to improve Member State performance in meeting the Europe 2020 target for energy efficiency. In principle, we support this Directive in its objective of implementing the Action Plan.

However, we note your concern that the current draft of the Directive is not sufficiently flexible in allowing Member States to propose tailored approaches that best reflect national circumstances. Whilst we believe that further action is necessary to achieve the target set by the Europe 2020 strategy, we would also not want to see this undermining the progress which is already being made at national and European level. We would support you in your attempts to introduce more flexibility into the text, whilst maintaining a high level of overall ambition.

We are grateful for the initial impact assessment you have sent, and appreciate that whilst the text is still in draft form it is difficult to provide accurate details of the likely cost of this proposal. However, we note that based on current information you expect the cost to Government and business to be significant, and would like to receive more exact cost estimates as soon as these become available.

The Committee is aware that negotiations are ongoing and that the Government’s position is dependent on the amendments made to the text during discussions in the Council and the European Parliament. We would be grateful if you could provide an update as soon as you are in a position to do so.

7 February 2012
Letter from the Chairman to Mark Hoban MP, Financial Secretary, HM Treasury

Thank you for your explanatory memorandum of 10 January 2012. It was considered at the meeting of the Internal Market, Energy and Transport Sub-Committee at its meeting on 6 February 2012.

We are dubious as to the benefits of this proposal, and have concerns as to its cost implications. However, we recognise as proportionate the measures proposed for the use of the European Social Entrepreneurship Fund designation, and so we are content to clear the proposal from scrutiny.

We believe that your suggestions - to expand investor eligibility criteria, exempt listed funds from those criteria and develop more robust protection for those investing in other funds - should all be explored further in order to streamline the proposal. However, we would like to hear more about the evidence base for such developments before offering our support. We would also like to hear more about how a business eligible for investment in the main body of a fund’s portfolio – a “social business” - is to be defined. Will the business have to both strive for “social impact” as its primary function and be structured so as to re-invest profits mainly towards the achievement of those aims, or will the definition be more flexible?

Otherwise, we agree that the Commission must take a flexible approach when setting out standards in delegated legislation, and that the relationship between this proposal and the Alternative Investment Fund Managers Directive must be clarified to take account of particularly successful social entrepreneurship funds. We also support the idea of more nuanced sanctions for minor breaches of the framework, as the FSA propose.

I look forward to hearing from you within the usual 10 working days.

7 February 2012

Letter from Mark Hoban MP to the Chairman

Thank you for your letter of 7 February 2012 in which you asked for further information regarding the evidence base for some of the UK’s suggested negotiations and on the definition of a social business.

EXPANDING INVESTOR ELIGIBILITY CRITERIA

In the UK, venture capital and social entrepreneurship funds are generally open to self-certified high net worth individuals. This means, for example, that they earn at least £100,000 gross per annum or have existing assets (less property) worth £250,000. Anecdotal evidence from industry suggests that these criteria allow a wide range of investors to invest in social entrepreneurship funds. The investor eligibility criterion proposed in the Regulation (investors who do not qualify as professional under MiFID are required to invest least €100,000) would exclude a significant number of these investors. Without expanding on this criterion, take-up of the brand would be reduced.

We do not agree with the proposed draft Regulation that the ability to make a single lump sum investment of any size necessarily denotes that a potential investor has sufficient understanding of the nature or risks of social entrepreneurship investments. Many individuals who have recently received a lump sum that they are seeking to invest (e.g. an inheritance or a redundancy payout), retired individuals or many others, could easily have this amount of money available to invest yet are not necessarily appropriate investors for EuSEFs. Income or assets tests would be preferable criteria as they give a better indication of an investor’s sophistication and mean it would be less likely that an investor could lose all their savings in one investment with no means of replacement. (i.e. investors who earn at least €x gross per annum or have an existing investment portfolio of €y). Thus we have suggested alternative criteria for eligible investors based around annual income and assets tests.

EXEMPTING LISTED FUNDS FROM THE INVESTOR ELIGIBILITY CRITERIA

In the UK, listed funds are already open to retail investors and have investor protection through company law, the Prospectus Directive and the Listing Rules. We therefore consider that listed funds should not be subject to the narrow investor eligibility criteria of the proposed Regulation. However, the European Commission have expressed an informal view that if a listed fund wanted to participate in this Regulation, they would also have to fulfil the requirements of the Prospectus Directive on top
of the requirements of this Regulation. The only additional benefit that any listed fund choosing to opt in to the Regulation would therefore be the European brand as they would already receive a passport under the Prospectus Directive. It is unlikely that the benefit of this brand would be sufficient to attract listed funds to take on the additional requirements of this proposal, and thus it does not seem appropriate to pursue the exemption of listed funds from the eligibility criteria.

MORE ROBUST PROTECTION FOR THOSE INVESTING IN THESE FUNDS

After due consideration and consultation with industry and the FSA, we find the approach adopted for the protection of investors is proportionate. Venture capital and social investment funds typically operate by contract between the investors and manager and overly prescriptive rules would be damaging. We intend to seek greater precision on particular details to provide certainty for industry and regulators.

DEFINITION OF A SOCIAL BUSINESS

The current definition in the proposed Regulation states that a social business is one which has the achievement of measurable, positive social impacts as a primary objective, where the undertaking provides services or goods to vulnerable or marginalised persons; or the undertaking employs a method of production of goods or services that embodies its social objective. There is general agreement between many Member States that this needs to be broadened and we have suggested an additional provision to do this: “where the undertaking provides goods and services in a manner which advances its social or environmental objective”.

The current definition also defines a social business as one which uses its profits to achieve its primary objective. We have suggested a provision to bring the definition in line with the UK’s agreed definition between Government and industry of a social business - “a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners”.

We will continue to inform you as required.

18 February 2012

EXTERNAL ENERGY POLICY (13941/11, 13943/11)

Letter from Charles Hendry MP, Minister of State, Department for Energy and Climate Change, to the Chairman

Further to your Committee’s consideration of the above explanatory memorandum and your request for further information, I am writing to update you on the progress of negotiations on the proposal and to respond to the points you raised.

Negotiations of the Decision are still at an early stage and are expected to continue under the Danish Presidency in 2012. Whilst there is a clear consensus on the need for greater transparency among EU Member States, a number have expressed concern about the extent of possible ex ante assessment of agreements with third countries by the Commission. There is clearly a balance to be struck between ensuring that Member States retain their competences and having a mechanism that facilitates the role of the Commission in ensuring compliance with the EU rules. On the issue of the examination period (your reference to a ‘four month standstill’ period), which would give the Commission sight of an agreement prior to its conclusion, this is still subject to negotiations.

The right of the Commission to be an observer in negotiations has been removed in a revised version of the text of the Decision although Member States retain the right to ask for the support of the Commission in their negotiations with third countries (as Poland did last year).

I will write again with any significant updates as the negotiations progress.

6 December 2011
Letter from the Chairman to Edward Davey MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 30 November. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 23 January 2012, where it was decided to hold the document under scrutiny.

We note that at present the position of the Government is largely reserved. You note that many elements of the provision are in line with United Kingdom policy agendas, but we would appreciate a more detailed response when the issues have been considered further. This includes a response to the question of whether subsidiarity is engaged. You also note that a stakeholder consultation will be launched soon. We would be grateful to be informed of the balance of views that emerge from that exercise.

The most interesting provision within the document concerns the requirement incumbent upon “extractive” industries and primary forest logging companies to disclose their payments to governments. You are supportive of the drive for further transparency, as are we. However, we have received correspondence that the clause does not go far enough, and that the opportunity should be used to require disclosure of the levels of tax paid to combat tax avoidance and evasion. We would appreciate your views on this suggestion. Conversely, the point is made in your memorandum that there is no provision relating to logging in the equivalent US provision and that similar provisions in other third countries are also rare. We would therefore ask in addition whether you would raise any concerns of competitive disadvantage as a result of the scope of the provision.

Given the early stage of consideration, we would be content to wait for a comprehensive response to these queries. As a result, we do not expect a reply within 10 days.

24 January 2012

FUEL QUALITY

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

I am writing to provide you with an update on the progress of negotiations on implementing measures for Article 7a of the Fuel Quality Directive (98/70/EC, as amended by Directive 2009/30/EC).

At the Fuel Quality Committee meetings of 25 October and 2 December a number of Member States, including the UK, sought clarification on the proposals from the European Commission. No vote was held at either meeting. The meeting scheduled for 19 January was cancelled.

The next meeting of the Fuel Quality Committee is scheduled for 23 February. Given the large number of queries Member States had at previous meetings, the little time given over to debate many of the technical details and the scheduling of another future meeting on 29 March, the expectation among Member States was that no vote would be tabled for the February meeting.

However, my officials received the papers for the February meeting on 13 February and a vote has been scheduled on the draft agenda. Despite the wide range of questions raised by a number of Member States, including the UK, and additional proposals put forward by officials from two Member States during the December meeting, the Commission has tabled a vote on their original proposal with very minimal changes.

As I explained in the Explanatory Memorandum, the proposals put forward by the European Commission include default values to calculate the greenhouse gas intensity of fossil fuels. The proposals set out a single default value for ‘conventional crudes’ and separate, higher, default values for crudes derived from natural bitumen (extracted from oil sands) or oil shale and for fuels not produced from crude sources such as Liquid Natural Gas (LNG), coal to liquid (CTL) or gas to liquid (GTL) fuels.

The fuels that have been given higher default values in this proposal do have higher associated greenhouse gas intensities. However, there are a number of different sources of crude that have been grouped together in the “conventional crude” category where extraction leads to higher GHG emissions and these are clearly less attractive than those which do not. These include crude from...
Angola, Nigeria and Venezuela which has lifecycle emissions considerably higher than those associated with fuel from elsewhere.

I believe that any methodology for calculating the greenhouse gas intensity of fuels used in Europe should account for the greenhouse gas emissions associated with all crude sources and should be based on robust and objective data. It must also be flexible and reviewed often enough to adapt to changes — for example so it can be updated as new evidence becomes available or reward new processes and technologies that reduce greenhouse gas emissions.

However, because the European Commission is not proposing a review until 2015, it will be difficult to see these other crudes, which are already widely used in Europe, being addressed in the short to medium term. Any methodology that does not take into account the emissions of these fuels will not provide a robust solution for the environment. There will be no incentive to reduce the emissions of these other crudes, and their supply in Europe will be allowed to continue with no proper accounting of their associated emissions.

It is also important that the burden on industry of meeting legislative requirements is kept to a minimum. This is why we are negotiating for the inclusion of a minimum threshold for reporting to lessen the burden on small and medium enterprises. There are also a number of technical areas where a number of Member States have raised objections or questions which have yet to be addressed by the European Commission.

As you know, other Member States also have concerns about the current proposal, and therefore if any vote on 23 February is not supported by a Qualified Majority, the proposal will be referred to the Council of Ministers. I will, of course, write to your Committee with a more detailed update after the Fuel Quality Committee meeting of 23 February when more information is available.

21 February 2012

GALILEO (17844/11)

Letter from the Chairman to the Rt. Hon David Willetts MP, Minister for Universities and Science

Thank you for your explanatory memorandum of 12 January 2012. It was considered by the Internal Market, Energy and Transport Sub-Committee at its meeting on 30 January 2012, and the Committee decided to retain the proposal under scrutiny.

