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 May to November 2008.

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

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Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum, sent on 10 July 2008, which Sub-Committee B considered at its meeting on 21 July 2008. It was agreed to hold the item under scrutiny.

We are content with the Commission’s efforts to ensure greater safety of aerodromes, air traffic management (ATM) and air navigation services (ANS) through the extension of the European Aviation Safety Agency’s responsibilities and competences.

We note that there are certain outstanding issues that require clarification. We intend to keep this draft Regulation under scrutiny until those issues are resolved. We would greatly appreciate if you could keep us up to date while you are working with the Commission to clarify and improve the draft Regulation.

22 July 2008

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I refer to your letter of 12 March 2008, following the evidence given by DfT officials about this agreement at Sub-Committee B’s meeting of 10 March.

You asked if we could make available information about comparisons of landing charges at a number of different airports. The most comprehensive data we have been able to find on this have been produced by Jacobs Consultancy, who have supplied this information to the CAA. I attach a table [not Printed] setting out the comparative charges position in 2007.

Your Committee may also be interested to know that the first round of negotiations on stage 2 of the agreement took place in Slovenia in May in accordance with the timetable laid down in the agreement. At that meeting both sides made initial presentations on their ideas and objectives for stage 2. The objectives for the EU side included each of the issues referred to in your letter.

The second round of negotiations is expected to take place in September. However, the general consensus is that little substantive progress can be achieved until after the forthcoming US Presidential elections.

9 July 2008

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I am writing to inform your Committee that the Transport Council on 9 October 2008 agreed to grant a mandate to the European Commission to negotiate with Lebanon a Euro-Mediterranean Air Transport Agreement, as part of the process of creating a wider Common Aviation Area with its Eastern and Southern Neighbours by 2010.

The mandate envisages the negotiation of an Agreement along the lines of the one already agreed with Morocco. It calls for the opening of markets between the European Union and Lebanon in return for which Lebanon would agree to adopt harmonised and equivalent regulatory standards based on EU legislation. The areas covered include safety, security, competition, state aids, environmental measures, passenger rights, air navigation management, rights of investment and technical assistance.

A gradual opening of markets is envisaged, with access to the EU market dependent on satisfactory progress by Lebanon in implementing Community standards, notably on safety and security. The Commission will be assisted in the negotiations by a Special Committee of Representatives from the

1 Correspondence with Ministers, 2nd Report of Session and 2009-10, HL Paper 29, p 71
AVIATION: EMISSION ALLOWANCE TRADING WITHIN THE COMMUNITY (5154/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I write further to my letter of 8 January 2008, which notified you of the Environment Council’s Common Position agreed at the December meeting. Since then, negotiations between the Environment Council, the Commission and the European Parliamentary Environment Committee have been ongoing and culminated in a working level agreement on 26 June.

The working level agreement was put before the European Parliament on 8 July and was supported by 640 votes to 30. Member States, at working group level, have already informally accepted the working level agreement, but the package still needs to be formally adopted by the Council, and this is likely to happen at a Council meeting in the autumn.

The compromise package represents a fine balance between the positions of both the Environment Council and the European Parliament and demonstrates the importance both sides attached to securing a deal. The UK is very pleased with this agreement which meets all of our key priorities on geographic scope, a start date within Phase II, increased levels of auctioning compared to the original proposal, an effective emissions cap and no hypothecation of auctioning revenue.

A second reading deal on this proposal demonstrates that the EU is serious about its climate change commitments and is willing to take a leadership role on tackling aviation’s climate change impacts. We are also hopeful that this agreement will set a positive precedent for securing a first reading deal on the Climate and Energy Package (including changes to EU ETS) which will show the world that the EU is preparing the ground effectively for a post-2012 agreement.

For information, I set out a summary of the details of the compromise agreement.

1. TIMING

Commission proposal: Phased approach – intra EU flights 2011, all flights arriving at and departing from EU airports from 2012.

Compromise agreement: Removal of phased approach – inclusion of all flights arriving at and departing from EU airports from 2012.

2. LEVEL OF EMISSIONS CAP

Commission proposal: 100% of average 2004-06 emissions.

Compromise agreement: 97% of average 2004-06 emissions in 2012, decreasing to 95% in 2013. There is a provision to amend the level of the emissions cap in the general Review of the EU ETS Directive.

3. AUCTIONING

Commission proposal: Phase II – Harmonised level equivalent to average of auctioning level of those Member State National Allocation Plans (NAPs) with auctioning (amounting to some 3-4% level of auctioning).


2 Correspondence with Ministers, 2nd Report of Session and 2009-10, HL Paper 29, p 51
4. **BENCHMARK USED FOR INITIAL ALLOCATION**

*Commission proposal:* Benchmark of Revenue Tonne Kilometre\(^3\) where a passenger is equivalent to 100kg.

*Compromise agreement:* RTK benchmark where passenger weight is equivalent to 100kg and distance includes the addition of a 95km fixed factor to take account of indirect routing and airport congestion.

5. **SPECIAL RESERVE**

*Commission proposal:* No special treatment for either new entrants or fast-growing airlines.

*Compromise agreement:* The creation of a reserve for new entrants and fast-growing airlines from within the cap. The reserve will be 3% of the total capped allowances for that phase. These allowances would be allocated to operators in the 3rd year of a phase - to those who begin operating between the year for benchmarking data and 2nd year of phase and also to those whose revenue tonne kilometres total has increased by more than 18% per annum in the same period. The compromise imposed a maximum allocation to an airline to one million allowances. A review of the continuing need for this reserve was also included.

6. **OPEN TRADING SCHEME. ACCESS TO CERTIFIED EMISSION REDUCTIONS (CERS) & EMISSION REDUCTION UNITS\(^4\) (ERUS)**

*Commission proposal:* Fully open trading scheme that introduced a conversion mechanism between Aviation Allowances and EU Allowances. Access to CERs and ERUs set at the average of the level in Member States national allocation plans.

*Compromise agreement:* Open trading scheme but with the removal of the clause that allows convertibility between Aviation Allowances and EU Allowances. 15% access to CERs and ERUs in 2012. Future access to be decided as part of ETS Review negotiations.

7. **ENFORCEMENT**

*Commission proposal:* Member State action.

*Compromise agreement:* Inclusion of text that describes an escalation process where, at the point where a Member State has taken all reasonable action unilaterally, the matter is referred to the Community and subsequent action is taken by the Community as a whole. This approach is similar to the approach as set out in the safety Regulation 2111/2005 which establishes a Community list of air carriers subject to an operating ban within the Community.

8. **EXEMPTIONS**

*Commission proposal:* 5.7t weight threshold. Exemption of all Heads of State flights. No special treatment of routes subject to Public Service Obligations (PSOs).

*Compromise agreement:* 5.7t weight threshold. Heads of State exemption restricted to non-EU Heads of State. Exemption for PSOs where they are either on routes within Ultra Peripheral Regions or on routes with annual seat capacity below 30,000. Exemption for operators who operate at a frequency lower than 243 flights into, out of, or within the EU in a four month period or who emit less than 10,000 tonnes of carbon dioxide per year.

The UK has already begun work on the practical implementation of the scheme and on establishing and aviation emissions trading regulator. We now await the Commission’s consultation on reporting requirements for airlines which should be published in the early autumn. We also look forward to the Commission’s proposal on NOx emissions, which is due later this year.

17 July 2008

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3 Distance x payload. Distance travelled multiplied by total weight of freight, mail and passengers carried. Operators may choose to apply (i) actual weight or (ii) standard weight (as per documentation for relevant flight) or (iii) default value of 100kg for each passenger and his checked baggage.

4 CERs and ERUs are Kyoto Protocol units equal to one metric tonne of CO2 equivalent. CERs are issued for emission reductions from Clean Development Mechanism project activities in developing countries. ERUs are generated for emissions reductions from Joint Implementation projects between industrialised countries.
Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for the two explanatory memoranda covering both the Single European Sky Communication and proposed Regulations. Sub-Committee B considered these dossiers during its meeting on 21 July. It was agreed to clear these items from scrutiny.

We are grateful for the support officials from the Department for Transport gave the Committee in its deliberations on these proposals. Further to the explanations provided by officials, we have identified some areas which we believe should be taken into consideration during negotiations. We would be grateful for additional comment on the following points:

— It is unclear to the Committee how setting binding national targets can be reconciled with the aim of integrating more closely the air traffic management (ATM) systems of Member States through the creation of functional airspace blocks (FABs). If the performance of ATM services in a Member State is, at least in part, reliant on the ATM services of other Member States within the FAB, how can national targets be set?

— We were informed that the UK had recently created an FAB with the Republic of Ireland. What plans are there to expand this FAB?

— What are the Government's estimates of the cost of implementing these regulations for the aviation industry?

— What will be the Commission's powers under the new Regulations, with particular reference to Article 6 (Network management and design); and what influence will the Commission have to encourage Member States to co-ordinate their ATMs?

The Committee supports the principles of making air traffic management more efficient and environmentally friendly. In particular, the Committee supports the Government's position on removing the distinction between upper and lower airspace. We are of the opinion that it would be more appropriate to implement the Single European Sky in upper airspace before introducing it to the more complex lower airspace.

Given the potential importance of these proposals and their technical nature, the Committee would be grateful if the Minister could attend a Committee meeting to give a report on these proposals following the December Transport Council.

22 July 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 22 July recording the outcome of the scrutiny of the above two Single European Sky-related explanatory memoranda by Sub Committee B (internal market) at its meeting on 21 July attended by policy officials from the Department's International Aviation and Safety Division. I note that the Committee agreed to clear these items from scrutiny.

Your letter relayed details of some areas which the Committee believed should be taken into consideration during negotiations and on which it sought additional comment. The Committee's queries and my response are given below:-

Q: It is unclear to the Committee how the setting of binding national targets can be reconciled with the aim of integrating more closely the air traffic management (ATM) systems of Member States through the creation of functional airspace blocks (FABs). If the performance of ATM systems in a Member State is, at least in part, reliant on the services of other Member States within the FAB, how can national targets be set?

A: The Community-wide performance scheme proposed under the draft legislation is intended to ensure that all the Member States play their part in improving the overall quality of air traffic control and that no Member State can avoid its responsibilities. Accordingly, the scheme will need to accommodate both national and regional systems (based on functional airspace blocks (FABs) comprising more than one EU Member State. To this end, regional performance plans are envisaged in the draft legislation, as well as national plans. The regional plans will require national supervisory authorities, such as the Civil Aviation Authority in the UK, and national air navigation service providers involved in a FAB, such as NATS, to
cooperate closely in the development both of the FAB itself and of the criteria for assessing its performance so that responsibilities and liabilities are clear.

Even where a FAB has been created, some aspects of performance will solely concern services provided on a national basis.

For the UK many performance areas already form part of the Licence under which NATS provides its service. Future requirements under the performance scheme, therefore, could merely be extensions to that licence.

The proposed new Article 9a of the Service Provision Regulation requires FAB partners to cooperate in seeking to achieve performance improvements. The agreements referenced in the following answer (on the UK/Ireland FAB) will in future, therefore, need specific reference to performance targets.

Q: We were informed that the UK had recently created a FAB with the Republic of Ireland. What plans are there to expand this FAB?

A: The UK/Ireland FAB, the first in Europe, became operational on 14 July 2008. The FAB is designed, irrespective of existing national boundaries, to deliver operational efficiencies by means of a design and build partnership involving UK and Irish air navigation service providers, airlines and our respective ministries of defence. Its focus is on airspace design, safety and service provision. Given the design and build nature of the FAB, there is no prescriptive end state.

However, the FAB Management Board will publish its first report in 2009. At this point, we will evaluate our progress in delivering identified near term objectives and in moving further down the road towards medium and longer term goals as defined in the priority lists approved by the FAB Management Board.

The FAB was brought into effect by the signing of three Memoranda of Understanding between (1) the two Member States, (2) the two National Supervisory Authorities (the UK's Civil Aviation Authority and the Irish Aviation Authority's Safety Regulation Division), and (3) the two air navigation service providers (NATS and the IAA). The Memoranda made explicit that the UK and Ireland were receptive to future co-operation opportunities, for example to include other States and/or joining the UK/Ireland FAB with other FABs, although there are no current plans to do so.

In addition, the UK’s involvement in the UK/Ireland FAB does not preclude our involvement in any other FAB. Consequently, the UK is also monitoring FAB EC (Functional Airspace Block Europe Central) involving France, Germany, The Netherlands, Belgium, Luxemburg and Switzerland. This project is not as advanced as the UK/Ireland FAB but a feasibility study has recently completed which anticipates staged implementation from 2009 to 2018 and beyond. The partner States are currently determining next steps.

Q: What are the Government’s estimates of the cost of implementing these regulations for the aviation industry?

A: The proposed changes to the SES high-level regulations should, in themselves, incur minimal costs and indeed should bring cost savings for airlines and efficiency gains for air navigation service providers if the increased cooperation and the performance scheme lead to efficiency gains.

Q: What will be the Commission’s powers under the new regulations, with particular reference to Article 6 (Network Management and Design); and what influence will the Commission have to encourage Member States to coordinate their ATMs (systems)?

A: While it would bring definite benefits to cooperate more fully in the design of the European network as a whole to ensure that the most efficient use possible is made of scarce resources and limited airspace, and to ensure coordination between each State and its neighbours, some further clarity is required in the drafting of the text to clarify the division of responsibilities for the adoption of implementing rules under the comitology procedures. Much cooperation will be possible in this area, but airspace remains sovereign and Member States must be able to meet their international obligations under the Chicago Convention.

I hope this additional information is useful to you, and in addition, my officials will be in contact with the Clerk to your Committee in November to discuss Ministerial attendance at a Committee meeting following the December Transport Council.

1 October 2008
Letter from Jim Fitzpatrick MP to the Chairman

I am writing to give the Committee an update on the progress of the above two legislative proposals which form part of the European Commission's Single European Sky Second Package and which Sub Committee B considered at its 21 July meeting.

The first draft regulation amends the four Single European Sky foundation regulations (Service Provision, Airspace, Interoperability and an overarching Framework Regulation) to introduce a more performance driven approach. Sub-Committee B cleared this document but asked for some additional information. The second extends the remit of the European Aviation Safety Agency (EASA) to include aerodrome, air traffic service and air navigation service provision safety. Sub-Committee B did not clear this document, pending the outcome of discussions on certain outstanding issues.

THE PROPOSAL AMENDING THE SINGLE EUROPEAN SKY REGULATIONS (11323/08)

You will recall that I wrote to you on 1 October in response to the questions on the Single European Sky regulation raised in your letter of 22 July. I also confirmed that my office would be in contact with the Clerk to your Committee in November to discuss Ministerial attendance at a Committee meeting following the December Transport Council. In the meantime, I felt that your Committee might find it useful to have a report on the progress made in negotiations.

This dossier has been considered as high priority by the French Presidency and has been pursued with vigour. Intensive negotiations have taken place at official level. The final official level meeting is planned for 20 November when it will be passed to COREPER (the Committee of Member States' Permanent Representatives to the European Union), who decide whether the dossier should be passed to the Council. The UK has been very active in negotiations and we are satisfied with the progress that has been made.

The centrepiece of SES II is a performance framework that will ensure that each Member State contributes appropriately to an overall improvement in air traffic efficiency across the EU. Negotiations have secured an appropriate role for Member States in the design and implementation of this performance framework and in the increased cooperation and coordination at EU level of network management.

Negotiations have also ensured that Member States will have some flexibility in complying with SES II and oversight of all areas of further SES development.

The proposal originally sought the funding of common EU projects through air traffic control charges; this may create an additional financial burden on airspace users. Progress has been made in securing safeguards for the Member States through the comitology process, which means that proposed changes will be submitted to a committee of the Member States before adoption.

The UK’s current system of setting air traffic control charges through a revenue cap for NATS is compatible with the legislation in SES I and we will need to seek to ensure this remains the case in SES II.

The French Presidency is aiming to reach a General Approach on this dossier at the December Transport Council. We consider this to be a realistic goal and will aim to protect the progress that the UK has made, particularly in relation to the performance framework and network management.

DRAFT REGULATION EXTENDING THE REMIT OF EUROPEAN AVIATION SAFETY AGENCY (EASA) (11285/08)

Your letter of 22 July reported the Committee's consideration of the proposed extension of the European Aviation Safety Agency (EASA) to the safety of aerodromes, air navigation services and air traffic management. You reported that the Committee supported the proposals in principal but intended to keep it under scrutiny pending clarification of certain outstanding issues.

Discussions on the proposal began at official level at the end of October. Three working groups have taken place so far, with three more planned before the December Transport Council. Discussions are still at an early stage but to date have focussed on the licensing threshold for aerodromes; the question of whether aerodromes should receive a single certificate covering both their infrastructure and operations or whether these should be certificated separately; the proposal’s relationship with the provisions in the Single European Sky Regulations; and EASA’s certification of pan-European air navigation services.

The French Presidency’s intentions for the December Transport Council are as yet unclear, and will depend on the progress that can be made over the next few weeks at official level. The UK, together with a number of other Member States, consider a progress report to be the most preferable and likely outcome from the Council.
EUROPEAN PARLIAMENT PROGRESS ON BOTH DOSSIERS

The two proposals are being considered concurrently by the European Parliament (EP). Draft reports on the Single European Sky and EASA proposals were discussed in the EP's TRAN committee on 4 November. MEPs were invited to submit further amendments by 17 November. A vote on these proposed amendments will take place in Committee on 8 December, with the plenary vote on both dossiers programmed for January.

I will, of course, continue to keep the Committee updated on the progress of these two dossiers.

20 November 2008

BATTERIES AND ACCUMULATORS (8576/08)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Thank you for your Explanatory Memorandum on this dossier. It was considered by Sub-Committee B at its meeting on 2 June. It was decided to hold this item under scrutiny.

The Committee would appreciate further details on who would bear the cost of the safe removal of non-compliant batteries and accumulators from the market now if that were decided on.

The Committee would also be grateful for details of who would be required to bear the cost of the recycling requirements specified in the original directive for both compliant and any remaining non-compliant items in future.

5 June 2008

Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 5 June, notifying me that Sub-Committee B had held the above item under scrutiny, and had requested further information.

You first asked who would bear the cost of removing non-compliant batteries, if the Commission's proposed clarifying amendment to the Batteries Directive were not to be adopted, and Article 6(2) of the Directive were to be interpreted in a way that required, from 26 September 2008, the withdrawal from the market of certain batteries and accumulators lawfully placed on it before that date. The location of the responsibility for meeting the cost of removal from the market would depend upon the precise nature of the contract which existed between the holder of the unsold batteries and his supplier. Our market enquiries suggest that, in the majority of cases, formal responsibility would rest with the holder namely, the battery wholesaler or retailer, or the battery-powered appliance manufacturer, wholesaler or retailer – but that the need for a continuing commercial relationship might see some sharing of costs.

Secondly, you asked who would be required to bear the cost of recycling compliant and non-compliant batteries in future. The Batteries Directive specifies that producers must finance any net costs arising from the collection, treatment and recycling of waste batteries collected via collection and take-back schemes set up under Article 8 of the Directive, but is silent on both whether non-compliant batteries need to be recycled, and where responsibility would lie.

It follows that, if the Commission's clarifying amendment were not to be adopted, there would be no obligation on the holders of those significant quantities of portable batteries withdrawn from the market to ensure they were recycled, rather than disposed of. Holders of waste industrial and automotive batteries withdrawn from the market would need to arrange for their recycling, since disposal by landfilling or incineration is prohibited by the Directive.

23 June 2008

Letter from the Chairman to Mr Malcolm Wicks MP

Thank you for your letter to the Committee on this dossier. It was considered by Sub-Committee B during its meeting on 7 July. It was agreed to continue to hold the item under scrutiny.

The Committee would be grateful for further details about what legislation exists already in the UK on this topic. Are there any existing UK requirements for manufacturers or local authorities to recycle batteries and accumulators? If there are, who bears the cost of this?

8 July 2008
Letter from Malcolm Wicks MP to the Chairman

Thank you for your letter of 8 July concerning the request from the Committee for further information on what legislation exists already in the UK with regard to batteries, specifically if there are any existing UK requirements for manufacturers or local authorities to recycle waste batteries, and who bears the costs.

Legislation concerning a limited number of batteries currently exists by way of the Batteries and Accumulators (Containing Dangerous Substances) Regulations 1994 (as amended) in GB and equivalent Statutory Rule (as amended) in Northern Ireland. This legislation specifies permissible heavy metal limits, introduces a labelling system for batteries containing mercury, cadmium or lead, and requires certain battery-powered equipment to be designed in such a way as to make their batteries easily removable.

The existing Council Directive requirements are being carried over and enhanced into the new Directive which applies to all types of batteries and accumulators, regardless of their shape, volume, weight, material composition or use (subject to certain exemptions).

At present, there are no specific requirements or obligations placed upon manufacturers of batteries or Local Authorities to recycle waste batteries. The new Batteries Directive will place an obligation on battery ‘producers’ – that is manufacturers, importers or any other person that places on the market batteries or appliances that contain batteries – to finance the net costs of collection, treatment and recycling at end of life.

The proposed amendment to the Directive has now been voted upon in the European Parliament and approved by them on 9 July. The European Parliament has now instructed its President to forward its position to the Council and the Commission. We anticipate that the Commission will want Council to vote on the amendment at the next earliest meeting.

10 July 2008

Letter from the Chairman to Malcolm Wicks MP

Thank you for your letter dated 10 July. Sub-Committee B considered it during its meeting on 14 July. It was agreed to clear the dossier from scrutiny.

The Committee agree with the Government’s position that it would not be desirable for all non-compliant batteries to be removed from the market when the Batteries Directive comes into force. However, we wish to emphasise the importance of transposing effectively this Directive into UK law and ensuring that proper measures are in place to facilitate the collection and recycling of portable batteries. Without such measures the full benefit of this Directive will not be achieved.

15 July 2008

BUSINESS CLUSTERS: TOWARDS WORLD-CLASS CLUSTERS IN THE EUROPEAN UNION (14265/08)

Letter from the Chairman to Ian Pearson MP, Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform

Thank you for this Explanatory Memorandum. Sub-Committee B considered it during its meeting on 17 November. It was agreed to hold it under scrutiny.

The Committee noted that the actions the Commission commits itself to are aspirational but vague. We are concerned that this is an area of policy that should remain at the Member State or regional level. We would therefore appreciate your views on whether elements of this Communication are likely to be translated into proposals for legislation and, if so, when this might happen.

19 November 2008

COMPETITIVENESS COUNCIL 8 DECEMBER 2008

Letter from Ian Pearson MP, Parliamentary Under Secretary of State, Department for Business, Enterprise and Regulatory Reform to the Chairman

Thank you for your letter of 18 November 2008. I would like to respond to the questions raised by Sub-Committee A and update you on the progress of the negotiation.
I am grateful to the Sub-Committee for clearing the proposal. As you will know, the Presidency intend to seek agreement to it among several financial services dossiers at the ECOFIN Council on 2 December in order to allow negotiations with the European Parliament to proceed.

Sub-Committee A has asked how Directive 94/19/EC defines ‘credit institutions’ and what effect this may have on depositors in separate banks which are part of the same group. The Directive defines a credit institution as ‘an undertaking the business of which is to receive deposits or other repayable funds from the public and to grant credits for its own account’. This embraces banks and building societies.

The Directive applies the guarantee to deposits with separate companies within the same group. Depositor protection in the UK is framed in terms of all the accounts held in a firm operating under a single authorisation by the FSA.

The FSCS protection limit therefore applies on a per-person, per-authorised institution basis. The European proposals would not modify this, except insofar as the Commission is tasked, among other things, with reporting by December 2009 on the scope of products and depositors covered.

Any future modification is likely to be implemented through changes to FSA rules not through primary or secondary legislation to amend the Financial Services and Markets Act 2000. The FSA has invited comments on the per-authorised institution criterion in its consultation on compensation schemes, published in October (CP08/15). It has said that it will consider simplifying the eligibility criteria and may bring forward proposals in a further consultation in the New Year. The Sub-committee has asked when the FSA expect to publish the results of its consultation paper on compensation limits. That is a matter for the FSA. However, I understand that the consultation closes on 5 January 2009 and rule changes and a policy statement will be published later in 2009.

I would also like to update you on the progress of the negotiations on amendments to the Directive. The Government has continued to support an increase in the minimum level of compensation, a shorter pay out deadline and the move to compensate 100 per cent of eligible deposits.

Member States have reached agreement, subject to the views of the European Parliament on an increase to €50,000 when the Directive enters into force and to €100,000 by 31 December 2011. The limits will be inflation-linked. The payout delay should be reduced from three months to 20 days, with a further 10 days in exceptional circumstances, by December 2010. Compensation will extend to 100 per cent of eligible deposits. Further measures include a requirement for guarantee schemes to cooperate and schemes must be stress tested regularly.

A provision authorising the Commission to propose temporary increases in a crisis has been withdrawn. Instead there is a commitment to further work in a number of areas. The Commission is tasked with reporting by December 2009 on:

- the effectiveness of payout procedures
- the determination of contributions to schemes
- the effectiveness of cooperation arrangements
- the potential impact of increasing the limit to €100,000
- whether €100,000 should become an upper limit, it will do so unless the report finds against.

I believe that, taken together, these changes represent a significant improvement in the protection afforded to depositors and the effectiveness of the Directive. Further improvements are likely to follow the Commission’s report in December 2009.

