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 6 June to 30 November 2011.

**INTERNAL MARKET, ENERGY AND TRANSPORT**

**(SUB-COMMITTEE B)**

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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 memorandum of 4 July, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 18 July. They decided to clear the documents from scrutiny.

We note that, in general, you welcome the Commission’s Communication and draft Regulation concerning European standardisation. We further note your more specific concerns about certain elements of this package and trust that these will be addressed during the forthcoming negotiations on the draft Regulation.

We consider that the development of existing European standards has played a significant role in the development of the Single Market to date. Therefore, we welcome these proposals for an improved standardisation system and hope that it will also play a more significant role in sectors such as ICT and services.

20 July 2011

AIR PASSENGER RIGHTS COMMUNICATION (9066/11)

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

Thank you for your explanatory memorandum of 3 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the document from scrutiny.

Much of the document is unobjectionable, and we welcome measures to coordinate and improve the application of passenger rights. The main item of interest in the document is the proposal to review operation of Regulation 261/2004 with regard to the unlimited liability of carriers to provide care for passengers unable to fly. We see some merit in this, but look forward to scrutinising any proposals which emerge.

You mention in your EM that there are five requests for clarification on the application of the Regulation currently before the Court of Justice. We would appreciate further details on the nature of these.

14 June 2011
Letter from the Rt. Hon Theresa Villiers MP to the Chairman

Thank you for your letter of 14 June 2011 about my Explanatory Memorandum of 3 May and the review of EU Regulation 261/2004. You asked for further details of the requests for clarification on the application of the Regulation currently before the European Court of Justice (ECJ).

In its communication the Commission recognises that case law has had an important impact on the interpretation of Regulation 261. This impact has perhaps been greatest in respect of the ECJ ruling in November 2009 in the Sturgeon case where the Court held that a delay on arrival of at least 3 hours entitled passengers to the same amount of compensation as in the case of a flight cancellation since the inconvenience suffered was held to be similar.

This ruling has given rise to a stream of cases where airlines have sought clarification of the judgment. The five cases referred to in the EM before the ECJ are:

— TUI Travel plc, British Airways plc, easyJet Airline Co. Ltd, International Air Transport Association, The Queen v Civil Aviation Authority (C-629/10);
— Emeka Nelson, Bill Chinazo Nelson, Brian Cheimezie Nelson v Deutsche Lufthansa AG (C-581/10)
— Société Air France S.A. v Heinz-Gerke Folkerts and Luz-Tereza Folkerts (C-11/11)
— Denise McDonagh v Ryanair Ltd (C-12/11)
— Finnair Oyj v Timy Lassooy (C-22/11)

Aside from the Finnair case, the UK has an interest in all the other cases and has submitted formal observations to the Court via Treasury Solicitors.

Since ECJ rulings are authoritative and legally binding on all national courts within the EU all carriers are legally obliged to respect them. The TUI case involves the Judicial Review by TUI and others of the CAA’s stated intention to uphold the ECJ’s Sturgeon ruling. The English High Court allowed the Judicial Review and referred the matter to the ECJ; and at the same time stayed enforcement of the delay ruling pending further consideration by the ECJ. The Nelson case seeks clarification between the obligations imposed by Regulation 261 and those imposed by the Montreal Convention 1999 (ICAO). The Folkerts case seeks clarification on whether compensation rights apply where delay on arrival was over 3 hours, but not on departure. The McDonagh case seeks clarification on the open-ended nature of obligations to passengers under Regulation 261. Finally, the Finnair case seeks clarification of whether compensation is payable only in the event of an over-booking.

The ECJ has yet to fix a time for the hearings in the above cases, but we hope some might be heard before the end of this year. However any rulings are unlikely before next year.

I hope this is helpful.

04 July 2011

APPROVAL OF AGRICULTURE OR FORESTRY VEHICLES (12604/10)

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

Thank you for your supplementary explanatory memorandum of 7 July. It was considered by the Sub-Committee on the Internal Market, Energy and Transport, who decided to hold the original document under scrutiny pending the development of the negotiations.

We are grateful to have received a copy of the UK impact assessment and hope that it will prove useful in informing the UK’s position in the ongoing negotiations on this dossier.

We look forward to receiving updates as appropriate as the negotiations move closer to completion.

20 July 2011
Letter from Mike Penning MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Thank you for your letter of 6 April which set out the considerations of the Sub-Committee on the Internal Market, Energy and Transport in relation to the implementation of EU Regulation 392/2009 and the entry into force of the 2002 Protocol to the Athens Convention.

In your letter you expressed concern about the potential for confusion should the EU Regulation apply before the Protocol enters into force and you urge Government to use its influence to make sure Member States ratify the 2002 Protocol on time and to ensure that a robust insurance regime is agreed.

I would like to reassure you that we are doing all that we can to ensure a smooth implementation of this complex regime. We are continuing to work very closely with both the insurance and shipping industries and we are also actively engaging other EU Member States to address those technical issues which, if left unresolved, might become a barrier to implementation.

Further to my previous letter of 24 March, I am also able to provide your Committee with a short update on this proposal ahead of the summer recess.

As you are aware, the question of whether or not to include an additional Article 81 legal base had not been fully resolved when I last wrote to the Committee.

At Transport Council on 31 March, the Council agreed its position. The Council agreed to split the Council Decision in two: one Decision with an Article 100 legal base dealing with the transport elements and another Decision with an Article 81 legal base dealing with the justice and home affairs provisions.

The Council agreed to send both Decisions to the European Parliament for consent. The relevant Decisions are now being considered by the Legal Affairs Committee and the Transport and Tourism Committee; and are currently scheduled for consideration by the Plenary of the European Parliament on 12 October 2011. It is likely that the Decisions will then be sent back to the Council for formal adoption shortly after.

I will, of course, keep your Committee informed of further developments and expect to be able to write to you again shortly.

12 July 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 12 July, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 10 October.

We note that the proposal was split into two separate Decisions under different legal bases. We welcome the principle of dealing with matters subject to the UK opt-in in a separate instrument, but would appreciate a fuller explanation of the implications of this late change on the deadline for the UK opt-in to be exercised.

In your last letter to us you undertook to write separately on the more general issue of opt-ins in relation to international agreements. We have still not received this letter and would appreciate it soon.

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

11 October 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 11 October which set out the considerations of the Sub-Committee on the Internal Market, Energy and Transport in relation to the implementation of EU Regulation 392/2009 and the entry into force of the 2002 Protocol to the Athens Convention. Your letter sought a fuller explanation of the implications of splitting the proposal into two separate Decisions under different legal bases on the deadline for the UK opt-in to be exercised.

The fact that proposal has been split into two separate Decisions has no implication on the deadline for the UK opt-in to be exercised. In our view the 3 month period whereby the UK may notify the
President of the Council in writing after a proposal or initiative has been presented ran from the date on which the Commission presented its proposal for a Council Decision. The fact that the Council dealt with the Justice and Home Affairs (JHA) provisions in a separate Council Decision did not affect the opt-in deadline. This deadline has now passed. The UK may however notify its intention to opt-in to the measure at any time post-adoptive.

Recent correspondence from the Home Office explains that it is now Government policy that the UK should not be bound by any EU instrument imposing obligations in the JHA field without having first chosen to exercise its opt-in. The Government will now need to reach a post adoption decision on this dossier, and I am therefore writing to ask for your Committee’s opinion on that decision.

While the 1974 Athens Convention established a regime of liability for damage suffered as a result of the death of or personal injury to a passenger and the loss of or damage to luggage carried by sea on any international carriage, it is in need of modernisation to reflect best international practice. There are good reasons why the UK should ratify the 2002 Protocol and opt-in to the Council Decision. These are set out below.

From our previous exchanges you will know that the UK is continuing to work toward ratification of the 2002 Protocol to the Athens Convention. Our aim is to ensure that both EU Regulation 392/2009 on the liability of carriers of passengers by sea, which introduces the 2002 Protocol into EU law, and the 2002 Protocol itself, apply in the UK at the same time from the 31 December 2012.

The Council Decisions set out the basis for the Union’s competence in respect of the Protocol to the Athens Convention and authorises the Council to conclude the Protocol on behalf of the EU. It also defines the basis upon which Member States are able to become Parties to the Protocol in their own right as regards those areas within Member State competence. By opting-in to the Council Decision the UK will be able to ratify the 2002 Protocol when it is ready to do so.

The 2002 Protocol will ensure that claims for compensation are able to be met adequately and paid promptly. The 2002 Protocol establishes an enhanced regime of liability for damage suffered as a result of the death of, or personal injury to, a passenger and the loss of, or damage to luggage carried by sea on any international carriage. When it enters into force, the 2002 Protocol will:

— Introduce higher liability limits on carriers (from approx. £46,000 to £400,000 per passenger per carriage);
— Require the carrier to provide evidence of insurance up to approx. £250,000 per passenger on the basis of strict liability;
— Require the compulsory insurance cover to be verified by a certificate issued by a State Party;
— Introduce a right of direct action against the insurer up to approx. £250,000; and
— Extend the time bar provisions i.e. the amount of time that is allowed to pass after an incident before any action for damages has to be brought before a court of law.

The Government therefore takes the view that the UK should opt-in to this measure.

The March Transport Council agreed to send the Council Decisions to the European Parliament for consent. The Decisions are scheduled to be considered by the Plenary of the European Parliament on the 14 November before they are returned to the Council for final adoption soon after. At the moment it is not clear at which Council the Decisions will be considered but they need to be adopted as soon as possible to enable the EU to accede to the 2002 Protocol before 31 December 2011. Only when the EU has acceded can the Member States deposit their instruments of ratification or accession to the Secretary General of the International Maritime Organization and trigger the entry into force provisions of the 2002 Protocol.

Given the need to accede by 31 December, it would be helpful to have your views on our proposed approach by 19th December. We will keep the Clerk to your Committee up to date on any developments that may affect that timing.

3 November 2011
Letter from the Rt. Hon. Chris Grayling, Minister for Employment, Department for Work and Pensions, to the Chairman

Further to my letter of 18 January 2011, I am writing to update you on the latest position on negotiations on the proposed European Regulation concerning the placing on the market and use of biocidal products. You will recall that the document was released from scrutiny on 14 December 2010, ahead of Political Agreement in the Environment Council on 20 December 2010. Since then, the Council’s text has undergone legal-linguistic finalisation, with the Council adopting its first reading position on the dossier on 21 June 2011.

On 22 June, the Council published a statement outlining the extent to which its position included the approximately 360 amendments adopted by the European Parliament (EP) at its first reading on 22 September 2010. Over half of the Parliament’s amendments have been included in the Council’s position, either in full, in part, or in principle. However, a significant number were rejected, mainly because they did not provide added value or clarity, were inconsistent with other amendments the Council had introduced, would introduce undue administrative burdens or would make the proposed Regulation unduly rigid.

On 16 August, the Commission issued a Communication confirming that although its opinion does not coincide with the Council on all points, the changes introduced by Council are in line with the aims of the Regulation and it accepts the Council’s position. The Commission has also produced a legislative financial statement on the proposal, which sets out the costs to the European Chemicals Agency (ECHA) in Helsinki of operating the regime. The Commission and Council documents are attached with this letter.

Our initial assessment of the cost estimates is that they are excessive and out of line with the costs of operating the existing biocides regime. We have challenged the estimates and will continue to do so with the aim of reaching more proportionate costing for the Agency’s work under the new regime.

I believe the Council’s position at first reading is a positive outcome for the UK. Our priority for the remaining negotiations will be to defend many of the amendments that we previously secured. This will include maintaining derogations to exclusion criteria, so that the Regulation would take proper account of the fact that hazardous biocides such as rodenticides may be required for wider beneficial purposes, for example to maintain public health or to prevent damage to infrastructure. We will also seek to ensure that the definition of a biocidal product remains pragmatic, thereby preventing the large range of treated articles which do not have a primary biocidal function (items such as treated socks, towels, underwear, computer keyboards etc) from having to go through the full authorisation procedure for biocidal products, which we believe would be disproportionate and burdensome.

NEXT STEPS

The Council text is due to be formally transmitted to the EP at its plenary meeting from 26-29 September 2011. Its ENVI Committee will consider the Rapporteur’s draft recommendation for a second reading of the dossier on 8th September and a vote is planned for 4 October.

We understand that the Polish Presidency hopes to reach an informal agreement on the text by the end of the year, with a formal second reading deal then concluded at the Environment Council in January 2012 under the Danish Presidency. In light of this timetable, the Commission has indicated that it intends to request a delay of the applicability date of the proposed Regulation until 1 September 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.

27 August 2011

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

Further to my letter of 27 August 2011, I am writing to update you on the latest position on negotiations on the proposed European Regulation concerning the placing on the market and use of biocidal products.

As you know the document was released from scrutiny on 14 December 2010, ahead of Political Agreement in the Environment Council on 20 December 2010. Since then, the Council’s position at
first reading was formally transmitted to the European Parliament (EP) during its plenary meeting from 26-29 September. The EP’s Environment, Food and Public Health (ENVI) Committee held its vote on a draft recommendation for a second reading on the proposed Regulation on 4th October 2011.

The outcome of the ENVI vote presents a mixed picture for the UK. Some positive outcomes include support for amendments to reduce animal testing through reduced data requirements, amendments that will widen the scope of the new proposed Union Authorisation procedure which we believe will provide welcome simplification for industry, and several technical clarifications which will assist with implementation of the Regulation.

However, the ENVI Committee also supported several amendments that are more problematic for the UK. These include amendments which will substantially tighten the exclusion criteria for active substances, meaning that it will be much more difficult to approve biocides with certain hazard profiles (such as those which are carcinogenic, or have persistent, bioaccumulative and toxic (PBT) properties) even when there is a strong case that their societal benefits outweigh the risks from their use. Other amendments also make it much easier for Member States to refuse to permit products to be marketed in their territory even when they have been deemed to meet the safety and efficacy criteria in the Regulation by other Member States and included in the mutual recognition procedure or where a Union Authorisation has been granted. This is unwelcome from a UK perspective as it would create market imbalances, effectively allowing some Member States unilaterally to apply tighter controls than others. This undermines the single market in biocidal products and will increase costs for industry.

One of the UK’s main priorities during the remaining negotiations will therefore be to seek to resist movement towards the European Parliament’s amendments in these more problematic areas.

**NEXT STEPS**

The Polish presidency continues to lead negotiations with the aim of reaching an informal understanding on the text by the end of the year which would then need to be agreed by the Council.

The Commission has formally requested a delay of the applicability date of the proposed Regulation until 1st September 2013, though this has not yet been confirmed.

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 progress towards a second reading deal.

25 October 2011

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

Thank you for your letter of 25 October 2011, and for your comprehensive update on negotiations.

We are, like you, supportive of proposed amendments to reduce levels of animal testing, and are glad that your arguments for a wider scope for Union Authorisation has been persuasive. We urge you to take a strong stance to entrench these provisions in the final Regulation.

We also share your views on the proposed amendment that would tighten exclusion criteria for active biocidal products. Such a change would be a disappointing loss of flexibility. We are also concerned at the apparent flexibility for Member States to refuse to permit the marketing of products deemed to have met the requisite standards. This would seriously undermine the single market in this area. We support strongly your negotiating position on both points, and hope that you are able to resist movement towards them as negotiations progress.

On a separate note, we would like to know whether there is any appetite amongst negotiating parties for a duty to be placed on those who use biocidal products in the service industries to notify those who may utilise their services.

We look forward to an update on further developments as and when they occur, but do not expect a reply within 10 working days.

15 November 2011
Letter from the Chairman to Norman Baker MP Parliamentary Under-Secretary of State, Department for Transport

Thank you for your explanatory memorandum of 10 October 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 21 November 2011. They decided to hold the document under scrutiny.

We understand the case you have made. Like you, we are concerned that this proposal seeks to introduce a new system of reporting without making a persuasive case for its institution, and without taking account of national contexts.

Bearing in mind the existing registration requirements, we would urge you to call on the Commission to outline its case in a more detailed manner, in order to inform our deliberations in the future. We would also be grateful if you could give your indication of the likely progress of the proposal in light of your assessment that the new system of registration does not add sufficient value.

24 November 2011

CALCULATION OF GHG EMISSIONS AND OTHER ENERGY FROM FOSSIL FUELS

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

I am writing to inform you of an expected implementing measure that may be of interest to your Committee. If the European Commission issues this proposal it is expected to be taken forward very quickly. We expect that it would be tabled and voted on in September, or early October 2011.

The possible proposal would take the form of delegated legislation under the Fuel Quality Directive (98/70/EC, as amended by Directive 2009/30/EC), referred to below as the “FQD”. Directive 2009/30/EC amended the FQD both to introduce a mechanism to monitor and reduce greenhouse gas (GHG) emissions from petrol, diesel and gas-oil, and to change the specification for those fuels.

The major amendment introduced by Directive 2009/30/EC requires fuel and energy suppliers (principally those providing fuel and energy for land-based transport, and other non-road mobile machinery) to reduce the lifecycle GHG intensity of the fuel/energy they supply by 6% per unit of energy by 2020. A consultation on proposals on how to implement this in the UK closed in June 2011 and a summary of responses is being published imminently. The Government is considering the responses.

Annex IV to the FQD already includes a methodology to calculate GHG emissions from biofuels, and the European Commission is now required to put forward an implementing measure setting out how to calculate GHG emissions from fuels and other energy from fossil sources. This implementing measure will be adopted through the comitology process using qualified majority voting.

A key part of this methodology will be the GHG intensity factors assigned to particular fossil fuel feedstocks. In particular, the methodology will need to set out how upstream emissions are factored in. The European Commission has indicated that they are likely to propose setting a default value specifically for the GHG intensity of fuel derived from oil sands and oil shale because of the high upstream emissions associated with these fuels.

In practice this could mean that most fossil-derived fuels would be assigned one default value and oil sands or oil shale-derived fuels would be assigned a much higher one. The European Commission has stated that it hopes to then assign default values for other fuels with high associated GHG emissions, but that more research is necessary in order to set these default values. As such, the European Commission is likely to introduce review clauses enabling new default values to be adopted as more information becomes available.

Most oil sand derived crude oil comes from the large oil sands deposits in Canada. The Canadian Government would be likely to strongly oppose a proposal to set a default value for oil sand derived fuel.

The evidence is that fuel derived from oil sands has a high GHG emissions intensity. However, this is also true for a number of other crude sources such as Nigerian and Angolan crude oil (with its associated flaring) and Venezuelan heavy crude oil. For environmental reasons, the Government
would like to see a methodology that is able to account for the GHG emissions of all crudes, including oil sands and oil shale, and is based on robust and objective data.

Consequently, the Government is seeking an outcome that would split crude sources into three broad categories (e.g. low, medium and high) based on their lifecycle GHG emissions. We would also like to ensure that such a methodology is reviewed regularly as new evidence, technologies and processes become available.

8 September 2011

Letter from the Chairman to Norman Baker MP

Thank you for your letter of 8 September, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 10 October. Unfortunately, we are unclear on two points, which have an impact on the process of scrutiny. We would appreciate if you could clarify them.

Firstly, we would be grateful if you could lay out the precise provision of Directive 2009/30 that confers power on the Commission to enact the subordinate legislation in question.

In addition, we would also like to know which procedure is proposed to be used in taking the proposal forward. As the Directive 2009/30 was enacted prior to the Treaty on the Functioning of the European Union (TFEU), it appears that the proposal could proceed using either the pre-Lisbon “regulatory procedure with scrutiny”, or the subsequent procedures for either delegated legislation (as per Article 290 TFEU) or implementing legislation (as per Article 291 of the Treaty).

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

11 October 2011

COMPETITIVENESS COUNCIL

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

The EU Competitiveness Council will take place in Brussels on 5 and 6 December 2011. I will represent the UK for the Internal Market and Industry items on 5 December and David Willetts will represent the UK for the Research items on 6 December.

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

29 November 2011

COOPERATION AGREEMENT ON SATELLITE NAVIGATION BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES AND THE FEDERAL REPUBLICS OF BRAZIL AND CHILE

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

I am writing to inform you of the agreement of negotiating mandates for the European Commission to negotiate two new co-operation agreements with the Governments of Brazil and Chile respectively on behalf of the European Union and its Member States. The mandates cover scientific and industrial co-operation with these countries in the fields of satellite navigation, positioning and timing. A similar co-operation agreement was recently concluded with the Kingdom of Norway and an explanatory memorandum (6618/11) was submitted by the Department for Transport.

Once negotiations conclude, the proposed co-operation agreements will be put before Council for decision. The proposed agreements will be subject to the normal scrutiny procedures including the submission of explanatory memoranda to the Committee.

Responsibility for the European satellite navigation programmes (Galileo and EGNOS) transferred to my Department from the Department for Transport on 1 April 2011. My officials will monitor the
negotiations as they occur and will seek to update the Committees on any significant developments during the course of negotiations.

30 June 2011

COMITOLOGY: STANDARD RULES OF PROCEDURE FOR COMMITTEES UNDER REGULATION (EU) NO 182/2011

Letter from the Rt. Hon. David Lidington MP, Minister of State for Europe and NATO, Foreign and Commonwealth Office, to the Chairman

I am writing to update you on the rules of procedure for ordinary committees established under the Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 (the “comitology” Regulation) laying down the rules and general principles concerning the mechanisms for control by Member States of the Commission’s exercise of implementing powers. Although these rules of procedure are not formally caught by the Scrutiny Reserve Resolution, we are, as promised, sending them to you given their importance to the functioning of the overall comitology Regulation.

The new comitology Regulation provides for a committee of Member State experts and representatives to convene to discuss a draft piece of legislation. The rules governing an individual committee of Member State experts is decided by that committee when it is first convened. However, the Commission decided to consult Member States’ representatives on the arrangements for ordinary committees so there was a common basis from which they can work. The rules for these committees will follow the template of the Standard Rules of Procedure, which were published in the Official Journal of the European Union on 12 July 2011 (please find attached).

The UK was involved in the discussions on the Standard Rules of Procedure and some of our suggestions were included in the final text. For example, the UK secured a provision at the end of Article 7(3) that ensures a simple majority of committee members can prevent the Chair of the committee inviting a third party or expert, with whom the committee is not comfortable. These discussions also allowed the UK to make clear its views on what should be considered by an ordinary committee when they first convene to decide their particular rules of procedure. For example, the UK argued that where tax matters arise in a non-tax committee, that committee should look to hold joint meetings with the relevant tax committee.

The rules of procedure include general rules for convening a meeting, including special arrangements on definitive anti-dumping or countervailing measures, the documentation to be submitted, ways in which the Committee will deliver its opinion, as well as issues on quorum and representation.

2 August 2011

E-CALL SERVICES (14070/11)

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

Thank you for your explanatory memorandum of 28 September 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October 2011. They decided to clear document 14070/11 from scrutiny.

This is an area in which we are quite interested, and it is clear from your memorandum that there are a number of significant policy questions in relation to wider implementation of the eCall system that would require resolution. Most prominently, your analysis of anticipated cost-benefit ratios as a result of regulatory action differs considerably from that of the Commission. There are also identified challenges and costs in relation to infrastructure development, vehicle fitting and emergency service procedures.

However, we also note that the document in question is not legally binding in the United Kingdom, with regulatory proposals – and an accompanying United Kingdom Impact Assessment – indicated to be following this Recommendation in 2012. We wish to defer more detailed scrutiny until those proposals emerge.

In the meantime, we would appreciate it if you could update us on the landscape in this area following the Government’s report on implementation of the Recommendation, due by the end of March 2012.
In particular, we would be grateful to know more specifically when proposals for regulatory action are anticipated.

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

18 October 2011

ENERGY EFFICIENCY (12046/11, 7363/11)

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

Thank you for your letter, of 21 June 2011, in which you advise that the Sub-Committee on the Internal Market, Energy & Transport has decided to clear the Energy Efficiency Plan from scrutiny. This is clearly a welcome development, although as the proposed implementing legislation for the Energy Efficiency Plan was published on 22 June, I am sure the Sub-Committee will continue to take a close interest in this issue. My officials are currently writing an explanatory memorandum for the draft Energy Efficiency Directive, which will be sent to you in the near future.

In the meantime, I will address the points you raised in your letter, and provide the supplementary information I promised during the Committee session.