The question of funding levels within the EU budget is one that is being examined as part of the Select Committee’s inquiry into the Multi-annual Financial Framework. Nevertheless, we are concerned at the proposal to more than double the funding for a programme beset by cost overruns and delays. We question directly the merit of continuing with the programme; indeed we would wish to see the project called to a halt and are frustrated to see the readiness with which the Commission proposes to allocate more than double the amount given in the previous financial period.

The governance structures outlined in the proposal differ significantly from that in place in previous financial periods. Despite our misgivings as to the project continuing at all, we agree that were it to continue the proposed governance structure would at least offer the potential for a greater input of expertise into its management. However, we note that much of the detail is to be worked out, and we will give a more considered opinion once we know more, particularly relating to cost-effectiveness.

You reference the revised procurement arrangements cautiously, again owing to the early stage of negotiations. A more detailed statement of your views in this regard would be welcome. Elsewhere, there are detailed issues of security, intellectual property rights and the oversight by Member States of third party arrangements that need to be worked out. On those fronts too we would be grateful for an update on your position as soon as you are able to.

Overall, the main issue seems to be a lack of detail on which to reflect. As a result, we would be content to waive the usual 10 day deadline for replies in favour of a more substantive response once there are updates of note.

31 January 2012
Letter from the Rt. Hon David Willetts MP, Minister for Universities and Science, to the Chairman

I am writing to update you on progress with this proposed Decision. An Explanatory Memorandum was submitted by the Department for Transport on 04 November 2010 and was cleared by the scrutiny Committees of both Houses. Policy responsibility for the Galileo Programme has now passed from the Department for Transport to the UK Space Agency.

The public regulated service (PRS) is one of five Galileo services. It is a highly encrypted service for Government authorised users. The Decision sets out the high level rules governing access to the PRS.

The Hungarian Presidency has successfully pushed the Commission, Council and Parliament to a first reading deal which was agreed by the European Parliament on 13 September 2011. Amongst other things, the Decision requires Member States to set up Competent Authorities to agree the users of the service and monitor the manufacture, ownership, export and use of PRS technology. The UK is well placed to deliver early manufacturing capability of PRS technology. A first reading deal means we can push forward with domestic legislation to create this body well before initial capability (known as In Orbit Validation – IOV) of the system is achieved in 2014 – thus strengthening the UK’s competitive position.

The UK has been instrumental in taking the Decision from the original Commission proposal to the legislation that was published in the Official Journal as EU Decision 1104/2011 and came into force on 04 November 2011. Key achievements include:

— Defining the key responsibilities set out in the Decision
— Separating the rules governing manufacture and use of PRS technology
— Differentiating between the manufacture of the PRS security modules and other PRS equipment
— Gaining agreement from Member State experts on the shape and content of the annex which defines the areas covered by the Common Minimum Standards for access to the PRS

The UK has also led work to push the Commission to include commitments to consult and take account of expert opinion when amending technical standards for the PRS by delegated acts. This has led to the inclusion in the Decision of statements attached at A [not printed] by both the Council and the Commission. Whilst the statements carry little legal weight, they nonetheless place a significant moral obligation on the Commission to consult and listen to Member States in the preparation and amendment of highly technical standards.

Apart from the addition of the statements, there are no significant changes to the outline set out in EM 14701/10 and the Decision is likely to be agreed in Council.

The committee should also note that a full Impact Assessment into the Decision still needs to be undertaken by the Commission. This was highlighted by the Rt Hon Theresa Villiers MP in the scrutiny debate on 21 March 2011. Whilst this remains outstanding, it is likely that Commission will undertake some form of assessment as part of renegotiating the two key Galileo regulations ahead of the next multi annual financial framework. It may be that the impact of PRS will be considered as part of this assessment. Initial proposals for both these regulations are expected before the end of this year.

21 December 2011

GENERAL AFFAIRS COUNCIL (16 DECEMBER 2011)

Letter from Mark Prisk MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills, to the Chairman

The EU General Affairs Council will take place in Brussels on 16 December 2011. As the Polish Presidency has asked Cohesion Ministers to attend, I will represent the UK and I will be accompanied by Alun Davies AM, the Welsh Minister for Agriculture and European Affairs.
The main item on the agenda (which I attach) is an orientation debate on structural and cohesion funds for 2014-20. The Presidency has tabled three questions for discussion linked to strategic programming and ring-fencing of funds for specific objectives. At lunch there will be an informal discussion on positive and negative incentives to improve performance in delivering structural and cohesion funds.

I have also attached a Pre-Council Written Ministerial Statement which is being laid in Parliament.

14 December 2011

Letter from Mark Prisk MP to the Chairman

I represented the UK at the General Affairs Council, on 16th December. The agenda covered structural and cohesion funds for 2014-2020.

The Polish Presidency presented its Progress report and tabled three questions for discussion: whether the Common Strategic Framework should be approved by the Council and the European Parliament, or adopted solely by the European Commission; whether Country Specific Recommendations or National Reform Programmes should provide a linkage between EU2020 goals and the development needs of Regions and Member States; and whether funds should be ring-fenced for specific objectives.

On the Common Strategic Framework almost all Member States, including the UK, supported the proposal that the Common Strategic Framework should be incorporated in an Annex to the Regulations, and not adopted solely by the Commission.

On the use of Country Specific Recommendations to ensure structural and cohesion funds deliver EU2020 goals, the majority considered this was best achieved through reference to the funds in National Reform Programme, rather than annual Country Specific Recommendations.

There was significant support for the principle of thematic concentration (the main priorities on which the funds should be spent). However, the UK, together with most Member States, was concerned that further restrictions, by ring fencing at a European level, would not reflect local needs.

There was also an informal lunch which looked at whether both negative and positive incentives are necessary to ensure that funds deliver on EU2020 objectives.

19 December 2011

GREEN PAPER: TOWARDS AN INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS (5491/12)

Letter from the Chairman to Mark Hoban MP, Financial Secretary, HM Treasury

Thank you for your explanatory memorandum of 31 January 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 27 February 2012. The Committee decided to clear the document from scrutiny.

We remain firmly supportive of the development of e-commerce as part of the single market. We welcome the desire in the Green Paper to take a far-reaching look at stimulating the payments market to help foster this development. Such stimulation will require a concerted effort from all stakeholders, but could have significant benefits for the internal market in payments and beyond.

The key point at issue is the case for intervention at a European level in this area. In general, your case is for softer, non-interventionist approaches (although you do accept the case for harmonised standards for card formats, cash machines, and card processing standards). We agree with that general proposition; action should be taken at EU level only where it is clearly demonstrated to be necessary, as the Commission itself often states. However, we also note that the scale and scope of concerns identified by the Commission may present a case for concerted and radical policy efforts. As a result, we would be grateful for an outline of your response to the Commission’s consultation on the Green Paper to inform our scrutiny of any actions in this area in the future.

As to specific points, we note that the consultation suggests that payment service providers may be required to refuse executing transactions on websites previously identified as illegal. This is rather a significant suggestion that was raised without much discussion by the Commission, and we would appreciate it if you could outline your view on such a provision.
I look forward to hearing from you within the usual 10 working days.

28 February 2012

Letter from Mark Hoban MP to the Chairman

Thank you for your letter of 28 February 2012 clearing the Green Paper on card, internet and mobile payments from scrutiny.

You asked for an outline of the Government’s response to the Commission’s consultation on the Green paper.

At this stage of the process, the Government is engaged in an assessment of the ideas presented in the Green Paper. I will therefore update the Committee again, once the assessment has completed an assessment of the ideas floated in the Green paper. In the meantime, I can say in general terms that the Government will wish to support measures that promote the development of new value-added payment services, and the digital economy. On the main issues raised by thirty two questions in the Green paper:

—  **Multilateral interchange fees** (fees typically payable by the merchant’s bank to the cardholder’s bank). There is a clear need for clarity on the legality of these fees under competition law. The question is currently before the EU General Court. A judgment is expected later this year. The Office of Fair Trading has ongoing investigations of UK domestic multilateral interchange fees. The Treasury is consulting the OFT on whether further action may be necessary, and if so, what the scope and form of that action should be.

—  **Cross border acquiring**: (card firms signing up retailers) there do not appear to be serious obstacles to cross-border acquiring.

—  **Co-badging** (more than one brand on a card): officials are consulting the card industry about the practicalities of co-badging.

—  **Restructuring the card schemes and processing infrastructure**: the case for radical action is not strong. It is likely that greater European integration, competition and lower costs can be achieved by less interventionist means. Officials are consulting the card industry about the options for securing technical standardisation in a number of areas such as card formats, terminals, scheme rules, processing and security.

—  **Transparent pricing**: the Government will propose close coordination of a ban on above-cost surcharges, and transparency of fees, by Member States. It will consider whether changes to card scheme rules would improve transparency and help merchants to steer customers to less expensive forms of payment.

—  **Standardisation of mobile and internet payment systems and services**: Experience suggests that standardisation follows the development of the most successful solution in a competitive environment. Attempting a top-down harmonisation of nascent technologies will deter innovation and product development.

You also asked for my view on a suggestion in the Green paper that payment service providers might be required to refuse executing transactions on websites identified as illegal.

An illegal website is, by definition, off limits to payment service providers. It is possible that the idea may be to make payment service providers responsible for policing websites that break the rules on under-age sales, or offer goods and services that are prohibited in the country of the buyer. There are a number of drawbacks to this. In the first place, on-line retailers are responsible for complying with the law on under age or banned goods, and they are required to have systems in place to ensure this. But more importantly, the card schemes and payment service providers are working successfully with the enforcement authorities on these issues. Subjecting payment service providers to the threat of prosecution and penalties will create a barrier between them and the authorities, and put an end to the collaborative effort needed to tackle these websites.

5 March 2012
Letter from the Chairman to the Rt. Hon David Willetts MP, Minister of State for Universities and Science, Department for Business, Innovation and Skills

Thank you for your explanatory memoranda on the referenced documents. They were considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 23 January 2012. They decided to retain the documents under scrutiny.

We have in the past expressed concern with the structure of the research framework, particularly with respect to the bureaucracy and fragmentation of the seventh framework programme. We are therefore supportive of work to seek to better rationalise and coordinate efforts in such an important area. Similarly, fostering innovation amongst SMEs, research co-operation across Europe and a greater cross-fertilisation of ideas are all to be supported. The nature of the instrument is something that we are examining as part of a broader inquiry into the Multi-annual Financial Framework, but at this stage we seek to state our support for its broad thrust, as well as stressing the importance of seeking to tackle duplication and inefficiency in as many areas of research and innovation as possible.

The question of the EU budget overall is a question for the Select Committee as part of its inquiry into the MFF. Nevertheless, the reprioritisation of EU funds to focus on growth-enhancing areas – of which research and innovation are one of the most prominent examples - is something we remain very supportive of. The potential for research and innovation to boost growth and productivity should be properly recognised at the EU level and met with financial commitments commensurate to its importance. We hope that negotiations reflect this need.

We note with confusion the discrepancy between the allocations to the different budget headings referred to in document 17933/11 (including the overall allocation of €88bn) compared to the Commission’s publicity figures (which includes an overall allocation of €80bn). We would appreciate your thoughts on the disparity between the various sets of figures.

One important area not attended to in sufficient detail by the Commission was the question of ITER funding. This will also form part of the MFF inquiry process, but like you, we raise serious concerns at the outset with respect to the proposal to remove the programme from the MFF budget process.

You also raised some particular concerns over the operation of the scheme in relation to its flat rate funding. We would be grateful to hear more on this in your subsequent response. You were also cautious as to the possibility for an agreed approach on nuclear waste management, and we would like to hear more on this point too.