24 November 2008

COMPUTERISED RESERVATION SYSTEMS (14526/07)

Letter from Jim Fitzpatrick MP, the Parliamentary Under Secretary of State, Department for Transport to the Chairman

I write further to my letter of 12 March 20085 in order to update you on the revision to the Code of Conduct for Computerised Reservation Systems (CRS).

The Transport Council reached a General Approach on the proposed Regulation on 7 April. The text was satisfactory to the UK and contained the key provisions outlined in my last letter. The European

5 Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 58
Parliament’s Rapporteur published his report on the proposal on 18 March. This was adopted by the Transport Committee, with amendments, on 29 May.

Following this, a number of informal trilogues were held between the Commission, the Council Presidency and the Rapporteur. The compromise proposals were also considered and approved by the Council’s Working Group. The resulting ‘first reading’ text was adopted at the Parliament’s plenary session on 4 September.

The final text contains some amendments to the Commission’s original proposal and the Council’s General Approach. The most significant area of redrafting was clarification over the definition of ‘parent carriers’. The amended text clarifies the circumstances under which CRS vendors are considered to have parent carriers and are therefore subject to specific rules. The resulting definition is more detailed than the previous test of effective ownership or control, and is based on notions of control, capital investment and rights and representation on the governing body of CRS systems vendors.

Other amendments to the proposal include requirements for public disclosure of capital holdings between CRS system vendors and air or rail operators, and for 4-yearly audits of CRS vendors’ ownership and governance structures. The rules of conduct for parent carriers are also clarified, and the Commission is given the power to investigate compliance with these provisions. Further detail is given on the protection of personal data and the use of Marketing Information Data Tapes (MIDT), which contain information about the bookings made. References to safety (the EC ‘Blacklist’) and consumer protection (the revised ‘Third Package’) in the General Approach remain.

The Parliament introduced new provisions aimed at promoting environmental efficiency. These include references to incorporating information on bus services into the CRS principal display. CRS vendors are also encouraged to provide easily understandable information about CO2 emissions, with the possibility of comparing this to alternative train journeys for flights of less than 5 hours.

The UK is happy with all of the above amendments, which for the most part clarify the provisions contained in the Council’s General Approach. We expect the agreed text to be endorsed by Council in the near future and to be published in the Official Journal of the EU in due course.

14 October 2008

ENERGY: COUNCIL OF THE ENERGY COMMUNITY (9723/08, 9970/08)

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business Enterprise and Regulatory Reform to the Chairman

I am writing to apologise for the override of the Parliamentary Scrutiny Reserve on EM 9723/08 and 9970/08. The documents that were the subject of the EM were an annotated agenda for the Ministerial Council of the Energy Community on 27 June and a proposal for a Council Decision on the European Community position to be taken at the Ministerial Council. No legislative proposals were involved. BERR submitted the EM to your Committee on 18 June in order for it to be considered at your weekly meeting the week commencing 23 June.

Unfortunately, the documents had to be agreed as an ‘A’ point at the Agriculture and Fisheries Council on 23 June in order to agree a European Community position before the Ministerial Council on 27 June. Given the short timescales involved, it was not possible to obtain Parliamentary Scrutiny clearance before the Council on 23 June and we were obliged to ask for an override of the Parliamentary Scrutiny Reserve. We only took this action after consultation with the House of Lords clerks, who said that the proposal was not a legislative proposal and therefore taking a position on the dossier in Council would not constitute an override. However, we have now discovered the clerks in Sub Committee B, to which this dossier has been sifted, differ. It was not possible to get the views of the House of Commons clerks. If we had maintained a scrutiny reserve, the European Commission would not have been able to take a position at the Ministerial Council on 27 June.

Once again, I apologise for the override.

24 June 2008
Letter from Shriti Vadera, Minister of State for Economic Competitiveness and Small Businesses, Department for Business Enterprise and Regulatory Reform to the Chairman

Thank you for your letter of 12 March 2008 in which you raise two issues on behalf of the Committee. As the issue was not raised at the Committee meeting on the 17th of March as expected we sought advice from the clerk of the Committee who suggested to us 7 weeks ago (week commencing 5 May) that I should write giving the information requested. Apologies that it has taken longer than I would have wished to respond.

Firstly, with regards to the expected increase in the size of the renewable energy market in the UK and the apparent difference between UK Government and smaller Commission forecasts. Most recent figures now project that the UK renewables market will be considerably larger in 2020 than suggested by earlier estimates quoted in the Explanatory Memorandum, particularly bearing in mind the new EU 2020 Renewable Energy targets, which will require the UK to increase the proportion of renewable energy up to ten fold. It is difficult to suggest a specific figure as I am sure you can appreciate. However, globally the overall added value in the low-carbon energy industry could be as high as $3 trillion per year by 2050, and renewables are expected to represent a large part of this.

You will also wish to note that the UK has a steeper renewables target than the EU as a whole - the proposed target would mean an increase from 1.5% renewable energy in 2006 to 15% in 2020 compared to an increase from 8.5% to 20% for the EU. We should therefore expect the UK market to grow more in the period to 2020 than the EU market as a whole.

It is not clear what assumptions the Commission’s figure is based on. The numbers arrived at by the Commission or ourselves will depend on the different models to estimate these values, different assumptions of fossil fuel prices, carbon price, and different assumptions of the cost of capital investment, as well as the choice of financial instrument to promote renewables.

However, with the above in mind, we should note that the primary purpose of the Commission’s figure in the context of this initiative is to indicate that renewable energy is widely believed to be a ‘growth market’ and that we could therefore support its inclusion as one of the six pilot markets where the Commission should try the ‘lead market’ approach to stimulate more innovation within Europe.

Secondly, you raise concerns expressed by the Committee regarding the reference in the Commission’s communication to the “reorientation of national or Regional State aid schemes”. This is not a forewarning of a review of current state aid rules. However, the Commission are keen to highlight to Member States that, within their own strategic reference frameworks, they may wish to consider how, if at all, the identified sectors might feature in their list of strategic national and regional priorities during the next cycle. They have made clear that there will be no diversion of funds from current programmes to specifically support initiatives under the Lead Market Initiative at EU level.

25 June 2008

ENERGY: THIRD ENERGY PACKAGE (13043/07, 13045/07, 13046/07, 13048/07, 13049/07, 13212/07, 13219/07)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise & Regulatory Reform

As you may be aware, Sub-Committee B has been following the progress of these proposals closely since their publication. The Committee reconsidered the package during its meeting on 12 May, 2007, and has agreed to clear the documents from scrutiny.

The report, Single Market: Wallflower or Dancing Partner?, stated the Committee’s view that ownership unbundling and the creation of an agency for the co-operation of energy regulators would be positive measures for the EU energy markets. The issue of unbundling has been contentious both within and without Council and the Committee would, therefore, appreciate being kept informed of the progress of negotiations.

13 May 2008

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6 Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 80
ENVIRONMENT: ECO-MEASURES (12026/08, 12041/08, 12074/08, 12108/08, 12119/08)

Letter from the Chairman to the Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change Adaptation and Air Quality, Department for Environment, Food and Rural Affairs

Thank you for the above Explanatory Memoranda. Sub-Committee B considered these during its meeting on 13 October. It was agreed to clear documents 12026/08, 12119/08, 12074/08 and 12041/01/08 from scrutiny. The Committee also agreed to hold document 12108/08 under scrutiny.

The Committee would be grateful for some further information from the Minister on the following areas:

1. Concerning document 12119/08: as the Government has identified problems in the methodology for agreeing implementing measures but is opposed to widening the current proposal to address this, what steps are proposed to amend the Directive at a later date?
2. Concerning document 12041/08: what steps will the Minister take to reject or modify the proposal contained in this Communication to introduce a GPP target of 50% by 2010?
3. Concerning document 12108/08: as the ISO 14001 has proved more popular than and performs many of the same functions as the EMAS, why is it proposed that the EMAS be revised rather than abolished?

15 October 2008

ESAFETY COMMUNICATION: ECALL PROJECT (12383/05, 15932/06)

Letter from the Chairman to Lord Adonis, Minister of State, Department of Transport

Sub-Committee B cleared these items from scrutiny on 3 December 2007 and wrote to your predecessor asking to be kept informed of any future developments on the eCall project. As the Committee has not yet received any further information, members would appreciate an update.

11 November 2008

HAZARDOUS SUBSTANCES: CLASSIFICATION, LABELLING AND PACKAGING (11497/07)

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

The Council is due to adopt the proposed European Regulation on the Classification, Labelling and Packaging of Substances and Mixtures (CLP Regulation) on 18 November, following a First Reading Deal between the Council and the European Parliament agreed on 3 September 2008. I apologise for not writing to the Committee immediately after the First Reading Deal to inform you and members about this development. However I think you will agree that this is a very favourable outcome to negotiations on the proposal.

The Regulation is expected to be published in the Official Journal at the end of November/December and will enter into legal effect 20 days later. This means that Europe will be able to meet the high-level commitments given at the World Summit on Sustainable Development in Johannesburg in 2002 to adopt the Globally Harmonised System (GHS) by 2008.

OUTCOME OF NEGOTIATIONS

The UK (HSE lead) played an active and influential role in EU negotiations, working closely with the Presidency, the Commission and Member States on several significant issues. As a result, I am pleased to report that the outcomes of the detailed negotiations on the CLP Regulation have been very positive for the UK and fully in line with the policy principles agreed last year, and set out in the Explanatory Memorandum on the CLP Regulation (see Annex A). On key objectives:

a. That there is no reduction in the level of protection for people, or the environment, compared to the existing classification and labelling system:
The UK and Member States drew on their extensive collective experience of the existing European classification and labelling system throughout negotiations to ensure that the new GHS-based Regulation aligns as closely as possible, maintaining the level of protection to both human health and the environment.

b. That the new CLP Regulation aligns, as far as possible, with the existing system for both supply and transport, keeping in place many of the harmonised classifications developed and agreed over decades:

— The UK successfully resisted a number of proposals to extend the scope of the Regulation from the existing system, including attempts to include certain GHS hazard categories which would have broadened significantly the scope of substances and mixtures now considered to be ‘dangerous’, thereby avoiding substantial costs to industry.

— A substantive Annex to the CLP Regulation takes forward all the existing harmonised classifications, which are now expressed in the new GHS criteria, as well as in the existing EU system for the transitional period.

c. That the transitional arrangements for migrating from the present system to the GHS-based one are practicable and workable:

— The UK helped to negotiate a workable two stage transitional period (3 years for substances and 4 years for mixtures) to help duty holders and others migrate to the new CLP arrangements. The UK was also instrumental in securing in addition, a “period of grace” for substances and mixtures that are already on the market at the time these compliance deadlines are reached. This should ensure that such products already on the market can move through the supply chain without having to be relabelled and repackaged.

— Work is already progressing on central guidance from the European Commission on how to comply with the CLP Regulation. The UK is assisting in this process both as an adviser in the development of more detailed guidance, and in producing a more simplified text based on our experience with the successful supporting documentation for the GB wide Chemicals (Hazard Information and Packaging for Supply) Regulations - known as CHIP.

d. That the interface between the CLP Regulation and the REACH Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals - the new chemicals regulatory system successfully brought to common position by the UK during its Presidency in 2006) is coherent:

— The definitions of key terms in REACH such as substance, manufacturer, downstream user, distributor and supplier have been read across to the new Regulation, thereby achieving a consistent and coherent approach. The requirements of Title XI of REACH on the Classification and Labelling Inventory have been fully transferred and integrated into the CLP Regulation.

e. That any consequential changes to the scope of ‘downstream’ controls on chemicals are proportionate and appropriate:

— Proposals to amend affected ‘downstream’ European legislation have so far been limited to minor adjustments in six directives and a Regulation. The proposals relate to changes in terminology and result in no extension of scope or additional duties. The responsible departments have agreed to take these amendments forward in domestic legislation over the coming months.

— Further proposals from the European Commission relating to other downstream requirements are expected.

17 November 2008

ANNEX A

‘POLICY PRINCIPLES’ ON EUROPEAN REGULATION ON THE CLASSIFICATION, LABELLING AND PACKAGING OF MIXTURES – AGREED BY MINISTERS
1A. In negotiating the proposal, the UK Government had five key policy principles/objectives. These were to secure a system in which:

a. there is no reduction in the level of protection for people, or the environment, compared to the existing classification and labelling system;

b. the new CLP Regulation aligns, as far as possible, with the existing system for both supply and transport, keeping in place many of the harmonised classifications developed and agreed over decades;

c. the CLP Regulation provides a practicable, workable system, incorporating the experience from operating the existing classification and labelling system;

d. the interface between the CLP Regulation and the REACH Regulation (Registration, Evaluation, Authorisation and Restriction of Chemicals - the new chemicals regulatory system successfully brought to common position by the UK during its Presidency in 2005) is coherent;

e. any consequential changes to the scope of ‘downstream’ controls on chemicals are proportionate and appropriate.

2A. These policy principles were agreed by all Ministers with an interest (DWP, Defra, DTI, DoH, DfT, HMT, the Minister for Europe, together with the Devolved Administrations) and underpinned the UK negotiating strategy.

INTERNAL MARKET FOR SERVICES (8413/06)

Letter from Gareth Thomas MP, Parliamentary Under Secretary of State for Trade and Consumer Affairs, Department for Business Enterprise and Regulatory Reform to the Chairman

I am writing to send your committee a copy of the Government’s response to the consultation. I am also sending a copy of the accompanying Impact Assessment, which has been revised in the light of further studies by Copenhagen Economics. Copies of both documents have been placed in the Libraries of the House and can also be found at http://www.berr.gov.uk/europeandtrade/europe/services-directive/page9583.html

This follows my letter to you on 31 July 2007 in response to your letter on 25 June to my predecessor Rt Hon Ian McCartney MP following the meeting of your committee on 11 June 2007 to discuss the implementation of the Services Directive.

19 June 2008

MARITIME: THIRD MARITIME SAFETY PACKAGE (“ERIKA III”) (6843/06, 5907/06, 14486/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

I am writing to update you on the progress of the Third Maritime Safety Package. This package of seven measures was launched in 2005 under the UK Presidency and there has to date been agreement in Council on five of the original proposals (port state control (EM 5632/06), vessel traffic monitoring (EM 5171/06), accident investigation (EM 6436/06), classification societies (EM 5912/06) – which has now been split into a regulation and directive – and carrier liability (EMs 6827/06 and 14302/07), the last of which is linked to the Athens Convention).

The remaining two proposed directives on Flag State Requirements (FSR) (EM 6843/06) and Civil Liability (CL) (EMs 5907/06 and 14486/07) had attracted little support from Member States and had not had any substantive discussion at working group level until the Slovenian Presidency took them forward. Both dossiers were the subject of policy debates at the April 2008 Transport Council, but failed to attract support from the majority of Member States.

The Government considers that the FSR directive would have added to the exclusive Community external competence in respect of the responsibilities of flag States in a wide range of International Maritime Organization (IMO) instruments.

During the negotiations in the Council, the European Commission was prepared to accept the deletion of references to several IMO conventions in the FSR directive to help minimise the increase
in Community competence in the maritime sector and to make the dossier more palatable to the Member States. However, whilst the Government supports the objective of improving flag State performance across the Community, it continues to consider that there are better, non-regulatory ways of achieving this without the need to increase Community competence, such as submitting to audit by the IMO — as the UK did in 2006. In addition, the Government argued that the real problem of poor flag State performance was with ships from a number of non EU flag States, a problem which this proposal would do nothing to address. Despite the efforts made by the Slovenian Presidency and the Commission to reduce the scope of the directive, the Member States felt unable to support the FSR proposal in April 2008 and no further consideration has yet taken place.

The Slovenian Presidency also pushed forward discussions on the proposed CL directive. The Government has always doubted whether the directive would work in practice. For example, applying higher limits of liability to shipowners will not provide a disincentive because the mutual system of marine insurance will simply absorb costs. The proposal would also impose a substantial additional burden on state administrations which would be tasked with certifying all ships on their registers (confirming that insurance is in place) and ships from third States entering Member State ports and installations.

The Government considers that the intended benefit of the proposal could readily be achieved by a Council Decision instructing the Member States that have not already done so to ratify the 1996 Protocol to the Limitation of Liability for Maritime Claims Convention (LLMC), 1976. The 1996 Protocol significantly increased the levels at which shipowners are entitled to limit their liability; twelve Member States (including UK) are parties and greater Member State ratification of this Convention would extend the coverage of the higher limits of liability.

Most of the EU Member States agreed at the April 2008 Transport Council that there was no need for Community legislation in this area. Indeed, there was even less support for this proposal than on Flag state. There has been no further discussion on the CL directive since the April 2008 Council meeting.

The French Presidency has indicated its desire to reopen the discussions on both FSR and CL in the second half of its Presidency and has scheduled a debate for the December 2008 Transport Council. This is partly because the European Parliament supports both proposals and is pushing for the Council to agree them, and also as France has indicated its support for both dossiers.

Although supportive of FSR and CL, France does recognise that the majority of Member States continue to oppose both dossiers and that it will be very difficult to secure an agreement on them. The Presidency has therefore indicated that if, as expected, it proves impossible to reach a political agreement on both proposals, it will try instead to secure some form of Council Conclusion in place of the proposals.

On FSR, this is likely to involve the Member States to undergo IMO audit and to adopt the IMO Flag State Code and on CL to ratify the 1996 LLMC Protocol. The UK would be content for the Presidency to adopt such an approach, and I will update you on progress later in the year.

The European Parliament has now been sent the texts of six legislative measures referred to above which the Council has agreed. The French Presidency has already commenced the discussions with both the European Parliament and the Member States with a view to reaching second reading deals on these dossiers.

The early indications are that accident investigation and the two classification society proposals should be relatively straightforward, but that the remaining three proposals on vessel traffic monitoring, Athens (carrier liability) and port state control could be problematic. The Parliament wishes to consider the proposals as a package and, although there may be provisional agreement on several dossiers, if there is a need for conciliation it is likely to be on the entire six proposals and to begin in October or November. I will keep you informed of progress in due course.

10 July 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 10 July. Sub-Committee B considered it during its meeting on 21 July. It was decided to continue holding the item under scrutiny.

The Committee note that the proposed Directive may be replaced by proposals for Council Conclusions by the December Transport Council. The Committee would appreciate a further update on the status of the proposal prior to that Council meeting.

The Committee would also be grateful for clarification on two points:
1. Will conformity to IMO Conventions allow EU ports not to accept unsafe ships?

2. Will conformity to IMO Conventions provide for the compatibility of insurance classification oversight procedures between ports of origin and ports of destination so that if a port of destination rejected a ship there would not be any curtailment of its insurance cover?

22 July 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 22 July 2008 concerning Sub-Committee B’s consideration of the Flag State proposal. I am writing to provide the further clarification that the Sub-Committee requested on two points of the proposal and to update you on progress on both Flag State and Civil Liability ahead of the 9 October Transport Council, where the Presidency now hopes that it may be possible to achieve political agreement on amended versions of both dossiers. You will also wish to be aware that the European Parliament has completed its second reading of the rest of the ‘Erika III package’ proposals (Port State Control (EM 5632/06), Vessel Traffic Monitoring (EM 5171/06), Accident Investigation (EM 6436/06), Classification Societies (EM 5912/06) - which has now been split into a regulation and directive – and Carrier Liability (EMs 6827/06 and 14302/07), the last of which is linked to the Athens Convention).

In your letter you asked:

i. **WHETHER CONFORMITY TO INTERNATIONAL MARITIME CONVENTIONS (IMO) WILL ALLOW EU PORTS NOT TO ACCEPT UNSAFE SHIPS?**

The IMO Conventions are international treaties which do not contain enforcement or prosecution provisions such as the right to refuse access to the ports of States Parties. Such provisions are left to individual States parties to apply in national law.

However, the issue of whether to ban certain ships has been considered in the proposed recast Directive on Port State Control (PSC, EM 5632/06). The Government’s view is that the introduction of permanent banning will not achieve the desired improvement in maritime safety. Although it will send a clear message to ship owners that sub-standard ships are not welcomed in Community ports, it would not prevent such ships from sailing through sea areas under the jurisdiction of Member States, providing such ships were on innocent or transit passage or exercising the right of freedom of navigation according to international law. The consequence of this is that Member States would find it difficult to inspect vessels which would not be able to enter their ports. The Member States have agreed with this view and the common position on the PSC proposal does not include permanent banning. Member States have, however, proposed that a ship should be banned for a period of 36 months following its third refusal of access from a Community port and will only be allowed to call again at Community ports once certain conditions have been met. These include a change of Registration and ownership. The UK supports this approach.

ii. **WHETHER CONFORMITY TO IMO CONVENTIONS WILL PROVIDE FOR THE COMPATIBILITY OF INSURANCE CLASSIFICATION OVERSIGHT PROCEDURES BETWEEN PORTS OF ORIGIN AND PORTS OF DESTINATION SO THAT IF A PORT OF DESTINATION REJECTED A SHIP THERE WOULD NOT BE ANY CURTAILMENT OF ITS INSURANCE COVER?**

Conformity to IMO Conventions would also have no impact on insurance cover in such circumstances as they do not include any relevant provisions.

The decision to terminate insurance cover is a contractual matter between the shipowner and the insurance provider. It is therefore for the insurance provider to decide whether the rejection of a ship from a port, Community or otherwise, is sufficient grounds to withdraw the insurance cover. However, the IMO liability conventions require the State to issue a State Certificate attesting that insurance is in place in respect of the liabilities of the shipowner. Such certificates issued by States parties are mutually recognised by other States parties, unless there is doubt about the underlying insurance in which case a port State (which is also a State party) may detain the ship.

**UPDATE ON THE EP SECOND READING OF THE PACKAGE, AND PROGRESS OF NEGOTIATIONS ON FLAG AND CIVIL LIABILITY**

As you may recall, the European Parliament has consistently pressed for all of the maritime safety proposals to be considered as a package and has been very concerned about the lack of progress on Flag State and Civil Liability. The EP held its Plenary second reading of the rest of the ‘Erika III package’ on 24 September, and reinserted most of the amendments from their first reading that were
not included in the Council common positions, meaning that conciliation is now the next stage for these dossiers. Because they had no assurances that the Council would adopt Flag State and Civil Liability the EP also included amendments relating to both dossiers into their amendments on Vessel Traffic Monitoring, Port State Control and Classification Societies.

In my letter of 10 July 2008 I indicated that the Presidency were expected to reopen the discussions on the Flag State and Civil Liability dossiers in the second half of their term, with a debate scheduled for the December Transport Council. However, that position has now changed. In the last few weeks, the French Presidency has been active in trying to secure a political agreement on both the Flag State and Civil Liability Directives. Following extensive negotiations during September, the Presidency is now seeking agreement at the Transport Council on 9th October on a Member State Statement and political agreement on substantially amended versions of the Flag State and Civil Liability directives.

a. The Member State Statement

The Statement, although not legally binding, provides a commitment from the Member States to ratify certain IMO Conventions, if they have not already done so, undergo IMO audit, improve their position on the Paris Memorandum of Understanding on Port State Control inspections so that they are on its “white list” by 20127, and adopt the IMO Flag State Code. None of these commitments are difficult for the UK to accept and we can therefore support the introduction of the Statement. Essentially, the Statement provides a good deal of the real substance which the Commission originally wanted in the Flag State proposal, but which the Member States were unwilling to sanction due to the significant transfer of competence which would have resulted from the original draft directive.

As it is a “statement” no competence issues are raised, and most Member States seem content to agree, although there are a few outstanding minor points of detail/clarification which need to be addressed in the forthcoming days.

b. The Flag State proposal

The latest version of the draft Directive is substantively amended from that rejected by the Council in March 2008. In order to secure agreement, the Presidency has removed most of the sections which would have increased Community competence and the latest draft requires EU Flag States to:

i. follow a consistent EU practice for allowing a ship to operate under its Flag, to accept new vessels on their registers; and for transferring vessels to another Flag State (including providing details of any deficiencies the vessel may have to the new Flag State);

ii. ensure that any detained vessels flying its Flag are brought into compliance with the necessary IMO ship safety requirements;

iii. maintain a database of information about the vessels on their registers; (iv) ensure that every five years they undergo an IMO Audit or an equivalent independent audit. This requirement may be subject to a “sunset clause” in that it would cease to apply if the IMO Audit Scheme was made mandatory at the global level. This suggestion has been added as a means of trying to persuade the Member States to accept the Directive;

iv. develop and implement a quality management system for its Flag State responsibilities; and

v. report to the Commission if they appear on the Paris Memorandum of Understanding “grey list” on two successive years.

Although this is quite a long list, there is little of genuine substance and the Directive has such limited overall effect that it is quite hard to justify its added value. As presently drafted, the proposal does not address the real issue which is the poor performance of non EU Flag States.

