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 December 2009 to April 2010.

**INTERNAL MARKET, ENERGY AND TRANSPORT**

**(SUB-COMMITTEE B)**

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Letter from Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

You may recall that the proposal for a Decision on the first stage of the air services negotiations with the United States of America was the subject of Explanatory Memorandum 8656/06. Previous correspondence on this issue rests with Jim Fitzpatrick’s letter of 9 July 2008 to Lord Grenfell, which notified your Committee that the first round of stage two of the agreement took place in May 2008 with both sides making initial presentations on their ideas and objectives for stage 2. At that point it was not expected that much substantive progress would be achieved for some time after the US Presidential elections. It may be helpful if I let you have a short up-date on further developments since then.

As anticipated in that letter, the negotiations were effectively put into abeyance in the period around the US Presidential elections and the appointment of a new Administration. Since then there have been three further rounds of discussions, most recently in November 2009.

As you may be aware, Article 21 of the Stage 1 Agreement set out the starting point and a timetable for the negotiation of a second stage. We have now reached the point envisaged in that timetable where a review of progress is due to take place. To that end the Commission, who lead the negotiations on behalf of the EU and its Member States, will be presenting a progress report to the Transport Council on 17 December, and seeking guidance on the next steps.

During the 5 rounds of discussions to date, both sides have tabled proposals for amending or supplementing the existing agreement. The proposals have covered all the areas mentioned in Article 21 (2) of the existing Agreement as priorities for the second stage, i.e.

a. further liberalisation of traffic rights;
b. additional foreign investment opportunities;
c. effect of environmental measures and infrastructure constraints on the exercise of traffic rights;
d. further access to Government-financed air transportation; and
e. provision of aircraft with crew.

Proposals have also been made in a number of other areas, including security, enhancing the future role of the Joint Committee set up under Article 18 of the Agreement, mutual recognition of certain regulatory determinations, and enhanced cooperation on addressing the environmental impacts of aviation.

At this stage no agreement has been reached on any of these items, though common understandings have been reached on some. It is also clear that many of the proposals advanced by the two sides would require amendments to existing legislation, either in the US (as regards some aspects of items a), b), d) and e) above) or in the EU (as regards some aspects of item c)). An important aspect of the discussions is therefore how an agreement can be framed, within the timetable envisaged for the negotiations, in anticipation of possible future legislative change, and without pre-empting the respective legislative procedures.

Lord Grenfell’s letter of 12 March 2008 indicated that Sub-Committee B was particularly interested in developments on US carrier ownership rules, on the Fly America arrangements, and on Cabotage. Each of these areas has been addressed in the negotiations, and in each case the European Commission has put forward proposals for the removal of restrictions, on a reciprocal basis where applicable. There has as yet been no firm progress on any of these issues. On each of them the US side has indicated some further relaxation of controls would be possible in some areas within the existing legal framework, but that, as noted above, substantial change along the lines envisaged by the EU side could not be delivered without amendments to US domestic legislation. In particular, current US law does not allow foreign carriers to operate cabotage flights (i.e. routes within the US), does not allow foreign investors to own more than 25% of or exercise effective control over US carriers, and does not permit foreign carriers to participate in the Fly America programme.

So far as the UK is concerned, having consulted stakeholders, we have sought to prioritise investment liberalisation as the most important area in which we would like to see progress made during these negotiations. We also see enhancement of cooperation between the EU and US on the environmental impacts of aviation as a potentially fruitful area for further action.

Discussions are likely to continue and intensify in early 2010, and the in-coming Spanish Presidency has indicated that this is likely to be one of its priorities in the transport area. The timetable set down envisages finalisation of an agreement within 12 months of the review (ie by November 2010), after
which, if no agreement has been reached, the Parties have the option to suspend rights specified in the Stage 1 agreement. We do not expect that a depositable document will be issued for some time yet, but I would be happy to provide your Committee with a further update on discussions during the Spanish Presidency.

3 December 2009

Letter from the Chairman to Paul Clark MP

Thank you very much for your letter dated 3 December 2009. Sub-Committee B considered the letter at its meeting on 11 January.

We are pleased to receive an update on this matter as we are very interested on progress on EU-US stage 2 aviation agreement. We would like to continue to receive further updates, especially in regard to developments on US carrier ownership rules, Fly America arrangements and on cabotage. We are looking forward to hearing about how the Spanish Presidency intends to reach progress on these areas. We would also like to receive an account of discussions that took place at the Transport Council on 17 December. At an appropriate point in the negotiations we may wish to conduct an evidence session on the agreement.

12 January 2010

Letter from Paul Clark MP to the Chairman

I wrote to you on 3 December about the on-going negotiations on this agreement, and Sub-Committee B subsequently took evidence from my officials on 8 February. I believe it would now be timely to bring your Committee up to date on further recent developments.

As anticipated in that letter, the pace of the negotiations has intensified in the early part of this year. There have been two further rounds of discussions so far in 2010, the latest on 15-17 February, hosted by the Spanish Presidency in Madrid.

Following that meeting the Commission negotiators reported back to the EU Transport Council on 11 March. The Commission reported that considerable progress had been made towards agreement on further enhancing cooperation between the EU and the United States on a range of regulatory issues in the aviation field, notably in the areas of environment, security, competition and reciprocal recognition of certain decisions in order to reduce the regulatory burden on airlines. The UK Government agrees that substantial progress has been made in these areas, and in particular welcomes the new understandings reached on the environment which, upon final agreement, would cement closer co-operation between the EU and US in tackling the global impacts of aviation. This would represent a significant step forward and reflects recent developments in the US position on this issue.

The Commission further reported that the negotiations had narrowed the areas of difference on a number of other outstanding matters such as the further expansion of traffic rights and access to third country markets, investment in third country airlines, relaxation of the restrictions on access by EU airlines to US Government traffic (the “Fly America” programme). The UK Government agrees that progress has been made in these areas which should enable them to form part of a final agreement.

The Commission reported that three key items required further negotiation before a final package could be put to Ministers for consideration. The first concerns the relaxation of restrictions on foreign investment in airlines, which, as noted in my previous letter, is a priority issue for the UK, but which would require changes to current US domestic legislation before it could be achieved. The second concerns procedures for the introduction of noise controls at airports, which is a matter of particular concern to the US side. And the third concerns mechanisms for the further development of the agreement, including the possibility of granting additional rights in the future once relevant legislative reforms have been delivered on either side.

The Transport Council welcomed the Commission’s report and the progress made to date and asked the Commission to continue the negotiations. Discussions are set to resume later this month. If an acceptable outcome can be found on the remaining issues, the Commission negotiators are likely to bring the proposed agreement to the Transport Council in June for consideration by Ministers. They will also at that stage need to propose a draft Council Decision authorising signature of the agreement, which will of course be a depositable document.

22 March 2010
Letter from the Chairman to Paul Clark MP

Thank you very much for your letter outlining progress in the negotiations of the EU-US stage II aviation agreement. The Committee considered the letter at its meeting on 29 March. As we maintain a great interest in this matter, we would be grateful to be kept informed on any further developments.

As discussed at the evidence session with officials in February, we would like to hold a further evidence session at an appropriate point when negotiations have progressed.

30 March 2010

AVIATION: PREVENTION OF ACCIDENTS (15469/09)

Letter from the Chairman to Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport

Thank you very much for your Explanatory Memorandum. Sub-Committee B considered the document at its meeting on 11 January and decided to clear it from scrutiny.

However, we are not entirely convinced that the choice to substitute the current Directive with a Regulation is justifiable and would welcome the Government’s view on this matter.

13 January 2010

Letter from Paul Clark MP to the Chairman

Thank you for your letter of 13 January 2010 noting Sub Committee B’s clearance of the above proposal from scrutiny. I am writing in response to that letter, and also to bring you up to date with progress in negotiations.

You noted that the Committee was “not entirely convinced that the choice to substitute the current Directive with a Regulation [was] entirely justified and would welcome the Government’s view on this matter”. It may be helpful if I explain the rationale for a Regulation in the context of wider European Union aviation safety standards legislation.

The European aviation safety policy objective is to ensure a high level of safety throughout the EU. The main pillars of this system are a set of common safety rules which are directly applicable in a uniform manner across the EU through legislative instruments in the form of EU Regulations. For example, EC Regulation No. 3922/91 (commonly known as “EU-Ops”) sets out harmonised technical requirements and legislative procedures for civil aviation; EC Regulation No 549/2004 establishes the framework for a Single European Sky; and Regulation EC No 216/2008 sets out common rules in the field of civil aviation and establishes the European Aviation Safety Agency.

The current regulatory framework dealing with accident investigation i.e. Directive 94/56/EC is over 15 years old. Since its adoption, there have been significant changes in aviation, namely:

— substantial growth in air traffic;
— increasing complexity of investigations and equipment;
— varying capabilities of accident investigation bureaux, due to EU enlargement and the level of specialisation required to conduct investigations; and
— the advent of a new player, the European Aviation Safety Agency (EASA) and, consequently, a need to clarify its responsibilities (insofar as international law allows) in the field of accident and incident investigation.

A new Directive might be suitable to meet some of the objectives of the proposed legislative approach. However, it would not be legally sufficient to ensure uniformity of approach across all Member States in delivering European aviation safety policy and, in particular, would be legally insufficient to clarify the mutual rights and obligations of EASA and national accident investigation authorities in accident investigations. This is particularly important given the need to maintain the independence of national accident investigations whilst recognising EASA, on behalf of Member States, has responsibilities for the airworthiness of aircraft, air operations, flight crew licensing, oversight of third country aircraft, and the safety aspects of air traffic management and air navigation services and aerodromes. The need for clarity was also noted by the International Civil Aviation Organisation (ICAO) in a recent audit of EASA.
Should the current regulatory proposal take the form of a Directive, there is a distinct possibility of variations in the implementation of safety standards across Member States. Consequently, it is appropriate to give consideration to a Regulation as an effective and proportionate means of updating the legislative framework and contributing to the overall objective of ensuring high and uniform levels of safety across the EU.

I hope this provides appropriate clarification.

I would also like to take this opportunity to provide you with a progress update on the proposal. The Government’s consultation on the proposal is due to close on 3 March 2010. However, negotiations are progressing rapidly in Council working group and we anticipate that the Spanish Presidency will seek a general approach in time for the Transport Council on 11 March. Subject to review of textual revisions arising from the outcome of working groups on 1 and 2 March, it is possible that the UK might wish to support a general approach at the Council.

GOVERNMENT CONSULTATION – GENERAL

The Government has received 9 responses to its consultation on the proposed regulation: these included responses from bodies representing pilots and passengers, as well as a response from one airline and one manufacturer. Of these nine responses, 4 provided direct responses to the questions raised in the consultation document and 5 provided general comments and observations. All responses were broadly supportive of the proposed regulation and none raised any issue which has not already been subject to discussion in working group or which has caused the UK to alter its negotiating position.

In summary, all respondents agreed that there was a need for change in order to improve the efficiency of investigations of accidents and incidents in civil aviation across Europe and approved the broad thrust of the Commission’s Impact Assessment, conclusions and preferred options.

GOVERNMENT CONSULTATION – DETAIL

Creation of a Network

All respondents supported the proposed creation of a European Network of Civil Aviation Safety Investigation Authorities, commenting that such a system would strengthen the coordination of activity and lead to improved safety in aviation.

It has been agreed in Working Group that a Network should be established, and negotiations are ongoing to determine the core functions of this Network.

Role of EASA

Given EASA’s responsibility to produce airworthiness directives, respondents recognised the need for EASA to have a role in safety investigations. However, most did not agree entirely with the Commission’s approach to the Agency’s involvement. Respondents suggested that EASA, as the European safety regulator, should participate but only in manner which did not impinge the independence of the investigator in charge and did not lead to a conflict of interest with the Agency’s regulatory responsibilities. Respondents suggested that EASA’s involvement should be aligned with the role of advisor as set out in International Standards and Recommended Practices under Annex 13 to the Convention on International Civil Aviation (the Chicago Convention). Such responses align with the view expressed by the UK in on-going Council working groups. All respondents supported the Commission’s proposal that EASA should have full access to all of the information contained within the European central repository of mandatory occurrence reports to enable the Agency to undertake analyses of occurrences and enhance its capability to deliver effectively its safety responsibilities.

Negotiations in Working Group have led to changes to the Article outlining the role of EASA. I am reassured that these changes reflect the concerns expressed by consultees. Amendments to the text have modified EASA’s involvement to that of advisor, in line with International Standards and Recommended Practices, and clarified EASA’s role so as to limit its rights to those afforded to safety regulators, thus ensuring the Agency’s participation will not lead to a conflict of interest with its regulatory responsibilities.

Protection of sensitive safety information

The importance of protecting sensitive safety information was recognised and supported by all respondents. The majority of respondents even suggested that the text could be strengthened in order to reinforce the maintenance of a “just culture” approach of open reporting designed to improve aviation safety.
Participants in Council Working Groups are supportive of the need to maintain a “just culture” approach of open reporting. Negotiations in Council Working Groups are ongoing to ensure the wording of the text adequately protects sensitive safety information.

**Passenger lists**

Respondents recognised the benefits of the swift production of a passenger list in the event of an accident and were broadly supportive of the Commission’s proposal that such a list should be provided as quickly as possible. However, rather than the Commission’s focus that such a list should be produced within one hour, one respondent suggested that the requirement to produce an accurate list should take precedence over the need to produce a timely list and that, in some cases, one hour might not be a practicable timeframe.

Participants in Council Working Groups support the production of a passenger list as soon as possible after the occurrence of an accident and the scope of the proposal, as laid out in Article 3, is to be extended to incorporate this obligation. Negotiations are ongoing; it has not yet been agreed, should a time limit be set, how quickly passenger lists will have to be produced.

**Assistance to victims and their families**

Respondents agreed with the Commission’s proposal that Member States should have in place a national plan to provide assistance to the victims of civil aviation accidents and their relatives.

There is strong support in Council Working Group for the Regulation to require Member States have a national plan in place to provide assistance to victims and their relatives. Consequently, the scope of the proposal, as laid out in Article 3, is to be extended to include explicit reference to this requirement.

Further to the closure of the consultation on 3 March, my Department will publish a summary of all responses on its website.

In the meantime, I am satisfied that all responses to the consultation have informed the UK’s negotiating position and I am reassured that the issues raised are being reflected in the discussion and emerging textual revisions from Council working group.

The European Parliament is at an early stage in its consideration of this proposal, and has provisionally scheduled its Plenary first reading for June. I will of course keep your Committee informed of the outcome of the European Parliament’s consideration and will continue to keep you informed of developments as negotiations progress.

4 March 2010

**AVIATION: SECURITY CHARGES (9864/09)**

**Letter from Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman**

Following my initial Explanatory Memorandum (EM) dated 17 June, Sub-Committee B considered this proposal on 6 July, and requested further information for consideration prior to discussion of the dossier at Transport Council. The Swedish Presidency originally hoped that it would be possible to seek a general approach on the proposal at the October Council, but the negotiations were not sufficiently mature for the proposal to be included on the Council agenda and it was not discussed. It is now looking likely that a general approach will be sought at Transport Council in Brussels on 17/18 December, however there are still a number of issues that Member States have not yet been able to resolve in the Aviation Council Working Group so it is possible that the proposal may only be the subject of a progress report.

When my ministerial colleague, Sadiq Khan MP, attended the Transport Council in June (where the proposed Directive was presented by the Commission under ‘Any Other Business’), he set out the headline UK position as wanting: the charging elements of the proposed Directive to match those in the Airport Charges Directive (ACD) as closely as possible; to be sure that Member States’ ability to swiftly impose More Stringent Measures when the security situation demands it is in no way restricted; and, to make sure the proposal does not cause unnecessary administrative burdens on public authorities and private businesses.

The Council Aviation Working Group have considered these proposals in detail at a number of meetings over the last couple of months. Early in the discussions, the Swedish Presidency agreed to consider and put forward some initial drafting suggestions regarding references to impact assessments for More Stringent Measures. I am pleased to report that this included the insertion of text at Article
6 which clarifies that a Member State does not need to do an impact assessment where an MSM targets a specific threat and is intended to be of limited duration. We support this sensible approach as we were previously concerned that the text limited the ability of a Member State to swiftly counter an immediate threat and put in place any necessary security measures needed in order to protect the travelling public. I know that Sub-Committee B had similar concerns. This amendment to Article 6 deals with our main reason for raising subsidiarity concerns in the EM and we were not the only Member State to have raised this same concern.

We put together a public consultation package including an initial Impact Assessment, and this was issued to all relevant stakeholders and published on our website on 21 July. I attach a copy of the initial Impact Assessment (not printed) for your information. In order to assist consultees, we held a stakeholder information event on 7 September, at which around 30 industry colleagues attended, as part of the consultation process. The consultation period formally closed on 25 September and some 23 organisations responded. We are finalising our analysis of the responses and currently in the process of drafting the summary document and Government response. What is clear is that airlines in particular would welcome transparency of charges; smaller airports expressed concern at the administrative burdens they would face if the qualifying threshold was to be below 5 million passenger movements. Impact Assessments for More Stringent Measures were broadly welcomed.

In my initial EM I noted that we had concerns about the potential impact on small airports, including those in the Highlands and Islands. The smaller airports and representative organisations also raised concerns about the costs of implementing this Directive in their responses to the consultation. At a recent working Group the Presidency indicated that they are minded to align the scope of the proposal with the Airport Charges Directive i.e. 5 million passengers per annum threshold, although they may seek to compromise on 2 million to ensure that each Member State has at least one airport covered by this Directive. We could support this compromise as smaller airports such as those in the Highlands and Islands would still not be covered by this Directive.

You asked for my view on Option 4 in the Commission’s Impact Assessment - that Member States should fully finance airport security. The UK is clear on this issue - we view aviation security charges as just one of the many costs of doing business and like other Member States we believe that there should be no obligation on Member States to increase public expenditure in this area – the user should continue to pay.

In our initial Impact Assessment, which formed part of our consultation package, we note that many airports do levy a separate security charge, at a published rate. The most significant of these airports are Manchester and Luton with the notable exceptions being the BAA airports, amongst others. As the UK airport market is largely privatised the UK Government believes that competition between private companies is a better way than regulation to exert downward pressure on prices for the benefit of consumers. However, in the absence of competition and where significant monopoly power exists, regulation is seen as necessary. The Civil Aviation Authority (CAA) performs this role in the UK, currently regulating airport charges at three airports: Heathrow, Gatwick and Stansted.

For the non-price regulated airports, competition between airports ensures that the overall airport charges on airlines are as low as possible. Airlines can then find the best airports for their needs, for example considering location and accessibility as well as the level of airport charge. In this respect, the security charge element of airport charging should not be regarded any differently to other aspects of cost recovery.

For privatised and non-price regulated airports, the Directive’s requirement for cost-relatedness in respect of the security charging element may have the effect of increasing the charge on other elements of airport service to maintain the overall level of charge, as private firms look to maintain profits. However, the presence of competition and the potential for regulatory involvement dictate that the level of profit will not be excessive.