1. ENERGY EFFICIENCY PLAN - 3% PUBLIC BUILDING RENOVATION TARGET

As I said during the scrutiny session, my assessment of the proposed 3% target is, like yours, that such a blunt and seemingly arbitrary target has the very real potential to be both costly and bureaucratic to enforce. Furthermore, I have yet to see evidence that such a target is the most cost-effective manner of driving energy efficiency improvements within the public estate.

However, I cannot share your view that the target is unlikely to be pursued. Indeed, the proposal remains, with some minor caveats, in the published draft Directive. My officials are watching developments closely, and currently exploring the views of other Member States.

2. THE 2020 ENERGY EFFICIENCY TARGET

I share the concerns of the Committee that progress towards the 2020 energy efficiency target across Europe is not progressing as rapidly as it could. While it is not strictly the UK’s responsibility to ensure that other Member States contribute to the 2020 target, it is clearly very much in our interest that they do so.

I see the new Directive as central to encouraging other Member States to realise the level of energy efficiency ambition agreed by Heads of State and Government as part of the Climate and Energy Package in 2007. The Directive has a clear role to set out robust, but proportionate, measures for action on energy efficiency, whilst maintaining an appropriate level of flexibility for Member States to realise energy savings in the most cost-effective way for their own national circumstances.

My officials will be working over the next year, with other Member States, to ensure that the Directive as finally agreed supports the timely achievement of the 2020 target.

3. SMART METER ROLL-OUT

In your letter you encourage the roll-out of smart meters as quickly as possible. I would like to reiterate what I said at the scrutiny session. I fully agree that the benefits of smart meters should be realised as quickly as possible. This is why the Government challenged the industry to accelerate the roll-out from the previous Administration’s end-2020 deadline. As part of this, we examined a number of options, and have concluded that a roll-out beginning in 2014, to be completed in 2019, is as quick as is practicable whilst ensuring a future-proofed solution.

4. REFURBISHMENT OF PUBLIC BUILDINGS

The Lord Chairman requested an update on the Government’s current position on the accounting treatment of public building refurbishment and retrofits.

Energy efficiency retrofit of public sector buildings can provide excellent value for money, often with a very short pay-back period, and can generate savings over many years. We therefore encourage
public sector organisations to consider how to prioritise energy efficiency within their funding envelopes.

We have explored the extent to which private sector finance can be used to fund such projects. Accounting and budgeting rules make it difficult for public bodies to access private finance for energy efficiency investments without assigning the resulting assets and liabilities to their capital budgets. These rules are designed to ensure that any borrowing is recognised in accounts.

Nevertheless, for those organisations that can borrow (for example foundation trusts), accessing private finance can be an option to find the up-front capital required. Innovative partnerships can also be developed, such as through facilities management contractors, whereby the private sector is paid by results. It may be the case that, in some instances, contracts in the form of service concessions might allow commitments to be assigned to operating rather than capital budgets and thereby remove a barrier to some types of energy efficiency project. For example this may be the case where organisations are developing an energy generation centre. However, such contracts would need to be appraised on a case by case basis.

It will be clear from the above that this is a complex matter bound by accounting and budgeting rules. It is also the case that the accounting treatment will be different for different projects and financing models. As such it has not been possible to provide generic advice for all public sector bodies to follow. The Cabinet Office Efficiency Reform Group will continue to address energy efficiency in government departments, through the reform agenda. The options it is examining include introducing payment by results agreements into facilities management contracts.

5. INNOVATION AND TECHNOLOGY

The Sub-Committee requested detail of the support offered by DECC for the development of innovation and technology.

In the Spending Review, DECC was allocated over £200m to support low carbon technologies, of which up to £60m will fund offshore wind manufacturing at port sites. In order to target the remaining investment, a series of Technology Innovation Needs Assessments (TINAs) has been undertaken to provide a robust evidence base for the innovation needs of the technology families most likely to be important in achieving the UK’s climate targets and delivering economic benefits.

Drawing on TINAs and other evidence, my department is reviewing the financial needs of a range of innovative technologies and is developing programme plans, in conjunction with others, to be implemented over the next four years. I expect to announce the first allocation of funding very shortly, and officials will then work closely with external stakeholders to finalise the design of these first interventions. Announcements on further allocations are expected to follow in the second half of this year.

With specific reference to support for Carbon Capture & Storage - an area in which the Committee expressed particular interest - the Coalition Agreement stated the Government's commitment to continuing with public sector investment in CCS technology for four power stations. The allocation of up to £1 bn in capital expenditure to the first CCS demonstration project announced in the Spending Review in October 2010 is the largest confirmed commitment to a single commercial-scale CCS project in the world and will ensure that the UK continues to lead the way on commercial-scale demonstration.

A consortium consisting of Scottish Power, National Grid and Shell is the remaining bidder in the CCS demonstration competition, which was launched in 2007. Subject to the quality and value for money of the consortium’s proposals and agreeing suitable terms, we hope to award the contract for the first demonstration project in the second half of 2011. We are aiming for the demonstration project to be constructed by 2014/15. I hope that this addresses all of the Committee’s queries.

13 July 2011

Letter from the Chairman to Gregory Barker MP

Thank you for your explanatory memorandum of 7 July, and for your letter of 13 July following our oral evidence session with you. They were both considered by the Sub-Committee on the Internal Market, Energy and transport who decided to retain the Directive under scrutiny.

The Directive follows substantially from the Energy Efficiency Action Plan, which we broadly supported as a means to improve Member State performance in meeting the Europe 2020 target for
energy efficiency. There are several elements of the Directive on which we should appreciate further clarification.

ENERGY SAVING OBLIGATION

Your EM suggests that you would want to monitor the development of this requirement for subsidiarity, but you do not elaborate. What are the Government’s concerns? The requirement would appear to be justifiable in order to meet the aims of the Directive, and to ensure consistency throughout the internal market. You welcome the flexibility for Member States to require companies to make savings to the same degree in other ways; this would appear to provide sufficient leeway to take account of individual circumstances in each Member State.

PUBLIC SECTOR REFURBISHMENT REQUIREMENT

This would appear to represent the element of the Directive most likely to be in breach of subsidiarity. We have previously discussed the issue with you in terms of its being a “blunt instrument” or overly prescriptive. While requiring public bodies to take action would appear to be justified as a means of achieving the target, we agree that a one-size-fits-all requirement, without any particular rationale for the 3% figure is difficult to justify. However, we note that the Commission’s impact assessment, while suggesting the efficiency gains will be relatively small, also judges that public bodies will, across Europe, make cost savings from implementing the requirement, while also boosting the market for energy efficient materials and products. We would be interested to receive your views on this, particularly in the light of the UK impact assessment when it has been produced. In addition, you have previously suggested that the proposal had gained little support in the Council. We note that this has not prevented its inclusion in the Directive – do you think it is likely to remain in its current form when negotiations are complete? We also note that the requirement to undertake a full inventory of public building stock is an ambitious undertaking. Have you made any assessment of the likely cost of doing this, and have you considered whether this work is likely to be undertaken by outside consultants?

SMART METERS

We have discussed this issue with you at length, both in writing and in person. We remain of the opinion that the speedy introduction of smart meters will be an effective way of meeting the target, particularly in the light of the information requirements set out in the Directive. We note that you believe energy companies will not be able to supply such information before smart meters are fully introduced, and while we would not expect information to be provided where it was not possible to do so, we would not wish to see this used to prevent the provision of such information in the future. How do you think the Directive will be amended to take account of this? We understand that smart meter roll-out by energy companies will take place next year: are you confident that such meters will be sufficiently future-proofed?

RELATIONSHIP WITH THE ETS

In your EM, you draw attention to the assessment by the Commission that greater energy efficiency might undermine the ETS by reducing the ETS price (to zero, in one scenario modelled by the Commission). We welcome the intention of the Commission to monitor the impact greater energy efficiency will have on ETS: the two measures should be complementary, and should not compete for the same energy savings.

There are two areas of your EM where you do not appear to give the Government’s opinion. On co-generation, you merely state that the measures in the Directive will create a presumption that cogeneration should be accommodated in plans to build or refurbish generation infrastructure. On split incentives for refurbishment you note that the measures will have an impact on who is responsible for funding refurbishment of communal areas. We should appreciate more detail on you thinking in these areas, and in particular whether the Government support the measures.

Finally, do you think it is possible at this stage to provide accurate cost estimates for the plans envisaged in the Directive?

13 September 2011
Letter from Gregory Barker MP to the Chairman

Thank you for your letter of 13 September seeking clarification on a several elements of the EU Energy Efficiency Directive, the subject of the Explanatory Memorandum I submitted to the European Union Committee on 13 July.

On the provisions in Article 6 of the Directive relating to the requirement to adopt a supplier obligation, our principle concerns related to subsidiarity are the level of prescription with regard to the specific design of the obligation. We believe supplier obligations can be a successful and cost-effective policy mechanism but their effectiveness very much depends on their adaptation to specific national market structures and we would be concerned if requirements in the Directive would preclude us from implementing schemes that meet our policy needs. An example of this is the current provision for exclusion of suppliers from any obligation. We believe the threshold has been set too low which would mean the obligation would capture smaller suppliers in the UK for whom an obligation would potentially act as a disproportionate burden or a barrier to market entry at a time when we are seeking to encourage greater competition in the retail market. We also question whether a right of approval for the Commission over the alternative policy approaches to be deployed is consistent with the right of Member States to determine their own policy frameworks.

With regard to the question of whether the renovation target in Article 4 and compilation of the inventory of publicly-owned buildings is cost effective, we are currently in the process of assessing the cost implications for the UK and hope to be in a position to submit a full impact assessment on the Directive to the Committee shortly.

We do believe that there is a leadership role for Government on energy efficiency, as demonstrated by our target to reduce GHG emissions from the central government estate by 25% by 2015. However, even if the deep renovation target set out in the Directive is cost-effective on its own terms, it is certainly not a given that it is more cost-effective than a range of other energy-saving actions, which raises the question of whether we should be mandating an approach in this Directive that will deliver lower energy-savings for any given investment by the public sector than alternative approaches.

As you say, this provision has attracted considerable opposition from Member States both in their original response to the Commission’s Energy Efficiency Plan and now in their early reactions to the Directive, with disappointment expressed that the Commission chose to ignore Council’s view that they should consider alternative approaches. It is clearly very early days in the negotiation of the Directive but certainly based on preliminary views expressed by Member States, I would be surprised if the requirement were to remain in its current form when the Directive is ultimately adopted.

The rollout of smart meters to all homes and smaller non-domestic sites in Great Britain is an important element of the Government’s strategy to meet the EU energy efficiency target. Consumers will have access to accurate and near real-time information leading to better choices on how they use energy, reduce carbon emissions and save money.

The installation of smart meters in GB is arguably the largest and most complex change-over programme in the energy industry since the switch to North Sea gas in the 1960-70s. The challenge for Government is to ensure that we put in place the framework and conditions to enable the mass rollout to proceed successfully and to ensure the benefits for consumers are fully realised. A major GB-wide programme is therefore needed to prepare for the mass rollout of smart meters.

The Government has established a Programme within DECC. Key elements of this include work to establish the Data and Communications Company (DCC) and finalise common minimum specifications for the smart metering equipment. This is to ensure smart meters installed during mass rollout are interoperable and deliver the functionalities required to realise the Programme’s benefits.

The Government has emphasised the value of an ambitious rollout timetable, delivering the broad range of benefits from smart meters to customers and the industry as quickly as possible. On 30 March 2011, we published national rollout plans for the installation of 53 million smart meters in 30 million homes and businesses across Great Britain. The document set out the overall strategy and timetable for rollout, and set out the Government’s intention to bring forward the planned completion date to 2019; at least one year ahead of previously published plans.

In August 2011 the Government published draft technical specifications for the smart metering equipment which were developed by industry working with DECC. It also published a contract

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1 Industry’s draft technical specifications for smart metering equipment (see http://www.decc.gov.uk/en/content/cms/tackling/smart_meters/smdg/smdg.aspx)
notice\(^2\) relating to the procurement of the central communications and data systems required to support the mass rollout; and a consultation on draft supplier licence conditions and technical specifications for the rollout of the smart metering equipment\(^3\).

We have, and continue to, work with stakeholders ensure that smart meters and the communications system have the functional capabilities and commercial arrangements necessary to enable future energy efficiency developments, for example smart grids, smart energy services (such as smart home appliances), microgeneration and the use of electric vehicles.

The final technical specifications will set minimum requirements for smart metering equipment. The Government expects smart meters that comply with the technical specifications to be available in volume during 2012. Suppliers who install smart meters before the technical specifications have been finalised do so at their own commercial risk.

The co-generation provisions are amongst the most complex in the Directive and we need to work with the Commission and other member states to understand the implications of the requirements. The Government is keen to ensure that all the necessary investment comes forward to build our next generation of power stations, and at the same time we need to ensure that our generation of electricity is as energy efficient as practicable, which is why we already support the use of combined heat and power (co-generation). We are therefore playing an active role in the technical working groups which are looking in detail at this provision, in order to be able to propose particular changes to the text of the Article. For example we think the term “waste heat” is unhelpful; the important point is that it should be “useful heat”. And we need to ensure that location decisions for new power stations are not unnecessarily constrained. Our objective is to ensure that we have both electricity and heat security in the future.

We recognise that split incentives are a barrier to improving the energy efficiency of buildings and we are taking action to address this through the Green Deal and have proposed that from April 2016 landlords will not be able to refuse reasonable requests from tenants, or local authorities acting on their behalf, to improve their property. In addition, from April 2018 we will make it unlawful to rent out a house or business premise with less than an “E” Energy Efficiency Rating. The requirement in the Directive is currently to report what we are doing to the Commission but we would not want to see that reporting to subsequently form the basis of proposals for further legislation on this issue at the EU level.

30 September 2011

**Letter from Gregory Barker MP to the Chairman**

I am writing to update you on the proposal for a Directive of the Council and of the European Parliament on Energy Efficiency which was the subject of an Explanatory Memorandum (EM: 12046/11) submitted to the Scrutiny Committee earlier this year. I am now, as promised, enclosing a copy of the initial Impact Assessment we have undertaken to assess the legal and financial implications of the proposal.

Preliminary analysis of this draft directive has highlighted the potential for significant costs to be imposed on business and government. The proposed measures impose additional obligations compared with existing UK policy, but with limited apparent net economic benefits.

The requirements of the proposed Directive as currently drafted are such that there would be very limited scope, if any, for the UK to pursue co-regulation or alternative forms of regulation in transposition. New legislation would be needed to implement many, but not all, of the proposed Directive’s provisions. In other cases existing legislation could be amended. There would also be problems in using copy-out in any implementing legislation; the language of Directive’s provisions, as currently drafted, is very unclear in places and would give rise to legal ambiguities and uncertainty. Full copy out would likely be deemed to be defective drafting.

Concerns have been raised by other Member States that certain provisions of the Directive breach the principle of subsidiarity. These concerns arise principally as a result of the very prescriptive nature of many of the provisions and the belief that the current level of detail in the Directive is unnecessary and that Member States ought to a greater extent to be left to determine how to implement the Directive’s objectives. The Government has sympathy with these concerns and will be seeking during

\(^2\) DCC communication services contract notice (see http://www.decc.gov.uk/en/content/cms/tackling/smart_meters/dcc/dcc.aspx)

\(^3\) Consultation on draft licence conditions and technical specifications for the rollout of gas and electricity smart metering equipment (see http://www.decc.gov.uk/en/content/cms/consultations/cons_smip/cons_smip.aspx)
the negotiations to avoid over-prescription and provide the flexibility for Member States to propose and adopt approaches that best reflect national circumstances and existing policy interventions, in order to ensure the principle of subsidiarity is properly respected.

We have also conducted a consultation on the Directive and have undertaken a preliminary analysis of the responses received from a variety of stakeholders. The overwhelming majority of written responses professed support for the stated objective of the Directive - to make a significant contribution to meeting the EU’s 2020 energy saving target - but there were divergent views on the individual elements of the Directive.

A strong theme of the responses was the need for requirements, including targets, to better reflect national circumstances and a general preference for binding targets as being preferable to very prescriptive binding measures.

The energy efficiency potential in the public sector was generally recognised by respondents, and the need to realise significant savings in this sector was also generally agreed upon. However, the impact of the recent economic climate, both in the UK and across the EU, on public sector finances, and in particular the ability of public sector authorities to embark upon mandatory, large-scale refurbishment programmes was questioned by many respondents.

The requirements in article 6 of the Directive relating to supplier obligations and/or alternative approaches to meet an annual energy-savings target attracted a significant proportion of the comments received. Whilst many responses recognised the success of extant supplier obligations in the UK (the Carbon Emission Reduction Target and the Community Energy Saving Programme), commentators were worried that the requirements could act negatively on plans for the future Energy Company Obligation. They also queried whether this model could be successfully applied to the non-domestic sectors, how economic or climatic variables would be accounted for in target-setting, and how (or if) obligated parties would be held accountable for the failure of their customers to realise energy savings.

Whilst the value of audits were generally recognised (when and if undertaken by, suitably qualified experts) many of the potentially affected respondents raised concern over the possible overlap and duplication of different auditing requirements. National programmes, such as the Carbon Reduction Commitment (CRC) and Climate Change Agreements (CCAs), and international programmes such as EU-ETS, the Industrial Emissions Directive (IED) etc., have the potential to add cumulative burden on companies, with little added value. Other respondents pointed out, however, that there may be certain business sectors which fall outside of the sphere of any auditing requirement.

Respondents also recognised the value of enhanced consumer access to accurate consumption data through improved metering and billing, but queried the apparent disconnect between the requirements of this article and of those of the 3rd Package. There was also a general perception that this article required the roll-out of smart metering, but to a much shorter timescale than set out in the UK’s smart meter roll-out programme.

Whilst the potential of Combined Heat and Power (CHP) to realise energy savings was generally recognised, many supported the need for an assessment of cost-efficiency before CHP was made mandatory for new plant. Similarly, there were a number of concerns raised about the possible economic impact of such CHP requirements upon industrial plant, where the production of power is not a core activity. The effect of such economic impacts was linked to investment decision-making, and possible negative long-term effects on strategic energy and industrial objectives. Many commentators instead argued that market dynamics should determine when and where plant is sited, and whether CHP capacity should be included. However, a number of commentators argued that heat is currently under-valued by both the existing planning systems, and by the markets themselves, and that a greater presumption in favour of CHP is warranted.

The Government will reflect carefully on both the emerging findings from the Impact Assessment and the public consultation together with wider discussions with stakeholders.

We will therefore be seeking to maintain a high level of overall ambition during the negotiations whilst securing a greater focus on outcomes rather than inputs, avoiding over-prescription and providing the flexibility for Member States to propose and adopt alternative but equivalent approaches that best reflect national circumstances and existing policy interventions.

We will also seek to ensure that all requirements are subject to a clear test of cost effectiveness and value for money. As it stands, the Directive does not adequately recognise that action should only be taken where it is cost-effective to do so. This is particularly the case with regard to the target for renovation of public buildings and both the public procurement and metering and billing provisions. It will also be important to ensure that the requirements do not act as a barrier to new entrants to the
energy market, and to minimise disproportionate burdens on business, in particular ensuring that there are no additional burdens on SMEs.

We will also wish to ensure that requirements relating to energy generation and transmission and distribution infrastructure do not inject unwanted uncertainty into pending investment decisions within the energy system but instead contribute to both electricity and heat security whilst avoiding conflict with UK planning regimes. Alongside that, it will also be important to ensure that the successful operation of the EU Emissions Trading System is not compromised by the Directive.

We are also keen to see the administrative and reporting burden on Government and business reduced and make sure that there is no competence creep on the part of the Commission and that the subsidiarity principle is respected.

Negotiations on the Directive have begun under the Polish Presidency with initial exchanges of views and more detailed consideration of a number of key articles; a Progress Report will be submitted to the Energy Council on 24 November. We understand that Denmark see making progress, and potentially securing agreement, as a priority for their Presidency and we expect them to devote significant time in the Energy Working Group to the negotiations.

The European Parliament has also begun its consideration of the proposal. The Parliamentary Rapporteur is arguing in his draft report for the Directive to be strengthened, further reducing flexibility for Member States and placing more of the requirements on a mandatory footing. The Parliament will be voting on amendments in Committee in January and in Plenary in April next year.

I will continue to keep you informed of developments as negotiations progress.

22 November 2011

E-PROCUREMENT (15215)

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

Thank you for your letter of 10 May, in which you confirm that your Sub-Committee on the Internal Market, Energy and Transport has decided to clear from scrutiny the Cabinet Office response to the European Commission Green Paper on e-procurement in public sector contracts.

In your letter, you also seek clarification about the Government’s position on legislation governing e-procurement. As I mentioned in my letter of 16 March to you, the Government wishes to see a fundamental simplification of the European rules governing public procurement, including e-procurement. You are correct that we would therefore oppose any further general prescriptive or proscriptive legislation in this area. However, there are some areas where existing applicable European legislation could be changed, simplified and improved.

The Cabinet Office response to the Commission identified a number of specific areas where existing European legislation could be altered. These suggested legislative actions and changes are intended to encourage and simplify the use of e-procurement, and reduce burdens on suppliers and public authorities.

These changes include: disallowing any insistence by public authorities that suppliers use "qualified certificates" and digital signatures when submitting bids electronically; explicitly permitting electronic documents attesting a supplier’s suitability and capability; simplification of the rules governing "Dynamic Purchasing Systems" and removal of the "aggregation" rules where electronic marketplaces are used. The consultation response which your Sub-Committee has cleared discusses these suggestions in more detail.

As you know, the Commission is also undertaking a wider review of the European public procurement rules, about which I have sent you another Explanatory Memorandum, on which we have exchanged correspondence.

You may wish to note that the Commission has indicated that any proposals it makes for legislative changes governing e-procurement will be included in wider changes to the public procurement rules following this latest consultation. My officials and I will be actively promoting simplification of the public procurement rules, whilst maintaining free and open markets in public procurement, in relevant EU fora, and in bilateral discussions with the Commission and colleagues from other Member States.
I hope this is helpful; I will of course be happy to address any further comments or questions you may have.

3 June 2011

ENERGY COUNCIL

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

I am pleased to enclose a copy of my written statement [not printed] to Parliament outlining the agenda items for the forthcoming Energy Council in Brussels on 24 November.

21 November 2011

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

I am pleased to enclose a copy of my written statement [not printed] to Parliament outlining discussions at the recent Energy Council in Brussels on 24 November.

29 November 2011

ENERGY MARKET INTEGRITY

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

I am writing to inform you that at the Environment Council on 10 October political agreement was reached on the Regulation on energy market integrity and transparency (REMIT). I am pleased to tell you that we successfully negotiated a text which addresses the issues which we highlighted as areas of concern. More detail on these issues follows.

LACK OF CLARITY IN DEFINITIONS OF INSIDE INFORMATION AND MARKET MANIPULATION:

We succeeded in negotiating a text which makes the scope of article 2 clearer by including a requirement on ACER to provide non binding guidance (with input from Ofgem acting as the conduit between industry and ACER) on the behaviour which can constitute market abuse. However, there are still concerns amongst market participants that this guidance will not provide sufficient clarity; this is why we argued for guidance to be included and it is hoped that this will provide greater transparency.

RELATIONSHIP BETWEEN ACER AND NATIONAL REGULATORY AUTHORITIES:

The Commission’s original proposal gave ACER a power to direct national regulatory authorities. However, we were of the firm view that responsibility for investigation and enforcement of the prohibition on inside information and market manipulation should rest with national energy and financial regulators. In the text which has been adopted investigation and enforcement powers remain with national regulators, and ACER has a monitoring and coordinating role. We were successful in negotiating a text which clearly states that NRAs are responsible for the enforcement and although ACER can direct NRAs to carry out investigations, subject to limited exceptions, the ability to make enforcement decision still rests with NRAs.