It is understood that there is still a blocking majority on the Flag proposal even in its present diluted form. However, in view of the efforts being made by the French Presidency, the Commission, and the European Parliament it seems increasingly likely that further consideration both before and during the Council may enable an agreement to be reached. It is unfortunate that this means that I will be unable to provide you a report on the final negotiations in time for your Committee to consider them ahead of the Council. However, I wish to assure you that the UK, whilst seeking to minimise the impact of the proposal, is continuing to press for the proposal to be blocked on the grounds that it is not consistent with the principles of better regulation and will not achieve the Commission’s stated objective. Nonetheless, if a majority of the other Member States indicate their willingness to accept a weakened proposal at the Council, the UK will also be willing to agree to this, subject to securing a

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7 The Paris MOU ranks Flag States according to the detention record of their ships being detained by Port State Control authorities. Ships on the ‘black list’ present the greatest safety and environmental risk, while those on the ‘grey list’ experience fewer detentions and those on the ‘white list’ perform best of all.
satisfactory agreement with the European Parliament on all of the third maritime safety package measures.

c. The Civil Liability proposal

Previous concerns regarding treaty law conflict with the United Nations Convention on the Law of the Sea and the International Convention on the Limitation of Liability for Maritime Claims are negated by the current text. The administrative burden on Member States to issue verification certificates to its merchant fleet and to third country ships calling at the ports of EU Member States has also been removed.

In recent weeks the French Presidency has sought the co-operation of the Member States in a concerted effort to achieve political agreement at the 9 October Transport Council. The proposal as currently drafted is now very close to what the Government can accept as it is limited to a codification of an existing International Maritime Organisation Resolution (A.898) on the responsibility of shipowners to maintain insurance, which the UK pressed for at the time.

However, although a great deal has been achieved in negotiations by the UK and like-minded Member States, the Government continues to be cautious about both the Flag State and Civil Liability proposals and our possible support for any political agreement will depend upon the outcome of negotiations with the Presidency and European Parliament on the other measures comprising the whole third maritime safety package.

I will, of course, keep you informed of the outcome of the Council discussions of both of these proposals.

1 October 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 9 October (see Sub Committee E Correspondence)8 replying to my letters of 10 July and 1 October concerning the proposed directives on Flag State and the Civil Liability of shipowners. I am now writing to update you on the outcome of the negotiations at the recent Transport Council on both of these proposals. I am pleased to let your Committee know that the UK was successful in ensuring our key concerns were met on both proposals at the Council, and that the UK was therefore able to support them.

THE FLAG STATE REQUIREMENTS DIRECTIVE (6843/06)

In the last few days before the Council met, there were further discussions on the requirement for each EU Member State to undergo an audit by the International Maritime Organization (IMO). The Member States agreed that their ability to meet a requirement to undergo an audit by the IMO, would also be determined by the IMO’s available audit resources. At the Council, the Member States agreed therefore that they should undergo an IMO audit every seven rather than the five years, as I indicated to you in my letter of 1 October. In addition, a reference was added to provide the Member States with more time to undergo IMO audit, if they could provide evidence that the IMO was unable to carry out their audit within the seven year, period as required by the Directive.

In view of these further improvements to the IMO audit requirements, and the very substantial amendments which have been made to the draft of the Directive since it was first launched in 2005, the UK agreed to support the Directive at the Council. Our support was given, however, on condition that the European Parliament accepted both the Council text of the Flag State Directive and the achievement of satisfactory outcomes with the Parliament on the whole third maritime safety package.

The Council reached a political agreement on the Directive, and its accompanying Member State Statement, with little discussion.

THE CIVIL LIABILITY DIRECTIVE (5907/06 & 14486/07)

I am also pleased to report, that the UK was successful in ensuring that our key concerns, particularly those relating to the innocent right of passage of ships, as allowed under the United Nations Convention on the Law of the Sea (UNCLOS), were resolved satisfactorily in the run up to the Council.

At the Council, the UK raised our only remaining specific concern, which related to the provision enabling the Member States to expel an uninsured ship from one of their ports. The UK argued, that

8 Correspondence on this subject is also contained under Sub Committee E
it was better to detain the ship until evidence of adequate insurance, in compliance with the directive
is provided to the Member State, rather than simply expelling it and allowing it to continue uninsured
around the coasts of the EU. Other Member States supported our view, and the UK was therefore
able to secure an amendment to the text which resolved our concerns satisfactorily.

The proposed Directive introduces compulsory insurance provisions, and this is a useful addition to
maritime safety in the EU. In view of the progress the UK has made to minimise the scope of this
Directive and the successful negotiations both in the last few days before Council and at the Council
itself, the UK was able to support it at the Council. As with the Flag State Directive, the UK support
was conditional on the European Parliament accepting the text as drafted and on a swift conclusion to
the negotiations on the rest of the third maritime safety package.

Following a satisfactory conclusion to the discussions on the expulsion issue, the Council reached a
political agreement on the text of the Directive.

I note from your letter of 9 October that, in the absence of a revised text, Sub-Committee E felt
unable to clear the proposal pending the outcome of the Council discussions. There has been no new
depositable document since the Commission's amended proposal following the European Parliament
first reading, which was the subject of EM 14486/07, but I attach a copy of the text that was agreed at
the Council (Annex A). In addition, the fast-moving nature of the negotiations during the run-up to
the Council meant that it was not possible to provide you with a definitive description of the changes
made since EM 14486/07. However, I can now summarise these as:

i. the title of the directive has been amended from "the civil liability and financial guarantees of
shippers" to "the insurance of shipowners for maritime claims". This amendment reflects the
changes made to the proposal;

ii. the definitions of "ship", "civil liability", "financial security" and "IMO resolution 930(22)" have
been removed. The definition of "shipowner" has been refined and a new definition of "insurance"
has been added. These amendments have provided greater clarity to the text;

iii. the introduction of the concept of "gross negligence" for ships flying the flag of third country
states has been dropped. This avoids the introduction of a community system at variance with
the established arrangements set out in Article 4 of the Convention on the Limitation of
Maritime Claims Convention (LLMC 1976);

iv. the EU Member States have agreed, that the port state control authorities should verify the
certificates required by the directive, and that a system of penalties for the breach of this
requirement should be introduced;

v. the proposal to remove the ceiling of liability as set out in the 1996 protocol to the LLMC 1976
has also been dropped. If the proposal had been included, the EU Member States would have
been obliged by community law to breach the LLMC convention limits, with a potentially
significant impact on the marine insurance market;

vi. the requirement for the EU Member States to become a state party to the LLMC has been
removed. This avoids the unnecessary interference in the EU Member States rights under
international law;

vii. the "financial guarantee system", "community office", "solidarity fund", and "the right of direct
action against provider of the financial security system" proposals were not supported by the
Member States. These proposals would have created significant additional requirements and
expense for both the insurance industry and the Member States without a commensurate benefit;
and

viii. the references to the 1996 Hazardous and Noxious Substances Convention (HNS Convention)
have been removed. Their inclusion would have created potential legal difficulties for the EU
Member States in their ratification process of this Convention.

I regret that we gave our agreement to the proposal, ahead of scrutiny clearance by Sub-Committee
E, and would like to assure you that we would not do so lightly. However, given the improvements
made to the proposal in the key areas of importance to the UK, and in particular our success at
Council in the resolution of our key remaining concern, the UK took the view, that we should
support the proposal in order to secure these negotiated improvements.

28 October 2008
MARKETING OF CONSTRUCTION PRODUCTS (10037/08)

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

Thank you for this Explanatory Memorandum. Sub-Committee B considered it during its meeting on 30 June. It was agreed to hold it under scrutiny.

We understand that the implications on small-medium business are currently being reviewed. We would appreciate further details of these when they become available.

8 July 2008

Letter from the Chairman to Iain Wright MP

Sub-Committee B has been holding this item under scrutiny since 17 June 2008. The Committee last wrote to you concerning this document on 8 July 2008. The implications on small-medium business were under review and members requested further details when they became available. The Committee would be grateful if you could provide an update on developments.

11 November 2008

MEDIA PLURALISM

Letter from the Rt Hon Andy Burnham MP, Secretary of State, Department for Culture
Media and Sport to the Chairman

I am writing to update you on the European Commission’s three-step approach on Media Pluralism. If you remember, their approach included the staff working paper (published in January 2007), an independent study on levels of media pluralism in the Member States in 2007 and a Commission Communication presenting the outcome of the study in 2008.

It would be fair to say that progress on the last two items has been slower than the Commission had originally anticipated. According to the Commission’s website, the contract for the independent study was awarded to Leuven University (Belgium) in December 2007 and the Commission Communication is now planned for early 2009. Although the website says the Council will be kept informed about progress, there have not been any discussions to date. The issue has not been on the agenda of recent Ministerial Council meetings nor has it been discussed at official level. This is not surprising given that the timetable has slipped.

Detailed information contained in the tender document on the independent study confirms that the study is expected to take between 15-17 months to complete. Various milestones are given, such as interim reports at 4, 8 and 10 months, followed by a 1 day workshop in Brussels at 13 months and then a final report at around 15 months. This makes a deadline of early 2009 for the Communication look ambitious.

Once more progress has been made on the independent study, I would expect the issue to be discussed (at least initially) in the official level Council working group. My officials will ensure that your clerks are kept informed about any significant developments and I will write to you again at a suitable juncture.

11 October 2008

RESEARCH: ERI (12259/08)

Letter from the Chairman to Lord Drayson, Minster of State for Science and Innovation,
Department for Innovation, Universities and Skills

Thank you for the above Explanatory Memorandum, submitted by your predecessor on 30 September 2008. Sub-Committee B considered it at its meeting on 27 October and agreed to hold the item under scrutiny.

The Sub-Committee shares the Government’s concerns about the exemption of ERIs from VAT and excise duties and would greatly appreciate it if you could keep members informed of negotiations on the final text of the Regulation. The Committee would also be interested to know what steps the
Government will take to address other obstacles to the construction of research facilities, such as decisions on their location and the availability of funding.

28 October 2008

Letter from Lord Drayson to the Chairman

Thank you for your letter of 28 October in response to the Explanatory Memorandum on the above document.

Negotiations on the draft Regulation have been ongoing since the EM was submitted. The issues concerning the tax status of ERls (now to be known as European Research Infrastructure Consortiums of ERICs) have, as one might expect, bulked large in these negotiations. Despite opposition from the Commission and some other Member States, the UK pressed hard for the deletion of these references. Initially the UK had very little support, but over time, rather more Member States supported our position. At the meeting of Coreper on the 26 November, in the face of the substantial resistance, the Presidency shifted to a compromise text. This text includes references to tax, but the references are merely declaratory in nature and have no legal effect. They are essentially signposts to the appropriate tax provisions in tax legislation. In the event, despite continued Commission opposition, all other Member States felt willing to accept the compromise text and that is the text the Presidency has now sent through to the Competitiveness Council.

We therefore propose to agree to the General Approach at the Competitiveness Council on 2 December. I apologise for not being able to write to you earlier to seek your approval to this but, as you will see from the above, negotiations on this text have been active until a very late stage and we only obtained an acceptable outcome within the last few days.

Your Committee also raised separate questions concerning the funding and location of European research infrastructure projects. The Government welcomes the Commission’s efforts through the Framework Programme (FP7) and ESFRI to stimulate and facilitate a co-ordinated EU wide approach to the identification and cultivation of large scientific Research Infrastructures. It is important that such facilities are only developed where there is a convincing scientific case for them. The selection of their location should remain a matter for those member states prepared to fund their construction and operation.

The UK has an established consultative Roadmap process for identifying and prioritising large scientific research facilities. The most recent Roadmap was published by RCUK in 2008. The Government looks to RCUK for the identification of potential facilities and for their prioritisation. In producing the 2008 Roadmap RCUK took into consideration those facilities proposed by ESFRI. The 2008 Roadmap included reference to 24 of the 35 facilities that had at that time been proposed by ESFRI. Which facilities are taken forward results from a prioritisation process invested in RCUK which results in an earmarking of funds by Government from DIUS’ Large Facilities Capital Fund. The results of the 2008 prioritisation Round was announced in June 2008. Subsequent development and implementation of the earmarked facilities depends upon the production of a convincing science case to RCUK and a supporting business case to the satisfaction of RCUK and DIUS and is subject to consent from Treasury.

30 November 2008

TRANSPORT: ROAD INFRASTRUCTURE SAFETY MANAGEMENT (13874/06)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Further to the Supplementary Explanatory Memorandum of 8 November 2007, I am writing to inform you of the outcome of the European Parliament’s plenary vote on the Road Infrastructure Safety Management Directive.

The Parliament adopted 46 amendments. These include

- amendments that make the proposed Directive less prescriptive, by mandating only that technical processes are carried out, rather than additionally mandating how such processes must be carried out
- changes to the technical definitions that have the beneficial effect of reducing the financial and administrative burden of compliance
general movement towards requirements that accord with existing UK best practice, which includes the consideration of road safety issues alongside other issues when determining transport related investment decisions.

The Government is content with these amendments, which represent minor textual changes with minimal policy implications. There has been no further need for substantive working group discussion since the general approach reached on this proposal in October 2007, but the amendments are also expected to be acceptable to other Member States. We therefore expect that it will be possible for the Directive to be adopted shortly.

4 November 2008

SMALL BUSINESS ACT (SBA) (11262/08)

Letter from Baroness Shriti Vadera, Minister for Economic Competitiveness and Small Business, Department for Business, Enterprise and Regulatory Reform to Lord Freeman to the Chairman

Thank you for your letter of 27 October 2008 inviting me to give evidence to EU Sub-Committee B on the European Commission’s Small Business Act communication (COM (2008) 394).

I understand that there are a number of areas the Committee is particularly interested to know more about and I am grateful for the questions your clerk has forwarded. I hope this letter and annex answer these questions.

Our Explanatory Memorandum expressed the UK’s strong support for the SBA initiative, which is not an ‘Act’ as we would understand the term from domestic legislation, but is a non-legislative communication with ten policy principles and 92 underlying measures. In many ways, the UK leads the way amongst Member States in its support for enterprise, entrepreneurship and small businesses. By sharing our evidence and experience we were successful in influencing and improving the Commission’s proposal. It includes a number of UK ideas and aligns well with our domestic policy.

In addition, the areas of potential concern we raised in the EM have not escalated. We continue to work with the Commission, the Presidency and other Member States to ensure that activity at the EU level helps to tackle the issues that SMEs now face and complements our own efforts to promote UK enterprise.

As you know, the SBA will be included in the conclusions of the Competitiveness Council on 1 and 2 December. A goal for the UK is that the Conclusions call for a prioritisation of measures that will help small businesses in the short term during this period of economic downturn. At September’s Competitiveness Council the UK pressed for implementation to prioritise access to finance, better regulation and actions to help SMEs benefit more from the opportunities of the single market. Measures in these areas will send a clear message to our small business community that action is being taken at a European level to support them now.

5 November 2008

APPENDIX

EU SMALL BUSINESS ACT – ISSUES RAISED BY HOUSE OF LORDS EU SUB-COMMITTEE B

How does the SBA relate to current UK SME policy?

1. In October 2007, as part of its mid term review of SME policy, the Commission announced its intention to establish an EU Small Business Act. At that time the UK knew that President Sarkozy was pressing the Commission for the SBA and that it would be a priority for the French Presidency.

2. Since that time the UK has been actively negotiating with the Commission and engaging with the French – including a joint Brown/Sarkozy letter to the Commission in April – to set out our expectations for the broad scope of the proposed SBA. From the outset our aim was to ensure that the SBA fitted with UK objectives and the new domestic Enterprise Strategy and put in place positive measures at the EU level.

3. To this end we worked with the Commission during the drafting phase of the Communication itself, sharing ideas, evidence and textual suggestions. It is as a consequence of this concerted effort that the final Communication is one which the UK can be broadly positive about.
Furthermore, as noted in the EM, the majority of the SBA measures are either already underway in the UK or could be taken forward within existing activities.

4. All of the ten SBA principles complement domestic policy and pick up on the key themes of the UK’s new Enterprise Strategy: regulatory framework, access to finance, culture, knowledge and skills, and business innovation. Additionally, the SBA calls for measures to help SMEs benefit from opportunities in EU and international markets, and these are also in line with the Government’s strategy and ongoing commitment to help UK small businesses to thrive in the global market.

5. UK implementation of the Small Business Act does not require us to take a radically new direction. The UK is already well advanced in realising the SBA principles and implementing recommendations.

Is there a significant risk or unnecessary overlap between EU and UK legislation?

6. There is no risk of unnecessary overlap between EU and UK legislation. The SBA is a non-legislative Communication. It makes reference to five pieces of legislation9 which have either now been completed or are being negotiated outside of the scope of the SBA itself. In committing to implement the SBA, Member States are not signing up to legislate.

7. However, with respect to the wide ranging non-legislative SBA measures, there is helpful overlap. The SBA will ensure that policies taken forward domestically are supported at the Community level with a coherent and coordinated approach.

How will it affect future policy, eg: during the current financial situation?

8. The ten SBA principles cover a wide range of areas that will be relevant in the short and long term. They will act as an ongoing framework for policy development at the EU and national level. As a consequence of the fit between them and the UK’s enterprise strategy, the Government does not anticipate there will be any negative impact on the future direction of UK enterprise policy from the SBA. The SBA is non-legislative and Member States retain flexibility to respond to changing national (and international) circumstances.

9. For example, the UK Government’s initial response to the economic downturn includes a range of measures to help SMEs, such as strengthening Government schemes like the Small Firms Loan Guarantee, helping businesses with cash flow (including the PM’s recent announcement on central Government moving to pay all bills within 10 days) and are making available more advice and training. These actions are fully in line with the objectives of the Small Business Act. We will continue to find ways to help UK SMEs in the current situation.

10. The global financial crisis gives added impetus to the need for the SBA’s measures. Effective and swift SBA implementation is now key, particularly to improve access to finance. For example, the SBA highlighted the importance of the European Investment Bank as a source of funding for SME lending. The UK has subsequently led Member States’ efforts to call on EIB to speed up its processes to open up lines of credit. As the Chancellor announced last week, the main UK banks have indicated that they will negotiated credit lines with EIB of over £1 billion to lend to UK SMEs out of an overall £4 billion UK share. In parallel, Government is encouraging these institutions to make use of the EIB’s new risk sharing facility to extend the reach of this fund to a diverse range of businesses.

A B D E F G H I J K L M N O P Q R S T U V W X Y Z

The SBA, despite its name, does not have legislative force. Some SME organisations have called for it to include binding principles. Should the Act go further in this respect?

11. The UK favoured a non-legislative format for the SBA and, although some European SME organisations have called for a legally binding format, UK SME representative organisations (with whom we have and continue to liaise closely on the SBA) have not raised with us a desire for a legal SBA. The UK believes that a non-legislative SBA offers the flexibility needed for Member States to take appropriate action across a wide range of policy areas at the national level, recognising that they are starting from very different positions.

12. The SBA gives a politically binding commitment from the Commission and Member States to implement the SBA and report on progress annually. This is not insignificant; the SBA principles, and underlying measures, are of sufficient clarity and detail to enable Europe’s SME community to hold both Member States and the Commission to account.

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9 The five legislative measures mentioned in the SBA are: General Block Exemption Regulation on State Aids; Regulation providing for a Statute for a European Private Company; Directive on reduced VAT rates; a legislative proposal to further modernise, simplify and harmonise the existing rules on VAT invoicing; an amendment to the Directive 2000/35/EC on late payments.
Committee has highlighted the importance of implementation and the damaging impact of poor transposition on SMEs. To what extent will poor implementation undermine the SBA?

13. The SBA will be implemented at both EU and member state level.

14. For EU level measures, the European Commission made a firm commitment in the SBA Communication to take forward measures across the ten guiding principles and is making progress in a number of areas, for example, a group is currently taking forward work on Common Commencement Dates. There is a high-level commitment to the SBA, in particular from Commission President Barroso and Vice President Verheugen, while at the practical level, the Commission will report annually on progress made against its commitments, so member states and business representative will be able to monitor progress and challenge the Commission.

15. For member state level measures, there will be a political commitment to start to implement the SBA by EU Ministers at the December Competitiveness Council. There needs to be a degree of flexibility, to reflect different national circumstances and business needs. The majority of measures to be taken forward at the national level fall solely to member state competence. They are aimed at improving the situation for SMEs in their respective countries (for example, including entrepreneurship in national education systems) and so do not directly impact on UK small business. There is a risk that poor implementation by other member states of some measures could impact on UK SMEs, for example establishing contact points to help service sector SMEs to operate in other member states. For this reason, the UK strongly supports the SBA commitment to report on progress annually and indeed we have gone further and pressed for a prioritisation of measures and for timescales to be put into place.

In what areas do you see the “Think Small First” principle being particularly useful?

16. This step will ensure that impacts on small businesses are considered throughout the policy development process, in particular in Impact Assessment processes, enabling any disproportionate or negative effects to be addressed early. We would particularly expect to see new and amended legislation coming from Brussels that demonstrates greater consideration of the impact and cost of regulation on small businesses with evidence that special measures to help small business comply have been considered and adopted. It will be particularly important to embed this approach when the new Commission and European Parliament take office in 2009 and begin to develop their new work programmes.

What legislation or action do you see coming as a result of the “Think Small First” principle, either at UK or EU level?

17. The ‘Think Small First’ principle should not lead to additional legislation, but is about ensuring that policies and legislative proposals take into account the needs of small business. Key elements of the “Think Small First” package – which the UK has consistently lobbied for over recent years – are the Commission’s specific SBA commitments to use common commencement dates, apply an ‘SME test’ in developing policy and legislation, and to consider special measures (such as derogations, transition periods and exemptions). These commitments, within the SBA and by the Commission, are a major achievement for the UK.

18. One example of action at the EU level as a result of the “Think Small First” principle is the recent Commission announcement that it intends to allow Member States to exempt micro-firms from certain annual accounting and auditing requirements. This one action could bring significant benefits: the Commission’s expert group set up in November 2007 under the chairmanship of Edmund Stoiber to look at the reduction of EU administrative burdens, estimated that it would lead to a potential Europe-wide burden reduction of 5.7 billion euros.

19. The Commission’s SBA measures mirror the approach we are already taking in the UK. For example, Common commencement dates already help UK business to prepare for upcoming regulatory changes, so they can plan and budget for new measures more effectively. Extending this approach to EU legislation will make the system much more integrated. It will increase the existing cost and time saving benefits that UK SMEs currently enjoy for domestic regulations. Reducing the EU administrative burden by 25% would translate into an increase of 1.5% in European GDP, saving business 150 billion Euros.

In its explanatory memorandum, the Government highlight some reservations about the SBA, opening up third country procurement markets and the ICT proposals for example. Please could you explain the Government’s concerns more fully?

20. The UK successfully argued for the exclusion of measures in areas of serious concern, for example to harmonise taxation, impose distorting SME quotas or preferential treatment for
public procurement and to re-examine SME definitions. In our EM, we drew the Committee’s attention to potential UK concerns in the following areas, which are still part of the SBA proposal but are less critical:

— Opening up third country procurement markets

21. The SBA commits the Commission to work to open up third country procurement markets “which should lead to mutual and reciprocal benefits.” The Government is content with this line. We support the intention in the SBA to open up third country procurement markets as this fits with our belief in level playing fields and that open markets and competition will deliver the greatest benefits to European procuring authorities and SMEs.

22. However, together with the majority of Member States, we are resisting any attempt for the Council Conclusions to go further and call for the opening up of our own EU procurement markets to be dependent on the actions of third countries. This would deny public authorities the best value and range of choice that open markets offer. Insisting on reciprocity would deny Europe the productivity gains and lower prices that imports bring. As a tactic it is unlikely to deliver open markets and could instead risk leading to increased protectionism.

— ICT – promoting e-signatures

23. The proposals in the Small Business Act commit the Commission to promote electronic signatures and invite Member States to encourage electronic business identities. Although these measures are not in themselves problematic, the UK does not want to encourage the view that this is the only solution for interoperability in other negotiations. This discussion is primarily taking place in the context of the Services Directive (where the Commission have promoted specific digital signature technology) and access to single points of contact for SMEs, where there is a risk that a focus on e-signatures might create new barriers for service providers and diminish the market opening benefits of the services directive and SMEs in general.

24. The potential cost for SMEs of compulsory technology means that the UK continues to resist this, and we are arguing for more attention to lower-tech and less burdensome approaches for SMEs and that we need a case by case approach to the risks to be addressed by individual licensing regimes.

— Business transfers

25. SBA invites Member States to ensure taxation does not unduly hamper business transfers, to put in place schemes to match transferable businesses with potential owners, and to provide mentoring for business transfers.

26. The UK has a tax and legal environment that offers a level playing field for the various transfer options available. Furthermore, EU and UK studies have not shown a compelling case for the need for direct state intervention in the transfer market. The Government favours an approach based on tackling misperceptions and ensuring buyers and sellers have adequate information.

27. During negotiations for the Council Conclusions, some Member States (notably Italy) have raised business transfer as a key concern. They would like strong measures in this area, including a reference in the Conclusions endorsing the use of taxation. We have lobbied hard against this proposal and have the support of a number of Member States. We continue to push for a positive outcome for the UK.

— Standards

28. SBA measures on improving SME access to standards and involvement in standards-setting processes are welcome. The SBA also invites Member States to ask National Standards Bodies voluntarily to reconsider their business models in order to reduce the cost of access to standards. However, the Government does not think this is necessary because the problems associated with SME access are not limited to cost. Evidence suggests that providing free-of-charge standards does not significantly increase uptake or usage. Furthermore, SMEs tell us key issues are around awareness, support and involvement in standards-setting processes and focus should be on addressing these areas.

29. This issue has not been developed further in negotiations for Council Conclusions. We do not expect the Conclusions to revisit the SBA text on this issue.