For the price-regulated airports, the regulator already mandates that aggregate income and expenditure attributable to the levying of airport charges and operational activities is disclosed through operational accounts. This is taken into account in the setting of price controls.

While we do not consider that the proposed Directive will have a significant effect on charges levied by UK airports, we do consider that there are potential benefits for UK airlines operating out of other EU airports and consequently UK passengers. The proposal could bring greater visibility of charges, especially in countries which are less market based or have limited regulation, and it therefore may help to drive down costs.

Our principal security concern in the negotiations has been to ensure that Member States’ ability to swiftly put in place More Stringent Measures should not be restricted, and this point has now been resolved. However, as I explained earlier there are a considerable number of issues still to be addressed.
There is still no consensus among Member States and many questions need to be followed up by the Presidency (including better alignment with the Airport Charges Directive). There will be further Working Group consideration of the proposal on 3 December and I will write to you again to set out any progress made (if this discussion results in progress on the issues that I have outlined). There will also be further discussion of the proposal by the Permanent Representatives at COREPER, and of course by Ministers at the Council itself later in the month.

The Government’s view is that this proposal still requires significant further work, and that it is not ready for a general approach. We have made these points strongly to the Presidency. However, if the Council proceeds to discussion of a general approach, we propose to take the line that any agreement needs to ensure a genuine level playing field in all Member States; that the appeals mechanism should be aligned with that in the Airport Charges Directive, and that provisions on cost-relatedness should strike a fair balance between passengers and airport operators.

We will of course continue to provide you with updates on the development of this proposed Directive, including the outcome of the discussions at the Transport Council and the consideration by the European Parliament. The European Parliament held their first discussion of this proposal at the TRAN Committee meeting on 10 November and asked the rapporteur – Jörg Leichtfried MEP – to report back in January. Their main concern was that the proposed Directive did not include any proposals on the financing of aviation security measures by Member States. As stated above, the UK position on this is that the user should continue to pay.

3 December 2009

**Letter from Paul Clark MP to the Chairman**

Further to my letter dated 3 December I promised to provide you with an update following the Aviation Working Group on 3 December. The issues remain largely the same following this discussion, although it would appear that most Member States are content with the threshold for this Directive remaining at 5 million passenger movements, and the Presidency agreed with this approach. This covers our concerns about the administrative burdens that would have been placed on smaller airports.

The Presidency still hopes that it will be possible to reach a general approach at the Council. We therefore propose to take the line, as previously indicated, that any agreement needs to ensure a genuine level playing field in all Member States; that the appeals mechanism should be aligned with that in the Airport Charges Directive, and that provisions on cost-relatedness should strike a fair balance between passengers and airport operators. Unless these issues can be resolved at COREPER on 9 December or during the Council meeting itself we are minded to inform the Council that we abstain from any agreement to a general approach.

7 December 2009

**Letter from the Chairman to Paul Clark MP**

Thank you for your letters on aviation security. We considered the documents at our meeting on 7 December. It was decided to retain the document under scrutiny, bearing in mind your intention, in your letter of 4 December, to abstain on 17 December.

We understand that European Parliament seems determined to provoke a conflict with the Council of Ministers to include in the proposal some provisions requiring public financing for airports security. Therefore we are considering the option to follow up the issue of aviation security with a short inquiry. We will be in touch with the DFT in due course.

8 December 2009

**Letter from Paul Clark to the Chairman**

Further to my letters dated 3 and 7 December 2009 I promised to keep you informed on the progress of this Directive.

My previous letters advised your Committee that the Swedish Presidency hoped that it would be possible to reach agreement on a general approach at the Transport Council in December, and also noted our view that the proposal was not yet ready for this. In the event, the Swedish Presidency also concluded that a general approach was not yet possible, and the Directive was only the subject of a progress report at the Council.

Since the Spanish Presidency took over this dossier they have arranged just one further working group on this Directive. The outcome of that meeting was that another progress report is to be made
at the Transport Council in March. There have been no substantive changes to the amendments previously agreed in the Council working group, in particular that the Directive should only apply to airports handling more than 5 million passengers per annum. The Presidency are now awaiting the outcome of the European Parliament’s first reading of the proposal before returning to it.

The European Parliament has just concluded the Committee stage of its consideration, and the TRAN Committee have voted on a series of amendments to the original Directive; in particular they favour applying the Directive to all commercial airports and to require Member States to pay for More Stringent Measures. The European Parliament’s Plenary first reading is currently scheduled for April.

My letter of 3 December gave an overview of the outcome of our public consultation on this proposal. On 26 January 2010 we issued a summary of responses and the Government response to our consultation on this Directive. I enclose a copy of this summary, which is also available on our website. The responses show that airports are broadly supportive of the 5 million threshold and that airlines welcomed transparency on charges. Most consultees also recognized the need for Member States to be able to introduce additional security measures in response to an immediate threat without first having to carry out an Impact Assessment. A majority of consultees were also concerned about the administrative burdens which could flow from this Directive.

Whilst we continue to consider that the proposed Directive will not have a significant effect on charges levied by UK airports, we do consider that there could be potential benefits for UK airlines operating out of other EU airports and consequently UK passengers. The proposal could bring greater visibility of charges, especially in countries which are less market based or have limited regulation, and it therefore may help to drive down costs. However, the impacts of the proposal remain far from clear, not least because the Commission’s own impact assessment is based on looking at a very small number of airports, in just one Member State. There would be costs for those airports which do not separately identify security costs, there would also be a cost in setting up consultative committees with airlines and a cost to Government in establishing or nominating an Independent Supervisory Authority to ensure the correct application of the measures in this proposed Directive.

Our principal security concern in the negotiations has been to ensure that Member States’ ability to swiftly put in place More Stringent Measures, if needed, should not be restricted; and this point has now been resolved in the current working text. However, we cannot support the amendment proposed by the European Parliament at its Committee stage, which requires Member States to pay for More Stringent Measures: we remain firmly behind the ‘user pays’ principle as it would be wrong to burden the general taxpayer with these costs.

There is still no consensus among Member States; many questions remain unresolved and will need to be followed up by the Presidency (including better alignment with the Airport Charges Directive). There is likely to be a further Council working Group after Easter which will need to consider the stance taken in the European Parliament TRAN Committee and the potential EP plenary vote at the end of April.

The Government’s view is that this proposal still requires significant further work, and that it is not ready for a general approach. We have made these points strongly to the Presidency so we are pleased that the item is only on the March Transport Council agenda for a further ‘progress report’. However, if in future the Council proceeds to discussion of a general approach, we propose to take the line that any agreement needs to ensure a genuine level playing field in all Member States; that the appeals mechanism should be aligned with that in the Airport Charges Directive, and that provisions on cost-relatedness should strike a fair balance between passengers and airport operators.

We will of course continue to provide you with updates on the development of this proposed Directive, including the outcome of the discussions at the Transport Council and the consideration by the European Parliament.

In terms of other EC aviation security legislation I would like to provide you with an update on two other matters. Firstly, the Detroit incident has naturally been a matter of concern and was recently discussed at an Informal meeting of EU Transport Ministers on 12 February 2010 in La Coruña, Spain. At this meeting the UK, along with most Member States, highlighted the need for a review and reinforcement of EC current baseline measures and the application of new technologies. The Presidency expressed satisfaction at the consensus reached at the Informal Council, which will be developed in a joint strategy within the framework of the European Union. The Commission are committed to reviewing current security requirements and considering any potential enhancements—proposals are likely in due course.

The other issue concerns the restrictions on carriage of liquids in hand luggage. I wrote to you on 4 November about the need to replace the current Commission Regulation, which set out temporary

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measures pending the development of an appropriate technology-based solution. As you will recall, after the liquids plot in 2006 EU-wide restrictions on the carriage of liquids, aerosols and gels (LAGs) were mandated by Commission Regulation 820/2008 and a commitment was given to lift these restrictions if and when technology became available to detect liquids explosives. Technology is now sufficiently advanced for the EU to set a timetable for the removal of the current restrictions. That timetable and amendment to Commission Regulations is subject to the Regulatory Procedure with Scrutiny procedure, so after agreement in the aviation security regulatory committee it was passed to the European Parliament, who had until 2 March to veto it (they have no power of amendment under RPWS)—and no veto occurred. We therefore shortly expect the Commission to publish the timetable as follows:

**By April 29 2011** EC airports will have equipment in place to screen Liquids, Aerosols and Gels (LAGs) bought at a third-country airport or on a non-Community carrier and carried by passengers (arriving from outside the EU), through ‘transfer’ points. Such LAGs must be packed in a security tamper evident bag (STEB) which conforms to guidelines laid down by the International Civil Aviation Organisation. The same types of LAGS purchased within the EU and carried in a STEB are already exempt from screening.

**By April 29th 2013** all EC airports shall screen LAGs in accordance with detailed rules set out in implementing regulations. Once published, there could be some media interest once again in this subject.

4 March 2010

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**Letter from the Chairman to Paul Clark MP**

Thank you very much for your comprehensive letter. We are still keeping the proposal under scrutiny as we understand that a general approach is not imminent.

We agree with you that Member States should not finance aviation security measures that are stricter than EU requirements. We urge you to defend this point in negotiation with the European Parliament.

In light of our recent inquiry on impact assessment we are also concerned that the impact assessment accompanying the proposal does not give a clear indication of the implications of the draft Directive, especially for those airports which do not identify security costs separately. We will send you a copy of our report on impact assessment.

We look forward to receiving further updates on progress of the negotiations.

16 March 2010

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**BIOCIDAL PRODUCTS (11063/09)**

**Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions**

Thank you for your letter of 13 November. It was considered by Sub-Committee B on 7 December and they decided to retain the document under scrutiny.

We would like to take this opportunity to express our gratitude to officials from your Department for a very helpful evidence session on 30 November. Their evidence was extremely useful to our inquiry into Better Regulation.

We understand that negotiations are at an early stage and hope to monitor the progress of this dossier closely. It would be very helpful if we could receive a report of the policy debate due to take place at the Environment Council on 22 December, and we would be very grateful if you could send us the final UK impact assessment when it is ready in February. We would be particularly interested to see the Government’s assessment of the costs of including treated materials in the scope of the Regulation.

8 December 2009

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**COMPETITION: EC ANTITRUST RULES (8235/08)**

**Letter from Kevin Brennan MP Minister of State, Department for Business, Innovation and Skills, to the Chairman**

Thank you for your letter of 3 November 2009.
You will know from the information we have been able to provide, informally in the absence of anything formal, that the situation with this dossier was difficult and remains uncertain. The Commission’s proposed private damages Directive was withdrawn from the agenda for adoption by the College of Commissioners at their meeting on 7 October 2009. It was not on the agenda for the further meetings in October of the College, despite suggestions that it would be. As the current Commission is now in ‘caretaker’ mode, the dossier will fall for consideration to the new Commission. Competition Commissioner Neelie Kroes has made this clear in recent public comments.

This situation makes it very difficult to comment on the proposals as it is uncertain whether and in what form, if at all, the new Commission will take this forward. Also any comments would be based on leaked drafts of the proposed Directive which may have changed during what seems to have been a difficult period of inter-service consultation. I can say, however, that we did not expect the proposals to differ much in substance from the Commission’s White Paper and from the previous meetings of Member States with the Commission.

We had concluded at the time of the White Paper that the UK has much of what was being proposed, including on disclosure and collective actions, but that we would need to consider the detail. We were confident that we could negotiate an effective and practical Directive, not least because this was also the aim of the Commission and because so many of our Member State colleagues had similar views on elements of the work. In this context and for example, in your letter you restate the Committee’s concern about the proposal for the codification of damages. Our position on this has not changed from that set out in my letter of 13 July 2009. Codification of the rules on damages is one area where we would need to be satisfied that any proposal adds value and does not undermine the discretion of the courts to assess damages.

The question of EC competence to enact the proposals did arise during the meetings between the Commission and Member States. Broadly, the view among Member States was that while the Commission did have a remit to do this work to tackle barriers to bringing private actions, the question of competence could only be fully assessed with sight of the final proposals and confirmation of the legal base under which these were being made.

It is unclear from what we have seen recently from business organisations and their representatives whether their concern about subsidiarity is a concern in principle about the Commission’s role or just on individual aspects of the proposals, such as representative actions and the so-called “opt-out” option. Their sensitivities about not encouraging what has been called a US style culture of litigation by non-meritorious class actions was and is shared by all parties, including the Commission. A lot of time was spent in the discussions between the Commission and Member States on identifying safeguards in Member States’ current legal systems, such as on costs and maintaining the discretion of Member States’ courts to reject vexatious or non-meritorious claims, in order to mitigate against creating an overly litigious culture. We recognised that in some areas, such as on representative actions, disclosure rules and any “opt-out” option, the proposals would need to be very clear but that these would be issues for resolution by Member States once the proposals had been formally adopted by the College.

You have asked about the position of consumer organisations. As you might expect, they have been supportive of this work, and of the Commission’s initiative for consumer collective redress where there have been breaches of consumer law. Consumer organisations placed a lot of emphasis on the development of effective systems to provide for representative actions, as did a few organisations representing smaller businesses. We have not seen any formal response from consumer organisations to the current situation with this proposal. I do know, however, that at the Commission’s Competition and Consumers in the 21st Century conference, in Brussels on 21 October 2009, the representatives mainly from Member States’ consumer organisations, including BEUC – the European Consumers Organisation, expressed their disappointment with the opposition to the proposed Directive and a motion was passed to urge the next Commission to take the proposal forward. They also drew clear links between this work and the work on consumer redress.

In relation to breaches of consumer law, the Commission published a Green Paper on consumer collective redress in November 2008 (Council doc no. 16658/08), and a follow-up consultation issued in May 2009. These papers set out a series of options for improving consumers’ access to justice and we expect the new Commission to publish their intentions and Impact Assessment into the options in early 2010. In the Government’s Consumer White Paper, ‘A Better Deal for Consumers: Delivering Real Help Now and Change for the Future’, we also announced the appointment of a Consumer Advocate who would be able to take forward a collective action following a breach of consumer protection law once a significant number of named consumers have agreed to join the action to obtain compensation. We expect to consult on this before the end of the year.

I will ensure that you are kept up to date with any developments with the proposed Directive although, as I have said, we shall have to see what the new Commission decides in due course.

4 December 2009

ENERGY: INTERNATIONAL RENEWABLE ENERGY AGENCY (IRENA) (11593/09, 11598/09)

Letter from the Rt Hon Lord Hunt of Kings Heath, Minister of State, Department of Energy and Climate Change, to the Chairman

Thank you for your letter of 13 October regarding the above proposals and my apologies for the delayed reply and for not providing a written explanation of the circumstances of the agreement on the signing of the Statute of IRENA at the Agriculture and Fisheries Council in October 2009 at the time.

This letter is to give you further clarification as requested and to update you on the negotiations.

Initial progress on this dossier was made more quickly than we expected, and in October Member States were asked to adopt a draft Council Decision on the signing of the Statute of IRENA. Although we felt the case for Community membership of IRENA could have been made more fully, other Member States were fully supportive of Community membership and participation in IRENA.

References to early enforcement of the IRENA statute were removed from decision 11598/09, reducing this to a straightforward decision on whether the Community could participate fully in IRENA, and in this case we had no in principle objections.

As this was still under Parliamentary scrutiny however, following discussion on handling with your officials and the Cabinet Office, we decided to abstain from the vote which passed this Decision at the Agriculture and Fisheries Council on 19/20 October. As the vote was under qualified majority voting, my officials were advised that we would not be in breach of our scrutiny obligations, but I apologise that I did not write after the Council to provide this explanation.

The Commission and Presidency subsequently signed the IRENA Statute on 23 November, allowing the Commission to participate in the third Preparatory Commission meeting of IRENA in Abu Dhabi in January 2010.

Decision 11593/09 on the exercising of the rights and obligations of the Community as a member of IRENA was more contentious and has been discussed several times in the Energy Working Party, and is still under discussion, but the Presidency will seek final agreement during early March.

The original draft of this decision contained a Declaration of Competence and a Code of Conduct in relation to the shared competence of the Member States and the Community. Many Member States found the suggested Code of Conduct unworkable, and the Commission accepted its removal.

The draft declaration of Competence is still being discussed with the Commission. Whilst we consider that the EU does have competence in relation to certain areas covered by the IRENA Statute, we do not think it has competence in relation to all areas covered. Issues of competence have been raised most strongly by the UK and Germany, including suggested revised text. We are working to ensure that there is greater precision in relation to the extent of the EU's competence and to avoid any suggestion that the EU has competence in relation to the entire Statute. Final wording is being negotiated with the Commission and its legal services.

I hope that the Committee will allow me to proceed with negotiations to achieve a final outcome in line with our objectives as set out above.

24 February 2010

Letter from the Chairman to the Rt Hon Lord Hunt of Kings Heath

Thank you for your letter of 24 February. It was considered on 1 March by Sub-Committee B who agreed to clear both documents from scrutiny.

We appreciate your abstention from the decision on 19 October in order to respect our scrutiny reserve, but it was extremely disappointing not to have received a letter from you sooner. In any case, we would normally expect to receive replies to letters within 10 days.

Our principal concern with the document was the extent of EU competence, and our previous letter asked about possible inconsistencies between the Declaration of Competence and the Code of Conduct. We are pleased to hear that the Code of Conduct has now been removed as unworkable
but would be interested to know what, if anything, is likely to replace it. On the issue of competence, we agree that the Declaration needs to be clarified and support your efforts to achieve this.

2 March 2010

ENERGY: INVESTMENT PROJECTS IN INFRASTRUCTURE (12235/09)

Letter from the Rt Hon Lord Hunt of Kings Heath, Minister of State, Department of Energy and Climate Change, to the Chairman

Thank you for your letter of 20 October regarding the above proposal.

Your letter sought clarification in respect of three issues, namely:

— the minimum threshold for the requirement to inform the Commission of new energy infrastructure investments;
— the UK position during the negotiation of this draft revised Regulation; and
— why we believe that an impact assessment is not necessary.

On the first issue, the thresholds vary depending on the relevant sub-sector, but in most cases are lower than in the existing Regulation – meaning that more information would be required to be notified than currently. However, subsequent to the Explanatory Memorandum being submitted to your Committee, the Commission has confirmed that information will not be required on a project by project basis (except, we assume, in respect of major and, therefore, infrequent investments such as Liquefied Natural Gas terminals) but only at the level of aggregate capacities. This will reduce the practical impact, and burden, considerably.

On the second issue, the UK’s position in the negotiations will be to support the revised Regulation provided that any additional administrative burden on industry and governments is kept to a minimum. This is a position which we believe is shared by the majority of Member States.

On the third point, we took the view that an impact assessment was not necessary because much of the data is already required under existing legislation and because we calculated that the cost of providing additional data fell well below the cost threshold for an impact assessment. Although the new data that will be required will impose some increased burden on industry and governments, we believe that, with the support of other Member States in the negotiations, we will be able to keep this manageable.

