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

This edition includes correspondence from 1 December 2010 to 31 May 2011.

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

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

Thank you for your explanatory memorandum of 4 November, which was considered by the Subcommittee on the Internal Market, Energy and Transport. They decided to retain it under scrutiny.

We continue to be concerned about the funding arrangements for Galileo and understand that these have yet to be resolved. We would therefore be very grateful to receive your latest assessment of the funding arrangements, particularly in the light of the forthcoming review of the EU Budget.

The Public Regulated Service would appear to present a valuable revenue stream to the project. It is particularly regrettable therefore that the Commission has not produced an impact assessment of the access arrangements. Do the Government intend to produce a UK impact assessment?

We understand that one of the options for addressing the funding problems would be to launch fewer satellites. What impact would a smaller constellation have on the operation of the system? Specifically, would such a reduced infrastructure be able to provide the level of accuracy and robustness necessary for the operation of “value-added” services such as PRS or the Commercial Service?

We note that the Government have been tentative about the potential UK uses of the service. Do you have any further information about which services the UK is most likely to use? Does the Government’s caution reflect concerns about the reliability of the services as mentioned above?

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

14 December 2010

Letter from the Rt. Hon. Theresa Villiers MP to the Chairman

Thank you for your letter dated 14 December in which you have indicated your Committee’s decision to retain the above subject under scrutiny. I thought it would be helpful if I provided your Committee with an update on the developments that have taken place since I submitted Explanatory Memorandum (EM 14701/10) on 4 November 2010.

On 2 December I attended the second Transport Council of the Belgian Presidency in Brussels. My written statement on the outcomes of that Council was laid in the House on 13 December. A progress report was given at Council on the proposal for a Decision on the Public Regulated Service (PRS).

During the discussion I made reference to the lack of an impact assessment and expressed my disappointment at the lack of visibility on costs. In order for the Government to assess potential uses of the PRS here in the UK, greater clarity is required on the estimated infrastructure and operational costs as well as an indication from the Commission on whether it proposes to charge Member States for access to the PRS. The Commission has committed to providing a paper on costs at the next Transport Council Working Group, scheduled for 20 January.

Following receipt of the Commission’s paper on costs we will seek to identify possible groups of users of the PRS in the UK. In the meantime, we are working closely with the European Commission and the upcoming Hungarian Presidency to ensure that the provisions in the draft Decision relating to the manufacture of PRS receivers and associated security modules are not overly restrictive. UK industry is regarded as an expert in the field of PRS technology and we are keen to facilitate industrial return. Our aim is to negotiate a suitable form of wording which balances the need for appropriate security controls of manufacturers against favourable conditions in which a market for PRS receivers can grow.

You also requested an update on the funding arrangements for Galileo. The agreement reached by the European Council, Parliament and Commission in 2007 fixed the budget for the completion of the system by 2013 at €3.4bn. It now seems likely that the full system of 30 satellites and 40 ground stations as envisaged in 2007 cannot be delivered to this timescale or for this budget. The European Commission is exploring with the European Space Agency how the programme can be made to fit within the agreed budget and I understand that part of that work involves looking at several different constellation designs and the trade-offs in terms of services that those would involve. Of course, as the programme is part-way through, some options may actually increase costs further and it is important that the Commission explores the options thoroughly.
The Commission is obliged to prepare a mid-term review of the Galileo programme which is expected to set out the results of this work. An Explanatory Memorandum will be submitted to you once the Commission’s Communication is issued early next year.

The UK will continue to push the Commission to respect the 2007 budget cap and reduce the level of ambition of the programme to respect the agreed budget.

13 January 2011

Letter from the Chairman to the Rt. Hon. Theresa Villiers MP

Thank you for your letter of 13 January which was considered on 24 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to retain the document under scrutiny.

We welcome your protest at the lack of a Commission impact assessment for this proposal and look forward to receiving your assessment of the Commission paper on costs. Your letter does not make clear whether and when a UK impact assessment will be forthcoming. We feel unable to release the document from scrutiny until we have a clearer idea of the likely uses of the service in the UK, and the associated costs and benefits.

Thank you for your update on the funding of the scheme. We note that the mid-term review was published on 19 January and look forward to scrutinising it in due course. We are extremely concerned that the project appears to require a further €1.9 billion.

I look forward to receiving your reply within the standard 10 working days.

26 January 2011

Letter from the Rt. Hon. Theresa Villiers MP to the Chairman

I am writing to you in response to your letter dated 26 January in which the Committee states its decision to retain the above proposal under scrutiny.

At the Transport Council in December I asked for more detail on the estimated costs of the public regulated service (PRS). The Commission has now shared a cost analysis paper with Member States and it has become clearer that the costs associated with the PRS will relate mainly to the setting up costs of a national competent authority to oversee the security and operation of the manufacture and use of the PRS receivers. We are currently examining who will perform the role of competent authority in the UK. All of the proposed functions are already carried out in the UK and as such we do not expect there to be any significant start-up costs. We will not be carrying out an impact assessment at this stage; however, if we decide it necessary to legislate for the role of national competent authority we will provide an analysis of costs.

The Hungarian Presidency has scheduled weekly Working Group meetings to discuss the proposal, with a view to a general approach at the Transport Council on 31 March. In addition, and with a view to securing a text which will be effective at the operational level, the UK has asked the Presidency and the Commission to engage with national experts to examine some of the more technical elements of the legal text. This is resulting in a significant re-draft of the proposal and I am pleased to report that the efforts of UK officials are proving fruitful with the emerging text addressing our earlier concerns.

I will, of course, write to you again ahead of the March Transport Council to keep your Committee informed of the progress in negotiations. A separate Explanatory Memorandum will be sent to your Committee shortly regarding the Commission’s Mid-Term Review on Galileo.

15 February 2011

Letter from the Chairman to the Rt. Hon. Theresa Villiers MP

Thank you for your letter of 15 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 14 March. They decided to hold the document under scrutiny.

We are still disappointed that no impact assessment has been produced, either at EU or UK level. We note that you protested at the lack of an EU assessment at the Transport Council in December, and are therefore surprised that there are no plans for a UK assessment. We would therefore appreciate the fullest estimate you can provide of the likely costs and benefits of the system for the UK.

The Commission has now produced an analysis of costs: we wonder why this could not have been done when the proposal was first made.

I look forward to receiving a reply to this letter within the standard 10 working days.
Letter from the Rt. Hon. Theresa Villiers MP to the Chairman

Thank you for your letter of 15 March informing me of the decision by the Internal Market, Energy and Transport Sub-Committee to retain the above proposal under scrutiny. I am writing to provide you with an update in advance of Transport Council on 31 March.

With regard to the proposal for a Decision on the detailed rules for access to the public regulated service ("PRS Access Decision") I am pleased to report that we have seen substantial re-drafting of the proposal to take account of the Government’s initial concerns. In summary, these covered:

- Costs;
- Framework for the manufacture of PRS receivers and associated material; and
- Security Standards.

Taking each of these in turn, I would first like to explain where we have got to on the issue of costs. The Commission has confirmed our earlier understanding that the PRS is part of the design of the Galileo system. This means that the budget set to complete Galileo includes provision to make it capable of producing the PRS service.

The costs that will be incurred at a national level relate to the setting up and running of the Competent PRS Authority. In the UK, many of the proposed functions are already carried out - for example security vetting and authorisation; export control; management of cryptographic material; and control of frequencies.

In the light of this, our aim is to avoid creating a new organisation. We propose that the designated Competent PRS Authority will be the focal point for PRS in the UK. It will ensure that these activities are coordinated and are carried out efficiently though minimising costs and maximising the use of existing resources and expertise.

We have taken a tough line on the proposal to allow Member States to designate the European GNSS Agency as their Competent PRS Authority. While we appreciate that some Member States, in particular the smaller ones, may not have the expertise to carry out all of the named activities, they should nevertheless retain financial responsibility. The proposed Decision, as currently drafted, now requires any Member State designating the European GNSS Agency to enter into an agreement with that body to cover costs.

The one outstanding issue, which will not be addressed in the proposed legal text, is whether the Commission will charge Member States to access the service. The Government is clear that we have already paid for such access, given the funding we have provided for Galileo through our contribution to the EU Budget. We will strongly resist any suggestions that Member States should be charged.

We will be looking to recoup the administrative costs of the Competent PRS Authority by applying the ‘user pays’ principle. However, we cannot determine that charge at present because it is we do not yet know with any certainty who will be using PRS in the UK.

Since we have already paid for the PRS through the Galileo budget, we would like to find appropriate and cost-efficient uses for the service. We recognise that the service will offer benefits where there is a need for a more assured and secure navigation or timing signal or where unencrypted signals are being blocked.

There is interest from the UK applications industry in supporting PRS use. The Government is working with UK industry, the Commission and the European GNSS Agency to organise a workshop in the autumn for potential UK PRS users. The greater the volume of users in the UK, the lower the overhead costs will be. Preliminary work undertaken in the UK would suggest that with 1,000 receivers an annual user charge of £450 pa may be applicable and with 100,000 receivers this charge could fall to £35 pa.

A key benefit to the UK of the PRS is expected to accrue through industrial return. The original draft of the proposed Decision limited PRS manufacturing to those Member States which use the service. We opposed this because it would have prevented UK industry – which is well placed to take a lead in the manufacture of PRS receivers and security modules – from entering the market in the immediate future. We have negotiated for this limitation to be removed.

We have also pressed for due consideration to be given to balancing the needs for appropriate security controls of manufacturers against favourable conditions in which a market for PRS receivers can grow. We now believe that the text, as currently drafted, will deliver this.
To maintain our confidence in the PRS, the UK Government has pushed for the establishment of robust common minimum security standards for access to the PRS system and the manufacture, ownership and use of PRS receivers. Robust security standards, coupled with the UK’s joint hosting of the Galileo Security Monitoring Centre, will give us the assurance and oversight we need to protect our security interests.

Overall I believe the text to be tabled for General Approach at Transport Council at the end of this month addresses the UK’s earlier concerns.

21 March 2011

Letter from the Chairman to the Rt. Hon. Theresa Villiers MP

Thank you for your letter of 21 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 28 March. They decided to clear the document from scrutiny.

We remain very disappointed that no impact assessment was conducted for this proposal. Your letter suggests that, though the overall costs of setting up the competent authorities will be low, and recouped from users, little consideration has been given to who those users might actually be.

We believe that most robust consideration should have been given at an early stage to the potential uses of all the Galileo services, and to any potential revenue which might be gained from such services. Although we accept that, to a certain extent, the potential users of the service will be determined by the access rules, it seems extremely unsatisfactory that the more information is not available at this stage. We would also urge the Government to be vigilant with regard to the security of the service when considering potential users.

With regard to charging Member States for use, it would seem that such a solution might help with the wider budgetary problems encountered by the Galileo project, if the fees were to contribute towards reducing the budget or operating costs of the project. We accept that Member States have already paid for the service through their contributions to the EU budget, and agree that such fees should not be used as a back-door measure to top up the €3.4 billion already allocated.

30 March 2011

ALTERNATIVE DISPUTE RESOLUTION IN COMMERCIAL TRANSACTIONS AND PRACTICES

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

I am writing to inform you of the UK Government response to the European Commission consultation on the use of ADR to resolve disputes related to commercial transactions and practices in the EU.

Earlier this year, the Commission launched a consultation on how to increase the use of ADR in business-to-consumer disputes. The consultation sought views on how to raise awareness of consumers about the availability of ADR, how to encourage the participation of industry in ADR schemes and how best to fund ADR that is free or at least very cheap for consumers. The UK Government response of 17 March 2011, which accompanies this letter, addresses these points.

I welcome the Commission’s interest in how ADR within the EU could be improved and we should engage fully in the process and collaborate with the Commission and other Member States as this work is taken forward. I have a particular interest in dispute resolution for on-line sales as evidence suggests that consumer confidence is weaker in this area. An efficient EU-wide dispute resolution mechanism has the potential to benefit UK consumers shopping cross-border and UK businesses trading into other Member States.

Evidence suggests that one of the factors discouraging consumers from purchasing goods and services cross-border is uncertainty about what to do or who to turn to if they experience a problem with a foreign trader. The Commission’s purpose in promoting increased use of ADR is to encourage active participation of consumers in the internal market thereby boosting cross-border trade. Consumers would have confidence that they will have access to cheap, simple and quick solutions to resolve disputes.

ADR, through arbitration, mediation or ombudsmen schemes, provides a way to resolve a dispute as an alternative to courts or tribunals. ADR has been promoted for many years in the UK as the best
way to resolve disputes, and ADR schemes can help to drive up business standards and alleviate burdens on the judicial system.

Although I support the Commission’s objectives in promoting use of ADR in business-to-consumer disputes, my response to the consultation makes clear that where effective national schemes already exist, EU action must not damage their operation. Furthermore, any EU measures should:

— be limited to cross-border disputes between EU businesses and their customers; and
— not, implicitly or explicitly, lead to Member States having to change their internal judicial systems;

And any proposal that would affect UK judicial systems would be subject to the JHA protocol 21 ‘opt in’ procedure.

The Commission do not put forward any proposals in their consultation but a legislative proposal from the Commission is scheduled for late 2011. Our reaction to any eventual Commission proposal in this area will depend on a robust assessment of costs and benefits and of the EU’s legal competence to take the proposed action. I will carefully consider any proposals put forward by the Commission and write again in due course.

23 March 2011

ANNUAL GROWTH SURVEY (18066/10)

Letter from the Chairman to Lord Sassoon, Commercial Secretary to the Treasury, HM Treasury

Thank you for your explanatory memorandum of 31 January which was considered by the Subcommittee on the Internal Market, Energy and Transport on 28 February. They decided to clear the document from scrutiny.

We welcome the publication of the Annual Growth Survey, and hope that, as part of the European Semester, it can contribute to increased EU growth. We will suspend judgement until we have seen how the national targets in the headline areas are revised in the light of the process. It is, however, very disappointing that, at this early stage in the ten-year span of Europe 2020, it is projected that the targets will not be met. Do you think that it will be possible to meet them?

As you will recall, we recommended in our recent report, The EU Strategy for economic growth and the UK National Reform Programme, that there should be a debate in the House of Lords about the National Reform Programme alongside that on the UK’s Convergence Plan. We look forward to hearing whether such a debate will take place.

1 March 2011

Letter from Lord Sassoon, Commercial Secretary, HM Treasury, to the Chairman

Thank you for your letter of 1 March on the Commission’s Annual Growth Survey.

Your letter notes your disappointment that, at this early stage in the ten-year span of Europe 2020, it is projected that the headline EU-level targets will not be met, and asks whether I think that it will be possible to meet them.

There are three key issues related to targets. The first is to ensure national and political ownership of the targets, as recognised by the Commission in their progress report on Europe 2020. Lack of national ownership of targets was one of the main failures of the previous Lisbon Strategy. The second is to ensure that there is sufficient ambition in Member States to undertake the reforms needed to make progress in the areas covered by the targets. This should be detailed in their National Reform Programmes (NRP) in April. The third is for committed EU-level action to support Member State-level action: this includes through promoting the Single Market and trade, reducing regulatory barriers, and promoting innovation; and also through delivering on the strategy’s flagship initiatives.

While I have no better view than the Commission on the probability of the targets being missed, delivering on these issues will help ensure progress against meeting the overall goals of Europe 2020 and promoting growth in Europe.

Your letter also recalls your recent report, the EU strategy for economic growth and the UK NRP, and its recommendation that the House of Lords should debate the NRP alongside the UK’s Convergence Programme.
The Government welcomes Parliamentary engagement on the NRP and European economic issues more broadly. Given this, and that the new European Semester reconciles reporting of Member States’ NRP and Convergence Programmes, the Government looks favourably upon this recommendation, subject to agreeing a suitable time for the debate. My officials are working with the Lords’ business managers to facilitate this.

11 March 2011

Letter from Lord Sassoon to the Chairman

Thank you for your letter of 6 April on the Commission’s Annual Growth Survey. I am aware that preparations for a debate on the National Reform Programme are underway and to which I look forward.

In your letter you note that without ambitious National Reform Programmes (NRPs), the preconditions for meeting the Europe 2020 targets will be absent. I agree that Member States should be ambitious in designing their structural reform programmes, in order to make progress in the broad policy areas covered by the Europe 2020 targets and also to tackle their individual “bottlenecks to growth” as identified by the ECOFIN Council. My Explanatory Memorandum on the Commission’s Annual Growth Survey also points out the importance of Member States submitting ambitious NRPs; and I can assure the Committee that the Government is on track to submit a robust NRP document to the European Commission in time for the deadline of 30 April.

13 April 2011

Letter from the Chairman to Lord Sassoon

Thank you for your letter of 11 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 4 April.

We look forward to debating these issues further in the House of Lords whenever such a debate can be arranged, so we can debate how these targets can be achieved.

We note that you are unable to give an assessment of whether the targets are likely to be met, and will be interested to see whether the final NRPs show any greater ambition than the drafts. Without ambitious NRPs the preconditions for meeting the target will be absent. Do you agree with these points?

06 April 2011

Letter from the Chairman to Lord Sassoon

Thank you for your letter of 13 April, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 9 May. I look forward to the debate on the UK Convergence Programme, the National Reform Programme, and our report, on 12 May.

We have previously stated that ambitious targets were necessary in order to achieve growth, and that it was disappointing that, on analysis of the draft NRPs, it seemed unlikely that the headline targets would be met. The UK has not set targets, but we note that the final UK NRP considers the issues in a far greater level of detail than the draft. We look forward to monitoring how the UK performs against the relevant growth indicators.

At this stage, it is difficult to comment on how other Member States have revised their NRPs. We will be interested to see the Commission’s assessment of whether the headline targets are likely to be met when they consider the final NRPs.

10 May 2011

APPROVAL OF AGRICULTURE OR FORESTRY VEHICLES (12604/10)

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

I am writing in response to your letter of 19th October 2010, on the subject of the proposal for a regulation on approval of agricultural and forestry vehicles.

You stated that your Committee wished to maintain Scrutiny Reserve since the proposal was not entirely clear, and the Committee harboured some reservations about it.
The Commission have now clarified that their intention is to make approval compulsory on tractors beyond categories T1-T3. For agricultural and forestry trailers, towed equipment and self-propelled machinery, the intention is to make approval optional (at the choice of the manufacturer), and for existing national regimes to continue unchanged. If agreed, this would permit the current UK regime - which does not involve third party approval - to continue.

As your letter suggests, the burden on manufacturers of categories of tractors other than T1-T3 would increase. In the case of T5 (fast) tractors (the new category that is of most relevance to the UK), initial indication are that compulsory approval would impose a small increase in burden (around £340k in Net Present Value over 10 years) on manufacturers selling their products in the UK. However, this initial assessment does not take safety and trade benefits into account, which we are attempting to quantify for the Impact Assessment.

Although the proposal makes a headline claim about reducing 60 Directives to 5 Regulations, this is mainly administrative in nature and would not reduce the overall burden as the standards themselves would be little changed overall. Nevertheless, some simplification would result, for example from elimination of duplicate requirements (in EU and other legislation) and by including direct references to standards made by other organisations (such as UNECE, OECD) rather than creating duplicate European legislation. I have asked my officials to press for further simplification and reductions in burden, wherever possible.

The discussions in Council working group to date have not been conclusive and an early agreement does not appear likely. We anticipate an agreement in Council First Reading by summer 2011. The European Parliament First Reading of the proposal is just getting underway. As the incoming Presidencies do not seem to attach a high priority to this dossier, we consider that a First Reading deal is unlikely.

21 December 2010

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 21 December, which was considered on 31 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to hold the document under scrutiny.

We are grateful for your clarification of the scope of the proposal, and for your initial assessment that the added burdens will be low. We would appreciate a copy of your impact assessment in due course, after which we may be in a position to release the document from scrutiny. In the meantime, we would like to express our support for your efforts to keep any additional burdens to a minimum.

1 February 2011

ATHENS PROTOCOL (17511/10)

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

Thank you for your explanatory memorandum of 5 January, which was considered on 17 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to retain it under scrutiny.

We agree with you that EU accession to the Protocol by the end of this year is to be encouraged, and read with interest your concerns about some of the technical and practical details of the proposal.

With regard to sincere cooperation, the Protocol largely concerns matters which fall within the exclusive external competence of the EU, and therefore accession to it would appear, in terms of Article 4.3 to be a task which flows from the Treaties, and Member State ratification would appear to be an action facilitating the achievement of the Union’s task. We therefore do not share your concern at the last sentence of recital (3) because it is not binding and can therefore be read as urging Member States to act in a coordinated way in respect of matters for which they retain competence. On the other hand we would not object to its removal.

You acknowledge that the EU has competence with regard to the IMO Guidelines, as a result of the Athens Regulation. The Commission assert that EU competence is exclusive. If this is correct then it would be necessary for the EU make the Reservation. Do you believe that making the Reservation is, in fact, a matter of shared competence, and if so, what practical difficulties do you see in the EU making the Reservation?
With regard to simultaneous ratification, your suggestion that the wording of the Decision should encourage rather than compel Member States appears to be sensible, and consistent with the principle that the EU should not go so far (even in the light of the duty of sincere cooperation) as to require Member States to ratify the Protocol as this would amount to imposing an obligation upon them to exercise their competence in a specific manner. However, we would be interested to receive your assessment of the effects of some Member States having not ratified by the time the Athens Regulation comes into force.

You argue that the EU does not have the competence to impose rules on Member State ratification, but the Commission explanatory memorandum points to Recital 11 of the Decision to accede to the Hague Protocol, which contains similar wording. We are not persuaded by the precedent cited by the Commission because in the case of the Hague Protocol it was necessary for the EU to authorise Member States to accede to the Protocol which covered an area of exclusive EU competence, although it could not accede because participation was limited to states. The Member States were therefore required to act on behalf of the EU and not in exercise of their own competence.

Your point regarding the addition of Article 81 as a further legal base seems valid, given that the Commission use the Article to justify their exclusive competence with regard to conflicts of jurisdiction. However, given that this would trigger the UK and Irish opt-ins, do you think this would jeopardise reaching agreement in time to accede by the end of the year?

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

20 January 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 20 January, which sets out the deliberations of the Sub-Committee on the Internal Market, Energy and Transport on the above proposal.

I am pleased to report that the UK, working with other like minded Member States, has achieved significant progress in the negotiations on this dossier. The Commission in presenting its initial proposal attempted to push through a Council Decision which purported to require Member States to exercise their competence in a particular way. This raised a number of subsidiarity issues as Member States were being required to deposit their instruments of accession or ratification simultaneously on the 31 December 2011. Language, which mirrors that used previously in the Council Decision authorising Member States to become Party to the Bunkers Convention, has now been proposed by the UK and accepted by the Commission and other Member States. That language, whilst encouraging Member States to become a Party to the Protocol by 31 December 2011, retains the UK’s flexibility to ratify the Protocol when it is ready to do so. The amended proposal for a Council Decision does however still require the Union itself to deposit its own instrument of accession by 31 December 2011 at the latest.

In your letter you ask a number of supplementary questions, the answers to which I set out below.

EU Regulation 392/2009 establishes the basis for exclusive external Union competence in respect of the 2002 Protocol to the Athens Convention. The Union has acquired exclusive external competence in relation to the IMO Guidelines by virtue of Article 3 of that Regulation. However in our view it does not follow that the Union has exclusive competence to make the IMO Reservation on behalf of its Member States, when depositing the instrument of accession of the Union to the Athens Protocol. They are considered to be two distinct areas. Indeed section 1.13 of the IMO Reservation establishes the relationship between the IMO Reservation and the IMO Guidelines for implementation of the Athens Convention. It states that the rights retained by this reservation will be exercised with due regard to the IMO Guidelines.

The making of the IMO Reservation is therefore considered to be a matter of shared competence. This position was recently confirmed by the Commission. It is their view that both the Union and its Member States need to make the IMO Reservation when becoming Party to the 2002 Protocol. However there is a concern that if the Union were to make the IMO Reservation and this included sections 1.10 and 1.11 on certification, Member States may in fact be conceding competence in this area. Whilst this does not appear to be the Commission’s intention, such an incidental transfer of competence would not be acceptable. Moreover, in practice it is the UK and other Member States that will issue and accept the certification, as part of their civil liabilities and Port State Control functions. Such a role will not be carried out by the Union institutions.

On a more practical point there is potential for difficulties to arise for ships operating outside the EU in relation to the certification issued by EU Member States that have not ratified, or acceded to, the 2002 Protocol to Athens. It is unclear how non-EU States will interpret the Union’s IMO Reservation, but in our opinion the Union’s IMO Reservation will not validate certificates issued by such States,
whereas insurance certificates issued by UK authorities will be valid providing the UK makes the IMO Reservation when ratifying the Protocol.

In your letter you request an assessment of the effects of some Member States having not ratified the 2002 Protocol to the Athens Convention by the time the Athens Regulation comes into force, no later than 31 December 2012. If a sufficient number of Member States do not deposit instruments of ratification, or accession, then the entry into force provisions relating to the 2002 Protocol to the Athens Convention will not be triggered. This would mean the EU Regulation would create a purely regional regime rather than forming part of an international framework. In such a scenario, there would be a risk that shipowners would be unable to obtain the necessary insurance to cover their liabilities under the EU regime or that the insurance they did obtain was either more expensive or not reliable. The reason that this is considered to be a risk is that the International Group of P&I Clubs (which provide liability cover for 90% of the world’s ocean going tonnage) has a long standing policy of not providing liability cover to shipowners on the basis of regional agreements.