You support in principle the prospect of more Knowledge and Innovation Communities (KICs) as part of this proposal. We would like to know the evidence on which you support the expansion of this programme. We would also like to know your assessment as to the likelihood of the UK hosting some of the proposed new centres, particularly given the existing structures in London and the West Midlands.

As with other areas of the MFF, the early stage of negotiations has somewhat restricted full consideration of the proposals. We would be grateful for a substantive update on the dossier when more detailed points of consideration can be made, and we would be content for the questions we have raised to be attended to in that update. In the meantime, we do not expect a reply within the usual 10 days.

24 January 2012

INTEGRATED MARITIME POLICY (14284/10)

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

Thank you for your letter of 8 November 2011 reporting your Committee’s consideration of my letter of 24 October 2011.

I was grateful for the support of the Committee to the Government’s approach to the final negotiations on the Commission proposal for a programme to underpin work on Integrated Maritime Policy. I am pleased to report that the outcome in Council was satisfactory and that the resolution we sought in respect of possible legal uncertainties was preserved in the final text of regulation (EU) No 1255/2011.

31 January 2012

THE INTERNAL MARKET INFORMATION SYSTEM: THE IMI REGULATION (13635/11)

Letter from Edward Davey MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 24 November asking to provide an update on the IMI Regulation currently under discussion in the Council working groups. I apologise for not responding sooner but I wanted to reflect the latest position as the discussions in working groups are still ongoing.

During the last meetings under the Danish Presidency sufficient progress to the negotiations have been made. The main focus was on the process of future expansion of IMI and sound data protection framework.

FUTURE EXPANSION OF IMI

At the working group meeting on the 9 January the Danish Presidency presented a discussion paper on Article 4 (expansion of IMI) suggesting two options. This was based on the premise that the power to bring the Acts listed in Annex II within scope of the IMI Regulation cannot be conferred on the Commission under either Article 290 or 291 TFEU as it constitutes a power to expand the material scope of the IMI Regulation. Such a power can only be conferred if it is strictly restricted so that the margin of discretion for the Commission is extremely limited.

The first option was to amend Annex I (by incorporating acts listed in Annex II) by giving the Commission power to carry out an impact study to assess whether IMI would be appropriate for acts listed in Annex II. The impact study, which could include a test phase, would examine whether certain criteria (including suitability, technical feasibility etc) were met. The decision by the Commission to carry out a study was to be adopted through the process reflecting the examination procedure in accordance with Article 5 of Regulation 182/2011. If the impact study met the criteria the Commission would adopt a delegated Act in respect of each act moved into Annex I.

The second option was to delete Annex II and to give the Commission a power to carry out pilot projects to assess whether IMI would be an effective tool to implement administrative cooperation in internal market acts. The decision of the Commission on which internal market acts were to be subject to a pilot project was to be made in accordance with a process reflecting the examination procedure in accordance with Article 5 of Regulation 182/2011. The Commission would submit the evaluation of the pilot project to the European Parliament and Council where appropriate accompanied by a proposal to amend Annex I which would be subject to the ordinary legislative procedure.

At the working group meeting on 18 January, the main discussion focussed on Article 4 and the proposed options (delegated acts vs ordinary legislative procedure (codecision)). The result was agreement by all Member States and the Commission that Annex I would be amended by the ordinary legislative procedure route (as set out in Option 2). There would be further discussions on the technicalities of this option.

We maintained a scrutiny reserve in the light of the amended proposal. Our preference was to support Option 1 of the Danish Presidency paper as this reflected our original position.

However we are prepared to agree with the majority position on the second option on the basis that the work on the pilot project would help accelerate the working party group discussions before adoption under the ordinary legislative procedure. If no pilot is proposed, then expansion of scope will be effected through the ordinary legislative procedure. We hope to lift our scrutiny reserve at the next meeting if scrutiny committees are content with this position.
THE DATA PROTECTION ELEMENTS OF THE DRAFT REGULATION

At the Council working group Article 13 defining data retention periods was discussed. A majority of Member States raised concerns that a personal data retention period of 5 years was too long and should be shortened to 3 years. Consultation with UK stakeholders has not identified any concerns over data retention periods and supported the Commission’s proposal to shorten it to 3 years. Discussion on the data retention period is ongoing.

25 January 2012

Letter from the Chairman to Norman Lamb MP, Minister for Employment Relations, Consumer and Postal Affairs, Department for Business, Innovation and Skills

Thank you for your letter of 25 January. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 13 February 2012.

You highlight the shift in how IMI expansion will be handled. The shift to the ordinary legislative procedure provides the opportunity for more supervision by Member States, but also runs the risk of a more cumbersome expansion of the system to other areas of legislation. We would appreciate your assessment as to the possible impact on the speed of expansion.

Otherwise, the document has already been cleared from scrutiny and we look forward to receiving updates on its progress.

I look forward to hearing from you within the usual 10 working days.

14 February 2012

Letter from Norman Lamb MP to the Chairman

Thank you for your letter of 14 February seeking views on the shift in discussion in Council working groups on how IMI expansion will be handled and if ordinary legislative procedure runs a risk of being more cumbersome.

At the working group meeting on 16 February the discussions were focused on the new drafting proposal presented by the Danish Presidency. With regards to the Articles 4 and 22 where the IMI expansion model is defined, our view is that the ordinary legislative procedure will not be too cumbersome as it will be accelerated by the work on the pilot test project and this would help the working party group discussions before decision to use IMI in new internal market areas.

I hope this addresses your concerns and I will keep you up to date regarding the further developments throughout negotiations.

27 February 2012

ITER PROJECT (2014-2018): SUPPLEMENTARY RESEARCH PROGRAMME (5058/12)

Letter from the Chairman to the Rt. Hon David Willetts MP, Minister for Universities and Science, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 26 January 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting of 8 February 2012. The Committee decided to retain the document under scrutiny.

We have supported the ITER project in the past given its possible benefits for the security and sustainability of energy supplies in Europe, and we do so again. At the same time, we remain concerned as to how effectively the project is operated. The point you have raised as to the uncertainty surrounding the legal base of this proposal is reflective of our concerns, and we urge that the issue is resolved as soon as possible.

The key feature of this proposal is the new funding structure, with a Supplementary Research Programme proposed outside of the Multi-annual Financial Framework structure. We are not convinced by the Commission’s justification for taking such a significant amount of spending outside of the MFF budget process. We support your strong stance in this respect, in the interests of transparency and accountability. Focus should instead be directed on reforming the governance of the project; this should be along the same lines as reform proposals for the Galileo and GMES projects,
where expert agencies are to take over project management. We would appreciate your views on the need for, and preferred configuration of, governance reform.

Your memorandum comments on the need to keep ITER spending within the MFF, but you do not comment upon the actual quantum of funding proposed. We would be grateful to hear your views in this regard. Given that spending has been limited to €6.6bn up to 2020, we were also curious as to what degree of freedom this proposal would give for spending on the project between 2018 - when this settlement would end - and 2020, and whether the degree of funding remaining was a source of concern.

I look forward to hearing from you within the usual 10 working days.

14 February 2012

Letter from the Rt. Hon David Willetts MP to the Chairman

Thank you for your letter of 14 February following my explanatory memorandum of 26 January on the Commission proposal for a Supplementary Research Programme for the ITER Project.

Firstly, I am pleased to hear of the Committee's continuing support for the ITER project; and we remain committed to ensuring that, as far as we can, the project is effectively governed.

You have noted in your letter the aspects of the Commission's proposal where we had some concerns. You firstly mentioned the legal status of the proposal in relation to the placing of the ITER programme funding outside the Multiannual Financial Framework (MFF). I informed in my memorandum that there was some uncertainty about the legal status of the proposal, and that written advice had been sought from the Council Legal Service (CLS). We are now satisfied that the proposal is legal, and we have received advice from the CLS that is consistent with that view.

I am grateful for the Committee's support for the Government's position that this ITER proposal should be included in the next MFF. The Government will continue to argue that all EU Budget spending should be within the MFF as it believes that this is sound financial management.

Turning to ITER project financing, EU Council Conclusions of July 2010 capped the European contribution to ITER construction at €6.6 billion (in 2010 values). The available budget for ITER construction in the period from 2014-2020 will need to respect that limit. You will note that the Euratom Treaty limits the duration of research programmes to a maximum of 5 years and so Council will be invited to agree, at the appropriate time, an extension of the ITER programme (whether inside the MFF or not) for the two remaining years of the budgetary period with funding consistent with the overall budget agreed up to 2020.

Finally, you raise the question of ITER project governance. As you will be aware, under the ITER project contributions, which are mostly in the form of project components, are provided from the seven parties (Euratom, China, India, Japan, Korea, Russia, and the USA) making up the ITER Organisation. The European contribution to ITER is managed through the European Joint Undertaking for ITER – "Fusion for Energy" (F4E), based in Barcelona.

A management and governance assessment of F4E was undertaken by an expert group at the end of 2009 and it concluded that radical changes to the organisation and culture of F4E were required. Council in July 2010 recognised that governance of the ITER project had to be improved and requested a number of measures to be implemented by F4E to improve its operation.

F4E has since responded is addressing its areas of weakness, and it is now becoming a more project-focused organisation with improved cost containment and project management systems and processes. It has also made changes to the organisational structure. We will continue to monitor this closely.

The governance of F4E is benefitting from the modification of F4E committees including the establishment of an Administration and Finance Committee to lighten the load on the Governing Board and enable it to focus on more important and strategic issues.

F4E has also completed the implementation of the recommendation of the Court of Auditors which includes the adaptation of the Financial Regulation of F4E, and the appointment of the Commission Internal Audit Service as Internal Auditor of F4E. In addition, a contract has been awarded by F4E to an independent expert to perform a yearly assessment of project progress in response to a request by Council in July 2010. This report will be made available to Council and European Parliament.
Finally, the ITER Organisation based at Cadarache in France has a new senior management team and a new project-oriented structure. These measures in total are producing significant improvements in the management of the ITER project, and we will look to try and build on these in the future.

27 February 2012

A MARITIME STRATEGY FOR THE ATLANTIC OCEAN AREA (17387/11)

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

Thank you for your explanatory memorandum of 20 December. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 16 January. They decided to clear the document from scrutiny.

The delineation of the area concerned is very important. We would appreciate it if you could clarify the full territorial scope of the proposed strategy. We are nevertheless supportive of the proposed Atlantic Forum and the potential it has to take discussions forward. We are also supportive of the stance you are taking into those discussions, and agree that any actions resulting must clearly add value. We look forward to scrutinizing any measures that emerge.

We do not expect a reply to this letter.

17 January 2012

MINIMUM LEVEL OF TRAINING FOR SEAFARERS (14256/11)

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

Thank you for your letter on 21 November. The Committee has decided to clear document 14256/11 from scrutiny.

We are pleased to see that you have secured an amendment which improves the proposal significantly with respect to the anonymous nature of data shared. Our only lingering concerns related to this data sharing requirement; though your attempts to remove the provision from the proposal appear likely to be unsuccessful, we are encouraged, as you are, that the regime will at least allow for flexibility at a national level and that data collected will be anonymised. We urge you to continue your vigilance towards potentially duplicating requirements of data collection as negotiations continue.

We do not expect a reply to this letter.

7 December 2011

NEW LEGISLATIVE FRAMEWORK ALIGNMENT PACKAGE (16983/11, 17265/11, 17266/11, 17268/11, 17269/11, 17271/11, 17272/11, 17274/11, 17275/11, 17277/11)

Letter from the Chairman to Mark Prisk MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 8 December. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 16 January. They decided to clear the document from scrutiny.