10 December 2009

Letter from the Rt Hon Lord Hunt of Kings Heath to the Chairman

I am writing to update you on negotiations on the above Regulation in advance of the Energy Council on 12 March, when the Spanish Presidency is hoping for political agreement. I apologise for not sending this to you sooner, which was due to an administrative error in my private office.

The purpose of this Regulation is to provide the Commission with a more accurate and fuller picture of the EU’s energy infrastructure than the current Regulation 736/96. The key concern for the UK and other Member States has been to minimise the additional burden on industry and governments.

Progress during the negotiations has been very encouraging in this area, for example:

— Information will only be required at aggregate level – except for major investments such as cross-border pipelines and LNG terminals – reducing the burden of providing information and helping to ensure confidentiality.
— Information will only be required for investments on which the decision to proceed has been taken, with information on possible future investments to be provided only on an estimated basis –, this represents an improvement in both accuracy and reporting burden over the previous Regulation;
— Information already provided under existing EU legislation need not be provided again;
— A proposal to widen the scope of the Regulation to include new investments in hydrocarbons production – which would
have both increased the administrative burden and caused difficulty in defining the information required - has been successfully resisted by the UK and others.

In summary, although the new Regulation will increase the scope and volume of data to be provided, our view remains that the additional burden will be manageable and will be justified by the value of the information provided. Where the UK does not currently compile the data required, e.g. on investments in oil storage and in biofuels, DECC is confident that it can put systems in place to do so without major problem.

We expect political agreement to be reached on this dossier at the Council.

11 March 2010

ENERGY: LABELLING OF ENERGY-RELATED PRODUCTS (15906/1/08)

Letter from Dan Norris MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs, to the Chairman

Political agreement has been reached between Council and the European Parliament on the main aspects of the recast Energy Labelling Framework Directive. However, final agreement of the Directive has been delayed by the need to bring the process for agreeing implementing measures in line with the Lisbon Treaty, which came into effect on 1 December. As this is one of the first Directives to be affected by the Lisbon Treaty, lawyers are considering carefully how best to reflect the changes in the text and the Directive is now expected to be agreed in April or May 2010, coming into force in July with a year for transposition.

The outcomes on the main points are as follows:

— **Layout of the label.** The new Energy Label will look similar to the one we have now, with colours ranging from dark green (the best) to red (the least efficient). It will be based on A to G but, when technological progress requires, additional classes will be added. These will take the form of A+, A++ and A+++.

The highest class will always be dark green, even when extra classes are added (so, when additional classes are added, the A class would become mid green, then light green then yellow). Provided the classes at the bottom of the label are empty (i.e. there are no products in those classes), the number of classes will be restricted to seven. The classification will be reviewed “in particular when a significant proportion of products on the internal market achieves the two highest energy efficiency classes and when additional savings may be achieved by further differentiating products”. This is not the UK’s preferred outcome of a closed A to G scale with regular revalorisation, but we will be working with stakeholders to ensure that consumers will understand the label and be encouraged to choose the most efficient products on the market.

— **Public procurement.** A non-mandatory commitment encouraging all public authorities to purchase energy efficiency products – this is in line with the UK position;

— **Fiscal incentives.** An aim for Member States not to provide incentives below the highest energy efficiency classes – again, in line with the UK position;

— **Advertising.** A requirement that any advertisement for a specific model of product where energy-related or price information is included, should include a reference to the energy efficiency class of that product.

13 February 2010
Letter from the Chairman to the Rt Hon Lord Hunt of Kings Heath, Minister of State, 
Department of Energy and Climate Change

Thank you very much for your letter dated 23 November regarding the proposed regulation on the security of gas supply and your subsequent appearance in front of the Committee. As negotiations proceed at a slow pace, we are keeping the document under scrutiny while awaiting a further update. In particular, we would like to receive further clarification on how additional costs for infrastructures are going to be met.

15 December 2009

Letter from the Rt Hon Lord Hunt of Kings Heath to the Chairman

Thank you for your letter of 15 December 2009 requesting further clarification on how additional costs for infrastructure are going to be met.

Possible infrastructure costs for Member States arising from obligations under the draft Regulation are likely to fall into two categories:

i. costs associated with providing additional infrastructure necessary to meet the N-1 standard (ensuring that a Member State has sufficient remaining capacity to meet total demand in the event of failure of its largest price of infrastructure); and

ii. costs arising from the requirement for transmission system operators to enable permanent bi-directional physical flow capacity on all cross-border interconnections (with the possibility of exemption from this requirement if, for example, the Commission decides the addition of such bi-directional flow would not enhance the security of supply of any Member State).

On (i), the Presidency has introduced a much improved and cleared N-1 formula. Having consulted our national transmission operator, National Grid, we remain confident that the UK will be able to meet the required N-1 standard without the need for new infrastructure and therefore no new costs should be incurred.

On (ii) the UK, as I noted during my evidence to EU Sub-Committee B, sees this requirement as currently drafted, as too open-ended. In particular, we are pressing for agreement that the requirement that cross-border pipelines should have bi-directional flow will apply only if it would provide a significant improvement in the security of gas supply for at least one Member State. There also needs to be a framework in place for agreeing how such projects should be funded, to ensure that costs are borne by those benefiting from such investments.

More generally as I mentioned to the Committee, there are a number of sources of EU finance available to support energy infrastructure development:

— the Trans-European Networks for Energy TEN-E Programme (worth around €22m per annum) is available to provide limited early stage financing for some projects;

— Member States may also be able to apply for money from the Structural and Cohesion funds;

— Earlier this year, Heads of Government agreed to a €4bn package of money for energy infrastructure projects as part of the EU’s Economic Recovery Plan. Of this, around €2.4bn was allocated to gas and electricity interconnection projects, some of which will improve connection in Central and Eastern Europe;

— In addition, the European Investment Bank (EIB) and the European Bank of Reconstruction and Development (EBRD) offer loans for energy infrastructure projects.

5 January 2010

Letter from the Chairman to the Rt Hon Lord Hunt of Kings Heath

Thank you very much for your letter dated 5 January regarding the proposed regulation on the security of gas supply. Sub-Committee B discussed the letter at their meeting on 25 January. We are
keeping the document under scrutiny as we would like to be kept informed on progress on the proposal under the Spanish Presidency.

26 January 2010

Letter from the Rt Hon Lord Hunt of Kings Heath to the Chairman

This letter is to update the Committee on the progress of negotiations on the proposed Regulation on Security of Gas Supply and the significant improvements that the UK, working together with other Member States, the Presidency and the Commission, has been able to secure since I last wrote to you on 5 January 2010.

In my earlier letter, I explained how the UK was seeking to amend the requirement that all cross-border pipelines should have bi-directional flow capability, to allow some flexibility where the benefits from such an investment were limited. The current text now allows for exemption from this requirement on the grounds that it would not significantly enhance the security of supply of any Member State or region. We have also secured language which requires the national regulatory authorities of all relevant Member States to agree on the allocation of costs of any such project, taking into account, in particular, the division of benefits in terms of increased security of supply. These amendments provide greater assurance on the Government’s main concerns in this area.

During the oral evidence session on 30 November, you will recall that I agreed with the Committee that the powers of the Commission had been too widely drawn and too open-ended in the original proposals. I am pleased to confirm that here too we have made significant progress in negotiations such that:

— Commission powers to require changes to risk assessments, preventative and emergency plans of Member States have been removed. References are now to request / recommend;

— Commission powers to require a lifting of a national state of emergency in certain circumstances are now also removed. References are now to request / recommend;

— though the Commission retains the power to require a change of action by a Member State in a Union or regional emergency, the Presidency have accepted our proposed changes that this would only be in the circumstances that Member States introduce measures which:
  - unduly restrict the flow of gas, particularly to affected markets; or
  - are likely to seriously endanger the situation in another Member State; or
  - do not allow cross-border access to infrastructure;

and, unlike previous drafts, Member States ultimately retain the power to refuse to take the action required by the Commission but, where they do so, they must set out their reasoning for that refusal and may be subject to infraction after the event.

The draft legislation now also establishes a mechanism, involving the Gas Coordination Group to try to settle disputes between Member States and the Commission in such an emergency:

— the status of the Gas Co-ordination Group remains an advisory Group;

— the text has been strengthened to emphasise the priority to be given to keeping the internal market functioning as long as possible in an emergency without interference by Member States.

With these amendments, I believe that we are now in a strong position for the trialogue process (Presidency and Commission seeking agreement with the European Parliament) which we expect to begin, at least informally, after Easter. I also believe that the changes we have been able to secure respect subsidiarity, whilst also recognising that it is in the UK’s best interests for the EU market to function as effectively as possible, including in emergencies. As you know, the process is ultimately subject to QMV.
The Spanish Presidency is keen to secure political agreement at the Energy Council on 31 May. In the meantime, we remain vigilant in keeping the powers of the Commission as tightly drawn as possible. We are also mindful of the need to keep coherence with our domestic arrangements as far as possible to minimise any changes that might be necessary as a result of this Regulation. With this in mind, and given we are entering the final stages of negotiations on this Regulation, I hope that the Committee can now feel in a position to lift scrutiny on this dossier.

11 March 2010

Letter from the Chairman to the Rt Hon Lord Hunt of Kings Heath

Thank you for your letter of 11 March. Sub-Committee B considered it at their meeting on 22 March and decided to clear the proposal from scrutiny. We are content with the progress made during negotiation and would like to be informed about the outcome of the Energy Council meeting.

23 March 2010

ENVIRONMENT: ECO-MANAGEMENT AND AUDIT SCHEME (EMAS) (12108/08)

Letter from the Chairman to Dan Norris MP, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter of 25 November, which was considered by Sub-Committee B on 7 December.

We are still somewhat confused as to the sequence of events leading up to the override. Your letter states that “it is of course the case that a politically cleared proposal can be formally adopted by Council as an ‘A’ point at any time”. What do you mean by “politically cleared”? The context of the paragraph implies that this relates to political clearance in the spring.

In our letter to Lord Hunt of Kings Heath of 20 May we asked whether “a Common Position, General Approach or similar was agreed in Council before the European Parliament’s First Reading”. You replied: “I can confirm that no General Approach, Common Position or Political Agreement was reached in Council before the European Parliament First Reading on 2 April 2009”. This, along with the maintenance of the Parliamentary Scrutiny reserve in the Council would imply that no such “political clearance” had been established at that stage.

If by “political clearance” you are referring to agreement in COREPER, we do not accept that the proposal might have been adopted as an “A” point any time thereafter.

The Cabinet Office Scrutiny Guidelines are clear.

At paragraph 6.2.6 they state: “Where the United Kingdom spokesman is asked to indicate the UK’s position on a proposal in COREPER or the Special Committee for Agriculture before it goes to Council for adoption or agreement (including political agreement or a general approach) on a proposal or common position, a Parliamentary Scrutiny reserve (in the sense used in the Council) must be placed on all uncleared proposals”.

At paragraph 6.2.8: “The effect of placing a scrutiny reserve (in the Council sense) should be to prevent the Presidency putting the item to the Council as an ‘A’ point … The Council’s rules of procedure make it clear that only items for which approval is possible without discussion shall be included as ‘A’ points.”

The Guidelines do, however, indicate that the Council Secretariat may do this, rarely, if there is the expectation that the scrutiny reserve (in the Council sense) would be lifted in time for the Council. On the EMAS proposal, UKRep would have had no reason to believe that the House of Lords scrutiny reserve would have been lifted, and therefore should have had no expectation that the Council reserve could be lifted before the Council.

The question remains as to why the Council Secretariat felt able to place the proposal on the agenda as an “A” point when a UK Parliamentary Scrutiny reserve was in place? Further, why, when their intention to do this was made clear, was the reserve removed?

As we understand the situation, the original intention, after the COREPER meeting on 21 October, was for the proposal to be taken at the meeting of 26 October. This was then changed to 10 November, which would have given this Committee time to consider the proposal and clear it from scrutiny. It appears that the proposal was then placed on the agenda for the 26th on the morning of the meeting. Would you be able to explain why this happened? What was the urgency behind the decision to bring agreement forward again?
Finally, we welcome your commitment to improving Defra’s handling of scrutiny, and look forward to receiving your update by the end of the year.

9 December 2009

Letter from Dan Norris MP to the Chairman

Thank you for your letter of 9 December 2009 which asked for further information about how the UK came to remove its scrutiny reserve on the above proposal when it was considered by the General Affairs and External Relations Council (GAERC) on 26 October. I apologise for the delay in replying.

I wholly accept that we should agree to “A” point adoption only following completion of all the scrutiny procedures, and indeed this is the practice we follow. We seek to avoid overrides wherever possible.

On this occasion, a UK Parliamentary Scrutiny reserve was maintained on this proposal until 26 October 2009. We had not anticipated this proposal being included on the “A” point list but the Council Secretariat and Presidency were determined to adopt the proposal on that day. We were therefore faced with the difficult decision of overriding scrutiny or abstaining from the vote. In all the circumstances we judged, on this occasion, the better course was to override. I regret we were faced with this dilemma and it was not an easy decision to take.

10 February 2010

Letter from the Chairman to Dan Norris MP

Thank you for your letter of 10 February which was considered on 1 March by Sub-Committee B. We are grateful for your acknowledgment that items still under parliamentary scrutiny should not be allowed onto Council agendas as A points, but are disappointed that this happened in the case of EMAS. We accept that you were put in an uncomfortable position by the item’s late inclusion on the agenda.

Your letter implies that the item was not on the provisional agenda prior 26 October. Could you confirm that this was the case? Could you also confirm whether it was ever on a provisional agenda for this meeting? If so, did the placing of the UK scrutiny reserve result in the item’s withdrawal?

Perhaps you could also clarify your understanding of the Council rules of procedure? As we understand them, any decision to introduce a new item on the agenda, even as an A point, at the Council meeting itself would require a unanimous decision (i.e., the UK would have been at liberty to object).

In the absence of any convincing explanation of why the Presidency were so keen to place the item on the agenda of 26 October, it seems that they have exercised a disturbing disregard for the normal procedures, and have demonstrated a disappointing lack of respect for parliamentary scrutiny. We would expect a UK scrutiny reserve to be respected by the Presidency in all but the most pressing cases.

2 March 2010

ENVIRONMENT: ENERGY PERFORMANCE OF BUILDINGS (15929/08)

Letter from Ian Austin MP, Parliamentary Under Secretary of State, Department for Communities and Local Government, to the Chairman

Thank you for your letter of 13 October regarding the recast of the Energy Performance of Buildings Directive. There has been considerable progress on the recast since I last wrote to you on 16 September. I am very pleased to be able to advise you that political agreement was obtained on 19 November. The Directive will be considered at a meeting of the EU Energy Council on 7 December when we expect it to be formally approved.

The recast will be a key tool in helping to reduce building related carbon emissions and agreement on its provisions in advance of the Copenhagen summit is a major achievement. A copy of the Directive is attached at Annex A (not printed). The key provisions of the recast are set out at Annex B. I have highlighted a number of the main issues below and addressed the points raised in your letter.
The proposal to increase the number of new and existing buildings that are low or zero carbon has been dropped. In its place, the concept of a ‘near zero energy building’ has been introduced. It is defined as:

“A building that has a very high energy performance determined in accordance with Annex 1. The nearly zero or low amount of energy required should to a very significant extent be covered by energy from renewable sources, including renewable energy produced on-site or nearby”

The recast includes a requirement that all new buildings which receive planning permission after 31 December 2020 must comply with this definition. In recognition of the public sector’s leading role in promoting energy efficiency, an earlier deadline of 31 December 2018 will apply to new buildings that are occupied by public authorities.

We fully support the definition of near zero energy buildings which fits very well with the UK’s definition of zero carbon homes and the emerging definition of zero carbon non-domestic buildings. We also support the targets noted above which are in line with domestic targets in respect of new zero carbon buildings.

Initially, we did have some concerns that a requirement that new buildings should derive a significant degree of their energy requirements from renewable sources could undermine our domestic policy on zero carbon buildings and may have substantially increased development costs. However, the European Commission have confirmed that the word “should” in this context does not imply an obligation to do something. They produced a written statement to this effect, which will be appended to the minutes of the Energy Council meeting, and is set out at Annex C. This statement will be followed up by a formal letter from the Commission to the UK Government.

The definition of ‘cost optimal level’ has also been revised. It is now defined as:

the energy performance level which leads to the lowest cost during the estimated economic life-cycle where:

— the lowest cost is determined taking into account energy-related investment costs, maintenance and operating costs (including energy costs and savings, the category of building concerned, earnings from energy produced), where applicable, disposal costs, where applicable; and

— the estimated economic life cycle is determined by each Member State. It refers to the remaining estimated economic life cycle of a building where energy performance requirements are set for a building as a whole, or to the estimated economic life cycle of a building element where energy performance requirements are set for building elements;

— the cost-optimal level shall lie within the range of performance levels where the cost-benefit analysis calculated over the estimated economic life-cycle is positive.

Other key developments include a change in the proposed thresholds for DECs. DECs will now be required for buildings occupied by a public authority and frequently visited by the public that are larger than 500m², reducing to buildings larger than 250m² five years after implementation. We think this is a sensible and pragmatic compromise.

The threshold for those commercial buildings where an EPC has to be displayed has been increased from 250m² to 500m². While the UK was supportive of the original threshold, we are content with this change.

I noted in the Supplementary Memorandum the possibility that Article 4(3) contravenes the principles of subsidiarity. At that stage, the definition of cost-optimal was very unclear. We have now obtained greater clarity on what is meant by cost optimal as set out above. In our view, the performance standards currently in force in the UK will equal and may exceed the level of performance that would be required using the cost optimal methodology. As the UK would not provide incentives for the construction or renovation of buildings that do not comply with minimum energy performance standards, Article 4(3) is no longer a concern and issues of subsidiarity do not arise.

Your letter sought clarification of a number of terms in the recast. I have discussed some of them in preceding paragraphs. I have also noted that the terms “low carbon” and “zero carbon” have been dropped from the latest version. Definitions of other terms are set out below:
“BUILDING” means a roofed construction having walls, for which energy is used to condition the indoor climate.

“BUILDING ENVELOPE” means the integrated elements of a building which separate its interior from the outdoor environment.

“MAJOR RENOVATIONS” means the renovation of a building where:

— (a) the total cost of the renovation relayed to the building envelope or the technical building systems is higher than 25% of the value of the building, excluding the value of the land upon which the building is situated, or

— (b) more than 25% of the surface of the building envelope undergoes renovation;

— Member States may choose to apply definition (a) or (b) or both.

I hope that I have been able to satisfy the Committee in relation to the recast and that the Committee can support the Government’s position.