There would also be other practical problems. The certification provided for under the 2002 Protocol to the Athens Convention and the EU Regulation is identical. If a Member State does not ratify the Protocol but issues certificates under the Regulation, this could be interpreted as a State having issued a certificate under a Convention that it is not Party to. Non-EU States may therefore decide to detain vessels flagged to such a Member State.

In the Explanatory Memorandum on this proposal I said that the Government considers that the Protocol to Title V of the Treaty on the Functioning of the European Union (TFEU) (on the position of the United Kingdom and Ireland in respect of the area of Freedom, Security and Justice) applies, so that the UK has an option whether to opt-in to the proposal or not. However, in light of further consultation across Government I now understand, that it has not generally been the practice of HM Government to assert the opt-in in cases such as this, relating to measures to which exclusive external competence applies as a result of an internal exercise of EU competence.

14 February 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 14 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 7 March. They decided to clear the document from scrutiny.

We welcome your further clarification of the Government’s concerns and are pleased that a compromise has been reached with regard to the Commission’s power to direct Member States over ratification. However, if there is no requirement for Member States to ratify on time, might this lead to the unsatisfactory situation you describe where the Regulation is in force before the Protocol?

With regard to the UK opt-in, you say that the Government will not be seeking to assert this. Does this mean that you will not be pushing for the inclusion of a Title V legal base, or that you would like to see the legal base included but would automatically opt in? If the latter, this would appear to have implications for the Council timetable and the parliamentary scrutiny process. Our view is that the question of the UK opt-in is resolved by consideration of the legal basis of the measure. If the legal basis does not include a Title V article then the UK right to opt in does not apply and the measure automatically applies to the UK. Conversely, if there is a Title V legal basis then the UK opt-in does apply.

The right of the EU to make the Reservation appears to be an unresolved issue. We understand the Government’s concerns about this, but do you see a compromise being reached?

I look forward to receiving your reply within the standard 10 working days.

8 March 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 8 March, which indicated that the Sub-Committee on the Internal Market, Energy and Transport had decided to clear document 17511/10 from scrutiny.

In your letter you ask a number of supplementary questions, the answers to which I set out below.

It is correct to assert that without a requirement within the Council Decision for Member States to become Party to the 2002 Protocol to the Athens Convention by 31 December 2011, there is a possibility that the Regulation will apply in the EU before the Protocol is in force internationally. The UK and a number of other Member States are working toward depositing instruments of ratification of, or accession to, the Athens Protocol by 31 December 2011. The UK and 9 other Member States
have already written to International Group of P&I Clubs, which provide insurance to the majority of
the world’s shipping fleet, to highlight our commitment to bringing the international regime in force as
soon as possible. Given this show of commitment it is hoped that the Clubs will provide the necessary
liability cover, for any interim period if it is necessary. We are not expecting a response from the
Clubs until the autumn.

As you are aware, the Government considered the making of the IMO Reservation to be a matter of
shared competence. The difficulty however was that the text of the IMO Reservation had been
constructed in 2006 before the EU Regulation 392/2009 was negotiated. Whilst it was recognised that
the Union might have the competency to make the IMO Reservation, it does not have exclusive
competency on all the matters within the Reservation itself. To address this technical problem the UK
proposed that the Council Decision should make it clear that both the Union and the Member States
should make the IMO Reservation when becoming a State Party to 2002 Protocol. In addition the UK
proposed that language should be inserted in the Recitals that make it clear that the Union’s IMO
Reservation should not be interpreted as altering the current division of competence which exists
between the Union and the Member States in relation to certification and the controls by States
authorities. I am pleased to report that the UK’s proposals have been accepted.

My previous letter noted that it has not generally been the practice of HM Government to assert the
opt-in in cases such as this, and you asked for some further clarification. At present the Government
is considering its position on the application of the UK’s opt-in to international agreements where the
EU has exclusive external competence and the Government will write to the Parliamentary
Committees in the near future setting out its position. In respect of the Athens Council Decision we
are continuing to press for the inclusion of an Article 81 legal base, but the matter may not be finally
resolved until the Transport Council on 31 March, at which the Presidency is hoping the proposed
Decision will be adopted.

24 March 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 24 March, which was considered by the Sub-Committee on the Internal
Market, Energy and Transport on 4 April.

We welcome the compromises reached on this proposal, and believe that the making of the
Reservation by both the EU and the Member States is a sensible course of action given the
distribution of competence.

However, we remain concerned about the potential for confusion in the insurance market should the
Regulation come into force before the Protocol. We are not entirely persuaded by your account of
your representations to the International P&I Clubs that this will provide a guarantee that insurance
will be issued. We urge the Government use their influence to make sure Member States ratify the
protocol in time and to ensure that a robust insurance regime is agreed. We would welcome your
views on this matter.

06 April 2011

AUSTRALIA: COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY
(EURATOM)

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

I am writing to inform you of the agreement of a restricted negotiating mandate for an updated
agreement between Euratom and Australia on the peaceful uses of nuclear energy, that was agreed at
the Council of Ministers on the 12 July.

The proposal relates to a mandate for the European Commission to renegotiate the current
cooperation agreement between Euratom and Australia, which was first signed in 1981. The present
agreement expires on 14 January 2012.

The existing agreement covers trade in nuclear material from Australia to the European Atomic
Energy Community for peaceful uses.

The new negotiating mandate wishes to include additional provisions on the transfers of nuclear
material, in both directions, transfers of equipment as well as nuclear co-operation. It also includes
the Contamination Principle.
The Commission have also drafted it to keep it as close as possible to the Euratom Canada negotiating mandate of 2009 which was the subject of an EM submitted on document 14350/08 on 6 November 2008.

My officials will monitor the negotiations as they occur and will seek to update the Committees on any significant developments during the course of the negotiations.

1 February 2011

AVIATION SECURITY CHARGES AND USE OF SECURITY SCANNERS IN EU AIRPORTS (9864/09, 10865/10)

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

I am writing further to Philip Hammond’s letter of 29 July 2010 in which he promised to keep you informed of the progress of the proposed Aviation Security Charges Directive. I should also like to provide you with an update of the work being taken forward in the aviation field around cargo security and security scanners.

STRENGTHENING AIR CARGO SECURITY

Following the discovery of two improvised explosive devices concealed within cargo on two aircraft on 29 October 2010, the Presidency and the Commission decided on 8 November 2010 to set up an ad hoc High Level Working Group to look at ways to strengthen air cargo security. The Group prepared a report on strengthening air cargo security including the EU Action Plan on Air Cargo Security, which was presented to the Council on 2 December 2010 and carries a limité marking. The late addition of this item to the agenda meant that it was unfortunately not possible to write to your Committee about it ahead of the Council; however I felt that you would find it useful to have an account of the Report and the Council discussion to assist with your general scrutiny of aviation security matters.

The aim of the High Level Report and its action plan is to address the threat to civil aviation from this type of attack. The report’s recommendations seek to strengthen cargo security controls, ensure better coordination of action and information within the EU and to further develop action at the international level and in particular with the International Civil Aviation Organisation.

In particular the recommendations include

— Accelerating the adoption of measures enhancing aviation security in relation to cargo originating from outside the EU;
— reviewing procedures for the designation of "trusted" consignors and carriers;
— strengthening the compliance monitoring of the cargo and mail rules;
— further investment in research to improve the performance of current detection technologies and to come up with new possibilities;
— better sharing of intelligence and threat information to ensure a prompt, effective and harmonised response to arising threats;
— promotion of global regulatory standards, especially through the International Civil Aviation Organisation (ICAO); and
— further initiatives to help certain countries outside the EU to enhance their security capacities.

The information in this letter which summarises the contents of the High Level Report, and the full document, ‘Report on strengthening air cargo security 16271/10’ (enclosed) is being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

At the Transport Council on 2 December I broadly welcomed the report and its associated action plan and provided the Council with some details of the specific nature of the terrorist plot and viability of the package intercepted in the UK. The Council welcomed this report and the Presidency concluded orally that the Council had a “positive appreciation” of it. The Presidency asked the
Commission and Member States to speedily implement the measures in the Action Plan attached to the report. It invited the Commission to report back to the Council on progress made within the next 6 months. A parallel discussion took place in the JHA Council on the same day.

Following the discussions at the Transport and JHA Councils, conclusions were adopted at the Environment Council on 20 December 2010. The conclusions said that:

"The Council welcomes and agrees on the Report on Strengthening Air Cargo Security and requests that the Commission and the Member States speedily implement the actions listed in the EU Action Plan on Strengthening Air Cargo Security. The Commission is invited to report on progress within the next 6 months."

**AVIATION SECURITY CHARGES DIRECTIVE**

As you may recall, no first-reading agreement was reached between the European Parliament and the Council in May 2010 on the proposed Aviation Security Charges Directive (EM 9864/09). The Belgian Presidency did not convene any meetings to discuss the proposal and early indications suggest that the Hungarian Presidency does not view this dossier as a priority. We shall of course continue to provide your Committee with updates on any developments on this proposed Directive.

**SECURITY SCANNERS**

Your Committee cleared EM 10865/10 on the Commission’s communication on the use of security scanners in July. You may like to know that the Commission is currently finalising its Impact Assessment which should address concerns about the balance between security needs and fundamental rights, and the Commission expects to bring forward a legislative proposal in the coming months to allow scanners to be used as a primary security measure. In the UK, we have been carrying out an EU-approved security scanner trial at Manchester airport as part of an alarm resolution process, and in an interim report submitted to the Commission the airport have highlighted the operational and security benefits achieved by the use of this system and the high level of public satisfaction with this method of screening.

I hope that this update is useful. I will continue to keep your Committee informed of the progress of all of these issues. Any new legislative proposals will of course be subject to Parliamentary Scrutiny in their own right.

24 January 2011

**BIOCIDAL PRODUCTS (11063/09)**

**Letter from the Rt. Hon. Chris Grayling MP to the Chairman**

I am writing in response to your letter of 3 November 2010 to give an update for the Committee on negotiations on the proposed European Regulation concerning the placing on the market and use of biocidal products, and to seek final release of the document from scrutiny prior to offering any agreement in Council. As you are aware, negotiations in the Council on this dossier commenced in July 2009 and are currently continuing under the Belgian Presidency. The Presidency aims to achieve a Political Agreement in the Environment Council on 20th December this year, and is currently leading negotiations intensively in order to achieve this.

You raise two questions on which you would like further information. On treated articles you ask how it will be ensured that dangerous biocides, such as dimethylfumarate, do not find their way onto the EU market when incorporated into treated articles. Dimethylfumarate (DMFu) is currently subject to a temporary EU-wide restriction lasting until 15 March 2011, preventing products containing DMFu from being placed on the EU Market. A proposal is also currently under consultation to make this restriction permanent by including it in Annex XVII of the REACH Regulation (Regulation (EC) 1907/2006 on registration, evaluation, authorisation and restriction of chemicals), preventing articles which contain more than 0.1mg/kg of DMFu from being marketed in the EU. If agreed, this restriction would also apply in cases where DMFu is used as a biocide in treated articles.

More generally, Article 47 of the draft Regulation states that a treated article may not be placed on the EU market unless all active substances contained in the biocidal products it was treated with or incorporates are included in Annex I of the Regulation for the relevant product-type, and any conditions specified therein are met. An active substance is only included in Annex I after being subject to a rigorous risk-assessment, agreed at EU level, to ensure that it is sufficiently effective and
does not pose any unacceptable risks to human or animal health or the environment. Therefore, the provisions on treated articles would prevent articles containing biocides that pose such risks from entering the EU market.

You also asked why it was not possible to produce a more precise estimate of the number of vertebrate animals saved by data waiving and sharing, than the range given of between 600 and 69,000. This is because the numbers of animals saved depends on a number of different variables, including the number of authorisation dossiers submitted, the average number of active substances per dossier, the total number of data sets needed, the number of repeated vertebrate animal tests, the number of dossiers with data sharing and the number of vertebrate animals needed for each test. For each of these variables realistic ‘optimistic’ and ‘pessimistic’ scenarios were constructed, based on reasonable high and low estimates of each parameter given the available evidence. Because of the large number of different parameters involved, the differences combine to produce the range of 600-69,000. Although I acknowledge that this range is very large, unfortunately the available evidence does not permit a more precise estimate.

Discussions continue in Council on the other key issues, and indications are that Member States are now converging on an agreed text. The UK continues to be active and influential in negotiations, arguing for a pragmatic, risk-based approach which would streamline the processes for authorising biocides while maintaining the present level of protection to human health and the environment. The UK remains relatively well-placed in most cases. I summarise the latest position on some of the key issues in the Regulation below.

On exclusion criteria, there has largely been a consensus that active substances with certain health and environmental hazards (e.g. carcinogenicity, or persistence, bioaccumulativity and toxicity (PBT properties)) should be excluded from use in biocides. However, the UK has argued that there should be derogations from this principle to take into account that inherently hazardous substances may be required for beneficial purposes, for example, to address dangers to public health or to prevent damage to infrastructure. The latest text reflects this more risk-based approach and allows derogations from the exclusion criteria, for example, where not including the active substance in Annex I would cause disproportionate negative impacts for society, and there are no suitable alternative substances or technologies.

On Union Authorisation, the UK has consistently argued that the proposed ‘Union Authorisation’ procedure, allowing EU-wide authorisation of certain biocidal products, should be given a wide scope to maximise cost savings it offers to businesses who market biocides across the EU. Several other Member States prefer a reduced scope, however the UK has been influential in developing the current text, which, after an initial phase-in period, would allow most biocidal product types to be subject to the Union Authorisation procedure. The European Parliament have also voted for a wide scope, so I believe there is a good chance that this can be maintained in the final Regulation text.

Although some details remain to be resolved, other issues on which an agreed position is now close or has largely been reached, include data-sharing and data-waiving and mutual recognition of authorisations.

In view of the above developments, I would like to seek the release of this document from scrutiny in order to enter into a political agreement on the dossier, as is likely to be proposed at the 20th December Environment Council.

As I am sure you understand, the position described above is based on the latest state of play in negotiations in the Council Working Party, and it may be subject to change as negotiations continue. Should the position shift substantially in relation to the issues outlined above, I will write to you again to let you know the latest situation.

NEXT STEPS

As you know the European Parliament voted on the Regulation in its plenary meeting on 21st September, approving a package of around 360 amendments. Should a political agreement be reached in Council on 20th December, the Council position will be forwarded to the European Parliament for a second reading. I do not expect substantial further negotiations to take place under the forthcoming Hungarian EU presidency (running from January-June 2011). Instead, the most likely scenario is that Council and Parliament will reach a second-reading deal in the latter part of 2011, under the Polish EU presidency (July-December 2011). Once agreed, the draft Regulation is due to enter into force on 1st January 2013.

I hope this information is helpful to the Committee and I look forward to hearing from you before the 20 December Environment Council.

2 December 2010
Thank you for your letter of 2 December. It was considered by the Sub-Committee on the Internal Market, Energy and Transport, who decided to clear the document from scrutiny.

We are grateful for your update on the progress of negotiations and look forward to receiving further updates as the proposal heads toward a second reading deal. In particular, if a new text emerges with significant policy changes we would expect it to be deposited for further scrutiny.

14 December 2010

I am writing in response to your letter of 14 December 2010 to give an update for the Committee on negotiations on the proposed European Regulation concerning the placing on the market and use of biocidal products. In particular I would like to update the Committee on the Political Agreement that was reached on the Regulation in the Environment Council on 20th December 2010. You will recall that you released the dossier from scrutiny ahead of this.

As you are aware negotiations on the Regulation commenced in July 2009 and progressed intensively during the latter part of 2010 with the aim of achieving Political Agreement in December 2010. At the Environment Council on 20th December, all Member States supported Political Agreement, although Denmark, Austria and the Commission expressed some reservations and made statements.

The UK has been active and influential throughout negotiations and the agreed text incorporates many drafting proposals made by the UK. The UK’s overall strategy has been to argue for a pragmatic, risk-based approach which would streamline the processes for authorising biocides while maintaining the present level of protection to human health and the environment. This approach has been reflected in the agreed text, which the UK supported at the Environment Council.

I summarise the position reached on some of the main key issues in the Regulation below.

On exclusion criteria, the agreed text reflects the consensus among Member States that active substances with certain health and environmental hazards (e.g. carcinogenicity, or persistence, bioaccumulativity and toxicity (PBT properties)) should be excluded from use in biocides. The UK has successfully argued that there should be adequate risk-based derogations from this principle to take into account that inherently hazardous substances such as rodenticides may be required for beneficial purposes, for example, to address dangers to public health or to prevent damage to infrastructure. The UK resisted pressure from some other Member States to further restrict these derogations, and the agreed text reflects the UK’s position.

On Union Authorisation, the UK has argued throughout that the proposed ‘Union Authorisation’ procedure, allowing EU-wide authorisation of certain biocidal products, should be given a wide scope to maximise cost savings it offers to businesses who market biocides across the EU. Several other Member States have preferred a reduced scope or further restrictions, however the agreed text is closer to the UK position, allowing most biocidal product types to be subject to the Union Authorisation procedure after an initial phase-in period. The European Parliament is also seeking a broad scope for Union Authorisation.

On regulation of treated articles, the UK has pressed for a proportionate and sensible approach, which would give adequate protection to consumers and users of such articles but would not require the very large range of articles treated with biocides such as socks, towels, mobile phones, refrigerators, cars and ships to be subject to the full authorisation procedure as biocidal products. The agreed text reflects the UK’s approach, and retains a proposal made by the UK to exempt such articles from the full biocide authorisation procedure when their primary function is not as a biocide. Although such articles are not treated as biocidal products, a proportionate level of protection is maintained by requiring that they may not be placed on the market unless the active substances with which they have been treated are approved for use in biocides. This ensures that any active substances used to treat articles have been subject to a rigorous assessment agreed at EU level, to ensure that they are efficacious and do not pose unacceptable risks to humans or the environment.

Agreement has also been reached on the other issues in the Regulation, including data sharing and data waiving, leading to reduced requirements for animal testing, on mutual recognition of authorisations, and on a simplified authorisation procedure for certain biocidal products posing a lower level of risk.
NEXT STEPS

As you know the European Parliament considered the Regulation in its plenary meeting on 21st September, approving a package of around 360 amendments. The text on which Political Agreement was reached already reflects some of the points raised by the Parliament. After legal-linguistic finalisation of the text during the early part of 2011, I expect the Council’s position at first reading to be formally adopted in summer 2011, and for this to be forwarded to the European Parliament around September 2011 for their consideration at second reading. The most likely scenario remains that Council and Parliament will explore the possibility of a second-reading agreement in the latter part of 2011, under the Polish EU Presidency (July-December 2011). Once agreed, the draft Regulation is due to enter into force on 1st January 2013.

I hope this information is helpful to the Committee. I will write again in due course to update the Committee on further developments as matters proceed towards a second reading deal.

18 January 2011

Letter from the Chairman to the Rt. Hon. Chris Grayling MP

Thank you for your letter of 18 January, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 7 February.

We are grateful for your update on the political agreement reached in Council and note that it accords with the description you gave of the likely outcome in your last letter to us.

We would be grateful to receive updates as the negotiations proceed towards second reading in the European Parliament.

8 February 2011

DRAFT ROADMAP: COMMON INFORMATION SHARING ENVIRONMENT FOR THE SURVEILLANCE OF THE EU MARITIME DOMAIN (15361/10)

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

Thank you for your explanatory memorandum of 21 December 2010, which was considered on 24 January by the Sub-Committee on Internal Market, Energy and Transport. They decided to clear it from scrutiny.

We note the Government’s support for the Draft Roadmap and the principles underlying it. We also support the objectives which the Draft Roadmap aims to achieve and while clearing it from scrutiny, would still appreciate being kept informed about its development.

26 January 2011

E-GOVERNMENT (18135/10)

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

Thank you for your explanatory memorandum of 18 January, which was considered on 7 February by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

We welcome the Commission’s commitment to eGovernment and look forward to scrutinising more detailed proposals as they emerge. We note that you regard the plans as ambitious within the 2011-15 timetable, but would be interested to know whether you expect to see any concrete action on any of the proposals in the near future.

We note the links between this document and others, for instance on the Digital Agenda and eProcurement. We believe that encouragement of digital services will be crucial for the health of the future European economy and believe that governments can lead the way. We look forward with particular interest to the review of the eSignatures Directive.

Although the proposals in this document are largely concerned with exchange of information and best practice, and in any case, fairly vague, two points in particular stand out.
We would be interested to know how the proposed use of citizens’ initiatives to encourage public participation in policy making will relate to the recently-agreed Regulation on citizens’ initiatives for legislation. The Government expressed concerns over the bureaucracy involved in that proposal: do you foresee similar problems in the eGovernment area? Do you think that eAuthentication and eIdentification might alleviate such problems?

Many of the proposals, but particularly the promotion of the “once only” principle would appear to have data protection implications. Although there are already rules in place to protect users’ information, we would be interested to know whether you believe the safeguards will be strong enough in the light of the development of eGovernment, and particularly cross-border services.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

8 February 2011

**Letter from the Rt. Hon Francis Maude MP to the Chairman**

On the 7th February 2011, the House of Lords Sub-Committee on the Internal Market, Energy and Transport considered and cleared the above document from scrutiny. In response to your letter of the 8th February informing me of this matter you raised a number of questions of which I would like to respond to here.

**IMMEDIATE ACTIONS**

Out of a total of 35 actions, 15 are to be completed before the end of 2011, with seven more actions starting this year but requiring completion within the 2012-15 period. These actions focus on conducting studies, agreeing common indicators and targets, all of which will act as the foundation for the further actions elaborated within the Communication. The Government is satisfied this will be achievable given the majority of these actions are already in line with the Government’s policy.

**CITIZEN ENGAGEMENT – CONCERNS OVER BUREAUCRACY**

Concerns over the bureaucracy involved in this area of the Action Plan are similar to those raised in relation to the Regulation on citizens’ initiatives for legislation. The Government believes this new way of public participation in the policy making process will ultimately lead to better policy as online collaboration becomes an open dialogue, rather than a fixed time product and also opens up both the size and range of the audience.

The shift to online requires a different allocation of resources from those of traditional consultation and a different skill set so that resources can moderate (where appropriate) and respond directly to comments made rather than merely collating paper-based returns and producing a response report.

The Government believes that although there will be some bureaucracy in the online method for public engagement in the policy-making process, the benefits far outweigh the means. The Government will work to ensure that any unnecessary bureaucracy or waste in either the traditional or online method is identified and tackled so that the overall experience for the citizen improves and the process develops into an efficient mechanism for the policy-makers.

**CITIZEN ENGAGEMENT – USE OF E-AUTHENTICATION AND E-IDENTIFICATION**

There has to be a reasonable level of proportionality in this new way of working, as were an event such as a public meeting over a new policy take place, it is unlikely the Government would ask those attending to produce their passport, national insurance number or council tax bill for proof of identity or address as validation to participate. Were the same debate to happen online, there would be no case to change the conditions.

During the Government’s Spending Challenge consultation, a generic username and password was considered appropriate when a member of the public wished to leave a comment, simply to protect other users from spam and offensive behaviour that such a service might attract.

The Government is committed to ensuring there are appropriate levels of assurance for different levels of participation, and the underlying and fundamental concepts of data protection and privacy will be upheld when collaborating with the public over policy formation in any medium.

By July this year, the Government will have developed and implemented a consistent standard for government consultation online, including moderation and resources levels.
DATA PROTECTION SAFEGUARDS

The Government continuously works with Member States and the European Commission to prioritise trusted information exchange in the development of new or existing services. The Government is committed to ensuring that the safeguards deployed by any department responsible for delivering any cross-border services are strong enough to protect citizens’ information and compliant with the Data Protection Act 1998 and other relevant legislation.

February 2011

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter which we received on 24 February, which was considered on 7 March by the Sub-Committee on the Internal Market, Energy and Transport.

We are grateful for your comprehensive answers to our questions. We accept that UK departments will need to abide by the Data Protection Act 1998 in their handling of personal details, but would point out that it is important that the same considerations apply to the use of data in other Member States, not subject to the Act. We acknowledge, of course, that the EU Data Protection Directive, as implemented in other Member States, will provide protection in such cases. We note, however, that any possible data storage via systems such as cloud computing will have complex ramifications for data protection.

I do not require a reply to this letter.

8 March 2011

ENERGY EFFICIENCY ACTION PLAN (7363/11)

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

Thank you for your explanatory memorandum of 28 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 9 May. They decided to hold the document under scrutiny but to waive the scrutiny reserve in order to allow the UK to vote on Council Conclusions on 13 June. Members of the Sub-Committee would be interested to discuss in greater detail the matters contained in this document with you at the meeting which has already been arranged with our Sub-Committee on Agriculture, Fisheries and Environment for 15 June.

The Communication is very wide-ranging and it is difficult at this stage to take a very clear view on the specific proposals contained within it. We do, however, welcome action to achieve the headline target of 20% reduction in energy consumption by 2020, and highlighted the importance of action on energy efficiency in our 2008 report The EU Target for Renewable Energy: 20% by 2020.

While the aim is laudable, we are concerned about the availability of funding for the schemes proposed, both from the public and private sectors. The use of Energy Service Companies to finance up-front the costs of energy efficiency investment would appear to depend on the availability of private sector finance, which, in the current financial situation, is less available. We note that the Government have recently introduced the Green Deal to facilitate investment in domestic energy efficiency and we would be interested to hear how you see such schemes interacting and developing.

We would also appreciate an account of how the UK has performed so far in increasing energy efficiency.

In particular, we would be interested to learn how the UK is progressing towards the target of 80% of homes having smart meters by 2020, and whether there is any method of advancing that target date.