INTERACTIONS WITH OTHER FINANCIAL INSTRUMENTS: MAD, MiFID AND EMIR:

REMIT is closely linked with three existing pieces of EU legislation: the Market Abuse Directive (MAD), the Market in Financial Instruments Directive (MiFID) and the Regulation on over-the-counter derivatives, central counterparties and trade repositories (EMIR). The Commission published the draft proposals for MiFID and MAD in October, each of these will be negotiated over the course of the next year or so. All Member States outlined that it would be important for the package of instruments to complement each other, once finally adopted.
Otherwise, there could be excessive burdens on industry and regulatory authorities through duplication of reporting, monitoring and enforcement, an ineffective regulatory regime which does not close the regulatory gaps, and possibly other unintended consequences. The Commission and Presidency made textual amendments to avoid duplication of reporting and allow the updating of definitions in REMIT. This was difficult to achieve as this Regulation was the first to be agreed. DECC and HMT officials will endeavour to ensure that the renegotiation of the three existing pieces of legislation takes account of the obligations in REMIT.

The Regulation will enter into force 20 days following publication in the Official Journal of the European Union and we expect this to be before the end of 2011. Following entry into force it will now be necessary to ensure the successful implementation of the Regulation in the UK.

I have attached the final version of the Regulation [not printed].

15 November 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 letter of 19 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 6 June.

Thank you for providing a copy of the UK impact assessment, the contents of which the Committee notes with interest.

A response to this letter is not required, but I look forward to receiving updates after the appropriate Council meetings.

7 June 2011

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 7 June in response to mine of 19 May concerning the above-mentioned proposal.

The Secretary of State, Philip Hammond, attended the second Transport Council of the Hungarian Presidency in Luxembourg on 16 June where the issue was discussed. He set out the UK’s opposition to any staff or administrative cost increases for the Agency, and was able to accept revised wording on Agency resources, which addressed our concerns.

The Council agreed a general approach on the draft Regulation amending Regulation 1406/2002. This amending Regulation modifies and extends the tasks of the Agency to bring them in line with recent international and EU developments in the maritime safety field. The text of the general approach is attached to this letter.

The Commission reserved its position on the current text for procedural reasons until the European Parliament has opined on the proposal (scheduled for November). While it supports the general direction of travel of the Council and could accept the agreed text, the Commission regrets the reduction in EMSA’s role regarding research and inspections. Nevertheless, the Commission remains sensitive to the budgetary implications of the proposal and has promised to pay particular attention to this as negotiations progress.

28 June 2011

EUROPEAN SEMESTER (11491/11, 11196/11)

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

Thank you for your explanatory memorandum of 17 June, which was considered on 27 June by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear the documents from scrutiny.
We acknowledge that the Government did all they could to enable us to scrutinise these documents promptly, and note your abstention at EPSCO on 17 June and at ECOFIN on 20 June. However, as it was not appropriate for the UK to abstain at the European Council from its endorsement of the Recommendations on 24 June, we consider this endorsement to represent an override of the scrutiny reserve with regard to document 11196/11. As you will be aware, the Scrutiny Reserve Resolution of the House of Lords reads “no Minister of the Crown shall give agreement in Council or the European Council in relation to any document ... while the document remains subject to scrutiny.”

With regard to document 11491/11, the overarching Communication concluding the European Semester, we do not regard the European Council Conclusions in relation to this document as an override. Although the Conclusions might be said to agree to a “programme, plan or recommendation for European Union legislation”, they appear to agree to no more than the aggregation of the plans proposed in the individual Country-Specific Recommendations.

Scrutiny of these documents has highlighted a problem with the timing of the Semester (which, necessarily, must be concluded by the June European Council). The Country-Specific Recommendations were issued by the Commission on 7 June, leaving just eight working days before the first agreement at ECOFIN. Not only does this not allow sufficient time for scrutiny by national parliaments, but it also leaves little time for governments to reflect on the Recommendations before endorsing them. We note that others have criticised this short deadline, including Mr Matolcsy, the Hungarian Finance Minister. It would seem that the only option for improving the situation would be to bring forward the publication of the Country-Specific Recommendations. However, we recognise that this would impose a tight deadline on the Commission, who receive NRPs, Stability Programmes and Convergence Programmes at the end of April (or, in some cases, later). We would be interested to receive your views on how the timetable might be adjusted in order to allow deeper consideration of the Recommendations. In addition, we would like to know whether a robust process of review of other Member State plans was possible given the short timeframe.

On the general findings of the process, we note that Member States appear to have had some success in implementing some of the priority areas for action suggested in the Annual Growth Survey. The Commission’s Communication points to the control of public expenditure and the reform of public administration, offsetting trends in Member States running current account surpluses, and the reform of pensions systems. However, there are more areas which do not seem to have been implemented successfully, including the quality of public spending, early school-leaving, rebalancing employment protection legislation in order to stimulate job creation, and adjusting taxation systems to favour low-earners, implementation of the Services Directive and energy efficiency.

You will be aware that we have been pressing for the implementation of the Services Directive, and for greater efforts with regard to energy efficiency in relation to other documents.

With regard to the UK, we note that the Commission broadly endorses the Government’s programme. We were, however, concerned about the assessment of the long-term health of the UK economy and in particular the impact on the future deficit of the likely costs of ageing. We were surprised that the Commission did not produce a specific recommendation to address this point, and that it was not discussed in the EM. Although the analyses of other Member States suggest that more might need to be done with regard to pensions reform, this was not a recommendation made to the UK. We would be interested to know what lies behind the Commission’s assessment, and what might be done to avoid such a deficit developing.

Since you submitted your EM, the Recommendations have been the subject of discussions in ECOFIN and endorsement by the European Council. We would be very grateful for an account of any changes made to the UK Recommendation, and of the major changes made to the Recommendations to other Member States.

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

28 June 2011

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

I refer to the Government’s recent Explanatory Memorandum submitted in connection with the European Semester and the proposed country-specific recommendations to the UK. I am writing to provide the Committee with an update on recent negotiations of these recommendations in Council ahead of the Committee debate which will take place in the coming weeks.

Ministers discussed the European Commission’s draft recommendations to Member States in the Employment and Social Affairs Council (EPSCO) on 17 June; in the Economic and Financial Affairs
Council (ECOFIN) on 20 June; and in the General Affairs Council (GAC) on 21 June. The Government maintained a scrutiny reserve throughout these discussions. Changes to the draft recommendations agreed in Council were aimed primarily at guarding against fiscal risks and respecting the balance of competences between the EU and Member States.

The draft recommendations were amended to remove some of the more prescriptive elements on public spending, while maintaining a strong message of support for the Government’s programme of fiscal consolidation. The proposed text on early school leaving was modified to take a broad approach to addressing the skills needs of young people, while a proposed recommendation to reduce the number of workless households by increasing childcare provision was changed to focus on those who are inactive due to caring responsibilities. Finally, the recommendation on increasing lending to Small and Medium-sized Enterprises (SMEs) was amended to better acknowledge the Government’s recent policy responses to this issue.

The Prime Minister maintained a scrutiny reserve at the European Council on 24 June, where the draft recommendations were given political endorsement by Heads of State and Government. The final stage in the process will be for the ECOFIN Council to formally adopt the recommendations at its next meeting on 12 July.

I am confident that the amended draft recommendations reflect accurately the fiscal and structural reform challenges facing the UK, and provide valuable support for the Government’s objectives of deficit reduction and achieving strong, sustainable and balanced growth. They are broadly in line with other recent assessments of the UK economy by both the IMF and OECD. The Government will reflect on these recommendations, just as it would with any recommendations from other institutions, but importantly, no sanctions for failing to follow recommendations can be applied to the UK under any circumstances in this process.

I also acknowledge the letter that you sent to my colleague, the Commercial Secretary, on this issue dated the 28 June. Lord Sassoon will reply to that letter within the deadline of ten working days with the further information required.

I attach a copy [not printed] of the updated draft recommendation for your reference. As set out in the Explanatory Memorandum, the Government regrets that more time for was not available throughout this process for Parliamentary scrutiny, and I can assure the Committee that we will make this point in discussions with the European Commission.

3 July 2011

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

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

Thank you for your explanatory memoranda of 28 September 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 24 October 2011. They decided to hold document 13943/11 under scrutiny and to clear document 13941/11 from scrutiny.

The Communication

We note the very wide-ranging and ambitious nature of the Communication. We find it to be a helpful signpost of proposed future activities to develop external energy relations, and it gives us an early indication of possible areas of concern.

In your memorandum, you identify the need to guard against any requirement for Member States to “speak with one voice” encroaching on Member State competencies. We support the Government’s wish to protect its freedom of action. However, we would also wish to note that consensual positions of all Member States, where agreeable, could offer the potential to leverage the political influence of the EU as a whole for national gain.

You also call for existing mechanisms to be utilised in this area before employing devices such as EU negotiating mandates. This is a sound position to take, and powers should not be conferred without a clear need being identified. However, agreeing mandates for EU institutions to negotiate on behalf of all Member States can focus political will in order to overcome longstanding challenges, as has been seen during the Commission’s negotiations on removing charges for the use of Russian airspace for
EU airlines. As a result, such measures should continue to be open for consideration where suitable in the future.

Other ideas in the document are potentially very significant for the future of EU energy policy. Many would involve co-operation to facilitate the wider development of smart grid infrastructures. Such developments are of particular interest for the Committee, and we would appreciate it if you could keep us updated on any proposals emerging in that sphere. However, we believe that more detailed scrutiny would be more appropriate at the stage when such ideas emerge as legislative proposals, and so we are content to clear the document from scrutiny at this stage.

THE DECISION

The Decision is one such proposal to emerge from the document. We are supportive, as you are, of granting the Commission the powers it would require to judge the implications of intergovernmental agreements, enhance transparency around such agreements and to defend the EU acquis.

However, like you, we have concerns about the proposal for the Commission to be able to act as an observer in negotiations. We are not convinced that such a measure would be necessary when the proposal also envisages Member States providing regular updates during negotiations. We would be grateful to hear more about the stance you will take on this element of the proposal in future negotiations.

Your letter is circumspect on the four month standstill period proposed. This is a point we wish to consider further, but would appreciate hearing more about the Government’s analysis of its possible implications before doing so.

Elsewhere, you identify the need to ensure adequate protection for confidential elements of proposals, and the need to exclude nuclear agreements from the scope of the proposal. We wish to support your stance on both points, and hope that the Government maintains a strong position in these respects during negotiations.

Given the gravity of our concerns, we wish to hold the document under scrutiny. We would appreciate it if you could keep us updated on any developments in relation to the proposal as negotiations progress.

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

25 October 2011
Letter from Gregory Barker MP to the Chairman


You noted the Sub Committee on Internal Market, Energy and Transport’s concern on the proposal to relax the requirement for the Commission to reduce funding in subsequent years if sufficient in-kind contributions have not been made by participating industrial partner(s),

The aim of the proposal to amend the existing regulation EC No 521/2008 is to widen the scope of what is counted as in-kind contribution. The Fuel Cell and Hydrogen Joint Technology Initiative reimburses 50% of direct costs for large industries (the 50% funding level is a requirement for participation in this initiative). Under the existing regulation, industry has to cover the contributions from other participants.

The proposal therefore redefines the eligible in-kind contribution to include those of other legal entities such as universities, research centres and public bodies. This should make the funding levels more attractive to industry as they would additionally be reimbursed for the contributions of these participants.

The proposal also modifies the wording in Article 12 - Sources of financing, Paragraph 7 second sub paragraph of EC No 521/2008 from “.....shall reduce its contribution the following year” to “.....may reduce its contribution the following year”. This will allow the Commission the flexibility to reduce funding if it is deemed necessary while providing continuous public support for fuel cell technology and hydrogen energy. The continuous support will help extend technological development and validation into market development and commercialisation.

With regard to your question about £5.67m (£4.9m) funding to TfL for the hydrogen bus project, this figure is the amount that was provided entirely by the Commission. Industry provided greater than this matched funding requirement for the project. London Bus Services Ltd, the subsidiary of TfL which received the funding, was regarded as representing industry for the purposes of this project.

30 June 2011

Letter from the Chairman to Greg Barker MP

Thank you for your letter of 30 June.

As we have stated in previous correspondence, we are supportive of efforts to encourage further research in this important area. We are keen to ensure that such efforts are not undermined through the operation of this undertaking, and as a result we are grateful for your clarification as to how the scheme will operate.

Should there be any further developments in relation to this proposal, we would appreciate being kept up to date, but otherwise we do not expect a response to this letter.

8 November 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 supplementary explanatory memorandum of 19 May, which was considered on 6 June by the Sub-Committee on the Internal Market, Energy and Transport. The SEM was cleared at the sift, but the Sub-Committee has now decided to clear the original document from scrutiny.

We were grateful to be provided with your impact assessment, but maintain that such documents would be of much greater value if produced earlier in the negotiation process.

I do not require a response to this letter.

7 June 2011
Letter from the Chairman to Baroness Wilcox, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 1 August, which was considered by the Sub-Committee on Internal Market, Energy and Transport on 10 October. They decided to clear it from scrutiny.

We note that the Government broadly support the content of this Green Paper, which we also consider to be a significant document. We will therefore look forward to scrutinising any related proposals that may emerge from this Green Paper in due course.

While we appreciate that the content of the Green Paper does not anticipate any legislative proposals at this stage, we would be interested in receiving further information about what the implications of the Commission’s approach may be for the availability of UK catch-up TV services, including BBC iPlayer, in other Member States – some of which we understand are currently restricted for licensing purposes.

11 October 2011

Letter from Baroness Wilcox to the Chairman

Thank you for your letter of 11 October. I am grateful to the Internal Market, Energy and Transport Sub-Committee for clearing the document. In doing so, you requested more information on the implications of the Commission’s approach for the availability of UK catch-up TV services, including the BBC iPlayer, in other Member States.

The Green Paper notes the increasing online availability of television programmes after their initial broadcast (catch-up TV services) and the potential difficulties arising from clearance of rights. The BBC’s iPlayer and the equivalents from the other UK Public Service Broadcasters (PSBs) are intended to allow those who can lawfully watch live TV in the UK (that is UK licence fee payers) to also be able to watch those services in a time-limited window after first transmission; however they are currently also legally available to non-licence payers. Outside that window the programmes may or may not be made available either on a digital TV service (which broadcasts to a schedule set by the broadcaster) or a video-on-demand service which allows the viewer to select a programme from a catalogue for viewing at the time of the individual’s choice. How each programme is made available will depend on how the rights have been sold.

The Commission’s approach in the Green Paper is that rights sold on a pan-European basis rather than on a territorial basis would widen access to catch-up and other online services across the EU. It will however remain the case that many rights holders may not want to sell on a pan-European basis. Many offerings in the audio-visual repertoire are specifically adapted for each market, so the provision of pan-European licensing will not automatically guarantee availability. There is also a particular issue to consider with iPlayer in that it is funded by the UK Licence Fee. We would expect any broadcaster to sell their content for distribution to such viewers in territories where this method is economically viable.

Cases in the Court of Justice of the EU may also have a bearing on the Commission’s future approach. Since publication of the Green Paper, the EU Court of Justice has issued its judgment in the FAPL case concerning the restrictions on sale of Greek decoders to users outside Greece. This case has implications for territorial restrictions on services and may eventually impact on the availability of catch up TV services, but it is too early to assess any impact on the Commission’s thinking.

The Government may wish to comment on this issue in its response to the Green Paper. I will of course write to the Committee with a copy of the Government’s response which is due by the Commission’s deadline of 18 November.

2 November 2011

Letter from Baroness Wilcox to the Chairman

In the Explanatory Memorandum submitted to Parliament for scrutiny on 1 August 2011 it was highlighted that the Government intended to draft a Government Response to the Commission’s public consultation on the above Green Paper to be submitted by to the European Commission by 18
November 2011. The Commission will use the feedback from the consultation to launch a debate on the opportunities and challenges of the online distribution of audiovisual works.

As indicated in the Explanatory Memorandum of 1 August I wish to share the Government Response with the Scrutiny Committees and therefore I now have pleasure in submitting the document for your perusal (Annex A).

The UK Government’s response has been drafted by the Intellectual Property Office on behalf of BIS in conjunction with the Department for Culture, Media and Sports. The submission takes an overview of the issues and does not seek to answer the individual questions posed in the Green Paper, but focuses on the topics they raise.

The key points raised in the Government response are:

— The Government welcomes the publication of the Green paper as a positive move that opens up a discussion and debate on issues that are important to stakeholders in the audiovisual sector;

— It would be useful to see sound evidence which demonstrates the nature and scale of pan-European issues relating to the online distribution of audiovisual works;

— The UK would be keen to look at the scope for simplification of copyright licensing insofar as it is needed or is being sought for audiovisual works. In the wake of the Hargreaves Review the UK Government intends to consult on measures to simplify and modernise copyright licensing;

— The UK is interested in developing a flexible scheme that allows access to a wide variety of orphaned copyright works;

— The Country of Origin principle continues to be an important one and requires careful consideration in the light of recent court cases;

— We agree that there is a need to reflect upon whether copyright exceptions should be modernised at EU level to better support innovation and growth;

— Legislation in the area of the preservation of film archives might clear up the legal uncertainty for public interest organisations;

— We would hope that the Green Paper consultation exercise will provide concrete proof of the need for an unwaivable right to remuneration for creators before any changes to the legal framework can be considered;

— Issues of access to creative content and digital technologies by disabled people are important to the UK Government, but there is still significant work to be done at a national and European level to achieve an inclusive society.

The Government Response was submitted to the Commission on 18 November and should be published on the Commission website. I will keep you informed of any significant further developments regarding this matter.

22 November 2011

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

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

I write following my earlier response to your letter of 17 May about the European Commission’s green paper on the EU corporate governance framework.

In your letter you specifically raised the issue of transparency and asked about the situation in other Member States. My officials have looked into this, having spoken to administrators in France, Germany, Holland, Poland and Spain. In these countries, there are very similar requirements to disclose information as the ones in the UK. Like in the UK, the requirements are proportional in relation to the circumstances of an individual company.
Although it may still be some time before the Commission formally announce their next steps, we have had some encouraging informal soundings from them. They received over 400 responses, and around a quarter of all of these were from the UK. Across the board, not just within the UK, it seems there is very little appetite for many of the suggestions in the paper, with respondents wanting these issues to be left to shareholders to decide on.

I also enclose a copy of our response to the green paper, and a summary of that response [not printed].

25 September 2011

Letter from the Chairman to Edward Davey MP

Thank you for your letter of 25 September, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 7 November.

We are grateful for the information about the transparency requirements which apply in other Member States. We also note the content of your response to the Commission’s consultation on EU corporate governance.

We have now decided to clear the document from scrutiny.

8 November 2011

HEAVY GOODS VEHICLES (11857/08)

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

I wrote to you on 23rd November 2010 to inform your Committee that the Transport Council had reached political agreement on plans to amend Directive 1999/62/EC (The ‘Eurovignette’ Directive). I am writing now to inform you that the European Parliament has completed its second reading of the amended directive. The EP’s second reading position on the proposal is essentially the same as the position agreed at the Council of Ministers in October, and it is therefore expected that the Directive will be quickly adopted following a further vote of the Council.

The main relevant amendments are below. I listed many of them in my letter of 23 November. Below I also set out where negotiation with the European Parliament has resulted in some minor changes:

— The removal of mandatory references to earmarking of revenues from charges for externalities. The EP argued strongly for mandatory earmarking, but we have secured a statement from the Commission saying that the text does not create any legal obligations on Member States;

— The right for Member States to vary charges in sensitive areas, in order to reflect congestion, noise, air quality and other externalities;

— The right for Member States to exempt vehicles below 12 tonnes from the provisions of the Directive. The EP argued to restrict this right. Instead, the text now requires Member States to provide reasons for exempting such vehicles;

— The protection of the right of Member States to run flat rate time-based schemes of the sort being considered by the UK in the long-term as opposed to as a transitional arrangement towards (more expensive, less viable) distance-based schemes, as Favoured by the EU Parliament and Commission;

— The text does not give the Commission new delegated powers to change the ceilings on distance-based user charges as originally envisaged;

— The rolling back of the Commission’s powers to use the Comitology process to make changes to aspects of the Directive, including the methodology for calculating charges and, importantly, the minimum rates for Vehicle Excise Duty.
The European Parliament’s amendments do not pose any difficulties for the UK and we remain of the view that the amended directive represents a significant policy gain that helps shift the balance back from Brussels to Member States on charging.

13 September 2011

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

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

Thank you for your letter of 19 January, setting out your interest in learning whether there are any plans for the European Court of Auditors (ECA) to analyse the effect of the SME Test in the EU policy-making process. Reducing regulatory burdens on SMEs is a key priority for the Government as set out in the 18 March EU growth letter signed by David Cameron and eight other EU Heads of State.

My officials have been trying to contact the authors of the ECA report to discuss their plans to analyse the use of the SME Test but as yet have not received a response.

However you may be interested to know that we are actively calling for the SME Test to be strengthened after a study by my officials showed that, since 2008 when the SME Test was introduced, out of 60 impact assessments that reference SMEs only three included an SME Test.

One way we believe this could be achieved is by reversing the burden of proof whereby micro-businesses would be exempt from EU legislation with SMEs receiving special treatment or exemptions, unless there is an overwhelming, quantifiable case for their inclusion.

My officials met with the Commission’s SME Envoy and other senior Commission officials who were very interested in our ideas. This followed on from the March EU Council where the Commission was mandated to report by the summer on how to reduce the overall burden of regulation, including for SMEs, and propose ways to exempt micro-entities from future regulation.

In the run-up to the Commission’s report we successfully called for the strengthening of the SME Test in the May Competitiveness Council Conclusions on Smart Regulation and the Conclusions on the review of the Small Business Act. We will work closely with Brussels to make this a reality.

14 June 2011

INDUSTRIAL POLICY: REINFORCING COMPETITIVENESS (15587/11)

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

Thank you for explanatory memorandum of 1st November regarding the above document, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 21 November 2011. They decided to clear the document from scrutiny.

We note, as you do, that the document contains a number of policy themes we have seen in the past; nevertheless, we support the broad thrust of the development areas outlined. We will scrutinise carefully specific legislative proposals emerging from this agenda.

You outline that you will be reviewing the key findings in the Communication and considering whether any lessons can be applied to UK industrial policy. We would be grateful for an update after you have made that assessment as to how the UK could do better. In particular, we would be grateful to hear more about the problems identified by the Commission in relation to e-government usage by business, and the possible solutions.

24 November 2011
Letter from Mike Penning MP, Parliamentary Under-Secretary of State, Department for Transport, to the Chairman

Thank you for your letter dated 22nd March about your Committee’s further 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). I apologise for the time it has taken me to reply. In the intervening period, arduous negotiations on the detail of this proposal have been necessary. However, I can now report that a clear direction has emerged which is satisfactory to the Government.

The activities to be funded under the Regulation are varied but are developmental rather than prescriptive. Some activities are welcome, such as:

— further work to develop the prototype European Marine Observation and Date Network (EMODNET),

— work to support the consistent application of the Marine Strategy Framework Directive across the EU, and

— the development of a decentralised information exchange system to enhance maritime surveillance in keeping with the roadmap towards establishing a Common Information Sharing Environment in the EU.

Work with third countries over maritime areas in which interest is shared, such as the Mediterranean, is also envisaged. A welcome concomitant to this would be to urge countries that have not yet done so to ratify the United Nations Convention on the Law of the Sea. The Commission has been leading a series of initiatives to develop other regional sea basin strategies, most recently on the Danube and Baltic. These have proved useful for those concerned where they have helped tackle specific issues. The Commission has recently begun similar work for the North Sea and Atlantic which are of particular interest to the UK. Our position towards these embryonic strategies is and will continue to be to press for evidence of demand and added value. In the case of the Atlantic Strategy this evidence is not immediately apparent and there is potential for creating duplication and confusion. However, other Member States with Atlantic coastlines are keen to see some work undertaken. Officials will also monitor closely developments arising from the preparatory studies and projects to support the development of Integrated Coastal Zone Management and Maritime Spatial Planning, in readiness to challenge any direction of travel towards potentially unnecessary EU legislation.

As far as initial funding under the proposed Regulation goes, the amount is relatively small. Officials will engage with and seek to influence the work on an Atlantic strategy to ensure that what emerges reflects UK thinking as much as possible. The Commission has reassured Member States that its aims will not entail the creation of new governance structures. Following a public consultation on such an Atlantic Strategy, a Commission Communication is expected in the near future, which itself will be subject to Parliamentary Scrutiny in the normal way.

This proposed Regulation does not, in itself, imply further EU legislation except for the possible renewal of the programme beyond 2013 if deemed to be appropriate. The main emphasis is on the development of cross-sectoral tools which would improve information sharing between Member States and foster greater cooperation with the aim of enhancing environmental goals and growth in the maritime sector in its widest sense.