14 December 2009

ANNEX B

Minimum energy performance requirements to be set for all new and refurbished buildings and compared against requirements calculated in accordance with cost-optimal requirements. The cost–optimal methodology is a way of calculating the level of investment required to achieve the best level of energy performance cost-effectively over the life-cycle of a building;

Energy use of technical building systems to be optimised by setting requirements relating to installation, size etc. Covers heating, hot water, air-conditioning and large ventilation systems;

All new buildings developed after 2020 to be nearly zero energy buildings, with an earlier target date of 2018 where the building will be owned and occupied by a public authority;

Property advertisements to include details of EPC rating;

Member States to provide details of the fiscal incentives in place (if any) which could be used to improve the energy efficiency of their buildings;

Content of EPCs to be improved by making them more specific to a particular building and including more detailed information on the cost-effectiveness of recommendations, along with the steps to be taken to implement those recommendations;

DECs to be issued and displayed in buildings larger than 500m² (current threshold is 1,000m²) that are occupied by a public authority and frequently visited by the public. This threshold will fall to 250m² after 5 years;

EPC to be displayed in commercial premises larger than 500m³ that are frequently visited by the public, and where one has previously been issued;

A statistically significant percentage of EPCs and air-conditioning inspection reports to be checked by independent experts for quality assurance purposes.

ANNEX C
STATEMENT BY THE COMMISSION

The use of the word “should” in this Article is intentional, and the word “shall” or “must” has deliberately not been chosen by the co-legislators.

This is fully in line with the Community legal practise whereby “should” always expresses an aspiration and not an obligation.

The sentence “the nearly zero or very low amount of energy required should to a very significant extent be covered by energy from renewable sources” is to be read in light of the main objective of this Directive that is the improvement of energy performance of buildings as spelt out in Article 1.

Therefore, while Article 2(1 a) refers to renewable energy as a source to cover the amount of energy required, it does not exclude other energy sources or energy supply systems.

This recast Directive cannot interfere in the freedom of a Member State to determine its own energy mix. The national energy mix of a Member State, and the extent to which it has available other energy sources than renewable energy that meet the dual climate change and energy security objectives, will be one of the important considerations that a Member State shall take into account in determining the best manner to meet the agreed aspiration.

Finally, it is recalled that the implementation of this definition has to be seen in light of the corresponding operative provision, i.e. Article 9, including its paragraph 6.

Letter from the Chairman to Ian Austin MP

Thank you for your letter of 14 December. It was considered by Sub-Committee B at their meeting of 11 January and they decided to clear it from scrutiny.

We understood that you were keen to have the document cleared from scrutiny before Christmas and indeed Sub-Committee B would have been in a position to clear the document on 7 December had they received your signed letter in time. Our understanding is that a letter was ready but was not signed until 14 December. Had the proposal been scheduled for adoption in early January, as we had been originally informed, this would have presented serious problems in obtaining scrutiny clearance.

We are pleased to note that subsidiarity concerns over the cost-optimal methodology and restrictions on incentives have now been alleviated. The proposal in its current form appears to allow Member States more discretion than the original draft.

We note with interest the declaration by the Commission on their use of the word “should” and shall be alert to the use of the word in future proposals.

We would be grateful for an update on the progress of the dossier as it passes through the legislative process.

12 January 2010

ENVIRONMENT: GLOBAL MONITORING FOR ENVIRONMENT AND SECURITY (GMES) (15496/09)

Letter from the Chairman to the Rt Hon Lord Drayson, Minister of State, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum. Sub-Committee B considered it at its meeting on 11 January and decided to clear the document from scrutiny.

We welcome this Communication discussing the costs of exploitation and possible renewal of space infrastructure in the GMES programme. We would like clarification on how the GMES programme differs from what has been developed under Galileo. We understand that this Communication was presented to ministers in the EU Competitiveness Council on 3 December. We would like to have an account of the discussions that occurred in during that event, especially with the proposed option for the Commission to become the owner of the Sentinels and GMES data policy.

We are concerned that the work being done in this area duplicates work already done outside Europe and would appreciate it if you could provide us with your assessment of the justification for EU action.

12 January 2010
Letter from the Rt Hon Lord Drayson to the Chairman

Thank you for your letter of 12 January, about the issues that were raised during your Committee’s discussion on this Communication.

The differences between Galileo and the GMES programme are extensive and span across programmatic and policy areas. In essence, GMES is an initiative to provide and pool data relating to environmental monitoring designed to meet European policy-making needs. GMES will provide decision-makers who rely on strategic information with regard to environmental and security issues with an independent and permanent access to reliable data. On the other hand, Galileo is a European initiative to develop a global navigation satellite system. Galileo will both provide independence from, and be complementary to, the existing US Global Positioning System (GPS) and the Russian Global Navigation Satellite System.

From a programmatic perspective both have a similar pattern of joint funding. In the development phase the funds have been from both the European Space Agency (ESA) and the Economic Community (EC) on a nominal 50/50 basis. For operations, Galileo is EC funded and a similar approach is anticipated for GMES. In the EC, GMES has up until now been funded from the European Union (EU) research framework programme, whilst Galileo has its own dedicated budget line.

The Communication was presented to the Space Council on 29 May 2009, but was not presented to the EU Competitiveness Council on 3 December 2009 and therefore I am unable to provide an account of discussions. The proposed option for the Commission to become owner of the Sentinels and GMES data policy has not yet been discussed in EU Council fora. However, there are initial trilateral discussions ongoing between ESA, EC and member states at officials’ level, with a first approach to the United Kingdom scheduled for 23 February 2010.

Since its inception in 1998 GMES has recognised the wealth of activity that is ongoing across the globe in environmental observations. GMES has been established to fulfil the growing need amongst European policy-makers to access accurate and timely information services to better manage the environment, understand and mitigate the effects of climate change and ensure civil security. It follows that its design has been driven by European policy needs. However, it is unsurprising that in 1992 the pressing need for global co-ordination on environmental monitoring was recognised.

The Group on Earth Observations (GEO) was launched in response to calls for action by the 2002 World Summit on Sustainable Development and by the G8 (Group of Eight) leading industrialised countries. These high-level meetings recognised that international collaboration is essential for exploiting the growing potential of Earth observations to support decision making in an increasingly complex and environmentally stressed world. In 2005 the Global Earth Observation System of Systems (GEOSS) 10 year implementation plan was developed and endorsed. These parallel initiatives have now achieved maximum synergy where GMES is recognised as the European contribution to GEO, and the GMES sentinels form the backbone of the European contribution to GEOSS.

The resulting outcomes will bring a broad range of socio-economic benefits to many sectors of society. Policy makers will have ever-better information on which to base decisions for the protection, preservation and management of the environment as well as benefit from related cost savings.

28 January 2010

Letter from Chairman to Ian Pearson MP, Economic Secretary, HM Treasury

Thank you very much for your Explanatory Memorandum on Europe 2020. Sub-Committee B considered the document at its meeting on 29 March, and decided to hold it under scrutiny.

Europe 2020 is meant to be a central strategy for the EU for the next decade and we would like to continue to engage in discussions with the Government to shape its final form.

We note that the Commission proposes that EU targets are translated into national targets to reflect the vast differences in economic development between Member States.

We note that thematic flagship initiatives combine action at EU level with the involvement of Member States. Some of these flagship initiatives contain a clear indication of the action needed at EU level in co-operation with Member States. We agree that significant work needs to be done to determine the right balance between action at the EU and Member State level. We observe that some of these flagship initiatives contain a clear indication of action needed at EU level - for example creating a
Digital Single Market. We look forward to scrutinising additional EU initiatives to complete the single market.

In terms of governance, Europe 2020 is still predominantly reliant on the soft mechanisms such as benchmarking, monitoring and recommendations which underpin the open method of co-ordination. However, the Commission’s proposal includes the possibility of sanctions for non-performance in form of a policy warning. No details are available on what this warning specifically entails and how effective the policy warnings will be in influencing national policies in practice. What is your opinion on the effectiveness of these “policy warnings”?

We observe that as per the Commission Communication, the Europe 2020 Strategy no longer contemplates awarding additional EU funds to Member States that make progress in achieving the five headline targets (the so-called conditionality). Could you explain why this is the case? We believe that such an approach has some merits.

Identifying a suitable governance mechanism remains the challenge for the Europe 2020. We hope, as you do, that the European Council’s declared ownership of the Europe 2020 Strategy could result in more effective implementation. The EU budget must be part of the Strategy implementation mechanism and should support the Europe 2020 objectives.

Turning to economic governance, we observe that Europe 2020 seeks to strengthen economic surveillance. The assumption is that the success of the Strategy depends on both the consolidation of public finances and the mobilisation of growth and jobs drivers. However, we observe that the Communication keeps separate the mechanisms and the procedures of Europe 2020 and the Stability and Growth Pact. Some have argued that the integration of both mechanisms could provide an opportunity to bind Europe 2020 into the wider EU economic governance mechanisms and by doing so increase the chances of a more comprehensive and successful strategy. What is your view on this? What would be the advantages of having an annual economic summit of Europe’s leaders over the integration of governance mechanisms underpinning the Stability and Growth Pact and Europe 2020?

On a final note, we welcome the Commission’s intention to publish a Smart Regulation agenda that will consider the wider use of regulations rather than Directives, as well as launching ex-post evaluations of existing legislation and reducing administrative burdens. This is line with the position of the Committee as expressed in its report on impact assessment.

While we regret that we have not been able to begin the scrutiny of this proposal in time for European Council of 25-26 March 2010 we look forward to being engaged in a dialogue with the Government in setting national targets and more widely in the discussions of the final shape of Europe 2020. We will evaluate the opportunity to examine the Europe 2020 in greater detail after the UK general election. In the meantime, we keep the document under scrutiny while awaiting your update on the results of the European Council.

30 March 2010

‘EU 2020’ STRATEGY (16016/09)

Letter from Ian Pearson MP, Economic Secretary, HM Treasury, to the Chairman

Further to EM 16016 on the European Commission’s Working Document Consultation On The Future “EU 2020” Strategy, please find attached the UK’s contribution to the Commission’s consultation (not printed).  

13 January 2010

Letter from Ian Pearson MP to the Chairman


The paper sets out the need for strong, sustainable and balanced growth to continue to raise the prosperity and improve the standard of living of Europe’s citizens.

It outlines six areas where action is needed, with policy proposals in each area:
a. Fiscal policy that protects the recovery and supports sustainable growth.

b. Creating new jobs and equipping our workforce with skills for the new economy.

c. Growing the innovative industries of the future.
d. Supporting business to take advantage of the Single Market.
e. Opening up global markets to trade and investment.
f. And a robust and competitive financial services sector.

It also proposes a Compact between the President of the Commission and the President of the European Council that would serve as a framework for harnessing Europe’s policies, such as those set out in the paper and the Commission’s EU 2020 proposals, to deliver jobs and growth.

19 January 2010

Letter from Chairman to Ian Pearson MP

Thank you for your Explanatory Memorandum and subsequent letters about the EU 2020 strategy. Sub-Committee B considered the documents at its meeting on 15 January and decided to keep them under scrutiny.

We welcome the Commission’s working document as it launches an important debate on the review of the Lisbon Strategy. We are convinced that we need to give a much stronger political dimension to the Lisbon Strategy which, so far, has been undermined by its low profile at national level. We interpret the Government’s efforts in producing a “Compact for jobs and growth” as a clear signal in this direction. We recognise that the Government’s compact is a valid contribution to the Commission’s consultation.

We are particularly pleased to see in the Commission’s document and in your Compact the intention for the EU 2020 strategy to emphasise the completion of the Single Market. Like you, we look forward to the publication of the report Mario Monti is preparing to re-launch the Single Market.

We share your view that, given the EU role in regulating and enforcing the rules of the Single Market, much of the responsibility for reducing burdens is at European level and therefore the EU should concentrate its efforts in meeting the target to reduce EU administrative burdens by 25% by 2012. The Better Regulation Agenda has a key role to play through the strengthening of impact assessments process. We will soon publish a report on this matter where we will share the results of our inquiry.

We are also convinced of the need for strong coordination of exit strategies from Member States’ support policies to ensure sustainable public finances across the EU. The adherence to the Stability and Growth Pact is fundamental to ensure coordination of fiscal consolidation among Member States. We believe that the emphasis at EU level should be on both dimensions of the Pact: ensuring stability while enhancing growth so that recovery from the financial crisis can be achieved along with competitiveness.

While overall we are content, policy wise, with the direction taken by EU 2020 and the Government’s Compact, our major concern is on the proposed delivery mechanisms for EU 2020. So far the Lisbon Strategy has not achieved its promises mainly because of the weaknesses underpinning the Open Method of Coordination. This instrument, as it has been implemented in practice, has not provided an effective enforcing mechanism.

A new strategy would appear to require a clear and efficient governance system, embedding efficient supervisory mechanisms and coordination with Member States together with adequate enforcement mechanisms. The Government’s Compact seems to propose a reiteration of the Open Method of Coordination, the limits of which we have already discussed in our recent meeting with the Minister for Europe, Chris Bryant MP, which took place on 12 January 2010. To what extent are you ready to support stronger rules? What is your opinion of the Spanish Presidency’s initial suggestion to use sanctions against Member States that fail to achieve the proposed objectives? Are there any alternatives? Overall, we fear a divergence between the EU 2020 policy ambitions and the tools foreseen to deliver them.

We believe that the success of EU 2020 also lies in the review of the EU budget. We are pleased that your Compact makes this point very clearly by expanding the principles contained in the Commission’s document. The EU Budget needs a radical reform that take into consideration the ambition of the EU 2020 which, in turn, represents the challenges that the EU faces today. Finally we note that the Commission’s document refer to an increased use of PPPs as new financing models to pool resources between the public and the private sectors to invest in infrastructure projects. We have already expressed our view on PPPs in our letter to you regarding document 16586/09.
We understand that the informal EU Council meeting to be held on 11 February will be key to shaping the final form of the EU 2020 ahead of the Commission’s final proposals. We urge the Government to take forward our points with a view to putting in place a credible and effective EU 2020 strategy. This letter is intended to demonstrate that as a Committee of a national parliament we take a strong interest in the EU 2020 strategy, in line with Commission’s aspirations.

27 January 2010

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 27 January, which set out the Committee’s views on the EU 2020 strategy, and underlined the strong interest of the Committee in this important issue.

I welcome the view of the Committee that the UK’s contribution to the Commission’s consultation on EU 2020 – ‘EU Compact for Jobs and Growth’ – correctly points to the need for a much stronger political dimension at the national level to economic reform in Europe.

I also welcome the support of the Committee, policy wise, for the direction taken by EU 2020 and the Government’s Compact.

Your letter notes that the Committee’s major concern is on the proposed delivery mechanisms for EU 2020. In particular, the Committee:

— asks to what extent the UK is ready to support stronger governance rules;
— asks what the UK’s opinion is of the Spanish Presidency’s initial suggestion to use sanctions against Member States that fail to achieve the proposed objectives;
— asks whether there are any alternatives; and
— notes the weaknesses underpinning the Open Method of Coordination (OMC), as currently implemented, and that the Committee views that the Compact seems to propose a reiteration of the OMC.

I would like to take this opportunity to address these governance issues raised by the Committee.

The Government is ready to support, and is indeed leading calls for, a strong and effective governance structure in the new strategy. However, sanctions – including through expansion of the Stability and Growth Pact (SGP) – and are unlikely to serve as genuine incentives for reform. Rather, Europe’s prospects of recovery and long-term growth should be promoted through a much higher profile for success or failure at the national level. This does not require a change to the treaties or a ceding of power to one part of the EU machinery or another. It requires agreement that we will raise the political stakes of progress.

The Government is also calling for improved coordination and coherence between existing policy instruments. Integrating the structural reform agenda with the SGP is not the right approach – they have different aims and objectives and legal bases. The Compact instead calls for better coherence and coordination between the two, by aligning timetables, and having the Council of Economic and Finance Ministers (ECOFIN) report on both microeconomic and macroeconomic reform to an annual summit of EU leaders.

To inform its policy objectives, the EU should set clear and measurable objectives. These should include:

— strengthening Europe’s long-run growth potential;
— ensuring growth within Europe and its Member States is balanced;
— increasing employment and labour market participation;
— raising labour and capital productivity; and
— facilitating investment.

Member States should define and establish national targets in these objectives, and be held publicly accountable for progress. Member States should be benchmarked against each other on the basis of their progress towards these targets, to underline where progress is being made and where it is not. These steps would not alter the fundamental principle of the OMC—that policies should be implemented at the national level, but with collective coordination, encouragement, and mutual
learning. But they would generate a step-change in the political profile of reform, improving ownership and accountability and thus increasing the pressure on governments that were failing to make progress.

I hope that this helps to address the governance issues raised by the Committee; and I look forward to discussing this in more detail at the Lords Committee evidence session on EU 2020, on Monday 22 February.

8 February 2010

Letter from the Chairman to Ian Pearson MP

Thank you very much for your letter, dated 8 February, and for appearing before Sub-Committee B to discuss the EU 2020 Strategy on 22 February. The Sub-Committee agreed to clear the document from scrutiny.

We welcome your commitment to having an ambitious and higher profile for the EU 2020 Agenda as a way of holding Member States to account for their delivery. We intend to discuss further governance issues underpinning the EU 2020 Strategy upon publication of the Commission’s final proposal for ‘Europe 2020’ which we hope to be able to scrutinise before the election.

9 March 2010

Letter from Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Sub-Committee B considered the above Explanatory Memorandum and took evidence from a DfT official at its meeting on 22 June, and from Commission officials on 29 June. I am writing now to advise you of advances that have been made in subsequent official-level working groups and to inform you of the decisions DfT Ministers expect to have to take at the 17/18 December Transport Council. No further working group discussions are scheduled ahead of the Council, although it is expected that there will be some further discussion by the Permanent Representatives at COREPER in December.

At the December Council the Swedish Presidency will seek to agree a General Approach on the proposal, and it will then fall to the incoming Spanish Presidency to seek Political Agreement at a later Council and pursue a First Reading Agreement with the European Parliament (who are currently scheduled to have their Plenary first reading of the proposal in April 2010). The Swedish Presidency is keen to secure progress on the Galileo programme during its Presidency and there is a desire amongst Member States to assist the Presidency and reach agreement as swiftly as possible.

Since the submission of EM 6257/09 there have been a number of official-level working group meetings on the text of the proposed regulation. You will recall from the EM that there were a number of areas where we considered that the text needed to be improved, and we have been working intensely to ensure that the draft regulation is one with which the UK can be satisfied. I am happy to say that we have made considerable progress in securing a number of improvements with a general level of agreement on all sides; and whilst there are still some outstanding details under negotiation it is generally accepted that these are very close to resolution. I am hopeful that these matters can be resolved in COREPER but it is also possible that some of them will have to be addressed in discussions at the December Council itself.

SECURITY ACCREDITATION

As you know, one of the Government’s key objectives for Galileo is to ensure an effective governance structure for the programme. We therefore fully accept and support the Commission’s aim of bringing the text of Regulation (EC) 1321/2004 (GSA Regulation) into line with the provisions of Regulation (EC) No. 683/2008, given the substantial changes the latter made to the finance, governance and procurement procedures for the programme. From a legal perspective the inconsistencies between the two regulations have to be addressed as soon as possible.