In a time of public sector spending constraint, any requirement to refurbish 3% of a public authority’s building stock per year would seem to be heavy-handed, and not take into account local variations in building stock. We would be interested to hear your views on how such a scheme would be compatible with the requirement under Europe 2020 for fiscal consolidation. Having raised that concern, we would also like to receive your views on what sort of role you see the public sector playing in increasing energy efficiency.

I look forward to receiving a reply to this letter within the standard deadline of 10 working days.

10 May 2011
Letter from Gregory Barker MP to the Chairman

Thank you for your letter of 10 May regarding Explanatory Memorandum (7363/11) on the Commission Communication on an Energy Efficiency Plan 2011, which was submitted on 28 March. I hope I can answer to some of your concerns.

Firstly, you asked about the Green Deal’s role in facilitating domestic energy efficiency. Actions to improve energy efficiency in the UK have achieved a significant degree of progress to date. For example, latest analysis shows that policies and measures targeted at the residential sector have seen the average level of household energy efficiency improve by more than 27 per cent since 1990. The new generation of policies now in development, including Green Deal, will further galvanise efforts to improve the energy efficiency of our homes and businesses over the next decade and beyond.

Securing private finance at minimum cost is key to ensuring that as many customers as possible can take advantage of the Green Deal. There are a number of potential financing models - one of the cheapest may be to seek funding from long term capital markets investors. We are working closely with the finance community to promote the benefits of Green Deal as an investment and to shape our legislative and regulatory framework in a way that supports the creation of long term, low risk cash flows which are attractive to institutional investors.

Secondly, you asked about the UK’s progress on smart meter roll-out. On 30 March, the Government published the response to its consultation on the Smart Metering Prospectus. Among other things, the Government set out its intention to consult on an obligation on suppliers effectively to complete the roll-out of smart electricity and gas meters in 2019.

And finally, you asked about the refurbishment of public authority building stock. The public sector in the UK employs around six million people, owns a tenth of all land and has significant purchasing power - around £150 billion per year and is directly responsible for around three per cent of the UK’s emissions. We believe, therefore, that it essential that the public sector plays a leading role in increasing energy efficiency. That is why last May the Prime Minister announced a target for carbon emissions from central government to be cut by ten per cent over 12 months and we are looking forward to reporting progress in June.

In addition, as part of the Carbon Budgets framework, all departments have been allocated a share of the budget to cover their own emissions from their buildings and estate and all government departments are also part of the Carbon Reduction Commitment Energy Efficiency Scheme.

Additionally, public procurement can be a powerful tool for transforming the market for the most efficient products, for example IT equipment, and the Government has set minimum requirements through the Government Buying Standards. To help facilitate investment in energy efficiency, Salix Finance (a private company funded by DECC and the devolved administrations) provides up-front capital investment for energy saving projects through interest free loans to public sector organisations.

With regards to the Commission proposal to require the refurbishment of three per cent of the public sector building stock per annum, we will clearly need to examine the proposal in detail when the specific legislative proposal emerges. Whilst the aim of the proposal to improve the efficiency of our public building stock is a worthy one, at first sight it does appear that it may be a fairly blunt instrument that could be difficult and bureaucratic to monitor and enforce. We must also be mindful of potential costs associated with any such requirement and consideration of the financial implications will be fundamental in framing our response to any specific requirement that subsequently comes forward. We will of course also expect to see a robust impact assessment form the Commission.

26 May 2011
information about how the Government intends to balance its support for the content of the Communication with its objective of reducing the overall size of the EU budget would also be appreciated.

Lastly, the Committee would be grateful for the Government’s view as to how the overall funding requirements – private and public – should be met in this area and how access to affordable energy sources will be increased as a result.

I look forward to receiving a reply to this letter within the standard 10 working days.

15 December 2010

Letter from Charles Hendry MP to the Chairman

Thank you for your letter dated 15 December which cleared from scrutiny the explanatory memorandum I submitted on 1 December.

You asked whether the Government believes that the funding of infrastructure products identified in the Communication should be prioritised in budgetary terms with regard to the next Multi-annual Financial Framework.

The Government believes that the EU Budget and the forthcoming Multi-annual Financial Framework must be restrained to reflect fiscal consolidation efforts being made by Member States. Spending should therefore be reprioritised from areas of low EU added-value to support European priorities – in particular growth and competitiveness, including the move to a low-carbon economy. However, in the case of energy infrastructure, the priority should be to create a stable regulatory environment to ensure that the bulk of the investment needed can be provided by the private sector. Public funding should be used only in very limited circumstances, for instance, where projects have real public benefit but significant market failures prevent their take up by the private sector. This will be the best way to ensure that the investment made is cost-efficient, thereby minimising the costs to consumers and taxpayers.

24 January 2011

ENERGY: ITER STATUS AND POSSIBLE WAY FORWARD, AND NUCLEAR FUSION PROJECT (9424/10)

Letter from Justine Greening MP, Economic Secretary to the Treasury, HM Treasury, to the Chairman

Further to my letter of 6 November, I am writing to update you on the issue of financing the funding shortfall for the ITER nuclear fusion project.

Discussions have taken place in Council’s Budget Committee and in COREPER, to make progress on this issue. There has not been a further formal proposal from the Commission. You will recall that Council had called for the financing shortfall to be met primarily through reallocation of existing resources in Heading 1a (competitiveness for growth and employment). Meanwhile, the European Parliament’s position was that the shortfall should be met through an increase to the Financial Framework.

The Presidency has proposed the following as the basis for possible final agreement with the European Parliament:

— A reduction in the amount of funding required from €1.4bn to €1.3bn. This is possible because the F4E Agency has identified €100m of savings from the project this year, which reduces the overall figure required;

— €460m to be found through reallocation of existing resources in Heading 1a in 2012 and 2013;

— The balance of €840m to come from the available budget margins in 2010 and 2011. In practice, this would be achieved through revising the Financial Framework to: reduce heading ceilings as needed in 2010 and 2011; and increase by corresponding amounts the heading 1a ceiling in 2012 and 2013, as required for ITER. This would not require an overall increase in the Financial Framework. Any such increase would be completely unacceptable to the Council.
The Commission issued a non-paper on 26 November setting out the latest state of the available budget margins, to support the third element above. There are changes from the situation set out in my letter of 6 November, in Headings 2 (Preservation and management of natural resources) and 5 (Administration):

— The Commission’s proposed amendment to Draft Amending Budget No 10 to the 2010 budget, published on 26 November, reduces the available margin in Heading 2 in 2010 to €484m (from its previous level of €814m). The Commission therefore proposes using a further €269m from the Heading 2 margin in 2011 for ITER financing. The latest Commission proposed Draft Budget for 2011 provides for a total margin in Heading 2 next year of €1,679m, from which this amount would be deducted.

— In Heading 5, the Commission non-paper proposes using €54m from the 2010 budget margin, rather than the €94m suggested in its previous assessment of the margins. This, and the overall decrease in the amount to be allocated from the Heading 2 margin, is to reflect the reduction in the total amount required for ITER from €1.4bn to €1.3bn.

The available amounts in the 2010 margins of €15m in Heading 1a, and €18m in Heading 3a (Freedom, security and justice), are unchanged from the situation explained in my 6 November letter.

The Government welcomes that this proposal achieves full financing of the ITER shortfall at once, contrary to the Commission’s original financing proposal in July. As you know, we wished the proportion of funding found through reallocation to be increased, in order to limit the eventual cost to Member States. There has not been the progress we wanted on this. However, the Government notes and supports the reduction in the overall figure required for ITER, which will impact on the contributions required from Member States. This has been found through cost savings, and we will continue actively to push for more such savings in the years ahead.

Taking into account that our and other Member States’ strong efforts have not been able to secure further reprioritisation of existing resources, and that the European Parliament’s position was to support only fully additional spending, through an increase to the Financial Framework, we are of the view that the Presidency’s proposal is the best achievable solution in these circumstances. It is important for the future of the ITER project to finalise a solution to the funding shortfall, and we believe the Council and the European Parliament should now try to bring this negotiation to a close.

The Presidency’s proposal has been widely supported in Council. If the European Parliament can agree to it, then it will take effect formally in the new Financial Framework Regulation. Discussions of both ITER and this Regulation are ongoing with the European Parliament. It is not yet clear whether the two sides will be able to reach agreement on them. If they can, we understand that the Presidency is hoping for the Council to adopt the new Regulation at the Environment Council on 20 December.

2 December 2010

Letter from the Chairman to Justine Greening MP

Thank you for your letter of 6 December about the funding of the ITER nuclear fusion project. The Government have argued that the funding gap should be met through reallocation of funds within Heading 1a, but have also argued that this Heading represents better value for money than Heading 2. We would be interested to know how this reflects the Government’s priorities with regard to infrastructure and research investment. The Government have consistently called for the gap to be met by reallocating funds from within the research budget, and we would be interested to know where such savings might have been made. Given that the proposed solution still envisages a substantial reallocation of funds, what funding from within this Heading would the Government like to see preserved?

The funding gap also suggests that the project has been badly managed from a budgetary point of view. The Galileo project would also seem to be an example of this. What is the Government’s view of the causes of the funding gap, and what can be done to prevent it recurring?

I look forward to receiving a reply to this letter within the standard 10 working days.

21 December 2010

Letter from Justine Greening MP to the Chairman

Thank you for your letter of 21 December about the funding of the ITER nuclear fusion project.
You raised the issue of financing the ITER shortfall through reallocation of funds within Heading 1a (competitiveness for growth and employment) of the EU budget. As you know, Council conclusions of 12 July 2010 requested the Commission to make proposals for meeting the shortfall within the Financial Framework, based primarily on redeployment within Heading 1a; they were first to take into account unused appropriations, and then apply a flat-rate basis with appropriate adjustments.

As you note, the Government considers that EU budget spending from Heading 1a by and large represents good value for money. This includes not only research funding, but also that encouraging growth, innovation and competitiveness. However, we supported the Council conclusions requesting reallocation of resources for ITER within Heading 1a, and pushed for as substantial an amount as possible to be identified in this way, because of the importance of limiting the additional cost to Member States of an ITER financing solution. At a time of profound fiscal consolidation across the EU, this is a priority that is widely shared by Member States.

You asked where savings might have been made to provide for reallocation in Heading 1a. In its financing proposal last September, the Commission suggested that €460m should be redeployed from the Seventh Research Framework Programme (€100m in 2012 and €360m in 2013); but it did not specify in any more detail precisely which parts of the Research Framework Programme would be affected.

Clearly, redeployment of funds could have an effect on a range of future research programmes. However, it is important to note here that the Financial Framework provides for a substantial increase in the Framework Programme in 2011-2013. We therefore believe it is possible to obtain a balanced solution to the issues of respecting the current Financial Framework in meeting the ITER commitment, and limiting additional Member States’ contributions for ITER as far as possible, while increasing investment in research and innovation. Indeed, according to the financial programming information supplied with the Commission’s draft 2011 budget proposal in May last year, the proposed redeployment of €460m would represent only around 2-3% of the total amount projected for the Framework Programme in 2012 and 2013.

Your letter also asked about the causes of the ITER funding gap. The funding gap of €1.4 billion for 2012-2013 in the Euratom contribution to ITER arose primarily because of the increase in cost estimates, a project design review, and also because of a peak in resources needed in the years in question to meet the project schedule. The Commission, which manages the Euratom funding for ITER, has described the main reasons for the increase in cost of the European contribution to ITER’s construction as:

— 2001 cost estimates that were made on an insufficiently rigorous basis;
— The need for additional and more complex technical components to deliver ITER successfully;
— Escalation of materials and construction costs at much faster than average inflation rates;
— The increase from three to seven parties increased the complexity of project integration;
— The unforeseen effort needed to ensure sufficient design specifications of the ITER components to be able to initiate calls for tender from industry;
— Higher resources than foreseen for inspection and testing to comply with the Quality Assurance requirements for a nuclear installation and the millions of parts to be assembled; and
— The start-up costs of establishing autonomous organisations – the ITER Organisation and “Fusion for Energy” agency (F4E) - from scratch.

Finally, you ask what can be done to prevent the funding gap recurring. To some extent, the over-run has been due to poor estimates of start-up costs – for example for the F4E agency – and therefore that element should not recur. ITER is a complex and technically challenging project, but it is generally recognised that its project management and budgetary control has to improve considerably. The July Council conclusions listed a number of measures to be undertaken, as well as making clear the European contribution to the construction phase would be limited to €6.6 billion (2008 value). F4E, which manages the European contribution to ITER, is now led by a new Director and has responded with proposals on measures for improvement. These include a cost containment and reduction plan, and have been endorsed by its Governing Board. Further improvement measures have been proposed by the Commission and Member States, and are now being considered.

21 January 2011
Letter from the Chairman to Justine Greening MP

Thank you for your letter of 21 January, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 7 February.

We understand that no agreement has been reached on meeting the shortfall, and would be grateful to receive updates as negotiations progress.

We note that the Government’s priority is to limit Member State contributions, but it is regrettable that €460 million will be lost from the FP7 budget, even though this constitutes a small portion of the total. We regard the FP7 budget as important, and any decision to reduce it should not be taken lightly. We would still like to receive the Government’s assessment of the priority spending areas within the FP7 budget, and will be particularly keen to examine these issues when plans for FP8 emerge.

The shortfall appears to be largely the result of poor initial cost estimates and weak budget control thereafter. This is extremely regrettable. We are pleased to see that the new Director is putting in place measures to prevent a recurrence of these problems and shall monitor the situation closely. We are seriously concerned about what has happened so far.

Your letter gives no indication of whether there are any more general measures in place to prevent such overspends in future large-scale projects. The Commission’s EU Budget Review Communication suggests that such projects might in future be run by arm’s-length bodies receiving a fixed annual EU contribution, with no suggestion that further funds would be provided. We would be interested to learn your assessment of such a structure, and whether you think it would have any effect on the likelihood of cost overruns.

8 February 2011

ENERGY MARKET: INTEGRITY AND TRANSPARENCY (17825/10)

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

Thank you for your explanatory memorandum of 7 January, which was considered by the Sub-Committee on Internal Market, Energy and Transport. They decided to hold it under scrutiny.

We note the Government’s general support for the proposed Regulation but also note their view that the ‘power of direction’ which would be awarded to the European Agency for the Cooperation of Energy Regulators (ACER) is not consistent with the principle of subsidiarity. While recognising that the subsidiarity principle is certainly engaged in this instance the Committee wishes to reserve their position as to whether there has actually been a breach. In the meantime, further information about the Government’s position on this matter, including whether the continued existence of this provision would prove fatal to their support for the measure as a whole, would be much appreciated.

On a more general point, we would also welcome the Government’s view on whether there are problems with oil industry cartels operating within the EU.

I look forward to receiving a reply to this letter within the standard 10 working days.

19 January 2011

Letter from Charles Hendry MP to the Chairman

Thank you for your letter dated 19 January on the explanatory memorandum I submitted on 7 January on the above Commission proposal.

You note the Government’s view that the ‘power of direction’ which would be awarded to ACER is not consistent with the principle of subsidiarity and seek further information on the Government’s position. You also ask for the Government’s view on whether there are industry oil cartels operating within the EU.

The Government is of the view that enforcement of the prohibitions in the proposal should rest with National Regulatory Authorities. The proper role for the Agency should be to coordinate action by national regulators in the case of cross-border breaches and to intervene only if they fail to agree on the remedial action to be taken. We believe that an acceptable compromise can be found on this issue as our concern about subsidiarity is shared by other Member States.

On your question about possible oil industry cartels, I would note that crude and its products are traded internationally. While we are seeking to improve the transparency of this global market,
notably by reinforcing the work of the International Energy Forum, the European market is relatively transparent with little to suggest the operation of a substantive oil cartel within the EU. If evidence of the existence of such a cartel were to emerge, I would of course expect a thorough investigation of the matter by, as the circumstances warranted, national or EU competition authorities. Oil trading is not covered by this proposed Regulation which relates to trade only in gas and electricity.

11 February 2011

Letter from the Chairman to Charles Hendry MP

Thank you for your letter of 11 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 28 February. They decided to clear the document from scrutiny.

We note your view that there is little evidence that ‘substantive’ oil cartels are operating within the EU but we continue to have concerns about this matter. Like oil, gas and electricity are also traded on the international markets, and therefore we consider that the former commodity’s exclusion from the scope of the Commission’s proposal to be unfortunate. The ability of the competition authorities to respond to suspected cartels in a timely manner is also questionable.

We would also be grateful if you could keep us informed of any substantive developments regarding this measure, including the details of any ‘compromise’ which is reached concerning the Government’s subsidiarity concerns, as the negotiations progress.

2 March 2011

Letter from Charles Hendry MP to the Chairman

Thank you for your letter of 2 March clearing the Explanatory Memorandum I submitted on 7 January on the European Commission’s proposal for a Regulation on Energy Market Integrity and Transparency. At the time I was unable to send the impact assessment which was not completed in time to accompany the Explanatory Memorandum. The Department promised to send the Committee a copy of the impact assessment once the UK negotiating position had been cleared by the European Affairs Committee. I now have pleasure in enclosing a copy of the impact assessment.

The Hungarian Presidency is aiming for a first reading deal on the dossier by the summer which would involve political agreement being reached at the June Energy Council and a compromise text agreed with the European Parliament shortly after. This is a challenging deadline but appears to be possible.

9 May 2011

ENERGY: PROGRAMME FOR RECOVERY (9141/10, 10457/10)

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

I am writing to inform you of a first reading agreement by the Council and the European Parliament on the Regulation on the European Energy Programme for Recovery (EEPR) and adoption of the legislative act at the Energy Council on 3 December.

I wrote on 27 July to provide more detail, as you had requested, and to update you on the progress of negotiations on the EEPR, which had begun shortly before. On 31 May, the Commission presented proposals for the reallocation of uncommitted funds from the original EEPR, as envisaged in an amendment to the original legislation proposed by the European Parliament. It proposed the creation of a dedicated financial instrument to support projects in the areas of energy efficiency and renewable energy. The fund would be open to public bodies, primarily at local and regional level, and entities working on their behalf. The Commission preliminarily estimated that an amount of around €114 million was available due to the failure of some projects, which had originally been allocated money when the EEPR was agreed in 2009, to progress. However, the Commission said that more money could become available if further projects failed to go ahead before the end of 2010. This would have meant that the final amount available to the fund would not have been pre-agreed with the Council and that the new mechanism would have absorbed all available decommitted funding from the original EEPR.

The original proposal contained limited detail on the operation of the fund. During negotiations, the Commission clarified that the intention was to use the unallocated money from the EEPR, in conjunction with money from the European Investment Bank (EIB), to leverage private finance. The
proposed financing facility would offer a range of financial products (e.g. loans, bank guarantees etc), as well as a small amount of technical assistance.

During the negotiations, the UK argued in particular for the proposals to reflect the need for fiscal consolidation taking place in Europe, as well as the principles of sound financial management and transparency. In this context, the UK consistently pressed for a cap on the amount of money which could be allocated to the financial instrument and for reassurance that the proposal complied with the EU’s Financial Regulation. I am pleased to report that the final agreement reached between the Council and the Parliament broadly met these objectives. In particular, the final sum being allocated to the facility was set definitively at €146.3m. While this represents an increase in the original estimate put forward, the ‘cap’ will ensure that any further money which becomes available through the failure of projects from the original EEPR will not be available; and it reaffirms the important point of principle that such proposals for funding from the EU budget must be properly quantified.

In addition, the UK succeeded in getting amendments to the original proposal which introduce certain safeguards and a review clause. In accordance with the agreed text, the new facility will be reviewed by 30 June 2013 before decisions are taken by Ministers on its success (in particular in meeting its stated objectives of contributing to green growth, developing a competitive, connected, sustainable and green economy, protecting employment, creating jobs and tackling climate change) and possible continuation.

We understand that the Commission will now work with the EIB and others to set up the financial instrument, with a view to it being operational by spring next year. By using this EU money to leverage private finance, the Commission and EIB hope to be able to raise around €700m. Once in operation, the facility should be another useful source of funding for local and regional energy efficiency and renewables projects across Europe, including in the UK. It is therefore in line with the Government’s objectives to support green growth not just at home, but also abroad.

The legislative act was adopted at the Energy Council on 3 December without discussion. We had expected the Commission to provide an update at the Council, and had therefore delayed replying to you, but in the event this did not take place.

20 December 2010

E-PROCUREMENT (15215/10)

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

Thank you for your explanatory memorandum of 17 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to hold it under scrutiny pending receipt of your response to the Commission’s consultation.

We welcome the Commission’s attempt to reassess the provisions for electronic procurement. This would appear to be an important tool for the opening of cross-border procurement opportunities, and for the encouragement of the wider single market.

We have recently received evidence to our inquiry into the single market suggesting that procurement can play an important role in developing the market. With this in mind, we would like to emphasise that any development of e-procurement in the EU should respect the principles of the single market. It should be developed in such a way as to encourage participation in cross-border procurement, especially by SMEs.

We note the Commission’s concern, echoed by you in your EM, that authentication procedures have been too stringent and share the concern that this may impose excessive burdens on suppliers, and present a barrier to participation for SMEs. We would also urge the Government and Commission to be alert to the potential use of national e-procurement rules as a barrier to suppliers from other Member States.

The paper says that Portugal has introduced mandatory e-procurement for public bodies: we would be interested to learn how well this has worked, and whether it has affected the amount of cross-border procurement. We would also be interested to know how the use of e-procurement by public bodies compares to its use in the private sector.

We note that you are opposed to the introduction of a requirement to use electronic procedures in regard to “certain procurement”. We would appreciate it if you could clarify which types of procurement you had in mind.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.
Letter from the Rt. Hon Francis Maude MP to the Chairman


I understand that unfortunately my initial reply to your letter did not reach you, which was due to an administrative error. I am therefore pleased to send you this letter, which addresses the questions you raised, and also draws attention to key points in the Cabinet Office response to the Green Paper. A copy of that response has previously been forwarded for your Committee’s attention.

In your letter of 7 December you raise a number of points, which I address below.

I share your view that development of e-procurement in the UK should respect the principles of the single market, and should encourage participation in cross-border procurement, in particular by SMEs.

The Commission’s Green Paper and the accompanying Commission Working Paper, recognises that public sector e-procurement, and in particular cross-border e-procurement, remains limited in scale and scope. Barriers arise both from a variety of technical infrastructures and lack of common technical standards, and also from differences of legal interpretation and processes, despite the 2004 public procurement directive. The Commission is keen to encourage a real single market in public procurement, using e-procurement as an enabler.

I am encouraged that the European Commission is thinking along these lines but the details of any concrete proposals will be important. I wish to see a fundamental simplification of the public procurement rules, and a reduction in EU “micro-management” of the public procurement process. The rules governing e-procurement should be included in that simplification.

Therefore removal of barriers to interoperable and cross-border e-procurement must not be at the expense of imposing inflexible or costly requirements, or stymie future innovation, or have an unwanted impact on existing successful e-procurement solutions in the UK. You will see that the response to the Green Paper makes those points. My officials will continue to actively engage with the Commission and representatives of other Member States, through the Commission’s Advisory Committee on Public Procurement, and through bilateral contacts.

You refer to authentication procedures. I am encouraged by the Commission’s recognition that over-stringent authentication procedures can act as a barrier to cross-border e-procurement. The Commission points out that sophisticated, but in practice potentially complex “qualified” digital certificates and “advanced” signatures may be disproportionate for the risks in e-procurement. This is the experience in the UK, where most suppliers do not routinely use these solutions.

You will see that the Cabinet Office response to the Green Paper makes those points. We ask the Commission to explicitly recognise that simpler (user-name and password based) authentication systems are often fully adequate for the risks in e-procurement, and can also minimise problems of cross-border interoperability.

I will now address the specific topics on which you ask for information.

E-PROCUREMENT IN PORTUGAL

The Portuguese government has undertaken a long-term programme to implement electronic public procurement. This started with a Pilot process in 2003, and since November 2009, the use of e-procurement has been mandatory for public contracts, except those of very low value. Actual e-procurement services and platforms are provided by accredited private sector firms in competition with each other. I understand Portugal regards this programme as having been successful, which was made possible largely because of a carefully implemented strategic plan. Portuguese authorities also consider e-procurement may have helped increase the level of cross-border procurement.

I include more details of the Portuguese programme as Annex 1.

COMPARISON BETWEEN PUBLIC AND PRIVATE SECTOR USE OF E-PROCUREMENT

You ask how the use of e-procurement by public bodies compares with the private sector. There is a lack of good quality comprehensive data to compare public and private sector experience, compounded by uncertainties of definition. Moreover, the availability of e-procurement tools and techniques does not necessarily mean that they are used. Difficulties of reliable comparisons are
increased by differences between the public sector and the private sector, and the wide variety of experience in the private sector.

Limited data suggests that full “end-to-end” e-procurement (including e-invoicing and e-payment) remains uncommon in both the private and public sector. Research by the National Computing Centre and information services provider COA Solutions, released in January 2009, indicated that only 3% of UK organisations had a fully electronic procurement process, 18% had a highly automated (electronic) procurement process, 32% made some use of e-procurement, but 47% made little or no use. Approximately 20% more public than private sector bodies reported that they process documents manually. However, this was a relatively limited sample of 110 organisations in total, and may not be fully representative.

THE USE OF ELECTRONIC PROCUREMENT IN “CERTAIN PROCUREMENTS”

You refer to the EM’s mention of a requirement to use electronic procedures in “certain procurements”. This was intended to reflect the Commission’s consultation question which asked whether e-procurement should be required in “certain procurements” (and if so, which?). The Green Paper does not give a Commission view as to what those “certain procurements” might be.