During the consultation period prior to the publication of the SBA, some SMEs highlighted the complexities of intellectual property rights across the EU. The SBA Communication highlights the Commission’s work to create “an efficient, cost effective, high-quality and legally secure patent system at the European level, including a Community Patent and EU-wide Patent Jurisdiction”. What action will the UK be taking to help the EU achieve such a patent?
30. The Government recognises that navigating the EU patent system can be complex and confusing for SMEs, and the processes involved can be costly, both in time and money. It currently costs over €100,000 for an SME to maintain patent protection across the EU for 20 years. The UK continues to work constructively with EU partners towards a Community patent system which will make it affordable for SMEs to apply for a single patent covering all 27 States of the EU. A crucial aspect of this is an efficient language regime which ensures that the associated translation costs are as low as possible.

31. Cost is not only a factor in applying for patent protection: it also affects a patent holder’s ability to defend their patent rights. In order to help SMEs better defend their patents we are working with EU partners towards a single European Patent Court. This will help reduce burdens that SMEs face when trying to defend their rights across European borders. Currently companies may face litigation in multiple European states, which can be very expensive and time-consuming. A single European patent court will help reduce the costs associated with pan-European litigation. The UK is working to ensure that this Court operates in an efficient and sustainable way, and provides real benefits over existing options. It is important that we do not only focus on legislative solutions at the EU level. We must also provide better access for SMEs to alternative dispute resolution mechanisms such as arbitration and mediation, so that disputes can be resolved quickly and efficiently without resorting to expensive court actions.

32. Costs are not the only barriers to patent protection in Europe. Delays in granting patent rights can have a massive impact on the ability of SMEs to secure funding so that they are able to exploit their inventions. In common with other major Patent Offices around the globe, the European Patent Office (EPO) has significant work backlogs, which means it can take up to seven years for a patent to be granted. The UK supports work to reduce European and global patent backlogs by utilising patent application work already done by other suitably-accredited Patent Offices. We also support work sharing initiatives within the Community patent system. These solutions will help all companies, including SMEs, obtain their patent rights quickly.

33. The UK is fully-supportive of both the Community patent and the European patent court; but it is essential that they meet the needs of the users. Negotiating a compromise that works politically, but that does not offer real benefits to users will mean that these systems will ultimately fail. Negotiations are currently progressing slowly as there are several points of difference between Member States, on issues including the language regime for the Community patent, how the Community patent will be financed, and the structure of the Court. The UK will continue to push for solutions to these problems during 2009.

Letter from the Chairman to Baroness Shriti Vadera

Thank you for your letter concerning the Small Business Act (SBA). Sub-Committee B considered it during its meeting on 10 November. It was agreed to clear the proposal from scrutiny.

The Committee noted that the SBA is a statement of intention from the Commission and we look forward to seeing the ten SBA principles being taken into account in future legislation.

12 November 2008

SPACE: EUROPEAN POLICY (9052/07)

Letter from Ian Pearson MP Minister of State for Science and Innovation, Department of Innovation, University and Skills to the Chairman


At the time a response to your letter was drafted. However it seems that during the machinery of government changes being undergone, the reply to your letter did not complete the final stages of the process. Please accept my apologies for this oversight. I am now writing to answer the questions posed in your letter, but also to update you regarding developments in this fast moving area.

In Explanatory Memorandum 9052/07, we outlined the Government’s concern regarding reference in the Commission/ESA European Space Policy document to Galileo having military users. The Government has always accepted that there may be military users of the system. This is because Galileo’s open service, like that of GPS, can be accessed by all and therefore could be used by military forces. Furthermore some of our European partners’ police forces or coastguards are technically
part of their military. Nevertheless this is an area on which we are particularly vigilant. We had
further concerns about a reference in the draft Council Resolution emphasising "the importance of
keeping Galileo a system which continuously evolves ... to fulfil users' Requirements". This is because
we had concerns this could provide a green light to those wishing to continuously update the system
for industrial rather than user reasons.

I am pleased to say that the proposed reference to the continuous evolution of Galileo in the Council
Resolution was removed from the final version agreed by Ministers at the Space Council on 22 May.
Further, the section pertaining to potential military users states that the Council "Recognises that the
uses made by any military users of GALILEO or GMES must be consistent with the principle that
Galileo and GMES are civil systems under civil control, and that any change to this principle would
require examination in the framework of Title V/TEU and in particular Articles 17 and 23 thereof, as
well as in the framework of the ESA Convention".

On GMES the technical specification does not raise the same military concerns. Our baseline is that it
is essential GMES remains a system driven by civil requirements.

You also asked to be kept informed of any developments regarding the UK approach of a user-driven
exploitation of satellite technology. This is, in fact, a long standing UK objective and there was no
discussion of this specific issue at the 22 May Council.

4 June 2008

SPACE: SATELLITE RADIO NAVIGATION PROGRAMMES (EGNOS AND GALILEO)
(13113/07)

Letter from Rt Hon Rosie Winterton MP, Minister of State, Department for Transport
to the Chairman

I am writing to update you on the progress made to adopt the above regulation since my letter to
your committee of 14 March 200810.

You may recall that a number of points remained under negotiation at the time of my previous
correspondence, including the role of the European Parliament, the future of the Galileo Supervisory
Authority (GSA) and some aspects of the procurement rules. All of these issues were satisfactorily
resolved during negotiations held in the run-up to April's Transport Council.

On the question of European Parliament involvement, we successfully argued against using the
'regulatory procedure with scrutiny' mechanism to manage most elements of the programme. The
only circumstances in which this procedure could be triggered involve the approval (or change) of the
strategic framework document that sets out certain high-level aspects of the programme, or in the
unlikely event that the Commission wished to reduce the interoperability of the system.

In exchange we were able to offer the Parliament an 'interinstitutional panel' to keep them informed
of progress on the programme. This new body will include representatives of the Commission,
Parliament and Council of Ministers and have the right to access certain information on the
programme and make recommendations. They will not be able to take decisions or mandate actions.

Meanwhile, the Galileo Supervisory Authority (GSA) will continue as an organisation in its present
form, in line with UK objectives. We secured language that confirms the body's commitment to
continuing their hitherto positive work on commercialisation and market-preparation in addition to a
number of other tasks as requested by the European Commission. The GSA will also assist in the
process of system security accreditation.

On the procurement-related issue of how to resolve the impossibility of 40% subcontracting in
certain market sectors the UK agreed with other member states and the Commission that any failure
to meet the 40% target should be referred to the 'GNSS Programmes Committee' for consideration.
This committee exists to support the Commission's management of the programme and includes
representatives from each member state. The Commission may seek to demonstrate to this
committee that the structure of a particular industry prevents extensive subcontracting, and to
request its permission to derogate from the target.

As I explained in my previous letter, the draft text of the regulation already met the UK's priority
concerns about the need to control costs, adopt sound project management principles, provide a fair,
competitive playing field for suppliers and recognise the system's civilian status. Coupled with the
agreements on the points outlined above, the regulation meets all of our objectives for Galileo, and I

10 Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 73
was pleased to be able to join colleagues from other member states in supporting a General Approach on the regulation at the Transport Council held on 7 April.

This was followed by a near-unanimous vote in favour of the regulation by the Industry, Research and Energy (ITRE) Committee of the European Parliament on 8 April 2008 and a final vote in favour of the text by a plenary session of the European Parliament at the end of April.

The last stage in adopting the regulation will be the routine passage of the text through another meeting of the Council of Ministers for endorsement. We understand that the Slovenian Presidency would like to adopt the text during the Transport Council in June. However, if this is not possible then other, later Councils are being held on 16th and 23rd June and we would expect the regulation to pass through one of these. The document would then be signed by the Council and Parliament in early July and enter into force immediately.

24 May 2008

TELECOMS: BRIDGING THE BROADBAND GAP (7622/06)

Letter from Shriti Vadera, Minister for Economic Competitiveness and Small Business, Department for Business, Enterprise and Regulatory Reform to the Chairman

Following the explanatory memorandum in 2006, I would like to provide a further update on broadband developments in the UK, subsequent to those set out in Stephen Timms’s letter of 13 September 2007\(^{11}\), attached for reference [not printed].

To date the European Commission have not produced subsequent communications on the subject of bridging the rural broadband gap since their March 2006 Communication. That focussed on 1st generation broadband. The subsequent conference in May 2007 served only to reinforce the Commission’s desire to see Member States encourage deployment of 1st generation broadband to rural areas, but the conference did not give rise to additional policy initiatives, or directives for member states to implement.

The UK had by the date of the Commission Communication in 2006, as you are aware, already achieved the most extensive 1st generation coverage in the G7, but I recognise, however, that there are small pockets in the UK where broadband supply remains elusive, or of variable quality, due to the limitations of copper based technology. The announcement by BT on 16 July 2008, of further network investment, however, provides an opportunity for Regional and Local Government to engage with BT to address rural and urban broadband supply and I will be writing to the RDAs and Devolved Administrations encouraging them to make the most of this opportunity.

This timely announcement sits comfortably with our own approach of fostering market-led solutions by looking at ways of minimising barriers to the significant investment required to deliver the next generation of communication infrastructure.

To this end, I also announced in March, a review of next generation access to broadband and asked Francesco Caio of Lehman Bros (ex CEO, Cable & Wireless) to lead it. Mr Caio is due to deliver his report in the autumn.

In addition, the Broadband Stakeholder Group have produced two additional reports, attached for reference [not printed], since the 'Pipe Dreams' report, which Stephen Timms sent you. These were on the 'Social & economic value of next generation access to broadband’ and ‘Efficient public sector interventions’

You may also like to review EU broadband updates through the Commission’s broadband portal at: http://www.broadband-europe.eu

The Commission will be issuing a communication in the autumn on the subject of next generation access to broadband and I will therefore provide future updates to the Committee in the context of that communication.

21 July 2008

\(^{11}\) Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 26
Letter from the Chairman to Stephen Timms MP, Minister of State for Competitiveness, Department for Business, Enterprise & Regulatory Reform

As you may be aware, Sub-Committee B has been following the progress of these proposals closely since their publication. The Committee reconsidered the package during its meeting on 12 May, 2007, and has agreed to clear the documents from scrutiny.

The report, Single Market: Wallflower or Dancing Partner? stated the Committee’s view that the creation of a European Electronic Communications Market Authority (EECMA) would not be the appropriate method of improving regulation in the electronic communications markets.

The Committee would be grateful if you could keep it updated on the progress of these proposals.

13 May 2008

Letter from Lord Carter of Barnes, Minister for Communications, Technology and Broadcasting, Department for Business Enterprise and Regulatory Reform

Your letter dated 13 May 2008 requests to be kept informed of progress on the Review of the European Communications Framework.

PUBLIC CONSULTATION

The Public Consultation has now concluded and the Government’s response has been published; a copy is attached (Annex One).

I was pleased to note that stakeholders broadly supported the policy adopted in order to ensure that UK could take a full role in the early stages of negotiation. I believe that meeting stakeholders in a workshop context early in the consultation process was very helpful in ensuring that our negotiating position reflected UK stakeholder concerns.

FIRST READING OF EUROPEAN PARLIAMENT

The first reading by the European parliament took place over 1 to 4 and 22 to 25 September 2008. I attach a copy of each of the reports for each vote as Annexes Two to Four inclusive.

The Presidency, currently held by France, has taken into account the Parliament’s amendments in moving towards a text that will be put to the Telecommunications Council on 27 November.

In general, the position adopted by the European Parliament is closer to that adopted by the UK than what may reasonably be assumed to the outcome of the Council discussions. This is especially true of issues relating to: the independence of National Regulatory Authorities; the role of the Commission in addressing market remedies; and the role of pan-European “Authority”. The areas where the European Parliament’s view differs from the UK’s are on the liberalisation of spectrum allocation and potentially discriminatory access conditions for new infrastructure developments.

The Commission has yet to adopt a formal position following the first reading.

The date of the second reading in the European Parliament has yet to be set, but it is likely that this will take place in early Spring 2009.

COUNCIL NEGOTIATIONS

Negotiations are continuing in the run up to the Telecommunications Council but there are still a number of areas where have continued difficulties in persuading other Member States to support our position. Where we stand on the key issues is as follows:-

- Fully Independent National Regulatory Authorities (NRAs)

We continue to face opposition for NRA’s to be ‘independent’ from day to day pressure of political influence and from market participants;

- Prevent abuse of the Appeals process
We support the Commission’s original text enabling “NRA’s decisions to stand pending final decision by appeal body, unless interim measures are granted to prevent serious and irreparable damage”. Such a change would obviate the delay caused by legal challenge. The current Council text and EP text make this subject to national law, which potentially would severely reduce the impact of the change;

— Availability of Functional Separation

We continue to push for NRAs across Europe to have the necessary powers to impose functional separation, without having to rely upon general competition powers and the need to prove (under competition law) that incumbents are abusing a dominant position; many Member States would prefer to make this effectively unworkable in practice.

— Commission ‘Veto’ powers

We favour the proposed powers for the Commission to be subject to a ‘co-regulation’ approach with the advisory body (see below), in order to speed up the adoption of regulatory best practice across Europe. We also have a preference that this process concludes in a Commission Decision (which is immediately legally binding), but would accept a Commission Recommendation (whereby the NRA has to take utmost account of and which could be enforced through national courts). Given strong opposition for any improved decision making process, we are continuing to push for a Decision to enable us to retain the Recommendation and prevent the process being watered down further;

— Pan-EU “Authority” (EECMA)

We have succeeded in scaling down the original proposals and in removing any role on either security or spectrum. Although we are continuing to resolve issues of funding, we are on track to agree a form of an advisory body that effectively formalises the existing European Regulators Group (ERG) into the legislation. We also welcome the obligation on the Commission to consult with this body, and take utmost account of its advice. It is important, however, that this body is not bureaucratic and is guaranteed to be sufficiently independent (both operationally and at the level of governance) from the European institutions; we have a reasonable prospect for a successful outcome on this issue.

— Spectrum

We continue to seek to ensure that references to the International Telecommunications Union (ITU) Radio Regulations are removed in the package, as they could constrain UK’s spectrum management. We also continue to push for the removal of restrictions on spectrum trading, specifically that “conditions attached to individual rights to use radio frequencies shall remain unchanged by transfer or lease”. We also have concerns about the dual notification process, which will create significant burdens for all involved in this process; and

— Discriminatory access regimes for Next Generation Access Networks (NGA)

There has been a push, which we opposed, from some Member States and the European Parliament to permit discriminatory access conditions, through making specific reference to risk sharing as a solution. We believe that the package contains sufficient instruments to create a regulatory regime suitable for all forward technological developments.

This is clearly a snapshot of where the negotiations stand at present and I will write to you again before the 27 November Telecommunications Council to let you know how things stand at that point and how the process might be brought to a conclusion.

5 November 2008

TRANSPORT: END OF LIFE VEHICLES (5413/07)

Letter from Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise & Regulatory Reform to the Chairman

Thank you for your letter of 1 April 2008 12 in which you indicated that the Committee had decided to keep the dossier under review until the position on 2006 targets was clear.

We have now completed analysis of the 2006 target performance and a copy of the information that we provided to the Commission is attached. While this shows that the UK fell short of the 85% target, the undershoot was relatively minor and amounts to less than 15,000 tonnes of material in total. We expect this performance, which has increased from an estimated 81% in 2005, to compare favourably with those of a number of other Member States, when the Commission publishes a

12 Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 151
consolidated report across the EU. We are aware also that some Member States may not be in a position to provide any figures to the Commission.

Our early analysis of 2007 returns from businesses obligated under the ELV (Producer Responsibility) Regulations 2005 to achieve the necessary recycling and recovery target, suggest that further improvement is likely to be recorded in respect of last year. Companies involved in the treatment, dismantling and recycling of end of life vehicles, particularly those that fragmentise vehicle shells, have been investing in technology to separate non-metallic materials such as glass, plastics and rubber from automotive shredder residue, and developing markets for these recycle streams, as routes to additional recycling and recovery. We believe that these efforts will enable the UK to meet the 85% target for future years.

That effort extends towards the higher 2015 targets, with investments in train on plastics separation and reprocessing that should move us significantly forward in this respect. However, the 95% reuse, recycling and recovery target will be very challenging and much further work will need to be done over the forthcoming years to enable that target to be met by the due date.

My officials are further evaluating the detail of the reuse, recycling and recovery data compiled for 2006 and provisionally for 2007, and relating the findings to the intelligence we are receiving about actual and planned technological investments, so as to assess whether the structure of the 2015 target is the best fit for UK needs. Following this exercise, we shall again seek the views of industry sectors represented on our ELV Consultation Group, who themselves have not yet reached a single view, before reaching a BERR position to discuss with colleagues.

17 July 2008

Letter from the Chairman to Ian Pearson MP, Parliamentary Under Secretary of State, Department for Business, Enterprise and Regulatory Reform

Thank you for your predecessor’s letter dated 17 July updating the Committee on the UK’s progress towards the 2015 ELV target. Sub-Committee B considered this during its meeting on 13 October. It was agreed to continue to hold this document under scrutiny.

The Committee notes the work BERR is carrying out to assess whether the 2015 target is suitable for the UK based on the level of reuse and recycling to date. We look forward to receiving further correspondence once the Government’s position has been decided.

Furthermore, the Committee would be grateful to receive information about what role local governments plays in working to meet this target and what the relevant statutory requirements on them are. In particular, what requirements are there on local governments to provide collection or deposit facilities for ELVs?

21 October 2008

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 21 October, responding to my predecessor’s letter of 17 July, on this issue, in which you indicate the Committee continues to hold this document under scrutiny.

Since our last letter, in which we provided the Committee with details of the UK’s 2006 end of life vehicles recovery and recycling performance, as submitted to the Commission, the Commission has made available the performance of other member States. This information, which is attached, show target rates achieved ranging from under 80% to over 90%.

BERR continues to assess the structure of the 2015 target in the light of UK experience and interests but, prior to reaching a final view, we currently consider that the originally proposed minimum 85% reuse and recycling split of the overall 95% target does not present any significant practical constraint on likely future activity, while at the same time providing a degree of confidence for those looking to invest in reuse and recycling technologies. The target structure for the period 2006 – 2014 provides for a maximum energy recovery contribution of 5% (10% proposed from 2015). For the 2006 targets, the UK performance attributed 1.4% to energy recovery, mainly due to the use of tyres in cement kilns as a fuel, but also through engine smelting, where plastic engine components helped to self-fuel the smelting process. I shall, of course, write to the Committee as soon as a final view is reached.

It is also the case that the Commission will need to assess the suitability of the 2015 targets in light of the information that is now flowing to it.

You also asked about Local Authorities. I understand that they have particular responsibilities in relation to abandoned vehicles under the Refuse Disposal (Amenity) Act 1978. The Act obliges them to remove and dispose of abandoned vehicles and gives them powers to recover the expenses
connected with these activities. Many local authorities have contractual arrangements with ELV authorised treatment facilities (ATF), but in recent years the numbers of vehicles handled under these arrangements has been low, due to high scrap metal prices.

The Refuse Disposal (Amenity) Act 1978 also places Local Authorities under a duty to provide householders with facilities to which they can bring their refuse free of charge, and refuse can be considered to include scrap vehicles. In practical terms, scrap vehicles have not been disposed of at civic amenity sites, although a number of local authorities have previously run campaigns, alongside their abandoned vehicle arrangements, through which last owners have been able to dispose of their cars from home free of charge. In fact, the Government provided transitional funding to Local Authorities under the new burdens requirements to support such schemes.

However, since the End of Life Vehicles (Producer Responsibility) Regulations came into force, requiring vehicle manufacturers to establish a convenient network of facilities into which last owners can deliver their vehicles free of charge, that has been the most appropriate route for last owners to dispose of their vehicles should they need to take advantage of the free take-back entitlement.

Against the background of lower metal prices, which have fallen back to the point where the risk of increased vehicle abandonment is a concern, BERR intends to raise publicity highlighting this last owner entitlement to help mitigate any risk. Local Authorities too can benefit from that same protection.

18 November 2008

TRANSPORT: EXPECTATIONS FOR THE FRENCH PRESIDENCY

Letter from Rt Hon Rosie Winterton MP, Minister of State, Department for Transport to the Chairman

I thought your Committee might find it helpful to have an update on transport proposals that will be progressed in the next few months, including the French plans for their Presidency.

The dates for the next two Transport Council meetings have been confirmed as 9 October and 9 December. The French have indicated that their broad priorities for Transport are: climate change and sustainable development; safety; opening of the transport European market; and new technologies for transport such as Galileo. Dossiers that they will focus on include the forthcoming Eurovignette directive, the proposed directive on cross-border enforcement of road safety offences and the recently-issued Single Sky package. I understand that the French Transport Minister, M Dominique Bussereau, presented the Transport programme to the European Parliament TRAN Committee on 15 July.

There will be an Informal Transport Ministerial Meeting on 1-2 September at La Rochelle. The focus will be on ‘greening of transport’ and maritime transport/motorways of the sea. Minister Bussereau also wants to use the opportunity to sound out his colleagues’ views on reviving the final proposals in the third maritime safety package (see below). There will be a Road Safety Day in Paris on 13 October and a Road Safety enforcement seminar, aimed primarily at Justice and Home Affairs experts, in Paris on 11-12 December. There will also be an experts meeting on freight corridors in Paris on 29 October and an Aviation Summit for senior officials in Bordeaux on 18-19 November to discuss the European projects aimed at improving the sustainability of air transport development. Specific elements of the Integrated Maritime Policy for the EU will be progressed, particularly in respect of maritime governance and maritime surveillance and including discussions at an Informal Ministerial Meeting of Europe Ministers in Brest on 13 July and at the BioMarine Conference and Exhibition in Toulon and Marseilles on 20-24 October.

THE PRIORITY DOSSIERS

Eurovignette Directive and the ‘greening of transport package’

The Commission adopted a package of measures on the ‘greening of transport’ on 8 July which will be the subject of Explanatory Memoranda shortly. The package consists of:

- an overarching communication;
- an ‘inventory’ of current EU actions and previously announced future actions, tackling climate change, noise, local pollution, congestion and accidents in the transport sector;
- a communication on the internalisation of external costs in all modes;
— a proposal for a revision of the Eurovignette directive; and
— a communication on railway noise.

The Presidency wants to make progress on the Eurovignette proposal and therefore intends to open discussions at two Working Group meetings in late July, followed by discussion at the informal Ministerial meeting at La Rochelle and a debate at the Transport Council in October. They would like an agreement in Council in December but are aware that this will be difficult to achieve. The Government is currently considering our formal position on the proposal. We were, however, broadly supportive of the principle that Member States should be free to levy tolls or charges that reflected external costs in the earlier 2006 Directive. We are likely to have difficulties, in particular, with the requirement that revenues are earmarked for transport, the possible extension of the scope of the proposal from the TEN-T network to all roads and the proposal to review the Directive in 2013 including consideration of a mandatory EU-wide charging scheme.

It is also the Presidency’s intention for the October Transport Council to adopt Conclusions on the internalisation of external costs in all modes of transport. This strategy reflects the European Commission’s desire to highlight the need for a transport pricing system that is more efficient and more accurately reflects the true costs involved. Transport generates negative externalities that involve a cost to society and the economy, such as delays to other drivers as a result of congestion and health problems caused by noise and air pollution. By internalising those external costs, the intention is to give the right price signal so that users will bear the costs they create and will thus have an incentive to change their behaviour in order to reduce those costs. In practice the main economic instruments for internalising external costs are taxation, tolls or user charges (like Eurovignette) and, in certain circumstances, emissions trading (the Aviation emissions trading scheme is highlighted). An initial round of views will be sought at Working Group in late July and this is also likely to be touched on at La Rochelle on 1 September.

The Presidency has not indicated any intention to work on the rail noise communication but it is expected that this will be followed by a legislative proposal in due course. We would have concerns about legislative proposals which have been referred to in the Communication, such as the introduction of noise-differentiated track access charges, unless it follows a robust study on the feasibility and impact of such a proposal. The costs associated with retrofitting freight wagons are significant and therefore would need to be supported by a full cost benefit analysis.

Cross-border enforcement of road safety offences directive

The proposed Directive facilitating cross-border enforcement in the field of road safety (EM 7984/08) was published in March 2008 and given a first discussion at Working Group in June. The French Presidency aim is to achieve an agreement at first reading with the European Parliament by October. This is an ambitious objective and we anticipate that it may not be possible to achieve before the December Council.

Single Sky Package

The package was published recently and consists of:
— SESAR master plan (EM 11325/08 & 11347/08) for the development phase: the Presidency is aiming for a Council Resolution in October broadly welcoming the plan;
— Single Sky regulations (EM 11323/08) amending Single Sky Regulations agreed in 2004 to shift the emphasis towards Performance of the Air Traffic Management system: the Presidency hopes to achieve a general approach in October or December; and
— revision to EASA regulation (EM 11285/08) to include Airports and Air Traffic Management safety aspects: the Presidency hopes to hold an orientation debate in December: but this aspect of the package is not a Presidency priority.

OTHER ISSUES

As well as the priority dossiers, the French Presidency plan to make progress on a number of other legislative and non-legislative proposals.

Aviation

Following the recent agreement between the Council (Environment) and the European Parliament on an EU aviation emissions trading scheme (EM 5154/07), the Presidency would like to adopt Council
Conclusions at Transport Council in October on aviation ETS and third countries. They have identified 3 particular issues:

— to reaffirm that EU still wants a global agreement and is committed to the ICAO process;
— to make use of aviation external agreement negotiations to open dialogue on ETS with third countries (as was the case in the Australia and New Zealand mandates agreed at the June Transport Council); and
— to give more precision on use of revenues from the EU aviation ETS scheme, which France regard as an important point in defending the EU scheme against appeal at ICAO.