However we are keen to ensure that in doing so, the regulation we adopt is fit for purpose. Our main concern relates to the security accreditation provisions in the regulation. Under the terms of this draft regulation a new Security Accreditation Committee (SAC) would be set up. It would be the body which will ultimately be responsible for security accreditation assurance on the Galileo system and decide whether the risks associated with the system are low enough to be acceptable. The Government has been keen to ensure that this body would be independent of the other authorities involved in the
governance of Galileo (i.e. the Commission, the Galileo Supervisory Authority (GSA), etc., and would be controlled by Member States. There are very complex legal issues here around the issue of competence; the UK has been supported by a number of countries and we have been working closely with the Commission – sometimes on a bilateral basis – to get the text to a state that will meet our concerns and ensure we put in place a structure that will contribute towards system security assurance, whilst retaining its independence, and remain under Member States’ control. The Commission has been very receptive to our proposals as have a number of Member States and the text has undergone a number of substantial and important revisions.

We considered that the Council and the European Parliament must be the ultimate decision making body and that the Commission should not be in a position that would allow it to decide on a proposal that cut across the recommendations of the Security Accreditation Committee (SAC); this point was not clear in the original text. We have now been assured that this would be the case and an additional recital will be added to the draft regulation to make this point explicit. Alongside the revised text, it also makes explicit that decisions that may affect existing agreed budgets or that may affect the security of either Member States or the Union can only be taken at the higher level of the Council and the European Parliament. The text is now in accord with these views and all Member States believe that the proposal is substantially improved, and more importantly addresses their concerns. It is the general consensus that, subject to some minor edits, this part of the draft regulation can be agreed.

THE ROLE OF THE GSA

With the Commission being placed in overall control of the programme it was appropriate to review the functions for the GSA, and Regulation 683/2008 therefore confirmed that the Agency would henceforward be a body which would provide support to the Commission. Under the direction of Commission officials its role is now to assist the Commission on any issue related to the execution of the Galileo programme, as required. However it retained specific responsibility for the technical certification, security accreditation, operation of the Galileo security centre and the market preparation and commercialisation of the Galileo system.

You will recall that the Commission’s original proposal for the proposed successor to the GSA would have further eroded the independence of this body and limited its independence further, by having the weight of the Commission’s votes on the Administrative Board equal to that of all the Member States combined.

All Member States support the need to safeguard the Commission’s position as programme manager and to ensure it has full control of the Galileo programme. Views were however divided over the extent to which this control should be exercised. A number of Member States supported the Commission’s original proposal, whilst others, along with the UK, were keen not to put in place a structure that would be at such variance with that which applies on other EU Agencies and would thereby set an unhelpful precedent. A revised structure has been proposed that would give the vote of the representative of the Commission a weight of 30%. The UK still believes that this is too much but it is an improvement on the original proposal that gave the Commission 50% of the vote and therefore ‘outright veto’. The new proposal does have previous precedence in other Agencies and has considerable support from the Presidency and all other Member States.

The Commission is prepared to accept this revision providing that it is able to fulfil its role as ‘project manager’ by having ‘outright veto’ on the appointment of the Executive Director, adoption of the work programme each year, duties in relation to the Agency’s budget, oversight of the operation of the Galileo Security Centre, the ability to exercise disciplinary authority over the Executive Director, special provisions for the right of access to the documents of the Agency, adoption of the Annual Report and adoption of the rules of procedure.

All Member States are opposed to giving the Commission both thirty percent of the vote and the above veto rights. Some are prepared to accept one or the other, or to allow the Commission some veto rights. The UK strongly opposes the Commission having veto rights but if it is felt necessary to concede to prevent a more draconian voting structure we are prepared to cede to the Commission the right to veto the adoption of the work programme of the Agency for each year and the right to veto any exercising of disciplinary authority over the Executive Director.

The UK has obtained important concessions with regard to the Security Accreditation Committee and that the Presidency and the Commission has been receptive to the majority of our revisions to the text. Therefore, considering the support of all other Member States and the Presidency, we can accept this on the understanding that it does not undergo any more revisions.

The Commission and other Member States have accepted the UK’s contention that we need to safeguard the ability of the successor body to the GSA to provide specialist and undistracted (i.e.
arms-length) focus on the system and its commercialisation. This includes preparing the industry; marketing the system in preparation for and during the exploitation phase of Galileo (which is expected to commence from 2013). In the negotiations the Commission has now undertaken to address the role the Agency will play in the exploitation phase of the programme when it brings forth its mid term review of the Galileo programme and the governance structure, which is expected in 2010.

No discussion on the future location of the Agency has taken place during the Swedish Presidency as they do not see it as a priority at this time. The Government agrees that this is not a matter that needs to be resolved at this time as the priority is to progress the procurement of the system and ensure the majority of the industrial contracts are signed by the end of the year in line with the tight timetable with which we are faced, if Galileo is to be operational by 2013, as currently envisaged.

INvolvEMENT OF THE EUROPEAN PARLIAMENT

The original proposal also contained a proposal for a representative of the European Parliament (EP) to be allowed to sit on the GSA Administrative Board as an observer. The UK Government and all other Member States are unconvinced of the necessity of this. Whilst we accept that the EP needs to receive full, accurate and timely information on Galileo to fulfil its obligations as an arm of the EU’s budgetary authority, it already gets this via the Galileo Inter-institutional Monitoring Panel (which comprises representatives of Parliament, the Commission and Council). Moreover we are keen not to do anything that would have the effect of confusing the lines of governance on the programme, as the lack of effective project management has been a recurring problem with the Galileo programme in the past.

The EP argues that the information that they receive from the Galileo Inter-institutional Monitoring Panel is insubstantial. This is a matter that I do not expect to be resolved ahead of the Council, and as it may not be possible for Ministers to resolve it during the Council, it is likely to remain an issue during the subsequent discussions with the EP.

NEXT STEPS

Some issues still remain to be addressed as I have set out above. However, with the exception of the involvement of the European Parliament I believe we have achieved success in having a number of UK objectives – particularly on security accreditation – accepted by the Commission and other Member States and represented in the negotiated amendments to the text. We believe that the majority of outstanding issues are at such a point that agreement will be reached at COREPER with which the UK will be satisfied. It is therefore likely that we will indicate that the UK is in favour of the emerging text at Transport Council.

I will of course continue to keep your Committee informed of further developments, and in particular on the outcome of discussions with the European Parliament.

3 December 2009

Letter from the Chairman to Paul Clark MP

Thank you for your letter of 3 December, which Sub-Committee B discussed at its meeting on 7 December. We are pleased that you reached such progress on many aspects of the proposal so we are therefore content to lift the proposal from scrutiny. We of course look forward to receiving an update following the discussions at the Transport Council that will take place on 17/18 December

8 December 2009

Letter from Paul Clark MP to the Chairman

I am writing to advise you on the progress on the above Regulation and to inform you of some success for UK and French cooperation.

You will recall from my letter of 3 December that the Regulation was to be discussed at the December Transport Council and was also being considered by COREPER. This letter will update you on the outcomes of both those events and the Spanish Presidency’s work in seeking a final text. Discussions are also continuing with the European Parliament, who are currently scheduled to have their Plenary first reading in May.
GALILEO SECURITY MONITORING CENTRE

I am pleased to be able to tell you that the Commission told my officials on Friday 19 February that our joint offer with the French to host the Galileo Security Monitoring Centre had been successful. The facility will be situated on two sites in France and the UK. The UK centre will be situated at NATS, Swanick, with the French site situated just outside Paris. The French facility will be the primary site, with the UK providing a back up site that will give identical functions and be able to take over seamlessly from the French site if a situation should require it. We, and the French government, believe that two centres geographically separated would better ensure a continuous service and be more secure, and the Commission seems to agree.

The detailed functions of the Centre will be the subject of further studies and discussions by Member State experts and the Commission over the coming months. However, in general terms we expect it to cover: general system security monitoring, management of access to the Public Regulated Service, implementation of any instructions given in emergencies, and provision of ongoing security expertise.

Whilst it’s a small technical aspect of Galileo, it plays to our joint strengths in security.

UPDATE ON THE DRAFT REGULATION

At the December Council, the Swedish Presidency secured agreement on a General Approach on the proposal, whilst the Commission retained their scrutiny reservation; they argued for greater representation and a larger voting weight. COREPER and the Spanish Presidency have subsequently proposed a number of further amendments and these were discussed at the working group meeting on 17 February. The majority of the proposals were sensible editing that tightened up the Regulation and ensured that changes were cross referenced in both this and Regulation (EC) No. 683/2008. However, some of the proposals were in line with previous drafts that had already been rejected by the UK and other Member States.

SECURITY ACCREDITATION

You will recall that we fully accept and support the Commission’s aim of bringing the text of Regulation (EC) 1321/2004 (GSA Regulation) into line with the provisions of Regulation (EC) No. 683/2008 (Implementation of EGNOS and Galileo), given the substantial changes the latter made to the finance, governance and procurement procedures for the programme. From a legal perspective the inconsistencies between the two regulations have to be addressed as soon as possible and it is a key Government objective for an effective governance structure for the programme to be put in place.

Under this draft regulation, a new Security Accreditation Board would be set up. The text that had been agreed prior to the December Transport Council had, allowing for some minor edits, addressed all the concerns regarding the security accreditation of the UK Government. The European Parliament (EP) has now proposed a couple of amendments to the Articles dealing with Security Accreditation that are not acceptable to the UK.

Firstly, the EP proposed to remove the reference stating that the Security Accreditation Board for European GNSS systems must be an autonomous body that takes its decisions independently. The UK believes that the Board must be allowed to act independently of the other authorities involved in the governance of Galileo (i.e. the Commission, the Galileo Supervisory Authority (GSA), etc. It is ultimately responsible for security accreditation assurance on the Galileo system and must decide whether the risks associated with the system are acceptable. The Presidency and other Member States share our concerns and we will be robust in our opposition to the EP’s amendment.

The EP also proposed that the Security Accreditation Board should adopt opinions by a majority of three quarters of the members of the representatives of the Member States. All Member States had previously agreed that majority voting would be done in accordance with Article 205(2) of the Treaty, (i.e. QMV). The Presidency has proposed a compromise, acceptable to the UK, where this would be retained but text would be added to ensure that it was without prejudice to the Joint Action which provided that the security of the EU would not be prejudiced by the operations of Galileo.

THE ROLE OF THE GSA

Regulation 683/2008 confirmed that the Agency would be a body which would provide support to the Commission under the direction of Commission officials. Its role is to assist the Commission on any issue related to the execution of the Galileo programme, as required. However the body retained specific responsibility for the technical certification, security accreditation, operation of the Galileo security centre and the market preparation and commercialisation of the Galileo system.
You will recall that the Commission’s original proposal would have eroded the independence of this body by having the weight of the Commission’s votes on the Administrative Board equal to that of all the Member States combined.

All Member States supported the need to safeguard the Commission’s position as programme manager and to ensure it has full control of the Galileo programme. The UK had been successful in proposing that the weight of the Commission’s vote on the Administrative Board should be limited to one vote for each of its five representatives. The Commission were prepared to accept this, in return for ‘outright veto’ on a number of ‘project manager’ roles. The EP has subsequently proposed that the Commission be given 40% of the vote. The UK will strongly oppose this amendment, as we believe that whilst the Commission would not have outright veto, it would be given too much control, and could allow decisions to be taken with only minority support from Member States. There is strong support amongst MS for the Commission to have five representatives and to retain veto rights on the appointment of, and the disciplinary authority, of the Executive Director. This is very close to the UK’s original proposal and we will push for this line to be taken.

The Commission and other Member States have accepted the UK’s contention that we need to safeguard the ability of the Agency to provide specialist and undistracted focus on the system and its commercialisation. In the negotiations the Commission has undertaken to address the role the Agency will play in the exploitation phase of the programme when it brings forth its mid term review of the Galileo programme and the governance structure. This is expected to be presented at the June Transport Council.

There has still been no discussion on the future location of the Agency as this has been a low priority. With the location of the Galileo Security Monitoring Centre now resolved it is possible that discussion will turn to this, but the Government believes that the priorities remain to progress the procurement of the system and ensure the majority of the industrial contracts are signed by the end of the year, if Galileo is to be operational by 2013. We will seek to ensure that these remain the focus at future official level meetings.

**INVOLVEMENT OF THE EUROPEAN PARLIAMENT**

The EP continues to push to have three representatives to sit on the GSA Administrative Board as observers. The UK Government, the Commission and all other Member States are still unconvinced of the necessity of this.

Whilst it is accepted by all Member States that the EP needs to receive full, accurate and timely information on Galileo to fulfil its obligations as an arm of the EU’s budgetary authority, it already gets this via the Galileo Inter-institutional Monitoring Panel (GIP). Budgetary requirements and a report on the implementation of the programme are reported annually to the EP. Their argument is that the information that they receive from the GIP is insubstantial and that Regulation 683/2008 highlighted that close cooperation between Council, EP and the Commission would be useful. It was for this very reason that the GIP was created.

This matter was not resolved at Council, and remains an issue that officials, the Commission and the Presidency will need to come to an agreement on quickly during subsequent discussions with the EP. The UK will continue to support its European colleagues and the Commission in opposing EP representation.

The Parliament has proposed text that gives provision for the EP to see agendas, records of meetings and voting of both the Administrative Board and the Security Accreditation Board. As far as the Administrative Board is concerned, the UK is not in favour of the Parliament seeing records routinely. However, for the Security Accreditation Board the UK is strongly opposed to this. The Security Accreditation Board deals with detailed technical matters which are dealt with on a strictly “need to know” basis as they are of importance to both national and EU security and also are the Intellectual Property of the EU or its contractors. It would be completely inappropriate for this information to be divulged. The Presidency have proposed a compromise text which would give limited access to relevant documents as appropriate, which the UK can accept.

**NEXT STEPS**

Some issues still remain to be addressed as I have set out above. These issues need to be resolved quickly to ensure that the Programme can progress to schedule. There is a general consensus amongst Member States, the Presidency and the Commission that these can be resolved with the EP, and UK officials will continue to work closely with European colleagues to ensure that this is the case, whilst defending UK interests robustly.
I will of course continue to keep your Committee informed of further developments, and in particular on the outcome of discussions with the EP.

4 March 2010

Letter from Paul Clark MP to the Chairman

I am writing to advise you on progress on the above Regulation and in particular the involvement of the European Parliament in the Administrative Board of the proposed Agency.

My letter of 4 March set out that the Spanish Presidency had proposed a compromise to the Parliament’s demands to have 3 full members of the Administrative Board each with a right to vote. This compromise involved new and enhanced requirements for the transfer and provision of information to the Parliament, which the Committee will recall raised some concerns since the proposal also applied to security related information.

At the Council working group meeting on 17 March, the Presidency informed Member States that informal discussions with the Parliament indicated that the offer of better access to information through the Administrative Board would not be an acceptable compromise. The Presidency therefore proposed a second compromise which would give the European Parliament one representative on the Board without voting rights. In an effort to ensure that the Parliament’s representative added value to the functioning of the Administrative Board, the Presidency proposed that the representative must have experience and expertise in the field of security of satellite navigation programmes. The proposed compromise went on to provide that as a result of this concession, the enhanced information exchange provisions would fall.

Some Member States have reluctantly concluded that the Presidency’s second compromise is the best that they can hope to secure. Parliament representation on the Administrative Boards of Community Agencies is not unprecedented – 7 of the 33 Community Agencies have Parliament representatives on their Boards (for example the European Environment Agency), and in 6 of them, the representatives have voting rights. Given that such a move will not create a precedent and that in any event, establishing an alliance to form a blocking majority against the Presidency’s proposal now seems unlikely, I suspect more Member States will simply accept the Presidency’s proposal.

I have therefore instructed officials to work to ensure that the Presidency proposal is acceptable in case it is carried in Council working group. The proposed requirement for specialisation of the Parliament’s representative in the compromise is odd, since it does not reflect the governance arrangements that have been established (security issues will not be handled by the Administrative Board in order to ensure that information is handled appropriately). The Presidency’s compromise proposal conflicts with that arrangement and the UK will therefore seek to ensure that it is changed so that the Parliament’s representative adds value to the functioning of the Administrative Board by bringing, for example, expertise on the management of large Community Agencies.

I will of course continue to keep your Committee informed of further developments, and in particular on the outcome of discussions with the European Parliament.

30 March 2010

INNOVATION POLICY (12905/09, 12956/09, 12957/09, 12958/09, 12960/09)

Letter from the Chairman to the Rt Hon Lord Drayson, Minister for Science and Technology, Department for Business, Innovation and Skills

Thank you for your letter regarding document 12905/09 and for your supplementary Explanatory Memorandum. They were considered by Sub-Committee B at their meeting of 11 January and they decided to clear the documents from scrutiny.

12 January 2010
Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department of Communities and Local Government, to the Chairman

Thank you for your supplementary Explanatory Memorandum of 7 November. It was considered by Sub-Committee B on 8 February, and they decided to hold it under scrutiny along with the original proposal (10037/08).

We have previously expressed a concern that any legislation in this area should strike a balance between protecting consumers and imposing burdens on businesses, particularly SMEs. Do you think such an outcome is likely?

We understand that there is some disagreement about the purpose of the proposal, the Commission and the UK holding the view that it should be purely an internal market measure to ensure consistent labelling of goods adhering to existing standards, while others are of the opinion that the Regulation should establish standards where none currently exist. We fear there might be a subsidiarity issue here, if such a standard were to be imposed on goods which were not intended to be marketed across borders.

The document does not express the Commission opinion on many of the European Parliament amendments, and consequently neither does your EM. We would like to know the Government's opinion on these amendments. As a Common Position is likely to be adopted soon, we would appreciate a full assessment of the current state of negotiations and an indication of the likely shape that agreement will take.

9 February 2010

Letter from Lord McKenzie of Luton to the Chairman

Thank you for your letter of 9 February 2010, informing me that the House of Lords European Union sub-committee B intends to continue holding the draft EU Construction Products Regulation under scrutiny – a decision which I understand given that no clear outcome has emerged from the negotiations to date. However, I am hopeful that the Council negotiations are now drawing to a conclusion which will form a good basis for negotiation with the European Parliament.

Your letter asks for a full assessment of the current state of the negotiations, including a UK Government view on the European Parliament’s proposed amendments, both of which I can provide.

UPDATE ON NEGOTIATIONS

The negotiations in Council began in June 2008 and are ongoing. At the same time consideration began in the European Parliament Internal Markets and Consumers (IMCO) committee. A set of amendments was passed at First Reading in the European Parliament in April 2009. The Commission’s reaction to those amendments (which, as you point out, was incomplete) was the subject of my last Explanatory Memorandum to you in November 2009.