Like you, we are supportive of the aims of the “goods package” – modernising the legislative framework, clarifying duties along the supply chain and ensuring robust market surveillance. We are glad to see that this measure seeks to align a broad range of directives with these aims. We are also glad to hear of the sensitivity displayed by the Commission in bringing this proposal forward. We are hopeful of the potential of the New Legislative Framework for the single market, and are pleased to see positive results arising from it.
Should there be any significant changes to the proposal that alters the position as expressed in your memorandum, or pertinent updates on its progress, we would appreciate an update as soon as possible afterwards. Otherwise, we do not expect a reply to this letter.

17 January 2012

NUCLEAR DECOMMISSIONING: BULGARIA, LITHUANIA AND SLOVAKIA

Letter from the Chairman to Charles Hendry MP, Minister of State, Department for Energy and Climate Change

Thank you for your explanatory memorandum of 19 December. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 16 January. They decided to retain the document under scrutiny.

We entirely agree that support for this decommissioning is a matter of principle that is in the best interests of the United Kingdom and other Member States. Similarly, we agree that the key question is the level of support provided. In your EM, you note the wider context of budgetary restraint, which we support, but you do not comment upon the allocated provision here. When you are in a position to, we would appreciate your assessment of the projected allocation, particularly given that two of the concerned Member States consider it inadequate. If you agree with their assessment, is this an area where you would support the reprioritisation of resources from elsewhere?

We are, however, concerned to ensure that the highest safety standards are maintained, and that a project of such significance is not mishandled in the same manner as other European-level projects, such as Galileo. As a result, it is important that the conditionality involved in funding is sufficiently robust and we would appreciate your views as to the adequacy of the proposal in this regard. Furthermore, we understand that the United Kingdom maintains high standards of nuclear safety, and we would be keen to ensure that UK officials are available to help in designing and carrying out the decommissioning work. Does this happen at present?

Given the relatively early and delicate state of negotiations, we are prepared to wait until such time as a considered and comprehensive response can be given. As a result, we do not expect a reply within the usual 10 days.

17 January 2012

NUCLEAR SAFETY ASSESSMENT (17496/11)

Letter from the Chairman to Charles Hendry MP, Minister of State, Department for Energy and Climate Change

Thank you for your explanatory memorandum of 12 December. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 16 January. They decided to clear the document from scrutiny.

You alert the Committee to the potential of future legislative proposals in the area once stress tests are complete. We look forward to scrutinising those proposals as they emerge.

We do not expect a reply to this letter.

17 January 2012

OPEN DATA: RE-USE OF PUBLIC SECTOR INFORMATION (18554/11, 18555/11)

Letter from the Chairman to the Rt. Hon Francis Maude MP, Minister of State, Cabinet Office

Thank you for your explanatory memorandum of 12 January 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 6 February 2012. The Committee decided to clear document 18554/11 from scrutiny and to retain document 18555/11 under scrutiny.
At the outset, we would like to congratulate your commitment to the digital agenda. The digital single market will be an important engine for growth in years to come, and we urge you to continue that commitment to ensure that the UK is as competitive as it can be in taking advantage of its opportunities.

For the same reasons, we support this proposal in principle. We believe that promises to put in place conditions that will foster innovation and increase the value of data as a resource, and we are positive as to the possible benefits it may bring.

You note that the practical implications for public sector bodies will be important, and we too would urge vigilance in this respect. However, you raise a concern regarding copyright holdings by bodies such as libraries, despite the fact that the proposal appears to exempt such bodies from providing details of copyright ownership. We would appreciate it if you could clarify this point in more detail.

Your memorandum gives the impression of general readiness for the changes this proposal suggests, which we are glad to see. We would be interested to know in more depth, though, the degree of change that this proposal would be likely to bring about in practical terms. For example, is the present complaints procedure you have outlined entirely compliant with the requirement in the proposal to have an independent complaints body? Similarly, is the Open Government Licence ready for use in any reformed system? Finally, we would like to know whether the National Statistician was consulted on this proposal, and what views she fed in if so.

I look forward to hearing from you within the usual 10 working days.

8 February 2012

Letter from the Rt. Hon Lord McNally, Minister of State, Ministry of Justice, to the Chairman

I refer to your letter dated 8 February 2012 to Francis Maude, Minister for the Cabinet Office. As the questions raised in your letter refer to specific issues concerning the practical implications of the proposed amendments to the Directive for which I have policy responsibility, I have agreed with the Minister for the Cabinet Office to respond to your letter.

First of all, may I say that Mr Maude and I welcome the House of Lords European Union Committee’s support for the UK’s contribution to the European Digital Agenda and for the Committee’s support in principle for the proposal to amend the existing European Directive on the re-use of public sector information.

I note your concerns about the practical implications for public sector bodies and the need for vigilance. In the negotiations the effect on public sector bodies will be a key consideration.

You seek clarification regarding the copyright holdings by bodies such as libraries. The proposed text maintains the principle of ensuring that copyright holdings owned by third parties fall outside the scope of the Directive. We regard this as an important principle on the basis that a public sector body is unable to authorise re-use unless it owns the copyright or is authorised to do so on behalf of the legal owner. This principle is particularly crucial for libraries, archives and museums which, by their very nature, tend to hold substantial amounts of information where the copyright is owned by others. It will not always be easy or indeed possible for such bodies to be able to ascertain where ownership of specific material rests. At this stage, we are content that the Commission has built sufficient safeguards into the proposed amendments to protect against certain institutions (including museums, archives and libraries) being subject to potentially unserviceable demands in the future. We will monitor and assess these safeguards as the negotiations develop.

You are right in noting that there is general readiness for the changes contained in the proposal to amend the current Directive. The Open Government Licence has proved fit for purpose in facilitating and encouraging re-use. The Open Government Licence will continue to be an effective model under the proposed reformed system.

The present complaints process under the UK Regulations will need to be enhanced if the proposed new wording is adopted. The enhancements take the form of:

— the binding nature of the decisions taken by the independent authority;
— the proposal that making information within scope available for re-use will be mandatory and extend the potential scope for complaints; and
— the independent authority’s role in the criteria for cases where charging exceeds marginal cost.
The cost implications of these enhancements are being reviewed by The National Archives, the Cabinet Office and HM Treasury and this review will feed in to the UK’s negotiation stance to the proposal.

Finally, you ask whether the National Statistician was consulted on this proposal. We did not write specifically to the National Statistician although officials at the Office for National Statistics were consulted regarding the Explanatory Memorandum and were content. The Office for National Statistics Officials offered context and background information to feed into the issues of open data portals and open data for science and research, which were relevant to the Communication on open data (18554/11).

16 February 2012

PASSENGER RIGHTS COMMUNICATION (18516/11)

Letter from the Chairman to the Rt. Hon Theresa Villiers MP, Minister of State, Department for Transport

Thank you for your explanatory memorandum of 18 January 2012, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at the meeting on 6 February. They decided to clear the document from scrutiny.

We welcome this document as a very helpful consolidation of the existing EU measures on passenger rights. We are glad to see a focus on consumer rights, which should be central to considerations in transport policy. We are open-minded about further improvements to the current legislative framework, although we support your aim of ensuring that these are cost-effective and take due account of the differences between each transport sector.

We support, in contrast to your memorandum, the idea of proposals looking across transport modes to try to improve the passenger experience. Despite this, we remain wary of the concept of blunt standardisation across all transport modes, and call instead for a more nuanced approach. Finally, we insist that any enforcement of passenger rights is best performed by national regulators and agencies rather than at a European level. We note that future legislative proposals will be subject to scrutiny, and we look forward to corresponding with you on these.

No reply to this letter is expected.

7 February 2012

PROCUREMENT PACKAGE (18960/11)

Letter from the Chairman to the Rt. Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, Cabinet Office

Thank you for your explanatory memoranda of 16 January 2012. They were considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 13 February 2012. The Committee decided to retain the documents under scrutiny. We note that the Government initiated a consultation exercise on these proposals. We would be grateful if you could detail the results of that exercise to inform our considerations.

SUBSIDIARITY

Your memoranda focused particularly upon the question of subsidiarity. We agree that there is an arguable case that the arrangement of dispute adjudication procedures in relation to procurement should be a matter for Member States to decide; a point also raised by the Scottish Parliament’s Infrastructure and Capital Investment Committee, who considered the present arrangements to be entirely satisfactory.

However, though we are minded to agree with the sentiment, it is not a clear-cut case; there is a similarly arguable case that the proposal would improve the functioning of an internal market by providing a common and intelligible base for seeking legal redress. Indeed, a similar proposal relating to adjudication in relation to the re-use of public sector information, which was opposed by the Swedish Riksdag on subsidiarity grounds, was not opposed by either the Government or the Committee.
The complexity of assessing the competing positions requires more evidence than is in place at present. We therefore seek further information before taking a decision as to the compliance of the proposal with subsidiarity; in particular, we would like to know the views of stakeholders who took part in your consultation exercise on this point. This view echoes that of the aforementioned Committee of the Scottish Parliament, who also felt that a considered decision was not possible on the evidence at hand.

**GENERAL**

One of the central elements of these proposals is the idea of keeping rules simple and flexible, which we support. We also support, as you do, the idea of taking forward e-procurement measures. In that respect, we would be grateful for an explanation of why you do not support the proposed timetable for implementation of mandatory electronic communication.

Another important strand of the proposal is the idea of pursuing social goals and stimulating innovation through procurement. We note, though, that the Commission highlighted the mixed reaction of stakeholders of these ideas. Was this a view shared by stakeholders you consulted; and if so, is this scepticism shared by the Government?

**GOVERNANCE**

We have indicated above our initial concerns over the proposed governance arrangements in relation to subsidiarity. We move now onto our views on the merits. We agree that the Commission has to make a firmer case as to the benefits of a competent authority as proposed.

We are swayed, for example, by your contention that a body providing both advice and adjudication would give rise to a potential conflict of interest. Such a situation could be easily avoided if judicial functions continued to be exercised by the courts.

We are also dubious as to the proposal that the competent authority would provide advice, training and guidance. This would serve to shrink levels of private sector activity these areas. We would prefer any competent authority to act as a signpost for private sector services, rather than replacing them. It would also raise the question, as flagged by the Scottish Parliament’s Infrastructure and Capital Investment Committee, as to how a UK-wide body would be able to offer comprehensive guidance on procurement policy given the distinct legal systems in Scotland as compared to England and Wales, as well as how such a body would be accountable to the Scottish Parliament as required under the devolution settlement.

On all fronts, we are therefore deeply sceptical as to the benefits of the proposed arrangement and agree with your decision to oppose it as drafted.

**PUBLIC AND UTILITIES PROCUREMENT**

In relation to the public and utilities procurement proposals, you urge for the proposed 2017 review of the attendant value thresholds applicable to these proposals to be expedited. We would be grateful for more detail on why you feel the present timetable is insufficient. Are you and the stakeholders you have consulted with content with the thresholds contained in this proposal as drafted?

The proposals would remove a distinction between Part A and Part B services, and we share your concern about this. The proposal’s separation of social services is designed to remove areas with little cross-border activity from scope. It therefore seems incongruous that the Commission’s response to increasing levels of cross-border activities elsewhere was to remove any distinction, rather than attempt to create a more nuanced one.

As a final point in this area, the idea of dividing contracts into lots is an area inviting significant comment from those in the procurement industry. We would be grateful for more information on the views of stakeholders you have consulted on this provision, particularly in relation to the question of the administrative burden that would result.