The UK is looking forward to engaging with the Presidency on the first two points. On the third point, the UK is keen to further understand what value can be gained from giving more precision to the use of revenues from the ETS scheme.

On external relations, the Presidency and Commission will continue work towards an agreement with Canada and are looking for new mandates for Mediterranean countries: Lebanon, Algeria and Tunisia are candidates. The Presidency is also keen to conclude BASA (safety) agreements with USA and Canada.

There will also be work to prepare for ICAO meetings: for a conference on airport charges in September (preparatory work will take place in July); and for ICAO Council towards the end of the year. Negotiations may begin on agreements with Israel, Australia and New Zealand. The Commission is also keen to finally close a deal with Russia on Siberian over-flights.

The first round of negotiations on stage 2 of the EU/US aviation agreement (EM 8656/06) took place in Slovenia in May in accordance with the timetable laid down in the agreement. The second round of negotiations is expected to take place in September. However, the general consensus is that little substantive progress can be achieved until after the forthcoming US Presidential elections.

**Galileo**

The Presidency wants to take a proposal to a meeting of the Permanent Representatives of the Member States (Coreper) in July on the composition of the Inter-Institutional Panel, and would like a first meeting of the Panel in September.

The Commission is aiming for publication of an action plan on Galileo and EGNOS applications in November and, if time is available, the Presidency will start work on this and would, ideally, like to have Council Conclusions in December. The Presidency is also awaiting a possible Commission proposal for a review of the regulation on the Galileo Supervisory Authority.

**Maritime transport**

The French Presidency will take forward negotiations with the EP on the third maritime safety package and aims to achieve second reading agreements on the 6 common positions transmitted to Parliament at the end of June. Preparatory work began in Working Groups at the start of July.

The Presidency also wants to re-table the proposed directives on flag state obligations (EM 6843/06) and civil liability of shipowners (EM 5907/06 and 11486/07). They have promised new ideas and, as mentioned, the Minister wants to raise this at La Rochelle in September. A separate letter was sent to your Committee on these proposals on 10 July.

The Commission is aiming to publish a new set of measures in October: a communication on maritime transport 2008-2018 on which a number of consultations with national administrations and other interested parties have already been held; a revision to the EMSA regulation focusing on governance; and legislation on reducing administrative procedures for intra-Community shipping, the ‘maritime space without barriers’, on which the Government will wish to ensure that any new trade facilitation measures should be in alignment with the provisions of the Community Customs Code.

The Presidency also seeks to make progress on specific elements of the Integrated Maritime Policy for the EU (EM 14631/07), particularly in respect of governance issues and maritime surveillance. An Explanatory Memorandum is currently being prepared on a recent Commission Communication (11364/08) concerning best practice in integrated maritime governance and stakeholder consultation.

**Road transport/vehicle emissions**

The Presidency is aiming for a first reading agreement with the EP on the clean vehicles procurement directive (EM 5113/08). This is scheduled for EP plenary First Reading in September.
The political agreements on the road transport package (EM 10092/07, 10102/07, 10114/07, 10117/07, 10119/07, and 10125/07) are now being translated and the common positions will be adopted after summer in line with a timetable to be agreed with the EP and the forthcoming Czech Presidency.

The Euro VI proposal (EM 5127/08) for a regulation tightening air quality pollutant emission standards for new HGV and bus engines from 2013 has been discussed at a number of Working Group meetings and the French Presidency aims to achieve an agreement with the European Parliament at first reading as soon as possible. The European Parliament is expected to hold its Plenary First Reading of this dossier in September. Following a recommendation by the House of Commons European Scrutiny Committee, the proposal will be the subject of a Standing Committee debate on 15 July.

Following a number of Working Group discussions, it is expected that the Presidency will aim to reach a political agreement on the proposal for a regulation setting performance standards on CO2 emissions from new cars (EM 5089/08). A separate letter was sent to your Committee on this dossier on 10 July.

The proposal to amend the Fuel Quality Directive (EM 6145/07) to tighten fuel specifications and, in particular, to introduce targets for reducing the lifecycle greenhouse gas emissions of petrol and diesel continues to be discussed in Working Group meetings. The French Presidency hope to achieve early agreement on sustainability criteria for biofuels, for inclusion in the Directive, in COREPER ad-hoc meeting discussions, possibly in July. The European Parliament’s Rapporteur remains keen to achieve a 1st Reading Agreement by October, although the Presidency has made no commitment to this as yet. Biofuels, which are expected to be the major contributor to the greenhouse gas reduction targets, can potentially have adverse sustainability impacts, as highlighted by the Gallagher review. At present it is difficult to predict these impacts. For this reason it is essential that biofuel sustainability criteria address indirect impacts, that greenhouse gas targets are set at a realistic level and that the targets are subject to a robust review.

**Rail transport**

In addition to the communication on rail noise (part of the greening of transport package mentioned above), the Commission is also planning a legislative proposal for a freight-oriented rail network and a re-cast of the first railway package. Both are scheduled to be issued during October which will not allow time for much progress under the French Presidency. The Commission hopes for first reading agreements with the European Parliament on both measures during the current Parliamentary mandate (by March, in effect) which may be too ambitious unless the Commission’s proposals are cautious and, on the freight network, take due account of the concerns already expressed by Council.

**Urban mobility**

The Commission is due to publish an action plan in the autumn following last year’s Green Paper (13278/07). The Presidency hope to receive it in time to prepare Conclusions for the December Council.

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

22 July 2008
I would therefore like to strongly assure the Committee that these conclusions will be of a general and uncontentious nature, without any content of policy significance. They will note the elements of the package, and that the Commission will be bringing forward other proposals and communications in due course. The Conclusions will not bind Member States in respect of negotiations on any existing or future legislative proposals. Negotiations on the proposed Directive on Eurovignette have opened separately and will continue during the second half of the French Presidency, with no Ministerial commitment scheduled before the December Transport Council at the earliest.

I would wish to join other Member States in endorsing these Conclusions, as a failure to do so would risk sending the wrong message about the UK’s approach to the issue of greener transport. In these circumstances, I would be grateful if the Committee could indicate that they are content for agreement of the Conclusions to take place pending completion of scrutiny at a later date.

1 October 2008

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Sub-Committee B met with officials from the Department for Transport on 27 October to discuss the above documents and some other related transport issues. Arising from that meeting were a number of matters on which we would appreciate further comment.

RAIL NOISE REDUCTION

We were informed that the majority of UK rail stock is already fitted with composite brake blocks. What information does the Department have on how much of the minority without such brake blocks will be replaced through natural wastage and how long does the Department expect this process to take?

EUROVIGNETTE AND THE INTERNALISATION OF EXTERNAL COSTS

We discussed the possibility of introducing a charging scheme in the UK. What plans do the Government have to look again at the possibility of using the Eurovignette provisions to charge foreign hauliers so that their operating costs in the UK are similar to those of UK-based haulage companies? If there are currently no plans, under what circumstances would the Government reconsider their position?

We understand that in Germany a charging system is in operation on some parts of the road network. We would be grateful if you could provide us with some information on how this scheme is working, what impact it has had on the haulage industry operating in Germany and what impact it has had on removing the most polluting vehicles from the road.

ROAD SAFETY

Our discussion with your officials covered a range of topics under the heading of road safety. We would be interested in receiving details on:

— The possibility of restricting the sale of certain pharmaceuticals in roadside shops;
— The regulation of drivers’ hours and rest periods in accommodation rather than vehicle cabs; and
— The regulation of satellite navigation systems to make sure that heavy goods vehicles are not directed to use inappropriate roads.

The Committee would be grateful if information could be supplied on road accident death and injury trends and, in particular, road accidents where the mirrors on left-hand drive vehicles have been a contributory factor. We would also appreciate details of what information the Government collect on breaches of motoring laws by drivers from other EU countries.

5 November 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 5 November following Sub-Committee B’s evidence session with officials on 27 October that discussed the ‘Greening Transport’ package, and also a number of road safety issues. Please find below responses to the matters your letter raised.
“[...] what information [does] the Department have on how much of the minority of UK rail stock not fitted with composite brake blocks will be replaced through natural wastage and how long the Department expects the process to take?”

The Department does not hold comprehensive data on braking mechanisms for the UK’s railway wagon fleet. However, industry contacts have estimated that of all wagons in the UK, that 11% are in circulation with cast-iron brake blocks, 3% are stored with cast-iron brake blocks, 8% are unknown and that the remaining (approximately 80%) are either composite brake-blocked or disc-braked.

The Department has asked industry contacts for further information regarding the use and lifecycle of existing cast-iron braked wagons. The information, provided gives a mixed picture on the timescale for wagons to be replaced due to natural wastage. Although some of the wagons dating from the 1960s and 1970s may be nearing the end of their useful life, many are in low demand traffic and it is difficult to estimate when they would all be withdrawn, or if at all.

EUROVIGNETTE AND INTERNALISATION OF EXTERNAL COSTS

“What plans do the Government have to look again at the possibility of using the Eurovignette provisions to charge foreign hauliers so that their operating costs in the UK are similar to those of UK-based haulage companies? If there are currently no plans, under what circumstances would the Government reconsider their position?”

As stated in the Explanatory Memorandum submitted on the Commission’s proposal, there are currently no plans at this time to introduce a widespread lorry tolling or user charging arrangement in England or other parts of the UK.

Following the conclusions of the Freight Data Feasibility Study, Budget 2008 announced that the Government will not be progressing a vignette scheme at this time. The study found that all options considered, including a vignette, offered limited safety, congestion and environmental benefits.

The position is kept under review but the Government would need to be persuaded that any scheme was practicable, and that the benefits justified the costs, before deciding to proceed.

Your question implies that operating costs of UK hauliers are higher than those of foreign hauliers operating here. The reality is rather more complex than this. All other things being equal, a foreign operator undertaking a transport journey within the UK using cheaper foreign fuel will have a lower cost base than a competing UK haulier. But all other things are not equal and fuel is not the only factor – it accounts for about a third of costs. Hauliers across Europe have differing cost bases depending on company tax regimes, employment costs and other factors. Furthermore British hauliers on an international journey can buy their fuel at the same price as foreign hauliers on the same journey.

GERMAN LORRY ROAD USER CHARGING SCHEME

“We understand that in Germany a charging system is in operation on some parts of the road network. We would be grateful if you could provide us with some information on how this scheme is working, what impact it has had on the haulage industry operating in Germany and what impact it has had on removing the most polluting vehicles from the road.”

The German lorry road user charging scheme (“Lkw Maut”, or HGV Toll) has been operating since January 2005. It is run under contract to the German Government by a consortium called “Toll Collect” led by Daimler AG and Deutsche Telekom. The scheme was originally scheduled to be introduced in August 2003 a year after the contract was let, but technical difficulties led to a renegotiation of the contract and a longer implementation period.

The toll applies to lorries over 12 tonnes max permitted weight and on all motorways and some other road sections. Charges are differentiated so that cleaner lorries pay less. Users may opt to sign up for an account and an on-board unit that enables automatic charging and billing for distance covered. Alternatively users may declare their journey and pay on the internet or at border stations. The attached Q&A (Annex A at end) (not printed in this publication), taken from the German Federal Transport Ministry’s website13, describes in detail how the scheme works for users.

The Department has not had recent detailed discussions with the Federal Ministry about the operation of the scheme, so we cannot provide an authoritative view on how the scheme is working, including the specific questions you ask about impact on the haulage industry and on the most

polluting vehicles. In discussions in Brussels on the proposed amendment to the “Eurovignette” Directive German officials have indicated that their differentiated charges have been effective in encouraging the use of cleaner vehicles. A study undertaken for the European Parliament and published in July this year indicated that there had been a good uptake of cleaner vehicles but suggested that the differentiated tolls may not be the only factor at play. The study also indicated there had been an increase in lorries below 12 tonnes, i.e. those that are not subject to the toll. Load factors had also increased, but the upward trend pre-dated the toll and again there may have been other factors at work.

There will be a separate letter to update the Committee on progress with negotiating the revision to the “Eurovignette” Directive.

**ROAD SAFETY**

Following on from the discussion with the Committee you also asked a number of questions about road safety matters. Taking each bullet in turn:

*You asked for details on:*

— “The possibility of restricting the sale of certain pharmaceuticals in road-side shops;”

The Department believes that the answer to this issue is to give drivers better information about those products rather than to attempt to restrict the sales in ‘road-side’ shops for road safety reasons as suggested.

Further, the Department believes it would be impracticable to attempt to make such a restriction - there are very few shops that are not accessible to a greater or lesser degree to drivers. Drivers can purchase “over-the-counter” preparations such as cough mixtures or travel sickness pills and simply keep them in a vehicle – or use them at home before they start driving.

The Department is, of course, concerned about drivers who may be unfit because they have used such preparations – and it is has long been a specific offence to be unfit through any drug – including medicinal drugs.

It is already a legal requirement that over-the-counter preparations give information where they are liable to cause drowsiness and impair those who drive or operate machinery. That information is given on the packaging and also given in the Product Information Leaflet inside the packaging.

The Department will shortly be announcing a consultation on a range of road traffic compliance issues. That will include work to see how we can improve and make more effective the information given to drivers about prescription and over-the-counter drugs.

— “The regulation of drivers’ hours and rest periods in accommodation rather than vehicle cabs;”

The EU drivers’ hours rules, which are directly applicable, prescribe maximum limits on driving time and minimum requirements for breaks and rest periods for most drivers of large commercial vehicles operating in the UK. There is no explicit requirement for drivers to take rest periods in housing accommodation under these rules. But drivers can choose to take daily rest periods (normally 11 hours) and reduced weekly rest periods (at least 24 hours) away from base in a vehicle as long as it has suitable sleeping facilities for each driver and the vehicle is stationary (Article 8.8 of Regulation (EC) No. 561/2006). At this juncture, we know of no plans to amend the current EU rules (which only entered into force in April 2007) to prohibit drivers from taking their rest periods in vehicle cabs. Moreover, such an amendment would require the agreement of a qualified majority of EU Member States.

— “The regulation of satellite navigation systems to make sure that heavy goods vehicles are not directed to use inappropriate roads.”

Drivers are responsible in law for their own actions; they must not drive dangerously, but with care and attention and with reasonable consideration for other road users (Road Traffic Act 1988 sections 2 and 3 as amended by the Road Traffic Act 1991).

Well-designed and correctly-used route guidance systems have the potential to reduce congestion and improve safety on the road. However, the Department is aware that routeing issues can arise, and in particular that large and heavy vehicles are sometimes guided onto unsuitable roads.

Satellite navigational aids include factory fitted in-vehicle systems, dedicated nomadic navigation devices, and more recently devices such as mobile phones and PDAs.
While it is the responsibility of the producers of navigational aids to ensure that their products are fit for purpose – which of course includes accuracy of material - each issue can only be accurate at the time the data is collected. It cannot take account of changes to the road network which occur after issue. The producers cannot oblige customers to buy their products in the first place, nor to update them as time passes.

Routeing suggested by any satellite navigation system (or indeed by a paper map) can only be advisory. It is for drivers to ensure that the route being followed is legal and appropriate, having regard, for instance, to the road signs displayed, making sure any navigational aids are kept up to date (and indeed, using common sense generally).

The Department advises anyone with concerns about possible satellite navigation mis-routeing affecting particular roads to inform the companies which are responsible for producing and maintaining the digital maps used by the vast majority of satellite navigation devices. Many companies provide route guidance devices, but we believe that only two digital mapping companies cover Europe: TeleAtlas and Navteq. Both offer a facility to suggest map updates through their websites at:


Route guidance systems are generally designed for cars, but roads adequate for cars may not be appropriate for large or heavy vehicles. System and map providers are conscious of the issue of heavy vehicle mis-routeing. Information such as bridge heights, width and weight restrictions is now being collected and becoming available for route guidance systems. As ‘truck-friendly’ systems come into use we would hope to see a marked reduction in truck misrouteing incidents. It seems likely that the haulage industry will wish to take up these systems so as to avoid the risk of accident, delay, extra costs, bad publicity and loss of goodwill arising from the use of inappropriate roads.

Meanwhile the Department is supporting a Network Management Board subgroup that aims to bring together a wide range of stakeholders to consider how best to address the issue of inappropriate routeing. The Department is also reviewing route guidance system issues. Initial public consultation was undertaken as part of the review. The results can be seen on the DfT website at:


In addition the Department has recently commissioned research to examine the use and impact of satellite navigation systems on making travel choices and journey planning for both public and professional use. The research will look in particular at journey planning for HGV journeys, and at what other information sources would be useful on satnav for HGV drivers. The research is due to be completed in March 2009 and will be published.

Local authorities have available to them a range of measures to control vehicles at specific locations such as low or weak bridges or narrow roads, supported by signs available in the Traffic Signs Regulations & General Directions. They may restrict the use of particular roads where necessary (for instance by excluding heavy vehicles) by means of traffic regulation orders, which are legally enforceable.

The Department has also recently designed a new sign to advise drivers of large/heavy vehicles not to take an unsuitable route. This uses a truck pictogram with a red diagonal line through it to indicate ‘Not for heavy goods vehicles’. Local highway authorities can request authorisation to use this sign, which we hope will help overcome difficulties caused by foreign drivers whose grasp of written English may be poor.

Finally you also asked for information on: “road accident death and injury trends and, in particular, road accidents where the mirrors on left-hand drive vehicles have been a contributory factor. We would also appreciate details of what information the Government collect on breaches of motoring laws by drivers from other EU countries.”

MIRRORS ON LEFT-HAND DRIVE VEHICLES

Whilst the Department for Transport statistics only record accidents involving occupant injury, we are aware that other sideswipe incidents occur, which result only in vehicle damage. Since 2005 our statistics have distinguished between accidents involving UK registered vehicles and foreign left-hand drive vehicles but they do not indicate the country of origin. The data shows that in 2005 the total number of accidents where large goods vehicles were changing lanes was 1164 and, of these, 443 (38%) were left-hand drive vehicles. During 2006, the total number of these accidents was 1126, with 403 (36%) being left-hand drive, whilst in 2007, the corresponding numbers were 975 and 343 (35%)

14 Accidents occurring on a dual carriageway involving at least one car, and an HGV which is changing lane or overtaking a moving vehicle.
respectively. Although these figures are limited, they are the latest we have and do indicate a slight
decrease in the occurrence of this type of accident.

However, you may be interested to know that there are a number of initiatives underway at present
aimed specifically at improving the safety of all large goods vehicles on our roads.

The first of these concerns new vehicles. New European legislation came into effect in January 2007
that applies to all new goods vehicles above 3.5 tonnes gross mass that are registered for the first
time in the European Union (EU), including UK lorries. This legislation requires the fitting of improved
mirrors offering a greater field of view around the vehicle. In particular, large goods vehicles are
required to have an enhanced “wide-angle” mirror on both sides, that provides an increased area of
vision to the side and to the rear and an enhanced “close proximity” mirror, which gives a downward
view of the road on the passenger side of the cab; there are some exemptions but only for those
vehicles where the “close proximity” mirror cannot be fitted at least 2m from the ground.

Whilst this new legislation represents a substantial contribution to optimal driver vision, it is not
retrospective in any way, so it would remain legal to use a vehicle complying with the older
requirements indefinitely. To address this, a new European directive has been adopted which requires
existing large goods vehicles, first registered from 1 January 2000, to be retro-fitted with mirrors, on
the passenger side, that provide a similar field of view to those required for new vehicles, by 31
March 2009 (This was the subject of EM 13869/06). This measure is being implemented in all Member
States of the EU and will affect the majority of vehicles, both domestic and those used for
international transport. The Department is implementing these requirements through our national
legislation, but we are unable to impose further requirements on visiting vehicles on a national basis.

Additionally, all large goods vehicles operating within the London low emission zone will be within the
scope of this legislation and required to comply.

The enforcement provisions will be implemented through the Vehicle and Operator Services Agency
(VOSA) annual test and their targeted roadside checks carried out in conjunction with the police.

However, even with the above measures, the Department recognised that there will remain a small
blind spot alongside the passenger door, beyond the view of the close proximity mirror. We
therefore commissioned a study to consider what else could be done in the short-term to overcome
this problem.

The study, which ran from August 2006 to March 2007, was funded by the Highways Agency with the
support of the Vehicle and Operator Services Agency (VOSA) and the UK Border and Immigration
Agency. During the course of the study, 40,000 Fresnel lenses were issued, free of charge, to left hand
drive goods vehicles entering the UK by the Channel crossings. Fresnel lenses, when fitted to the
passenger side window, give drivers a wider field of vision through that window, thus reducing the
blind spot adjacent to the passenger door. Results from this trial indicated a 59% reduction in
sideswipes involving left-hand drive lorries in the period following the issuing of the lenses. In
November 2007 the Highways Agency began the distribution of a further 90,000 lenses to left-hand
drive lorries entering the UK. This campaign is ongoing and more lenses have been issued. The
Department continues to monitor their effect. We are also aware that Transport for London handed
out 10,000 Fresnel lenses to UK lorries in the Greater London area during March 2008 and, on 1st
October, the Olympic Delivery Authority started handing out Fresnel lenses to Olympic site vehicles,
as part of vulnerable road user safety campaigns.

Further to this, the provisional results of a UK study considering the safety aspects of a range of
supplementary devices, including the Fresnel lens, on large goods vehicles have been utilized in the
preparation of an initial document recently presented at an international meeting on vehicle safety for
support in further advancing the safety of all vulnerable road users.

**BREACHES OF MOTORING LAWS BY DRIVERS FROM OTHER EU COUNTRIES**

We do not have statistics on breaches of motoring laws by drivers from other EU countries. When a
serious incident or serious injury occurs and we proceed to prosecution we do not record nationality
so cannot break the statistics down.

We do however have significant information on casualty statistics involving drivers from other EU
countries. Since 2005, a ‘foreign registered vehicle’ variable has been collected by the police for
personal injury road accidents on the STATS 19 form. This variable distinguishes between whether
the vehicle involved in the personal injury road accident was a foreign registered vehicle or a GB
registered vehicle. It further breaks foreign registered vehicles by left hand drive, right hand drive and
two wheelers. From this information, we are able to classify vehicles by their vehicle type, so it is
possible to determine the involvement of foreign registered HGVs in personal injury road accidents.
Table 53 in ‘Road Casualties Great Britain’ shows the number of vehicles, casualties and accidents involving at least one foreign registered HGV. In 2007, 868 left hand drive HGVs (LHD HGVs) were involved in reported personal injury road accidents. 63 foreign registered right hand drive HGVs (RHD HGVs) were also involved. In 2006, these figures were 979 and 93 respectively, whilst in 2005 they were 1,031 and 86 respectively. For all three years, 9 per cent of all heavy goods vehicles involved in personal injury road accidents were foreign registered.

Table 45 in ‘Road Casualties Great Britain’ looks at the number of foreign registered left hand drive HGVs involved in accidents by vehicle manoeuvre. In 2007, 39 per cent of foreign registered LHD HGVs involved in accidents were changing lane to the right, whilst a further 37 per cent were going ahead.

The number of sideswipe accidents has been increasing, from 242 in 1979 to 1,246 in 2004. Since 2004, the number has declined slightly to 974 in 2007. In 2007, there were 1,323 resulting casualties from these sideswipe accidents; 470 from accidents involving foreign registered LHD HGVs, of which the vast majority were where the HGV was changing lane to the right. 40 per cent of GB registered HGVs involved in sideswipe accidents were where the HGV was changing lane to the right, compared to 51 per cent when the HGV was changing lane to the left. This differed greatly for foreign registered LHD HGVs for which 93 per cent were changing lane to the right, compared with 3 per cent when they changed lane to the left.

Contributory factor data is collected at the scene of a personal injury road accident. The contributory factor system allows the recording of up to six factors in those accidents reported at scene by the police. In 2007, 25 per cent of foreign registered LHD HGVs involved in accidents had Vehicle blind spot as a contributory factor, compared to 4 per cent for GB registered HGVs. 9 per cent of foreign registered LHD HGVs involved in accidents had Inexperience of driving on the left as a contributory factor (compared to 0.4 per cent for GB registered HGVs), 41 per cent had failed to look properly (compared to 20 per cent for GB registered HGVs) and 19 per cent had poor turn or manoeuvre (compared to 9 per cent for GB registered HGVs).

**COUNCIL CONCLUSIONS ON THE ‘GREENING TRANSPORT’ PACKAGE**

As the Committee is aware the French Presidency did not, after all, seek agreement on the Greening Transport Conclusions at the October Transport Council. This was largely procedural; a number of delegations did not want to agree Conclusions on the overall package whilst negotiations on the proposal to amend the Eurovignette Directive were at an early stage. Subject to sufficient progress being made, we expect that the Presidency will want to seek agreement on the Conclusions at the December Transport Council instead.

As set out in our letter to you of 1 October, the United Kingdom would wish to join other Member States in endorsing the Conclusions. They are general and uncontentious in nature, without any content of policy significance. They note the elements of the package, and that the Commission will be bringing forward other proposals and communications in due course. The Conclusions do not bind Member States in respect of negotiations on any existing or future legislative proposals. Nevertheless, a failure to endorse the conclusions would risk sending the wrong message about the UK’s approach to the issue of greener transport. In these circumstances, I would be grateful if the Committee could indicate that they are content for agreement of the Conclusions to take place pending completion of scrutiny at a later date.