I should also like to take this opportunity to update you on the financial aspects of this proposal. In negotiations in Brussels, we have continued to press our point, with the support of a significant number of Member States, that any expenditure on the development of the Integrated Maritime Policy for the period to 2013 should be met from within existing budget provision. We have achieved that aim to the greatest extent possible. A reduced amount of funding (€40 million as compared to the originally proposed €50 million) is now envisaged for the period 2011-2013. Existing funds for 2011 will go into a reserve, pending final agreement of the Regulation, and there are no new resources for 2012 compared to the draft 2012 EU budget presented by the Commission. Funds for 2013 are relatively low (€200 000), though this may be additional resource. The next Multiannual Financial Framework (MFF), which runs from 2014-2020, will set out ceilings on the amount of funding available to different EU policy areas over that period. Negotiations on the next MFF are ongoing. The UK is seeking significant budgetary restraint in the next MFF and does not wish to agree to any specific spending over this period until a comprehensive agreement is reached. Importantly, the
recitals to this particular Regulation state that the envisaged future work on integrated maritime policy is without prejudice to these broader financial negotiations.

The question over the legal bases has now been resolved. I expect the references to Title V legal bases to be removed. The European Parliament Committee on Legal Affairs has also called for that to be done. To make it explicit that the Regulation has no Title V content, I expect a recital to be included stating that funding relating to maritime surveillance activities is limited to the development of a decentralised information exchange to enhance interface between existing surveillance systems, plus a further recital that simply states that none of the actions envisaged for the programme would require an additional legal basis. Therefore, I am confident that the Regulation to be approved by Council will be acceptable to the Government. The Regulation is expected to come before the TTE Council on 24th November.

24 October 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 24 October, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 7 November. They decided to clear the document from scrutiny.

We note that the level of funding has been decreased from €50m to €40m, and welcome the Government's work in negotiating this reduction.

In previous correspondence we have raised queries as to how the funds available as part of this policy will be used. We accept that the funding aims are developmental rather than prescriptive, but appreciate your outlining of the areas which the Government find most agreeable. This gives a good indication of the landscape in the area.

You refer again in cool terms to the Atlantic basin strategy. Though we are supportive of the potential of co-ordination in relation to the Atlantic sea basin, we agree that actions at a European level should be shown to add value over and above activities at national level (and not merely be duplicative) before proceeding.

Finally, you note that the legal base question is now resolved, and that the Government are seeking specific recitals to ensure clarity on this point. We urge you to take a strong position in this respect in the interests of legal certainty.

Otherwise, we would appreciate an update immediately following the Transport Council meeting on 24 November, in order to determine whether any queries emerge from any negotiated agreement. We do not expect a response prior to then.

8 November 2011

ITER FUNDING SHORTFALL (9419/11)

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

Thank you for your explanatory memorandum of 10 June. It was considered by the Sub-Committee on the Internal Market, Energy and Transport on 4 July, and they agreed to clear it from scrutiny.

We welcome this attempt to resurrect the negotiations on financing ITER. We note that the new proposal will not increase Member State contributions over and above that previously agreed by the Council in December 2010. However, we repeat our concern that funds reallocated from within Heading 1a will have a detrimental impact on proposed research projects in the coming years.

The new proposal is to source a greater proportion of the funding from the Heading 5 margin, in relation to that to be taken from Heading 2. We would be interested to receive your views on why it is now thought possible to transfer more funds from this heading.

The predecessor to this proposal failed to reach agreement in the European Parliament. Do you have any reason to believe that this proposal will not suffer the same fate?

5 July 2011
Letter from Justine Greening MP to the Chairman

Thank you for your letter of 5 July on negotiations to finance the International Thermonuclear Experimental Reactor (ITER) for 2012-13. I note that the Sub-Committee on the Internal Market, Energy and Transport cleared EM 9419/11 on 4 July, but would welcome further information on how existing margins, particularly under Heading 5, might be used to fund ITER and prospects for agreement with the European Parliament (EP).

During June and July, Council’s budget committee considered the Commission’s proposal for ITER funding, but it has not yet been possible to reach agreement. A number of Member States are insisting that any agreement on ITER ought to be made to the same timetable, and as part of, a final deal on the 2012 EU budget. These Member States have blocked any deal to date.

Council has agreed to re-examine ITER funding after the end of the agricultural year for 2011, in view of deciding on the sources and scale of additional financing. At this later stage in the budgetary year, more reliable estimates of available margins under each heading, including Heading 2 and Heading 5, are expected to be available, as implementation in 2011 will be more advanced. The Council has also invited the Commission, in cooperation with Fusion 4 Energy (F4E), to present by 15 October 2011 reports on: the progress achieved in implementing the cost containment and savings plan; the performance and management of the European Joint Undertaking for ITER; the Development of Fusion Energy and the ITER project; and, the fulfilment of the scheduled activities within the annual budget.

ITER funding was raised at a trilogue meeting on 11 July. The Presidency reported back to Council on 13 July, explaining that the European Parliament had not conveyed a clear position on the details, but would wait to consider any proposal agreed in Council. The EP would, however, prefer not to link negotiations on ITER to conciliation on the draft 2012 EU budget in the autumn. The Government continues to support a swift agreement on ITER funding, while interrogating the overall level of extra financing required by the ITER project and possibilities for further efficiency savings.

16 July 2011

Letter from the Chairman to Chloe Smith MP, Economic Secretary to the Treasury

Thank you for your predecessor’s letter of 16 July, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October.

We apologise for the delay, on account of the Parliamentary recess, in sending our response.

In our previous letter, we asked about why it was now thought possible to draw a greater proportion of funding from Heading 5 compared to Heading 2. In response it was suggested that the question of margins would be better addressed subsequent to the end of the agricultural year, as margin estimates would be more reliable. We would be grateful if you could provide a more detailed answer subsequent to those updated calculations.

Elsewhere, your predecessor’s letter outlined clearly the political landscape around ITER funding negotiations. We note that the stance of the United Kingdom Government is not responsible for the slow rate of progress, and support the Government’s continued attempts to reach a solution. Given the difficult nature of negotiations, we would appreciate it you could provide timely updates on their progress.

18 October 2011

MINIMUM LEVEL OF TRAINING FOR SEAFARERS (14256/11)

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

Thank you for your explanatory memorandum of 13 October, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 14 November 2011. The Committee decided to hold the document under scrutiny.

Our concerns with the proposal centre on the requirement for data sharing with the Commission. You point out that the data collection infrastructure is already in place in the United Kingdom and that statistics can be produced as required; yet you also claim that supplying the data will incur further expenditure. Though we acknowledge that debate is constrained owing to the absence of a
Commission Impact Assessment, we would appreciate it if you could outline the Government’s concerns with the data sharing requirement in more detail.

On the same point, we agree with your stance as regards the anonymity of any data shared with the Commission. We urge you to take a firm stance to ensure that anonymising software is in place before any obligation is placed upon Member State, and that the responsibility for paying for the software is delineated clearly.

15 November 2011

Letter from Mike Penning MP to the Chairman

I am writing to you in response to your letter dated 15 November in which you indicated your Committee’s decision to retain the above proposal 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 the EM on 13 October 2011.

I am pleased to report that in negotiations at working group level we have seen substantial re-drafting of the proposal to take account of the Government’s initial concerns which, in summary, covered (i) data transfer; (ii) the use of delegated acts; and (iii) the timeline for transposition.

You asked for more information on the Government’s concerns with the data sharing requirement. We would question whether adequate consideration has been given to the ease and cost of extracting data from national databases and converting it for inclusion in the database managed by the European Maritime Safety Agency (EMSA). We have discussed our concerns with officials from EMSA and are encouraged that there will be a degree of flexibility and that advice will be offered to national administrations.

Notwithstanding the lack of support at working group level to block the requirement to transfer the data we nevertheless were successful in obtaining an amendment to the proposed Directive to ensure that the anonymisation of seafarer personal data is made a mandatory pre-condition of the obligation to transfer data.

The Commission has confirmed that the funding for the database is already provided for the next financial period within the budget of the European Maritime Safety Agency. With regards to any future decisions on maintenance and upgrading of the anonymising software, we have successfully negotiated an amendment which would require an implementing act to be agreed to determine measures for transmitting data. Anonymisation and costs are inherent to the process of transmitting data and as such this provision would allow us to influence any future discussions.

As a result of our negotiations, the use of delegated acts would now be limited to amending the Directive only with regards to further updates to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). There is now specific language in the text which would prevent the use of delegated acts to override the provisions mandating the anonymisation of data before transmission.

Finally, we have also been successful in arguing for a longer transposition deadline. Member States would now have 18 months to implement the changes in the Directive which reflect the STCW amendments, thus replicating the deadline agreed between States and the International Maritime Organisation. With regards to the EMSA database, the obligation to transfer data would only begin after 24 months following adoption of the Directive.

Overall I believe that the proposal as amended in negotiations addresses the UK’s earlier concerns. The Presidency is hoping that a General Approach can be reached at Transport Council on 12th December, and we expect that this can be achieved.

21 November 2011

PARTNERING IN RESEARCH AND INNOVATION (14555/11)

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

Thank you for your explanatory memorandum of 10 October 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 14 November 2011. They decided to clear the document from scrutiny.
Collaboration to take forward research and innovation are valuable means of achieving value from investments in this sphere, as seen in the thriving university and research sectors in the United Kingdom. We are therefore supportive of the possibilities in this area. We agree, though, that EU instruments must add value over and above national actions; they must also be compatible with actions taken at a national level, such as the technology roadmap frameworks developed by the Technology Strategy Board.

The major query arising from the proposal appears to be the nature of the role that the European institutions will play in future co-operative initiatives. The Communication foresees a stronger co-ordinating role to drive the projects forward, whilst your memorandum supports Member States and the private sector taking projects forward on a voluntary and flexible basis. We are in principle supportive of this stance, and of restricting the role of the Commission to areas where its input is necessary to further collaborative efforts.

The other question relates to the calls for up-front commitments from both public and private partners. As stated in your memorandum, the impact of such commitments is dependent on the specific details of any proposal. As a result, we will be diligent in our consideration of these calls as part of the Horizon 2020 proposal due later this year.

15 November 2011

POLISH PRESIDENCY PRIORITIES

Letter from the Rt. Hon. Theresa Villiers MP, Minster of State, Department of Transport

I am writing to advise your Committee of the transport issues that are likely to be taken forward during the Polish Presidency.

The Presidency will be seeking agreement on a number of dossiers including the rail recast, the EMSA regulation, and the forthcoming dossiers on TEN-T guidelines and digital tachographs.

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

— There will be two Transport Councils during the Polish Presidency. The first one will be in Luxembourg on 6 October and the second will be in Brussels on 12 December.

— The Polish Transport Minister appeared before the European Parliament on 12 July. The Minister also opened a conference on 12 July in Brussels on High Speed Rail, organised by Polish regional representations.

— An Informal Ministerial Transport Council will be held in Sopot on 5-6 September with a focus on how to fund infrastructure projects from sources other than national budgets.

— A high level conference will take place in Szczecin on 20-22 September to discuss green freight corridors, focusing on solutions such as ITS and infrastructure planning.

— A high level conference on the Eastern Partnership will take place in Krakow on 25-26 October, to discuss the facilitation of transport operations. This will build on Council Conclusions which the Presidency hopes to have adopted at the October Council.

THE DOSSIERS

Horizontal

The proposed revision of the TEN-T guidelines will be the Presidency’s transport priority. The guidelines identify “projects of common interest” via criteria and maps. These projects of common interest will then be eligible for TENs funding.

The Commission proposal is expected in the latter half of September, and there will be a presentation at the October Council. The Presidency would like to reach agreement on a general approach in December, and are planning to commit two working groups a week to achieve this. They are keen to start engaging early with Member States to hear their views.
The Presidency hope to adopt Council Conclusions in October on their Communication on transport relations with the EU neighbourhood (EM 12635/11), particularly in the East. The Communication seeks to boost co-operation with Eastern neighbours in a similar way to that which has been achieved with the Southern neighbourhood.

**Aviation**

It is not yet clear exactly what, by way of legislative proposals, will emerge from the Commission as part of the Airports Package. This is scheduled for adoption by the Commission in October, but could be delayed. The Presidency have suggested that they would wish to take discussions forward on the planned revision to Ground Handling Directive 96/67, with a progress report or policy debate at the December Council. There may also be a legislative proposal to revise the airport Slots Regulation, but this has not been included on the draft agendas for October or December.

On external relations, we expect to see more negotiating mandates and negotiations on agreements with eastern neighbourhood countries such as Moldova, Ukraine, and Azerbaijan, but no major new initiatives this year.

In the near term we can expect the Presidency to take forward a proposed Mandate authorising the Commission to negotiate a High level Agreement with Eurocontrol. It is also likely that a Communication on SESAR Deployment will emerge after the summer, and the Presidency hope that some short Council Conclusions can be agreed at the December Council.

**Land**

The Presidency will pick up work on the Interbus Agreement in July with a view to agreeing a mandate in October to authorise the Commission to open negotiations on the revision of the Agreement. The existing Agreement sets out some basic rules on issues like drivers’ hours and who is a fit and proper operator for occasional international bus and coach operations. The new mandate will seek to enlarge the scope to include regular passenger transport, to include countries that are not currently covered, and to align the agreement with Regulation (EC) No. 1073/2009.

A proposal is expected shortly on a Regulation to amend the technical specification for digital tachographs, possibly altering the basis on which they operate (e.g. the arrangements for driver cards). The Presidency expect to start work on this dossier as soon as it comes out, and are aiming for a general approach in December. We will be looking to avoid any increased burdens or costs for UK industry and the Government, whilst being supportive of any changes that may bring benefits.

Following the General Approach reached at Transport Council on 16 June, the Presidency will begin trilogue negotiations with the European Parliament on the 1st Railway Package Recast (EM 13789/10). However the vote in the European Parliament TRAN Committee has been delayed to 10th October with plenary scheduled for November at the earliest.

**Shipping and Inland Waterways**

The Presidency will start discussions with the European Parliament on the EMSA Regulation (EM 15717/10), although the European Parliament first reading plenary is not expected until November. If a first reading deal cannot be achieved, the Presidency hope for a political agreement in December. The UK will be looking to defend the gains we made during initial discussions on issues such as the budgetary implications and off-shore oil and gas platforms, and will want to resist any attempts to further widen EMSA’s tasks in an unacceptable way.

The Presidency hope to get final agreement on the Council Decisions concerning the accession of the EU to the 2002 Protocol to the Athens Convention (EM 17511/10). The European Parliament first reading plenary is currently scheduled for October.

The dossiers described as the maritime social agenda will no longer be presented as a package, but will be split along legislative and non-legislative lines. The proposed revision to the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Directive is expected at the end of July. The Presidency expect this to be a straightforward technical update to reflect international developments, and will aim for a general approach in December.

Other aspects of the maritime social agenda have been delayed: initial proposals to incorporate the Maritime Labour Convention into EU law would now comprise two amendments to the Flag State and Port State Directives, but are not expected before October / November. A communication on social aspects at sea, based on the Task Force report due out in July, will also issue in October / November, as will a revision to the Marine Equipment Directive. At the moment the Presidency are unsure how much work will be possible on these dossiers.
Other work will include IMO preparation and the Integrated Maritime Policy (14284/10). The latter of these will be taken at the GAC rather than Transport Council, and is not expected to be included on a Council agenda until November. The European Parliament first reading is currently scheduled for September. The Presidency are keen to initiate discussions on Boatmasters' Certificates if the proposal is published towards the end of 2011 as expected.

While responsibility for Galileo has recently moved from my Department to the UK Space Agency, the dossier remains in Transport Council and it is possible that it will feature on a Council agenda during the Polish Presidency.

BUSINESS IN OTHER COUNCILS

Competitiveness Council

There are three live transport-related “technical harmonisation” files being discussed in the Competitiveness Council. The Presidency will be looking for agreement on the final emissions flexibility scheme proposal, concerning vineyard tractors (EM 5427/11). The European Parliament first reading plenary is currently scheduled for September.

The Presidency are not looking to make significant progress on the two larger files. The proposed Regulation on tractors (EM 12604/10) and the Regulation on 2 and 3 wheeled vehicles (EM 14622/10) will continue to be discussed at a technical level. Theoretically, first reading deals are possible in December.

Environment Council

The Presidency will start discussions in July on the proposed further revision of Directive 1999/32 on the sulphur content of liquid fuels. The IMO’s Marine Environment Protection Committee formally adopted the revised MARPOL Annex VI in 2008, which included stricter limits on sulphur in fuel. It is our understanding that this revision of the Directive is intended to bring it into line with the MARPOL provisions. The Presidency have scheduled a possible exchange of views for the December Environment Council.

Discussions will continue, at least informally, on the Non-Road Mobile Machinery dossier (EM 12171/10), which covers the temporary increase of the ‘flexibility’ scheme during the transition to the Stage IIIB emissions standard. The European Parliament first reading plenary is currently scheduled for September.

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

14 July 2011

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

July saw the start of the Polish Presidency of the European Council. This is the first time the Poles have held the rotating Presidency. The Poles theme during their term focuses on growth; a secure Europe (energy, food and defence) and an open Europe.

Discussions on the multi-annual financial framework (new EU budget) will begin in the General Affairs Council and ECOFIN. BIS has two major interests: Structural and Cohesion Funds for which the Commission is hoping to bring forward proposals towards the end of September; and the new Common Strategic Framework for Research and Innovation (or “Horizon 2020”) as it will be called, a proposal will materialise towards the end of the Polish Presidency. We will also have an interest in the funding for large projects such as International Experimental Thermonuclear Reactor, Space Policy including Galileo and GMES4.

The Poles main priorities during their Presidency in which BIS have an interest are:

INTERNAL MARKET

The Commission will conclude consultation on mutual recognition of professional qualifications and public procurement later in the year with legislative proposals expected

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4 Global Monitoring for Environment and Security
thereafter. Proposals amending the accounting directives are also expected before the end of the year.

At the December Competitiveness Council the Polish Presidency are hoping to adopt conclusions on the digital internal market (e-commerce in particular), industrial policy (globalisation of SMEs, corporate social responsibility and standardisation) and SMART Regulation (Impact Assessment). The Presidency will also present a report on reduction of administrative burdens for September.

There will be a public consultation later this month with a communication in October on social businesses. This will aim at addressing ‘abusive’ clauses in supply contracts with SMEs, and will raise question of unfair commercial practices in the online environment.

SPACE

It is unclear how much progress will be made in the discussions on the future financing of the Commission’s two priority space programmes, Galileo and GMES. The Commission will, however, continue work on developing and implementing the EU space strategy and have indicated that an opinion paper on next steps is likely. The Presidency is planning a conference on Space Situational Awareness.

INTELLECTUAL PROPERTY

The Presidency is hoping to achieve a first reading deal on the two Regulations on unitary patent and discussions will begin on the patent court. Legislative proposals on orphan works (EM submitted on 17 June) and moving the anti-counterfeiting observatory to OHIM in Alicante (EM submitted on 22 June) have been published. Both proposals are provisionally scheduled for a first reading position for the December Competitiveness Council.

The copyright term proposal appears to have reached a QMV (we await confirmation of formal positions); if an agreement is confirmed we expect the Poles will table a vote with some urgency.

An Audio-Visual Green Paper was launched on the 13 July which covers copyright and a broader audio-visual. An explanatory memorandum will be prepared shortly for the Committee’s consideration when they meet during the summer period. A report on the Artists’ Resale Rights Directive is expected in October.

TECHNICAL HARMONISATION

The Commission released its standardisation package (Communication and draft Regulation accompanied by an Impact Assessment) on 1 June. An explanatory memorandum has been submitted to the Committee. The Polish Presidency is considering including a couple of generic standardisation conclusions in the conclusions for the December Competitiveness Council. We imagine negotiations on the Regulation to be finalised and agreed under the Danish Presidency.

The alignment package (aligning 10 old Directives on standards for industrial goods to the New Legislative Framework agreed in 2009) will be presented under the Polish Presidency, but there will only be initial discussions.

CONSUMER POLICY

The Commission will bring forward a proposal for a framework Directive on Alternative Dispute Resolution (ADR) and an accompanying regulation on Online Dispute Resolution (ODR) in November. Towards the end of the year, the Commission will adopt a Communication on Collective Redress for breaches of consumer and competition law.

EDUCATION

We expect the Polish Presidency to bring forward revised proposals for the EU modernisation of higher education strategy. In 2006 the Commission Communication "Delivering the
Modernisation agenda for universities: education, research and innovation” proposed a series of policy changes required to develop the potential of EU higher education institutions. Main areas for action on modernisation include: increasing the level of HE attainment; improving the quality of teaching; providing the right mix of skills and competencies for the labour market; ensuring real autonomy and accountability for universities; substantially increasing geographical and inter-sectoral mobility; and increasing public (and private) investment in tertiary education.

TRADE

The Presidency is aiming to conclude Free Trade Agreement (FTA) negotiations with India, Ukraine and Singapore in 2011, and it may be possible to agree a small Doha Round package at the WTO Ministerial in December. The Commission also intends to table proposals in September for signature and conclusion of the EU-Andean (Colombia and Peru) and EU-Central America FTAs and for Regulations for the respective bilateral safeguard arrangements. Shortly before the summer break the Commission adopted and passed to the Council and Parliament its Trade Omnibus II proposal to adapt appropriate decision-making to the regime for delegated acts.

By the end of 2011 the Commission intends publishing a new Trade and Development Communication (an EU "White Paper") setting out how future EU Trade Policy will take into account the developmental needs of trading partners from poor countries, in order to support their greater integration into the world economy.

COUNCILS

There will be two Competitiveness Councils during the Polish Presidency: 29-30 September and 5-6 December, both in Brussels. Space Council is likely to be part of the December meeting. There is a Telecom & Transport Council on 12-13 December and six General Affairs & Foreign Affairs Councils, covering Trade issues which the Foreign & Commonwealth Office takes the lead. An informal Competitiveness Council will also take place on 20-22 July.

I hope you find the above information useful.

19 July 2011

PROTOCOL TO AMEND THE AIR TRANSPORT AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, AND THE UNITED STATES OF AMERICA (9296/10, 9435/1/10)

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

I am afraid that a response to your letter to me of 6 July last year clearing the above documents, and answers to the questions you posed in it, was overlooked. I can assure you that my officials and I take the work of the scrutiny Committees very seriously indeed, and so I very much regret the delay taken in responding to your questions.

You asked whether the rules in the Protocol regarding noise-based restrictions took into account possible restrictions on the grounds of pollution, and whether the new procedures introduced in the aftermath of the volcanic ash incident would be affected by the Protocol. The rules you mention explicitly only apply to the imposition of "new mandatory noise-based operating restrictions at airports which have more than 50,000 movements of civil subsonic jet aeroplanes per calendar year", and our view would be that they therefore do not apply to any operating restrictions at airports that might be imposed on other grounds, such as pollution. Nor would we regard them as limiting our ability to impose operating restrictions at airports on safety grounds, as a result of volcanic ash for example. We have no reason to believe that the US Government thinks differently, and indeed neither they nor their airlines sought to argue that the rules ought to apply to the operating restrictions imposed during the volcanic ash incident last year.

You also asked for clarification on the statement in our Explanatory Memorandum that the access to "Fly America" traffic granted by the Protocol "still leaves valuable traffic by US government employees and defence-related contractors out of reach of EU airlines", even though the access to civilian contractor traffic granted by the Protocol is considered to be a valuable benefit. As you say, this was intended to be a reference to the fact that the Protocol does not grant access to traffic obtained or funded by the US Department of Defense or to domestic US traffic, which are clearly significant.
markets. You also asked about the status of contractors or NGOs under the revised arrangements. Broadly speaking, the Protocol gives EU airlines access to civilian contractor traffic, and to traffic by Federal "grantees" (i.e. those organisations in receipt of Federal grants). The detailed rules have been published by the US General Services Administration in their Federal Travel Regulations.

04 July 2011

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

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

Thank you for your letter of the 24th May, informing me of the decision of the Sub-Committee on Internal Market, Energy and Transport.