I am not persuaded that an EU-wide mandating of electronic procurement is desirable or necessary for any types of procurements. As the Portuguese experience shows, success requires a long term coherent programme, which cannot readily be imposed centrally by the EU. There may be an argument for e-procurement being the default, but not obligatory choice, in certain procurements. This might apply where e-procurement can be introduced easily; where the parties are already likely to be familiar with the use of e-procurement; and where substantial benefits can be expected, based on existing experience. This might include the purchase of major commodities by central government departments and central purchasing bodies.

You will see that the Cabinet Office response to the Green Paper makes these points.

ADDITIONAL MATTERS IN THE RESPONSE TO THE GREEN PAPER

Perhaps I may briefly draw your attention to a few of the other points raised in the Cabinet Office response to the Green Paper. You will see that these are set out in more detail in the response.

If there is any doubt in the matter, it should be made explicit that contracting authorities can require the use of electronic means in their procurements (which of course does not imply the Commission’s imposing the use of e-procurement).

In general, barriers to cross-border procurement should be removed by non-legislative means where at all practicable. E-procurement remains a developing area, and further legislation risks inadvertently stultifying innovation. It also runs contrary to a simplification of the rules.

The rules governing dynamic purchasing systems should be greatly simplified. E-procurement could be encouraged by legislative incentives, including further reductions in procurement timescales, and encouraging the use of “e-marketplaces”. (It would be preferable to remove many of the specific legislative requirements altogether).

Existing investment in e-procurement solutions, systems, standards and software must be respected; however, there is a role for the Commission in encouraging open source solutions to assist interoperability of existing solutions.

You may be interested to learn that the Commission has told my officials that the Cabinet Office submission is a substantial response, which contains clear and cogently argued positions, and gives the Commission much to think about. So I hope that our arguments will carry weight in influencing the Commission; we will of course continue to make our views known.

THE WIDER PUBLIC PROCUREMENT RULES CONTEXT AND WIDER COMMISSION CONSULTATION

You will be aware that in addition to the Green Paper on e-procurement, the Commission is also carrying out a wider review of the current public procurement rules. Among other issues it is looking at accessibility for SMEs; procurement tools and techniques; wider policy issues in procurement (including social issues and “green” procurement); and data on the benefits of structured procurement rules. The Commission has issued a Green Paper on the wider review of the rules, which has been put before your Committee. I have sent the Scrutiny Committees a separate Explanatory Memorandum on this wider Commission consultation. In brief, my officials have sought views from a range of interested parties and will respond in to the detailed questions asked by the Commission.
As noted above, the Government believes that there is an opportunity for substantial simplification of the public procurement rules, and greater flexibility for public authorities in their purchasing activities, whilst maintaining Treaty principles of open and transparent procurement across the EU, and achieving value for money. Our response will make that clear, and my officials will work with the Commission and other Member States to vigorously promote this approach. We believe that changes to the rules governing e-procurement should be consistent with, and form part of, wider changes to the public procurement rules.

May I also take this opportunity to provide a technical clarification to the EM on the e-procurement Green Paper. Paragraph 19 of the EM stated that the transposition of European public procurement legislation is the responsibility of the ERG except in Scotland, where it is a devolved matter. In fact, as regards Northern Ireland, although the current procurement and remedies directives have been implemented by Westminster for the Northern Ireland jurisdiction in addition to England and Wales, this legislation is implemented with the consent and on behalf of the Northern Ireland Executive. In national law terms the Northern Ireland Executive is entitled to implement separately in Northern Ireland if it so chose.

I hope the foregoing is helpful, and if you and your Committee have any further questions, I will of course be very happy to address these.

16 March 2011

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter of 16 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 9 May. They decided to clear the document from scrutiny.

It was unfortunate that your previous letter did not reach us, but we are grateful for your substantial reply to our previous letter and for the provision of the Government response to the consultation.

We are slightly confused as to your attitude to legislation in this area. At one point you appear to oppose it, but subsequently recommend legislative action as a means to encouraging e-procurement. Perhaps you could clarify the Government's position.

10 May 2011

ESTABLISHING A EUROPEAN MARITIME SAFETY AGENCY (15717/10)

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

Thank you for your explanatory memorandum of 29 November 2010, which was considered on 24 January by the Sub-Committee on Internal Market, Energy and Transport. They decided to hold it under scrutiny.

We note the Government's concerns about the proposed amendments to the EMSA Regulation. We would be interested to know whether the Government consider it to be the Commission’s duty adequately to justify any increase in costs for an EU agency resulting from the grant of additional competences and the resultant increase in staff numbers.

If now known, we would appreciate further information about the likely timetable for the proposal’s consideration by Council. With regard to the UK impact assessment, we are of the view that the scrutiny process becomes fragmented when documents of this nature are not made available at an early stage. Please provide an indication of when this document will be published and make a copy available to the Committee as soon as possible.

Looking ahead, we would also like to be kept informed of any substantive developments as the negotiations progress.

I look forward to receiving a reply to this letter within the standard 10 working days.

26 January 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 26 January 2011, which sets out the deliberations of the Sub-Committee on Internal Market, Energy and Transport on the Explanatory Memorandum for the above proposal.
You ask whether the Government considers it to be the Commission’s duty to adequately justify any increase in costs for an EU agency resulting from the grant of additional competences and the resultant increase in staff numbers. It is the Government’s view that any increases in costs for EU agencies must be fully justified by the Commission. The UK, along with other EU member states, will continue to pursue rigorous justifications for any additional increases in EU costs. The Government has made it clear that it wants to limit growth in the EU budget and therefore consistently argues that, if additional funding requirements can be adequately justified, they should be found through reprioritisation from areas of the EU budget of lower added value.

You also ask when the matter might be put before the Transport Council. The Presidency is aiming for formal adoption at the Transport Council on 31 March 2011. However, we believe this to be a highly ambitious timetable given where we are in terms of the negotiations and the concerns that have been expressed by Member States. Indeed, at this juncture there is little to report by way of progress, but we will of course keep you informed of any substantive developments as negotiations progress.

With regards to the Impact Assessment, this has been delayed due to the lack of clarity in the Commission’s initial proposals. The Impact Assessment is now being finalised and I will send it to you shortly.

15 February 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 15 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 28 February. They decided to clear the document from scrutiny.

You stated that the Impact Assessment was being finalised and would be forwarded to the Committee. We have still not received this document, and look forward to receiving it shortly. We would also be grateful if you could elaborate on where you consider there was a ‘lack of clarity’ in the Commission’s proposal.

I look forward to receiving your reply within the standard 10 working days.

2 March 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 2 March 2011, which indicated that the Sub-Committee on Internal Market, Energy and Transport had decided to clear EM 15717/10 from scrutiny.

You asked to see the Impact Assessment. This has now been finalised, and I enclose a copy. This clarifies that the EU proposal does not impose a regulatory burden on the UK private, public or third sectors.

As you may recall from my letter of 15 February, negotiations were initially very slow, with little progress made before the 31 March Transport Council. The Council meeting included a progress report and policy debate on the new tasks and governance of EMSA.

During this debate, the Secretary of State, Phillip Hammond, made clear that the UK’s priorities centred on the budgetary consequences of the proposal (as set out in paragraph 27 of EM 15717/10) and that any additional funding for the new tasks should be found through the reprioritisation from other areas of the EU budget of lower added value, rather than from an increased EU budget. Similar concern was expressed by a number of other Member States, with some also endorsing the position that EMSA’s work should not duplicate that of other Agencies or Member States, and should provide clear EU added value.

We have continued to press the Commission for rigorous justification for any additional increase in costs, and have also engaged with the Commission and other Member States to ensure that any additional funding is found through reprioritisation from other areas of the EU budget of lower added value, rather than from an increased EU budget. I am pleased to report that this has now been accepted, and the latest Presidency working documents make clear that the new tasks will be undertaken within the limits of the current financial perspective, and within the Agency’s budget as thereby provided for, and without prejudice to the negotiations and decisions on the future multiannual financial framework.

The UK’s concerns about the extension of EMSA’s emergency response capabilities and EMSA’s assistance in the analysis of the safety of mobile offshore oil and gas installations (along the lines set...
out earlier in this letter) were also expressed at the Council. However, no other Member State spoke out in support on these issues.

You asked if I could elaborate on where it was considered there was a ‘lack of clarity’ in the Commission’s proposal. The reference to EMSA assisting the Commission in the effective implementation of “relevant EU legislation” in Article 2.2(b), without defining what is meant by this, was a particular cause for concern because it could be interpreted as applying to legislation outside the maritime fields specifically mentioned in the objectives (which could, for example, have far reaching consequences for maritime security). However, the Commission has now agreed to the inclusion of a new recital to address this point.

We had concerns about what is meant by EMSA assisting the Commission in the “analysis of the safety of mobile off-shore gas and oil installations” in Article 2.2(d). The Commission has assured Member States that this assistance will be strictly limited to an advisory role, examining existing and future international requirements with a view to the potential development of new EU legislation by the Commission. However, as originally drafted, there remained a possibility that EMSA might be required to carry out inspections of these installations, of the bodies which inspect them or the national administrations concerned – even though EMSA does not have the necessary expertise to advise on activities specifically related to the exploration or exploitation of mineral resources (by means of a well).

Similarly, for the purposes of extending EMSA’s emergency response capabilities to cover marine pollution caused by oil and gas installations, there appeared to be nothing in Article 2.2 to stop the Commission from directing EMSA to intervene against the wishes of an affected State – even though the Commission has assured Member States that this will not be the case. However, I am pleased to report that appropriate safeguards to address these concerns, and those mentioned in the paragraph above, now appear in the latest Presidency working documents.

The governance of EMSA is not seen as a priority for the UK and we did not raise it at the Transport Council. However, several Member States did express views and believed that Member States should have a principle role to play in the governance structure, with the majority of those who spoke of the opinion that the current wording of the Regulation covering governance should be maintained.

The Presidency hopes that it will be possible to reach a general approach on the proposal at the Transport Council on 16 June. It is likely that they will be able to achieve this, subject to Member States being able to reach an agreement on the governance issues. There are some further unrelated minor amendments that we would like to see in the text, but we hope to be in a position to be able to support a general approach in line with the Presidency’s latest plans.

The plenary first reading of the proposal by the European Parliament is scheduled to take place in October. I will of course keep your Committee informed of the outcome of this, and of any further developments.

19 May 2011

EU 2020: A STRATEGY FOR COMPETITIVE, SUSTAINABLE AND SECURE ENERGY
(16096/10)

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

Thank you for your explanatory memorandum of 24 November, which was considered by the Sub-Committee on Internal Market, Energy and Transport. They decided to clear it from scrutiny.

We note the Government’s broad support for the content of the Communication, with which the Committee agrees. We consider it to be an ambitious package of measures, particularly the notion of a single European electricity grid, and we will monitor developments with interest.

However, the Committee also has a number of outstanding concerns regarding the UK’s ability to reach the 20-20-20 targets in relation to ongoing and prospective domestic energy projects. We would welcome the opportunity to receive oral evidence on this matter from the Minister early in the New Year. The Clerk will be in touch to arrange an appropriate date.

In the meantime, it would be useful to have an update on the progress which has been made in achieving more competition in the energy market, particularly the matter of regulated energy prices. In addition, further information about concerns that the Government express about specific proposals in the EM, including aspects of the EU’s external relations policy, as well as the references to energy taxation and planning policy would be most useful.
We are also concerned about bottlenecks in the availability in the UK of high-quality components for renewables technology such as wind turbines. Are the Government aware of any such supply bottlenecks within the EU?

I look forward to receiving a reply to this letter within the standard 10 working days.

10 December 2010

Letter from Charles Hendry MP to the Chairman

Thank you for your letter of 10 December, clearing the EM on “Energy 2020 – A strategy for competitive, sustainable and secure energy”. I apologise that the Christmas break has caused a delay in responding to your letter.

You asked for an update on progress in achieving more competition in the energy market, particularly in relation to regulated energy prices. The Commission states in its Communication that there is a problem in relation to regulated energy prices in many Member States. This is clearly anti-competitive. The Commission has started to take legal action against Member States with regulated prices and we strongly support this approach.

You also asked for further information about the Government’s concerns on the EU’s external relations policy, energy taxation and planning policy. While we agree with the Commission on the importance of the EU’s external energy relations and of diversifying the EU’s energy supplies, we want to ensure that the balance of competence between the EU and its Member States on this issue is preserved. There are already many examples of the success of the EU’s current external energy policy, for example in introducing EU market “norms” in the EU’s neighbourhood. These include the recent accession of Ukraine to the Energy Community Treaty, work in the context of the Energy Charter Treaty, and the progress being made in the Eastern Partnership. We consider that the EU should build on these experiences to strengthen its existing relationships with strategic partners and build new ones.

The Government recognises that delays in obtaining planning authorisations can present an obstacle to infrastructure projects and agrees that Member States should consider how the decision-making processes could be streamlined for major cross-border projects. Better coordination between the national planning authorities, the exchange of best practice and early involvement and better information of the public could help here. However, again we will want to ensure that any EU measures proposed have full regard for the fact that planning is a Member State competence.

In relation to the reference to revision of the Energy Taxation Directive in the Strategy, the Government considers that this is a matter for finance Ministers. We believe that any revision of the ETD should focus on reviewing EU minimum levels of taxation and do not support a mandatory EU-level carbon tax.

Finally, you asked if the Government was aware of bottlenecks in the availability of components for renewables technology, such as wind turbines in the UK. I recognise the importance of developing the wind turbine technology for Round 3 of UK offshore wind development, as well as supporting the expansion of manufacturing capacity that will be necessary to deliver deployment within the 2020 timescales. UK and European renewables deployment plans are ambitious, and require significant expansion of the supply chain in a relatively short timescale for recently developed technologies such as offshore wind.

The Government has supported the development of offshore wind technology by means of the Environmental Transformation Fund’s Offshore Wind Demonstration Scheme, which has offered over £20m of capital grant funding to support the development of next-generation offshore wind technology in the UK.

Examples of projects currently being supported include work by JDR Cable Systems to develop large specialist cables specifically designed for larger projects further offshore; work by NGenTec to develop a light weight and scalable 6 Megawatt generator based on technology originally developed at Edinburgh University; work by Burntisland Fabrications to develop advanced manufacturing techniques for a jacket foundation; and work by South Boats to develop a new modular design of offshore wind farm support vessel.

In parallel with this support for technology development, the Government is supporting inward investment by turbine manufacturers, with an announcement in October of up to £60 million to support the establishment of offshore wind manufacturing at ports sites in the assisted areas of England. This funding aims to support major investments by offshore wind manufacturers with large-scale coastal manufacturing requirements, addressing key areas of the supply chain that are likely to need expansion to serve UK deployment such as turbine, foundation, cable and tower manufacturers.
In relation to biomass, many biomass heat and electricity plant components are manufactured in the EU and lead-in time for delivery depends on the relative supply and demand at the time. For some technologies such as heat, the delivery time for biomass boilers can be significant (1-2 years) because of the relatively few manufacturers and installers able to build, install and service the boilers. Any significant increase in capacity of renewable heat and biomass electricity could potentially cause a bottleneck, as delivery will depend on the ability, flexibility and skills of the manufacturers and installers to meet demand.

Similarly for heat pumps, the component parts can be procured from other European countries or internationally with few bottlenecks at this stage, dependent on supply and demand across Europe and availability of products meeting appropriate standards. We are currently consulting on a strategy covering a range of microgeneration technologies and further engagement with the industry may highlight other issues.

My officials are liaising with your Clerk on the timing of an oral evidence session.

7 January 2011

EU – ICAO: MEMORANDUM OF COOPERATION (7660/11, 7662/11)

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

Thank you for your explanatory memorandum of 21 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 28 March. They decided to clear document 7660/11 from scrutiny, although with some reluctance, but to retain document 7662/11.

The broad intention of this proposal seems, on the face of it, sensible, as there are close links between the role of the ICAO and the EU in those areas of aviation policy which fall under EU competence. The proposal points to the relationship between ICAO standards and their impact on EU policy.

We are not convinced that the Memorandum of Cooperation will lead to further EU incursion into Member State competence with regard to ICAO. In fact, we take the view that the EU has an important role to play in the area. We would be interested to receive further clarification of your concerns in this regard.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

30 March 2011

Letter from the Rt Hon Theresa Villiers MP to the Chairman

Thank you for clearing document 7660/11 from scrutiny. As you will be aware, this proposal on the signature and provisional application of the Memorandum of Cooperation was adopted at the Transport Council on 31 March despite the UK’s abstention.

You asked for further clarification of my concern that the Memorandum of Cooperation will lead to further EU incursion into Member State competence with regard to ICAO.

I accept that there are positive aspects to this Memorandum of Cooperation and that it does not in itself imply a transfer of competence. My reservations concern the end result these proposals might lead to. I remain of the view that it was necessary to put down a marker that the UK is concerned about the principle of Member State sovereignty in international organisations and cautious about any proposals which appear to enhance the role of the EU at the expense of Member States. My feeling is that, in the longer term, such proposals could eventually change the distribution of competences between the EU and the Member States.

I considered that an abstention by the UK at the March Transport Council would be a stronger way of conveying this message than, for example, a vote in favour accompanied by a statement of our concerns.

I continue to believe that the UK should highlight our concerns regarding the gradual erosion of Member State sovereignty in international organisations. Even when all of the more technical issues relating to the working of the Joint Committee and the development of the remaining annexes have been resolved this matter of principle will remain. I therefore propose that the UK once again abstain when the proposal on the conclusion of the Memorandum of Cooperation is discussed, likely to be at the June Council.
13 April 2011

Letter from the Chairman to the Rt Hon Theresa Villiers MP
Thank you for your letter of 13 April, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 16 May. They decided to clear document 7662/11 from scrutiny. 
We maintain our support for this proposal on the grounds that there are close links between the roles of ICAO and the EU in aviation policy.
I do not require a response to this letter.

24 May 2011

EU – NORWAY: GALILEO AGREEMENT (6618/11)

Letter from the Chairman to the Rt Hon Theresa Villiers MP, Minister of State, Department for Transport
Thank you for your explanatory memorandum of 9 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear it from scrutiny.
While we are content with the terms of this particular agreement, we would like to take the opportunity to express again our deep concern regarding the governance and budgetary control of the Galileo and EGNOS projects.
I do not require a reply to this letter.

22 March 2011

EUROPEAN ROAD SAFETY AREA (12603/10)

Letter from the Chairman to Mike Penning MP, Parliamentary Under Secretary of State, Department for Transport
Thank you for your explanatory memorandum of 3 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.
However, it was extremely disappointing to receive your EM nearly three months late. We have recently raised the issue of lateness with your colleague Theresa Villiers in relation to the recast of the First Railway Package, and are very concerned that your department is, for a second time, not fulfilling its obligation to enable Parliament to scrutinise EU legislation within the standard deadline of ten working days to which the Government is committed.
We agree that the aim of improving road safety is worthwhile and look forward to scrutinising more detailed proposals as they emerge. We would like, at this stage, to draw your attention to the relationship between the number of deaths on Europe’s roads and the number of those killed or seriously injured (KSIs). We believe the number of KSIs may provide a better picture of the overall safety of roads. Has this number experienced a similar downward trend as the number of those killed?
As you are aware, we currently hold the eCall proposal under scrutiny. It appears that in the light of other technological developments, the case for implementing eCall more widely is diminishing. What is your initial assessment of the Commission’s plan to extend the implementation to a wider variety of vehicles?
You appear to oppose further legislation in this area. We would urge the Government to keep an open mind, pending appropriate impact assessments, over the need for such legislation. For instance, in developing technologies such as electric vehicles, regulation may prove necessary in order to alleviate as yet unforeseen or unassessed safety problems.
I look forward to receiving a reply to this letter within the standard deadline of ten working days.

1 December 2010
Letter from Mike Penning MP to the Chairman

Thank you for letter of 1 December confirming scrutiny clearance of the explanatory memorandum (EM) on the European Road Safety Action Plan.

I note your disappointment concerning the delay in receiving the EM, for which I apologise. The need for proper consideration of our road safety policy was one factor in this delay, but I am afraid that submission of the EM was also affected by the timing of the Spending Review. Nonetheless, we have recently put in place some additional processes aimed at reducing the risk of delays in sending EMs to Parliament in future.

Turning to the questions raised in your letter, firstly you asked whether the number of killed and seriously injured (KSIs) had experienced a similar downward trend as the number of those killed. The definitions for casualties, accidents and injuries vary between countries, with the definition of a serious as opposed to a non-serious injury being particularly difficult. The most comparable information is for deaths.

The ‘Community database on accidents on the roads in Europe’ does contain returns for the total number of reported accidents involving personal injury. There are some major caveats with these figures including varying definitions between country and variable reporting rates, but the long term trend in the figures for the European Union as a whole up to 2007 is for a lower rate of reduction in all reported injuries than fatalities.

You also asked for our initial assessment of the Commission’s plan to extend the implementation of eCall to a wider variety of vehicles. We believe that there are significant technical challenges in extending eCall to other categories of vehicle. For passenger cars the triggering of the airbag could be used to initiate an eCall message, but other vehicles such as trucks and motorcycles are not all fitted with airbags. Robust solutions would need to be identified for these vehicles before rolling eCall out to them could be considered.

I note your comments on further legislation in this area. As you may know, the Transport Council on 2 December agreed Conclusions on the Commission’s Communication. The UK negotiated successfully for the inclusion of a reference to new legislative proposals needing to be proportionate and accompanied by robust impact assessments. We will, of course, carefully consider any proposals for EU legislation put forward by the Commission providing that they meet these criteria. It will be important for proposals to be cost effective and reflect the principle of subsidiarity.

You refer to the example of electric vehicles as a potential area where legislation would be beneficial to address safety problems. Revised EU legislation on vehicle construction sets minimum safety requirements for cars trucks and buses (the 2007/46 EC type approval directive, which was the subject of EM 11641/03). It includes requirements for fully electric and hybrid electric cars. The requirements under this legislation are being updated to ensure the safety of electrical systems and further revisions are being considered to introduce minimum safety requirements for electrical components following a collision. The Department is also undertaking research into new braking systems fitted to electric vehicles. The outcome of this work will help to inform debate on new requirements for such vehicles.

16 December 2010

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 16 December, which was considered by the Sub-Committee on the Internal Market, Energy and Transport.

We are grateful for your answers to our questions and look forward to scrutinising any specific proposals arising from the document when they emerge.

I do not require a reply to this letter.

19 January 2011
Letter from the Chairman to Ed Vaizey MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

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

We note that the Government welcome the Communication and support the common positions which have been articulated by the Commission. In general we support efforts to achieve the better coordination of radio spectrum at the global level, including the attainment of a more flexible spectrum management regime, which has been identified as desirable by the Commission and endorsed by your explanatory memorandum. We therefore support your stated approach to the forthcoming negotiations.

24 May 2011

EU – US CIVIL AVIATION RESEARCH AND DEVELOPMENT

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

I am writing with reference to my Explanatory Memorandum (EM) of 17 February on the above two Council Decisions.

In the Explanatory Memorandum I indicated that we expected the Decision to be adopted at the Transport Council on 31 March. However, the proposed Decision on signature and provisional application of the Memorandum of Cooperation (MoC) was subsequently tabled by the Hungarian Presidency for adoption at the Energy Council on Monday 28 February.

Our initial approach was to try to get the item deferred to a later Council as the timing of Constituency recess meant that there had been no opportunity for scrutiny to be completed on the document. However, we were advised that the Presidency’s reasons for scheduling adoption for 28 February were that the US were willing to go to Budapest for a signing ceremony on 3-4 March, so the Presidency were reluctant to defer adoption of the Decision.

We had ascertained that the vote at Council would be by Qualified Majority Voting, and the UK therefore abstained from the vote as scrutiny had not been completed. We have, however, made the Presidency and the Council Secretariat aware that we were dissatisfied that we did not have more notice about this timetable, which might have allowed us to complete parliamentary scrutiny beforehand.

I should also like to take the opportunity to correct the implication in the EM that the Conclusion stage of the MoC comes before the signature and provisional application stage; in fact the reverse is true. Additionally, contrary to what the EM suggests about European Parliamentary (EP) procedure, the Conclusion of the MoC requires consultation with the EP. No particular timescale has been specified for this. A Corrigendum is being sent to you to document these corrections.

Now that the framework of cooperation has been defined, it is crucial that the MoC is swiftly and effectively implemented to realise its benefits. Accordingly, the UK will be closely tracking progress in all appropriate fora.

04 April 2011

FLEXIBILITY SCHEME: TRACTORS PLACED ON THE MARKET (15935/10)

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

Thank you for your explanatory memorandum of 10 December, and for your covering letter, which were considered on 17 January by the Sub-Committee on the Internal Market, Energy and Transport.
We note that the EM was submitted significantly later than the standard 10 days from deposit, but accept your apology for this. We also note that the document was deposited rather later than is desirable.

The proposal to extend the flexibility scheme to 50% appears to be in line with proposals for non-road mobile machinery (locomotives and railcars excepted). We welcome the easing of burdens to manufacturers but maintain our concern that the balance is set appropriately with regard to improving environmental standards.

We are unwilling to clear the document from scrutiny until you produce your impact assessment, which we look forward to receiving in due course.

In the meantime, we would be very grateful for answers to two questions: 1) are stage IIIIB tractor engines currently available, and in what quantities?, and 2) has there been any sign that tractor sales have recovered from the drop reported in 2008-09?

I look forward to receiving your reply within the standard 10 working days.