19 November 2008

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

I am writing to provide you with further information on the issues raised in our Explanatory Memorandum on the above proposal and to bring you up to date with progress in negotiations.

The proposal has been the subject of a good deal of discussion at Working Group level in October and November. We understand that the French Presidency is likely to try to achieve a general approach at the 9 December 2008 Transport Council. There remain a number of issues outstanding for member states, and the draft text continues to evolve in official level negotiations as the Presidency seeks compromises that will be acceptable to all. The proposal is also being considered by the European Parliament, and is currently being discussed at Committee level with a plenary first reading scheduled for March 2009.

15 Road Casualties Great Britain is available at
http://www.dft.gov.uk/pgr/statistics/datatablespublications/accidents/casualtiesgbar
The UK now has relatively few outstanding concerns on the current draft text, and I provide below an update on developments, picking up the points highlighted in the Explanatory Memorandum.

I will start with our consultation exercise, which closed on 7 November. We received 8 responses by the closing date. The low response rate could reflect the fact that without any plans to introduce widespread tolls or a vignette scheme for lorries the proposal will have little immediate impact in the UK. Broadly, green groups supported the Commission’s proposal; while transport organisations worried that environmental charges would add to costs with little environmental benefit.

No points have been made that would cause us to change our broad support for the proposed amending Directive. We will be publishing a summary of the responses shortly.

We continue to believe there is no need to produce our own impact assessment in the absence of a concrete proposal to introduce an external cost charging regime for lorries in the UK. For an impact assessment to be meaningful we would need to make some assumptions about how we might design a UK scheme, what charges would be applied, and what roads would be covered. We would then need to undertake some sophisticated modelling to indicate financial, traffic and environmental impacts. This is resource intensive work and does not seem justified in the circumstances. Nothing arising from the consultation exercise has caused us to change this view. The Commission has provided some limited further information on impacts in the form of illustrative charges for certain journeys. This was presented to member states rather than being the subject of a formal document.

Turning to the substance of the Directive, we are satisfied that the methodology proposed by the Commission reflects current best practice and is compatible with our approach to calculating external costs. The annex to the Directive would require member states to calculate external cost charges using the formulae, and then using the simplified values, and apply the lower figures. This is constraining, but it must be remembered that under the current Directive member states have no freedom to apply external cost charges at all. Given the concerns of peripheral member states over high transit charges we recognise that some constraints are necessary to secure agreement.

The Commission has proposed that only costs related to air quality, noise and congestion may be recovered. Some member states have expressed reservations about allowing the inclusion of congestion costs. The Presidency have floated the idea that congestion charges for lorries should be recovered only where there are demand management arrangements in place for all vehicles. We are sympathetic to the argument - lorries are not the sole cause of congestion. I would propose to agree such a provision provided it can be drafted in such a way as to avoid the side-effect of extending the scope of EU legislation to cars, a side-effect which nobody in the Council wants.

In our Explanatory Memorandum we signalled our concern that the grounds for derogation from mandatory differentiation of charges, that are in the existing Directive (2006/38), did not appear in the Commission’s proposed amending Directive. I am pleased to report that the Presidency have incorporated all the grounds for derogation from Directive 2006/38 into the current draft text.

The Presidency have also reverted to the approach used in 2006/38 and limited the scope of the detailed rules to the Trans-European Road Network (TERN). We could have accepted the Commission’s proposal for a wider scope but are content to revert to the more limited approach used in 2006/38. The Presidency have also accepted changes that provide us with more confidence that localised charging arrangements such as the London Congestion Charge and the Dartford charges fall outside the detailed rules. The text is not quite settled but I expect to be able to support an acceptable outcome.

Turning to the legal base and earmarking, little progress has been made. The UK is among a number of member states with reserves on both points, though some of these appear to be tactical and may not hold. Apart from our concerns about legal base and earmarking, however, the text is heading in the right direction and I remain supportive of the overall thrust of the proposal which would give us greater freedom to introduce lorry charges should we decide to do so in the future. I am keeping the position on legal base and earmarking under review with colleagues in other Departments with an interest and we have not yet finalised a Government Position. On the Legal Base point we are considering the use of a minutes statement along the lines used in similar circumstances in the past. The Government does and will oppose mandatory earmarking.

We may well have to react to compromise proposals on legal base and earmarking during further negotiations later this month. Your Committee will of course wish to consider the outcome of these further negotiations; I understand, however, that due to the Parliamentary timetable it will not be possible for the Committee to consider a further letter before the Council takes place. We would, of course, be reluctant to give agreement to the proposal ahead of scrutiny clearance but, in these circumstances, and provided that a satisfactory outcome is achieved on earmarking, it may be necessary for the UK to support a general approach in order to secure negotiated improvements to the text.
TRANSPORT: PERFORMANCE STANDARDS. (5089/08)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Sub-Committee B considered the Explanatory Memorandum on the above proposal on 25 February 2008, and responded that it was holding it under scrutiny pending receipt of an Impact Assessment and would like to be kept abreast of developments. I am writing to update you on negotiations on the proposed Regulation, including its key areas of concern for the Government, and attach a completed Impact Assessment.

This dossier has been discussed several times since February in Working Groups and has been the subject of policy debates at the Council of Ministers. The UK Government wants to see a strong environmental outcome while minimising competitive distortions. Our three main priority areas reflect those objectives: the addition of a longer-term target to the proposal; the retention of the derogation for small-volume manufacturers that is already in the proposal; and the inclusion of a provision for 'niche' manufacturers.

This dossier is a priority for France during its EU presidency, and it is likely that negotiations will be further advanced during early autumn. The European Parliament is currently considering the proposal and amendments put forward for it; the lead Committee (Environment) is due to vote in September and the plenary in October at the earliest.

A particular issue is the recently-announced joint French-German position. Notwithstanding the different natures of their national motor industries, France and Germany recently publicly stated a common position, some features of which correspond to what is already in the Commission proposal (and with which the UK agrees), but others of which are new and will need careful consideration in the coming months. It is likely that this dossier and the Franco-German position will be key issues at the Environment Council on 20th October.

The Government launched its formal consultation on the proposal on 10th July. We are consulting on two elements: 1) the contents of the proposal itself and 2) the UK position. While the original intention was to consult earlier this year, the July date reflects the iteration of the UK position in the context of continuous rounds of negotiation. The Impact Assessment formed part of the consultation package; and based as it is on modelling data that is subject to constant updating, could only be seen as final once the consultation became definite.

I will of course keep the Committee informed of the further progress of this dossier.

The impact assessment and supporting documents can also be found on the DfT website at http://www.dft.gov.uk/consultations/open/c02emissions/.

11 July 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 11 July. This was considered by Sub-Committee B during its meeting on 13 October. It was agreed to continue to maintain scrutiny.

Given that this proposal is likely to be subject to further significant negotiations, the Committee would be grateful for another update from the Environment Council on 20 October.

16 October 2008

Letter from Lord Andrew Adonis, Minister of State for Transport, Department for Transport to the Chairman

Thank you for your letter of 16 October. I am writing as requested to update you on discussions at Environment Council on 20 October.

As Jim Fitzpatrick set out in his letter of 11 July, our three main priorities were-and remain-as follows: addition of a longer term target and provision for 'niche' manufacturers to the draft regulation, and retention of the existing small-manufacturer derogation. Jim also mentioned that the French and Germans had reached a shared position. Since then, the French Presidency has produced a compromise text, which incorporates much of that earlier joint position but also makes provision for other elements, notably 'niche' manufacturers. In addition, this compromise text proposes new
elements for addition to the regulation: the main ones being a phasing-in of targets (i.e. manufacturers only required to meet their targets with a certain percentage of their output in initial years), eco-innovations (energy-saving features whose contribution to emissions reduction is not reflected in the car testcycle) and 'moderated' penalties (where the penalty for non-compliance varies according to how far from their target a manufacturer is).

As you may know, discussion of the dossier did not form a large proportion of this Council session. However, the balance of discussion concerning our priority areas has become more favourable: no Member State argued against the small-volume manufacturer derogation, and in the light of the compromise text there was limited opposition to the 'niche' manufacturer provision. Several Member States now support a specific target of 95g/km CO2 by 2020, although others continue to call for a range to be set for now. There were also discussions on target phasing and eco-innovations.

Looking ahead, we expect the 'trialogue' phase of discussions between the Presidency, Parliament and Council to run through November, and it is hoped that a first reading deal can be concluded in December.

Finally, you may be interested to know that we have now concluded analysing responses to our recent consultation on this topic, and intend to place a summary on our website in the coming weeks.

7 November 2008

**Letter from the Chairman to Lord Andrew Adonis**

Thank you for your letter updating the Committee on the discussions in Environment Council. Sub-Committee B considered it during its meeting on 17 November. The Committee agreed to continue to maintain scrutiny on this dossier.

The Committee noted that the target level and date have yet to be set. These are clearly crucial elements of the proposal. We would be grateful if you could write to us outlining the different positions being taken in Council and the European Parliament and give us the UK's assessment of them.

18 November 2008

**TRANSPORT: PROMOTION OF CLEAN AND ENERGY EFFICIENT ROAD TRANSPORT VEHICLES (5113/08)**

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

On 18 February 2008 Sub-Committee B considered Explanatory Memorandum 5133/08 on the European Commission’s revised Proposal for a Directive on the promotion of clean and energy efficient road transport vehicles. This summarised the Directive's requirements and explained that the Government was seeking further information to establish its scope, and to gain a better understanding of how it would impact on the organisations affected. In your letter to me of 19 February you asked to be kept informed of the UK negotiating position and of the progress of discussions in Council working groups.

I am writing to update you on the UK’s proposed position, and on the discussions that have been held to date, ahead of a possible general approach at the Transport Council on 12/13 June. The government has also conducted a targeted and accelerated consultation exercise to gain the views of key stakeholders, as well as initial impact analysis. A partial Impact Assessment on the proposed Directive is attached to this letter.

In the Explanatory Memorandum I explained that the Government shared the policy objectives behind the Proposal, as well as the general approach of seeking to use public procurement to stimulate the market for greener vehicles, but that we had reservations about the proportionality of the measure and the potential administrative costs of compliance for public authorities and bus operators.

A total of 10 written submissions were received on the Directive during the informal consultation exercise conducted. In addition, discussions were held with a number of key stakeholders, including a sample of fleet managers in the wider public sector, and representatives of local authority passenger transport groups and bus operators.

The majority of the stakeholders consulted expressed general support for the approach in the Revised Proposal, which was thought far preferable to the one in the original. Many highlighted the fit with the public sector’s existing commitments on green procurement, and cited the need to lead by
example. It was also felt that a mandatory legal requirement for public authorities to consider environmental impacts in vehicle procurement would be necessary to change purchasing behaviour in practice. Most respondents also thought the methodology would be relatively straightforward to apply in practice; but that there would be some administration costs related to compliance. Significant concern was voiced that the Directive could impose additional costs on local authorities - in particular relating to the cost of providing bus services. It was argued that this could have an impact on wider services by requiring cuts elsewhere. Local authority respondents argued strongly that central government should cover any additional costs linked to implementation of the Directive.

The impact analysis highlights a risk that implementing the Directive in the UK would not prove good Value for Money. While it could encourage cost-effective purchasing of greener vehicles, where the benefits in terms of fuel and environmental savings over a vehicle’s life justify any higher upfront costs, it is not clear that public authorities would act on the calculation of lifetime environmental costs which they are required to perform. This is because the Directive does not specify the weighting to be given to environmental impacts in award criteria. There is a risk therefore that many authorities would not change their purchasing behaviour, or that some would decide to procure supposedly “greener” vehicles, which are not appropriate for local circumstances or the vehicles’ duty cycles. This would mean that authorities would incur the administrative costs of compliance, estimated at a present value of £20million or an average annual cost of approximately £1.5million excluding one off costs, as well as the higher upfront costs from purchasing of greener vehicles, without necessarily achieving sufficient environmental benefits to justify them.

Given these considerations and the consultation findings, the UK negotiating position is that while a mandatory requirement to consider environmental impacts in public procurement of vehicles is welcome, greater flexibility is needed as to how public authorities can implement it. The intention behind the UK’s proposed approach is to give public authorities different options for how they can factor in and value different environmental impacts into the procurement process, so as to allow them to reflect local priorities and practices. This would reduce the administrative burden of complying with the Commission’s highly prescriptive methodology, while increasing the chance of achieving a good environmental outcome. For instance, instead of being required to factor environmental impacts into the overall cost assessment according to the (fixed) values proposed by the Commission, public authorities could be allowed to specify minimum environmental standards in vehicle tender documents, which reflect local environmental issues and choices.

The UK has suggested this alternative approach in a Council working group on 23 April 2008 and a number of other Member States have expressed initial support for the suggestion. However, the Commission is opposed to greater flexibility as to application of the methodology, and the outcome of negotiations is difficult to predict. Nevertheless the UK Government is working to build support for its approach, on grounds of better regulation.

Another area of concern to us is the Directive's application to commercial bus services run by private sector operators. As currently worded, the Commission’s Proposal would apply to all public passenger transport operators “under contract, licence, permit or authorisation granted by public authorities”. It would therefore capture commercial bus services registered with the Traffic Commissioner, but which are not contracted or subsidised by a local authority. While we recognise that wide coverage of the Directive is desirable in principle, we have concerns around how it could be applied and enforced for commercial bus services. The UK’s position is that the Directive should apply only to public passenger transport services under a "public service obligation" as defined in Regulation (EC) No 1370/2007. This would capture services directly run by local authorities, or contracted out by them to private operators, where a plausible enforcement mechanism exists. The concerns about application of the Directive to private sector bus operators are shared widely by other Member States and, while the Commission’s intention is to ensure as wide coverage as possible, there seem good prospects of obtaining some concession.

The UK Government intends to pursue both these lines in Council working group negotiations, which began on 31 March 2008 and are expected to continue throughout May. The Slovenian Presidency has indicated that it is hoping to reach agreement on the general approach to the Directive by June Transport Council, although it is feasible that discussions will continue past this date. The European Parliament’s ENVI Committee is also due to begin its consideration of the Directive shortly, with First Reading scheduled for the summer. I will of course keep the Committee informed of progress.

15 May 2008

Letter from Jim Fitzpatrick MP to the Chairman

I am writing to update you on the latest negotiations on the Proposal for a Directive on the promotion of clean and energy efficient road transport vehicles, ahead of the Transport Council on 13 June 2008.
My letter of 15 May 2008 explained first of all that the Government was seeking to secure greater flexibility on the method that UK public authorities are required to follow, in considering vehicles’ expected environmental impacts in the procurement process. This is so as to reduce the administrative and other costs of compliance for the revised Proposal, and increase the chances of realising environmental benefits.

In particular, we are concerned to ensure that local authorities and other organisations covered by the Directive are able to specify procurement needs according to local circumstances, decisions and environmental priorities, and to use a method for assessing vehicles’ environmental impacts which reflects these. In our opinion, the method specified in the Proposal, based on monetisation of environmental costs according to fixed emissions’ values specified by the Commission, will not always achieve this, and may in some cases lead to skewed vehicle procurement decisions that are not cost effective. Maintaining a mandatory requirement to take environmental impacts into account, while providing greater flexibility on the methodology to be used, in recognition of the variations in local needs and circumstances, will reduce the risk of incurring significant costs without environmental benefits to justify them.

I also explained the reasons for our view that the Directive should only apply to public passenger transport operators under a public service obligation, as defined in Regulation (EC) No 1370/2007. This is because of the difficulties that would be presented from seeking to enforce its provisions for operators running commercial services.

We have worked closely with the Presidency, Commission and other Member States to address these points since my last letter, and I am pleased to say that we have made good progress on both in Council working group negotiations. It has become clear that a majority of Member States supports our position on both issues, and the Presidency’s latest redraft of the Proposal includes amendments that meet our concerns. This includes an option for authorities to specify minimum standards for vehicles’ environmental performance in tender specification documentation, instead of following the Commission methodology, as well as restricting the Directive’s application to private sector bus operators discharging a “public service contract” within the meaning of Regulation (EC) W1370/2007. These amendments, together with a further possible change to include a de minimis threshold linked to the public procurement directives so as to exempt smaller purchases, should significantly reduce the burden of compliance for the UK and for other Member States.

It remains the objective of the Slovenian Presidency to achieve a general approach at the Transport Council in June. I am confident that if the Council is able to reach a general approach by this date, the text under discussion should meet the UK’s main concerns, and increase the chances of meeting the Proposal’s stated objective of using public procurement to stimulate the market for cleaner and more energy-efficient vehicles, at an acceptable cost.

28 May 2008

Letter from the Chairman to Mr Jim Fitzpatrick MP

Thank you for your letters dated 15 and 28 May. These were considered by Sub-Committee B at its meeting on 2 June and it was decided to clear this dossier from scrutiny.

Although the item was cleared from scrutiny, the Committee would appreciate information from the Government on their estimates of the impact of this proposal on a) services supported by local government; b) the rural bus subsidy grant; and c) education transport.

5 June 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 5 June 2008 clearing this dossier from scrutiny. In your letter you requested more information about the impact of the proposal on services supported by local government, on the rural bus subsidy grant; and on education transport.

The Department for Transport is carrying out work to update the impact analysis and assess what the changes to the text agreed in Council will mean in practice. We plan to complete this work, which will address the issues in your letter, over the summer and will send you an updated Impact Assessment together with a full response to your letter.

10 July 2008
Letter from Jim Fitzpatrick MP to the Chairman

You wrote to me on the 5 June 2008, advising me that you had cleared the proposed directive from scrutiny and requesting further information on how this proposal would impact services supported by local government, the rural bus subsidy grant, and education transport. I am writing to update you on developments to the proposed directive and to respond to your queries on the above three areas. I also want to provide you with the attached Impact Assessment, updated to reflect changes to the Directive following the general approach agreed in June.

I was very happy with the general approach agreed at Council as I felt it represented a significant improvement to the Commission’s original proposal, increasing its flexibility and reducing the administrative burden. As you may recall, the general approach secured four key changes for the UK which we felt would significantly reduce the burden of compliance for authorities in procuring road transport vehicles and would allow them to target environmental concerns more specifically in their areas:

- A provision allowing public authorities to specify minimum environmental standards in tender documentation for purchasing vehicles or use environmental impacts as award criteria, as an alternative to following the Commission methodology based on monetisation of external impacts into overall cost assessment.
- The introduction of a range of values to use in assessing the cost of carbon and pollutant emissions (for those choosing to follow the Commission methodology).
- The restriction of the Directive’s scope on bus services to cover those under a “public service obligation” only, within the meaning of Regulation (EC) N° 1370/2007.
- The introduction of minimum thresholds linked to those defined in the public procurement directives (2004/17/EC and 2004/18/EC).

Of particular relevance to your requests for information are the increased flexibility and de minimus provisions. These provisions allow those required to apply the directive to choose which method of application is most suitable to them and ensure that small procurements won’t be impacted.

There are now more options for how to apply the Directive. Environmental impacts must be taken into account, but this can happen by specifying minimum technical standards, by treating the environmental impacts as award criteria in the procurement process and allocating them weighting or by monetising the impacts using methodology proposed by the Commission. This increased flexibility and choice should allow organisations required to comply with the directive to do so in the most appropriate way for them and ensure that no authority is compelled to procure a vehicle that is not within their budget. Organisations will need to understand the Directive and determine how best to apply it, however, this process should be assisted by guidance that DfT will draft.

The introduction of de minimus provisions (in line with existing procurement directives 2004/17/EC and 2004/18/EC) means that environmental impacts will not need to be taken into account for procurements below the threshold. This means that the impact on organisations undertaking smaller procurements should be limited and should generally reduce the potential of administrative burdens on small organisations.

Our analysis of the general costs and benefits is provided in the attached impact assessment. Due to the increased flexibility and introduction of the de minimus provision any potential impact on services supported by local government, the rural bus subsidy grant or education transport should be significantly reduced. However, also due to this increased flexibility, it is difficult to determine the exact impact of the Directive on these areas. This will depend to a significant degree on how organisations required to apply the Directive’s provisions choose to do so.

As far as education transport is concerned, the proposed Directive needs to be applied by organisations in the public sector (such as state schools) and operators discharging a public service obligation under a public service contract (within the meaning of Regulation (EC) No. 1370/2007). If a school or other educational authority buys a vehicle directly they would need to take the environmental impacts into account during the purchase. Where a transport service is open to the public (including schoolchildren) the Directive would also need to be considered. However, they are required to take environmental impacts into account as one of many factors to consider during vehicle procurement. The requirement to take environmental impacts into account is subject to the operation of the de minimus provision discussed above.

With regard to the impact on services supported by local government and the rural bus subsidy grant (a grant paid by DfT to local authorities to help fund supported services) the same principles apply.
 Approximately 20% of the bus network outside London is supported by local government. Local authorities providing these services will have to apply the provisions of the Directive where required. Because of the flexibility and de minimus provisions in the Directive the exact impact is difficult to quantify but potential negative impacts should be reduced.

Following the agreement of the general approach the Impact Assessment has been updated and we have and consulted again with key stakeholders including those from local government. The majority of stakeholders consulted were broadly happy with the amended proposal and considered it superior to, and less burdensome than, the earlier version. They supported the concessions won and estimated that less time would now be spent on the implementation of the directive.

The next stage is for this directive to be discussed by the European Parliament at their first reading Plenary, currently scheduled for 22nd October. I will, of course, keep you informed of the outcome of the Parliament’s consideration, however it is expected that their amendments to the proposal will be relatively minor and that a First Reading Deal will be possible.

3 October 2008

Letter from Lord Andrew Adonis, Minister of State, Department for Transport

I am writing to inform you of the outcome of the European Parliament’s first reading of this proposed Directive. I also want to outline the main elements of the amendment to the Directive, the Council’s likely response and the UK’s position.

Before the European Parliament first reading plenary, a number of informal contacts took place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading and, as a result of this, a compromise text was drawn up.

The main element of the compromise was that the transposition period was to be set at 18 months rather than 24 months. It was also proposed that the Commission should evaluate and report on the performance of the Directive after two years and that a range of CO2 values rather than a single figure should be used if an authority chooses to monetise the environmental impacts. The European Parliament, at plenary, adopted the compromise text.

The UK is content with the amended proposal as adopted by the European Parliament as we feel it represents a significant improvement to the Commission’s original proposal, increasing its flexibility and reducing the administrative burden.

As the contents of the proposed amendment was discussed between the three institutions prior to its adoption by the European Parliament, it is very likely that the proposed Directive will be acceptable to the Council and will gain political agreement this year.

17 November 2008

TRANSPORT: PROTECTION OF PEDESTRIANS AND OTHER VULNERABLE ROAD USERS (13895/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 16 January 2008 confirming that Sub-Committee B had considered the Explanatory Memorandum concerning this document. Your letter asked for further information following our consultation, and on our negotiating position. Our consultation ended on 18 April and, following consideration of the responses, I am writing to update your Committee on the outcome, and on the proposal’s progress

UPDATE ON LEGISLATIVE PROCESS

As you will recall from the original EM, the aim of the proposal is to improve pedestrian safety by enhancing the passive safety requirements; extending the scope to include vehicles up to 3.5 tonnes; and introducing requirements for active safety systems.

I am pleased to be able to report that there has been a considerable amount of progress with this proposal. It is not yet certain whether it will feature on the agenda for the Competitiveness Council on 29/30 May, however following negotiations in Working Group and discussions between the
Presidency and the Rapporteur, the Presidency is now confident that a first reading deal is possible and it is expected that this will be reached fairly shortly.

The latest compromise proposal from the Presidency amends the Commission proposal in a number of areas:

— the majority of the dates for implementation of various aspects of the proposal will be shorter than that originally proposed by the Commission;
— the safety requirements for frontal protection systems, i.e. bull-bars, will be related to the level of pedestrian safety offered by the vehicle to which the system is intended to be fitted; whereas the European Parliament had asked for the frontal protection systems to comply with the highest level of safety regardless of the vehicle to which they are fitted, but is expected to accept the Presidency compromise.
— collision avoidance systems cannot substitute passive safety measures until the European Parliament and the Council have agreed the relevant measures to ensure equivalent levels of safety; which would require a separate legislative proposal for the Regulation to be amended; whereas in the Commission’s original proposal this had been an issue for comitology;
— the definition of exempt 'flat-fronted' vehicles has been modified to avoid introducing distortions in the market;
— the efficacy of brake assist systems must be reviewed by the Commission within 5 years and reported to the European Parliament and the Council.

CONSULTATION

Our consultation, which concluded on 18 April, sought views from 107 stakeholders including vehicle manufacturers, component manufacturers and distributors, vehicle operators, emergency services, road safety organisations and other Government departments, and received 16 replies. Three stakeholder meetings were also organised to seek directly the views of the vehicle manufacturers, frontal protection systems manufacturers and distributors, and road safety organisations, respectively.

All of the respondents that expressed an opinion supported the general principle of the proposal, but some concern was expressed that an exemption for 'flat fronted' vehicles would reduce the potential benefits and might encourage vehicle manufacturers to design their vehicles to benefit from the exemption. However, two thirds of respondents who expressed an opinion considered that any exemption should be introduced such that it does not create market distortions.