Given that the European Parliament’s amendments were agreed at First Reading with a very strong majority, the rapporteur has indicated her caution about entering into negotiations with the Council and Commission for a Second Reading deal until the Council has reached a Common Position. This means that there has been very limited contact with the IMCO committee since First Reading.

Although initially progress in the Council Working Party was slow, the pace of discussions under the Swedish (July 2009 to December 2009) and Spanish (January 2010 to date) Presidencies has increased significantly. The Spanish Presidency is keen to reach an agreement in time for the late May 2010 Competitiveness Council meeting which we think is ambitious, given the differences that remain, but may yet be achievable.

Differences in the working party have focused on the conditions under which CE marking should be mandatory for construction products which are placed on the market in the EU. The declaration of performance which forms the basis of the CE marking represents the results of technical testing against harmonised EU standards and test methods. In many cases this testing is expensive, and therefore the extent of declaration required is a sensitive issue, with the risk of imposing heavy cost burdens on product manufacturers, and proportionately greater burden on small businesses or those producing only a few products.

The view of the UK Government has been that if CE marking is to become mandatory (unlike many other Member States, this is currently voluntary in the UK) then it must remain linked to national or local building/works regulations, as this governs what is needed for the product to be used in a
particular area, representing (in our view) a proportionate burden on businesses, and a continuation of current practice among manufacturers who choose to CE mark.

The view of some other Member States is that the CE marking should be a much broader requirement, where many characteristics must be declared. They claim this is to guard against products moving across borders with insufficient performance information, and that if necessary, exemptions could be provided for certain micro-enterprises. The UK has argued for a proportionate and clear system for all businesses, not an onerous system for some and a complex system of exemptions for others.

The issue of simplified procedures for use by micro-enterprises and manufacturers of one-off bespoke products has also caused much debate. There were concerns that the Commission’s proposals were unclear, and therefore would not provide benefits to businesses. Having gained a better understanding of these provisions, we think that these could be acceptable to the UK, and could even be beneficial to (in particular) UK manufacturers of individual or one-off products, who would be able to use methods other than full expensive testing to demonstrate the performance of their products (past experience, for example).

EUROPEAN PARLIAMENT AMENDMENTS

On the main issue of the conditions for CE marking, the European Parliament’s amendments suggest that performance should be declared in two instances: where there are national works regulations applying, and also where the European Commission have established certain key characteristics (determined by product family) that should be declared EU-wide. We have concerns about this approach because of the lack of clarity about whether the EU-wide section of the declaration would be mandatory for all product families, and about its scope – a long list of mandatory characteristics would have a significant impact on costs.

Many of the other European Parliament amendments would be acceptable to the UK, as they are simply clarifications or positive improvements. Others are not acceptable, including the proposal to require declaration of the dangerous substances content of products, which we (along with a majority of the Council Working Group and the Commission) believe to be an overlap with the REACH Regulation on chemical content.

LIKELIHOOD OF A COMPROMISE

Over time in the Council negotiations, it has become apparent that the solution proposed by the European Parliament (or a version of it) could form the basis for a compromise within the working party about when to declare performance and what to include. It has the benefit of striking a balance between those that think the CE marking should be closely linked to relevant local/national regulation and those that think it should be set at the EU level. Therefore, while it is not our ideal position, I may be coming back to you to recommend that the UK accepts a compromise solution of this kind, provided that there is adequate scrutiny from Council and the European Parliament when the EU-wide requirements are established to ensure these are merited on technical and safety grounds.

I note that the Committees have requested sight of a final text in good time for this to be considered before a political agreement is reached in the Council. The Spanish Presidency is aiming for a political agreement at the Competitiveness Council meeting on 23-24 May 2010. If they are to succeed in this, then discussion on the key articles will need to be settled in the next few weeks, and at that stage we would hope to be able to submit this text to the Commons and Lords committees for consideration in advance of a vote. I intend therefore to write to you again in March either to request that the scrutiny reservation be lifted in advance of a Council vote, or to inform you that there is still no agreement and negotiations are to continue.

10 March 2010

Letter from the Chairman to Lord McKenzie of Luton

Thank you for your letter of 10 March. It was considered by Sub-Committee B at their meeting of 15 March. They decided to hold all documents relating to this dossier under scrutiny.

This proposal appears to have been somewhat controversial, and it seems likely that significant compromise will be necessary, both within the Council and between the Council and the European Parliament. We welcome your concern to limit any burdens imposed on businesses by this Regulation and urge the Government to work towards a deal to ensure these are kept to a minimum. Clearly, the extent to which CE marking is to be mandatory is crucial.
We note the European Parliament proposal for labelling to include the dangerous substances content of materials and would be interested to know whether the Government are aware of any steps being taken to prevent the use of construction products by terrorists and other criminals.

We look forward to receiving a final text in good time before the agreement of a Common Position in Council.

16 March 2010

SPANISH PRESIDENCY PRIORITIES: DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS

Letter from Lord Davies of Abersoch, Minister of State, Department for Business, Innovation and Skills, to the Chairman

January saw the start of the Spanish Presidency of the European Council, and I would like to take this opportunity to set out what we anticipate to be their priority areas for BIS.

The Presidency’s top priority is to agree the successor to the Lisbon Agenda of economic reform – known as the EU 2020 strategy – by the June European Council. It focuses on jobs and growth, the EU’s global competitiveness, research and innovation, and the transition to a low-carbon economy. The expected publication date for a Commission Communication is early March. HM Treasury is the lead Department, however BIS has a strong interest.

The second priority for the Presidency is the endorsement of a new EU Innovation Plan at the Competitiveness Council in May. The Commission is aiming to publish the Plan in March or April. Among the proposals we expect it will include: structuring the next generation of EU programmes; creating demand through public procurement for innovative products and services; and the creation of a large scale venture capital fund to support innovation – a pan-European innovation fund.

During the course of the Presidency’s term, there will be discussions on social equality, electric cars, Service Directive implementation, SMEs and standardisation.

In addition, below is a short summary outlining where specific dossiers are in the EU process. Where possible we have highlighted the likelihood of new Commission communications/proposals which may be subject to future scrutiny by your Committee should they emerge.

— **Consumer Rights Directive** – the Spanish are only planning a policy debate at the May Competitiveness Council.

— Although aspects of the **European patent court** are due to be discussed, no official agreement can be considered until the ECJ has issued its opinion on the compatibility of the court with EU Treaties (not expected until at least May). The Commission proposal on **EU Patent Languages** is also unlikely to be published before May. Therefore, unless the Presidency can get agreement on outstanding issues exceptionally quickly, any formal agreement at the May Council is unlikely.

— Spain is keen to agree an early deal on extended **Copyright term**, but will need to be sure that an established blocking minority has fallen before it will proceed with that deal. You will also be aware of an impact assessment from our Intellectual Property Office on the same subject which has been sent for your consideration. **Google Books** is likely to remain high on the agenda and a Commission communication is expected.

— The Presidency is keen to agree a first-reading deal on the **Late Payments Directive** in June.

— **Better Regulation** agenda – little development being made; however the Commission is working towards their new ‘Smart Regulation’ strategy, due in the summer.

The new Commissioners will be in office by late February/ early March, so we are expecting little activity until the second half of this year.

I hope you find the above information useful.
SPANISH PRESIDENCY PRIORITIES: DEPARTMENT OF ENERGY AND CLIMATE CHANGE

Letter from the Rt Hon Ed Miliband 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 Spanish Presidency. The Spanish have timetabled two Energy (12 March and 31 May) and Environment Councils (15 March and 21 June). Informal Energy and Environment Councils have already taken place (15-17 January) and Lord Hunt and I have already written to you outlining the discussion at both Councils.

As outlined in Lord Hunt’s letter, the discussions at the Informal Energy Council on 15 January focused on Europe’s priorities for energy policy over the next five years and beyond in the context of a new ‘Energy Action Plan 2010-2014’. Ministers identified a number of issues that they felt should be included in an Action Plan as a priority – for example, how to make EU energy markets work better; investment in low carbon technologies, and further diversification of energy supplies and sources. Once the new European Commission has taken up office, we expect one of its first actions to be the publication of an ‘Energy Action Plan 2010-2014’, drawing on these discussions. Currently, the Presidency is hoping that the Commission will be able to present its Action Plan at the Energy Council on 12 March. Council conclusions could then be adopted at the Energy Council on 31 May. Due to uncertainties around the timing of the new Commission, however, this timetable may slip.

The Spanish Presidency will also consider the Gas Security of Supply Regulation and is aiming for political agreement between the European Parliament and the Council in May. My officials will keep you informed of the progress of negotiations on this Regulation.

Other issues that may be taken forward in the Energy Council are:

— the Commission Communication ‘Investing in Low Carbon Technologies’ (published in October 2009), where the Presidency is aiming for adoption of Council conclusions in March;

— the Regulation concerning the notification to the Commission of investment projects in energy infrastructure within the European Community, where the Presidency is aiming for political agreement on the proposal in March;


The Spanish have indicated that energy will also be an important issue in their external relations policy. The Mediterranean Solar Plan will be a political priority and a conference will take place to discuss it in Valencia on 11-12 May. In addition, the Presidency is keen to work with Russia on energy security issues and to do further work on the EU-US Energy Council. There will be a report on a number of external energy dialogues at the May Council.

In relation to environment priorities for the Spanish Presidency, we expect these to include working towards the adoption of a globally binding international agreement on Climate Change and promoting the implementation of agreements reached in Copenhagen.

Initial discussions on next steps following Copenhagen and the Copenhagen Accord began at the Informal Environment Council on 16-17 January. The Presidency and the Commission have now submitted a target of ‘20/30%’ (move to 30% is conditional: “as part of a global and comprehensive agreement for the period beyond 2012 … provided that other developed countries commit themselves to comparable emission reductions and that developing countries contribute adequately according to their responsibilities and respective capabilities.”) on behalf of the EU and its Member States to the Copenhagen Accord Annex.

The Spanish Presidency has set up a Road Map, detailing the plan for their Presidency, in conjunction with the European Commission, with the objective of upholding European leadership on climate change. In addition, the Commission is due to present a Communication on implementing the different elements of the Copenhagen Accord ahead of the March Environment Council.
The Presidency will focus on regional cooperation on climate issues to strengthen the leadership role of the EU, in particular on financial flows and environmental technologies. The Presidency is aiming for adoption of Council conclusions at either the March or June Environment Council.

Separately, the Commission is expected to give a presentation on a Communication on the EU 2020 strategy (the successor to the Lisbon Strategy for economic reform) at the March Environment Council, where there will be opportunities to promote a low carbon and sustainable economy.

4 February 2010

SPANISH PRESIDENCY PRIORITIES: TRANSPORT

Letter from the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport, to the Chairman

I am writing to update you and your Committee on the transport proposals that are likely to be progressed by the Spanish Presidency in the coming months.

The Presidency have a broad range of headline priorities – including consolidating Europe's social agenda, promoting a People's Europe, getting out of the economic crisis, energy security and the fight against climate change, and consolidating a safer Union for its citizens. In the field of transport, they plan to focus on three key areas:

— **Sustainability**: the role of transport as a strategic sector of the new productive model; promoting more efficient urban mobility; improving and enlarging transport networks; and increasing competitiveness.

— **Innovation**: start up the second stage of the Single European Sky; promote the EGNOS and Galileo satellite navigation systems, paying special attention to the mid-term revision of the programme; and concluding ITS.

— **Safety**: work to update European legislation in the investigation of air accidents; promote initiatives that will continue to improve road safety; and initiate a discussion regarding maritime safety in the Informal Council.

The Presidency has informed us of the following key transport events over the next 6 months:

— There will be two **Transport Councils** during the Spanish Presidency. The first one will be in Brussels on 11 March and the second will be in Luxembourg on 24 June.

— An **Informal Ministerial Transport Council** will be held in A Coruña on 12 February with a focus on urban mobility. A separate high level conference on maritime safety will also take place in the morning at A Coruña.

— **Negotiations** on the Second Stage of the EU-US Air Transport Agreement will take place in Madrid on the 15-16 February.

— A **conference** on the application of the Single European Sky 2 will take place in Madrid on 25-26 February. The topic will be: The new regulatory framework: Performance (objectives for improvement indicators, FABS), technological dimension, airport capacity, human factor, international dimension and defence.

— A **high level conference** will take place in Madrid in April on road safety and what private companies can do to encourage safer driving.

— A **high level conference** on TEN-T will take place in Zaragoza on 8-9 June to present the results of the guidelines revision process and analyse the present and future of the network.
AVIATION

Further to Paul Clark’s letter to your Committee on 3 December, it has been established that the Presidency will host the next round of the second stage EU-US Air Transport Agreement negotiations on 15-16 February in Madrid. The Spanish view this is a key file and would like to see an agreement on stage 2 during their Presidency. Officials are attending Sub-Committee B’s meeting of 8 February to provide further information on the progress of the talks.

The proposed Regulation on air accident investigation (EM 15469/09) is the other Spanish Presidency priority dossier for aviation. Work commenced under the Swedish Presidency and the Spanish are very keen to secure a political agreement by the June Council.

The Presidency are aiming for the EU-Brazil safety agreement (EM 12580/09) to be signed with Brazil in the margins of the EU-Latin American Summit in Brazil.

There was a half day working group negotiation in January on the proposed directive on Aviation Security Charges (EM 9864/09). This dossier is not a priority for the Spanish, and they have decided to await the outcome of the deliberations in the European Parliament before returning to it. A separate letter will be sent to your Committee shortly to bring you up to date with the latest developments.

HORIZONTAL

The Presidency aims to adopt Council Conclusions on the Action Plan on Urban Mobility (EM 14030/09) at the June Council, following a discussion at the Informal Council in February. In principle, the Government supports the Commission’s Action Plan which is broadly in line with our urban transport policies, but we maintain that the principle of subsidiarity must be respected.

The Presidency intends to finalise the work of the out-going Swedish Presidency on the Intelligent Transport Systems Directive (EM 17564/08) by including agreed Lisbon Treaty-related comitology provisions. It is hoped that a quick agreement on these provisions can be reached with the European Parliament as the Directive has otherwise been agreed in principle by both the Council and the European Parliament.

Following adoption of Presidency Conclusions on the Future of Transport (EM 11294/09) at the December Transport Council, the Commission have confirmed that the next White Paper is unlikely to be ready for publication until early 2011.

The Presidency will continue in a modest way to work on the Galileo amending regulation (EM 6257/09). However it is not clear if a first reading deal will be possible due to the EP’s desire to remove some of the detail on accreditation and the issues surrounding European Parliament representation and Commission voting rights. The European Parliament’s first reading is currently scheduled for April 2010. A discussion is planned at the June Council on a Regulation on user access to the Public Regulated Service.

LAND

The Presidency are aiming for a political agreement on the Transportable Pressure Equipment Directive (EM 13566/09) at the March Council. All technical issues have been resolved, although some questions remain open on delegated acts. The Presidency have entered into discussions with the European Parliament Rapporteur (Brian Simpson) with a view to achieving a quick first reading deal. The pressured timetable is due to updated international law and the need to align EU legislation.

The Presidency will pick up work on the proposed Council Decision on a Community position on the Interbus Agreement (EM 10584/04) with a view to adopting a Council Decision at the March Council. Although the Agreement dates from 2003, the rules of procedure for the joint committee still need to be adopted and the technical annexes amended to reflect recent EU regulations on technical standards.

The Presidency are aiming to finalise the work of the outgoing Swedish Presidency on the Rail Freight Regulation (EM 17324/08) by achieving a second reading deal with the European Parliament. The European Parliament second reading is currently scheduled for June 2010.

The Presidency will continue to put pressure on the Commission to achieve an agreement on the proposed Decision on Accession to COTIF, the Convention concerning International Carriage by Rail (EM 12802/09).

Although the Presidency had hoped to start work on the revision of the First Railway Package the Commission have confirmed that no proposal will be forthcoming until the second half of 2010.
The Presidency will try to work for agreement on the Road Transport Working Time Directive (EM 14461/08) if the European Parliament is ready. After the previous rejection of the proposal in the European Parliament, the proposal has been referred back to Committee, with adoption of new report at Committee level expected in February/March 2010, and consideration in Plenary currently scheduled for April/May. Any potential political agreement would be at the June Council.

At the June Council the Presidency hopes that it will be possible to adopt Council Conclusions on the Road Safety Action Plan for 2011 – 2020 which the Commission have said should be ready in April. We are keen to support measures that are effective in improving road safety in the EU and will consider the detailed proposals when they emerge.

The proposed Cross-border Enforcement Directive (EM 7984/08) has been stalled for some time due to the concerns that Member States, including the UK, had over the legal base. The Commission are expected to issue a new proposal now that the Lisbon Treaty is in force, but have confirmed that this will not be forthcoming until at least July 2010.

The Presidency are hoping to achieve a second reading deal on the Bus Passenger Rights Regulation (EM 16933/08), although they have noted that the European Parliament has opposed the Council on issues such as scope and liability. The European Parliament wishes to treat both the bus and maritime passenger rights Regulations as a package. Therefore the Presidency is waiting for the Common Position to be prepared on the buses Regulation before submitting both Regulations to the European Parliament.

The Eurovignette Directive (EM 11857/08) is a low priority for the Spanish Presidency and is not expected to feature on a Council agenda, but they have indicated that it may receive some working group time during their term.

SHIPPING

The Presidency have indicated that the workload of the maritime working group will be very light.

The Presidency are hoping to achieve a second reading deal on the Maritime Passenger Rights Regulation (EM 11990/08). Therefore the Presidency is waiting for the Common Position to be prepared on the Buses Regulation before submitting both Regulations to the European Parliament.

The Presidency are hoping for a first reading deal on the Port Formalities Directive (EM 5789/09). Given that both the European Parliament and Commission have stated that they are keen for a quick agreement, we will continue to work to ensure outstanding UK concerns are reflected at Council.

VEHICLE EMISSIONS

The proposed Regulation on CO2 emissions targets for new light commercial vehicles (EM 15317/09) will be taken forward by the Spanish Presidency, with a scheduled policy debate at the Environment Council on 15 March and a possible political agreement at the 21 June Environment Council. The European Parliament has not yet scheduled an indicative date for its first reading of this proposal. The Presidency sees this dossier as a priority, although some unavoidable complexities in the subject matter mean that it may not be straightforward to complete.

The Commission will publish an electric vehicle development plan shortly, which is expected to be a priority document for the Spanish Presidency and may be the subject of Conclusions at the Competitiveness Council in May. The document is likely to concern vehicle and infrastructure standards which will ensure interoperability between Member States, and the Government is broadly supportive of the policy in line with our strategy for Ultra Low Carbon Vehicles. The detail of the document is not yet known however, and it has not yet been established whether the EU discussions will be best taken forward by the Department for Transport or the Department for Business, Innovation and Skills.

The Commission is expected to adopt a new framework regulation in April 2010 to simplify the type approval of motorcycles, tricycles and quadricycles. The proposals are intended to improve safety through various measures including the introduction of advanced braking systems, and improve environmental performance with tighter limits on the emission of pollutants.