19 January 2011

Letter from Norman Baker MP to the Chairman

Thank you for your response to our recent Explanatory Memorandum on the above subject. I can confirm that an Impact Assessment on the proposal is in preparation, and that I shall provide it as soon as it is completed.

In response to the questions that you raise, I can confirm that Stage IIIIB compliant engines for tractors are now available, although I regret that it has not been possible to establish in what quantities these engines are available because this information is considered commercially sensitive. Some manufacturers have been able to offer at least some tractors meeting the Stage IIIB standard for some months, and I believe that most are likely to bring tractors meeting that standard to market during the first half of this year, though it is less clear how long it will be before all manufacturers have been able to update their entire range.

You also asked whether there has been any sign of recovery in tractor sales. The most recent figures that I have on registrations of tractors suggest that the rate of decline of sales may be easing, but they do not, unfortunately, yet show any positive recovery from the drop reported in 2009. I include, below, a table showing the number of tractors with engines above fifty horsepower registered in each year since 2003. The figures do not quite include all tractors sold, since a small number will not be registered for road use, but they give a good indication of the state of the market. You will notice that current levels of tractor registrations are similar to those of five years ago. It is not yet clear whether the fall in sales in 2009 was entirely due to the economic situation or whether some proportion of it was simply due to the market having a cyclical nature. A downturn, however, evidently causes difficulties for businesses, whatever the underlying cause.

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3 February 2011

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 3 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 28 February. They decided to hold it under scrutiny.

We look forward to receiving your impact assessment, as it appears that the case for increasing the flexibility scheme has not been made.

In the meantime, we would appreciate it if you could keep us updated if there are any developments.

1 March 2011
Letter from the Chairman to the Rt Hon Theresa Villiers MP, Minister of State, Department for Transport

Thank you for your explanatory memorandum of 15 February, which was considered on 14 March by the Sub-Committee on the Internal Market, Energy and Transport. They decided to hold the document under scrutiny.

We share your concern about the over-run in the Galileo project so far, and agree that the Commission have not sufficiently justified their suggestion that a further €1.9 billion is needed. We find it extremely worrying that the governance structures established in 2007 have not enabled the costs to be brought under control.

Without a more detailed analysis of the causes of the over-run it is difficult to determine what might have been done to avoid it, but we note that the ITER project, a similar large-scale project, has also experienced significant difficulties in staying within budget. We welcome the Commission's plans, as outlined in their Budget Review, to look again at the funding arrangements for such projects, but it is too early to comment on the merits of any particular solution. We would simply note that any mechanism by which more of the funding was to come directly from Member States would appear, in the absence of any corresponding reduction in the overall EU budget, to constitute a de facto increase in that budget.

A decision urgently has to be made as to whether to pursue the original specification of 30 satellites, to the original timetable, or to accept a reduced constellation in order to reduce costs. We agree that the Commission should conduct a robust assessment of the options. We have previously asked whether a reduced constellation would provide a quality of service high enough to justify the project: it should be a priority to assess this before providing more funding in order to launch 30 satellites.

The document makes reference to expected social and economic benefits of €60-90 billion as a result of the project. We are concerned that this estimate has not been sufficiently justified. In particular, we would be interested to receive an analysis of the estimated benefits for the economy separately from the social benefits. We would also be very grateful to receive an analysis of the benefits, both economic and social, estimated for the UK.

We note that Council Conclusions are expected on 31 March. We would strongly urge the Government to resist any call for further funding before an adequate assessment of the options has taken place.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

15 March 2011

Letter from the Rt Hon Theresa Villiers MP to the Chairman

Thank you for your letter dated 15 March in which you set out the decision of the Sub-Committee on the Internal Market, Energy and Transport to retain the above document under scrutiny.

I note that the Committee strongly urges the Government to resist any call for further funding before an adequate assessment of the options has taken place. I agree with this approach. Please let me assure you that the Council Conclusions on this document which are due for adoption on 31 March will not grant additional funding for the Galileo Programme.

The mid-term review is a report by the European Commission rather than a formal request for additional funds. As such, it does not commence any formal procedures that could lead to additional funds being allocated to the programme.

With regard to the Conclusions themselves, the UK has been instrumental in working with other Member States to make it clear that they do not prejudice the negotiations on the new multiannual financial framework which will begin in the summer.

In the mid-term review, the Commission expresses the view that it is no longer possible to complete the Galileo project within either the budget or the timescale set in 2007 (the full system should have become operational in 2014).

You will appreciate that this is a matter of grave concern to the Government. There clearly needs to be a robust assessment of all options in light of the Commission’s conclusions on the state of the Galileo project.

Pressure from the UK and other Member States for the programme to respect the 2007 budget has led the Commission to undertake studies on the performance of the different Galileo services using...
an 18 satellite constellation. As the Committee’s letter rightly points out, we do not have clear enough information from the Commission on the quality of the services that can be offered from a reduced scope system which could be deliverable within the existing budget.

The Commission has now begun assessing an 18 satellite constellation, both as a free-standing system and, importantly, one that works in conjunction with GPS. They intend to set out the results of this analysis in the Impact Assessment that will accompany the proposals for the next multiannual financial framework later this year.

We will continue to seek to influence that work and the Commission’s subsequent proposals. An Explanatory Memorandum will be submitted in the normal way when the proposal is published.

Earlier this month, I met Commission Vice President Antonio Tajani to discuss the status of the Galileo programme in the light of the content of the mid-term review. I emphasised the need for the programme to respect the 2007 budget. I have subsequently written to him to reiterate this and other points. For your information, I am enclosing a copy of my letter to him.

The Committee asks for an analysis of the estimated economic and social benefits for the UK. The Department for Transport commissioned a study in 2007 (enclosed with this letter) which suggested that for road transport and location based services alone, the total accumulated benefit to the UK between 2006 and 2025 would be £18.2bn (non discounted) where Galileo is used in conjunction with GPS.

Of this, £14bn would be accumulated between 2013 and 2025 – the date by when it was expected that a full Galileo system of 27 operational satellites would be operational.

The delay to the programme confirmed in the Mid-term Review will reduce the benefits identified in the study.

The Government continues to strongly resist calls for further funding for Galileo. We have successfully worked with other Member States to put pressure on the Commission to undertake the analysis we need on what is possible within the existing budget and also on how costs can be reduced. The consistent pressure applied by the Government and other Member States led the Commission to conclude that it was untenable to request additional funds for Galileo before 2014.

21 March 2011

Letter from the Chairman to the Rt Hon Theresa Villiers MP

Thank you for your letter of 21 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 28 March. They decided to clear the document from scrutiny.

We continue to share your concern about the Galileo and EGNOS projects. As we have previously stated, it is vital that a robust assessment is produced of all the options for taking the project forward. We note that the Government are opposed to any increase in funding and suggest that this may require a reduction in scope to 18 satellites. We look forward to seeing an analysis of such a scenario, but, in the meantime, we commend the strong stance you have taken on the issue, as demonstrated in the recent debate in the House of Commons European Committee.

We are pleased that the proposed Council Conclusions will not call for further funds for the project, or prejudice future discussions of funding. We understand that they point in the right direction with regard to calling for better governance of the projects, and for a proper assessment of the way forward.

We remain unconvinced as to the proposed benefits of Galileo in addition to those already provided by GPS. We note that the Commission’s figure of €90 billion is based to a large extent on time savings in road transport as a result of greater use of intelligent transport systems. We regard this estimate, pending further details, as highly speculative.

We would appreciate an account of the Council meeting on 31 March and look forward to receiving updates on the project as appropriate. We would also like to hold an evidence session with you or an appropriate official at a time in the near future in order to discuss these issues in more detail.

30 March 2011

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

Thank you for your letter of 30 March to the Minister of Transport regarding the Galileo and EGNOS mid-term review. In the interim, policy responsibility for Galileo has passed from the Department for
Transport to the Department for Business, Innovation and Skills. I attach as an Annex the written Ministerial statement made by the Prime Minister on 1 April.

This transfer of responsibility is part of the Government’s plan to bring together all the UK’s civil space interests under the management of the new UK Space Agency. I am responding to you letter as the Minister responsible for the Agency.

At the Council on the 31 March, the UK and other Member States agreed Council Conclusions for the mid-term review that reflected a number of key UK objectives. I enclose a copy of the Conclusion’s for your information but would also like to draw your attention to the following points.

Firstly, the conclusions do not pre-judge the negotiations on the next financial perspective that will begin later this year. The Conclusions clearly state this in the ‘whereas’ clauses, preventing Galileo from being considered as exempted from the negotiations and already guaranteed additional funding.

Secondly, the conclusions stress the need for the European Commission to more thoroughly substantiate the assumptions and calculations on which the figures in the mid-term review are based. Many Member States felt that the Commission had not provided adequate justification of the basis for the figures and UK officials continue to seek to obtain more thorough information.

Thirdly, the conclusions urge the Commission to complete its analysis of the cost of the programme, begun last year, by looking at all possible options for reducing costs. The conclusions explicitly state the Council’s wish that the analysis should result in cost savings and cost containment.

Finally, the Conclusions underline the importance of beginning the first services from the Galileo system as quickly as possible (the mid-term review says that these will begin by 2015) since this will provide the public, receiver manufacturers and application developers with confidence to invest in products and services that will realise the benefits of the programme.

Article 16 of the Council conclusions sets out the Council’s view that Galileo should continue to be funded by the EU budget. This statement is the Council’s response to the Commission’s proposal in the mid-term review for to share the programme’s “costs and risks” between the EU budget and Member States. The Council is indicating that it does not support the Commission’s proposal.

The Secretary of State for Transport attended the Council meeting on 31 March and stressed the UK’s disappointment that Galileo could not now be completed to the budget or timescale set in 2007.

From your letter I note your interest in the work on the estimated benefits of Galileo to EU citizens and your intention to hold an evidence session on Galileo later this year.

5 May 2011

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

Thank you for your letter of 5 May which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 16 May.

The Council Conclusions of 31 March were as expected and represent a welcome note of caution from the Council with regard to extending the funding of the Galileo project. We urge the Government to maintain a firm line on the issue.

You will be aware that we have arranged an evidence session on 23 May with David Williams, chief executive of the UK Space Agency, in order to discuss EU space policy. We look forward to pursuing in particular some of the issues regarding Galileo in more detail at that session.

17 May 2011

GREEN PAPER: EU CORPORATE GOVERNANCE FRAMEWORK (8830/11)

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

Thank you for your explanatory memorandum of 28 April, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 16 May. They decided to hold it under scrutiny pending receipt of your response to the Commission’s consultation.

We note that you welcome the Commission’s Green Paper on the EU corporate governance framework and note the recent initiatives which have been conducted at the UK level in the same area. We also welcome the Green Paper and consider that some of its questions touch upon fundamental issues of corporate governance.
In particular, the Committee agrees that the principle of transparency is an important one. However, we are unclear what the present transparency requirements are in other Member States and would therefore welcome further information about this before considering the efficacy of adopting EU-wide rules in this area.

The Committee also strongly agrees with the Government’s position that a robust case should be made before the introduction of any further legislation. In this regard, we are reminded of and endorse the Government’s ‘one-in, one-out’ policy.

Ahead of the publication of your response to the consultation, we would be grateful if you could take account of the above views.

I would be grateful to receive a reply to this letter within the standard deadline of ten working days.

17 May 2011

Letter from Edward Davey MP to the Chairman

Thank you for your letter dated 17th May expressing the views of the Sub-Committee on the EU Green Paper on the EU corporate governance framework.

You specifically raised the issue of transparency and asked about the situation in other Member States. I have asked officials to find out more information about the transparency requirements in other Member States and I will write to you once again once we have further details.

This information along with the results of our discussions with stakeholders will help inform the government response to the Green Paper.

24 May 2011

GREEN PAPER: TOWARDS A MORE EFFICIENT EUROPEAN PROCUREMENT MARKET
(5962/11)

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

Thank you for your explanatory memorandum of 8 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to hold it under scrutiny pending receipt of your response to the Commission’s consultation.

We welcome the Commission’s proposals for the modernisation and simplification of the EU public procurement rules. This would appear to be an important tool for the opening of cross-border procurement opportunities, particularly by SMEs.

We will shortly be publishing our report on the Single Market, for which we received evidence suggesting that public procurement can play an important role in developing the market. With this in mind, we would like to emphasise that any development of public procurement in the EU should respect the principles of the Single Market as well as seeking to break down any remaining barriers to intra-EU trade.

We note that, among the improvements to the procurement process set out in the Green Paper, you consider streamlining procedures, improving access for SMEs and the removal of obstacles to cross-border procurement, to be priority areas for the UK. Ahead of the publication of your response to the Commission’s consultation, we would appreciate it if you could articulate how you see these changes being made.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

30 March 2011

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter of 26 April, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 16 May. They decided to clear the document from scrutiny.

We are grateful for your comprehensive and very helpful overview of what the Government believe to be the priority areas in the Green Paper and how these could best be achieved by changing the current EU public procurement rules. We will also look forward to receiving a copy of your response to the Commission’s consultation as soon as it becomes available.
Letter from Mark Prisk MP, Minister of State, Department for Business, Innovation and Skills, to the Chairman

I refer to my letter to you of 20 July 2010 warning you there were strong indications that the Belgian Presidency would work with the European Parliament and the Council to achieve a first reading agreement. This has now been achieved, with COREPER agreeing the text on 11 November and the European Parliament on 24 November. The agreed text will now be submitted to an appropriate Council meeting as an “A” point - not for discussion.

Overall, I believe this is a good outcome for the UK, the main features of which are listed below.

SCOPE

The Directive envisages a move, after 8 years, to a scope covering all electrical and electronic equipment (EEE) rather than, as now, limited categories of equipment. There has also been a modification to the definition of EEE which could in effect mean that a product with any electrical function is brought into scope rather than as it is understood at present by most member states who believe that a product is in scope only if its main function is electrical.

The UK lobbied heavily for scope not to be extended or changed without an impact assessment. However it is worth noting the concessions achieved by the UK:

1. For equipment being brought into scope for the first time by these changes, the Directive will only apply 8 years after entry into force. In addition, 3 years after entry into force, the Commission will carry out an impact assessment and consider the need for additional exclusions from scope.

2. The following broad categories are entirely excluded from scope, even after 8 years:
   - military equipment
   - transport equipment
   - off road equipment
   - large scale industrial tools
   - fixed installations
   - photovoltaic panel arrays
   - certain R&D equipment

Although this is not an ideal outcome in terms of process, I believe that given the overwhelming odds against the UK position, we have achieved a position on scope which is reasonable and practical and minimises the costs of the extension. It will also allow time for the results of the Commission’s impact assessment to be applied if appropriate, time for industry to modify products or, if not possible, time for them to apply for specific exemptions.

ANNEX IV - RESTRICTED SUBSTANCES

No new substances have been added to the restricted list, but instead a system to update the list when scientific evidence supports a new restriction. This is closely linked to REACH and is the outcome that the UK wanted.

ANNEX III - LIST OF SUBSTANCES TO BE STUDIED AS A PRIORITY FOR ADDING TO ANNEX IV

Annex III as proposed by the Commission has been deleted. There will, however, be a recital naming the 4 substances which the Commission included in their proposal. This is a good outcome given that the EP Environment Committee had proposed the addition of some 35 additional substances to Annex III. This would have meant a “blacklist” of substances that had been added without supporting scientific evidence.
APPLICATION OF THE NEW LEGISLATIVE FRAMEWORK

We maintained and enhanced other aspects of the recast which offered simplification of the previous Directive, e.g. the application of “CE” marking and associated procedures.

17 January 2011

IMPACT ASSESSMENTS IN THE EU INSTITUTIONS: DO THEY SUPPORT DECISION-MAKING? (15795/10)

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

Thank you for your explanatory memorandum of 23 November, which was considered on 17 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

We welcome the report and note that it echoes some of the findings of our own report Impact Assessments in the EU: room for improvement? As you note in your EM, some of the ECA’s recommendations have been taken forward in the Commission’s Smart Regulation Communication.

We have argued before that the Council and European Parliament should make use of impact assessments of their own amendments, as agreed in the 2003 Inter-Institutional Agreement. The Court of Auditors report confirms our finding that this happens extremely rarely.

With regard to the transparency of the IA process, we note your support for the publication of draft impact assessments. We made the point in our report that, without such publication, it is extremely difficult to envisage an impact assessment recommending that no action be taken.

We note that the report covers only the years 2003-08, and so some of the more recent developments of the impact assessment process may not have been fully taken into account. You draw particular attention to the lack of analysis of the SME Test. In our report we concluded that it was too early to make an adequate assessment of the effect of the Test. We hope that, in due course, such an assessment may be made, and would be interested to learn whether there are any plans for an updated analysis of the system.

I do not require a reply to this letter.

19 January 2011

INTEGRATED MARITIME POLICY (14284/10)

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

Thank you for your letter dated 16th November 2010 referring to the recent consideration by your Sub-Committee on the Internal Market, Energy and Transport of my Explanatory Memorandum on the European Commission’s proposal for a regulation of the European Parliament and of the Council establishing a Programme to support the further development of an Integrated Maritime Policy. I welcome the Committee’s interest in this proposal.

We have not yet received full clarification over the legal bases for this proposal. I understand that, following discussions in Brussels at official level, the area of freedom, security and justice legal bases will be deleted from the text of the proposal. However, we still final await confirmation that agreement has been reached at official level in the preparatory Working Group of the Council on the remaining legal bases that will be retained in the text.

Our concerns on subsidiarity do not relate to this funding proposal in itself but rather reflect the Government’s commitment to vigilance in respect of any subsequent actions proposed that emerge from the work that would be supported by the funding. Any such proposals would, of course, themselves be subject to Parliamentary Scrutiny.

The Government shares the Committee’s concern over the imprecision as to how the additional funding sought by the Commission is intended to be spent. As your Committee observes, the focus is on preparatory actions, pilot projects, studies and workshops with interested parties. Funding is sought for these activities even before any full evaluation of activities to date has been undertaken. In
the absence of demonstrable justification, the Government will continue to resist the Commission’s request for additional funding.

21 December 2010

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 21 December, which was considered on 24 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to retain the document under scrutiny.

We share your concern over the imprecision of the uses to which the funding is to be put, and believe that any such programme should be properly costed. We are unwilling to release the document from scrutiny until we have a clearer idea of where they money will be spent. As to whether extra funds are justified, we are not yet in a position to judge.

We appreciate your clarification of your subsidiarity concerns and look forward to scrutinising any proposals in regard to an Atlantic basin strategy should they emerge. We are still of the opinion that, on the face of it, such action would not be a breach of subsidiarity as the Atlantic coast is shared by several Member States, and would appreciate a clearer explanation of why you have concerns at this stage.

Has the issue of the legal bases been resolved? Your letter suggests that the AFSJ bases would be removed and thus the issue of the opt-in with them. However, we would be interested to know a) if this has yet happened, b) if so whether it happened before the three-month deadline for the UK to opt in had expired, and c) whether in any case the UK indicated it would opt in.

I look forward to receiving a reply to this letter within the standard 10 working days.

26 January 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter dated 26th January about your Committee’s scrutiny of this proposal for a regulation of the European Parliament and of the Council establishing a Programme to support the further development of an Integrated Maritime Policy (IMP).

The Commission has set out general objectives for the proposed work in Article 2 of the draft Regulation; to enhance integrated maritime governance; to contribute to the development of cross-cutting policy tools; to define further the boundaries of sustainability of human activities having an impact on the marine environment, in the context of the Marine Strategy Framework Directive (MSFD); to support the development of sea-basin strategies; to promote the international dimension of the IMP through the exchange of best practice and by enhancing international dialogue in the competent fora, and to support sustainable economic growth in maritime sectors and coastal regions.

Within those broad objectives, the Commission sees the Programme being used to promote various actions to encourage Member States to embrace integrated maritime governance and to raise awareness of the integrated approach, through the establishment of various forums, workshops, seminars, test projects, studies and technical development. However, as you note, the imprecision over the exact use of the additional funds remains unsatisfactory. It is this imprecision as much as anything that led my Department to register a possible subsidiarity concern lest proposals unwelcome in that regard emerge from any of the planned work, although I accept the Committee’s observation that there is no prima facie contradiction of the subsidiarity principle in the documents under scrutiny.

I can report that the question of the legal bases was resolved between the Member States and the Commission in Council Working Group discussions on 21st January. The Area of Freedom, Security and Justice (AFSJ) bases under Title V of the Treaty on the Functioning of the European Union have been removed. However, a caveat remains in that the European Parliament has still to reach its own position.

In discussions, the UK delegation has at no stage indicated that it would “opt in” in respect of the question over the AFSJ legal bases. However, the Government is content that any reference to Title V in the proposed Regulation would be incidental as long as the text does not include a reference to law enforcement activities as part of its general objectives, in which case our concerns would be allayed.

That is the state of play. I shall of course keep your Committee informed of further developments.

7 March 2011
Letter from the Chairman to Mike Penning MP

Thank you for your letter of 7 March, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 21 March. They decided to hold the document under scrutiny.

Like you, we believe that the proposal lacks clarity as to the activities to be funded under the Regulation and are therefore reluctant to clear the proposal from scrutiny until more clarity is provided.

With regard to the legal bases, the situation still appears to be unresolved. Your letter implies that, though the Title V legal bases have been removed by the Council, they might be reintroduced as a result of negotiation with the European Parliament. Where would this leave the UK opt in?

You indicate that there are references in the proposal to Title V matters, but they are “incidental”. We take the view that, provided any Title V component of the proposal is truly incidental to another objective which is reflected in the legal basis, then a separate Title V legal basis is not needed. In such a case, the proposal would apply to the UK with no question of an opt-in arising.

I look forward to receiving your reply within the standard 10 working day deadline.

22 March 2011

MARKETING OF CONSTRUCTION PRODUCTS (10037/08, 14989/09, 9459/10)

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

I am writing to inform the Committee that on 18 January 2011 the European Parliament adopted the Construction Products Regulation at Second Reading. The agreed text (Council document 5314/11) represents the outcome of informal trialogue discussions between the Council, Commission and European Parliament held in November and December 2010.

BACKGROUND

The Regulation concerns CE marking for construction products such as windows or insulation. It is an internal market measure, and provides a system of performance declarations based on harmonised EU standards and test methods which allows users and regulators to see the technical performance of a product presented in a harmonised way. The intention of this is to allow products to move freely across borders, and prevent Member States imposing additional national testing.

The UK has supported the Regulation (which replaces an existing Directive) on the basis that it will help clarify and simplify the whole CE marking regime, although accepting at the same time that this will represent a cost for some UK businesses. Therefore an important part of our negotiating position has been to argue for derogations and simplified procedures for some manufacturers (chiefly micro-enterprises and manufacturers of one-off products).

My last contact with the Committee was my letter of 17 July 2010, and the Committee lifted its scrutiny reserve on the Regulation on 21 July 2010.

AGREED TEXT

The Council adopted its Common Position on 25 September 2010. Following this, informal trialogue discussions were held to agree a Second Reading deal, which resulted in the amendments agreed by the European Parliament in January.

The amendments do not represent a substantive change to the Council text, and my view is that this is a good outcome for the UK. The most important parts of the text (the circumstances in which products have to be tested and CE marked, derogations from this requirement, and simplified processes for small businesses) are unchanged.

The main change is that the European Parliament has strengthened the requirements for products which contain hazardous substances. To date the CE marking has (rightly, in the UK’s opinion) focused on situations where there is a risk that dangerous substances may be released into the air, soil or water, rather than trying to address products which may contain dangerous substances, but which are never likely to be a danger to anyone.

The amendment means that manufacturers whose products require classification under the EU Regulation on registration, authorisation and restriction of chemical substances (REACH – EC/1907/2006) will have to include this information with their CE marking. The European Parliament
wanted this requirement to go much further, but the Council argued hard to restrict this requirement to those manufacturers who already had obligations under REACH. In my view, therefore, this is a proportionate outcome.

The remaining changes are much more minor, and many are very positive: there is greater freedom for manufacturers to choose whether or not to provide information by electronic means or in paper form, stronger requirements for independence and transparency in some of the bodies involved in the CE marking process, and a stronger emphasis on addressing the whole life cycle performance of buildings and products. I do not consider that these changes have a material effect on the costs of the new Regulation for UK businesses.

NEXT STEPS

The text has now been passed to the Council and the Commission. We expect the Commission to deliver its opinion and the Council to then adopt the text within the next three months, meaning that the new Regulation would be published in the Official Journal of the EU this spring. Some of the enabling provisions will come into force 20 days after publication but the main provisions will not come into force in the UK until mid 2013.

9 February 2011

NATIONAL REFORM PROGRAMME

Letter from Lord Sassoon, Commercial Secretary, HM Treasury, to the Chairman

I am writing to notify you that the Government today published the UK’s National Reform Programme (NRP) 2011. The NRP summarises the Government’s structural reform plans as set out at Budget 2011, in the Plan for Growth and elsewhere, in support of fiscal consolidation and strong, sustainable and balanced growth.

The 2011 NRP has been prepared in line with guidance from the European Commission. It reflects the ten priorities for faster growth and higher employment priorities set out in the European Commission’s Annual Growth Survey, and is fully consistent with the European Council’s commitment from March 2011 to “give priority to restoring sound budgets and fiscal sustainability, reducing unemployment through labour market reforms and making new efforts to enhance growth.”

I look forward to discussing the NRP on 12 May.

28 April 2011

NUCLEAR RESEARCH AND TRAINING ACTIVITIES 2012-13 (7402/11, 7404/11, 7418/11, 7421/11)

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

Thank you for your explanatory memoranda of 4 April which was considered by the Sub-Committee on Internal Market, Energy and Transport on 9 May. They decided to clear the documents from scrutiny.