With regard to the introduction of active safety systems, some caution was expressed with regard to the mandating of brake assist systems prior to technical requirement being agreed; however, this was tempered by the fact that there was a desire to see such systems introduced as soon as possible on vehicles. Three quarters of respondents, though, agreed that the Commission should review the efficacy of brake assist systems within 5 years. Over 80% of respondents considered that it was not appropriate to exempt vehicles fitted with collision avoidance systems from complying with passive safety requirements, primarily because the systems are not considered to be sufficiently developed to enable them to prevent accidents with pedestrians.

Respondents were broadly content with the Impact Assessment.

CONCLUSION

I am content with the progress that has been made during the negotiations, which go a long way towards meeting our original concerns and many of those of stakeholders, and do not feel that any of the amendments proposed or comments made necessitates any amendment to our Impact Assessment. I am also pleased that the European Parliament’s view of the proposal is expected to be similar to the Council’s, making a First Reading Deal a possibility. I believe that the road safety benefits of the proposal outweigh the costs and that we should continue to support the proposal. I will, of course, keep you informed of any changes to the proposal.

13 May 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 13 May. Sub-Committee B considered this at its meeting on 2 June and decided to clear this dossier from scrutiny.
Although the item was cleared from scrutiny, the Committee would appreciate clarification on the point of bull-bars and their relation to the level of pedestrian safety offered by a vehicle.

5 June 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 5 June confirming that Sub-Committee B has cleared from scrutiny this proposal. I note that you asked for clarification on the point of Frontal Protection Systems (bull-bars) and their relation to the level of pedestrian safety offered by a vehicle.

Please find appended to this letter a detailed answer to your question; however, I would summarise the facts as follows:

— the current Frontal Protection Systems (bull bar) Directive (2005/66/EC) adopted a proportionate approach, with two different requirements for bull bars depending on whether they are intended to be fitted to a vehicle that complies with the pedestrian protection directive (2003/102/EC), or not.

— the European Commission undertook to review the requirements and report to the European Parliament before bring forward any amendments.

— the Commission proposal for a Regulation on pedestrian protection retained the technical provisions from the bull bar directive; however, the European Parliament (EP), supported by the Commission, sought to raise the basic safety criteria without any consultation of the industry, or assessment of the costs or benefits.

— the UK questioned whether the EP position on bull bars adhered to the principles of better regulation and was proportionate. The UK noted that no consultation had been possible and that bull bar manufacturers would be required to comply with a more onerous standard within 9 months of the regulation entering into force, and up to 10 years before all new vehicles are obliged to comply with the equivalent level of safety.

— such a change could have an adverse impact on small and medium enterprises who are the main manufacturers of bull bars and who have invested in the market following the application of the Directive less than 2 years ago, in August 2006.

The Presidency took account of the concerns raised by the UK. As a consequence the compromise text negotiated with the EP has three levels of safety for bull bars. These depend upon whether the vehicle to which the bull bar is intended to be fitted complies with future (Phase 2) or current (Phase 1) requirements of the Regulation on pedestrian protection, or it is a vehicle not subject to the Regulation at all. In addition, the compromise proposal includes marking requirements for bull bars that will enable enforcement authorities to ensure that they are being marketed for, and used on, the correct vehicles.

Finally, you will wish to note that, as predicted in my letter of 13 May, the compromise text has been adopted by the European Parliament, at their plenary session on 16-18 June, and is now expected to be adopted by the Council in due course.

10 July 2008

APPENDIX

CLARIFICATION ON THE POINT OF BULL-BARS AND THEIR RELATION TO THE LEVEL OF PEDESTRIAN SAFETY OFFERED BY A VEHICLE

Background on the current Directive

The current Directive (2005/66/EC) regarding Frontal Protections Systems (i.e. bull bars) recognised that bull bars have the potential to improve the safety of some vehicles and reduce the injuries to vulnerable road users. Therefore, it was agreed that bull bars should be permitted if they provide equivalent or better safety than the vehicle to which they are intended to be fitted.

The level of safety required by the Directive was set to align with the initial (Phase 1) technical provisions of the pedestrian protection Directive (2003/1 O2IEC) as that was the obligatory standard for pedestrian protection at the time. However, by way of derogation, bull bars intended for fitment
to vehicles that are not subject to the pedestrian protection Directive (2003/102/EC) have less onerous provisions to comply with; nevertheless they are required to improve the safety of the vehicle.

Overall, the bull bar Directive established the principle of a proportionate approach to the performance criteria, with bull bars meeting requirements that were based upon the pedestrian safety of the vehicles to which they were intended to be fitted.

Nonetheless, Article 5 of the Directive anticipated that the technical provisions would be reviewed by the Commission by 25 August 2010 and reported to the European Parliament prior to new proposals being brought forward.

**European Commission proposal for a Regulation**

The European Commission (EC) proposal for a Regulation on pedestrian protection (which also incorporated requirements for bull bars) contained no changes in the technical requirements for bull bars.

**European Parliament position**

During discussion of the EC proposal, the European Parliament (supported by the majority of member states) proposed that the bull bar test limits should be increased to be the same as those that would be required for future (Phase 2) pedestrian protection vehicles.

The UK questioned whether such an amendment was reasonable and proportionate, and as such in adherence to the principles of Better Regulation, for the following reasons:

- the review and reporting process anticipated in the Directive had not taken place, manufacturers had not been consulted and no impact assessment had been prepared; therefore, it was not known whether it is feasible to produce bull bars to the proposed enhanced requirements;
- manufacturers have only been able to market approved bull bars for less than two years (since 25 August 2006) and therefore may find it difficult to recover their investment;
- manufacturers are typically small and medium enterprises who can ill-afford redevelopment costs associated with any change of requirements;
- the new provisions for bull bars will apply from 9 months after the Regulation enters into force, leaving manufacturers limited time to redevelop their product if they wish to obtain new approvals, further impacting on their opportunities to recover their investment;
- even if manufacturers are able to re-engineer their products to comply with the proposed requirements, there is a significant risk that they will not be able to do so in time to get their products re-approved within the 9 months; whereas, new types of vehicles will only have to comply with Phase 2 safety provisions, starting from 48 months after the Regulation enters into force, with all production vehicles only having to comply 126 months after the Regulation enters into force.

**Presidency compromise text**

The Presidency took account of the UK’s concerns and negotiated a compromise with the EP that will maintain the principle of a proportionate approach, whilst recognising the wish of the EP to introduce the higher provisions. Such an approach was acceptable to the majority of the member states.

Consequently, the compromise text establishes three levels of safety for bull bars:

- the highest level (as proposed by the EP) would only be required for bull bars that are intended for fitting to vehicles that comply with the future (Phase 2) requirements of the pedestrian protection Regulation;
- the middle level (as currently in the Directive) would be for bull bars intended for fitting to vehicles that comply with the current (Phase 1) requirements of the pedestrian protection Regulation, and hence maintains the ‘status quo’;
- the lowest level applies only to bull bars that are intended for fitting to vehicles that are not subject to the pedestrian protection regulation; nonetheless, these bull bars must demonstrate that they improve the safety of the vehicle to which they are fitted.
In addition, the marking requirements have been extended to require all bull bars to have an approval mark that indicates which level of safety they comply with. The approval mark is required to be affixed in a position on the device that is visible when installed on the vehicle. The affixing of such a mark will enable enforcement authorities to ensure that the bull bars are being marketed for, and used on, the relevant vehicles.

TRANSPORT: REGULATIONS (10092/07, 10102/07, 10114/07)

Letter from Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport to the Chairman

Thank you for your letter of 18 July 2007 concerning these three proposed EC regulations which impact on the road haulage and passenger transport sectors. I am writing to bring you up to date with progress on all three documents and to let you know that the Slovenian Presidency are keen to reach a political agreement at the Transport Council on 12-13 June 2008. The European Parliament will be voting on the Transport and Tourism (TRAN) Committee amendments at a First Reading Plenary in June.

PUBLIC CONSULTATION

The Government published its Consultation Document [not printed] on 7 December 2007, together with an Impact Assessment, with a view to gathering evidence to improve the assessment of costs and benefits. We also hosted meetings with key stakeholders including trade associations and the Devolved Administrations. The consultation closed on 29 February 2008. In total, 25 replies were received. The outcome of the consultation and the Government’s response was published on the Department’s website on 2 May 2008. In spite of the low response rate, the results of the consultation were encouraging as in virtually all cases the views of respondents were close to those of the Government. This was helpful because it means that the position we have taken in EU negotiations on the proposals has been in line with stakeholders’ views. With regard to your Committee’s specific concern on the possible economic impact on those currently providing internal regular (coach) services, of the two substantive replies from representatives of the coach and bus industry, neither highlighted this as a potential or actual problem.

UK IMPACT ASSESSMENT

The responses to the consultation resulted in virtually no information in relation to the costs and benefits of the proposals in monetary terms and nothing that impacts on the figures set out in the version of the Impact Assessment included in the Consultation Document. We have had to revise the Impact Assessment in only one respect. The proposed Passenger Market Regulation does not specifically exclude local bus services which cross international borders from the EC authorisation regime. In the UK these are exclusively operations between Northern Ireland and Ireland, and we were considering whether we should seek a specific amendment to the proposal so that local services within 50 km of border areas should only be subject to local regulation between the authorities in Northern Ireland and Ireland in order to avoid unnecessary administrative burden which were costed at £250k per annum. However, the Commission has explained that Article 25 of the proposed Regulation which allows Member States to conclude bilateral agreements on the liberalisation of services as regards the authorisation system should be sufficient to do this. Therefore, we will not be seeking such an amendment in EU negotiations. This means that the costs of the full implementation option in the revised Impact Assessment [not printed] have been reduced to reflect the Commission’s advice. The revised Impact Assessment provides an overall summary of the likely costs and benefits of three options: (a) do nothing (i.e. the regulations not coming into force), (b) full implementation (i.e. if the Commission’s original proposal was implemented without any modification) and (c) partial implementation (i.e. if the a modified version of the proposal was implemented which reflected the UK’s desired changes which formed our negotiating objectives in the EU negotiations). Partial implementation of the proposed Regulations is the preferred option and the figure on £39.2m net benefit has not changed from the earlier version. Additional costs on industry of at least £10 million present value have been identified with partial implementation. Costs for full implementation are five to eight times higher (£49m to £76m compared to £10m) with no change in benefits resulting in an

17 Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 86
average net benefit of -£13m, in particular due to a more onerous training regime, which would be poor value for money.

The proposed Regulations are intended to provide more consistent interpretation and enforcement of existing rules, thereby improving competition between hauliers across Member States assuming a common level of application. The Regulations would also be expected to have a positive impact on road safety given that there is evidence in the UK relating to higher non-compliance of international operators and their greater involvement in accidents. A small reduction in casualty accidents involving foreign registered HGVs in the UK would bring significant safety benefits. Quantification in the Impact Assessment of this possible benefit suggests partial implementation of the Regulations would represent "high" value for money.

Both the road haulage and passenger transport by bus and coach (including voluntary transport associations) sectors contain a significant percentage of small businesses. There is evidence to suggest that some elements of the proposed regulations will impact disproportionately on small firms, in particular the increased Certificate of Professional Competence (CPC) training requirement (leading to an increase in lost staff time) for transport managers. Restrictions on the responsibilities of transport managers may also create a disincentive for SMEs to expand their vehicle fleet.

The Department undertook a small firms impact test, involving a telephone consultation with a sample of road haulage businesses. Seven of these businesses were able to undertake a short survey (resulting in a response rate of 39%). The findings show that the proposed changes to the CPC training regime was the area which was of most concern to respondents given the significant increase in staff time which would be taken away from business activities and the associated impact on cost and competitiveness. A summary of findings is contained in Annex 3 of the Impact Assessment [not printed].

TRANSPORT COUNCIL WORKING GROUP NEGOTIATIONS

These proposals have been the subject of intensive negotiations in the Working Group, and I am pleased to be able to report that we have been able to achieve the majority of our objectives.

On the Access to the Occupation Proposal (10114/07), I am pleased to report that discussions at Working Group level have secured a number of important concessions. The original proposal did not make it entirely clear that the voluntary sector was out of scope. It also abolished the existing provision that allowed Member States to exempt domestic operations that had a minor impact on the transport market. However, the latest text restores that provision, which means that the UK can continue with the existing exemptions. This is particularly important for the agricultural sector. We have also obtained greater clarity in the proposed Regulation for the continued provision of voluntary sector transport, which would otherwise have come within scope of operator licensing, imposing a significant and potentially unworkable burden.

We have also succeeded in supporting the Commission's proposal to allow individual Member States to impose additional licensing conditions in their domestic legislation. A number of Member States did not agree with this proposal and had sought deletion on the grounds of harmonisation. The current UK system of operator licensing is more refined than the proposed EU requirements. This concession will allow the more scrupulous requirements of domestic operator licensing to remain.

The UK has lobbied for individual Member States to be able to determine the vehicle maintenance standards for their domestic operators. The Commission has clarified that this would, subject to relevant Community legislation on, for example, roadworthiness testing, be covered by the general provision of the proposed Regulation mentioned in the previous paragraph. Therefore, in the UK, the Traffic Commissioners can continue to check that UK operators have suitable arrangements in place to ensure their vehicles are properly maintained.

Originally the proposal did not allow certain persons associated with a transport undertaking, for example, directors, partners or shareholders to also act as the transport manager. The text has been revised to allow more flexibility e.g. enabling those with a minimum 20% shareholding and those administering the undertaking to also be the transport manager. This revision means that there will be more scope for those with a relationship with a company other than an employment contract to act as the transport manager.

The Commission proposed applying limits on the number of undertakings (4) and vehicles (12) that can be managed by an external transport manager. Following UK-led pressure, the Presidency proposed to remove the vehicle limit. However, at the same time the Presidency have to achieve a balance with those Member States who wanted tighter conditions, and proposed reducing the undertaking limit to 2. The UK will continue to press fixed limits that are as generous as possible and it seems that limits of 4 and 50 should be negotiable. This will allow transport managers that are contracted by those undertakings unable to meet the basic requirement of professional competence
from within the company to work for more undertakings and be responsible for a greater number of vehicles. This is important if additional financial burdens, particularly on smaller operators that are most likely to make use of this facility, are to be avoided.

In the original proposal, the Commission suggested that a transport manager who is contracted rather than employed by an undertaking (as described in the previous paragraph) should be legally and financially independent of any other undertaking with whom the first undertaking has a business relationship. However, the UK proposed alternative text, which has been, agreed by the Commission and the other Member States, which would only require the transport manager to act independently of any other undertakings for which they work. This will allow greater flexibility and not place unnecessary restrictions on relationships between, for example, a small company and a larger company just because the contracted transport manager of the small company is an employee of the larger company. This would only require the transport manager to be professionally scrupulous which should be expected anyway - rather than the more onerous and significant requirement of being completely independent. In the UK, the Traffic Commissioners will of course look at all such cases in order to ensure that transport managers are able to meet these requirements.

With regard to the text at Article 6 (1) [not printed] on the good repute of an undertaking, this has been extensively amended following proposals from UK and others. The text is now clearer on the liability for transport undertakings and transport managers for infringements committed by the undertaking or its employees. Furthermore the Commission text had proposed a series of good repute tests that were an absolute requirement - with no scope for the competent authority to exercise discretion. Following lobbying, the latest text has restored the ability for discretion to be exercised in individual cases. The freedom of Traffic Commissioners to exercise discretion, taking all relevant factors into account, is a vital part of the UK operator licensing system. This is, therefore, a significant success for the UK.

Although direct reference to "repeated minor infringements" has been removed from all three proposals, despite UK opposition, the substance of the Commission proposal that action should also be taken against serial offenders has been maintained in Article 6(2) (b) of the Access to the Occupation, thanks in part to UK persistence. Comitology will determine how repeated infringements are treated under this regulation and UK will play a full part in those future discussions.

The original proposal required all those seeking to prove professional competence to sit the same examination (covering both domestic and international operations), regardless of their existing qualifications. The UK has proposed a derogation allowing those with existing national qualifications to sit only those parts of the exam that relate to international operations if they wish to upgrade (those with an existing national Certificate of Professional Competence (CPC) who do not wish to upgrade are not required to take a further exam). This is likely to be agreed to.

The Commission also proposed mandatory 140 hours training. The UK and others have successfully negotiated the removal of this burden which was a key negotiating objective for the Government, because of the impact it could have, particularly on small firms.

The Commission originally proposed the phasing out of "grandfather rights" for those able to demonstrate professional competence because they were authorised to be passenger or road haulage operators in Member States before certain dates (for the UK, 1 January 1975) by 1 January 2012. However we successfully lobbied for a more liberal requirement and the current text allows "grandfather rights" for those that can prove 15 years continuous management of a transport undertaking before the Regulation comes into force. This means those who have a recent and significant proven track record of management experience when the Regulation comes into force will continue to be exempt from the formal professional competence requirements.

Although present in the initial Commission proposal, many Member States have been reluctant to accept the introduction of national registers of operators. However, with Commission support, the UK has lobbied for this and provided other Member States with some evidence on costs and implementation of the existing UK system. As a result, the principle of interconnected registers looks likely to be adopted as part of the Regulation, which is a major benefit. Each Member State will then have access to comprehensive data on operators registered in other Member States, across the EU. This will allow more effective and accountable enforcement of non-resident vehicles entering Member States.

The original Commission proposal was that checks with other Member States on the fitness of individual transport managers should take place routinely once the interconnected registers were in place. Following lobbying by a number of Member States, the Presidency originally amended this obligation to apply only if the Competent Authority believed there was any doubt that the requirement is satisfied. However, the UK has lobbied successfully for the Commission proposal to be restored. In the UK, this will require Traffic Commissioners to undertake a routine check on the fitness of any transport manager when determining the good repute of an operator (both at time of
will be removed once the interconnected national registers of operators are up and running. This will enable proper checks to be made on those seeking to become a transport manager outside their 'home' Member State.

The UK has lobbied hard for registration details of an operator's vehicles to be specified in the national registers. This would enable the full benefits of the new system to be realised, as is already the case in the UK. This has attracted support in principle from the Commission, who are impressed by the UK system but want to move step-by-step, and some other Member States. Whilst agreement has not yet been achieved, it is a measure still firmly on the agenda. This would greatly increase the effectiveness of enforcement of foreign vehicles in the UK, as it would provide a definitive link between a vehicle or driver offence and an operator.

The original Commission text proposed to reduce the time period for taking decisions on proposed changes in comitology from three months to one month. The UK lobbied hard in the Working Group negotiations for the three month time period to be restored in order to allow sufficient time to consider the legal implications of any changes and consult Ministers and Parliament if necessary, and other stakeholders. The Commission have agreed to restore the three month time period. There will be three months to consider the full implications of changes proposed in comitology before decisions are taken.

The offences listed in Annex III represent the most serious breaches of road safety and the Government believes it is important that they are harmonised across the EU. In addition, Article 6 of the Regulation requires the competent authority in each Member State to undertake a proper scrutiny of all operators that commit any of those offences, and determine whether they should lose their good repute and therefore be disqualified from operating. By ensuring that operators committing serious violations of road safety are taken off the road, this has the potential to improve the quality of foreign vehicles entering the UK.

Clearly, it is important that the list of offences in Annex III correctly target the most serious offences committed across the EU. Whilst the initial list has been determined as part of the EU negotiations on the Regulation, future changes rely heavily on the involvement and opinions of those with expertise in enforcement - in the UK, the Vehicle and Operator Services Agency and the police. The Government believes that the committee procedure – bringing together experts from across the EU - offers the best way of ensuring that their views are properly represented and taken into account. It also offers flexibility to ensure that the list of offences keeps pace with EC legislative developments in this field.

On the Access to the Road Haulage Market Proposal (10092/07) there has been significant progress in the Working Group although for the UK a few key issues remain to be fully addressed to ensure an acceptable outcome. Although the original Commission proposal included the requirement for the Community Licence, to carry out the international carriage of goods by road, to be renewed every five years, some Member States felt this was too onerous. A period of 10 years was proposed. The UK and some other Member States resisted this, so a compromise was reached to say that the Community Licence shall be issued for a renewable period of 'up to 10 years'. This ensures that in the UK, Traffic Commissioners can continue to check that operators meet the requirements for a Community Licence every five years, or more frequently if we wish. The interconnected electronic registers to be introduced through the Access to the Occupation proposal will enable better targeting of checks to supplement the five yearly ones.

As with the proposal on Access to the Occupation, following negotiations the Commission agreed to restore the three month time period for taking decisions on proposed changes in comitology. This should enable sufficient time to consider the full implications of any changes proposed under the Comitology procedure and consult stakeholders before deciding whether to agree to proposed decisions.

In addition, in response to some Member States' concerns over security, a list of security features that can be included on the Community Licence was drawn up. These include features such as the use of holograms, special tactile characters, symbols and patterns. The UK supported the introduction of such measures in the Working Group. Competent Authorities will be obliged to issue Community Licences with at least two of these security features but can chose which features to use.

However, one major sticking point in the Working Group negotiations is the Commission's proposed definition of cabotage. The Commission has confirmed that regular or fixed contract work for the same customer would be permitted under the proposed definition of cabotage. As it stands, the proposed definition also refers to hauliers being permitted to carry out cabotage with the same vehicle, which would mean that a haulage operation could use a number of vehicles to undertake a series of cabotage operations in the host Member State at the same time. The Government believes therefore, that if the proposed Regulation was implemented, there is potential for distortion to the UK haulage market. To date, the Commission has not produced any supporting evidence to challenge
this view. The Government is also concerned about the safety of some non-resident hauliers operating on UK roads. For example, the statistics from 2004/5 in respect of non-resident hauliers’ prohibitions on drivers’ hours rules, were three times as high as hauliers from the UK.

So, while the Government can largely accept the Commission’s proposed definition of cabotage, we would want this to be restricted to casual and temporary activities only, in order to prevent regular contract working until we have the evidence to suggest that such restrictions are not necessary or that we could ensure that appropriate enforcement arrangements were in place to ensure that action was taken by other Member States’ authorities against hauliers who commit offences on UK roads. We have the support of some other Member States on this issue and we are hopeful that the Presidency may yet try to reach a compromise.

However, the Government agrees in principle that there could be greater liberalisation of the cabotage market in the longer-term, providing evidence is available which demonstrates that the market conditions are right for this. On this basis we have supported a proposal in the EU negotiations for the Commission to undertake a study in 2012 to consider the impacts of greater liberalisation and to produce evidence to support any further opening of the cabotage market.

With regard to the Carriage of Passengers Proposal (10102/07), the negotiations have been relatively smooth as there were no really difficult issues with the original proposal. As with the Access to the Market regulation, the validity period of the Community Licence is likely to be “up to ten years”. We would have preferred to have a set time period of five years, in order to ensure this as a minimum to check that operators still meet all the requirements to hold an operator’s licence, however Member States will have the discretion to still do this nationally, so we are content.

With the regard to circumstances under which an application for a regular service may be refused, there have been moves within the Working Group to re-introduce powers to prevent international services (and cabotage) being authorised that would compete with coach and rail services not covered by a Public Service Obligation (PSO). The UK has so far successfully resisted these moves, as we believe the existing wording strikes the right balance between protecting PSO routes and the need for a liberalised market.

On cabotage for regular coach services, there is a discussion at the Working Group aimed at tightening up the definition to emphasise cabotage’s secondary nature to international operations, and it is likely that suitable wording will be found ahead of the Transport Council. With regard to the use of a journey form for occasional services, which provides the basic details relating to each journey, there is and remains a question as to whether these are really necessary or not. The Commission want to simplify the form through comitology which may be sufficient for those Member States looking to reduce the requirements for the form on better regulation grounds.

EUROPEAN PARLIAMENT

The negotiations in the Working Group have been running in parallel with those in the European Parliament. The TRAN Committee have adopted draft reports on all three proposals, which will be put to the Plenary in June. There has been considerable parity between the amendments made by the TRAN Committee and those negotiated in the Working Group, and we are hopeful that most of the amendments that the UK has negotiated in the Working Group will be adopted by the Parliament.

One amendment adopted by the TRAN Committee, which we support but which has been resisted in the Council Working Group, is for the registration details of all vehicles operated outside the home Member State to be recorded on the national register in that Member State. This would greatly improve the targeting and enforcement of foreign vehicles entering the UK. Despite opposition from a number of Member States, this has been included in the list of amendments to be considered at the Plenary debate.

However, we do have a major concern with the TRAN Committee view on cabotage. Several proposed amendments are more liberal or threaten to open markets prematurely, without a study to examine whether there is greater harmonisation of the market. The opening of the market without a full understanding of the prevailing conditions and consideration of the facts could be reckless. There may still need to be some forms of control to reflect the sensitivities of this transport market.

In respect of the Carriage of Passenger Proposal, there were not many amendments that were at odds with UK objectives. However, the TRAN Committee have put forward an amendment which would reinstate the 12 day rule for Coach drivers\(^\text{18}\). We have yet to agree our position on reinstating the 12 day rule.

\(^{18}\) Council Regulation EC 561/2006 removed a provision from the EU drivers hours rules which allowed coach drivers on non regular services to drive for up to 12 days before taking the weekly rest applicable to other commercial drivers. This has
Discussions at Working Group level will continue on the outstanding issues, and the Slovenian Presidency hopes that it may be possible to reach a political agreement at the Transport Council in June. This seems a little ambitious in respect of the cabotage provisions at the moment, but may be achievable. I will of course keep your Committee informed of further changes to the proposal, in particular the outcome of the European Parliament’s Plenary First Reading.