**CONCESSIONS**

On the idea of a new framework for concessions contracts, we are supportive of extending legislation given their thematic similarity with other procurement contracts and given the opportunities that expansion could offer for UK businesses through the development of the internal market. Like you, though, we see no reason for a directive entirely separate from the public and utilities procurement
proposals, particularly given the potential for divergence this holds. We also share your concerns on the need for clear drafting in any case.

You note that the proposal does not include any measures that cater for the participation of SMEs, and attribute this to the higher thresholds in place. Do you propose any shift in thresholds to seek to facilitate the involvement of SMEs, or are you content with levels in place at present?

Overall, given the number of questions we have, and the fact that we understand your consultation is ongoing, we are content to defer a response until correspondence can take account of all of the questions we have raised. We are nevertheless keen to receive a comprehensive response. We would like an indication of when we will receive it, as we are interested in taking further evidence from you on this dossier.

14 February 2012

PROGRAMME FOR THE COMPETITIVENESS OF SMALL AND MEDIUM-SIZED ENTERPRISES (COSME) (17489/11)

Letter from the Chairman to Mark Prisk MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 5 January 2012. This proposal was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 30 January 2012; it was decided to retain it under scrutiny.

Whilst recognising the importance of providing support to enterprises, particularly in this difficult economic climate, the Committee is concerned about the added value offered by a programme of this nature at European level. During the course of the negotiations, we would encourage the Government to ensure that this programme genuinely complements the support already available at a national level and that the assistance offered is effective and makes the best possible use of resources.

We have a number of more detailed points to make about the proposal, which are set out below.

FUNDING LEVELS

The questions of how to reconcile the EU budget overall is one for the EU Select Committee as part of its inquiry into the Multi-annual Financial Framework. However, the question of overall resources is integral to this proposal, and we have noted the Government’s intention to dispute the levels of funding currently proposed for COSME. The case for supporting enterprise at this time of low unemployment and slow economic growth is a strong one, and the Committee has noted the claims in the Commission’s impact assessment that this “moderate expansion” of the programme would lead to a significant increase of GDP, assist a high number of firms and create jobs.

In the light of this, the Committee would like the Government to answer the following questions;

— Do you agree with the assessment of the Commission that this “moderate expansion” of the programme would lead to a €500 million additional increase of GDP, as well as assisting 13,000 additional firms, creating and or safeguarding 12,500 additional jobs and creating 200 additional start-up companies?

— The increase in funding proposed by the Commission is significant. Would you consider accepting a smaller increase in funding?

— Would you consider accepting an increase in funding, if this were to be reprioritised from other, lower priority areas?

TOURISM

We share your concern that there is little evidence to justify any special treatment for the tourism sector as part of the COSME programme. Without undermining the importance and value of the tourism sector, it is important to also recognise the many other sectors characterised by a high proportion of SMEs and with significant growth potential. We would like to ask the Government to keep us updated on how this element of the proposal progresses, including whether other Member States share the view of the UK Government, and, if this emphasis on tourism remains in the draft Regulation, how it would be implemented in practice.
Presumably to reflect the emphasis on tourism in the proposal, we note that the draft Regulation has a dual legal base of Article 173 and Article 195. Do you believe that the inclusion of Article 195 is necessary, and do you intend to question the Commission further on this point in the course of negotiations?

**SUBSIDIARITY AND PROPORTIONALITY**

We share your assessment that certain business support interventions such as loan facilities must demonstrate clear EU added value. We note with concern the opinion on these loan facilities from the European Court of Auditors, that “the same effects could be achieved with funding from national budgets”. We welcome the Government’s commitment to ensuring that these loan facilities, and other planned activities as part of the COSME programme, are consistent with the subsidiarity principle. Could you please explain in further detail how this would be achieved?

Finally, we note that this proposal is in the form of a draft Regulation as opposed to a Decision. We recognise that the Government intends to clarify the reasoning behind this in the course of the negotiations and we would be grateful if you could please keep us updated on the results of this.

On these points, we would appreciate a substantive response as soon as it is possible for you to provide this information.

*31 January 2012*

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**Letter from Mark Prisk MP to the Chairman**

Thank you for your letter of 31 January seeking additional information on the COSME proposal. I very much agree that during negotiations the Government should seek to ensure this programme genuinely complements the support already available at a national level and that the assistance offered is effective and makes the best use of resources.

**FUNDING LEVELS**

Your Committee asked whether the Government agrees with the Commission’s assessment that this ‘moderate expansion’ of the programme would lead to a €500 million additional increase of GDP, as well as assisting 13,000 additional firms, creating and or safeguarding 12,500 additional jobs and creating 200 additional start-up companies. We have not conducted a detailed analysis, but note that from this total the Commission states that increasing the annual budget for financial instruments from €113 million to €200 million would increase EU GDP by approximately €500 million/year and generate or safeguard 11,000 jobs/year (above the 2006-13 baseline level). The Commission’s Final Evaluation of the Entrepreneurship and Innovation Programme (April 2011) found that:

— 62% of GIF [i.e. the High Growth and Innovative SME Facility that invests in venture capital funds] beneficiaries expected an increase in turnover in 2010 and 75% in 2011 and in most of these cases a growth of between 26% and 100% was expected;

— Almost half of SMEG [i.e. loan guarantee] beneficiaries were expecting growth of turnover in 2010 and 2011. Similar results were found for job creation. Almost half of the SMEG beneficiaries attributed new or saved jobs to the support, while for GIF this figure was 89%.

The above results will have been used by the Commission to help calculate the predicted impact of a ‘moderate expansion’ of the budget for COSME. However the extent that these gains could have been obtained through Member State (national or local) or private sector funding is unclear. As your Committee recognises, the Government remains to be convinced of the EU added-value of EU loan guarantee facilities. Furthermore a relatively high number of enterprises (in other Member States) have used the EU loan guarantee without actually needing it (the European Court of Auditors report put the level of deadweight at 38 per cent, although the Commission believes the figure is lower). We would therefore question whether the ‘moderate expansion’ would genuinely result in a €500 million additional increase of GDP, given some of this lending would occur without the EU loan guarantee.

The budget for COSME is one (relatively small) element of an overall package which will be agreed by the European Council where ‘nothing is agreed until everything is agreed’. The Government’s opening position is to seek significant reductions in the Commission’s proposed budget for COSME, in the context of the Government’s overall priority to restrain the next Financial Framework to, at
most, a real terms freeze in current payments levels. We would not rule out completely the possibility of a small increase in COSME funding compared with equivalent expenditure in 2007-13 if this was reprioritised from other, lower priority areas of the MFF and consistent with an overall freeze on spending.

TOURISM

I note your Committee shares the Government’s view questioning the proposed special treatment for the tourism sector and we will keep you informed of developments. In broad terms, many northern Member States share the UK’s view, but central and southern Member States tend to support the Commission’s proposal. If the text is retained then — through Annual Work Programmes and subsequent invitations to tender — the Commission has indicated that the focus of EU interventions in the tourism sector (€18 million/year on average) would be on: ‘sustainability and extension of seasonality, the diversification and promotion of transnational high-quality and inclusive tourism products and services, use of ICT, skills and the consolidation of the socio-economic knowledge base in the sector (page 33 of the COSME Impact Assessment).

Your Committee rightly questions whether it is necessary to include Article 195 TFEU as a second legal base in the draft Regulation. The Government also takes the view that it is unnecessary to include Article 195 in the legal base, and this factor will be taken into account during negotiations.

SUBSIDIARITY AND PROPORTIONALITY

The Government is working in a number of ways to ensure activities funded through COSME are consistent with the subsidiarity principle. In some cases, we are seeking changes to the text of the COSME Regulation (e.g. to clarify that the Enterprise Europe Network should focus on transnational business support, particularly access to EU programmes). Sometimes this will also need to be supplemented by improving any implementation guidance. For example, following my recent meeting with Vice-President Tajani, the Commission has confirmed that a future Fiduciary and Management Agreement between the Commission and the European Investment Fund (EIF) for the loan guarantee will be strengthened to reduce deadweight and better reflect EU added value. In addition the Government will need to work with the Commission and other Member States to influence the content of future draft annual work programmes.

A number of other Member States share the UK’s views on the need to ensure EU added value, particularly in relation to EU business support activity. However during initial exchanges in Council Working Groups it is clear that the overwhelming majority of other Member States are very strong supporters of the EU loan guarantee. The Commission is familiar with the Government’s views and has stressed that it will fully respect the subsidiarity principle, stating this is a fundamental tenet of the Treaty on the Functioning of the EU and therefore does not need repeating in every Legal Act.

FORM OF LEGAL INSTRUMENT

The issue where the Commission proposes the replacement of a Decision (of general application) by a Regulation has been raised during Parliamentary scrutiny with a number of departments. In the case of spending measures, the Government does not have a substantive objection. However the Commission, where it proposes such a change, should explain that choice in the Explanatory Memorandum for the measure as it has agreed to do under the 2003 Inter Institutional Agreement. The Government has come to this position in relation to these types of measures following further explanation from the Commission, which the Government has considered and accepts.

The Commission has indicated that the general change of legal form for EU financial measures was introduced to:

i. Give greater legal certainty and help efforts to improve financial management. Financial programmes include control and audit provisions conferring rights and obligations on individuals and a Regulation ensures it is clear these are binding and directly applicable;

ii. Ensure a coherent approach in the 2014-20 financial programmes. The vast majority of the current EU financial programmes already take the form of Regulations.

The Commission also emphasised that the type of legislative act has no impact on the procedure for its adoption. The Government has no objections to the COSME legal instrument taking the form of a Regulation.
Finally, a brief update on timing. The Danish Presidency have indicated they aim to secure a ‘partial general approach’ to COSME by 30 May 2012, that is to say agreement by the Competitiveness Council on the legislative text without any substantive discussion of the numbers (negotiations on the MFF are HMT led in the General Affairs Council and Committee formations). Discussions on the size of the COSME budget are not expected to get underway for several months yet.

28 February 2012

PUBLIC MOBILE COMMUNICATION NETWORKS WITHIN THE UNION (12666/11, 12639/11)

Letter from the Chairman to Ed Vaizey MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

The purpose of this letter is to provide you with an update on the progress of the proposed regulation of mobile roaming (Roaming III) since the issuing of the above EM and my exchange of letters with you in October 2011. It also further supplements my Post-Council Statement which contained detail of the exchange of views between Ministers during the December 2011 Telecommunications Council.

Following an initial analysis of the original text proposed by the Commission, consultation with stakeholders, and initial discussions at Working Party level, it became apparent that there would be concerns in four main areas. They were:

— The levels of the wholesale caps may be set at levels below cost, particularly in the latter part of the ten-year life-span of the Regulation;

— The differential between the wholesale and retail caps should be set at a margin that guarantees profitability for new market entrants offering roaming services under the ‘wholesale access’ structural remedy detailed in Art 3;

— Issues relating to the Review of the Regulation, in particular when the first Review was to take place, the metric(s) used to determine if competition has been established through the effects of the proposed Structural Solutions, and the assumption that retail prices would be lifted in 2016, regardless of the outcome of the 2015 Review; and

— The Regulation should be service and technology neutral especially those Articles that deal with the proposed structural solutions.

It became clear during discussions at Council Working Party level that these concerns were shared by a number of other Member States.