You may also be aware that the Lords’ Science and Technology Committee is currently conducting an inquiry into whether the UK’s nuclear research and development (R&D) capabilities are sufficient to meet its future nuclear energy requirements to 2050, which will take account of the European dimension.

10 May 2011
Letter from Charles Hendry MP, Minister of State, Department for Energy and Climate Change, to the Chairman

Thank you for your letter dated 16 November, in which you advised that the House of Lords Sub-Committee on Internal Market, Energy and Transport had cleared my Explanatory Memorandum of 25 October from scrutiny.

In your letter, you requested further information regarding the development of the UK’s safety standards since the Piper Alpha disaster and asked whether the Government had any particular concerns regarding the standards in place in other Member States.

As you know, I lead on Energy issues and have responded to these queries below. However, I should point out that health and safety is a matter for the Health and Safety Executive (HSE) and this response has been agreed with officials from that Agency.

Responsibility for UK offshore health and safety prior to 1991 and the Piper Alpha disaster lay with the then Department of Energy. The legislation was mainly prescriptive, laying down specific requirements over a range of subjects. Inspections were mainly concerned with the details of compliance with these requirements. The trigger for reviewing the UK’s offshore health and safety legislative regime was the Piper Alpha Disaster and the consequent Public Inquiry recommendations (the Cullen Report 1991).

The Cullen Report recommended that HSE should take over the responsibility for offshore safety from the Department of Energy. The report realised that a more comprehensive approach to regulating the offshore oil and gas industry was necessary, with a change of culture that put more emphasis on the responsibility of duty holders to manage risks across the complete range of their activities. The concept of goal setting was introduced, with duty holders required to identify their hazards, assess the risks they posed, and put controls in place to minimise the risks.

The report proposed that for high-risk offshore activities, it was necessary to formalise the process into a Permissioning Regime, with the industry required to show in writing (via a safety case) that their major health and safety risks were ‘as low as reasonably practicable’. The regulator’s role was to assess the safety case, accept it when appropriate, and initiate inspections to ensure that the safety case was effectively implemented.

HSE implemented the recommendation to adopt a ‘Safety Case’ approach through the introduction of the Offshore Safety Act 1992. Other key Cullen recommendations included:

— Revising other offshore specific legislation (on evacuation, escape and rescue; management and administration; and design and construction) to a less prescriptive style, to complement the new Safety Case regime; and
— The introduction of other offshore regulations to cover the reporting of injuries and dangerous occurrences, first aid, pipelines and diving.

At this time, the European Commission introduced Council Directive 92/91/EEC, which introduced the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through to drilling. This Directive required the production of a safety and health document (similar to the UK requirement for a safety case). The UK implemented this Directive via the above legislation.

Further to concerns about the standards currently in place in other Member States, HSE has no reason to believe that relevant Member States have not fully implemented those parts of Directive 92/91/EEC relevant to offshore oil and gas work activities.

HSE works closely with the other principal offshore regulators active in the North Sea (Norway, Netherlands and Denmark) both bilaterally and via the North Sea Offshore Authorities Forum (NSOAF). Although we all have slightly different regulatory approaches, and legislative differences around and above the requirements of 92/91/EEC, this is achieved by such vehicles as: common NSOAF audit approaches on well control; NSOAF cross-North Sea initiatives with senior offshore company leaders; and joint working on priority topics in NSOAF work groups. The overall outcome is a broadly consistent safety regulation for operators in the North Sea.

The European Commission consider that the UK and Norway are the benchmark European offshore safety regimes. They acknowledge that their aim in relation to offshore safety regulation is to bring other Member States up to the standards seen in the North Sea. HSE understands that a key area of concern is how offshore work activities are regulated in those regions, rather than just how Directives have been transposed into national legislation.
I trust that this provides the clarity that you were seeking.

8 December 2010

PHASE III OF THE EU EMISSIONS TRADING SYSTEM 2013-20

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


The EU Climate & Energy Package agreed by Member States in 2008 substantially revised the EU ETS. From 2013, there will be a centrally-set cap on EU emissions, with auctioning as the preferred allocation methodology, increasing across the EU to over 50%. On 12 November 2010 the Commission adopted the Auction Design Regulation (1031/2010/EC) which sets out the principles for how allowances will be auctioned in Phase III.

The majority of the remainder of allowances will be allocated to installations for free. The revised EU ETS Directive recognises that there should be some free allocation to industrial sectors to facilitate the transition to full auctioning, in particular to mitigate risks to sectors that are deemed at risk of carbon leakage. The revised Directive sets a maximum quantity of allowances that can be issued for free based on the share of historic industrial emissions in 2005-07. In line with the cap as a whole, this pot of free allowances (the 'industry cap') will decline annually by 1.74%.

Allocations to individual installations will be determined by a 'bottom up' approach, using harmonised EU-wide rules, with the majority based on benchmarks applied to historic production data. Installations deemed at significant risk of carbon leakage receive allowances up to the level of an efficiency benchmark. Installations not at significant risk will receive 80% of their allocation for free in 2013, declining to 30% in 2020 and 0% in 2027.

COMMUNITY-WIDE IMPLEMENTATION MEASURES

Article 10a of the revised EU ETS Directive requires the European Commission to bring forward rules for free allocation by 31 December 2010 for Member States' agreement through the comitology procedure. Once adopted as a Commission Decision, the rules will be used by Member States to calculate installations' allocations in order to submit their National Implementation Measures to the European Commission by 30 September 2011. Allocations to aviation will be determined separately, on the basis of amendments made to the EU ETS Directive in October 2008 through the Aviation Directive.

The Commission issued its final formal proposal for its Decision on 2 December in advance of an anticipated Member State agreement by qualified majority voting on 15 December 2010. The proposal sets out detailed procedures for determining free allocations to installations and rules to handle new entrant installations and closures.

The UK has engaged proactively in both informal and formal negotiations chaired by DG Climate Action over the past 12 months and, as a result, the Commission's proposal is in line with the Government's desired objectives, i.e. to:

— Ensure consistency with the revised EU ETS Directive.
— Ensure that harmonised rules are adopted as far as possible to limit intra-EU competitive distortion that might disadvantage UK industry.
— Ensure that there is a clear carbon price signal to ensure incentives are in place to reduce emissions cost effectively.
— Provide business certainty and reduce impact of carbon leakage on UK priority sectors.
— Minimise administrative burdens on EU ETS operators and competent authorities.
— Maintaining progress against UK Coalition Commitments where possible, particularly in terms of full auctioning of EU ETS allowances and to boost

1 The exact size of the industry pot will be published by the European Commission by 31 December 2010.
enterprise, support green growth and build a new and more responsible economic model.

At a sectoral level, the Government has focussed on those UK sectors which are most at risk of carbon leakage and those which will draw in a larger share of free allowances; Most key UK industrial sectors will be best served by ensuring a fair and transparent set of rules that prevent unfair distortion.

Once agreed by Member States, the European Council and Parliament have three months to scrutinise the Decision after which, provided the Council and Parliament do not object, it will be adopted.

LEGAL COMPETENCE
The draft proposal falls within an area of exclusive European Commission competence and does not go beyond the scope of the legal base in the Treaty.

REGULATORY IMPACT AND COSTS
The draft proposal does not impose a significant regulatory burden on UK private, public or third sectors. The impacts of the implementing measures within the revised EU Emissions Trading Directive were included in the overarching Impact Assessment on the EU Climate and Energy Package2 that was adopted in 2009. The ultimate cost impacts of the proposals will continue to be monitored in onward policy development. This analysis will help inform the ongoing assessment of compliance and administrative costs associated with EU ETS as we move towards a Post-Implementation Review in 2013.

13 December 2010

Letter from Gregory Barker MP, to the Chairman

Thank you for your letter of 3 February to Charles Hendry in which you seek further clarification of issues relating to the EU ETS.

In response to your first question, I can confirm that the Government broadly agrees with the Commission’s assessment that the carbon market is developing well in terms of liquidity and participation. Although still developing, the market has shown good growth in both trading volumes and numbers of market participants. This is borne out by analysis such as the World Bank State and Trends of the Carbon Market report 2010, which stated that the volume of EU allowances (EUAs) traded grew from 3,093 million in 2008 to 6,326 million in 2009 – a 105 per cent increase. Even as early as 2008 an NAO survey of six industrial sectors participating in the EU ETS, reported to the Environmental Audit Committee, showed that 82% of respondents had traded carbon allowances.

You also asked for specific comment on the effectiveness of the carbon market (as part of the EU ETS) in contributing to emission reductions. The EU ETS is a central part of Europe’s climate change policy, ensuring greenhouse gas emissions reductions are achieved in the most cost effective way. As you will be aware, the EU ETS sets a cap on emissions, therefore providing certainty over the emissions reductions that are achieved. The EU ETS cap in 2020 will be 21% below 2005 levels. Trading in the carbon markets allows these reductions to take place where the cost is lowest across the EU and enables business to decide whether and when to invest in abatement technology or buy allowances to comply.

There is good evidence from both trade associations representing industry, and independent sources, that EU ETS allowance prices are playing a role in increasing the profile of CO2 emissions and energy efficiency in company decision making, thereby influencing investment decisions and leading to emission reductions. As an example of this, analysis conducted by New Carbon Finance has shown that 40% of the reduction in verified emissions in the EU ETS in 2008 (approximately 3%) could be attributed to incentives created by the EU ETS.

Finally, your letter asked about the extent to which recent ‘phishing’ attacks on national EU ETS registries have affected our assessment of the functioning of the market. As I set out in my recent written statement (attached at Annex 1), in the short term, the impacts have been concentrated in the spot market (which allows for instant delivery of allowances bought on the secondary market), which represents only 10% of trading on the carbon market. The futures market, which is predominately based in the UK, and accounts for the remaining 90% of the carbon market, has shown only a limited level of disruption. Trading currently remains at broadly the same volumes as before the

2 http://www.decc.gov.uk/assets/decc/77_20090423091800_e_@@_euclimateenergypackage.pdf
registries were closed and the impact on the EU emission allowance price has been limited. However, discussions with market participants have shown that confidence has been impacted. The UK is working closely with market participants, the European Commission and with other EU member states to assess the implications of the recent attacks and identify appropriate actions in response.

These attacks have, however, underlined the importance of ensuring high standards of security across EU ETS registries, as in other financial markets, to counter the risks of fraudulent activity. In this context, the UK agrees with the European Commission that EU member states should not be able to reopen registries until they had provided sufficient evidence to the European Commission that their registries meet a number of minimum security requirements. In addition, the UK will continue to press the European Commission and other member states to ensure that registry security across Europe is consistently maintained at a sufficiently high level. This is vital to ensure continued confidence in this growing market.

As you have requested, I will write to you again as the European Commission study proceeds to keep you informed of this developing work on carbon markets.

16 February 2011

PHOSPHATES USED IN LAUNDRY DETERGENTS (16036/10)

Letter from the Chairman to Richard Benyon MP, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your explanatory memorandum of 25 November, which was considered by the Sub-Committee on Internal Market, Energy and Transport. They decided to retain it under scrutiny.

We note that the UK has recently introduced limitations to the use of phosphorus in household laundry detergents but that the terms of the UK Regulation in this regard differ from the proposed EU Regulation in terms of the weight specification and applicable date. The EM does not indicate whether the Government intend to negotiate within the Council to bring the terms of the proposal into line with the UK Regulation or whether it is relaxed about amending it, as required, once the EU Regulation is adopted. Therefore, we would be grateful for further information about the Government’s intended approach in this regard.

I would be grateful to receive a reply to this letter within the standard deadline of ten working days.

20 December 2010

Letter from Richard Benyon MP to the Chairman

Thank you for your letter of 20 December 2010. As you note, the UK has recently legislated in this area. The Government continues to support measures to protect the aquatic environment by controlling phosphates in domestic laundry detergents. These measures form part of a balanced package of policy interventions moving beyond agricultural specific measures to control Phosphate. It is worth noting again that the majority of Domestic Laundry Cleaning Products on the market in the UK are already phosphate free.

You identified there are two issues of divergence between current UK legislation and the Commission proposal, weight specification and applicable date. I will deal with them in turn.

WEIGHT SPECIFICATION OF PHOSPHATE- UK GOVERNMENT APPROACH

There is wide diversity amongst Member States with some pushing for greater ambition on this dossier and others for less; reflecting both differences in water treatment systems and infrastructure and the nature of domestic detergent industries. The Government position is the most desirable outcome of negotiations is full market harmonisation across the EEA.

In ongoing informal discussions the Commission, pushed strongly by a number of Member States, has suggested that it is likely the final regulation will instigate a minimum technical standard of 0.5% while allowing those pre-existing environmental bans which apply stricter standards of weight of Phosphate to remain in place, with full market harmonisation occurring over time.

While the Government does not support this approach it may mean that the UK Regulations would not need to be amended and the UK would continue to apply the standard set for the UK following a UK IA, public consultation and set in the UK Detergents regulations 2010.
The Government will negotiate in support of evidence based policy making. Opting for the EEA wide standard of 0.5% as identified in the impact assessment the UK insisted on at Council, to deliver market harmonisation across the EEA with a common standard.

However the Government does not believe following negotiations it will ultimately prove necessary to change the UK regulations due to the proposed amendments identified above being adopted. When the final Regulation is passed the Government will consider whether to retain the UK standard of 0.4% or make the required small amendment to the UK standard to achieve the benefits of EEA market harmonisation for UK business.

Neither of these outcomes would require amendments to any products that are designed to meet the currently legislated UK standards and would impose no additional cost on business operating in the UK.

**APPLICABLE DATE- UK GOVERNMENT APPROACH**

The Commission has been pushed on its ambitious 2013 start date particularly by those Member States who to date have not taken steps to control Phosphates in domestic laundry detergents and as such this measure would a substantial impact on their industries. Informally the Commission has suggested an approach which may be flexible on the applicable date allowing Member States individual derogations on the implementation date.

The Government has consulted the UK Cleaning Products Industry Association (UKCPI), who note that bringing forward of the start date for implementation whilst not welcome, should not be problematic for its membership in the UK. The Government is of the view the UK regulations were introduced by Parliament following an IA and public consultation and while a change of date may have no significant impact on businesses in the UK we see no reason to change the applicable start date for the UK.

Given the Commission is unlikely to be able to deliver a start date of 2013 due to the nature of negotiations and legislative timetable and that other MS will push for a later start date the UK views a start date of 2015 as realistic. The UK will support, but not lead, other MS calls for a later applicable date. In negotiation we will suggest 2015 as a compromise settlement, in the alternative we will negotiate for an individual UK derogation to allow small and medium enterprises time to reformulate their products in line with the pre-existing UK timetable.

Overall, we intend to ensure a proportionate development and implementation of a regulation in a policy area the Government supports which delivers the best outcome for UK business.

*7 April 2011*

**Letter from the Chairman to Richard Benyon MP**

Thank you for your letter of 7 April, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 9 May. They decided to clear the document from scrutiny.

We are grateful for your detailed overview of the Government’s position regarding the ongoing negotiations on the proposed EU Regulation and how it interacts with the UK Regulation which concerns the same matter.

*10 May 2011*

**PROVISIONS FOR ENGINES PLACED ON THE MARKET UNDER THE FLEXIBILITY SCHEME (12171/10)**

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

Thank you for your letter of 9 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to hold the document under scrutiny.

You address the questions raised in my last letter with some caution, given that the UK impact assessment is still in preparation. We would therefore appreciate updates as the negotiations and production of the IA develop, and would like to see the IA when it is ready.

With regard to a move straight to stage IV engines for locomotives, will this option be included in the UK impact assessment? It appears that you have discounted the possibility on the grounds of lost
development costs to manufacturers without balancing this cost against potential benefits to those manufacturers and to society as a whole. We would be interested to know the consideration already given to these issues in coming to that view.

We are of the opinion that a move to stage IV would enable the EU to take advantage of the larger US market more quickly, and may off-set any lost development costs. A quicker move to stage IV might reduce overall emissions in the medium to long term. Extending the IIIA standard to a larger number of locomotives could facilitate this.

I look forward to receiving your reply within the standard 10 working days.

7 December 2010

Letter from Norman Baker MP to the Chairman

Thank you for your letter of 7th December, informing me of the decision of the Sub-Committee on Internal Market, Energy and Transport.

Work on our Impact Assessment on the European Commission’s proposal is now close to completion, and I shall send it to you as soon as it is approved for distribution. Although the Impact Assessment will not explicitly address the possibility of a move straight from Stage IIIA to Stage IV for engines for railway vehicles I expect it to permit some conclusions to be drawn about the costs and benefits of such a move. We have, as you observe, largely discounted the possibility of a move straight from Stage IIIA to Stage IV for railway engines, but this is not solely on the grounds of lost development costs to manufacturers.

It is certainly true that alignment with United States standards of the kind that has effectively been achieved in the heavy-duty on-road sector is desirable from the point of view of minimising development costs. Many engine manufacturers, including those with a presence in the United Kingdom, would have welcomed a direct move to a Stage IV standard for railway vehicle engines aligned with the United States Tier 4 standard if the European Commission had made a clear commitment to that course of action two or three years ago. In discussions with the Department’s officials, however, engine manufacturers have indicated that they would not welcome such a move at this very late stage in their development programmes. Since no Stage IV standard for railway vehicle engines yet exists, and since some European Member States might like such a stage to be rather more strict than the United States Tier 4 standard, rather than simply aligned with it, a proposal to move to Stage IV in the rail sector would actually be more likely to expose manufacturers to a significant period of legislative uncertainty than to give them easier and earlier access to the North American market.

As you are probably aware, the possibility of effectively moving straight from Stage IIIA to Stage IV for engines for railway vehicles was raised in a report prepared by the European Commission’s Joint Research Centre that was completed in 2008. Although this report was widely misunderstood as constituting a proposal to delay or skip application of Stage IIIB to engines for railway vehicles, such a proposal was never made and European Member States showed little enthusiasm for pursuing it. In more recent discussions there has been, in addition, some resistance from some Member States, not all of whom share our interest in diesel rail traction, even to the European Commission’s current proposal to extend the “flexibility scheme” to the rail sector.

Although, as I said in my previous letter, I would not wish to pre-judge the outcome of our Impact Assessment, I am able to say that the analysis that underlies it suggests that a significant delay in moving to a more strict emissions standard than the current Stage IIIA would have some undesirable air quality, and so public health, disadvantages, and serious consequences in terms of the costs involved in meeting our legally binding air quality obligations and avoiding infraction proceedings.

It is consideration of our air quality and public health obligations, and of what is likely to be achievable by negotiation, together with the interests of manufacturers, that has led us to discounting direct movement to Stage IV for railway vehicle engines as a realistic scenario in the preparations for our Impact Assessment. The assessment will, however, consider the possibility of increasing the levels of flexibility currently being proposed by the European Commission for the rail sector.

I am inclined to think that some increase in the levels of flexibility being proposed might be achievable, and that an increase in the level proposed would go some way towards addressing the legitimate concerns of United Kingdom rail operators with respect to the impact of the forthcoming IIIB emissions stage on their businesses. Whether we are able to present increased flexibility of this kind as part of the United Kingdom’s proposed negotiating position on the Commission’s proposal will depend, of course, on both the final outcome of our Impact Assessment and the views of my ministerial colleagues.

20 December 2010
Letter from the Chairman to Norman Baker MP

Thank you for your letter of 20 December which was considered on 31 January by the Sub-Committee on the Internal Market, Energy and Transport. They decided to retain the document under scrutiny.

We look forward to receiving a copy of your impact assessment when it is ready. We are at the moment not entirely convinced that a move straight to stage IV would be a bad idea, and would be interested to consider the matter again in the light of the evidence presented in your IA. Your argument does not at the moment satisfy us that a move to stage IV would be unwise.

1 February 2011

Letter from the Chairman to Norman Baker MP

Thank you for your supplementary explanatory memorandum of 31 March. It was considered by the Sub-Committee on the Internal Market, Energy and Transport on 23 March, and they decided to clear the SEM and the original EM from scrutiny.

We remain unconvinced by your assessment of the attractiveness of the European market to US manufacturers of locomotive engines. Do you have any evidence that manufacturers are taking steps to fill the possible gap in production, prior to the introduction of Tier 4?

24 May 2011

RAILWAY PACKAGE (13788/10, 13789/10)

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

Thank you for your letter of 23 November about the consideration of the above Explanatory Memorandum by the Sub-Committee on the Internal Market, Energy and Transport.

Firstly, I should like to apologise for the delay in submitting the original Explanatory Memorandum. While this dealt with a complex dossier, I am sorry that the delay occurred, and would like to assure your Committee that as a consequence of this we are making changes to expedite our internal processes to avoid such occurrences in future.

You asked if I could elaborate on my concerns about the scope of Article 13. My principal concern about the investment disincentive potential of this relates to the provision which would give the regulatory body powers to take action to ensure that an appropriate part of capacity within a service facility is reserved for railway undertakings other than the ones which are part of the body or firm to which the facility operator belongs.

In practice, this would require either that the operator of a facility leaves part of its capacity unused – which is obviously economically inefficient, or is obliged to contract on the basis that it may have to withdraw capacity allocated to existing users in order to allow others in. This would act as a significant regulatory constraint on business activity – and potentially on the return on investment - which could deter investment in such facilities.

You also asked for further explanation of the additional administrative burden arising from the provisions on noise reduction. I understand that the provisions underlying those in Article 31 would surcharge wagons with a particular type of brake block that is considered to be more noisy than others. This would require the establishment of a new regulatory regime to monitor (and levy separate charges against) current brake block fitment across the wagon fleet. As well as being less targeted and effective than current UK practice, these proposals would impose additional - and unnecessary - regulatory burdens both on operators and on the infrastructure manager who would need to levy and collect such charges.

Article 32, through a cross reference to Annex VIII 3, lays down rigid rules under which mark-ups may be charged. You asked for more information on why we consider that these are too rigid. Although these cover freight they do not allow for the type of commodity-based mark-ups which we employ in the UK, allowing us to levy charges according to what the traffic will bear. This would deprive the UK infrastructure operator of the ability to charge higher rates for trains carrying coal supplies to the electricity supply industry and for nuclear traffic. This reduction in revenue would need to be offset by increased taxpayer subsidy.

You asked whether we feel that the proposals in Article 14 will lead to a reduction in the charges levied on freight through the Channel Tunnel. On the face of it these proposals would not reduce...
Channel Tunnel access charges for freight because they centre on contractual provisions which discriminate between railway undertakings or restrict their freedom to operate cross border services.

As noted in the Explanatory Memorandum, we expect that the negotiations on this proposal will continue under the Hungarian Presidency. Discussions held so far indicate that it could be a long time before any agreement can be reached as there are wide variations in Member States’ positions.

The Transport Council on 2 December included a policy debate on this proposal. There I took the opportunity to state that the UK believes that the Commission should focus on ensuring that Member States implement existing legislation correctly before it proposes new measures and notes that it is pursuing infringement action against those Member States that have not correctly implemented the First Railway Package.

I will, of course, keep your Committee informed about further developments in the negotiations.

22 December 2010

Letter from the Chairman to the Rt. Hon Theresa Villiers MP

Thank you for your letter of 22 December, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 31 January. They decided to clear document 13788/10 from scrutiny but to retain document 13789/10.

We are grateful for your clarification of the Government’s concerns. However, we are not convinced by your concern about Article 13. We believe it is crucial that, in order to encourage a liberalised market, access to rail related services is opened up to new entrants. We would like to know your specific views on this issue. The power of a regulator to allocate capacity when necessary would appear to be sensible way to achieve this.

We note that agreement in the Council of Ministers does not seem imminent, and look forward to receiving updates on the progress of negotiations.

I look forward to receiving a reply to this letter within the standard deadline of 10 working days.

1 February 2011

Letter from the Rt. Hon Theresa Villiers MP, to the Chairman

Thank you for your letter of 1 February about the consideration of the above Explanatory Memorandum by the Sub-Committee on the Internal Market, Energy and Transport.

I believe that the role of competition should be tested to ensure that it is delivering the optimal outcomes for both taxpayers and users of the railway against the backdrop of a rail industry which is in receipt of substantial subsidy from taxpayers. However, I agree with the Committee on the importance of ensuring that access to rail related services is open to new entrants; and that the process of capacity allocation should be overseen by an independent regulator.

My concern with the Commission’s proposed approach is to ensure that it achieves this outcome and does not have the unintended effect of discouraging private sector investment in such rail related services to the extent that this may actually restrict future growth in rail freight transport.

I will, of course, keep your Committee informed about further developments in the negotiations.

14 February 2011

Letter from the Rt. Hon Theresa Villiers MP to the Chairman

In my letter of 14 February clarifying my views about access to rail services, I promised to keep your Committee informed about further developments in the negotiations.

The Hungarian Presidency has been holding one working group each week on the proposal. Despite this pace of work they have not made much progress. Member States have continued to raise numerous technical concerns with little effort made by the Presidency to work systematically through them. Only minor changes to the text have been put forward by the Presidency. There have been wide variations in Member States’ positions, and the Presidency gave no indication of expecting to resolve them by June.

However, the Presidency is now trying to accelerate proceedings and has announced that it will be seeking agreement on a general approach at the Transport Council on 16 June. This is ambitious given the number of outstanding points, which will need to be resolved at the Committee of Permanent Representatives (Coreper) meeting on 25 May or at the Council itself. But if Member States decide to
pursue only their principal concerns then it is possible that the Presidency may be able to put together a compromise that Member States are willing to accept. We understand that the Commission is encouraging the Presidency to reach agreement not least because Poland, which holds the Presidency, next, is not keen on the proposal.