Our views on the likely behaviour of North American producers of railway locomotive engines are shaped by extensive informal discussions between the Department's officials and manufacturing sector stakeholders, including representatives of North American locomotive manufacturers, over a period of time. The precise details of companies' development and marketing plans are, of course, commercially confidential matters. The discussions that we have had, however, have led us to believe that development work by North American manufacturers on meeting both the Stage IIIB standard and the United States Tier 4 standard is well advanced, and that the manufacturers will be in a position to supply locomotives meeting the Stage IIIB standard some time before the United States Tier 4 standard becomes mandatory.

I am aware that rail freight operators, in particular, are concerned that, because the United States market for locomotives is significantly larger than the European one, and the Stage IIIB and Tier 4 standards are only very approximately aligned, North American companies will be likely to wait until after the United States Tier 4 standard becomes mandatory before addressing the European Stage IIIB standard. The concerns of rail freight operators in this respect are understandable, since the failure of supply that would follow from such an approach would be extremely damaging for their businesses. Nothing that we have been told, however, makes us think that those North American locomotive suppliers who have invested in establishing a presence in the European market will willingly relinquish that presence. These manufacturers produce locomotives which can be operated on the United Kingdom's network simply because (in stark contrast to continental European manufacturers) they see a commercial advantage in taking a pan-European view of the European market. They appear to be inclined, in much the same way, to see the provision of products meeting European emissions standards as commercially advantageous because it gives them access to markets outside the European Union where European standards are recognised and used.

The fact that the two North American suppliers are in competition with one another will undoubtedly provide a further spur to their efforts to bring compliant products to market in as timely a manner as they are able.

7 June 2011

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

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

Thank you for your explanatory memorandum of 21 July, which was considered by the Sub-Committee on Internal Market, Energy and Transport at their meeting of 11 October.

We note that the Government have yet to formulate a final position on this proposal, which we consider to be significant in terms of its potential impact on this sector of the Single Market. During the previous Parliament, the Committee published two reports about the previous forms of the Regulation and therefore retain a strong interest on this matter. As a result, the Committee may

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5 See GSA Bulletin FTR 11-02 of 6 October 2010, a copy of which can be found at http://www.gsa.gov/graphics/ogp/FTRBulletin11-02USEUOpenSkies.PDF.
consider taking oral evidence on the proposal or alternatively conducting a short inquiry as a follow up to the previous reports. In the meantime, they have decided to retain the document under scrutiny.

The document proposes the introduction of retail price caps for data charging. We believe that roaming cost reductions represent one of the most visible successes of the Single Market, itself the most prominent benefit of membership of the European Union. We therefore welcome the extension of retail price caps to data. This proposal accords with views expressed at the recent Single Market forum in Krakow, which took place on 2 October to 4 October 2011, where the importance of a single market in telecommunications was stressed.

I would be grateful to receive a reply to this letter within the standard deadline of ten working days.
11 October 2011

Letter from Ed Vaizey MP to the Chairman

Thank you for your recent letter of 11 October.

I have noted your committee’s support regarding the extension of retail price caps for data charging. I have also noted the Committee’s view that the reduction of roaming costs represents one of the visible successes of the Single Market and that the Single Market itself is regarded as the most prominent benefits of membership of the European Union. I can confirm that these are views that I share with the Committee.

CONFIRMATION OF HMG’S NEGOTIATING LINES

I can confirm that the Government has now formulated a general negotiating line and that this line has been cleared by Cabinet European Affairs Committee (EAC) and I detail this below.

Clearance from the EAC was sought because I shared the concern of the European Commission that data roaming prices have remained stubbornly high, that the current regulatory regime appeared to inhibit the development of a competitive Single Market, and that the use of structural solutions should be pursued with the specific purpose of addressing the perceived lack of competition within this specific market.

Thus, I can confirm that the Government’s general negotiating stance is:

— HMG has yet to indicate a firm view of any preferred structural solution, but an initial view is that there appears to be a greater potential benefits associated with the proposed obligation on network operators to allow wholesale access for the provision of roaming services. (I am aware that there is some limited precedent of this already happening in some Member States);

— HMG remains unconvinced of the potential efficacy of the second proposed structural solution ie the mandating of separate providers for the provision of roaming services. While we see that such a solution could have competition benefits we continue to have some concerns over the technical implementation of such a solution, along with the potential costs the network operators will incur when implementing such a solution, whether consumers will be able to make an informed choice when presenting with this option and whether it will be relevant to the majority of consumers who may roam a very limited number of times each year;

— HMG will seek to ensure that any changes made under a new Regulation are fair to businesses and consumers alike. HMG will seek to ensure that any outcome does not impose costs that may jeopardise investment decisions for the network operators nor that any outcomes are detrimental to the most vulnerable consumers, many of whom use expensive pre-paid services ie ‘pay as you go’;

— HMG is concerned that the proposed review date of 2015 may be too soon after the implementation of any structural solutions to ascertain if sufficient competition dynamics are been created and stabilised to warrant the automatic removal of retail price caps in 2016; and
In the absence of any evidence to the contrary, that an extension of price caps should be extended to retail data roaming as a short-term measure, along with a continuation of the existing price caps whilst the structural solutions are put into place and begin to have an effect on both prices and competition.

I can confirm that we have undertaken a stakeholder consultation, with early views generally aligning with HMG’s and sharing the same concerns, especially the cost and effectiveness of the mandating of separate roaming provision.

UPDATE ON NEGOTIATIONS AND EU PROCEDURAL ISSUES

Discussions have begun at Council Working Party level with a first read-through nearly complete; with a number of Member States beginning to provide specific changes to the text. HMG has yet to suggest specific changes. Rather it is setting out general headline objectives that it believes that the text should achieve and will then suggest textual changes once the first read-through is complete and we are fully aware of the positions of other Member States.

Initially, it would appear that the majority of Member States are aligned with HMG’s views but with some differences over some points of detail regarding the preferred technical solution for the provision of separate roaming services and its overall implementation. I believe that it is of note that many Member States share the UK’s concerns regarding the proposed 2015 review date and the automatic removal of retail price caps in 2016, regardless of the outcome of this review. Many also share the view that one year is insufficient time for any impact on competition from the structural solutions to be having a full effect.

I am aware that European Parliament rapporteur has been appointed, drawn from the Committee on Industry, Research and Energy (ITRE), Angelika Niebler (Germany/EPP); that Internal Market and Consumer Protection (IMCO) committee opinions will be handled by Eija-Riitta Korhola (Finland/EPP); likewise for the Legal Affairs (JURI) committee by Antonio López-Istúriz White (Spain/EPP). Despite this early progress, there is a concern that the new Regulation may not have passed through the necessary final procedural stages in time to replace the outgoing Regulation (which expires on 30th June 2012).

As with all negotiations, the situation remains fluid and I propose that I write to you and William Cash MP once the first run-through of text has taken and the other Member States’ positions, and how these may impact on HMG’s negotiating objectives, have become clear; I anticipate that this will be by the end of November. The Presidency will make a progress report on the Regulation at council on 13th December 2011.

2 November 2011

RADIO SPECTRUM POLICY PROGRAMME (13872/10)

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

Thank you for your clearance of the draft proposal for a Decision establishing the first radio spectrum policy programme. I am writing to update the Committee on the progress of negotiations as requested in your letter dated 3 November 2010.

I am content that the current legislative draft is broadly beneficial (or does not adversely affect UK interests) and detail below where the negotiations are. The Presidency is on course (following a formal negotiation with the Parliament and Commission) to secure a first reading deal later this year (possibly before the next Telecoms Council on 13th December) as any areas of disagreement with the Parliament are close to being resolved. At the write round to the European Affairs Committee concerns were expressed over the level of specifics in the RSPP, such as the 10MHz channel sizes, and over the deadline for putting the 800MHz band into use and over competence creep. I have indicated where appropriate what we negotiated to address these concerns.

The key articles are those I have commented on below (noting that some text has been moved into a new Article 7 and therefore the Article numbering differs from the earlier texts):
Art.1: Aim and Scope: The RSPP covers all internal market policy areas relying on frequencies. This has not changed meaning significantly in drafting changes but has allowed a little latitude for existing defence uses in bands that may be used for other services.

Art.2: General Regulatory Principles: this article deals with the application of general regulatory principles by MS such as the efficient use and management of spectrum, encouraging technology and service neutrality, applying the lightest authorisation system and guaranteeing the internal market and competition.

Art.3: Policy Objectives: this article is one of the areas of contention as it deals with ensuring sufficient spectrum for EU policies and harmonisation of spectrum. We have seen several attempts to insert a specific target to ensure a total of 1200MHz for mobile use which we have resisted as far as possible because it prejudges the future use of spectrum, spectral efficiency of technologies and demand – all of which have historically proven to be difficult to assess. We are seeking to move the reference to 1200MHz into a recital. However, we are not confident that we will win this fight and are therefore suggesting wording that will impose the least burden on the UK.

Art.4: Enhanced Efficiency and Flexibility: this article deals with ensuring consistent authorisation procedures across Europe. We don’t have concerns with the drafting as we believe that the UK is compliant already.

Art.5: Competition: this article deals with measures that member states may use to ensure competition. We are content with the drafting as the wording allows for latitude in application (with use of the word “may” in many instances and we feel that Ofcom already have sufficient competition powers.

Art.6: Spectrum for Wireless Broadband: this article included the deadline by which the 800MHz band was to be available for electronic communication services that Lord Sassoon wanted removed or moved to 2015. The Commission were most firm in keeping the deadline but it now is clarified so that the authorisation of the spectrum needs to be completed by 31 December 2012. As Ofcom intend to have the auction completed by that date we should be compliant, with spectrum availability during 2013. We therefore believe the revised text is acceptable.

Art.7: Spectrum needs for other wireless communication policies: this new article states “In order to support the further development of innovative audiovisual media and other services to Union citizens, taking into account the economic and social benefits of a digital single market, Member States shall, in cooperation with the Commission, aim at ensuring sufficient spectrum availability for satellite and terrestrial provision of such services, provided the need is clearly substantiated”. We believe this re-positioned text remains acceptable as it includes the need to clearly substantiate any spectrum needs.

Art.8: Spectrum Needs for Specific EU Policies: This article deals with spectrum for specific EU policies and gave us some concern that it might widen to become a “shopping list” for additional spectrum. Whilst we retain that concern (that was echoed in the write round) the wording is such that it “seeks to ensure” availability for services other than the GALILEO system and intelligent transport systems that were already present. We therefore believe the text is acceptable.

Art.9: Radio Spectrum Inventory: this article deals with establishing a European spectrum inventory as a step towards ensuring efficient use. Whilst we agree with the principles we had some concerns about scope and the detail that might emerge. The current proposal has clearly defined ranges of frequencies over which the inventory would be taken (400MHz to 6GHz) and brings forward the date for implementing the inventory to July 2013. We believe the concentration on the specific frequencies helps limit the scope and focuses the potential benefits of this article.

Art.10: International negotiations: this article originally sought the European Union to have a representative role at the International Telecommunications Union (which we correctly thought was not possible without a rewrite of ITU rules). There were concerns about competence creep here and we argued strongly for changes to the text to deal with this. The revised text now discusses seeking to establish a common European position, which reflects the current position and is therefore acceptable. It does not give the European Union a representative role and allows the possibility of disagreement.

In summary, I believe the RSPP proposal is acceptable to the UK and delivers some real benefits as it recognises several key UK positions such as service and technology neutrality and trading, and enshrines them in the programme as core values. It sets a policy framework across Europe designed to ensure efficient and effective use of spectrum to offer citizens a number of benefits (such as setting a European objective of 30Mbps broadband speeds). At the same time the wording is sufficiently
Letter from Ed Vaizey MP to the Chairman

I am writing with reference to my recent letter about Europe’s proposed Radio Spectrum Policy Programme (the “RSPP”) to add a small but significant update, as there have been positive developments as we approach a possible conclusion to the negotiations.

The latest compromise text issued by the European Council is a positive step as it deals with the single area we still had some concerns on. Article 3 now includes wording that “every effort should be made to identify, based on the inventory of spectrum in Article 8, at least 1200 MHz of spectrum by 2015 at the latest” (for mobile use, including existing allocations). This wording no longer “ensures” spectrum will be made available and is therefore now I believe acceptable to the UK.

I therefore can wholeheartedly recommend the latest text to the Committee as suitable to meet the interests of UK citizens as well as European citizens. I believe the concerns raised at the write round stage have been addressed and that the revised text of the proposed RSPP delivers some real benefits. I would therefore recommend that UK endorses it and seek the committee’s agreement to that approach.

16 November 2011

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 3 November 2011.

We note that the arguments and subsequent amendments are in line with those discussed in earlier correspondence. We do not have any lingering concerns with the proposal and are pleased that amendments secured appear to avoid the question of competence creep in this area.

We do not expect a reply to this letter.

24 November 2011

RAILWAY PACKAGE (13788/10, 13789/10)

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

When I wrote to your Committee on 17 May I undertook to write again to keep you informed of further developments ahead of the Transport Council on 16 June.

You may recall that the outstanding issues were scheduled for discussion at the Committee of Permanent Representatives (COREPER) meeting on 25 May. Following the limited progress made at that meeting, an additional working group was arranged for 31 May. A further COREPER discussion is also now planned ahead of the Council. Although the position is still uncertain I am writing now to bring your Committee as up to date as possible on further developments.

The main outstanding point for us relates to access to services, and in particular depots. On this we have found ourselves at odds with the Commission, which is unfortunate, as we share the overall objective of ensuring fair access, especially to terminals. Railways in many other Member States, especially in the former Eastern bloc countries, acquiesce in practices by their railways that make it difficult for competing rail freight operators to offer services.

This can come in the form of preventing access to terminals, sidings and yards, sometimes on trivial procedural grounds. The Commission’s solution was to require legal separation of such facilities from dominant national rail companies combined with independent regulation and an appeal process.

This would doubtless work in Eastern Europe. But the wording chosen could, for example, be interpreted as requiring Freightliner to divest its terminals. More worrying, it could deter investment in new facilities. In the UK we rely on our strong independent regulator to ensure fair access without insisting on full separation. That’s why we have been trying to water down the current wording.
If successful there is a risk that we may undermine the effect of the Commission’s proposal elsewhere, with possible negative effects for efficient rail freight on the continent. But we judge it to be more important to preserve our private sector funding arrangements and investments which have been crucial in securing rail freight growth and modal shift from road to rail.

In particular, I believe that the provision that requires the operator of a service facility to provide proof that a viable alternative terminal exists, if it is to avoid the prospect of having an access complaint made to the regulator, is not deliverable in practical terms. This will be a particular issue where the operator of a service facility is not a railway undertaking.

This will mean that it will have no understanding of the operational costs a railway undertaking will incur in hauling its train to an alternative facility and thus little ability to assess "economic acceptability" of the alternative site. The obligation to prove that there is no viable alternative terminal should rest with the applicant, as they are the only party who will have the information to be able to evaluate the economic acceptability of both, running the train and accessing the viable alternative facilities.

I believe provisions need to be targeted to deal with the problems which do exist, and need to be workable, easy to interpret, and provide incentives for the private sector investment and terminal development within Member States.

While some further progress has been made we continue to work to seek resolution of our concerns and I would like to assure your Committee that we would not wish to support a general approach unless these improvements are secured. At present several other Member States have objections to the part of the text (Article 13) relating to the status of dominant operators in the provision of services, though it is unclear whether this would crystallise into a blocking minority.

If a blocking minority is not possible, and our concerns have not been met, it is likely that we would therefore wish to abstain or oppose. We might, however, also have to give consideration to supporting the proposal in order to prevent the adoption of a worse measure. We would not of course take such a step without serious consideration of the implications of it, including the Government’s commitment to respecting the Parliamentary Scrutiny Reserve.

I will, of course, write again to keep your Committee informed about any further developments, including the outcome of the Transport Council.

6 June 2011

Letter from the Chairman to the Rt Hon Theresa Villiers MP

Thank you for your letters of 17 May and 6 June, which were considered by the Sub-Committee on the Internal Market, Energy and Transport. They decided to clear document 13789/10 from scrutiny.

The likelihood of a general approach on 16 June is uncertain, but we understand that the Government may wish to agree to a deal if an acceptable compromise emerges.

Throughout our correspondence on this matter, we have discussed the implications of Article 13. We welcome your acknowledgment in your letters that a strong regulator is necessary to ensure fair access to rail-related services. However, we are still not convinced that anything in Article 13 will discourage investment, as such investment would be protected for five years.

With regard to the burden of proof in determining a viable alternative, we repeat our recommendation in our report Recast of the First Rail Freight Package, that the operation of such a consideration needs to be clarified or removed. We acknowledge that, where there is full separation between the owners of service facilities and rail operators, the operator will be in a better position to determine the viability of the alternative, but this will need to be subject to fair adjudication. In the case where the facility owner also operates services (in which case discrimination would appear to be far more likely) it would seem possible, and perhaps sensible, for the burden of proof to rest with the facility provider. In either case, independent adjudication will be necessary.

You mention the Channel Tunnel Usage Contract. As you are aware, we are currently conducting an inquiry into the application of EU rail regulations to the Channel Tunnel, and look forward to examining this area in more depth in the context of that inquiry.

Finally, you say in your letter of 17 May that the UK has not produced an impact assessment due to the uncertainty of the direction in which the text would develop. We have previously argued that impact assessments are a valuable tool to determine the appropriate negotiating position to take, and see little point in producing one once the negotiations have reached their conclusion.
I look forward to receiving a reply within the standard 10 working days.

14 June 2011

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

I am grateful to your Committee for considering my letter of 6 June so quickly. As promised, I am writing now to update you on the outcome of the 16 June Transport Council.

Your Committee will recall that the main outstanding point for the UK related to access to services, and in particular depots. The original proposals failed to balance the need to open up existing available capacity to fair competition with the need to encourage investment in new capacity to provide legitimate competitive and/or commercial advantage for the investor.

The original proposals also required legal separation of such facilities from dominant national rail companies. As my letter of 6 June explained, this could have been interpreted as requiring Freightliner (the UK’s dominant haulier of intermodal containers) to divest its terminals or could deter investment in new facilities.

My letter noted that further discussions would take place at an additional meeting of the Committee of Permanent Representatives (COREPER), and at the Transport Council itself. I am pleased to report that in those discussions we were successful in securing acceptable amendments to the text. These replaced the requirement for legal separation with one which required independence of the body or firm in organisational and decision-making terms. Such independence shall not imply the requirement, of the establishment of a separate body or firm for service facilities and may be fulfilled with the organisation of distinct divisions within a single undertaking.

After the COREPER meeting the Presidency tabled a compromise text in an attempt to address outstanding concerns. The main alterations were:

— Article 13 - Conditions of access to services. Improvements to the text, as outlined above, to remove the obligation of legal separation of a dominant operator;

— Article 31 - Principles of Charging. The text now includes an additional provision that the Infrastructure Manager may decide to gradually adapt its methodology for the calculation of the cost that is directly incurred as a result of operating a train during a period of no more than five years;

— Recital 6 - Task delegation (also Article 7 - independence of essential functions of an infrastructure manager). The UK already has separate accounts and management for the functions described. The amended text will enable delegation of certain administrative functions to certain types of entities if this is required to reduce the cost or improve the structure of the rail industry;

— Recital 22 - Dominance in national railway transport service as referred to in Article 13 is defined as dominance in the carriage of freight or passengers on a national level, to reflect the Commission’s views on the issue. This should target the dominance and independence provisions of Article 13 on large incumbent operators on the European mainland, rather than on those in the UK like Freightliner. These are dominant in a certain market sector (like the transport of Deep sea containers on rail) but not nationally; and

— Annex III - Services to be supplied to the railway undertakings. The text was amended to avoid operational and legal confusion with the requirements in Regulation 1371/2007 on Passenger Rights and Obligations on railway undertakings and ticket vendors.

Ministers at the Council were able to accept these amendments, and the Presidency concluded that there was a qualified majority for a General Approach. However, some Member States were still opposed to certain provisions in the text.

We still consider that this is a poorly drafted and in many ways an inadequate text. There is little here that gives us added value over the existing First Railway Package directive, other than for the small number of UK based operators who are running international services and have had problems accessing facilities in other Member States. Nevertheless, we have secured changes that maintain a good deal of national flexibility and resolve our red line issues. Some further liberalisation in
continental Europe has also been secured. On that basis, we took the view that we should accept a
general approach in order to protect the improvements that we had negotiated.

I look forward to meeting the Sub-Committee on 18 July and assisting with your inquiry into the
application of EU regulations to the Channel Tunnel.

11 July 2011

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

Thank you for your letter of 11 July, which was considered by the Sub-Committee on the Internal
Market, Energy and Transport on 17 October.

We apologise for the delay, on account of the Parliamentary recess, in sending our response.

We note the agreement of a General Approach, along with the Government’s lukewarm reception of
the recast.

We note that as part of the agreement, legal separation of rail service facility providers and transport
providers will not be required. Instead, divisional separation will suffice. At present we are
undertaking an inquiry into the Channel Tunnel operation and the expansion of European rail market,
which is examining as part of its scope the appropriate separation required in this sphere. Though we
are still deliberating at this stage, and thus have not decided upon a specific policy position, this may
be a provision with which we disagree. Regardless, we have stressed throughout scrutiny of this
document the need for a strong, independent regulator to protect access to services; given this
amendment, we make this case again most firmly.

Another change revises the definition of market dominance to envisage national, rather than sectoral
domination. We welcome the pragmatic benefit that this offers to Freightliner as a UK company, but
we would be grateful to hear the Government’s assessment as to the whether this will weaken the
nature of the protection offered for access to services.

Otherwise, we would appreciate being kept up to date on developments as negotiations progress.

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

18 October 2011

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

Thank you for your letter of 18 October requesting further clarification on the amendments we have
secured to Article 13. I note that your committee wishes to know whether the amendment will
weaken the nature of the protection offered for access to services.

The amendment replaced the provision requiring legal independence of a facility operator from its
owning company, if the company has a dominant position in any rail transport market with one
requiring organisational and decision-making separation, in a national transport market defined
(through an amendment to recital 22) as "freight" or "passenger".

The original provisions were targeted at large incumbent operators and state owned facilities.
However, for the UK, this would mean that they would oblige Freightliner (the UK’s dominant haulier
of intermodal containers) to divest its terminals, with significant unintended consequences for the
private sector financing arrangements under which it was privatised.

We do not consider that the amendments to the provisions in respect of dominance and
organisational separation will weaken the nature of protection offered to other services. They have
no influence on what we consider to be the most crucial changes.

These amendments make access to terminals subject to regulatory appeal (as already applies in the
UK) and enforce the requirements for both an adequately resourced and independent rail regulator.

I hope that this clarifies the UK position.

Undated (Received 3 November 2011)

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

Thank you for your letter of 3 November.
On the Article 13 point, we have stated previously that we are supportive of legal separation of undertakings. However, this is a point where we have had a chance to express our views and we are grateful that you have outlined your position (and the possible effects of legal separation as applied to Freightliner) in more detail. Nevertheless, we would like to hear more about the “significant unintended consequences” you outlined with respect to the Freightliner private finance arrangements.

The key in any event is that rail regulators are independent and well-resourced, which is acknowledged in your letter. Such regulators are not in place across all Member States, and we would therefore urge you to take a strong stance to ensure their implementation across Member States.

Beyond those points, we would be content to close correspondence on this matter pending further updates, such as any consultations in relation to the proposal with stakeholders or any Impact Assessments that may be produced.

24 November 2011

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

In my letter of 11 July I reported the outcome of the 16 June Transport Council, and the general approach reached on this proposal. I am now writing to update you on developments ahead of the 12 December Transport Council, including the outcome of the European Parliament’s consideration of this proposal and a further working group discussion.

The European Parliament had its first reading on 16 November. Many of the Parliament’s amendments differed significantly from the Council’s general approach on such key issues as:

ARTICLE 6 - SEPARATION OF ACCOUNTS (ALSO AMENDMENTS TO LINKED RECITALS 6 AND 6A)

The original proposal, and the General Approach, sets out requirements for the separation of accounts between businesses relating to the provision of transport services and those managing railway infrastructure whereby public funds paid in relation to public service remits must be shown separately and not transferred to other activities. We support the principles of transparency outlined in both the original proposal and the general approach text.