Following the initial reactions by Member States at Working Party level, a Progress Report was presented to, along with an exchange of views between Ministers at, the Telecommunications Council on 13th December 2011. This exchange of views was based around three questions provided by the Presidency and reported in detail in my Pre- and Post-Council statements. It was clear that the majority of Ministers were of the view that:

— Negotiations of the Regulation should be completed in good time before the current Regulation expires, ie 30th June 2012;

— That the new Regulation should strive to be as service and technology neutral as possible, with technical and implementation detail of the structural solutions being contained in the associated BEREC guidance; and

— The provision of transparency on prices through the use of SMS detailing the price of voice, SMS and data services should be extended to those EU citizens who use mobile roaming services outside of the EU.

During this discussion, a number of Ministers also stressed the importance that there should be positive evidence of competition in this market before price caps were removed.

In parallel to this activity, discussions have been taking place in the European Parliament (EP), with the Industry, Research and Energy (ITRE) Committee in the lead on this dossier producing, in December,
a draft Report, and the Internal Market and Consumer Protection (IMCO) Committee producing a
draft Opinion; both containing a number of amendments to the original Commission proposal.

An analysis of the draft documents showed that MEPs were very much focused on issues relating to
consumer protection, with proposed amendments covering:

— **Reductions in retail price caps** for voice, SMS and data service for the
duration of the Regulation;

— **Seeking extension of transparency provisions** to non-EU mobile
roaming;

— **Ensuring a service and technology neutral approach**;

— **Prevention of ‘bill shock’** for Pre-Pay customers;

— **Removal of retail price caps to be delayed until 2017**, with no
provision to remove earlier;

— **Delaying the time of the first Review** of the Regulation from 2015 to
2016; and

— **Time limits for switching providers**.

A hearing on the draft Report and Opinion took place in the EP on 20th December 2011 and I can
confirm that UK MEPs who are members of both committees were provided with briefing setting out
HMG’s views on the draft Regulation and proposed amendments.

The next milestones for EP business are:

— **IMCO vote on draft Opinion** – 6th February 2012;

— **ITRE vote on draft Report** – 28th February 2012; and

— **Plenary vote of EP on draft ITRE Report** – 18th April 2012

I am of the view that the EP will continue to primarily focus on the absolute levels of both wholesale
and retail price caps, with the risk that margins will be squeezed and thus reducing the viability of the
wholesale access structural solution (Article 3). Meetings with UK MEPs to discuss this issue, and
further briefing provided at key points before the votes, are planned to attempt to mitigate this risk.

In parallel to the activity taking place within the EP, work continues within the Council Working Party.
The incoming Danish Presidency produced a new compromise text early in January and this is being
considered by Member States and will be discussed at four consecutive Working Parties taking place
in January. The first of these took place on 10th January and the current text was generally welcomed
by Member States.

An initial analysis of this text indicates that it addresses the majority of HMG’s concerns with the
notable exceptions of matters relating to the timing of the Review and the suspension of retail price
caps in 2016, regardless of the outcome of the Review. It is worth noting that the levels of both
wholesale and retail price caps remain unchanged (but for discussion) in the Presidency text.

It is then intended that the Presidency will seek a mandate to negotiate through Trialogues with the
EP; most likely at the COREPER meeting that is due to take place on 29th February 2012 ensuring
that an agreed text is adopted by the EP at the Plenary vote in April.

As such, it is currently anticipated that the Regulation will be taken as an ‘A Point’ at a Council other
than the Telecommunications Council - that is due to take place on 8th June 2012 - as agreement
then would be too late for the new Regulation to be in place in time for the expiration of the current
Regulation; my officials are currently working to identify the most likely Council.

With this in mind, I am keen for us to continue to work together so that you are content to lift the
existing scrutiny reserve in good time and I will write again once the text has become more
fixed and the most likely date for agreement has been identified. In the interim, please do not hesitate
to contact me if you have any further queries on this important dossier.

11 January 2012
Letter from Ed Vaizey MP to the Chairman

The purpose of this letter is to provide you with an update on the progress of the proposed Regulation of mobile roaming (Roaming III) since the issuing of the above EM and our exchange of letters in October 2011 and January 2012.

With discussions in the Council and European Parliament nearing completion, I believe that it is now time for a review of the Regulation as it stands and assess it against HMG’s negotiating objectives, examine the remaining risks and opportunities and offer a view on whether the Regulation is ‘fit for purpose’. I also provide an update on timetable for progression of the Regulation.

I. REVIEW OF THE LATEST PRESIDENCY AGAINST HMG NEGOTIATING OBJECTIVES

With regard to successes thus far, the latest Presidency text:

— Generally meets HMG’s negotiating objectives by ensuring that:
  
  ▪ consumers continue to enjoy protection through the mechanism of price caps until the proposed structural solutions have had an opportunity to introduce competition into this market;
  
  ▪ that the proven induction of competition into this market will ultimately result in a reduction in the level of regulation in this market through the cessation of price caps;
  
  ▪ by increasing the scope of the Regulation to include retail data prices, UK consumers will enjoy a price reduction of around 80%, with further drops in price through the mechanism of price caps in Years Two and Three of the Regulation; with further potential price drops through competition effects later in the life-span of the Regulation. This market is seen as especially important as it is regarded as having major growth potential, with the view that data prices are largely elastic, and with the advent of the use of smart phones by the majority of mobile telephony users;
  
  ▪ consumers enjoy further protection by extending the transparency and ‘alert’ SMSs on spending whilst roaming to all consumers who roam outside of the EU;
  
  ▪ further consumer protection is given through extending the current transparency requirements to all ‘pre-pay’ (also known as ‘pay as you go’) customers, although this does carry some costs that I detail below;

— Has retained a technology and service neutral approach, with the technical details of the structural solutions to be contained in separate BEREC guidance and supported by the necessary comitological processes rather than within the text of the Regulation;

— Generally meets ‘Better Regulation’ principles, with one exception that I will detail below; and

— Includes improvements to the Review mechanism that ensure that:
  
  ▪ Several criterion, rather than a single metric as originally proposed, are considered when determining whether competition has been engendered and maintained in the market as a result of the introduction of structural solutions;
  
  ▪ That price caps, in terms of duration and specific levels, can be reviewed in order to ensure that consumers can enjoy continued protection if the structural solutions have yet to take an effect or have been judged to have failed. This facility also seeks to ensure that wholesale caps in the latter part of this ten-year regulation can be altered to ensure that they are not set below costs to protect the mobile operators;
- Introduce further structural solutions and adjust those already in place to take into account any competition effects or their lack, along with any technological changes, over the duration of the Regulation;
- The first Review will now take place in 2016 (rather than 2015) ie two full years following the introduction of the structural solutions to ensure that any competition effects have had a greater period to take hold before being reviewed and one year before the first potential cessation date of retail price caps.

I noted above that one proposal contained in the latest text may not meet ‘Better Regulatory’ principles and had some costs associated with it. This is the extension of alert SMS and cut-offs (as detailed in Article 15 & 16) to all pre-pay customers.

I understand that whilst this may initially be attractive in terms of consumer protection, especially considering that many pre-pay customers are those within the lower socio-economic groups, there is some anecdotal evidence from operators that the vast majority of such customers will not benefit from these changes as they do not ‘top-up’ by, or maintain balances near, the €50 limit that will trigger such alerts.

During negotiations, HMG raised its concerns on the basis of proportionality and avoiding excessive costs for operators, however we were unsupported by other Member States on this issue and there appears to be no other evidence provided by operators regarding costs.

Given that this proposal first arose from the European Parliament (EP) and can be considered to be totemic for them, acceptance of this outcome is very likely to gain Council some negotiating capital with the EP when it comes to the matter of price caps, an issue to which I turn later.

2. REMAINING ISSUES: RISKS AND OPPORTUNITIES

I now turn to issues that have been largely unresolved and present a number of risks and opportunities as negotiations progress.

a. Currency Fluctuations

The first is a new issue that has arisen since I last wrote to you and no doubt has its genesis in the ongoing Eurozone crisis and the current turbulent economic climate. It is a proposal to introduce a mechanism that mitigates against roaming prices actually increasing when the price caps drop due to severe local currency devaluations when compared to the Euro.

The UK has spoken against this proposal on a number of grounds, including: on ‘better regulation’ grounds (whereby although the impact of this risk is high, the probability of such an event is extremely small ie it would require year-on-year currency devaluations in the order of at least 20%); that it would create a precedent in EU legislation; and that it would be inappropriate to legislate on a macro-economic issue within the Roaming Regulation. Thus we have made UK’s position on this matter clear and our view is supported by a number of other Member States. It is my intention to seek that the new Regulation continues with the existing provisions ie those used in Roaming I and II.

The risk that the Presidency text produced on 29th February contains this proposal is low.

b. Levels of Wholesale and Retail Price Caps

The second issue is that of the specific levels of the price caps. I believe it is worth recalling at this point that the UK’s main objectives at the beginning of negotiations were that:

- The levels of the wholesale caps should not be set at levels below cost, with a real risk this situation would develop in the latter part of the ten-year lifespan of the Regulation;
- The differential between the wholesale and retail caps should be set at a margin that guarantees sufficient profitability for new market entrants offering roaming services under the ‘wholesale access’ structural remedy detailed in Article 3.

However, since I last wrote, a third pricing issue has become apparent, that being:

- The levels of data wholesale caps as proposed may be set at unjustifiably high levels when compared to current domestic retail prices.
Thus far, whilst discussions at Working Party level have not largely covered the issue of specific levels of price caps, HMG has been very clear in its negotiating objectives and it would appear that we enjoy the support of majority of Member States in terms of principle, although views on specific levels may differ. Those Member States that have opined on levels appear to favour a reduction, with wholesale and retail data being a focus of later comments.

The general pricing landscape shows the EP favouring lower prices and price differentials, BEREC (including Ofcom, our regulator) striking the middle ground and the Commission proposals being the highest.

An analysis shows that the levels of price caps will be subject to continued downwards pressure from the EP and I am anticipating that BEREC (in a Report to be adopted at their Plenary) will propose a reduction of the levels of wholesale prices caps – specifically data. Indeed I anticipate that the BEREC figures will not only catalyse the necessary discussion on the specific levels but any specific levels recommended by BEREC will act also act as crystallisation points for some Member States and possibly the EP, on the basis of the technical credibility of BEREC’s data; the data on which the Commission’s levels was published around two years ago.

One possible outcome will be that the values favoured by EP and BEREC will become aligned and this places an excellent opportunity for Council, and the UK who has not stated any specific values thus far, to influence the outcome of this debate.

I remain very much open to further evidence and am pleased to note that your committee are holding a hearing and look forward to reviewing the evidence given.

As such, this matter remains very much a live issue, with the debate on specific levels expected to begin very shortly and I welcome your views.

   c. The Opt-out/Derogation Proposal

A final major issue that I believe is worth noting is a proposal that Council Working Group have now rejected but is contained currently in an EP amendment, is the ‘opt-out’ or derogation proposal.

In effect, the proposal would mean that if a mobile operator moves their roaming charges as close as possible to domestic prices, the provisions of being subject to the provisions in Articles 4 and 5 – the separate sale of roaming – no longer apply to them. Whilst this proposal may be initially attractive in terms of deregulation, there were some serious concerns about the negative impacts on both competition and consumer choice and how this would result in a patch-work effect of the Regulation across the Union that would be likely to cause confusion amongst consumers. HMG’s analysis agreed with these points and we also put forward the view that such provision would introduce a de facto price cap, something we were keen to avoid.

This proposal did enjoy some support at Council Working Group but this has now evaporated and the proposal has been removed from the current Presidency text.