In response to the current economic situation the Commission will issue a proposal for additional, temporary flexibilities on non-road mobile machinery emissions requirements. This will take the form of a revision of the Non-Road Mobile Machinery Directive 97/68/EC, and specifically a revision of the flexibility scheme introduced by 2004/26/EC. The proposal is expected to be issued in spring, and we expect that it will include the introduction of flexibility for some rail engines and the extension of existing flexibility arrangements for other applications to cover a larger number of engines (for a limited time period).
Later in the year we are expecting two further proposals, one setting energy efficiency requirements for car air conditioning systems and the other making further amendments to the NRMM Directive, extending the scope to larger and smaller engines and setting new emissions standards for constant speed (e.g. portable generator) engines, rail engines and inland shipping engines. However it is not expected that these will emerge until quite late in 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 the progress of each of these dossiers, in line with the usual procedures for Parliamentary Scrutiny.

10 February 2010

TELECOMS: DIGITAL DIVIDEND (15289/09)

Letter from the Rt Hon Stephen Timms MP, Minister for Digital Britain, Department for Business, Innovation and Skills, to the Chairman

I am writing with respect to the above EM which was submitted in the House on 18 November.

The Council Conclusions on the Communication are due to be agreed at the Telecommunications Council which I am attending on 18 December. I expect that these will include agreement to a ‘during 2012’ recommended timetable for ending analogue television transmissions that is fully compatible with the UK’s Digital Switchover programme. I do not expect the Conclusions to make reference to any mandatory harmonisation of the 800 MHz band, to agree to any proposals for interference-resistance standards, or to mandate that digital receivers have to be H264/MPEG4-AVC compliant.

The Conclusions should though reflect that harmonisation of the 800 MHz band is taking place in many Member States without any Commission involvement. This is in line with the UK’s position whereby primarily the market, rather than policy makers, decides what standards are appropriate.

The Conclusions should also state that further measures regarding the exploitation of the Digital Dividend or exclusive use of the 800 MHz band for non-broadcasting services should be raised in planned multiannual radio spectrum policy programmes, allowing the timely involvement of Council and European Parliament.

I therefore believe the UK’s position will be well reflected in the Council Conclusions and will report back to the Committee after the Council.

9 December 2009

Letter from the Chairman to the Rt Hon Stephen Timms MP

Thank you for your Explanatory Memorandum and for your letter of 9 December. They were considered on 14 December by Sub-Committee B who decided to clear the document from scrutiny.

It was unfortunate that your Explanatory Memorandum was not clearer about the date for adoption of Council Conclusions. A clearer timetable would have led us to consider the EM sooner.

We agree that mandatory standards for the harmonisation of the 800 MHz band would seem excessive, given that Member States and the industry are moving naturally towards harmonisation without the need for Commission action. However, in principle we consider that the Commission have a point: it is conceivable that in another part of the spectrum a fragmentary approach might develop, and there might be grounds for Commission action. We hope that the Government would approach such issues on a case-by-case basis.

We are pleased that the deadline for digital switchover has, in effect, been delayed by a year. It is rather late to move the goalposts when a significant number of Member States have already planned for a slightly later switchover. The Commission’s argument that early action is required to reap maximum benefits from the Digital Dividend is not entirely convincing. We do, however, support action to encourage the three Member States currently unlikely to make the switchover in time to do so.

Your EM and letter do not provide the Government’s view on the need for a common position prior to the World Radio Conference in 2012. There would seem to be some grounds for this, for instance when dealing with border issues involving countries such as Ukraine which borders several EU states. What do the Government think?

15 December 2009
Letter from the Rt Hon Stephen Timms MP to the Chairman

Thank you very much for your letter of 15 December 2009 clearing the document from scrutiny.

I apologise that I was not clearer about the timing of the adoption of Council Conclusions in the original EM; at the time it was not certain how the then Presidency was going to deal with this dossier. I am though happy to report that the Council conclusions were adopted at the Telecoms Council on 18th December during a useful debate on both the importance of the digital dividend and on harmonisation on use by member States.

You asked about the Government's view on the need for a common position prior to the World Radio Conference in 2012. Ofcom represent the UK at the WRC, and in European discussions beforehand. We, and they, think it best to agree wherever possible a common position within the EU in advance. The 27 member states then can act together to give greater weight to that view. In this case, we expect Ofcom to attempt to agree a common position with the 48 members of CEPT (the European Conference of Postal and Telecommunications Administrations) in order to give an even larger weight.

20 January 2009

TRANSPORT: A SUSTAINABLE FUTURE (11294/09)

Letter from the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport, to the Chairman

I am writing to you to update your Committee on the developments that have occurred in the discussion of this document since my letter of 28 September.

Since my last letter I took part in a policy debate at the 9 October Transport Council where I emphasised, in particular, the importance of moving rapidly to a low carbon transport system whilst maintaining economic growth. I called for ambition and prioritisation in Commission thinking coupled with a clear need to deliver significant existing projects through to completion.

Following the Council discussion, the Swedish Presidency has focussed on using Working Group time to develop a set of Council Conclusions with a view to agreement at the 17 December Transport Council. In discussions at Working Group level, the UK has aimed to ensure that the Conclusions are as closely aligned as possible to the UK priorities outlined in my previous letter. The tone of the discussion has been positive and I am confident that the final version of the Conclusions, when they are available, will be satisfactory for the UK.

We have proposed that the Conclusions focus on sending the Commission a clear message from the Council about priorities for the White Paper that will follow towards the end of next year. We have argued that this message must make clear to the Commission that the White Paper should contain more ambitious thinking and a greater sense of prioritisation than was present in the Communication. This was one of the clear messages that we received from respondents to our own consultation process and is shared by many other Member States.

The UK has argued that the Conclusions should make that clear that the Council considers delivering a liberalised, integrated and decarbonised European transport system as central to the next White Paper. In this light, the UK has focused on securing a strong reference to delivering a truly liberalised and competitive transport system. In addition we have sought to ensure that helpful language on decarbonisation and tackling climate change is sufficiently reflected in the text. We have also asked for a reference to ensuring that the Commission prioritises the delivery of significant EU projects. Whilst we believe the White Paper should be ambitious, this needs to be coupled with the successful delivery of existing significant projects like the Single European Sky Air Traffic Management and Research (SESAR) programme. At present it appears that we will be able to secure text in each of these areas.

The UK has also sought to remove any less helpful text as far as possible. In particular we have sought to limit the scope of text on internalisation of external costs which, in its original form, was unhelpfully close to mandating the Commission to bring forward possibly widespread pricing measures. In a similar vein, we have also sought to try and tie the reference in the Conclusions to deployment of traffic management tools and intelligent transport systems to ensuring that this is where these are the most effective solutions, and therefore not mandating the use of technology without having clearly defined goals.

On the basis of the changes we have secured, the tone so far and the importance of sending the Commission a strong and unified message from the Council, we are confident that we will wish to support the Conclusions at the December Transport Council.
TRANSPORT: ECALL (13233/09)

Letter from Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Thank you for your letter of 27 October on eCall deployment, in which you noted that Sub-Committee B had decided to hold the document under scrutiny.

You asked what steps we were taking to ensure technical specifications are agreed in order to enable an Impact Assessment to be conducted. The Department hosted a workshop in December 2009 for UK stakeholders to exchange views. We are currently seeking support for further collaboration to ensure the UK position is considered in future European developments. Department officials regularly attend the European Commission’s eCall Implementation Platform meetings to monitor the progress of the relevant standards groups.

The Technical Specifications are of course important in helping us to understand the cost impact of eCall on stakeholders, but we also need to consider the evidence to support the safety benefits, particularly in terms of the potential for eCall to contribute to a reduction in fatal accidents. This remains a particularly difficult area to quantify. However other benefits such as earlier incident notification and congestion reduction on major routes are being considered. The Highways Agency has been examining this area and plan to publish a report shortly.

You asked whether it is now likely that the 2006 analysis is now out of date, and I would agree that it is. As the standards have developed we now have a better understanding of the costs for the in-vehicle technology and the impact the technical specifications might have on the mobile networks. We will continue to monitor and assess cost implications on stakeholders as the standards are finalised.

As you may recall from the Explanatory Memorandum, we took the decision not to conduct a further review until the European Commission had finalised their wider study on deployment in Europe. This is now complete. The work included a specific assessment of deployment in the UK. The Commission study was published in November 2009 and is available on the eSafety support website:


A review of the Commission work has just been completed by the Department’s officials, which combined with the recent stakeholder meeting will provide evidence to update figures from our 2006 report. A copy of our report is annexed to this letter (not published). You will see that the report concludes that although costs for the technology are more favourable than previous estimates, the likely benefits in terms of casualty savings have reduced. It does however recognise the difficulties in quantifying the road safety benefits of eCall.

We will continue to support the development of the technology and continue to seek clarification of the costs and benefits before recommending supporting proposals for mandatory deployment. This is in line with our evidence-driven approach and ensures that added cost to a vehicle (and in this case wider UK stakeholders) is justified in terms of the safety benefits that will be realised.

We do not currently have any information on the road monitoring system in Portugal that your letter mentions, but would be happy to investigate if you could provide my officials with any further detail on this system. However, Departmental officials can see no reason why eCall could not co-exist with road monitoring systems if they were deemed appropriate.

Your letter also questioned the reference to earlier “inconclusive” UK work. This simply referred to uncertainty in the actual cost of in-vehicle hardware. As discussed above, we now have a better understanding of the actual cost to manufacturers but are still seeking clarification of installation cost.

24 March 2010

Letter from the Chairman to Paul Clark MP

Thank you for your letter of 24 March, which was considered by Sub-Committee B. They decided to retain the document under scrutiny.

Your update on the costs and benefits of the project was very useful. We note that both the costs and benefits of the scheme have been reduced, largely due to technical developments, but are concerned that there now appears to be a positive benefit only with mandatory introduction of the scheme. It appears that technical progress in other areas may have overtaken the need for eCall.
We look forward to receiving the Highways Agency report on the wider benefits of the scheme, and a full impact assessment when the technical specifications have been agreed and such a report is possible. The TRL report mentions the possibility of a UK pilot study: is this at all likely to take place?

It appears that progress on this dossier has been rather slow. The Communication envisaged the Commission’s proposing regulatory action if no progress had been made by the end of 2009: do you think that such action is likely?

In due course, the Committee would be interested to receive an account of how the production and use of the UK impact assessment for this dossier related to the recommendations of our report, Impact Assessments in the EU: room for improvement?

30 March 2010

TRANSPORT: EMISSIONS PERFORMANCE STANDARDS (15317/09)

Letter from the Chairman to the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport

Thank you for your Explanatory Memorandum of 4 December which was considered by Sub-Committee B on 11 January. They decided to retain it under scrutiny.

We look forward to receiving a copy of your impact assessment when it is ready and may wish to conduct an oral evidence session with officials to discuss it. We understand that it will be used as a basis for a consultation exercise on the proposal. Have you undertaken any prior consultation in order to prepare the IA? What do the Government think about the figures used in the Commission’s assessment? We understand that some Member States have questioned their accuracy.

The situation with regard to multi-stage vehicles seems troublesome. You rightly point out that it would be difficult to assess the CO2 emissions of such a vehicle accurately using a proxy valuation. Do the Government have a view as to a more accurate way of determining this? However, isn’t the risk of manufacturers adopting this method of production in order artificially to reduce their average emissions similar to the issue around “open pooling”? It would require manufacturers to cooperate at a level which seems unrealistic.

You also expressed some doubts about the use of mass as the utility parameter, given that it doesn’t always represent the “usefulness” of the vehicle, but reported problems with using other parameters. We understand that other Member States share this concern. What is the current thinking among Member States, and is there any likelihood that a better parameter could be found?

With regard to the penalties for exceeding the limits, we would be interested to see your analysis of whether €120 is the correct level. The arrangements for phasing in the penalties seem odd, and would result in a rather large jump in the penalties between 2018 and 2019. A manufacturer exceeding its target by 1g/km would appear to face penalties of €5 per vehicle in 2018 and €120 per vehicle the next year. Do the Government think there is a case for phasing the introduction differently to avoid this?

12 January 2010

Letter from Rt Hon Sadiq Khan MP to the Chairman

Sub-Committee B considered the Explanatory Memorandum for this document on 11 January and decided to keep it under scrutiny. On 12 January you wrote to me to ask for more detail on certain aspects of the legislative proposal. I am writing in response to those queries but also to highlight that the UK consultation document and Impact Assessment (IA) on this proposed regulation were published on 18 March, and I enclose a copy of the IA.

In developing the provisional UK position, reflected in the above two documents, we have engaged with a range of stakeholders, including van manufacturers, van users and environmental groups. The results of these discussions have fed into our analysis and position on the regulation. However, the data that fundamentally underpins the costs and benefits of the scheme have been sourced from independent sources to ensure that the IA provides an impartial view of the Commission’s proposal.

Given the lack of historic data on van CO2 emissions, analysing the impacts of the regulation is challenging. The approach that the Commission has taken in its analysis is similar to the approach taken in our own Impact Assessment; therefore, methodologically we consider its approach sound. However, there are uncertainties around the Commission’s analysis – the IA does not consider basic characteristics of the regulation such as the target phase-in, 2016 as the full compliance date (as
against the range of earlier dates actually assessed), and penalty modulation. In addition, its assumptions around the deliverability of the long term target hinge on the costs and benefits of two technologies (hybridisation and ultra-light weighting) that are not currently present in the van sector. Therefore, there is a high degree of uncertainty about whether these assumptions are correct. However, the consultants used by the Commission to analyse the impacts of the long term target are highly respected in the field and so the approach is as robust as it can be given the lack of available data.

With regard to multi-stage vehicles (MSVs), we are still considering what the best solution would be to determine an appropriate CO₂ figure for these vehicles. However, there are several principles that we would want to see respected in the eventual method and that we are concerned may not be fully taken into account in the draft regulation. MSVs must be within the scope of the regulation, as to leave them out would represent too large a potential loophole. The approach should not entail disproportionate administrative costs on either manufacturers or Member States. Thus, some kind of proxy value (either taken from a range of actual emissions values or by a modelled calculation) may be more workable than seeking to establish the actual g/km carbon dioxide emissions for each completed vehicle by re-testing. Given that the base vehicle manufacturer has the greatest scope to make emissions reductions, it seems right that the base manufacturer must be responsible for the emissions of a multi-stage vehicle. The possibility of extending the regulation so that coachbuilders share responsibility for emissions reductions is not assessed in the IA, would be administratively complicated and risks imposing a disproportionate cost onto what are typically SMEs. However, the proxy value for an MSV must be reasonable, relate to a base manufacturer’s ability to influence it and enable manufacturers to plan for compliance.

In your letter you suggest that the need for base manufacturer and coachbuilder to cooperate would limit the risk that there would be a perverse incentive for manufacturers to produce more MSVs to make compliance with their target easier. Whilst it is true that this level of cooperation between companies is unlikely, particularly as consumer demand is mostly for completed vans not bespoke multi-stage vehicles, this loophole could in theory be exploited by a manufacturer without needing to cooperate with another firm. For example, a base manufacturer could change the way that it produces its normal panel vans so that they were produced initially as a chassis-cab, then registered, before being bodied by the same manufacturer (or a coachbuilder wholly owned by the manufacturer). For the purposes of emissions testing the vehicle would be a MSV but as far as any end purchaser is concerned it would simply be buying a completed vehicle from the manufacturer. Producing vans by the multi-stage process is more expensive than building even a like-for-like complete van; but if this approach was cheaper for a manufacturer to comply with its target it is possible that some might exploit it.

Regarding utility parameter, this does not appear to be a significant issue among other Member States, in the sense that there have been few calls to use a different parameter from reference mass. A few Member States have suggested the use of gross vehicle weight, on the grounds that it would better reflect the ‘usefulness’ of the vehicle. However, gross vehicle weight is attested by the vehicle manufacturer rather than being objectively measurable, making it a potentially less reliable parameter than reference mass. Footprint is objective, but data on it will only start to be collected two years before the start of the mandatory targets (as currently in the draft regulation). Therefore, although not perfect, reference mass does appear the most appropriate parameter to use at this point; but we welcome the review provision in the regulation to allow other possible parameters to be considered.

The question of penalties is bound up with that of the near-term target level. Our analysis suggests that a €120 per g/km penalty rate is broadly appropriate to incentivise compliance with a 175g/km target level. This being the case, the proposed modulation to 3g/km increases the risk that the target will be missed—the reason that we would prefer a lower ‘corridor’ of modulation. On the issue of the impact of modulation suddenly ending in 2018, we do not consider that this will have a significant impact on manufacturers. In the Commission’s proposal an average 175g/km target will be applied from 2014 to 2019, before an average 135g/km target comes in for 2020. Therefore, we would expect that from 2016 onwards manufacturers will be planning for compliance with their 2020 targets. Therefore, we would not expect any manufacturers to still be exceeding their 2016 targets in 2019, if they were serious about complying with their 2020 target.

The Impact Assessment, consultation paper and supporting documents can also be found on the Department for Transport website at http://www.dft.gov.uk/consultations/open/2010-19/. The consultation will close on 10 June 2010, and the responses will be used to help inform the UK’s negotiating position.

Since Sub-Committee B last considered this proposal a number of Working Party meetings have been held, but there has been little progress in terms of advances towards a commonly-agreed text. An exchange of views took place at the Environment Council on 15 March. Many Ministers broadly supported the proposed long-term target of 135g CO₂/km to be met in 2020, although some Member
States argued that this would be difficult to achieve by the target date. The Government strongly supports the need to subject this target to a review and thorough Impact Assessment by 2013. The Spanish Presidency see this dossier as a priority, and it is possible that they may seek to achieve a general approach at the Environment Council on 21 June, however the level of complexities in the proposal mean that this may not be possible.

Discussion of the proposal has also recently begun in the European Parliament, with an initial exchange of views in the Environment, Public Health and Food Safety Committee on 17 March. The Committee is scheduled to adopt its report on the dossier in May, and the Plenary first reading is currently scheduled for October/November.

I will of course continue to keep you informed of further progress with this proposal.

24 March 2010

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your letter of 24 March which was considered by Sub-Committee B on 29 March. They decided to retain the document under scrutiny.

We are grateful for your answers to our questions regarding multi-stage vehicles, the utility parameter and penalties and agree with your support for a thorough assessment of the working of the Regulation by 2013.

On the Commission’s impact assessment, we were interested to hear of the lack of consideration of the impact of the target phase-in and the full compliance date. Has the European Parliament raised any concerns about this?

Thank you for providing us with your impact assessment. It was interesting to see your assessments of various possible amendments to the proposal. In our recent report, Impact Assessments in the EU: room for improvement? we discussed the extent to which Member State impact assessments could be used in Council negotiations. We shall be keen to follow the progress of this dossier with this in mind.

In due course, the Committee would be interested to receive an account of how the production and use of the UK impact assessment for this dossier related to the recommendations of our report.