EP amendments to Article 6

We support the principles of transparency outlined in both the original Council text and the General Approach text. We have concerns about EP amendments prohibiting:

The EP amendments would prohibit the revenues of an infrastructure manager in any way being used by a railway undertaking or body controlling a railway undertaking

We are concerned that these restrictions would appear to apply to all infrastructure managers and all sources of income - public or otherwise. In doing so they would appear to prevent a number of valid and necessary transfers of funds from infrastructure managers to other entities including those to railway undertakings which cover performance (as Annex VIII), incentive and efficiency regimes, contractual compensation and the purchase of services at market conditions.

ARTICLE 7 - INDEPENDENCE OF ESSENTIAL FUNCTIONS OF THE INFRASTRUCTURE MANAGER

The original text adds determination and collection of charges to the list of essential functions of an infrastructure manager which must be entrusted to bodies or firms that do not provide any rail transport services. It requires essential functions other than charge collection to be performed respectively by a charging body and by an allocation body that are independent from any railway undertaking.

EP Amendments to Article 7

Various EP amendments suggest additional independence requirements in respect of all the functions of infrastructure managers. We consider that this would restrict organisational flexibility. This would reduce Member States’ freedom to improve structures in the rail industry to tackle the rail industry’s cost base, to deliver the required outputs at a lower cost through the better alignment of incentives and more integrated working practices.

The EP have proposed additional text under this Article which would oblige the Commission to publish proposals for mandatory separation of infrastructure management from transport operations as well as proposals for domestic rail passenger market opening by 31 December 2012.
This amendment pre-judges the case for unbundling which has not yet been made in the EU’s own studies. UK experience suggests that the complex contractual framework that is required to implement it incurs costs although the EU study suggests that observed trends in costs, fares and service quality can be explained by a wide range of factors and in most cases cannot be attributed to vertical separation itself.

There has been only one Council working group meeting since the general approach and the first reading by the EP. That meeting took place on 25 November and discussed a small list of EP amendments which could be accepted by the Council on the basis that these were essentially the same as the general approach. The meeting did not consider the other EP amendments, some of which are at considerable variance from the general approach.

As a result it is expected that the Presidency will seek a political agreement on 12 December, which is expected to incorporate only those EP amendments that do not alter the general approach. This will not, of course, include the amendments that I have described to Articles 6 and 7. Any political agreement therefore will not differ from the general approach and will be acceptable to the UK.

If a political agreement is reached at the Transport Council, discussions with the EP will be taken forward under the Danish Presidency to try to reach a second reading deal. We understand that the recast will be a priority for the Danes during their Presidency, and we therefore expect that they will try to make enough progress to reach agreement at the March 2012 Transport Council.

I attach for information the text of the EP’s first reading of this proposal.

The Department is still in the process of preparing an impact assessment, which I will send to your Committee as soon as it is finalised. I will also, of course, keep your Committee informed about any further developments.

30 November 2011

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

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

Thank you for your explanatory memorandum of 12 August 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 10 October 2011. They decided to hold both documents under scrutiny.

In relation to the proposed Regulation, it appears that the Government’s policy position is dependent in some respects upon the results of the forthcoming Impact Assessment. Though we are supportive of the aims of reducing the administrative burden in this area, and improving road safety through the strong enforcement of rules concerning driving hours, we consider that a more in-depth assessment might be prudent following the production of that document. We would therefore be grateful if you could provide an indication of the timescale for the production of that assessment. We would also appreciate if you could inform us of the Government’s views on the proposed Regulation in light of its findings, as well as following consultation with interested parties, including enforcement authorities.

As a further aid to consideration, we would like to receive the Government’s assessment as to the number of people in breach of the rules governing the use of tachographs at present; and the impact of this proposal on those levels of abuse, and its possible societal benefits more generally. We would also welcome the Government’s assessment as to possible developments in vehicle recording technology in the future which would go beyond the provisions of this proposal.

As to the Communication, we note that there was no comment within the memorandum on two of its main proposals: the provision of a mandate to the European Committee for Standardisation (CEN) for security seals, and the reconfiguration of decision-making processes in relation to Regulation 3821/85, bearing in mind its connection to the AETR agreement (and its non-EU signatories). We would appreciate your views on both subjects.

11 October 2011
Letter from the Mike Penning MP to the Chairman

Thank you for your letter of 11 October, following consideration of the above Explanatory Memorandum by the Sub-Committee on the Internal Market, Energy and Transport. I am writing in response to your comments.

TIMESCALE FOR PRODUCTION OF IMPACT ASSESSMENTS

Our position on the proposed regulation is still being developed, and we are yet to be convinced that all the measures proposed by the Commission will address the problems with the digital tachograph. An initial impact assessment has been produced and is attached to this letter. A full impact assessment is being developed for consultation, which is planned over the next few months.

CURRENT LEVELS OF COMPLIANCE WITH TACHOGRAPH RULES

You asked for an assessment of current compliance with the rules. From 1st January 2009 to 31 December 2010 there were 284,927 vehicles stopped in the UK for roadside checks, with 34,584 recording equipment offences detected. This amounts to a 12% level of non-compliance. This level is a result of targeted enforcement, and therefore this level is considered to be above the non-compliance across the whole fleet.

The impact of the proposals on compliance and societal benefits more generally will be informed by the consultation process.

VEHICLE RECORDING TECHNOLOGY

The Committee also asked for our assessment on possible future developments in vehicle recording technology. The primary role of the tachograph is to be a reliable recorder of driver and vehicle activity, to allow checks of compliance with the drivers' hours rules for road safety. Although there are potential alternative technologies for activity recording purposes, the digital tachograph is expected to be the cost-effective technology for the foreseeable future.

MANDATE TO THE EUROPEAN COMMITTEE FOR STANDARDISATION

You asked for the Government’s views on the task to be given to the European Committee for Standardisation (CEN). The task is to develop an agreed technical standard for the mechanical seals used on the recording equipment. These seals are currently used to help prevent tampering with the equipment – their removal should cause obvious visual damage to the seal and prevent re-fitting. The current absence of a standard in the regulation means that seals can potentially be of variable quality and some seals might allow tampering without obvious signs. Establishing a standard is expected to reduce the scope for tampering and the Government is content for this task to be given to the CEN.

THE DECISION MAKING PROCESS FOR NON-EU AETR SIGNATORIES

The Committee also wanted to know the Government’s views on the reconfiguration of the decision-making process, bearing in mind its connection to the European Agreement on Road Transport (AETR). The Commission intend to change the decision making process for the technical progress of tachographs, by involving the contracting parties to the AETR. We await the Commission’s anticipated application to the Council for a mandate for the EU becoming a contracting party to the AETR, in order to consider this matter and check for impacts on Member State influence.

Council working group discussions on the proposed Regulation began in September, with a policy debate at the 6 October Transport Council. The UK and many other Member States have expressed concern over the uncertainty of costs and benefits and the lack of clarity in certain articles. The Polish Presidency is aiming for a partial General Approach on the proposed Regulation in Transport Council on 12th December. This ‘partial’ General Approach would exclude any agreement on articles which propose merging tachograph cards and driving licenses.

The Commission has now also published an additional proposal for a Directive to amend Directive 2006/126/EC, which governs the specification for driving licences. It would make the consequential amendments to the driving licence Directive that would be required if tachograph cards and driving licences are to be merged. This new proposal will be the subject of EM 16842/11. We are awaiting further information from the Presidency as to how they will wish to handle discussions on this new proposal.
I will of course continue to keep your Committee informed of developments.

21 November 2011

RECREATIONAL CRAFT AND PERSONAL WATERCRAFT (13336/11)

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

I refer to the Explanatory Memorandum on the above proposal that I submitted to the House on 10 August. As mentioned in the EM please find attached an Impact Assessment checklist for the Committee’s consideration [not printed]. The IA checklist provides a summary of the impact on the UK of the Proposal.

7 September 2011

Letter from the Chairman to Mark Prisk MP

Thank you for your explanatory memorandum of 10 August 2011, which was considered by the Subcommittee on the Internal Market, Energy and Transport on 10 October 2011. They decided to hold document 13336/11 under scrutiny.

We would like to state that we share your concerns over the possible inclusion of partly built craft within the scope of the proposal, given the burden this would place on individuals. We hope that the Government use their influence to lobby for change on this point. We would also appreciate if you could estimate the number of people that this would affect.

Beyond that, we are anxious to gain a fuller picture of the possible implications of the proposal. In particular, we would like to hear more on the impact of proposals on SMEs, given that they are the predominant type of enterprise in this area. We note that in the Impact Assessment, the Government do not anticipate a detrimental impact owing to transitional arrangements in the proposal. Is this assertion based entirely on the Impact Assessment made by the Commission? If not, and there are additional elements to the evidence base, we would appreciate if you could detail them in your response.

Furthermore, we note your concern regarding “unnecessary” administrative burdens; however, this contention is not explored following its introduction. We would be grateful if you could provide further information in this respect.

More generally, we would be grateful for timely updates on any negotiations surrounding the proposal, and any changes that result.

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

11 October 2011

Letter from Mark Prisk MP to the Chairman

Thank you for letter of 11 October regarding the explanatory memorandum (EM) for the above proposal.

I hope that this letter provides sufficient additional information to clarify the questions raised in your letter, by providing:

— Further information about partly completed craft and its relevance to the UK and an estimate of the number of companies involved in placing partly completed craft on the market;

— Further information in respect of post construction assessment and why the changes in the Proposal are likely to have a more detrimental affect on SMEs;

— A further discussion of the ‘unnecessary administrative burdens’ referred to in the EM, which we anticipate will be placed upon SME’s by the Proposal.

The current directive allows “partly completed craft” (meaning craft that are to be completed by the purchaser) to be placed on the market but not put into service until completed. However, the practice in the UK has been to put partly completed craft into service, which is not allowed under the
current Directive. We would like the wording in the Proposal to clarify what is meant by partly completed craft.

Under the current directive, narrow boats with a hull, engine, steering and controls can be placed on the market but not put into service by the purchaser in a partly completed state. The Proposal does not change this position.

This means that craft within scope of the Directive (as revised) need to be completed before the craft can be put into service, with the result that any purchaser of a partly completed craft would be purchasing a craft that they could not use. Manufacturers placing partly completed craft onto the market would need to supply these craft (unfinished as before) but declared as complete, which would require additional work to be undertaken by the manufacturer (many of whom are SMEs) to enable the craft to meet the relevant essential requirements which would result in an increase in the cost of these craft being passed to the consumer, thereby reducing the market for these craft.

We do not have precise figures for the number people that will be affected if the Proposal is adopted. However, the number of “partly completed” craft placed on the market in recent years number around 200 – 300 each year with about 70 to 80 companies involved. These companies are predominantly involved in the UK canal boat industry, but this statistic also includes some firms supplying GRP (glass reinforced plastic) mouldings for craft.

One issue in the Proposal would alter the position in respect of the Post Construction Assessment (PCA) so that rather than being a procedure which can be used by all economic operators and private importers, use of this procedure will only be available to private importers.

The PCA procedure allows a craft to be imported into the EU where the manufacturer or his authorised representative does not have a presence in the EU. This procedure is usually used to import second hand craft, which have not previously been placed on the EU market.

Currently, the PCA is used by number of smaller operators to bring in craft from outside EU, a process that would be prevented if the Proposal as currently drafted, were to be adopted. We believe that large manufacturers, probably of personal watercraft (such as jet skis) are looking to block this practice in order to prevent new craft being transferred from one market to another and thus preserve their pricing differentials, which is not in consumer interest. We understand from the industry that there are a small number of SMEs that bring in products from outside the EU with the agreement of the manufacturer outside the EU currently using the PCA but would not be able to under the Proposal. It is not necessarily a cheaper way of placing craft on the market.

The Commission’s Impact Assessment suggests that the impact on SMEs will be minimal in relation to the reduction in engine exhaust emissions limits. However, in other cases the impact will be greater as stated for PCA above.

There are some “unnecessary” administrative burdens that the Proposal will impose on private importers. One such burden will be the requirement to draw up technical documentation in respect of any craft they import which is unrealistic, when this documentation cannot be provided by the manufacturer. Attempting to draw up this technical documentation might require the assistance of conformity assessment body and incur extra costs as a result because the private importer may not have the technical knowledge required. There will be a further obligation to keep information about the supplier of their craft for a period of ten years. It both cases we do not think it is acceptable to place this responsibility on private importers.

Another issue of concern is the definition given for “watercraft built for own use” provided in the Proposal. As currently worded, this definition would bring craft built as DIY projects within scope of the directive, meaning that in some cases they will need to comply with the full requirements of the directive. The Commission’s intention here was to promote understanding of this term, which is specific to this sector. By doing so we think they are placing unreasonable requirements on individuals.

I will undertake to ensure that your committee are kept informed of significant developments in the negotiations as requested.

25 October 2011

Letter from the Chairman to Mark Prisk MP

Thank you for your letter of 25 October 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 14 November 2011. They decided to hold document 13336/11 under scrutiny.
In relation to “partly completed” craft, you appear to imply that general practice in the United Kingdom is contrary to the terms of the existing Directive. Is that your assessment? Whilst we agree that clarity on who is encompassed by the definition is valuable, and that circumscribing its scope may avoid shrinking this particular market, we would like more information on how the market operates at present before proceeding. Furthermore, we would appreciate more information on the how your negotiating stance with respect to this provision.

You address again the issue of PCAs, and provide helpful further information on how the change proposed would disproportionately affect SMEs. In light of these factors, we would also be grateful to know how you consider future negotiations will proceed.

The administrative burdens you have identified do seem excessive. We share your view that undue burdens on individuals and SMEs should be avoided where possible, and we support your stance in this respect.

15 November 2011

Letter from Mark Prisk MP to the Chairman

Thank you for your letter of 15 November in which you seek further detail for the Sub-Committee on the Internal Market, Energy & Transport on the negotiating position with regard to “Partly Completed” craft and Post Construction Assessment (PCA) in relation to document 13336/11.

The current practice in the UK with regard to “partly completed” craft follows the processes set out in the current directive by allowing a DIY builder to take a “partly completed” boat as a self build activity which effectively excludes the craft from the Directive providing it is not placed on the market for 5 years. However, this interpretation of the current directive is only possible as a result of a lack of clarity in the existing text, and others interpret this less favourably. The revised wording of the revision draft text clarifies both the process for “partly completed” craft and for “watercraft built for own use” (self build). The definition in the Proposal given for “watercraft built for own use” (self build) would prevent the use of “partly completed” craft becoming a self build project which is common practice in the UK.

Some background research has identified that this practice is common both in the UK and across the European Union. My officials have raised this issue both formally and in the margins and the Commission have made clear that they would not wish to disrupt the normal business practice in any member State.

I turn now to your request for more information with regard to Post Construction Assessment (PCA). Initial discussions in the Council working group have indicated many other member States have similar views to the UK. The Proposal seeks to introduce a revised PCA, the aim of which is to prevent a practice whereby persons claiming to be private individuals import a number of craft in to the EU claiming that they are personal property, when in fact, these craft are often sold on immediately, at a profit to the importer who is in fact operating as a business activity. This practice is possible because currently, craft being imported for private use are subject to a ‘light touch’ conformity regime rather than the basic conformity assessment regime that manufacturers are compelled to meet. However, the revised PCA introduces very extensive burdens that apply to both manufacturer and private individuals importing a single product for their own use. We believe that, it will in practice be impossible for a private individual, importing a craft for their own use, to meet the requirements of the PCA laid down in the Proposal, even with professional assistance. The UK is working with delegations from other member States to reach an acceptable proposal for the private individual. During negotiations, I will seek to ensure that the PCA is also available for commercial transactions, so that we are able to deal with any situation that may arise proportionately and effectively.

I thank you for Sub-Committee’s support in challenging burdens imposed by Regulation, particularly those on SMEs and individuals.

I trust this provides the information you seek.

23 November 2011
Letter from the Chairman to the Rt. Hon. David Willetts MP, Minister of State, Department for Business, Innovation and Skills

Thank you for your letter of 31 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 13 June. They have now decided to clear the document from scrutiny.

Thank you for drawing the Committee's attention to the UK’s formal response to the Commission’s Green Paper, the contents of which the Committee notes with interest.

A response to this letter is not required.

14 June 2011

SINGLE MARKET ACT (9283/11)

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

I am writing in response to your letter of 24 May regarding the Explanatory Memorandum (EM) on the Single Market Act. You noted that the EM did not comment on the Commission’s proposals for a Common Consolidated Corporate Tax Base (CCCTB). I would, therefore, like to take this opportunity to outline the Government’s position regarding CCCTB.

The Government does not believe that a CCCTB is necessary for the single market to function effectively and would not agree to any proposals that would jeopardise the UK’s ability to shape its own tax policy or create the most competitive corporate tax regime in the G20. However, the Government recognises that the Commission’s proposals will potentially impact companies operating across the EU, notably if they are taken forward by a small group of Member States under enhanced co-operation. Given that the adoption of a CCCTB by a small number of Member States would have implications for the UK and for UK businesses, the Government considers that it is very much in our interests to participate fully in any discussion of the Commission’s proposals.

16 June 2011

SMART GRIDS (9001/11)

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

Thank you for your letter of 24th May concerning the above communication from the European Commission.

We agree that there is value in the European Commission being involved in developing standards for interoperability of smart grids. The main benefit of setting European standards will be to ensure that smart grid products are compatible with each other and with different EU networks. This will drive an open competitive market in smart grid products. At the same time there will be aspects to smart grids that will need to cater to the individual needs of Member States’ networks. Therefore in setting any standards for interoperability, it will be important to balance the need for common standards against the context of a diversity in the legacy infrastructure and associated issues with networks across Europe.

We also believe that whilst guidelines for development of detailed plans for smart grids could be useful, it is premature for legislation based targets for the implementation of Smart Grids. There is currently too much uncertainty on pace and scale of challenges that networks will face. The specific smart grid solutions that will address these challenges are also unclear at this stage. This is reflected in the many smart grid trials and demonstrations throughout the UK and the EU which are in progress or in development. Legislation at this stage could therefore lock us in to an inappropriate pathway.

10 June 2011
Letter from Mark Prisk MP, Minister of State, Department for Business, Innovation and Skills to the Chairman

Thank you for your letter of 1 March 2011 setting out your interest in receiving an account of the action points agreed with Minister von Klaeden and Mr Harbour following our smart regulation teleconference on 23 March.

As you will recall, these actions stemmed from discussions at the first smart regulation seminar held on 12 January this year, which sought to identify ways we could work with MEPs to improve the quality of EU legislation and reduce the burden it places on business.

In the teleconference we agreed a number of actions including the promotion by MEPs of good practice regarding the use of impact assessments in Parliamentary Committees and the identification of ways to strengthen the voice of SMEs in the policy-making process. These actions contribute to the delivery of the ideas set out in the 18 March EU growth letter, signed by David Cameron and eight other EU Heads of State.

We also agreed to hold a second smart regulation seminar, envisaged to take place later this year, to further discuss these actions and the Prime Minister’s vision for EU growth. This will be extended out to other member states beyond UK and Germany to further develop the alliance we currently have in the European Parliament.

I am pleased to hear that you met Sir Don Curry on 12 May to discuss your views on how our work on smart regulation and growth can be furthered in Europe, and I look forward to working with you in the future in this important area.

14 June 2011

STRENGTHENING AIR CARGO SECURITY: SCREENING OF LIQUIDS AND GELS CARRIED BY AIR PASSENGERS (9864/09, 10865/10)

Letter from the Chairman to Philip Hammond MP, Secretary of State, Department for Transport

Thank you for your letter of 31 May regarding air security. We are very grateful to be kept informed of such developments when they fall outside the normal scrutiny process. We appreciate that your letter was sent to us in confidence and we shall neither publish it nor refer directly to its contents. However, in anticipation of the Transport Council on 16 June, we should like to make the following points.

It is disappointing that the technology for screening for liquid explosives has not been made available more quickly. Such technology was originally intended to be in place by April 2010. On 4 November 2009 we received a letter from the former Minister, Paul Clark, who said that this deadline would not be met but that some screening technology would be available “in the not too distant future”. Nineteen months later, the technology is still not in place. I understand you intend to write to us with an account of the discussions at the Transport Council, and we should be grateful if your letter could also provide an explanation of why there has been a delay in introducing such technology in the UK and the EU more generally, and whether there are any lessons which can be learnt from other Member States as to how implementation can be brought forward in this country.

The restrictions on carriage of liquids in hand luggage has been a major inconvenience to travellers since it was introduced, with good reason, in 2006. While it is disappointing that more progress has not been made in this area, we believe that considerations of security have to be paramount.

15 June 2011

Letter from Philip Hammond MP to the Chairman

Thank you for your letter of 15th June in response to my previous letter of 31 May. I am writing as promised to provide you with an update on recent EU aviation security activities following the Transport Council meeting which I attended in Luxembourg on 16th June and following votes taken on 8th June and 7th July by the EU aviation security regulatory committee. Please note that the
attachment to this letter is being provided to you in confidence. It should not be published or reported on in any way which would bring its contents into the public domain.

AIR CARGO SECURITY

The Commission put its inbound cargo and mail proposals to a vote at a specially convened meeting of the aviation security committee on 8th June. These narrowly failed to secure a qualified majority. The UK voted in favour of the proposals and I was disappointed that agreement was not possible. At Transport Council I called for work to continue in order to address the concerns of those Member States who were initially unable to support the changes. The Commission made some minor adjustments to the technical detail of the proposals (the substance remains the same as in the summary provided with my letter of 31st May.) These were subject to a re-vote on 7th July and were approved by the committee. The new rules will apply from February 2012.

LIQUIDS AEROSOLS AND GELS (LAGS)

At 8th June meeting a vote was also taken to amend Regulation (EU) 272/2009 on LAGs. This was carried, thus (subject to formal adoption through the regulatory procedure with scrutiny) revoking the 2011 first-phase screening requirement for 3rd country transfer LAGs, in favour of an optional approach until the 2013 deadline (full lifting of restrictions). You asked about the reasons for the delay in introducing LAGs screening technology and whether any lessons can be learnt from other Member States as to how implementation can be brought forward in this country. In the light of the continuing high threat to aviation, I felt it was important not to take any risks with security by requiring our airports to screen liquids before they were properly prepared to do so. Liquid explosive detection technology, although approved and available, is still relatively new and has not yet been fully tested in a busy operational environment. The UK faces specific challenges around airport size, numbers of airports, and the financing of security equipment. These may be more manifest than the challenges facing some of those Member States which were prepared to proceed with the introduction of LAGs screening at the end of April.

In discussions leading to the LAGs vote, the UK successfully lobbied for the inclusion of a regulatory provision permitting Member States the option of requiring their airports to screen LAGs under national measures before 2013. This maintains the UK’s ability to require, through domestic measures, LAGs screening at UK airports at any time, subject to a risk assessment. The Department is continuing to work with the UK aviation industry to ensure it is ready to screen transfer LAGs as soon as it is viable from a security and operational standpoint. An operational trial of liquids screening equipment is presently taking place at one of our major airports. The results of the trial will help inform our decisions on the introduction of LAGs screening in the UK.

SECURITY SCANNERS

When I wrote in January this year I advised you that the Commission was finalising an impact assessment on security scanners with a view to bringing forward a legislative proposal to allow scanners to be used as a primary security measure. When I wrote on 31st May I said that I hoped in my next letter to be able to update you on this work. This work has now been completed and a final draft has been shared with Member States. Proposals for Commission legislation on scanners have now been developed. These were put to the vote, and were approved by the aviation security committee, on 7th July. The proposals were received by my officials only a few days before the meeting and it was unfortunately not possible to give you the opportunity to consider them ahead of the vote.

The proposals, which must now be cleared by the European Parliament under the regulatory procedure with scrutiny in order to become effective, add to the list of permitted methods of primary passenger screening only those security scanners which do not use ionising radiation (X-ray). Domestically, the UK has taken a technology-neutral approach, based on assurances from the Health Protection Agency that the risks from X-ray based scanners were extremely small. However, the Commission felt that further work was needed at the European level to supplement the risk assessments already undertaken by a number of Member States. It has asked the European Scientific Committee on Emerging and Newly Identified Health Risks to do this and provide further advice back to the Aviation Security Committee. We expect this process to take about six months.

For those airports wishing to use scanners, the proposals lay down specific requirements to protect passenger privacy. For example scanners must not store, retain copy, print or retrieve images,
images shall be deleted immediately after the passenger has been cleared. The proposals also provide the ability for passengers to opt out of being scanned.