Whilst the risk that this proposal will be reappear in the Presidency text is now low, there is a risk that the EP may vote through the necessary amendments for it to reappear, although the current indications are that this specific amendment does not enjoy wide support across all the political groupings of the EP.

3. THE NEXT STAGES

The Danish Presidency have now produced a roadmap and key dates of note are:

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Key Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>28th Feb</td>
<td>ITRE Committee Vote on EP Amendment</td>
<td>The ITRE committee is the lead EP committee on this dossier</td>
</tr>
<tr>
<td>29th Feb</td>
<td>Presidency to seek mandate to enter in Trialogue with Compromise text</td>
<td>The mandate with be formalised through COREPER</td>
</tr>
<tr>
<td>6th March</td>
<td>Trialogue I</td>
<td>First discussions with EP</td>
</tr>
<tr>
<td>8th March</td>
<td>Council Working Group</td>
<td>Potential examination of text with EP amendments</td>
</tr>
<tr>
<td>15th March</td>
<td>Trialogue II</td>
<td>Further discussion with EP</td>
</tr>
<tr>
<td>20th March</td>
<td>Council Working Group</td>
<td>Potential examination of text &amp;</td>
</tr>
</tbody>
</table>

46
agreement for COREPER mandate

21st March  
Production of updated Presidency text &
second mandate to continue Trialogue with
this text

27th March  
Council Working Group & Trialogue III

29th March  
Trialogue IV

The mandate will be formalised through
COREPER

27th March Council Working Group & Trialogue III
29th March Trialogue IV

The text will then move through the formal co-decision process, with a final EP plenary vote due in May 2012. I believe it is important to recall at this point that it is currently anticipated that the Regulation will be taken as an ‘A Point’ at a Council other than the Telecommunications Council - that is due to take place on 8th June 2012 - as agreement then would be too late for the new Regulation to be in place in time for the expiration of the current Regulation; my officials continue to work to identify the most likely Council.

An analysis of the dates shows that there are a number of opportunities for Council to continue to review and influence the text over the next 6 weeks as its progresses at a rapid pace in an attempt to secure a First Reading deal so that the new Regulation is in place as the existing one expires on 30th June 2012 so that consumers continue to enjoy the protection from regulation.

4. CONCLUSION

In summary, I am content that the current draft of the Presidency Compromise text is an improvement over the original proposals, that it generally meets HMG’s overarching negotiating objectives and can be considered to be a robust fit-for-purpose Regulation. However, this view is caveoted that HMG is able to secure a successful outcomes for those remaining issues detailed above.

With this timetable in mind, I am keen for us to continue to work together and I propose that I write again in advance of the second COREPER associated with this issue - due to take place on Wednesday 21st March 2012 – further reporting on progress, a further assessment of the new Presidency text that will then largely reflect the changes introduced by the EP and updating you on the outcomes of the specific issues detailed above. In the interim, please do not hesitate to contact me if you have any further queries on this important dossier.

24 February 2012

RADIATION PROTECTION (14450/11)

Letter from the Chairman to Charles Hendry MP, Minister of State, Department for Energy and Climate Change

Thank you for your explanatory memorandum of 19 October 2011. The Committee has decided to hold document 14450/11 under scrutiny.

We note that the document anticipates further and more detailed assessment in the future, and as a result only presents concerns in outline. We would be grateful for a full and firm explanation of the Government’s position as soon as possible after those further assessments. We wish to defer consideration of the proposal – and particularly the claim of unnecessary and disproportionate additional burdens – until then.

We are grateful for your analysis of the political context of the negotiations for this proposal. We would appreciate some more information on your views as to the impact this context could have on the proposal and its specific provisions.

You note extensive consultation with industrial stakeholders. We would appreciate hearing more about the balance of views amongst those canvassed, as well as the balance of sectors from which those stakeholders were drawn. We would also like to be kept up-to-date on further consultations, given your point that the previous draft consulted on was more than 18 months older than the final proposal.

We would be content for all of these points to be consolidated within a single additional response after more detailed consideration. As a result, we do not expect a response within the usual 10 working day deadline.
*Letter from Charles Hendry MP to the Chairman*

Thank you for your letter dated 7 December 2011, giving your initial comments on the Explanatory Memorandum of 19 October 2011.

I note that you have decided to hold the EM under scrutiny pending a more detailed explanation of the Government’s objectives for the negotiation of the proposal. I therefore attach at Annex A [not printed], a summary of the UK’s objectives for this dossier.

All Member States are currently scrutinising the draft proposal in detail but have submitted initial written comments. These comments cover a wide range of topics and issues and highlight the difficulties that may be encountered in the forthcoming negotiations due to the breadth of scope of the proposal which contains 108 detailed Articles and 15 Annexes. My officials, with the assistance of the Cross Government Basic Safety Standards Group, are currently finalising a detailed Impact Assessment. However, it is already clear that some of the proposed amendments to the existing regime will require regulatory changes in the UK that would not provide additional benefits in terms of increased protection. The initial high level/checklist impact assessment attached at Annex B seeks to outline costs and benefits of implementing the issues covered in Annex A.

7 February 2012

*Letter from the Chairman to Charles Hendry MP*

Thank you for your letter of 7 February 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 5 March 2012. The Committee has decided to retain the document under scrutiny.

We thank you for your comprehensive response to our initial queries. Your case was well-argued, cogent and persuasive. The areas you have highlighted do indeed appear to grant insufficient flexibility and at times take an over-cautious approach, even taking account of the importance of safety standards in this area. We offer our provisional support for your position on that basis. Nevertheless, we wish to retain the document under scrutiny until we have examined the Impact Assessment, the preparation of which you referred to in your letter, to scrutinise fully the arguments you have put forward. In particular, we would like to hear more as to whether the period since the last of these measures was adopted in 2003 in any way calls for the more cautious approach in the area proposed by the Commission.

Given the dependence on the Impact Assessment, we are content to defer a response beyond the usual 10 working day deadline should it not be complete by that stage.

6 March 2012

RAILWAY PACKAGE (13788/10, 13789/10)

Letter from the Rt. Hon Theresa Villiers MP, Minister of State, Department for Transport, to the Chairman

LETTER RECEIVED IN CONFIDENCE.

31 January 2012

RECORDING EQUIPMENT IN ROAD TRANSPORTATION (13189/11, 13195/11)

Letter from Mike Penning MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

I am writing further to my letter of 21 November, to provide an additional update on this proposal ahead of the Transport Council meeting on 12 December.

I can now report that negotiations in Council Working Groups have resulted in some key developments. The most recent of these make the following important changes:
— The proposed ban of operators with tachograph workshops from installing or calibrating tachographs in their own vehicles has been removed. This would leave Member States to take appropriate measures to prevent conflicts of interests between workshops and operators.

— The delegated acts proposed for the specification of the technical measures (Global Navigation Satellite System location recording, Remote Communications and Intelligent Transport System interface) have been replaced with Implementing Acts with the Examination Procedure. This change reduces the risks of increased costs and burdens via future decisions taken by the Commission - by providing a Committee decision based on a qualified majority vote.

— The text is now clear that, in developing specifications for satellite positioning capability, the Commission may not require the use of a service that would attract a fee.

— The use of the remote communications facility by enforcement authorities would be optional.

The above changes are significant in terms of minimising the costs for industry and the Government. The ‘partial’ General Approach which the Polish Presidency is aiming for at the 12 December Transport Council is expected to include the above provisions.

The Government will resist as far as possible other provisions that might still impose unnecessary burdens or additional costs on Government or Industry which we think would add no value.

In addition we continue to await the Commission’s anticipated application to the Council for a mandate for the EU becoming a contracting party to the AETR, in order to consider this matter and check for impacts on Member State influence.

My previous letter alerted you to the Polish Presidency’s intention to seek a partial General Approach on the proposed Regulation at the Council, which would exclude any agreement on articles which propose merging tachograph cards and driving licenses. Negotiations are continuing, and it is not yet clear whether the Presidency will be able to achieve their objective of this Partial General Approach. However, due to the tight timeframes before the December Council it will unfortunately not be possible to report the outcome of further negotiations to you and give you a full picture of the shape of the partial General Approach in time for the Committee to consider it ahead of the Council. I appreciate that the Committee may, therefore, not wish to lift its scrutiny reserve on the proposal at this stage; however I would be grateful if the Committee could indicate that they are content for the Government to support a partial General Approach, pending completion of scrutiny at a later date.

I will of course continue to keep your Committee informed of developments.

1 December 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letters of 21 November and 1 December. The Committee has decided to clear document 13189/11 from scrutiny, and to grant a scrutiny waiver for document 13195/11 to allow a vote to take place on that proposal at the 12 December Transport Council meeting.

Your letter attends to concerns that were outstanding with respect to CEN and AETR in the Communication. We are therefore content to clear the document and resume scrutiny of the EU becoming a party to the AETR when any such proposals emerge.

We appreciate your initial impact assessment, which outlines a number of areas where there could be a significant impact on businesses and enforcement agencies in the UK. We were glad to see the results of negotiations so far have sought to reduce or remove those burdens where they occur. We urge you to continue this strong stance in further negotiations.

The question of whether stronger compliance measures are required was left somewhat open by your letter, given that your estimate is of 12% non-compliance in targeted vehicles. This figure could be used to support the Commission’s case for a stronger regime as well as your own, depending on interpretation. We would like more information on the criteria on which targeted enforcement operates to facilitate analysis by the Committee. However, you note that this aspect of the proposal will form a part of consultations with stakeholders in the future, and so we are content to defer consideration until the argument is outlined in more detail.
In the pursuit of an open market, we would like to see figures showing the state of non-compliance detected by enforcement officers by the country of origin of the vehicle; and also the Government’s assessment of the efficiency of the enforcement regimes when breaches are reported to the country of origin.

Overall, though it is unfortunate that there is not more detail for the Committee to consider at this stage, we are appreciative of the engagement you have demonstrated and the direction of travel you have spelled out with respect to negotiations. As a result, we are content to grant a scrutiny waiver for the proposed Regulation, to allow the Government to agree to the ‘partial’ General Approach outlined in your letter.

7 December 2011

Letter from Mike Penning MP to the Chairman

I am writing to provide an update on this proposal following the Transport Council meeting on 12 December. Thank you for your letter of 7th December - I am grateful to the Committee for clearing the Communication document (13189/11) from scrutiny and for granting a scrutiny waiver to allow support of the partial General Approach at Council.

I can now report that the partial General Approach was supported and was agreed at the Transport Council on 12th December. The partial General Approach was as described to the Committee in my previous letter, including the important amendment removing the proposed ban of operators with tachograph workshops from installing or calibrating tachographs in their own vehicles. Negotiations on the excluded measure to merge the driver card and driver licence - are expected to begin in the new year.

I note the further information required by the Committee about compliance measures, enforcement and related details – and that you recognise that this area of the proposal will form part of consultations with stakeholders, and that the Committee is content to consider this further when more detail is available.

I will of course continue to keep your Committee informed of further developments, including when any proposals for the EU becoming a contracting party to the AETR emerge.

20 December 2011

RECREATIONAL CRAFT AND PERSONAL WATERCRAFT (13336/11)

Letter from the Chairman to Mark Prisk MP, Minister of State, Department for Business, Innovation and Skills

Thank you for your letter of 23 November 2011, which was considered by the Sub-Committee on Internal Market, Energy and Transport at its meeting on 12 December. They decided to clear document 13336/11 from scrutiny.

We are entirely supportive of the Government’s wish to ensure that the proposal reflects current practice across Member States with respect to “partly completed” craft, and support your negotiating stance in this respect.