Although progress has been slow, there have been some useful developments that I can report to your Committee. In the original Explanatory Memorandum I identified a number of areas of potential concern. I am pleased to say that in a number of these we have managed to agree amendments to safeguard UK interests:

— Article 14 – Cross border agreements. The Commission has clarified that this relates only to agreements between Member States, and therefore does not affect the Channel Tunnel Rail Usage Contract;

— Article 17 – This had set out requirements under which railway undertakings could only apply for licences if EU Member States or nationals of Member States own in total more than 50% of the undertaking and effectively control. This has been deleted;

— Article 32 - Exception to Charging Principles. The text has been amended and now accommodates the UK/ORR existing charging principles and procedures; and

— Annex VIII - Requirements for costs and charges relating to railway infrastructure. We have ensured that the text has been amended so that it allows the UK charging structure.

I still have various concerns surrounding Articles 13, 31, 36, 55 and Annex III which I outlined in the Explanatory Memorandum. These have been raised on a number of occasions in the Council Working Groups, but have not yet been resolved. Therefore, although some progress has been made, I am not yet persuaded that the UK should support or agree to the current text at the Transport Council.

I regret that we are not yet in a position to prepare an Impact Assessment or hold a formal consultation. Throughout the process so far we have worked closely with those stakeholders affected by the proposal. However, given the uncertainty around the direction of the text, we have not judged that a formal consultation would be useful at this stage. For the same reason we have not undertaken a formal Impact Assessment. It is our intention to formally consult and prepare an Impact Assessment as soon as we can.

I will, of course, write again to keep your Committee informed about any further developments in the negotiations and the outcome of Coreper occurring before the Transport Council. In the meantime I felt that it was important to alert you to the possibility that the current EU Presidency may seek a general approach on what is still an unsatisfactory draft.

Your Committee may also like to know that the European Parliament’s consideration of the proposal is still at a fairly early stage, and it is not expected to complete its first reading before September. I will of course keep you informed of the outcome of this.

17 May 2011

REAPING THE BENEFITS OF ELECTRONIC INVOICING FOR EUROPE (17565/10)

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

Thank you for your explanatory memorandum of 7 February, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 7 March. They decided to clear it from scrutiny.

We support the overall aim of the Commission’s Communication and look forward to monitoring the progress made in this area.

8 March 2011
RE FORM OF THE EU STATE A ID RULES ON SERVICES OF GENERAL ECONOMIC INTEREST (8761/11)

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

Thank you for your explanatory memorandum of 15 April, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 9 May. They decided to clear the document from scrutiny.

We consider the reform of the State aid rules regarding Services of General Economic Interest to be a very important but complicated matter and will look forward to considering the draft SGEI Decision and SGEI Framework when they are published by the Commission in the summer.

17 May 2011

RESEARCH AND INNOVATION FUNDING AND RISK SHARING (6528/11, 6525/11)

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

Thank you for your explanatory memorandums of 3 March which were both considered by the Sub-Committee on Internal Market, Energy and Transport on 14 March. They decided to retain the first document under scrutiny, while clearing the second.

We note that the Government broadly supports the content of the Green Paper. As you may be aware a number of the proposals in the Green Paper are also being considered by the Select Committee as part of their EU Financial Framework from 2014 inquiry.

Until the report from this inquiry is published we will retain the first document under scrutiny and revert to you thereafter with any further points.

22 March 2011

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

I am writing in response to your letter of 22 March 2011 concerning the explanatory memorandum relating to the above communication. You stated that the Committee will retain the document under scrutiny until the report from your EU Financial Framework from 2014 inquiry is published.

I am pleased to say that the UK formal response to the Commission Green paper was published on 20 May 2011. A copy of the document is enclosed for your information and is also available via the following web link: http://www.bis.gov.uk/assets/biscore/science/docs/f/11-901-funding-eu-research-innovation-from-2014.

31 May 2011

SINGLE MARKET ACT (9283/11)

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

Thank you for your explanatory memorandum of 11 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 23 May. They decided to retain the document under scrutiny pending a debate on our recent report Re-launching the Single Market (15th Report 2010-11, HL Paper 129). However, they also decided to waive the scrutiny reserve in order to enable you to agree to Council Conclusions on 30 May.

We welcome the publication of the Single Market Act, as it demonstrates willingness on the part of the European Institutions to address the problems with the Market, in the interests of boosting growth. When we examined the Commission’s consultation paper, Towards a Single Market Act, we restricted the areas of our inquiry, so we shall not comment in this letter on those of the 12 levers we did not consider. When individual proposals come forward, as some already have, the appropriate Sub-Committee will examine and comment on them.
Of the areas we did consider, we are pleased to see plans for a review of the Posting of Workers Directive, a call for the full implementation of the Services Directive and plans to improve the handling of copyright in cross-border transactions. We also welcome plans to review the rules on public procurement, as procurement is a vital method by which Single Market principles can be advanced.

We are particularly glad to see a strong focus on the creation of a true digital Single Market. We strongly endorse the Digital Agenda for Europe and see a digital Single Market as vital for the health of the future European economy.

We were surprised by the omission in your EM of any mention of the Common Consolidated Corporation Tax Base, which is one of the supporting actions suggested under the “Taxation” lever. We realise that this has been covered by a separate EM on the proposal itself, but would have expected some consideration of such a controversial proposal to have appeared in this EM as well.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

24 May 2011

SMART GRIDS (9001/11)

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

Thank you for your explanatory memorandum of 26 April, which was considered by the Subcommittee on the Internal Market, Energy and Transport on 23 May. They decided to clear the document from scrutiny.

Like you, we welcome the initiative to develop smart grids and continuing work on smart meters. We are of the opinion that an sharp increase on the current 10% rate of smart meter usage would be of great benefit. We have previously made this point in a letter to your colleague, Greg Barker MP, regarding the EU’s Energy Efficiency Action Plan.

You are wary of EU involvement in more detailed plans for the development of smart grids: you do not say so explicitly, but this appears to be a subsidiarity concern. We would appreciate greater clarity on the precise nature of your concerns. It would seem that EU involvement would be justified in the context of creating cross-border grids, in order to ensure adequate interoperability.

However, as to Member State methodologies for the roll-out of smart meters, we share your caution. The EU has a role to play in setting overall targets and ensuring interoperability, but we are not convinced action on implementation plans is appropriate. We shall look forward to examining any proposals with this in mind when they are published.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

24 May 2011

SMART REGULATION IN THE EUROPEAN UNION (14421/10)

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

Thank you for your letter of 16 November 2010, setting out questions posed by the Committee in relation to the explanatory memorandum on the European Commission’s Communication on Smart Regulation in the EU.

You raise some pertinent points and I shall answer the questions in the order in which you ask them in your letter.

EX-POST EVALUATIONS

You have asked how ex-post evaluation will be fed in to the legislative cycle, with a particular interest to learn more about when an evaluation will be triggered; how strategic “fitness checks” will be considered in the impact assessments for new policies in the particular area; and which specific pieces of legislation would be encompassed by these checks.

I understand the Commission is developing its thinking in this area and therefore, at this time, I am unable to provide much more detail. However, I do know that the Commission wishes to work
closely with national experts to determine both which broader areas of legislation and specific pieces should be subject to “fitness checks”, as part of their commitment that Director Generals must review existing legislation before it proposes new legislation. We will of course seek all available opportunities to work with the Commission to ensure these commitments result in actual improvements.

USE OF IMPACT ASSESSMENTS IN THE EUROPEAN PARLIAMENT AND COUNCIL

You asked about the likelihood of the European Parliament and Council producing impact assessments on their amendments to Commission proposals. This remains a challenge, but one we are seeking to breathe new life into with key allies. As part of our EU smart regulation strategy my officials are developing initiatives to encourage the use of evidence-based decision-making in both these institutions, as a way to deliver commitments made in the inter-institutional agreements on better law-making (2003) and a common approach to impact assessments (2005). This can only be achieved through close cooperation with like-minded Member States.

We are focusing both on the European Parliament and the Council. There are some examples of excellent work on impact assessments in the European Parliament. As you noted in your report, Impact Assessments in the EU: room for improvement?, Malcolm Harbour, Chair of the Internal Market and Consumer Protection (IMCO) Committee, is at the forefront of the EU better regulation agenda in the Parliament. The IMCO Committee both makes use of and commissions impact assessments on Commission proposals, as do some of the other committees in the Parliament.

We will be working with other Member States to encourage more parliamentary committees to adopt this approach in their own discussions. We will also encourage upcoming Council presidencies to champion the use of Commission impact assessments as a starting point in working groups.

For example, my officials are organising a joint UK-German Ministerial seminar with MEPs in Brussels at the beginning of next year. This event will specifically focus on identifying ways we can work together to improve the quality of EU legislation.

GREATER INDEPENDENCE OF THE IMPACT ASSESSMENT BOARD

You asked for my assessment of the Commission’s dismissal of the argument that the Impact Assessment Board should be more independent, on the grounds that this would infringe upon its right of initiative. As a Government, we continue to believe that the Board could be further strengthened by making use of independent experts. We pressed the Commission to support this in our response to their consultation on smart regulation but were disappointed that this was not reflected in the Communication. We will continue to encourage the Commission to rethink its decision at every appropriate opportunity.

1 December 2010

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

Thank you for your letter of 1 December, which was considered by the Sub-Committee on the Internal Market, Energy and Transport.

We are grateful for your clarification of the process for fitness checks, and welcome your work to encourage greater use of impact assessments in the Council and the EP. We would be interested to receive updates as appropriate on the development of the Commission’s thinking in regard to fitness checks and, in particular, on the outcome of the UK-German seminar. You say in your letter that the seminar is due to take place early this year: has it already happened, and if not, when will it?

We would join you in welcoming greater independence for the Impact Assessment Board, although with due caution that its expertise is not diminished. We would also argue that greater transparency earlier in the process would be helpful.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

19 January 2011

Letter from Mark Prisk MP to the Chairman

Thank you for your letter of 19 January 2011, setting out your interest in receiving updates on the development of the Commission’s thinking in regard to fitness checks. I will be pleased to keep you informed of progress in this area.
I am also now able to update you on the joint UK-German Ministerial seminar with MEPs in Brussels on 12 January. As I mentioned in my letter of 1 December, this event focussed on identifying ways we could work together to improve the quality of EU legislation and reduce the burden it places on business. Discussions focussed on the use of impact assessments, the participation of SMEs in the policy-making process, and ex-post reviews of EU legislation. Over the next four weeks I will agree with Minister von Klaeden, Malcolm Harbour and Klaus-Heiner Lehne a list of actions for us to pursue in each of these three areas.

This seminar heralds a successful milestone in our bi-lateral work with Germany as well as cooperation with MEPs and we will hold a follow-up meeting in the summer to assess the progress we have made. We will also continue the successful relationships with our existing like-minded allies in order to develop the EU smart regulation agenda further. As such, we will invite other Member States and MEPs to the follow-up seminar with Germany, strengthening our efforts to deliver commitments in this area.

I am aware of the strong interest your committee has in this area of work, including your notable report on impact assessments in the EU (March 2010), all of which is very highly regarded within the European institutions. With this in mind I would welcome your views on how our work on smart regulation can be furthered in Europe. I would like to suggest a meeting between yourself and the non-Executive Director of the BRE, Sir Don Curry, to explore this possibility. I have asked Sir Don Curry’s office to be in touch with you shortly to facilitate this.

7 February 2011

Letter from the Chairman to Mark Prisk MP

Thank you for your letter of 7 February, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 28 February.

We would be interested to receive in due course an account of the action points agreed with Minister von Klaeden, Mr Harbour and Mr Lehne. We would be very happy to discuss these issues with Sir Don Curry and look forward to arranging a meeting at a convenient time in the near future.

1 March 2011

SOUTH AFRICA: COOPERATION IN THE PEACEFUL USES OF NUCLEAR ENERGY

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

I am writing to inform you of the agreement of a restricted negotiating mandate for an agreement between Euratom and the Republic of South Africa on the peaceful uses of atomic energy, which was agreed at the Council of Ministers on the 25th October 2010. The agreement covers the transfer of nuclear material and nuclear cooperation generally with South Africa.

The agreement follows the model of the Euratom - Australia negotiating mandate agreed in July this year (I wrote to inform you of the agreement in July 2010) and the Euratom- Canada mandate of 2008, which was the Subject of an EM (14350/08) submitted on 6 November 2008.

My officials will monitor the negotiations as they occur and will seek to update the Committees on any significant developments during the course of the negotiations.

13 December 2010

STATE AID TO FACILITATE THE CLOSURE OF UNCOMPETITIVE COAL MINES
(12698/10)

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

Further to my letter of 9 November, this is an update on the Proposal’s recent progress.

A revised Presidency text was discussed at Coreper on 1 December. The Commission was unable to accept this, so the Proposal will again be on the agenda for Coreper on 8 December, after which it is hoped that it will be taken at the Competition Council on 10 December.

The main revisions in the Presidency text were:
— last date for payment of closure aid to be 31 December 2018;
— the total amount paid to the industry by a member state in any year must not exceed the total paid in 2010, and must follow a downward trend whereby the reduction by the end of 2013 must be at least 20%, the reduction by the end of 2015 at least 40% and the reduction by the end of 2017 at least 60%, of the aid granted in 2011;
— last date for payment of exceptional aid to be 31 December 2027;
— the provision regarding the imposition of additional environmental regulation will apply to production units receiving aid, rather than to countries granting it.

The Commission’s main concern appears to be achieving a more credible pathway to closure. It indicated that it expected that the Proposal would be discussed at political level soon. Its aim is still to have a measure in place by 1 January 2011.

The Government position is that taken overall, the present text is acceptable as the last measure under which these types of aid can be paid to uneconomic mines. The revised last date for payment of closure aid is not unexpected; we would not oppose a steeper rate of decrease in closure aid in the early years if this emerged as the price of agreement at Coreper on 8 December; and we would have preferred an earlier date for last payment of exceptional aid, but 31 December 2027 is shorter than some member States would have liked.

2 December 2010

Letter from the Chairman to Charles Hendry MP

Thank you for your letter of 2 December, which was considered by the Sub-Committee on Internal Market, Energy and Transport at their meeting of 6 December. They decided to clear the document from scrutiny.

14 December 2010

TEXTILE NAMES AND LABELLING OF TEXTILE PRODUCTS

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

I am writing to inform you about progress on the Proposal for a Regulation of the European Parliament and of the Council on textile names and related labelling of textile products. The Proposal has already been cleared through scrutiny, but I thought you would want to be aware of its progress through Second Reading, where there has been some lobbying to widen the scope of the Regulation.

Directive 2008/121/EC on textile names (recast) requires textile products placed on the European Market to be labelled with or accompanied by an indication of their fibre content. This provides important protection for consumers. The fibre names used on the label and agreed allowances used to calculate fibre content are set out in Annexes to the Directive, which are updated from time to time as new fibres are developed. Directives 96/73/EC and 73/44/EEC specify the methods of analysis to be used to check whether the composition of textile products is in conformity with the information supplied in the label.

As you will recall, the Proposal will recast Directive 2008/121/EC into a Regulation and therefore provide a legal instrument which is directly applicable in member states. It will also repeal Directives 96/73/EC and 73/44/EEC on methods of analysis and transform them into a technical annex to the main Regulation laying down uniform methods for official tests. It is proposed to move the methods to the European Committee for Standardisation (CEN) in due course. The Proposal also establishes a procedure to be followed by a manufacturer requesting the addition of a new fibre name to the technical annexes of the Regulation. The intention is that, together, this will reduce burdens on business while retaining the consumer protection in the current Directives.

I am fully supportive of the original proposal for the following reasons:

— The proposal will shorten the time from investment to return for fibre producers and reduce costs for businesses when applying for a new fibre authorisation.
The Regulation will enable a new fibre name to be placed on the market some 12 months quicker than is currently possible. For industry, the benefits of reducing delay by one year is estimated to be between £88,000 and £1.8 million euros per fibre.

It will allow fibre users and consumers to benefit sooner from the use of novel fibres and innovative products.

It will reduce the burden for public administrations in respect of any additional names added to the list of permitted fibres which will apply directly to the law of member states; national legislation will not have to be amended to implement the changes.

Moving the testing methods for new textiles from the Committee of Textile Names and Labelling to the European Committee for Standardisation (CEN) will bring a significant reduction in administrative costs. As all CEN standards are reviewed regularly to ensure that they are still up-to-date and of use to industry and for public enforcement purposes, this process will allow for new development to be taken into account and improvements made.

A draft regulation was agreed by a qualified majority of Member States in the Council and we were expecting a first reading deal with the European Parliament. However, the text that eventually passed in Parliament at first reading saw amendments which widened the scope of the proposal - namely to extend the regulation to cover mandatory country of origin marking or “made-in” labelling for imports from 3rd countries, mandatory labelling of animal derived products, mandatory tests for allergens and the labelling of toys. This is disappointing as I don’t believe it would be helpful to extend the scope of the proposed regulation in this way – this is a simplification measure and if such an extension were needed it should be done separately from this simplification exercise.

We have particular reservations about the additions to the text on origin marking and on the mandatory labelling of animal derived products. I think origin marking would impose an unnecessary and additional burden on business when the mischief it is intended to address is already covered by the EU’s existing Intellectual Property and Unfair Commercial Practices Directives. I also believe that it is inconsistent with the EU’s open markets/trade facilitating objectives, and is not beneficial to consumers when combined with a globalised production chain and complex rules of origin. Which? (The UK’s Consumers’ Association) has been opposed seeing it as primarily a protectionist measure and the Commission’s own Consumer Consultative Group came out against the proposal. Moreover, there is a separate Commission proposal to introduce compulsory country of origin marking for certain consumer products from third countries (including textiles and clothing) which is currently the subject of technical level discussion in the Commercial Questions Council Working Group. The European Parliament is in favour of this proposal: the UK retains strong reservations.

Currently the concerns about lack of transparency about textile products which contain animal products are addressed by other provisions such as the Unfair Commercial Practices Directive (UCPD). There is no explicit rule that manufacturers must declare if their product contains fur or other animal product, and industry are mostly opposed to such labelling on a mandatory basis as this would impose unnecessary burdens on them. However, the UCPD requires traders not to omit material information which the average consumer needs, according to the context, to make an informed purchasing decision. From our better regulation stance we should be opposed to introducing an additional burden on business without evidence of need and in circumstances when it might not affect the average consumer’s choice.

The Regulation is now at Second Reading, which must be completed within 4 months to avoid a conciliation. The Hungarian Presidency therefore wants to make progress on the regulation and is expected to offer the Parliament a compromise deal on “made-in” labelling. Namely, voluntary made-in labelling for imports from 3rd countries and products produced in the EU, but under harmonised conditions. So, a manufacturer can choose to label or not, but if he does, his labels must meet certain requirements. They are also expected to seek the Parliament’s agreement to withdraw their animal labelling proposals but they are not optimistic that this will happen. Although I would prefer to accept the original simplification proposal, as agreed in Council, I am prepared to accept the voluntary made-in requirements proposed by the Presidency in order to reach agreement on the proposal as a whole. Whilst I remain convinced that labelling for animal products is covered in other legislation, I would agree to its inclusion for specific products, such as animal fur or seal-skins, in exchange for the removal of the mandatory requirements on made-in labelling. If the Parliament continues to insist on the inclusion of mandatory made-in labelling it is unlikely that I would be able to agree to the proposal as a whole.

I hope that you are content with my proposed approach, and am happy to answer any questions you may have.
4 March 2011

THE INTERCONNECTION OF CENTRAL, COMMERCIAL AND COMPANIES REGISTERS (7145/11)

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

Thank you for your explanatory memorandum of 15 March, which was considered by the Sub-Committee on Internal Market, Energy and Transport. As their inquiry into the Single Market is ongoing, they decided to retain the document under scrutiny.

We note that you supported the earlier Green Paper and also support the above proposal in principle. We are also supportive of the objectives contained in the proposal.

Your Explanatory Memorandum considers whether the technical specifications should be included within the body of the Directive or in Delegated Acts. We do not understand why a choice has to be made between these two options. By virtue of Article 290 TFEU, the draft Directive could, hypothetically, contain both the amendments to the other Directives (as it currently does, alongside the general principles of the measure) and the technical specifications. As long as a specific power was granted to the Commission in the measure to vary the latter by Delegated Acts then it would be able to update them in line with technological developments over the years. We would be grateful for your thoughts on whether you consider such an approach to be feasible.

However desirable the development of technical specifications are in this context, we also consider it likely that these will have financial consequences for the business registers in each Member State. With reference to the UK context, Companies House currently charges individuals and companies who wish to access information on the registers or to make submissions. If they were to incur costs in meeting their prospective obligations under this proposal then there is surely a risk that these may then be passed on to the users, including SMEs. We would also be grateful for your views on this risk and what could be done to mitigate any negative consequences that may result.

10 May 2011

Letter from Edward Davey MP to the Chairman

Thank you for your letter of 10th May commenting on the above proposal and raising issues associated with Delegated Acts and the possible financial impacts on Companies House, specifically the risk of whether costs could be passed on the SMEs.

The initial proposal from the Commission left all the governance, management, and operation of the electronic network along with the funding of the network and many other more minor issues to be determined by Delegated Acts. Although we thought it was appropriate for certain matters, such as the technical standards for the transmission of information between registries, to be dealt with through Delegated Acts, we were concerned that it was not appropriate for matters, such as the rules concerning the governance, management, operation and representation of the network, to be regulated by means of Delegated Acts. Matters of such importance should be the subject of negotiation and agreement between the Member States in Council, with the required input of the European Parliament.

Negotiations on the proposal have begun and it is clear that almost every Member State, like the UK, is of the view that there should be more detail in the directive itself. Delegated Acts should be used where it is appropriate to give the Commission discretion to amend or supplement non-essential parts of the Directive, or alternatively Implementing Acts should be used where it is appropriate to give the Commission power to develop uniform procedures for operational processes. I therefore propose that the UK negotiates for much more detail to be included within the directive.

Moving to your second point, Companies House is a member of the European Business Register (EBR) and supports work on interconnection of registers. While supporting the proposals in the directive the UK has stressed that it wishes to see development costs kept to a minimum, and this should be achieved where possible by building on the work of EBR.

Companies House pays an annual membership subscription to EBR which is currently £18,400 – a fixed cost spread across Companies House business, and has already committed to development work in this area up to £100,000. This is a cost that will be borne by those searching the register. Our goal is that following negotiations on this directive Member States will agree to implement proposals working within EBR or something very similar. If this is the case we expect the costs would...
not be significantly more than those already identified. If alternatively a different approach was proposed Companies House would need to consider whether to move money already earmarked for EBR to the new system.

I therefore suggest that the UK continues to argue that interconnection of registers should be based on the EBR system or something very similar to it, this approach should reduce the risks of any significant costs being passed on to SMEs by Companies House.

I hope this letter addresses your points and clarifies the position.

24 May 2011

TOWARDS A SINGLE MARKET ACT FOR A HIGHLY COMPETITIVE SOCIAL MARKET ECONOMY (13977/10)

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

I am writing to ask you to consider issuing a scrutiny waiver for the Competitiveness Council Conclusions on the Single Market Act. As you will be aware, the Commission have launched a consultation on package of measures designed to improve the functioning of the single market. The Commission will consult on its communication, entitled ‘Towards a Single Market Act: For a highly competitive social market economy’, until 28th February 2011. The Commission intend to submit a final version of the Single Market Act to the Council in March 2011.

The Competitiveness Council plan to agree conclusions on the Single Market Act at its meeting on the 10th December 2010. These conclusions welcome the Commission's communication on the single market, endorse the political priority that has been given to the single market and the general approach of the draft Single Market Act and state that it is necessary to: fully exploit the untapped potential of the single market; use the single market to stimulate growth; and strengthen the external dimension of the single market.

I know that you are yet to clear the draft communication from scrutiny and I would be grateful if the Committee would consider granting a waiver in order for me to agree the conclusions. To aid your consideration, I attach the latest draft of the conclusions. The attached document is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of limited EU documents. It cannot be published, nor can it be reported on substantively in any way which would bring detail contained in the document into the public domain.

I would welcome your response on whether you agree to grant a waiver in good time to inform my contribution to the debate on 10th December. I am of course happy to answer any further questions you may have regarding this.

2 December 2010

Letter from the Chairman to Edward Davey MP

Thank you for your explanatory memorandum of 18 November and your letter of 2 December, which were considered by the Sub-Committee on Internal Market, Energy and Transport. As their inquiry into the Single Market is ongoing, they decided to retain the document under scrutiny. However, in response to your request of 2 December, we are content for you to agree to Council Conclusions on 10 December.

We note that the Government strongly supports the aim of the Commission’s Single Market Act and that you intend to submit a full response to the Commission’s consultation which is due to close on 28 February 2011. Once the Government’s response has been prepared, we would be grateful to receive a copy to inform the Sub-Committee's inquiry.

We note certain differences between the Single Market Act and the report by Mario Monti. For instance, the social dimension of the single market is not prominent; there is no discussion of the relative merits between directives and regulations; and governance issues surrounding the functioning of the single market are not covered. The Act also appears not to address the issue of single market fatigue.

We look forward to discussing these and other points in an oral evidence session once an appropriate date has been arranged with the Clerk.

7 December 2010
Letter from Edward Davey MP to the Chairman

I thought you would wish to know that the Government published on Monday its response to the consultation on the Commission Communication Towards a Single Market Act – For a highly competitive social market economy (COM(2010) 608).