UK trials suggest that primary screening (or a variant, in which the scanners are used to resolve alarms from the metal detector), together with a no scan, no fly provision (which does not allow selected passengers to opt out of scanning if they wish to travel), provides the best outcome in terms of security and passenger facilitation. While the proposals will make primary deployment legally possible on an ongoing basis, they also contain a provision for a passenger opt-out which I could not support. As a result, the UK abstained in the committee vote.

The Commission’s scanners impact assessment is likely to be published in the autumn once European Parliament scrutiny of the scanners regulation has been completed. However, I thought that you would welcome early sight of the draft document and I have enclosed a copy in confidence as outlined in the first paragraph of this letter. It is still in draft form and it contains a few inaccuracies in respect of the UK position on no scan no fly. We have made the Commission aware of these inaccuracies which we hope will be rectified before the document is published.

**PROPOSAL FOR A DIRECTIVE ON AVIATION SECURITY CHARGES**

My letter of 31 May also undertook to update you on the likelihood of negotiations resuming on the proposed Aviation Security Charges Directive (EM 9864/09). As you know, the Hungarian Presidency chose not to take the proposal forward. I can now report that Poland has also signalled that it does not intend to take this work forward during its Presidency.

I hope that you will find this update useful. I will continue to keep your Committee informed of the progress of all of these issues as matters progress.

20 July 2011

**Letter from the Chairman to Philip Hammond MP**

Thank you for your letter of 20 July regarding air security, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 10 October. As per your previous correspondence in this area, we appreciate that your letter and the attachment was sent to us in confidence and we shall neither publish it nor refer directly to its contents.

We note that no progress has been made with the proposed Aviation Security Charges Directive but welcome your notification that further air cargo security measures have recently been adopted. We are also grateful for the further information you have provided regarding developments with the introduction of Liquids, Aerosols and Gels (LAGs) screening technology.

We also note that the Commission have developed delegated legislative proposals authorising the use of security scanners at EU airports. We consider this to be an important matter and therefore, would like to request that these proposals are formally deposited in order to allow us to conduct adequate scrutiny accordingly.

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

11 October 2011

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

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

Thank you for your explanatory memorandum of 19 August 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October 2011. They decided to clear document 13016/11 from scrutiny.

We apologise for the delay, on account of the Parliamentary recess, in our response.

We support strongly the aim of the proposals. Marine fuels are a significant source of pollution; steps must be taken, as they have been for other modes of transport, to reduce the impact that fuel emissions have on the environment and on human health.

In your memorandum you raise serious concerns regarding elements of the International Convention for the Prevention of Pollution from Ships (known as MARPOL) Annex VI revision that are not
contained within the proposal. We share your concerns, especially given that provisions implemented separately into national law could create an uncertain legal regime in this area. We hope that the Government will take a strong stance in this respect in future negotiations.

Your other main concern related to the strengthening of the compliance and enforcement regime. In this respect, the Government’s view that non-compliance is not an issue contradicts directly the view of the Commission, who believe that it is a significant issue at present and will likely become more so in the future. We would appreciate it if you could outline the evidence base for the Government’s differing view in this case.

We also note that you did not state a policy position on several points, including the extension of a 0.1% sulphur limit beyond specified Emission Control Areas (ECAs), whilst awaiting further analysis and an Impact Assessment. We would be grateful to receive the Impact Assessment as soon as possible, and to hear the Government’s updated thoughts on the proposal in light of that document and discussions with stakeholders.

You state that 18 months is a preferred transposition period, but the basis for this assertion is not clear from the memorandum. We would appreciate it if you could explain this view.

Finally, your memorandum highlights that the first global sulphur cap must be in place from 1 January 2012. Given how close this date is, we would like to know whether the timing raises any difficulties in relation to the implementation of this proposal.

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

18 October 2011

Letter from the Mike Penning MP to the Chairman

I am writing in response to your letter of 18 October 2011 regarding the European Commission’s proposal to limit the sulphur content in marine fuel. You requested additional information about the UK’s negotiating position.

I was pleased to see in your letter that the Committee supports the need to reduce the impact of ship emissions on the environment and on human health. I also welcome the fact that you share our concern that certain key provisions in the revised MARPOL Annex VI have not been included in the Commission’s proposal. Our position is that we support the full alignment of the European directive with the international standard. Unless there are significant benefits to industry or significant additional benefits to the environment and public health, we will oppose any European measures which deviate from or add to the provisions under the revised MARPOL Annex VI. I can assure you, therefore, that the Government will take a firm stance in negotiations to meet this objective.

THE UK COMPLIANCE AND ENFORCEMENT REGIME

On the issue of whether there should be more sampling of marine fuel, the Maritime Coastguard Agency have indicated that vessels calling at UK ports are largely compliant with the existing regime and that there is little evidence of non-compliance. Based on their inspections, the MCA estimate that less than 4% of vessels are technically non-compliant under the existing regime and of these, some may simply have been unable to purchase compliant fuel outside the SOx ECAs.

Of course, we want to ensure that the benefits of reduced sulphur emissions are obtained, and that means having an effective mechanism in place to enforce compliance. Fuel inspections are undertaken by MCA surveyors as part of their normal duties when carrying out a port state control inspection. Under the MARPOL convention, there is no requirement to sample fuel unless there is evidence of non-compliance -- although a ‘MARPOL sample’ of fuel must be available for testing if suspicions arise. Assessing compliance in the UK is done chiefly through the monitoring of bunker delivery notes. When appropriate, MCA surveyors will sample the sulphur content of fuel, although direct sampling of fuel in a vessel's service tank is not envisaged under the MARPOL regime.

This approach is the international norm in the marine fuel industry and is intended to deliver a clear chain of responsibility for the fuel supplied to a ship. The scope for committing fraud in the sector is also controlled to some extent by commercial buyers, who routinely test the quality of fuel to ensure the supply contract has been properly fulfilled.

Despite the reasonably good levels of compliance in UK waters, the Department recognises that introduction of stricter sulphur limits into Northern Europe, with its associated increase in fuel costs, may lead to an increase in non-compliance. To guard against this, the MCA will monitor compliance before and after the new limits come into force; and if there is a problem, then it might be possible to
adjust enforcement procedures accordingly. Whatever the outcome however, all inspections and enforcement action must be conducted in a cost-effective and proportionate manner, which makes the best use of the MCA’s existing staff and resources.

UK POLICY POSITION ON OTHER ISSUES

Your paper indicated that the Explanatory Memorandum did not provide a UK policy position on several points. I confirm that the Government does not support the proposed 0.1% sulphur limit for passenger ships which operate outside the SOx ECAs (in force from 2020). We have asked the Commission for further evidence that would justify the need of additional health and environmental safeguards outside the SOx ECA, but have not yet received anything further. We are also concerned that the measure would distort competition between ferries which are passenger vessels for the purposes of the directive, and other ferries. Both can carry lorries, but only passenger ferries would be subject to the stricter sulphur limit.

The Commission’s proposal would also increase the amount of fuel sampling, both in terms of the fuel being delivered to ships and sampling marine fuel in sealed bunker samples on board ships. The proposal would also determine the frequency of sampling, the sampling methods and where samples need to be taken. We are concerned that this would significantly increase the burden on regulatory authorities and increase the amount of administration for shipping companies for very little additional benefit – particularly if the current low level of non-compliance continues in UK waters.

The Commission’s proposal also includes an unnecessary requirement to undertake trials of abatement systems. This requirement may simply have been carried across from the original 2005 directive without recognising that the IMO has developed a standard and type approval regime for such systems in the intervening period. In our view, it is not appropriate that a system approved to the IMO standards should be subject to an additional EU trial.

We are also concerned about the procedures to approve alternative abatement systems. Under the revised Annex VI, the issue of equivalency and the verification of compliance along with the obligation to notify the IMO are the responsibility of the states that are Parties to the MARPOL Convention. The Commission would like to use the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) to perform this function. The UK is a member of COSS, so we would be able to influence the Committee’s decisions. However, we would be in a much weaker position and would not be able to act alone in deciding what is acceptable in terms of equivalency.

In addition to the new limits, the UK does not support the Commission’s proposal to ensure that marine fuels are not used or placed on the market within the EU if the sulphur content exceeds 3.5%. We consider this measure is unnecessary and potentially harmful. It is unnecessary, because there is an existing global limit which would limit the sulphur content in marine fuel to 3.5% or less, or require the use of an exhaust gas cleaning system in order to use fuel that has a higher sulphur content. It would also be harmful if it discouraged shipowners from purchasing exhaust gas cleaning systems. Typically, oil which has the highest sulphur content is cheaper than fuel which has a sulphur content of up to 3.5%. This measure would therefore, limit the fuel choice for shipowners who use an exhaust gas cleaning system and force them to purchase a more expensive fuel than they would otherwise need.

TIMELINES FOR IMPLEMENTING THE DIRECTIVE

As currently drafted, European Member States would only have 12 months to implement the directive. There are considerable variations in the way that Member States implement European directives and we will need to analyse, consult, cost and agree enforcement and compliance procedures before UK regulations can be laid before Parliament. As you know, this directive will have a significant impact on several sectors of the industry and the Government believes it is important that all the necessary steps are taken to ensure that interested parties are properly informed and have enough time to prepare for these changes. We consider 18 months is the minimum time required in order to implement this directive.

As you rightly note, our EM highlights the first global sulphur cap limit of 3.5% should be in place by 1 January 2012. There is also another deadline under MARPOL Annex VI that has already passed; the intermediate limit for SOx ECAs that would reduce the sulphur content in marine fuel from 1.5% to 1.0% from 1 July 2010 onwards.

We recognise that unfortunately, neither of these limits will be enforced actively by Member States until the new directive has been adopted and transposed into domestic legislation. Of the two limits, the 3.5% global limit is perhaps less important, because the average sulphur content of existing marine
fuel is already less than 3%. Our main priority is therefore, to ensure that we do not miss the 1 January 2015 deadline to implement the 0.1% limit for the SOx ECAs on 1 January 2015, as this measure is expected to provide most of the environmental and health benefits for Northern Europe.

 Negotiations are still at an early stage, so it is impossible to say when an agreement will be reached. In our view, the earliest that the Council might agree a general approach is March 2012, although we expect it will take longer. The European Parliament has scheduled 21 May 2012 as the date for its 1st Reading Plenary.

Finally, we will of course send you a copy of our initial Impact Assessment once this has been completed.

23 November 2011

THE SAFETY OF AIR NAVIGATION (EUROCONTROL)

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

I am writing to inform your Committee that the Transport Council on 6 October 2011 agreed to grant a mandate to the European Commission to conduct negotiations with the European Organisation for the Safety of Air Navigation (Eurocontrol) on a high-level agreement (“the Agreement”) aimed at establishing a new and stable framework for enhanced cooperation.

Since the advent of Single European Sky in 2004, the EU has considerably extended its regulatory experience in the field of air traffic management (ATM) but lacked the technical expertise in this area. Eurocontrol has been the source of this expertise and in 2003 the two organisations concluded a Memorandum of Cooperation in recognition of the support each gave to the other’s activities.

The launch of the SES II package in 2008, which included the introduction of a Performance Scheme for Air Navigation Services and a centralised Network Management Function, has led to Eurocontrol becoming increasingly viewed by the Commission as the technical and operational arm for the delivery of the SES. It is also actively involved in the SES ATM Research (SESAR) Programme to modernise the European ATM system. Eurocontrol has recently been designated as the Network Manager for the SES. The two organisations have also developed partnerships in other areas, such as the formation of the European Aviation Crisis Coordination Cell established in the aftermath of the 2010 volcanic ash crisis.

It is appropriate, therefore, for the cooperation to be strengthened and consolidated through the proposed Agreement. Eurocontrol has realigned its internal structures to accord with the multiple roles it has in SES/SESAR. Three “pillars” have been created: SES (for the work it is mandated to carry out by the Commission), Network Management and SESAR.

Eurocontrol with its 39 Member States also provides a conduit for extending the SES initiative beyond the EU. The cooperation of Eurocontrol’s non-EU Member States is crucial to the delivery of a truly pan-European SES. Eurocontrol also actively cooperates with neighbouring North African and Eastern Mediterranean States several of whom are participating in functional airspace block initiatives in the area. This pan-European dimension will be reflected in the Agreement.

The Commission will be assisted in the negotiations by a Special Committee comprised of Member States.

The Eurocontrol Agency also had to seek delegated authority from its Member States, including the UK, to conduct these negotiations with the Commission which they granted in May 2011. The Agency has set up a “Negotiation Support Group” of a core of members of the Provisional Council’s Co-ordinating Committee (PCC) to assist its negotiation team.

Negotiations have already commenced and are scheduled to finish before the year end. During the spring of next year the draft Agreement will be agreed in parallel via each organisation’s internal approval procedures. As a member of both organisations, the UK will, from its differing vantage points, seek to ensure that the interests of members of each organisation are preserved in the final text. The Agreement is likely to enter into force in the summer of 2012.

29 November 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 letter of 24 May, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 13 June. They have now decided to clear the document from scrutiny.

We hope that your suggestion that the costs are unlikely to exceed those already associated with the European Business Register becomes reality in due course. The Committee also notes with interest the Government’s proposed approach in the negotiations concerning this proposal.

A response to this letter is not required.

14 June 2011

Letter from Edward Davey MP to the Chairman

I wrote to you earlier this year on this issue which the Sub-Committee on the Internal Market, Energy and Transport considered at their meeting on 13 June cleared from scrutiny.

There have been a number of Council working groups on this proposal and I thought it would be useful to update you on progress and provide you with a negotiating check list. I also attach the latest Presidency compromise text which is under negotiation. The changes to the original proposal are in three key areas and these changes give us much more clarity:

— IT architecture: The revised proposal gives more clarity on the way that registries will be connected. The proposal is to have a central gateway/platform which individual registries in Member States will interface with. This approach avoids the complexities of trying to connect individual registries to each other, and so aims to keep costs and technological solutions to a minimum.

— Funding: The draft proposes that the Commission will be responsible for financing the central platform/gateway and its ongoing costs. Member States will be required to ensure that its register is able to connect to the central platform. This approach exposes Member States to reduced costs and the Commission hopes to secure funding from an established funding stream. Companies House are already working through the European Business Registers on a pilot to link up registries and they are confident that the cost to link with a central platform can be absorbed into their existing work on interconnection. This approach will ensure that no additional costs are passed on to UK companies as a result of this proposal.

— Two Stage approach – The latest draft proposal supports a two stage approach, firstly agreement to amend the relevant directives followed by the Commission and Member States working together to agree the appropriate technological solution – either delegated or implementing acts. There are now more details within the proposal on the scope of the technological solution and the Presidency is working on a new draft which we expect to include further detail on the governance which is currently in the recitals.

The Polish Presidency is aiming to seek general agreement at the Competitiveness Council in early December.

23 October 2011

Letter from the Chairman to Edward Davey MP

Thank you for your letter of 23 October, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 7 November.

The Committee notes with interest the progress of the proposal after the negotiations so far, which appears to satisfy our earlier concerns about some of its provisions. We especially welcome the intention that no additional costs will be passed onto UK companies. We further note that the
Government appears content with the current form of the proposal. Once enacted, we believe that the Directive should appear on UKWelcomes, the United Kingdom’s Point of Single contact.

Otherwise, we are now content that no further updates on the progress of this proposal are required.

8 November 2011

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

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 14 September 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October 2011. They decided to hold document 13635/11 under scrutiny.

In our report on Re-launching the Single Market, published on 4 April 2011, we gave our support to the Internal Market Information System (IMI), noting its value and the potential benefits of expanding its reach to other areas of Single Market legislation. We therefore welcome this proposal, and are glad to see that the Government are supportive of IMI expansion.

We note that support for expansion is predicated upon the presence of adequate safeguards to guide it. We agree that expansion must be with due care and attention, and would encourage the Government to take up this point as part of negotiations on the expansion powers delegated as part of the proposal.

In your memorandum, you raise concerns with respect to the interplay between national data protection standards and those in the proposal. Legal certainty is an important element of developing the IMI system, and we support the Government’s efforts to ensure that the precise nature of data protection provisions applicable in relation to the proposal are made clear.

You also identify in the explanatory memorandum a desire to see a more comprehensive system of coordinated supervision in relation to data protection standards. However, it is not clear from your memorandum whether this means that the proposal for joint working within the proposal is supported, or whether the Government intends to bring forward alternative plans. We would welcome clarification on this point.

We note and agree with your identification of unclear drafting in relation to information exchanges with third countries (Article 22). We defer consideration of the implications of the provision until this has been resolved. We would appreciate if you could update us on progress of negotiations in this area, as well as progress more generally.

More generally, we note that electronic systems can often be rendered obsolete by technological developments. We would be keen to hear whether there are any mechanisms in place to ensure that the information exchange system is able to respond to any such developments in the future.

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

18 October 2011

Letter from Edward Davey MP to the Chairman

I refer to the Committee’s letter of 18 October regarding the above proposal. I apologise for not writing sooner; this is due to the negotiations timetable of the Council working groups. I am now in a position to provide you with an update on the progress of the negotiations of this Regulation.

As mentioned in the Explanatory Memorandum, my concerns on this Regulation are centred on the process of the expansion of the IMI and ensuring there is a sound data protection framework which this Regulation aims to create. The Committee noted the Government’s reservations over these points and proposed to hold the proposed Regulation under scrutiny, pending further information.

My policy team has actively advanced our views in the Competitiveness Council working groups to build consensus amongst Member States and to explain our position to the Commission. These concerns were reflected in interventions and drafting proposals passed to the Presidency and Commission during the 11 and 21 October working group meetings.
During the negotiations we have been seeking agreement over the drafting of Article 4 which regulates the delegation to the Commission of the power to move items of legislation listed in Annex II to Annex I and thus expand IMI into these other Single Market legislative areas. The Government is content with IMI expansion into these areas listed in Annex II and with the delegation to the Commission of the decision to make the transfer. However we are concerned to ensure that the expansion should meet necessity and proportionality tests. We believe that in accordance with the Common Understanding between the European Parliament, Council and Commission on delegated powers there should be prior consultation with Member States, and that national experts are able to advise on the exercise of the delegated powers. In this regard we are pressing for the adoption of the acts in Annex II to be preceded by a pilot project where this is considered necessary by national experts as well as the Commission.

We also have been seeking to ensure that the draft Regulation creates a sound data protection framework for the personal data exchanged via the IMI. We are pleased that your Committee supports our efforts to ensure the specific safeguards provide legal certainty for data subjects and IMI users and that the Regulation makes clear how they relate to other data protection legislation. In relation to co-ordinated supervision, the Government has no difficulty with the existing text as it follows closely other models of co-ordinated supervision such as those for the Visa Information System and the Schengen Information System. The current proposal for joint working is therefore supported, however, we expect the European Commission to table a new legal instrument to replace the EU Data Protection Directive in early 2012 and this might have some bearing on how national supervisory authorities are expected to co-ordinate their activities in future.

In relation to the concerns over information exchange with the third countries (Article 22), we can report that the Commission consider that the limitations set out in Article 22(1) a-c are sufficiently prescriptive and has clarified that the IMI will only apply to those countries which have acceptable safeguards regarding data protection and data is exchanged or made available in accordance with an international agreement (for example EEA countries are covered by a separate agreement). We are content that this clarification is adequate, but will pursue clearer drafting of Article 22 to reflect this.

In relation to your concerns about the IMI response to technological developments, it is worth noting that Commission is making sure that the IMI has regular software updates to keep it up to date. For example, just recently the search function was redeveloped so Competent Authorities can more easily find their counterparts elsewhere in the EU.

The Polish Presidency is now gathering all drafting proposals and will present the redrafted text of the Regulation at the working group meeting on 24 November. We are working closely with other Member States including, Germany and France who have similar concerns, to come up with a common position on the questions raised.

1 November 2011

Letter from the Chairman to Edward Davey MP

Thank you for your letter of 1 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 21 November.

They decided to clear document 13635/11 from scrutiny.

We are in support of your position on the expansion of the IMI system. Like you, we support a careful delegation of powers, with any IMI expansion pursued proportionately, only when necessary and in consultation with experts from Member States.

We also support your position on information sharing with third countries. Now you have clarified the position with the Commission, we urge you to take a strong stance in negotiations in order to ensure that the wording of the proposal outlines precisely the conditions for data sharing.

Finally, we thank you for your note on how the system will be kept up-to-date as technology develops, and on your clarification of your position concerning the data protection framework. We would be grateful for updates on all these points as negotiations continue ahead of the proposed adoption by the end of this year.

We do not expect a reply within 10 working days.

24 November 2011
THE OPEN INTERNET AND NET NEUTRALITY IN EUROPE (9350/11)

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 13 May which was considered by the Sub-Committee on Internal Market, Energy and Transport on 6 June. They decided to clear the document from scrutiny.

We note that the Government support the content of the Communication, particularly the Commission's commitment to “preserve the open and neutral character of the Internet”. We are also sympathetic with this aim and will look forward to considering any further evidence published by the Commission which suggests that it is being interfered with.

A response to this letter is not required.

7 June 2011

THE QUALITY OF PETROLS AND DIESEL FUELS

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

Thank you for your explanatory memorandum of 14 September 2011, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 24 October 2011. They decided to hold the document under scrutiny.

We appreciate the clarification you provided in relation to the legal base for the proposal and the legislative procedure engaged.

We strongly support efforts to reduce the impact on the environment and on human health resulting from greenhouse gas emissions from vehicles and other machinery. As a result, we support the idea of weighting values based upon the intensity of greenhouse gases emitted across the lifecycle of a fuel. Whatever calculation system is adopted, it is important that the obligation incumbent upon fuel and energy suppliers to reduce the intensity of their greenhouse gas emissions by 6% per unit by 2020 is adhered to.

You have outlined reservations over the methodology suggested by the Commission, querying its decision to separate out fuels derived from oil sands and oil shale in calculations. However, we note that the Commission has attributed this decision to information drawn from scientific discourse and highlights a similar distinction in the European Emissions Trading System and guidelines by the Intergovernmental Panel on Climate Change. Furthermore, the proposal is identified as a compromise between accuracy and the administrative burden of more detailed calculations. Given that you raise points about the practical difficulties of establishing a “chain of custody” for fuel, we would like to know how a compromise that would distinguish between different extraction methods of the same fuel would strike the right balance between accuracy and burden.

As noted, the memorandum raises concerns over the practical difficulties of implementing these proposals. We agree that some elements of the proposal could pose significant administrative challenges (and thereby impose administrative burdens), but wish to defer more detailed consideration on this point until after the production of the Government’s Impact Assessment and after further details of implementation are known.

We believe that further scrutiny of the document is required, but note that there is a possible vote on the issue at the 25 October meeting of the Fuel Quality Committee. Given that the document was deposited on 13 October, and the memorandum was deposited on 18 October, a vote on 25 October vote provides scant opportunity for Parliamentary consideration. It is clear that you are pushing strongly for a vote to be postponed, with which we agree, and we thank you for your prompt and continued engagement despite the tight timescale.

Given that fact, and given that the Government’s position is to adhere to the target of reduced emissions under any compromise, we wish to make clear that, although we hold the proposal under scrutiny, any vote for the proposal at the 25 October meeting will not be treated as an override under the Scrutiny Reserve Resolution.
In light of the significance of that meeting, we would appreciate it if you could provide an update on developments as soon as possible after it has concluded, so that we can assess the impact on the proposal.

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

25 October 2011

Letter from Norman Baker MP to the Chairman

On 18 October I submitted to your Committee an unnumbered Explanatory Memorandum (EM) on the proposed implementing measures for Article 7a of the Fuel Quality Directive (98/70/EC, as amended by Directive 2009/30/EC), referred to below as the “FQD”.

Thank you for your letter of 25 October in reply to this explanatory memorandum. I would like to provide an update on the progress of these proposals. At the Fuel Quality Committee meeting of 25 October a number of Member States, including the UK, sought clarification on the proposals from the European Commission. Though the agenda had suggested a possible vote, I am pleased to say that no vote was called.

The next meeting of the Fuel Quality Committee is 2 December. No agenda or papers have been sent for this meeting yet. It is possible that a vote on the proposals could take place at this meeting. However, another meeting of the Fuel Quality Committee has been scheduled for 19 January 2012 which suggests that the vote will be postponed until then.