Regarding Post Construction Assessment (PCA), we are supportive of your desire to ensure flexibility in the use of any regime and therefore lend our support to your wish to see the system available where required to deal with a situation proportionately and effectively. However, we would have appreciated more evidence to support your assertion that the new provisions impose “extensive burdens” which would “in practice be impossible” for private individuals to meet, and would be grateful to receive more evidence to support claims of that kind in the future.

We do not expect a reply to this letter.

13 December 2011
*Letter from the Chairman to Edward Davey MP, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills*

Thank you for your explanatory memorandums of 24 November, which were considered by the Sub-Committee on Internal Market, Energy and Transport on 16 January 2012. They decided to clear both documents from scrutiny.

We note your view that the Commission’s approach to Corporate Social Responsibility is based upon similar principles to that of the UK Government. We further note your concerns about the proposal on the disclosure of social and environmental information, which we will look forward to scrutinising alongside any changes to existing measures, once they are published by the Commission and deposited in the usual manner.

17 January 2012

SAFETY OF OIL AND GAS PROSPECTION, EXPLORATION AND PRODUCTION ACTIVITIES (16175/11)

**Letter from the Chairman to Charles Hendry MP, Minister of State, Department of Energy and Climate Change**

Thank you for your explanatory memorandum of 24 November, which was considered by the Sub-Committee on Internal Market, Energy and Transport at its meeting on 12 December. They decided to retain it under scrutiny.

Given that the chances of an accident remain high, we support efforts to push for the highest standards of safety in this area. We note the Government’s faith in the UK’s current regulatory system and their initial view that an additional layer of regulation at the EU level may not ‘add value’ in this respect. However, with reference to the EM’s point about the choice of legal instrument, we would welcome your views on whether the use of a Directive rather than a Regulation may mitigate some of the Government’s concerns about the current form of the proposal while also allowing for a degree of pan-European harmonisation to be achieved.

I look forward to receiving a reply to this letter within the standard 10 working days. We would also be grateful if updates could be provided, in due course, concerning any significant developments which arise in the negotiations as they develop.

13 December 2011

**Letter from Charles Hendry MP to the Chairman**

Further to the Explanatory Memorandum I submitted to the Committee on 24th November on the EU proposed Regulation on Safety of offshore oil and gas, please see the attached impact assessment [not printed] which was not completed in time to accompany the Explanatory Memorandum.

The draft proposal is still in the early stages of the negotiation process. Denmark has already indicated that this dossier will be not be their highest priority during their presidency. It is possible that negotiations will extend into the Cypriot presidency in the second half or 2012.

In the negotiations so far, there has been broad support amongst all Member States for the intent of the proposals but with several States reserving their positions on the form of the proposal, preferring a Directive to a Regulation. There have also been widely expressed concerns about the proposed structure of Competent Authorities in Member States.

15 December 2011

**Letter from Charles Hendry MP to the Chairman**

Thank you for your letter in response to my explanatory memorandum of 24th November. I note that the Sub-Committee on Internal Market, Energy and Transport has decided to retain it under scrutiny.
I am pleased that you support our continuing efforts to push for the highest standard of safety for the offshore industry. It is indeed the case that a carefully crafted Directive should be capable of delivering high standards across Europe while avoiding some of the potentially disruptive effects which a Regulation might have on our existing system in the UK. I propose to argue strongly for such a change to the proposal but, recognising that unanimity among Member States is required for such a change, and that both Germany and France have spoken in favour of a Regulation, realise that we may not be able to achieve this desired outcome. If that appears to be the case, I shall argue for a Regulation with terms that are sufficiently flexible to allow us to achieve our objective of minimising disruption to our existing effective regime and also allowing us to introduce continual improvements to it.

21 December 2011

SMES: AN ACTION PLAN TO IMPROVE ACCESS TO FINANCE (18619/11)

Letter from the Chairman to Mark Prisk MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 17 January 2012. This proposal was considered by the Sub-Committee on the Internal Market, Energy and Transport as its meeting on 13 February 2012; it was decided to clear it from scrutiny.

The Committee welcomes this helpful summary of the measures being taken to improve access to finance for SMEs. Support for SMEs should remain a high priority in these difficult economic times. This is of particular relevance in the context of recent reports on the Project Merlin deal, which show that the five main UK banks missed their lending target to small businesses in 2011.

However, it is important that the added value of EU intervention in this area is considered carefully, especially in the case of EU financial instruments, which should only be pursued if they clearly complement, rather than duplicate or replace, support at national level. Attention should also be paid to ensuring that all EU measures also complement each other. In all cases, the principle of subsidiarity must be respected.

The Committee is aware that the majority of the measures set out in this Communication have already been subject to scrutiny, or will be subject to scrutiny in the future. We look forward to further correspondence with you on these. In the meantime, we are content to clear this document from scrutiny.

No reply to this letter is expected.

14 February 2012

SOCIAL BUSINESS INITIATIVE (16628/11)

Letter from the Chairman to Nick Hurd MP, Minister for Civil Society, Cabinet Office

Thank you for your explanatory memorandum of 28 November, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 23 January 2012. They decided to clear it from scrutiny.

We note your broad support for the proposals in the Communication and their potential to contribute to the Government’s domestic aims of improving the position of social business. We further note your concerns about the potential subsidiarity issues that may result from some of the proposed measures specified in the Communication, which we will look forward to scrutinising alongside any changes to existing measures, once they are published by the Commission and deposited in the usual manner.

24 January 2012
Letter from the Chairman to Norman Baker MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your explanatory memorandum of 10 January 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 27 February 2012. The Committee decided to retain the document under scrutiny.

In principle, we support putting in place more stringent noise limits in order to send a clear message to the international community on the importance of reducing noise levels. At present, though, assessing the merits of the proposal is largely dependent on your impact assessment, especially given the asserted 20:1 cost-benefit ratio in the Commission’s own document. As a result, detailed consideration is best left until that stage. We would appreciate you providing a detailed update on your position alongside a copy of that impact assessment when it is ready.

Despite the early stage of the proposal, we agree that there are concerns regarding its evidence base, given that the suggested testing procedures were based on an unrevised version of UNECE Method B. When you call for “careful consideration” of the change, do you propose a reversion to the established version of the test procedure, or further evidence-gathering as regards the new method proposed by the Commission? We also agree in principle that the revision of noise limit values is properly a matter for European primary legislation. However, we would appreciate you outlining your case in more detail before we reach any conclusion.

We note that the proposal suggests requirements for hybrid and electric vehicle noise systems. Given that the fitting of such systems will not be mandatory, we would appreciate your view as to whether it would be more suitable to have such standards in place as guidance rather than requirements. We would also like to know whether you consider the proposed standards to be suitable, regardless of what form they ultimately take.

You raise interesting points regarding dispensation for low volume vehicle manufacturers and the impact of testing methods on sports cars and vehicles modified for wheelchair access. We would be grateful for more detail as to your assessment and proposed actions in those respects in your response.

Finally, we would be grateful for your assessment as to whether, alongside these actions, the impact of road surfaces on overall vehicle noise levels should be subject to corollary action at EU level.

Given the importance of the impact assessment to future correspondence, we are content to receive a response after the usual 10 working day deadline.

28 February 2012

SULPHUR CONTENT OF MARINE FUELS (12806/11, 13016/11)

Letter from the Chairman to Mike Penning MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letter of 23 November 2011, which attended in detail to the points raised in our previous letter. We have decided to retain document 12806/11 under scrutiny.

Your points on fuel sampling were compelling. Like you, we do not support provisions out of step with those agreed in the MARPOL Annex without strong supporting evidence. We would urge you to engage with the Commission to elicit the evidence they feel justifies a more comprehensive sampling regime in order to enhance the debate in this area.

We were swayed by your idea of monitoring compliance after the limits are introduced, with additional sampling requirements then imposed if needed. How likely do you think such a result would be to emerge out of negotiations on this proposal?

You raise two separate points in relation to sulphur limits. On the idea of sulphur limits for passenger ships outside of ECAs, the potential for distortion of competition is rightly highlighted. However, we note that specific limits in such circumstances were in place in the 2005 Directive. Are you proposing to keep limits at 2005 levels, or to remove such limits altogether? With respect to the idea of a strict 3.5% limit overall, we are also supportive of your stance given that it would preclude choice over the use of exhaust cleaning mechanisms.
There were also a number of points raised on abatement. We support entirely your opposition to additional EU trials for abatement mechanisms; we hope you negotiate strongly to prevent this unnecessary burden. As to the idea of COSS, and not Member States, approving alternative abatement systems, we share your concern over such an extension of Commission competence where not called upon by the MARPOL Annex. However, we also think that such a centralised role could reduce the administrative burden associated with the regime and support consistent interpretation. We would appreciate hearing more detail as to the Government’s justification for their opposition.

There were, finally, two points on timing. Your desire for an 18 month deadline seems uncontentious in light of your explanation and we would now support your position. As to the provisions of the MARPOL Annex not being enforced actively prior to adoption of the Directive, we find this rather disappointing. Is the UK failing to enforce the provisions actively, or is this an issue only in other Member States? Given this non-enforcement, we urge a rapid conclusion to negotiations.

In light of these concerns, and the fact there is an impact assessment yet to be produced, we wish to hold the document under scrutiny. We are content to have all of these points addressed in correspondence alongside the impact assessment when it is compiled, and thus do not require a response within the usual 10 day deadline.

7 December 2011

TELECOMS COUNCIL (13 DECEMBER 2011)

Letter from Ed Vaizey MP, Minister for Culture, Communications and Creative Industries, to the Chairman

I am pleased to enclose a copy of my written statement [not printed] to Parliament outlining the agenda items and the positions I intend to adopt on each of them for the forthcoming Telecommunications Council taking place on 13th December in Brussels.

8 December 2011

THE USE OF SECURITY SCANNERS AT EU AIRPORTS (UNNUMBERED)

Letter from the Chairman to the Rt. Hon Theresa Villiers MP, Minister of State, Department for Transport

Thank you for your letter of 24 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 5 December.

We are grateful for your letter and appreciate that the timescales which applied to the negotiation and adoption of these measures was, in part, responsible for the circumstances which prevented us from conducting meaningful scrutiny. Looking to the future, we welcome notification of the trial exercise which you intend to conduct and hope that this will prevent further incidents of this nature from occurring. We note that discussions are ongoing with the Cabinet Office about how to achieve the better scrutiny of delegated and implementing measures more generally, and we will consider this exercise in that context.

We do not expect a reply to this letter.

7 December 2011

TRANS-EUROPEAN ENERGY STRUCTURE (15813/11)

Letter from Charles Hendry, Minister of State, Department for Energy and Climate Change, to the Chairman

Further to the Explanatory Memorandum I submitted to the Committee on 15 November on the EU proposed Regulation on Guidelines for Trans-Europian Energy Infrastructure, please see the attached impact assessment [not printed] which was not completed in time to accompany the Explanatory Memorandum.
Negotiations on this dossier have just begun and it has been highlighted as one of the priorities of the Danish Presidency.

In the negotiations so far, there has been broad support amongst all Member States for the core proposals to facilitate investment in key energy infrastructure across the Union by devising a system to agree Projects of Common Interest (PCIs) in twelve priority corridors / areas and to streamline permitting and consenting procedures. There is also some support for the Commission’s proposals that where the market has failed to deliver PCIs but there are significant positive externalities (such as security of supply or innovation) and the project has received a cross border cost allocation decision under provisions of the Regulation, some limited public funding may be appropriate.

15 December 2011