30 March 2010

TRANSPORT: GREENING TRANSPORT (11857/08, 11841/08)

Letter from Rt Hon Sadiq Khan MP, Minister of State, Department for Transport, to the Chairman

As Sub-Committee B are holding under scrutiny the Commission Communication on the strategy for the internalisation of external costs I thought that you might find it useful to have a brief summary of the current position on the strategy, and on the related proposal to amend the ‘Eurovignette’ Directive.

As the Committee will be aware, on 8 July 2008 the European Commission published a revised proposal on Lorry Road User Charging, the so-called “Eurovignette” Directive. The proposed Directive would amend Directive 1999/62/EC which set out rules governing the imposition of tolls, user charges and vehicle excise duties on heavy goods vehicles. This Directive was further amended by 2006/38 to take account of developments in road charging since the original Directive and to elaborate the principles governing any tolling arrangements that Member States chose to apply to heavy goods vehicles. The 2008 proposal allows, but does not require, Member States to calculate tolls on the basis of the costs of local pollution and of congestion. Neither the existing Directive nor the new proposal requires Member States to introduce charging; however, if they choose to do so, they would be obliged to comply with the rules in the Directive. The Government welcomed the fact that the introduction of tolling or charging remained optional for Member States under this proposal.

Progress with negotiating the revised Directive has been slow with the last three Presidencies choosing not to take forward negotiations. There are several reasons for this, including disparate views on how to take the key issues forward, but one of the most evident issues was a lack of political will on the part of some Member States to agree to a Directive that would potentially increase costs on hauliers during the economic crisis. As you may recall from my letter of 10 February about the prospects for transport proposals under the current Spanish Presidency, the proposal is not a priority
for the Spanish, and although they did indicate that it might receive some working group time during their term there has been no such discussion so far.

You may recall that this proposal was published as the only legislative proposal in a package of documents referred to as the “greening transport” package. The other elements of this package included the Communication on a Strategy for the Internalisation of External Costs and a Communication on Rail Noise Abatement (EM 11842/08). The proposed Eurovignette Directive was therefore considered to be part of a stepwise strategy to internalise external costs. The strategy for internalising externalities highlighted other measures such as Emissions Trading Schemes, tolls, charges and taxes as all contributing to ensuring that the externalities that the different transport modes created would be taken into account. With the limited progress negotiating the revised Eurovignette Directive there has been a general lack of progress with the broader internalisation strategy.

22 March 2010

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your letter of 22 March, which was considered by Sub-Committee B. They decided to retain document 11841/08 under scrutiny.

Your letter suggests that no progress is likely to be made under the Spanish Presidency. We would be grateful for further updates on the Greening Transport package as and when progress is made.

30 March 2010

TRANSPORT: INTELLIGENT TRANSPORT SYSTEMS (17564/08)

Letter from the Chairman to the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport

Thank you for your letter of 27 November, which was considered by Sub-Committee B on 7 December. They decided to clear the document from scrutiny.

We have shared your concerns about the appropriateness of legislative action in this area and are pleased that you appear to have negotiated restrictions to the proposal. We are disappointed with the stance of the European Parliament regarding mandatory deployment. Measures for mandatory deployment of certain systems, and imposition of standards where there is no issue of cross-border interoperability would seem to be breaches of the principle of subsidiarity. With this in mind, we would appreciate a prompt update on the progress of negotiations with the European Parliament and hope that the Council will strongly resist any revival of the proposed mandatory deployment provision.

Thank you for sending us a copy of your impact assessment. We appreciate the reasons for its being rather vague at this stage, but look forward to receiving a copy of the IA on comitology proposals when they emerge.

8 December 2009

Letter from the Rt Hon Sadiq Khan MP to the Chairman

Thank you for your letter of 8 December in which you advised me that Sub-Committee B had cleared the proposed Intelligent Transport Systems (ITS) Directive from scrutiny. I am now writing to update you on progress at the December Transport Council and subsequently.

When I last wrote to your Committee on 27 November, the Swedish Presidency was seeking to reach political agreement on this dossier at the Transport Council on 17 December. Agreement in principle was reached on the substance of the Directive within Council and, in parallel, with the European Parliament. I am pleased to report that this agreement substantively reflected the position I set out to you in my letter of 27 November. We were able to maintain the progress that had been made in restricting the scope of the Directive, including in not mandating deployment, though to accommodate the European Parliament, the Directive does make provision for the Commission to bring forward proposals for deployment once specifications have been adopted. These will be subject to separate negotiation when they emerge.

In spite of this progress, however, the Presidency was only able to give a progress update on the Directive at the Transport Council. The entry into force of the Treaty on the Functioning of the European Union (the Lisbon Treaty) on 1 December 2009 raised issues concerning the Comitology
provisions within the Directive. The Directive initially provided for the specifications to be adopted in accordance with the Regulatory Procedure with Scrutiny, while other provisions would be subject to the Advisory Procedure. These procedures will change as a result of the Lisbon Treaty.

The Council and European Parliament were unable to reach an agreed position on the replacement provisions in time for the Transport Council.

At the Transport Council, I took the opportunity to make a statement on the proposal. In this statement I set out the UK’s position that Intelligent Transport Systems have the potential to contribute to achieving transport objectives, if clearly targeted and supported by sound a business case. I also noted the UK’s intention to issue a declaration setting out our position that decisions on the deployment of ITS are a matter for Member States, in accordance with the principle of subsidiarity, and that nothing in this proposal prejudices that right. Several other Member States supported this statement.

Since the Transport Council, good progress has been made on the outstanding issues relating to the Lisbon Treaty, both within this dossier and in wider discussions between the Council and the European Parliament on the new provisions. Both institutions are close to agreement in principle, subject to some legal clarification. For those provisions in the ITS Directive subject to the Advisory procedure, the procedure will remain unchanged until replaced by the adoption of new provisions subject to the ordinary legislative procedure. For the adoption of specifications previously subject to the Regulatory Procedure with Scrutiny, the agreement makes provision for:

- The delegation of powers to the Commission for a fixed period of 7 years;
- For the Council or European Parliament to revoke the powers;
- For the Council or European Parliament to object to the adoption of the specifications.

Given the ambiguities in the Directive around the scope of the specifications, a key issue for us in negotiations has been to ensure that there is full and effective consultation with Member States during the development of the specifications. I am clear that we will need to play a full part in future discussions over implementation of this Directive to ensure that it best meets the needs of the UK.

The Directive will now go forward to a European Council meeting and a plenary session of the European Parliament. Given the significant progress we have made in negotiations and looking ahead to engaging constructively in the development of specifications during the implementation phase, I intend to vote in favour of the proposal.

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

22 March 2010

TRANSPORT: RIGHTS OF BUS AND COACH PASSENGERS (16933/08)

Letter from the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport, to the Chairman

Thank you for your letter of 14 July about the above proposed Regulation. I note your comments and that Sub-Committee B agreed to hold the proposal under scrutiny.

Since my letter of 8 July the Swedish Presidency has chaired a further seven meetings of the land transport working group to consider the proposal and is expecting that this will enable it to present Ministers with the basis for a political agreement at the Transport Council on 17 December. Whilst good progress has been made on negociations and looking ahead to engaging constructively in the development of specifications during the implementation phase, I intend to vote in favour of the proposal.

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

22 March 2010

THE SCOPE OF THE PROPOSAL

Throughout the negotiations on this dossier, the Government has consistently sought to secure the exclusion of local bus services. This was on the basis that Member States should be able to tailor any requirements to the specific nature of their bus market. To achieve this we have been seeking the removal of the public service contract condition that was attached to the original provision enabling Member States to exempt urban, suburban and regional transport. Although we were successful in securing the removal of the public service contract condition from the exemption, the Swedish
Presidency are currently proposing that whilst Member States would be able to exempt urban, suburban and regional transport from the majority of the provisions, a limited number of provisions would apply.

A number of Member States, including the UK, are still calling for the Regulation to only apply to long-distance bus services, but some Member States have indicated that they could support the Presidency’s current proposal. We are still hoping to secure the ability for Member States to exempt local bus services from all of the provisions of the Regulation, but given some Member States’ changing position this may not be achievable.

**THE LIABILITY PROVISIONS**

Significant progress has been made in respect of the liability chapter. The chapter has been completely re-written and the provision introducing strict liability removed. Instead passengers will be entitled to compensation in the event of an accident in accordance with national law of the state of the carrier. However, any limit in national law to limit compensation will not be less than 220,000 EUR per passenger and 1,200 EUR per item of luggage. In addition, carriers will also be required to provide assistance with regard to the passengers’ immediate practical needs following an accident. Prior to, and if necessary during, the Council we will be seeking further changes, in particular to clarify that any assistance does not constitute a recognition of liability, but compared to the original proposal the burden placed on operators should be reduced.

**UPDATE ON OTHER ISSUES**

We were concerned that the requirement to prevent discrimination on the grounds of nationality or place of residence with regard to prices offered to passengers may have implications in terms of the provision of concessionary travel, if this had to be provided to visitors from the EU. However, it has been agreed that the proposal will be clarified to ensure that such schemes can be applied to local residents only. The proposal will also be clarified to ensure that passes, SMS, electronic messages or electronic records would be classed as a ticket for the purpose of the EU Regulation.

The provisions in respect of disabled people and people with reduced mobility largely build on existing domestic legislation. There were concerns that if the proposal required operators to modify their vehicles, this could conflict with the staged introduction of accessible buses and coaches set out in existing UK legislation. However, it has been agreed that the proposal will be amended to make it clear that the Regulation will not require carriers or terminal managing bodies to modify or replace their vehicles, or the infrastructure and equipment at bus stops and terminals.

In terms of the information obligations on terminal managing bodies we have sought to make these practical in their application. For example, some respondents to the consultation said that terminal managing bodies would be unable to meet the original requirement to inform passengers of delays one hour before a scheduled arrival, as often they would not know how late a service would be, until the coach has actually arrived at the terminal. We have secured a change so that terminal managing bodies will only have to inform passengers of a delay no later than 30 minutes after a scheduled departure, and of estimated departure times as soon as this information is available.

On the designation of a national enforcement body, whilst this body will still be responsible for ensuring compliance with the Regulation, it has been agreed that the original proposal will be amended to give Member States the flexibility to decide whether the national enforcement body should also be the first point of contact for complaints or whether another body is designated for that role.

As originally drafted the Regulation would have come into effect one year after it has been agreed, we have managed to secure a change to two years, to give operators and terminal managing bodies more time to prepare.

**CONSULTATION WITH STAKEHOLDERS**

My last letter to the Committee summarised the responses to our public consultation, and noted that most respondents felt that the proposal did not achieve a reasonable balance between the rights of passengers and the economics of service provision, although there was a clear split between industry on the one hand and passenger and disability groups on the other. I now attach our full response to the consultation.

The Department has also updated its Impact Assessment on the original proposal to take into account costs identified by industry and has include a new option based on the exclusion of all local bus services, reflecting the Government’s preferred option. The revised impact assessment is attached to
this letter. For some of the provisions it has still proved difficult to quantify the costs and benefits, and this has been particularly the case in respect of the benefits accrued to passengers. In addition, we anticipate that the agreed revisions to the liability provisions will see a decrease in the costs estimated by industry in respect of the original proposal, as compensation would be determined in accordance with national law.

NEXT STEPS

As noted earlier it is likely that the scope of the proposal will only be resolved at the Council itself. If, as expected, a political agreement is reached at the Council the Government will continue to lobby to ensure that the gains we have secured in the first reading of the proposal will be reflected in the final version of the Regulation. The European Parliament’s second reading of the proposal has been provisionally scheduled for May 2010. I will, of course, continue to keep your Committee informed of the progress of this proposal.

2 December 2009

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your letter of 2 December, which was considered by Sub-Committee B on 7 December. They decided to clear it from scrutiny.

We have consistently supported the Government’s position that the scope of this Regulation would be more properly limited to long-distance and international services. Although some concessions appear to have been made toward a reduction of scope, we support the Government’s attempts to secure the best deal for the UK. We are concerned that full consultation with the local bus industry may not have occurred, relating especially to additional costs to the industry. We hope the Government will hold out for the exclusion of local bus services.

As this Regulation is likely to be further amended during the course of its progress through the Council and the codecision process, we would be very grateful if you could keep us updated.

Finally, we are grateful for the inclusion of the latest UK impact assessment in your letter. It was interesting to see your assessment of the differences between the Regulation as proposed and the amended version you were seeking to achieve.

8 December 2009

Letter from the Rt Hon Sadiq Khan MP to the Chairman

Thank you for your letter of 8 December about the above proposed Regulation. I note your comments and that Sub-Committee B decided to clear the document from scrutiny but asked to be kept informed, and I am writing now to report the outcome of negotiations at the Transport Council on 17 December.

In the final negotiations before the Council we managed to secure a change to the article requiring the provision of assistance with regard to passengers’ immediate practical needs following an accident, to make it clear that any assistance shall not constitute recognition of liability. This was a significant improvement that we were keen to secure.

In terms of the scope, as set out in my letter of 2 December the Presidency had been proposing that whilst Member States would be able to exempt urban, suburban and regional transport from the majority of the provisions, a limited number of them would apply. These provisions were:

— ticket prices and conditions to be offered without any discrimination based on nationality of the customer or the place of establishment of the carrier (Article 4(2));

— no discrimination on the grounds of disability or reduced mobility with regard to booking a journey or boarding a vehicle (unless safety requirements or vehicle design make access impossible – articles 10 and 11(1));

— compensation in the event of accidents is determined in accordance with national law, but if it is capped certain minimum limits apply (Article 6); and
the provision by carriers of reasonable assistance to meet passengers’ immediate practical needs following an accident (Article 8).

During the Council debate on the proposed Regulation, I was one of several Ministers to maintain reservations on the scope, asking for it only to apply to long-distance national and international services. This meant that at the outset of the Council the blocking minority was maintained. However, some other Member States argued strongly for widening the scope, although they were prepared to accept the existing text. To try and resolve this impasse the Presidency offered a compromise text, which set out that the only provisions that Member States would not be able to exempt urban, suburban and regional services from would be the ones which provided that:

— ticket prices and conditions must be offered without any discrimination based on nationality or the place of establishment of the carrier; and

— there must be no discrimination on the grounds of disability or reduced mobility with regard to booking a journey or boarding a vehicle.

The Presidency compromise removed the provisions stating that compensation in the event of accidents is determined in accordance with national law, but if it is capped certain minimum limits apply (article 6); and requiring carriers to provide assistance to meet the passengers’ immediate practical needs following an accident (article 8) from the list of provisions which Member States can not exempt urban, suburban and regional services from.

The remaining provisions that would apply to urban, suburban and regional services do not need to be tailored to the specific nature of our bus market. The provision in respect of non-discrimination against disabled people is already provided for in domestic legislation (although this right would be extended to people with temporary mobility difficulties). The provision preventing discriminatory ticket prices and conditions has, as I have previously reported, also been clarified to make it clear that it would not prevent concessionary travel schemes being provided to local residents. The Presidency's compromise therefore met the substance of UK concerns about the scope of the proposal. The other Member States that had formed the blocking minority also found this text a satisfactory compromise and on this basis they, and I, accepted the text of the political agreement.

In accepting the text I took the view that, as the application of these provisions fits with wider Government policy on supporting equitable treatment for disabled people and people with reduced mobility, and given the significant improvements that had been secured in respect of what was the liability Chapter and in particular the removal of strict liability, I felt that the compromise proposal represented a much better balance between the economics of service provision and the rights of passengers than the original proposal and was an acceptable resolution that best served UK interests.

I will, of course, continue to keep your Committee informed of the progress of this proposal through the further stages in negotiations.

22 December 2009

TRANSPORT: URBAN MOBILITY (14030/09)

Letter from the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport, to the Chairman

I am writing in response to your letter of 24 November 2009 in which you asked to be kept abreast of developments under the Spanish Presidency and whether congestion charges are seen as an effective policy tool.

LATEST ON THE ACTION PLAN

I am still awaiting the draft Council Conclusions on the Action Plan in which the Spanish Presidency will set out further details for Member States to comment upon. However, as it is unclear when these will be available, I would like to provide you with what information I can now.

As you may know, I attended the Informal Transport Council in A Coruña on 12 February, in part to discuss the Action Plan. I joined Ministers from several other Member States in supporting the principles of the Action Plan, in particular, the Commission’s approach of promoting and supporting the development of sustainable urban mobility policies, whilst maintaining that the principle of subsidiarity is vital for urban areas.
The Presidency emphasised the need to implement sustainable plans to promote greater integration of infrastructure planning and to find alternatives to the use of private vehicles through the use of public and non-motorised means of transport.

I agreed that there is a role for the Commission to play in overcoming the lack of evidence surrounding urban mobility and facilitating the exchange of best practice. I argued that an observatory, as suggested in the Action Plan, could achieve this goal, but that it was vital that there it has clear Terms of Reference, objectives, and a work programme agreed by Member States.

The UK position remains clear that the Action Plan should not lead to further legislation, and that cities and city regions should retain the freedom to pursue and implement locally relevant solutions.

The Presidency has scheduled several working group discussions of the Action Plan during April, and hopes to be able to agree Conclusions at the next Transport Council on 24 June.

**CONGESTION CHARGES**

You will recall that in recent times there has been an attempt by the Commission to update the Eurovignette Directive to include external costs such as congestion created by Heavy Good Vehicles. This proposal was the subject of EM 11857/08. This has been part of a broader strategy though, which would suggest that the Commission sees congestion charging as one policy tool to tackle the wider issue of internalising externalities across all modes. And the Commission has so far come forward with proposals that do not mandate charging measures. Whilst we cannot say for certain, this would suggest that the Commission favours congestion charging so far aimed at lorries alone as part of a wider package of measures. I am writing to you separately about the current position on Eurovignette and the related Communication on the strategy for the internalisation of external costs (EM 11841/08).

The Committee may also wish to be aware that the Commission’s Legislative Work Programme for 2010-2012, which is very high level and lacks any detail at present, indicates possible plans to bring forward further transport pricing measures in 2012 including a Communication on pricing in all modes of transport. Any such proposals or Communication would, of course, be the subject of Parliamentary scrutiny when they emerge.

It may also be of interest if I mention some recent UK developments. For the last few years the Government has been providing funding through the Transport Innovation Fund (TIF) to support local areas that wanted to deliver sustained reductions in congestion through a combination of investment in public transport and congestion charging. TIF was about tackling congestion and focused around a narrow set of solutions, in particular congestion charging.

On 2 March I announced the launch of a new Urban Challenge Fund – replacing TIF – to support local authorities developing wider packages of measures that not only tackle congestion but offer greater choice for transport users, improve safety, reduce air pollutants and carbon emissions and improve the living environment.

The new Fund will draw on the lessons from TIF, but will be geared to delivering economic growth, improving health and the environment, not just congestion. Nevertheless, a key objective of the Fund will be to reduce congestion and increase journey time reliability which will be of huge benefit to businesses.

22 March 2010