Many questions and queries about the proposals were raised by Member States at the 25 October meeting and more information and material will be provided at the December meeting in response to these. This will include information on the practical implementation of the proposals which you raised as an issue in your letter. Therefore I believe it would be preferable for the vote to take place in January.

I will write to your Committee with a more detailed update before the Fuel Quality Committee meeting of 19 January when more information is available.

15 November 2011

THE USE OF SECURITY SCANNERS AT EU AIRPORTS (UNNUMBERED)

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

We acknowledge your explanatory memorandum of 24 October regarding the above documents, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting of 7 November.

We are surprised that these subordinate legislative proposals have already been agreed and are likely to enter into force in mid-November. We consider it to be unsatisfactory that the existence of these measures was not notified to us earlier, thus depriving the Committee of the opportunity to conduct meaningful scrutiny.

A Commission Communication, which anticipated these proposals, was considered by the Committee on 19 July 2010 and we decided to clear this document from scrutiny. However, we wrote to Phillip Hammond MP, the then Secretary of State for Transport, making it clear that we intended to conduct more detailed scrutiny of the proposals when they became available, which at that point was expected to be before the end of 2010. We also made clear our belief that the introduction of security scanners raised important human rights issues, including privacy and data protection rights, as well as guaranteeing adequate health standards. We expected that the terms of this letter would have placed the Government on notice that we expected to be notified in good time when these proposals were eventually formulated. However, as we have seen, this did not prove to be the case and we contend that we are entitled to know your view on why the present situation has been allowed to develop.

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

8 November 2011
Thank you for your letter of 8th November concerning the Explanatory Memorandum on airport security scanners. I am happy to provide you with some further background on the history of this file.

When the previous Secretary of State wrote in January this year he advised that the Commission was finalising an impact assessment on security scanners with a view to bringing forward a legislative proposal to allow scanners to be used as a primary security measure. It was intended at that stage that any new legislative proposals would be put forward for Parliamentary scrutiny once they had been received from the Commission. When he wrote to your Committee again on 31 May, he again advised that he hoped to update you shortly on the forthcoming proposals.

However, the Commission’s proposal arrived later than expected, partially due to the need to complete their draft Impact Assessment and partly because the Commission was awaiting the completion of a European Parliament report on aviation security, published in June this year, which made recommendations on some of the aspects concerning Security scanners. As explained in the Secretary of State’s subsequent letter of July 20th, the draft proposals were finally received by Department officials only a few days before the meeting of the aviation security committee scheduled for 7th July, thus it was unfortunately not possible to give you the opportunity to consider them ahead of the vote.

Because of concerns that the EU proposals were not technology neutral (and thus potentially anti-competitive) and that they allowed persons to opt out of screening, the UK abstained in the committee vote. There was, however, a qualified majority in support of the proposal, which has now been published in the Official Journal.

I am sorry that your committee did not have the opportunity to consider the Commission proposals regarding security scanners before the vote. We try to communicate Commission Proposals to the Committees, together with an explanatory memorandum, within the agreed timescales; even in cases where they fall outside the normal scrutiny process. On this occasion the time constraints meant it was not possible to achieve this before the day of the actual vote, however with hindsight it would have been sensible to write to your Committee again in June to let you know that the proposals were still not available and notify you of the possibility that they would only be available a few days before the meeting.

Clearly it is in all our interests to have an adequate opportunity to scrutinise complex proposals, and officials will continue to impress upon the Commission the importance of giving Member States sufficient time before putting proposals to the vote. To support better scrutiny of proposals for subordinate legislative proposals my officials will be trialling a forward look exercise to identify proposals for delegated or implementing transport measures that are expected to be issued in the next few months, and their level of political significance. We will share this information with the Clerk of your Committee so that a scrutiny handling strategy can be agreed for those proposals that are likely to be of interest to you.

Finally, as you may be aware, the Secretary of State has now issued a Written Ministerial Statement covering the results of the public consultation on security scanners and the Government’s response. The subject of security scanners remains a sensitive one, which attracts a lot of press coverage. However, the overwhelming feedback from airports is that nearly all passengers accept the use of security scanners and find the process quick and convenient. Indeed, an independent survey at one airport employing scanners showed that around 95% of passengers had no concerns at being scanned.

A copy of the Ministerial Statement, and the revised regulations on the use of security scanners at UK airports, has been placed in the Libraries of both Houses.

24 November 2011

TRANSPORT COOPERATION WITH NEIGHBOURING REGIONS (12635/11)

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

Thank you for your explanatory memorandum of 12 August. It was considered by the Sub-Committee on the Internal Market, Energy and Transport on 12 September: they decided to clear it from scrutiny.

We welcome the development of a policy to address coherently the links with the EU’s neighbouring countries and consider it will benefit the mobility of EU citizens and facilitate market opening.
We note your concern about the potential costs involved. In the past, we have advocated the allocation of TEN-T funds based on a robust assessment of the added value such funding could bring. We maintain the same line in regard to any funding of infrastructure projects beyond EU borders. The Commission’s policy of seeking to link infrastructure in third countries with the expanded TEN-T network is sensible in principle, but each project must be assessed on its individual merits.

We of course also note your concern about the potential for competence creep, and strongly support your vigilance in this area.

I do not require a reply to this letter.

13 September 2011

TRANSPORT WHITE PAPER (8333/11)

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

Thank you for your letter of 17 May providing scrutiny clearance to the Explanatory Memorandum of 27 April on the EU Transport White Paper (TWP) and seeking further information on certain issues.

Your letter sought further clarification on whether the Government considers the actions proposed by the Commission are the right ones and which of these actions we believe to be priorities.

During discussions at the 16th June Transport Council and the recent House of Commons debate, the Government broadly supported the Commission’s desire to set a long term vision for a competitive, resource-efficient and environmentally sustainable transport sector in the EU. We acknowledged that some of the Commission’s proposed initiatives aligned well with our domestic objective to ensure that an improved transport system plays an important role in our efforts to promote jobs and sustainable economic growth.

For example, this Government supports the completion of the Single European Sky project, which we believe has the potential to deliver improvements in operational efficiency for aviation and to help to tackle delays and reduce emissions.

We also welcomed initiatives on aviation security in the White Paper that is aimed at improving screening for both cargo and passengers. Given the international nature of the aviation industry it is far better that we do this on a common EU basis. Of the long list if initiatives in the White Paper, these are two issues that we hope that the Commission will prioritise.

We also hope that future reform of EU aviation security rules will include adaptations to the current framework to respond to the concerns of the Sikh community on the searching of religious headgear, as well as a introducing wider role for security scanners. We continue to engage with the Commission on these two (separate) issues.

I welcome your Committee’s support in relation to the Government’s concern to maintain tax sovereignty.

In the context of negotiations on the next financial perspective, we have recently reiterated our opposition to any attempts to create an ‘own resources’ income stream to fund the Commission directly, whether based on infrastructure charging or any other charges or taxes.

You referred to the Eurovignette Directive. We still believe that a taxation base would have been appropriate for this legislation. However, we agreed to the new directive as it had several useful improvements for the UK.

The only national road charging scheme currently planned is the HGV levy which is compliant with the directive. If the changes proposed in the White Paper went ahead, this would be likely to require changes to our scheme (albeit not for several years) as the intention appears to be to mandate distance based charging schemes and full internalisation of externalities. We would oppose both the specifics of these changes and the principle of a one size fits all pan-EU charging scheme.

As you point out, the White Paper contains a number of broadly worded references to internalising externalities and ensuring that the user/polluter pays principle is applied. It is unclear at this stage what the Commission may seek to do to implement such an approach.

At a UK level, we do not exclude the possibility of making some use of the user/polluter pays principle in addressing congestion or reforming taxation in the future. Elements of this approach, for
example, already underlie the London Congestion Charge and Low Emission Zone. It is possible that in the future, our HGV scheme may be adapted to incentivise the user of cleaner and greener vehicles. In addition, local authorities have the power to introduce congestion charging schemes where they consider this is the right way to address local transport and air quality issues.

However, the Coalition has ruled out introducing a national road charging scheme. We would oppose any attempt by the EU to mandate such a scheme in the UK. We would also oppose EU legislation that would require local schemes to be introduced. Any mandatory and standardised road charging scheme would be likely to impinge on tax sovereignty.

I should also make it clear that the Government agrees with your committee that continuing subsidy for the railways will be needed to support economic growth and bring about the wider economic benefits that greater mode choice brings.

I hope that this is helpful.

18 July 2011

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

Thank you for your letter of 20 July, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October.

We apologise for the delay, on account of the Parliamentary recess, in sending our response.

We are deeply concerned about the future of transport policy in the United Kingdom, and feel strongly that a long-term strategic view is imperative. The two priorities outlined by the Government – the Single European Sky and reform of passenger and cargo screening – focus on aviation. Given that the Sub-Committee is examining the future of the European rail market at present, we would be grateful if you could elaborate on the comparative level of focus on other modes of transport in the Government’s plans for the future – and in particular rail - given the focus on air travel in the response.

Your letter also attends to the issue of road charging: stating opposition to a policy adopted nationwide, but accepting the use of some schemes, such as congestion charging, in some instances. We would welcome consideration of a broad range of policy options in the future, given the challenges faced; and believe that no ideas, including wider-scale road charging, should be automatically discounted.

The point of the legal base for Directives concerning road charging was also raised. It appears from your response that the decision to use a transport legal base in the Eurovignette instance was a pragmatic one. However, it is not clear from your response the implications of such a decision. We would be grateful to hear your assessment of the implications of the use of a transport legal base, particularly with respect to tax sovereignty. We would also be interested to know whether this pragmatic approach is likely to be taken in relation to any road charging provisions which may emerge from the White Paper framework.

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

18 October 2011

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

Thank you for your letter of 18 October about the EU Transport White Paper. Your letter sought elaboration of the Government’s plans for the future, particularly in relation to rail.

Although the two priorities outlined in my previous letter on 20 July focussed on aviation, the Government is equally committed to other transport modes.

HIGH SPEED RAIL

We support the proposal of completing a European high speed rail network by 2050. The objective aligns with our proposals to establish a high speed rail network in the UK by 2032-33. We do not object to the White Paper’s aspiration of tripling the length of the existing EU high speed rail network, but we consider that we should be realistic about the achievability of such an ambition, particularly given the financial demands this is likely to create.
On the White Paper's goal for the majority of medium distance passenger travel to be done by rail, we would appreciate clarification on what is meant by 'medium distance' before we can consider the appropriateness of such a target.

REDUCING GHG EMISSIONS FROM TRANSPORT

The Government shares the White Paper's ambition to significantly reduce the carbon emitted by the transport sector in order for us to meet our climate change goals, with additional benefits such as lower fuel costs and better energy security.

However, we would not support the specific goal of a 60% reduction of GHG emissions from transport, since a target at such a level constrains where carbon reductions are made across the economy as a whole, reducing the efficiency of the overall programme.

The Government also agrees that, over time, we are likely to need an almost complete decarbonisation of road transport to meet our climate change goals, and fully support the existing EU framework setting out CO2 emission standards for new cars and vans.

We are taking an integrated and pragmatic approach to support the early growth of the ultra low emission vehicle market, with provision for over £300 million over the life of this Parliament for consumer incentives to reduce the upfront cost of eligible ultra low emission vehicles to consumers and businesses.

However, we believe that it is neither necessary nor practical to set cross-EU targets for urban transport of the sort proposed in the White Paper. Individual urban areas may seek to encourage change through a range of measures already available to them, in a way appropriate to local conditions and priorities.

The Government also agrees in principle with the idea of promoting greater levels of modal shift to help create a more sustainable transport system in Europe. However we are sceptical as to defined targets, given the considerable uncertainties around technologies and costs. We also support in principle the idea of green freight corridors.

ROAD CHARGING

You mentioned that you would welcome a consideration of a broad range of policy options on road charging. Our view is that while congestion charging could play a useful role, for example in some urban areas, it is for each local authority to decide what is appropriate.

Local authorities already have powers under the Transport Act 2000 to implement charging schemes, and we intend to introduce regulations next year to complete the enforcement powers that are needed for such schemes. We would also consider a full range of options, including charging, to fund new strategic roads.

However we have stated that introducing a widespread road pricing scheme is not on the agenda this Parliament.

LEGAL BASE

On the legal base for Directives concerning road charging, during discussions on the latest amendments to the Eurovignette Directive, which governs charging for heavy goods vehicles, as you know we made the case that it should be on a tax rather than transport legal base, but there was not sufficient support for this among other Member States. We made a joint Council Minutes Statement saying:

"The UK, Sweden and Ireland note that the proposed adoption of amendments to the Eurovignette Directive on the sole legal base of Article 91(1) of the Treaty of the Functioning of the European Union is inappropriate for a legislative measure which contains substantial fiscal provisions. In line with observations the UK, Sweden and Ireland have made in similar circumstances previously, the UK, Sweden and Ireland continue to take the view that where EU legislation includes fiscal provisions the legal base should include, either solely or, where appropriate, jointly, one of the Treaty articles dealing with fiscal issues.

In this case, the UK, Sweden and Ireland believe that Article 113 should have been used as a legal base for the Amending Directive."
The support of the UK, Sweden and Ireland for this political agreement is without prejudice to their stance on similar measures in the future.”

The original Eurovignette Directive covered charging schemes and circulation taxes (Vehicle Excise Duty in the UK) and had a dual transport and tax legal base for this reason. Subsequent amendments dealt only with charging, rather than circulation taxes.

We will continue to argue the need for a tax legal base (singly or, where appropriate, jointly) when legislative proposals involve tax elements.

But in considering any future lorry road charging proposal and, ultimately, in deciding how we vote on such a dossier, we will, as here, need to balance our interests between legal base concerns and a desire to see a good agreement on the substance that delivers many UK priorities.

I hope that this is helpful.

7 November 2011

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

Thank you for your letter of 7 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport at their meeting on 14 November 2011.

We appreciate the clarification of your priorities in this area. We are, as we have stated previously, supportive of moves to lower-carbon forms of transport, but we support your drive to ensure clarity as to how this will be achieved. We note that you have deferred consideration of the idea of moving medium-distance passenger travel from air to rail until the definition of “medium-distance” has been defined properly. We would appreciate an update of your position once this has been done.

On emissions, we note that your stance is to call for greater flexibility with respect to specific targets, to allow for holistic action across the economy. We, in contrast, are supportive of strong emissions targets to ensure that carbon reductions are achieved. Nevertheless, we are grateful for your clear outline of the Government’s position in this respect and will defer further discussion on this point until more detailed proposals emerge.

Otherwise, we are grateful for your explanation of the Government’s position as regards road charging and the legal bases to be used for future provisions in this respect.

We do not expect a response to this letter prior to further pertinent developments in the area.

15 November 2011

TYPE-APPROVAL OF TWO AND THREE-WHEELED VEHICLES AND QUADRICYCLES

(14622/10)

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

I am writing to update your Committee on the subject of the approval and market surveillance of two- and three-wheeled vehicles and quadricycles.

The report of the Committee on the 3 November 2010 concluded that before considering the documents further, you would like further information on the negotiations and the UK impact assessment.

A negotiating stage Impact Assessment is enclosed for your information. A summary of the key results of this assessment is attached at annex A.

The text of the Commission’s proposal has been discussed at a number of Council working group meetings. There has been general support for the proposal from Member States. The discussions to date have considered elements common with a parallel proposal on agricultural tractors, EM number 12604/10, to ensure a consistent regulatory approach for both where possible. The discussions also covered general requirements for EU type approval, provisions for market surveillance, acceptance of UNECE Regulations (in place of EC directives) and obligations on manufacturers and distributors.

The UK and other Member States have expressed concern that the proposal gives the Commission powers to introduce new measures without sufficient scrutiny. There has also been support for the UK’s view that, to minimise the burdens on individuals and very low volume manufacturers, Member
States should retain the powers to set the requirements for vehicles built and approved singly, e.g. amateur self builds. There is also general agreement that the timetable for the changes is too ambitious and should be delayed by at least one year to allow time for Member States to implement the new provisions.

We have concerns with many of the emissions elements of the Commission’s proposal. The UK Impact Assessment suggests that the costs substantially outweigh the benefits and the benefits are not focussed on the air quality problems that exist throughout the EU. These issues will be discussed in future meetings.

The European Parliament is also considering the proposal and is expected to vote on its first reading position in October. The Parliament’s Committee on the Internal Market and Consumer Protection (IMCO) has made a number of recommendations in its draft report published on 6th May and this is likely to be the basis for the European Parliament’s position.

IMCO is also concerned that the proposed timetable is too ambitious and suggests that the proposed introduction date of 1 January 2013 is put back by one year to 2014. They also consider that the subsequent dates for the introduction of the various provisions e.g. advanced braking, tail pipe emission limits, etc. are too complex and could be simplified which supports views made by UK industry.

The draft IMCO report supports the introduction of tighter limits on tail pipe emissions, however it suggests deleting the first stage (Euro 3) and moving straight to the second stage (Euro 4) while keeping the proposed introduction dates. This view is at odds with the Department’s impact assessment which suggests that only the first stage will be cost effective for the UK.

The report also endorses the introduction of advanced braking system and other safety provisions. There is support for the introduction of small series and individual vehicle approval to benefit smaller manufacturers and recognition that the proposed limits on the numbers of vehicles that can be approved through these routes is too low and should be increased.

We understand the Polish presidency is keen to make progress with this dossier and is planning to convene a number of Council working group meetings before the summer break. I will, of course, keep you informed of progress in further negotiations.

12 July 2011

Letter from Mike Penning MP to the Chairman

I am writing to update your Committee on the subject of the approval and market surveillance of two- and three-wheeled vehicles and quadricycles.

In your letter of the 21 December 2010 you stated that your Committee wished to retain the proposal under scrutiny since, in advance of the impact assessment, the costs were not clear, in particular the cost of fitting advanced braking.

A negotiating stage Impact Assessment is enclosed for your information. A summary of the key results of this assessment is attached at annex A [not printed].

The Impact Assessment indicates the potential benefits of advanced braking systems which, when fitted to all motorcycles, could prevent up to 72 fatal accidents and 493 serious accidents each year saving £220 million annually, rising to £234 million when slight injuries are also considered. An alternative voluntary industry commitment to fit advanced braking systems is unlikely to achieve similar benefits; at best such a commitment might achieve 85% fitment in the same timescale but there is uncertainty over the exact details of such a commitment, e.g. systems may only be offered as an additional cost option rather than standard fit, and fitment could be as low as 24%.

The cost of fitting ABS to a motorcycle is estimated between £90 and £180 giving an annual total cost of nearly £16 million if fitted to all new vehicles. Overall the cumulative net benefit by 2026 is estimated to be £387 million.

A summary of some of the key results of this assessment is attached at annex A [not printed].

The text of the Commission’s proposal has been discussed at a number of Council working group meetings. There has been general support for the proposal from Member States. The discussions to date have considered elements common with a parallel proposal on agricultural tractors, EM number 12604/10, to ensure a consistent regulatory approach for both where possible. The discussions also covered general requirements for EU type approval, provisions for market surveillance, acceptance of UNECE Regulations (in place of EC directives) and obligations on manufacturers and distributors.
The UK and other Member States have expressed concern that the proposal gives the Commission powers to introduce new measures without sufficient scrutiny. There has also been support for the UK’s view that, to minimise the burdens on individuals and very low volume manufacturers, Member States should retain the powers to set the requirements for vehicles built and approved singly, e.g. amateur self builds. There is also general agreement that the timetable for the changes is too ambitious and should be delayed by at least one year to allow time for Member States to implement the new provisions.

We have concerns with many of the emissions elements of the Commission’s proposal. The UK Impact Assessment suggests that the costs substantially outweigh the benefits and the benefits are not focussed on the air quality problems that exist throughout the EU. These issues will be discussed in future meetings.

The European Parliament is also considering the proposal and is expected to vote on its first reading position in October. The Parliament’s Committee on the Internal Market and Consumer Protection (IMCO) has made a number of recommendations in its draft report published on 6th May and this is likely to be the basis for the European Parliament’s position.

IMCO is also concerned that the proposed timetable is too ambitious and suggests that the proposed introduction date of 1 January 2013 is put back by one year to 2014. They also consider that the subsequent dates for the introduction of the various provisions e.g. advanced braking, tail pipe emission limits, etc. are too complex and could be simplified which supports views made by UK industry.

The draft IMCO report supports the introduction of tighter limits on tail pipe emissions however it suggests deleting the first stage (Euro 3) and moving straight to the second stage (Euro 4) while keeping the proposed introduction dates. This view is at odds with our impact assessment which suggests that only the first stage will be cost effective.

The report also endorses the introduction of advanced braking system and other safety provisions. There is support for the introduction of small series and individual vehicle approval to benefit smaller manufacturers and recognition that the proposed limits on the numbers of vehicles that can be approved through these routes is too low and should be increased.

We understand the Polish presidency is keen to make progress with this dossier and is planning to convene a number of Council working group meetings before the summer break. I will, of course, keep you informed of progress in further negotiations.

19 July 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 19 July, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 17 October. They decided to hold document 14622/10 under scrutiny.

We apologise for the delay, on account of the Parliamentary recess, in sending our response.

We note from your letter that the Impact Assessment has provided much more detail on the proposal, and in particular has shown clear benefits in the proposal to require the fitting of advanced braking systems. We would like to reiterate our support for this measure in the light of the finding.

Otherwise, the Impact Assessment appears to make a case against the emissions limits as proposed. However, your letter does not make clear the next steps given this finding. Will the Government be proposing alternative targets, or is the intention simply to remove emissions targets from the scope of the Regulation?

The letter also makes reference to powers within the proposal that are conferred without sufficient scrutiny. It is not clear, though, to what this refers. We would appreciate it if you could outline this concern in more detail.

Otherwise, we would be grateful if you could give timely updates on negotiations as the proposal develops, especially as it appears that the Polish Presidency is keen to take this dossier forward.

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

18 October 2011
Letter from Mike Penning MP to the Chairman

Thank you for your letter of the 18 October asking for further information on the Government’s approach to the emission limits proposed in the draft Regulation and on the powers conferred on the Commission.

Regarding the emission limits, the Department has written to the Polish Presidency proposing that the 2nd and 3rd emission stages be deleted. We are content for the 1st stage to be implemented based upon our impact assessment. The Department also asked the Presidency to arrange an expert working group to examine the emission proposals in detail. This meeting took place on 22 September. To date the UK is the only Member State to have published a cost benefit analysis of the emissions proposal and this was discussed by the group. MEPs have also been briefed on the UK position.

The Government recognises the Second stage emission proposal might have greater benefit for Member States with warmer climates (e.g. those with coastlines to the Mediterranean). Another Member State has also expressed support for tighter limits on the emission of hydrocarbons (HC) which would support their domestic targets. In discussions at working group level there is broad support from other Member States for the three emission stages but we are, nonetheless, continuing to press for deletion of the 3rd phase.

Our concerns on scrutiny refer to the changes being introduced as a result of the Lisbon Treaty. The proposal creates the procedure for using “Delegated Acts” to update and amend the “non-essential elements” of the Regulation. The Government is seeking to clarify the extent of these provisions as this will avoid uncertainty on the adoption of the detailed technical provisions required by the regulation, especially where such new measures may impose substantive burdens on industry or consumers.

The European Parliamentary has begun its consideration of the proposal and the lead Committee (IMCO) is expected to vote on its report of the proposal on the 22 November. The Parliament’s first reading plenary is currently scheduled for February 2011.

I hope that this further information is helpful. I will of course keep your Committee informed of further developments in negotiations.

1 November 2011

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 1 November, which was considered by the Sub-Committee on the Internal Market, Energy and Transport on 21 November. They decided to clear document 14622/10 from scrutiny.

On the question of the Commission’s delegated powers, we are fully supportive of your position in light of your explanation. The definition of “non-essential elements” must be very clear, both in the interests of legal certainty and also to properly circumscribe the power conferred on the Commission. We hope that you take a strong stance in this respect during further negotiations.

With respect to emissions, we would like to stress again our support for limits put in place to protect the environment and human health. However, we appreciate your clarification of the Government’s negotiating stance, as well as the wider political context. Given the Committee’s interest in this area, we would appreciate being kept up to date on developments in this area in particular.

24 November 2011