The response sets out the UK position regarding the Single Market Act. In it we argue that reforms to the single market should be seen as part of a wider strategy to encourage growth across the EU and we recommend that the Commission takes specific action in three key areas.

Firstly, we argue that the Single Market Act should prioritise actions that will improve the single market in services. The service economy accounts for 78% of the EU’s economic output and has been the source of all net job creation in recent years. Improving the single market in services would, therefore, enhance the competitiveness of the EU’s economies as a whole.

Secondly, we recommend that the Single Market Act be used to prioritise actions that will modernise the single market. Specifically, we call on the Commission to take action to enable businesses and citizens to take advantage of advances in digital technology; support the development of a single market in energy and low carbon; facilitate innovation; and help businesses trying to trade with the rest of the world.

Finally, we argue that the Single Market Act should prioritise actions that support SME growth and ensure that the single market works for citizens when they make use of it. SMEs are a major contributor to the EU’s economies, representing 99.8% of EU enterprises and employing almost 90 million people, over two thirds of the EU’s private sector workforce. However, current evidence demonstrates that they find access to the single market blocked, which then inhibits their growth. Citizens also find that access to the single market is blocked and are increasingly reliant on informal problem solving mechanism to overcome the barriers they encounter.

4 March 2011

TOWARDS A SPACE STRATEGY FOR THE EU THAT BENEFITS ITS CITIZENS (8693/11)

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

Thank you for your explanatory memoranda of 27 April which were both considered by the Sub-Committee on Internal Market, Energy and Transport on 9 May. They decided to hold the document under scrutiny.

We note that the Government broadly support the content of the Communication and that with the exception of autonomy in manned space flights, the “thrust and direction” of the document is also considered to be consistent with the UK Space Agency’s strategic approach. However, we also note the various concerns that you have raised about other matters in the Communication.

In order to undertake enhanced scrutiny of this area we would like to invite David Williams, the chief executive of the UK Space Agency, to provide oral evidence to the Committee about the UK’s engagement with the Galileo project as well as other proposals in the Communication. In this respect, we are also conscious of Mr Williams’ role as chair of the European Space Agency Council.

I would be grateful to receive a reply to this letter within the standard deadline of ten working days.

11 May 2011

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

Thank you for your letter of 16 April which was considered by the Sub-Committee on Internal Market, Energy and Transport on 23 May.

We were very grateful for your swift confirmation in this letter that the Chief Executive of the UK Space Agency, David Williams, would be available to give evidence to our Committee on 23 May. This evidence session has now taken place and we were most grateful to hear his views, and those of his colleague Ann Sta, on a variety of matters concerning both UK and EU space policy.

We are now content to clear the document from scrutiny.

24 May 2011
Letter from the Chairman to the Rt. Hon Francis Maude MP, Minister for the Cabinet Office and Paymaster General, Cabinet Office

Thank you for your explanatory memorandum of 18 January which was considered on 7 February by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

We note that the Government support the Communication, including the content of the European Interoperability Strategy and the European Interoperability Framework. We are also in support of the long-term benefits of these documents, of which we will take note in the context of the Committee’s ongoing inquiry into the single market.

8 February 2011

TRANS-EUROPEAN TRANSPORT POLICY (9582/10)

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

Thank you for your letter of 12 October advising that this document has been cleared from scrutiny. I am sorry there has been a delay in responding to your Committee.

You asked for a clearer indication on the Government’s views on the merits of the dual-layer approach and mentioned that you would be interested in seeing a copy of our response to the Commission. I am pleased to attach a copy of the Government’s reply which you will see supports the dual-layer approach and objectives and gives our reasons for this.

You also asked about the potential costs and benefits of the various options and said that you would expect to see a full impact assessment before any decisions on the extent of the core network were made. I think there might be some confusion here.

In identifying our core network we are highlighting the key parts of existing infrastructure and transport nodes that already make up our more detailed comprehensive network. With the exception of High Speed 2 (HS2), which we will need to take account of, there are no new projects or costs to take account of for this exercise and we are aiming to reduce the costs for the UK, as our objective is to recoup taxpayers’ money for HS2. We will also be seeking flexibility to ensure that TEN-T promotes private investment as a way to ensure that UK private project promoters should have access to TEN-T funds (port developers, etc).

As I mentioned in my letter of 27 July, at a strategic level the benefit is that the UK has better access to the internal market via an efficient multi-modal transport infrastructure, and is able to bid for funding. For a variety of reasons it is difficult to quantify the benefits of the programme: the amount of funding available during each period varies as does the number of eligible projects in the UK and the amount of funding they might bid for.

At present no impact assessment is needed as the policy review does not place any direct burdens or costs on business. As I have mentioned above in identifying the core network we are identifying infrastructure that already exists.

I have also attached a copy of a Commission Staff Working Document. This summarises the responses received to the Commission’s consultation and shows that there was broad consensus on the proposals and taking them forward. It also provides guidance and criteria for Member States to use in considering which road and rail networks and nodes should be included in the comprehensive and core networks for 2011. My officials are working closely with the Devolved Administrations in taking this exercise forward. If your Committee would prefer to have this document deposited for a separate EM I would of course be happy to provide this.

I will, of course, continue to keep you informed of developments in the review of TEN-T policy.

9 May 2011

Letter from the Chairman to the Rt. Hon. Theresa Villiers MP

Thank you for your letter of 9 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport.

We note that your letter was extremely late, but accept your apology.
Thank you for supplying us with your response to the Commission and with the Commission’s Staff Working Document analysing the findings of the consultation. We note that many of the ideas from the Working Paper have been incorporated into the Transport White Paper and we look forward to scrutinising the new TEN-T guidelines in due course.

You will be aware that we have just launched an inquiry into EU passenger rail regulation, which will look into the use of TEN-T funds. The inquiry will provide an opportunity for us to look into TEN-T in more depth.

In the light of the above, I do not require a response to this letter.

24 May 2011

TRANSPORT: PERFORMANCE STANDARDS EMISSIONS (15317/09)

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

You wrote to the previous Minister of State for Transport on 30th March in the light of an update he sent you on 24th March on this dossier. In that letter, you asked about the views of the European Parliament on the phase-in for the proposed near-term target, and asked how the UK’s Impact Assessment related to the recommendations of the report your Committee had recently published on Impact Assessments.

I am now writing to update you on general progress in this dossier and in response to the points above, but more particularly because the pace of negotiations has recently changed. The Council, European Parliament and European Commission are now attempting to achieve a First Reading Deal on this dossier and are currently engaged in the trilogue process. If successful, a proposed agreement between the Council and the European Parliament may be reached at the final trilogue meeting on 15 December. This would have to be confirmed by the European Parliament at a plenary vote early in 2011 and subsequently by the Council. If the trilogue on 15 December cannot reach a proposed agreement, it is possible that the Presidency will seek to achieve a general approach at the Environment Council on 20 December, although the timing is very tight.

I attach a copy of the latest trilogue text for reference. This is provided to your Committee under the Government’s authority and arrangements agreed between the Government and your Committee for the sharing of EU documents carrying a limite marking. As you will understand, it is not for publishing or reporting on in any way that would bring the detail of its contents into the public domain. Also, by nature of the fact that the discussions are constantly evolving, it will of course not necessarily remain the wording finally agreed. Below are listed the most important issues to the UK, and how they are currently being played out in negotiations:

Long-term target. This is the most important outstanding issue. Since September the UK has been arguing in support of a target of 135g/km in 2022 as this represented a more cost effective way to deliver significant CO2 savings that the Commission’s proposed 135g/km in 2020. However, despite being clearly supported by the analysis within our Impact Assessment this has not gained traction among other Member States. All other Member States are focussing on targets in 2020, given the political importance of that date for a range of wider European climate change initiatives. The Council is, however, split over the appropriate target level in 2020. The larger Member States favour a less ambitious target of 155g/km in 2020, while smaller Member States there is significant support for 135g/km or 140g/km. The European Parliament’s ENVI Committee proposed 140g/km (although its rapporteur favoured 150g/km). As you will see from the trilogue document the Council’s current mandate for negotiations with the Parliament on the long-term target is 150g/km in 2020, which has reduced from an initial 155g/km. We understand the that Parliament has indicated that it could accept a long-term target of 145g/km, however, it remains to be seen at what level agreement can be forged.

While 135g/km in 2022 is still our favoured long-term target, it is clear that the majority opinion within our European partners is for a target in 2020. Therefore, to enable us to engage fully with negotiations, we have favoured a target of around 145g/km in 2020, as this puts van emissions on a similar trajectory to 135g/km in 2022.

Small-volume derogation. Ensuring fair treatment of small volume manufacturers is a key priority for the UK. Although some Member States have expressed reservations about the level of the derogation threshold (ie 22,000 EU registrations per year), currently it appears as though the derogation as proposed is likely to be agreed, which will ensure the fair treatment of smaller manufacturers. ENVI Committee adopted a proposal for nominated derogation targets to be
measured against the industry average reductions required under the mainstream target—which would be useful to provide greater certainty for small volume manufacturers on the scale of reductions that they would be expected to make. Although we have supported this amendment it does not appear likely that it will be included in the final agreement. This is disappointing but would not have a significant impact on relevant manufacturers.

**Multi-stage vehicles.** Achieving a fair and timely approach for including multi-stage vehicles within the regulation has been a priority for the UK. All Member States agree the importance of this issue but, due to its technical complexity, it has been difficult to find an appropriate solution. There has been a welcome rejection of the Commission proposal to use a proxy value based on the base manufacturer’s completed vehicles. ENVI Committee adopted an amendment making several provisions, among which was for the Commission to come up with a procedure by 2011 that would address this issue for monitoring purposes, and for this solution to be based on either testing the emissions of the base vehicle with a default added mass or testing the base vehicle at a number of different masses to produce a table of possible CO₂ emissions. We support the need for the issue to be resolved by 2011 and agree that the proposed approaches of a default additional mass or a number of different masses appear the most realistic solutions. Therefore, we are supporting these measures through trilogue.

**Penalties.** The UK position has been to support the Commission’s proposed €120 headline penalty level but to argue that it should only be modulated to 1g. This has not been supported by either ENVI or other Member States. The Presidency is now proposing to adopt the ENVI amendment to reduce the headline penalty level to €95 and retain modulation to 3g. This looks likely to be accepted by the Council and the European Parliament.

**Super-credits.** The UK position is to favour a super-credit provision that is more generous than the Commission’s proposal both in duration and multiple of credit. The Presidency has proposed text that meets these desires, and again this appears acceptable to the Parliament.

**Near-term target phase-in.** You asked specifically about the views of the European Parliament on this issue. The rapporteurs of all interested Committees (ENVI, which has had lead responsibility, TRAN and ITRE) have supported phase-in as a way of helping manufacturers to comply. Some amendments adopted by the Committees were aimed at extending the phase-in to 2017. The most recent trilogue text does not seek full compliance until 2017—although 70% of vehicles would still have to comply by 2014.

**Impact Assessments.** I was interested to read your Committee’s report "Impact Assessments in the EU: room for improvement?" As the report mentions, as a Member State it is necessary to be careful when citing one’s own Impact Assessment to avoid drawing universal conclusions inappropriately, or being perceived to do so. We have never sought to apply the results of the Impact Assessment more widely than the UK, and do not tend to quote this particular document in EU fora in any case. However, this is certainly not to say that the UK does not share the results of its analysis with others. Outside the IA process, DfT economists carry out many strands of work relating to costs, environmental impacts of various options etc. that yield results valid across the EU. It is these that we share with other States, European institutions and other interested parties; the UK is recognised for the quality of its analysis on this dossier.

Although it has not been possible to achieve everything that we would have wished I feel that the current negotiations will deliver a Regulation that closely meets the UK’s objectives. I expect to see a satisfactory outcome to the remaining discussions that protects our ‘red lines’, such as multi-stage vehicles, ahead of the possible general approach at the Environment Council on 20 December.

7 December 2010

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**Letter from the Chairman to Norman Baker MP**

Thank you for your letter of 7 December, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

We are grateful for your very full description of the current negotiating position and the UK’s aims. Now would be an appropriate moment to make progress on this issue, in the light of the recent Cancun agreement. We would appreciate further updates as the negotiations progress.

We were slightly concerned by the proposal to defer a decision on how to assess multi-stage vehicles until 2011, and would appreciate a fuller explanation of the likely progress on this issue.

14 December 2010
Letter from Norman Baker MP to the Chairman

Thank you for your letter of 14th December, informing me that the Sub-Committee on the Internal Market, Energy and Transport had cleared the above document from scrutiny. You also asked for further information as the dossier progressed, asking in particular about the prospective treatment of multi-stage vehicles.

I am now writing to update you on these points. As you may remember, at the time of our previous correspondence a trialogue process was under way to try to reach a first-reading deal. This was in fact achieved on 15th December (as envisaged in my letter), and adopted at a plenary vote of the European Parliament on 15th February. It is currently expected to be adopted at a meeting of the Transport, Telecommunications and Energy Council on 31st March, and come into force shortly after.

I attach a copy of the regulatory text as adopted by the European Parliament. Following my previous letter’s outlining of the UK’s priority issues and how each was progressing in the trialogue process, below is the outcome for these:

**Long-term target.** Our preference had been for a target of 135g/km in 2022. However, the preference among other Member States and EU institutions was for a 2020 date, and the agreed target for 2020 is 147g/km. This is acceptable to us as the emissions reduction trajectory is sufficiently close to our preferred option.

**Small-volume derogation.** This was a priority topic for the UK, and the agreed derogation delivers our aims. The main features (as per the draft regulation) are an eligibility threshold of 22,000 EU registrations and each manufacturer’s target to be set based on the reduction potential of that individual manufacturer.

**Multi-stage vehicles.** The European Parliament-proposed provisions for this sub-sector were adopted in the final Regulation. As noted in my previous letter, this commits the Commission to putting forward a final solution by December 2011. While I note your concerns about this timescale, a resolution to the multi-stage vehicle issue could of course not have been achieved earlier than 2011 given that the trialogue itself was not completed until December 2010. Achieving a regulatory outcome for this sub-sector that is fair, non-distortive and workable is the crucial factor, and clearly it will be necessary to allow sufficient time for this. I should add that multi-stage vehicles will not be left outside regulation: the Regulation contains a specific provision that “Where the specific emissions of the completed vehicle are not available, the manufacturer of the base vehicle shall use the specific emissions of the base vehicle for determining its average specific emissions of CO2.” While we have been keen for the treatment of this sub-sector to be addressed substantively, we are happy that this inclusion provides adequate interim treatment; although we will need to ensure that the Commission puts in train the necessary work to meet the December 2011 deadline.

**Penalties.** The headline penalty has been agreed at €95 (reduced from the proposal’s €120), with modulation retained to 3g/km. As you may recall, we had reservations on going below €120 (and/or retaining modulation for more than the first g/km) as our analysis strongly suggested that a strong penalty regime would be necessary to ensure compliance by securing it as the more cost-effective option. However, we acknowledge that reputational factors—the damage to a company’s public image from being seen to ‘break the rules’, especially given that money paid in penalties means a shortfall in investment that could have reduced running costs for future vehicle purchasers—could help encourage compliance even where strict least-cost analysis tends to negate it.

**Super-credits.** The agreed provision for this element is that super-credits will run until 2017 (compared with 2015 in the draft regulation), with an initial multiple of 3.5 (compared with 2.5). We are happy with this, as a degree of generosity in both duration and multiple will be important in encouraging the innovative technologies that are the purpose of the super-credits provision.

**Near-term target phase-in.** As per my previous letter, the final Regulation has confirmed a phase-in starting at 70% in 2014 and full compliance from 2017. Our preference had been for an unphased target starting in 2016; but this was always a minority view, and was not a ‘red line’ topic in the context of the range of important issues in this Regulation.

Overall we are satisfied that this Regulation represents a good balance between the important considerations that come into play in tackling light commercial vehicle CO2 emissions.

05 April 2011
Letter from Norman Baker MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

In my last letter I reported that the proposal for an EU Regulation on bus and coach passenger rights was likely to go to conciliation as the European Parliament (EP) had adopted a number of amendments at second reading that were unlikely to be acceptable to the majority of Member States. The Council formally rejected the EP’s amendments on 25 November and a meeting of the Conciliation Committee was convened on 30 November.

Prior to the rejection of the EP amendments the Belgian Presidency held a number of informal meetings, on behalf of Member States, with the EP and the European Commission to try and bring the differing positions closer together, but prior to conciliation a number of issues remained unresolved.

The key sticking point was the scope. The EP had wanted to make regional (and therefore rural) bus services subject to the full provisions of the Regulation, and to significantly increase the number of provisions that would automatically apply to all services. Prior to conciliation the Presidency had tried to unblock negotiations by proposing a change to the scope so that the Regulation would only apply to long-distance services. The majority of Member States, including the UK, supported this. However, no agreement could be reached with the EP on the distance threshold.

After a lengthy and difficult conciliation discussion an agreement was reached. The full obligations of the Regulation will only apply to regular services longer than 250kms, although a limited number of obligations will apply to regular services shorter than this. The provisions that will apply to all services are:

— non-discrimination against passengers on the grounds of nationality in terms of the ticket prices and conditions offered (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 9 and 10(1));
— disability awareness training for personnel of carriers and terminal managing bodies who deal directly with the travelling public, although drivers can be exempted for up to 5 years (article 16(1)(b) and (2));
— compensation in respect of damage caused to wheelchairs and other mobility equipment (article 17(1) and (2));
— right to travel information throughout the journey (article 23);
— provision of information on passenger rights under the regulation at terminals and where applicable on the internet (article 24);
— carriers to have a complaints handling mechanism (article 25);
— ability for passengers to make a complaint and the timescales attached to the submission of complaints (article 26); and
— the requirement for a national enforcement body (article 27).

In summary the provisions that will also apply to regular services longer than 250kms are:

— passengers would be entitled to compensation in the event of an accident in accordance with national law, but if it is capped minimum limits apply;
— carriers will be required to provide reasonable and proportionate assistance with regard to passengers’ immediate practical needs following an accident;
— carriers and terminal managing bodies to have in place, where appropriate through their organisations, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility;
— if a disabled person or person with reduced mobility holds a reservation or has a ticket and had notified their need for assistance, and has been denied boarding they shall be offered the choice between: reimbursement of the ticket price and where relevant a return service by bus or coach to the first point of departure;
continuation or re-routing by reasonable alternative transport services to the place of destination;

— disabled people and people with reduced mobility would have the right to specific assistance, free of charge, during their travel on board and at designated terminals. Passengers should notify the need for assistance 36 hours before, and arrive in advance of, departure. Member States will designate the terminals at which assistance will be provided;

— where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than two hours passengers shall have the choice between:

continuation or re-routing to the final destination at no additional cost;

reimbursement of the ticket price and where relevant a return service by bus or coach to the first point of departure.

— if the carrier fails to offer this choice passengers can get compensation amounting to 50% of the ticket price (with some exemptions);

— where a regular service is cancelled or delayed in departure from a bus stop for more than two hours, a passenger shall have the right to continuation or re-routing or reimbursement of the ticket price;

— in the event of cancellation or delay in departure of a regular service passengers departing from terminals shall be informed of the situation as soon as possible and no later than 30 minutes after a scheduled departure;

— for a journey of a scheduled duration of more than 3 hours the carrier shall in the case of cancellation or delay in departure from a terminal of more than 90 minutes offer the passenger free of charge:

snacks, meals or refreshments reasonable in relation to the waiting time, if they are available or can reasonably be supplied;

a hotel room or other accommodation in cases where a stay of one or more nights becomes necessary and assistance in arranging transport between the terminal and the hotel. This can be limited to 80 EUR per night and to a maximum of two nights;

— carriers would be exempted from this requirement if the passenger already knew of the delay or caused the delay himself, or if the carrier can prove that the cancellation or delay was caused by weather conditions or natural disasters endangering the safe operation of the bus or coach.

Except for the obligations that apply to all services, Member States can exempt domestic regular services from: the Regulation for a period of four years (renewable once); and the provisions relating to disabled people and people with reduced mobility if they ensure that the level of protection for such passengers under national rules is at least the same as the Regulation.

In respect of occasional services (e.g. holiday tours) the only change is that the provision requiring compensation in respect of damage caused to wheelchairs and other mobility equipment will apply in addition to the other provisions relating to compensation and assistance in the event of accidents, and non-discrimination against passengers on the grounds of nationality.

As we had safeguarded minimal changes to the liability chapter and ensured that rural bus services would not be subject to the full provisions of the Regulation, as previously reported we were willing to adopt a certain level of flexibility in our approach to the articles applying to all services. Whilst we continued to strongly resist the long list of articles that the EP wanted to apply, we did not want the Regulation to fail, and therefore consider that the proposed joint text is a sensible compromise that best serves UK interests, and strikes a balance between rights for passengers and the economics of service provision.

The next step is for the joint text agreed by the Conciliation Committee to be formally approved by the EP and the Council. The EP has indicated it will do this at its February 2011 Plenary. The Regulation will apply 2 years after its publication in the Official Journal of the EU. Decisions on the use of the exemptions in the UK will be taken in due course, following consultation.

I would be happy to deposit a copy of the joint text once it has been officially published if the Committee would find it helpful to have this.

20 December 2010
Letter from the Chairman to Norman Baker MP

Thank you for your letter of 20 December, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 31 January.

We have previously supported the Government in its efforts to minimise the burdens imposed by this proposal, while improving the rights of passengers as much as practicable. We agree that the deal reached with the European Parliament would appear to be a sensible compromise in the light of the significant extra requirements they sought to impose.

I do not require a reply to this letter.

1 February 2011

TRANSPORT WHITE PAPER(8333/11)

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

Thank you for your explanatory memorandum of 27 April, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

We appreciate that it is difficult to comment in great detail at this stage on such a wide-ranging and ambitious document, and await further analysis of the various proposals as they are brought forward. However, we would appreciate a clearer indication from the Government of whether you believe the actions proposed by the Commission are the right ones for the future of European transport, and in particular, which of those actions you believe to be the priorities. Overall, we are of the opinion that an integrated approach to the provision of transport is essential.

You raise concerns about subsidiarity and tax sovereignty. In our scrutiny of the Eurovignette Directive over recent years, the issue of the appropriate legal base for road charging has been discussed. We agreed with the Government in that context that a taxation base (and with it, unanimity in Council) should have been used. In the event, the revision of the Directive was taken through under a transport base. It is too early to comment in detail about the merits of taxation plans within further moves toward the internalisation of external costs, but we are sympathetic to the Government’s concern to maintain tax sovereignty. We are also concerned that any changes to road charges in the UK may encounter legal difficulties and would be grateful to receive the Government’s view on this.

The White Paper suggests that the EU will move towards principles of user-pays and polluter-pays. We would appreciate a clearer indication of how far this is likely to be applied as we are concerned that some level of subsidy will be necessary to provide a usable service in some cases.

With regard to subsidiarity, again we shall have to wait for more developed plans, but road charging, if it respects the overall goals to reduce environmental damage and shift the costs of such damage to users, would seem to be an area where the subsidiarity principle might apply. However, these considerations notwithstanding, we believe that this is an area where action is necessary: subsidiarity should be a concern only to the extent of determining who should take that action.

You will be aware that we have just launched an inquiry into EU passenger rail regulation, using the Channel Tunnel as a case study. Many of the elements of the Transport White Paper relate to the remit of the inquiry: some deal directly with rail, such as the establishment of a true internal market in rail services, or the development of the role of the ERA, and some go wider, such as the future of TEN-T funding. We look forward to receiving evidence from the Government in the context of that inquiry.

I look forward to receiving a reply to this letter within the standard deadline of ten working days.

17 May 2011
Letter from Mike Penning MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Thank you for your letter of the 23 November concerning the Explanatory Memorandum on the Proposed European Regulation on the type approval of two- and three-wheeled vehicles and quadricycles. You asked for further clarification on the cost of the proposal to industry and the cost of carbon.

The Explanatory Memorandum of 25 October identified Advanced Braking Systems as one of the measures likely to result in a significant cost to manufacturers. In many cases this measure will require additional components to be fitted to motorcycles. Initial estimates suggest that the component cost could add more than £130 to each motorcycle. Manufacturers will also incur design and development costs.

We expect to complete an Impact Assessment on UK costs and benefits early next year but in the meantime I have attached, at Annex A, further information on Advanced Braking Systems which I hope you will find useful.

You have also asked that the Impact Assessment fully takes into account the cost of carbon. We do not believe that the proposals are intended directly to reduce carbon. The Explanatory Memorandum (paragraph 4) mentioned new emission limits which will reduce the emission of harmful pollutants such as hydrocarbons (HC), but the proposal does not contain specific measures to directly reduce fuel consumption or emissions of CO2.

Whilst the measurement of CO2 emissions will enable consumers to compare the fuel efficiency of different bikes, and might influence their buying decisions, the actual impact on carbon will be difficult to quantify.

Discussions on the text of the proposal have now begun at the Council of Ministers Working Group and we will seek opportunities to minimise the costs to both industry and customers during the negotiations.

6 December 2010

Letter from the Chairman to Mike Penning MP

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

We are grateful for your further explanation of the likely costs of the proposal. However, it seems that in advance of the impact assessment it is not very clear what these costs might be. You mention a cost of £130 per motorcycle for fitting advanced braking systems, but, in your annex, suggest that 75% of motorcycles would be fitted with such devices in any case. We look forward to seeing the UK impact assessment which, we hope, will give a clearer picture of the situation, and would appreciate updates as appropriate in the meantime.

21 December 2010