15 May 2008

Letter from Jim Fitzpatrick MP to the Chairman

Following my letter of 15 May, I am writing to provide your Committee with a further update on progress in negotiations for these three draft regulations. I explained in my previous letter that the European Parliament (EP) was due to vote on the Transport and Tourism (TRAN) Committee amendments at a First Reading Plenary in June. However, this meeting was subsequently brought forward and took place on 21 May. The Plenary voted in favour of the Commission proposals for the Regulation on the access to the international road haulage market, and the Regulation to pursue the occupation of road transport operator, as amended by the TRAN Committee. The Plenary vote on the TRAN Committee’s draft Report on the Regulation on the access to the coach and bus market has been postponed until June.

The Slovenian Presidency remains keen to reach political agreements on access to the international road haulage market, and the Regulation to pursue the occupation of road transport operator, and a general approach on access to the coach and bus market at the Transport Council on 12-13 June 2008.

This letter provides information on further developments in a number of areas mentioned in my previous letter. An update on each is given below.

The UK-proposed derogation allowing those with existing national qualifications to sit only the international operations parts of the professional competence examination (10114/07)

This derogation was included in an amendment adopted by the EP at Plenary. I am pleased to be able to report that a different amendment, with similar effect, forms part of the text going to the Transport Council in June for political agreement.

Adoption of the principle of interconnected registers (10114/07)

The Plenary also voted in favour of the Commission’s proposal for each Member State to introduce national registers, with the Commission and Member States defining the minimal structure of data to be entered no later than 1 January 2010. The EP adopted a number of modifications similar to those under consideration by Council. For example, Member States will also be able to keep data on convictions and declarations of unfitness in a separate register to ensure confidentiality - with competent authorities in each Member State either granted direct access, or able to request information from the ‘home’ Member State - which must be provided within 10 working days (the current Presidency text foresees 30 days on this point). Whilst there has been opposition by some Member States on the grounds of the practicalities, data protection concerns, and potential costs involved, the Commission remains strongly in favour of national registers and the UK will continue to press hard for their adoption. We anticipate that this will be adopted as part of an overall political compromise at the Transport Council in June.

Specification of registration details of an operator’s vehicle in national registers (10114/07)

There has been considerable opposition to this in the Working Group, particularly from those Member States who are sceptical about the benefits of the registers. The Commission have indicated sympathy for the UK proposal but are not able to support it given the difficulties they face in securing agreement to the basic requirement to establish and interconnect the registers. However, the Plenary voted in favour of national registers including, for each operator, the registration mark of every vehicle undertaking international journeys. This will now be considered by the Transport Council in June and the UK will continue to lobby hard for its inclusion. Even if the EP amendment, or a variant of it, is not adopted by the Council in June, the Commission and other Member States will have to give it further serious consideration, alongside the other Parliament amendments, during the future second reading. We will continue to present the arguments in favour to all 3 institutions.

attracted considerable lobbying throughout Europe by the tourist coach industry and the European Parliament passed a resolution calling for its reinstatement.
THE DEFINITION OF CABOTAGE (10092/07)

The discussions on cabotage are highly unlikely to be resolved before the Transport Council on 13 June. Member States have now coalesced around the Commission's proposal of 3 cabotage operations with a single vehicle during a 7 day period. The UK (with several other Member States), whilst supporting this, has pressed for clarification of the status of regular work by a haulier for a single customer. This point remains unresolved but the Government's objective is to secure clarification that a non-resident haulier cannot use cabotage to create a pattern of services in a host Member State as a means of avoiding establishment in that Member State. The Government does not intend to support a political agreement on this Regulation unless an acceptable deal is reached at the Council on this issue.

The EP has adopted, by a relatively narrow margin, an amendment that will loosen the restrictions on cabotage after 2 years and open the market completely in 2014. The Commission does not support the Parliament on this point and the amendment will not be incorporated into the Council's political agreement. The Council is instead expected to adopt a provision, which the Government supports, that requires the Commission to report on the market situation at a future date (still to be agreed but will be between 2012 and 2015).

PROTECTION OF PUBLIC SERVICE OBLIGATION SERVICES AND LIBERALISATION (10102/07)

In the Regulation on access to the coach and bus market, the Commission has proposed some minor changes to the powers of Member States to refuse applications for international regular services including cabotage (picking up and dropping off passengers in the same Member State). The changes were two-fold: to align this Regulation with the recently adopted Regulation 1370/2007 on public service obligations in public passenger transport; and to enable bus and coach as well as rail services covered by PSOs to benefit from this protection; The UK position is that the Commission proposals were sensible updates of the existing rules. There have been some attempts to broaden the scope of these provisions in order to enable Member States to protect commercial services not covered by public service obligations. However, such attempts have so far been rebuffed.

As I mentioned earlier, the EP has not yet adopted its position on this proposal but the relevant EP Committee voted to delete one existing provision that gives Member States the power to require a service to be withdrawn if it is proved over time that it is seriously disrupting the viability of a service fulfilling a public service obligation. The Council will not take a position on this amendment until it is adopted by the Parliament. It is not a major concern for the UK.

THE NATURE OF CABOTAGE UNDER THE DRAFT CARRIAGE OF PASSENGERS REGULATION, (10102/07)

Member States and the Commission have now agreed modifications to the definition of cabotage under this Regulation that emphasise the secondary nature of cabotage operations to international services. This is acceptable to the UK.

SIMPLIFICATION OF THE JOURNEY FORM (10102/07)

Consideration has been given to removing references to the journey form. Having consulted with industry, the Government concluded that the current text should, on balance, be retained and the Commission's efforts in simplifying the form through future discussions at technical level should be supported. The majority of Member States share this view, and it is unlikely that this will be a sticking point at the Council.

As you may know, when the Commons Committee considered my letter of 15 May, they asked to hear the Government's decision in relation to the European Parliament proposal to reinstate the provision which would allow coach drivers to postpone having to take any form of weekly rest until the end of the 12th day (the 12 day rule): Your Committee may also like to know that, prior to the adoption of Regulation (EC) No. 561/2006 on drivers' hours, we considered the new weekly rest requirements for coach drivers very carefully in light of the views put forward by both sides of industry during the public consultation exercise. We concluded that having to take a reduced rest of at least 24 hours after, at most, six days driving would not be unduly onerous and would contribute
significantly to reducing driver fatigue. Moreover, revocation received widespread support from Member States.

Initial reactions from Member States suggest that there is little ambition to take the initiative to reopen this issue but a willingness to give due consideration to any new proposal from the Commission. The European social partners (the International Road Union and the European Transport Federation) are working on a possible agreement. The European Parliament has delayed its vote in Plenary on the Coach and Bus Regulation in order to see if the social partners can reach an agreement. If they do, we would expect EP to endorse this. If not, the EP may still adopt an amendment calling on the Commission to address the problem. Separately, the Commission has just launched a more general study of the coach market. The UK awaits the outcome of the social partners' dialogue, the EP vote and the Commission study with interest. When more information is available, the Government will be better placed to consider its response. At present, there is no Commission proposal to respond to.

28 May 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letters dated 15 and 28 May. These were considered by Sub-Committee B at its meeting on 2 June. It was agreed to clear these dossiers from scrutiny.

The Committee would, however, appreciate further details on what mechanisms are proposed to ensure that an infringement of regulations in a host Member State by a transport operator is registered and acted upon in the transport operator’s home Member State.

5 June 2008

Letter from Jim Fitzpatrick MP to the Chairman

Your Committee considered and cleared the above proposals at your meeting of 4 June, and I am writing now to provide you with a further update on the outcome of the Transport Council on 13 June.

Following my letter of 28 May to you there were further developments in negotiations of these proposals. Before the Transport Council, the Presidency proposed a compromise text which tried to address the concerns of several Member States, which had proved problematic at Working Group level. On the day of the Transport Council, the Presidency proposed two further compromises in order for Member States in order to reach Political Agreement. The following are the new elements of the proposals, not previously reported to you.

ACCESS TO THE MARKET (10092/07)

As you will recall from my previous letters, the Government’s objective was to secure clarification that a non-resident haulier cannot use cabotage to create a pattern of services in a host Member State as a means of avoiding establishment in that Member State. Negotiations on this issue have been complicated but I am pleased to able to say that we have secured a better result at the Council than had been expected, and this result has been welcomed by UK hauliers.

TRANSIT CABOTAGE (ARTICLE 8.2)

The compromise put forward allows “transit cabotage” whereby hauliers could, following a laden international journey, chose to undertake a cabotage operation in a transit Member State providing this operation was carried out within three days of entry into the transited Member State. Transit cabotage operations are not in addition to the three trips already mentioned in the Article, but an alternative way of making up the three trips. The UK’s position on this was that this proposal was acceptable but only as part of a compromise package. Transit cabotage would only apply in the UK to Irish hauliers returning from continental Europe or to hauliers who had undertaken an international journey to Ireland.

CABOTAGE

A "safeguard clause" in relation to Council Regulation (EEC) 3916/90 (on measures to be taken in the event of a crisis in the market in the carriage of goods by road) was also introduced into the text. This simply sets out the provisions in the Directive of the measures that Member States can take in case of serious disturbance to the road haulage market due to the impact of cabotage. While the
Government did not see a need to include this clause as the measures exist in EU law anyway, we accepted that it was necessary in order to reach agreement.

In addition the Presidency put forward revised text in Recital 11, the key part of which was that cabotage could be carried out as long it does not create" a permanent or continuous activity within a host Member State”.

The key phrase for the UK is “permanent or continuous activity” which was included as part of the compromise in spite of strong opposition from those Member States who were seeking greater liberalisation of cabotage. We, and the other Member States that shared our concerns, intend to interpret this as sufficient to exclude significant contractual working.

REPORTING (ARTICLE 16.3)

At the previous Transport Council on 7 April, Ministers agreed that the Commission should produce a report by 2012 on market conditions before any further relaxation of the cabotage rules are proposed. At Working Group the UK had argued for this date to be amended to 2013 because it would then capture the cabotage activity of all 27 Member States including Romania and Bulgaria who, as part of the their EU Accession Agreements, will only be able to undertake cabotage in other EU Member States from 2012. The Commission had supported this position.

The Presidency compromise amended the date to 2013 and in addition, included a commitment in the text that effectiveness of enforcement controls would now be part of the scope of the report. The report by 2013 means that there will be no further liberalisation of the cabotage market before 2013, by when the national electronic databases are due to be interconnected which will give the UK enforcement authorities the ability to target non-UK hauliers to the same degree as they target domestic haulers. The UK also welcomes the report stipulation as any further policy changes on cabotage will be evidentially based.

ACCESS TO THE OCCUPATION (10114/07)

With regard to the Access to the Occupation proposal the Presidency’s compromise included this wording at Article 15 (1) (the compromise wording is highlighted in bold):

"Not later than 1 June 2009, the Commission shall issue guidelines on the minimal structure of the data which have to be entered in the national electronic register from the date of its setting in order to ease the future interconnection of the registers and may recommend the inclusion of the vehicle registration marks on top of the data mentioned in this paragraph"

This text was an important concession for the UK because, as you may recall from my previous letters, we had been arguing since the beginning of negotiations for the inclusion of vehicle registration data on the national registers. This is because vehicle registration data is the key to targeted roadside enforcement. We will be seeking assurances from the Commission to ensure that the inclusion of vehicle registration data on the registers will be required from the earliest possible date. The UK haulage industry were pleased that the UK secured this concession as it is something they have been arguing strongly for.

NATIONAL ELECTRONIC REGISTERS. (ARTICLES 15 AND 26)

The text of the Political Agreement says that most serious infringements would have to be recorded on the registers from the start and serious offences would have to be recorded on the national register from 2016. This was a disappointment to the UK as we were seeking a much earlier date for recording of all serious offences. However, there was insufficient support for our viewpoint and as a trade off we did manage to keep vehicle registration details on the agenda, and that the interconnection of the databases would be in place before any further cabotage liberalisation.

CARRIAGE OF PASSENGERS (10102/07)

There were no new elements introduced to this proposal.

Enforcement Mechanisms

With reference to your specific enquiry on what mechanisms are proposed to ensure that an infringement of regulations in a host Member State by a transport operator is registered and acted upon in the transport operator’s home Member State, I offer the following.

The move from a Directive to a Regulation - directly applicable EU law – itself puts added pressure on all Member States to ensure that any infringements committed in the home or another Member State
receive proper action. Under the draft Regulation, all Member States must communicate to the Commission the text of the laws, regulations or administrative provisions they adopt in national law, to ensure the Regulation is properly implemented in law across the EU.

Turning to the specific issue raised by your Committee, the draft Regulation states that when a conviction or penalty for a serious infringement (from a specified list) is incurred by an operator in one or more Member States, the competent authority in the 'home' Member State is required to determine whether it affects the operator's good repute. In cases where they decide it does not, the reasons must be recorded in the national register mentioned below and included in the biennial national report to the Commission. The Regulation also makes provision for a list of categories, types and degrees of seriousness of infringements to be developed that would attract more frequent on-the-road compliance checks of vehicles belonging to those operators.

The draft Regulation also includes a number of additional measures to ensure that infringements committed by operators in other Member States are properly reported and taken into account by the competent authority in the home Member State.

There is a general requirement that Member States cooperate closely and exchange information on convictions or penalties for serious infringements, penalties or other information liable to affect the good repute of an operator. The mechanism for exchanging this information is twofold:

— Each Member State is required to designate a national contact point responsible for exchanging information with other Member States on the application of the Regulation. The Commission is then required by the draft Regulation to draw up a consolidated list of these contact points and forward it to all Member States. This will ensure that each Member State has an agreed specified contact for forwarding details of infringements incurred by operators that are licensed in other EU states.

— The draft Regulation also requires each Member State to develop a national register of its operators and transport managers with, among other things, details of serious infringements that have resulted in a declaration of unfitness (until fitness is re-established) or a conviction or penalty in the last two years. The Regulation specifically requires any notifications of such serious infringements received from other Member States to be recorded in the national register. In the longer term, these registers will be interconnected electronically across the EU, so such information will be forwarded and recorded automatically.

Every Member State must also draw up a biennial report on the activities of its competent authorities and forward it to the Commission. Among other things, the Report must contain an overview of the exchanges of information with other Member States, including the number of infringements notified by other Member States. As explained above, this includes details of all specific cases where serious infringements were committed and reported, but the competent authority decided that the good repute of the operator or transport manager was unaffected.

On the basis of these national reports, the draft Regulation also requires the Commission to draw up a biennial report on the pursuit of the occupation of road transport operator across the EU, for the attention of the European Parliament and Council. This Report must contain, in particular, an assessment of the operation of the exchange of information between Member States and a review of the functioning of the national registers.

Taken together, we believe these measures and reporting structures are sufficient to ensure that:

a. Infringements committed in other Member States are properly reported and recorded in the 'home' Member State; and

b. All Member States must be able to demonstrate that they have taken this information - as well as any other relevant information passed on by another Member State - properly into account.

EUROPEAN PARLIAMENT

The plenary session of the European Parliament on 5 June 2008 gave a First Reading to the carriage of passengers proposal. The plenary adopted 28 amendments including two in relation to the 12 day rule as explained in my letter of the 28 May. These amendments did not, of course, form part of the Transport Council political agreement.

The next stage in the co-decision process is the European Parliament’s second reading and the conciliation between the Council and the Parliament, if necessary. I will of course continue to keep your Committee informed of future developments.
TRANSPORT: ROAD TRANSPORT FUELS (6145/07)

From the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Sub-Committee B has been holding this item under scrutiny since 27 February 2007. The Committee last wrote to you on 26 February 2008 noting that, in light of the position supported by stakeholders, other Member States and the European Parliament’s Environment Committee, you were prepared to modify your position.

The Committee asked to be kept informed on the final compromise before releasing the document from scrutiny. Further information was also requested on the vehicle maintenance standards and enforcement mechanisms that would be included in this proposal. The Committee has not yet received this information and would appreciate an update on developments.

Letter from Lord Andrew Adonis, Minister of State, Department for Transport to the Chairman

Thank you for your letter of 11 November to Jim Fitzpatrick further to your letter of 26th February 2008 regarding Sub-Committee B’s consideration of the above proposal, and requesting information on the final compromise ahead of any first reading agreement. I am responding as Minister for cleaner fuels and vehicles. Please accept my apologies for the long delay in writing to your Committee. It is not that your request for further information had been forgotten, rather that progress in Brussels in drawing together a compromise package has been slower than anticipated. The European Parliament’s consideration has been delayed, with the plenary first reading currently scheduled for early December. Trialogue discussions with the European Parliament only began in November and the French Presidency is aiming for a first reading agreement by the end of the year. The likely content of such a package is still unclear in a couple of key areas. An update on the negotiations is given below.

FUEL LIFECYCLE GREENHOUSE GAS REDUCTION TARGETS

The Commission proposed that fuel suppliers be obliged to reduce the lifecycle greenhouse gas emissions of petrol, diesel and non-road gas oil by 1% per annum between 2011 and 2020, relative to a 2010 EU average baseline, giving an overall 10% reduction target. You will recall that the Government was seeking to reduce the level of the target to one consistent with the Renewable Energy Directive’s (RED) 10% biofuel target.

This is one of the elements of the proposal on which discussions are still ongoing. At official level the Council is moving towards a 6% reduction by 2020, with a single non-binding interim target in 2015. The 6% is consistent with the Government's assessment of what might be achievable with 10% biofuel uptake (a 5% greenhouse gas saving coming from biofuels and around 1% from improvements in fossil fuel extraction and refining). Understanding of the greenhouse gas, and other environmental, impacts of biofuels is still evolving. In addition there is also uncertainty over the scope for fossil fuel refining and extraction to deliver emissions savings. For this reason the Government has been pressing for a review of the target in 2014 when further evidence is likely to be available. We have been able to gather support for this approach.

The European Parliament has been pushing for retention of the Commission’s proposed 10% by 2020 target with interim targets every two years. In order to enable this to be achieved, the EP has proposed extending the scope of the greenhouse gas savings which could be counted towards the target.

BIOFUEL SUSTAINABILITY CRITERIA

A joint set of sustainability criteria are being developed for use in both the Renewable Energy Directive and the Fuel Quality Directive. Any biofuels contributing towards the greenhouse gas reduction target will be obliged to comply with these sustainability criteria. The criteria include requirements on minimum greenhouse gas savings thresholds, biodiversity impacts and impact on land carbon stocks. In addition the Committee are obliged to monitor and report on impacts on water,

19 Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 91
soil and air quality, impacts on food prices and workers rights. The Government has been pushing for the inclusion of a factor to account for indirect land use change impacts in assessing whether or not biofuels meet the greenhouse gas thresholds. Indirect land use change i.e. biofuel cultivation displacing existing crops onto potentially previously uncultivated land, can significantly affect overall greenhouse gas savings. There is support for this approach from the European Parliament and a number of Member States and we are hopeful it will be included in the final package.

PETROL SUMMER VAPOUR PRESSURE LIMITS

This is another issue where the final content of the package is yet to be agreed. At official level the Council is tending towards maintaining the current summer vapour pressure limits for petrol (60% or, in the case of regions such as the UK with cool summer conditions, 70%). The Government strongly supports this. The European Parliament continues to press for tightening of these limits by 4kPa to partially offset the increase in vapour pressure that will be allowed for petrol containing ethanol (up to a maximum of 8% depending on ethanol content). The Government’s view is that it would be preferable to retain the current vapour pressure limits and delete the vapour pressure waiver for ethanol, since the increases in vapour pressure due to ethanol blending can readily be offset by modifications to the base petrol into which ethanol is blended. However, several Member States and the European Parliament seem to be in favour of the vapour pressure waiver and this may form part of the final agreement. Our modelling suggests that the impact of the waiver on air quality emissions is negligible.

PETROL-ETHANOL BLENDS

The Commission’s proposal included two grades of petrol, one permitted to contain up to 5% ethanol (E5) and the other permitted to contain up to 10% ethanol (E10). In line with the Government’s objectives, the Presidency’s current draft text simply contains a single petrol specification with a 10% maximum permissible ethanol content and no minimum ethanol content. This will give industry maximum flexibility to supply petrol which meets market needs, in terms of compatibility of the vehicle fleet, whilst making progress towards their greenhouse gas reduction targets. However, we seem to be moving towards inclusion of a requirement that fuel suppliers continue to make petrol containing no more than 5% ethanol available until 2013. This is intended to support existing vehicles which are not warranted for 10% ethanol content petrol, however in practice we believe that these vehicles are already a very small proportion of the fleet and will be even less significant by 2013. However, we do not anticipate that this will cause UK fuel suppliers major problems in practice.

DIESEL POLYCYCLIC AROMATIC HYDROCARBON (PAH) CONTENT

The compromise likely to be reached between the Presidency and the European Parliament’s rapporteur is to tighten diesel PAH content from 11% to 8% as proposed by the Commission in order to control emissions of particulate matter (PM). We believe the air quality benefits of this will be minor, since advances in vehicle emissions control systems will make much greater reductions in PM emissions. However, current diesel PAH content is sufficiently far below 8% that, even with a move away from relatively ‘light’ North Sea crude to heavier crudes, this requirement is unlikely to adversely impact on refining costs or greenhouse gas emissions.

METALLIC ADDITIVES

In response to pressure from a number of Member States to delete the current derogation, allowing continued sale of small quantities of leaded petrol, the allowance has been significantly tightened from 0.5% to 0.03% of total petrol sales. The UK makes use of this derogation to support historic vehicles, but current sales are well within the 0.03% allowance and have been falling year on year.

The European Parliament’s rapporteur and several Member States have called for an outright ban on the use of the manganese-based additive MMT. This is a controversial area. Excess quantities of manganese in the atmosphere are harmful to health, but there is not conclusive evidence to show that MMT use would lead to harmful concentrations. Furthermore MMT use in the EU is minimal with no expectation of it increasing. The Government’s preference is to await further evidence before legislating.
SULPHUR FREE GAS OIL

In view of the protracted negotiations the implementation date for reducing the sulphur content of gas oil from 1000mg/kg to 10mg/kg (‘sulphur free’) gas oil has been moved back one year to 1st January 2011. The Government has so far been successful in securing flexibility to accommodate minor contamination with higher sulphur heating oil in the distribution chain. This flexibility, which allows the fuel to contain up to 20mg/kg sulphur at point of delivery to the use, will avoid the need for separate tanker fleets for non-road gas oil and heating gas oil deliveries, which would have been a major burden for small fuel distributors. The Government has also secured a permissive derogation which allows the continued supply of 1000mg/kg sulphur gas oil for rail vehicles until 31st December 2011. This fuel is not required for rail engines until 2012, since sulphur intolerant emissions control equipment is not introduced on rail engines until that date. The derogation secured allows similar flexibility for agricultural tractor fuel, at the request of Member States with older tractor fleets. However, since some new tractors will require sulphur free fuel in 2011 it is not anticipated that this derogation would be implemented in the UK.

MAINTENANCE STANDARDS

In your letter of 26th February you requested information on what vehicle maintenance standards would be included in the proposal. The proposal introduces new requirements into the EU Fuel Quality Directive. These requirements define mandatory fuel quality specifications and targets for reducing the lifecycle greenhouse gas emissions of road fuels. These requirements are addressed at fuel suppliers only and as such the proposal does not contain any requirements in respect of vehicle maintenance.

ENFORCEMENT MECHANISMS

In your letter of 26th February you also asked for further information on what enforcement mechanisms would be included in the proposal. In respect of the mandatory specifications that apply to petrol, diesel and gas oil there are no new enforcement requirements. The Directive will need to be transposed into UK law. In terms of the amendments to fuel specifications this is likely to be via amendment to the Motor Fuel (Composition & Content) Regulations. No changes to the enforcement mechanisms in these regulations are envisaged. The existing requirements already in the Fuel Quality Directive requiring Member States to monitor and report on compliance with fuel specifications will also continue to apply. In the UK monitoring is achieved using returns from industry. Industry provide fuel quality analysis data on every batch of fuel released from UK refineries, in addition to which oil companies provide analysis data from forecourt sampling of their own and competitors fuels.

In support of the greenhouse gas target the proposal requires fuel suppliers to report annually on the greenhouse gas intensity of their fuels, including data on the volumes and sources of biofuel supplied. These requirements would also need to be transposed into UK law, probably by means of new regulations. These regulations would need to include sanctions against fuel suppliers who fail to meet the greenhouse gas reduction targets. The proposal also requires Member States to report to the Commission every two years on the sustainability impacts of biofuel use. No other enforcement provisions are specified in the proposal.

I hope that this information is helpful to the Committee. I will, of course, keep you informed of the outcome of the European Parliament’s first reading.

19 November 2008

Letter from Lord Adonis to the Chairman

Thank you for your letter of 11 November to Jim Fitzpatrick further to your letter of 26 February 2008 regarding Sub-Committee B’s consideration of the above proposal, and requesting information on the final compromise ahead of any first reading agreement. I am responding as Minister for cleaner fuels and vehicles. Please accept my apologies for the long delay in writing to your Committee. It is not that your request for further information had been forgotten, rather that progress in Brussels in drawing together a compromise package has been slower than anticipated. The European Parliament’s consideration has been delayed, with the plenary first reading currently scheduled for early December. Trialogue discussions with the European Parliament only began in November and the French Presidency is aiming for a first reading agreement by the end of the year. The likely content of such a package is still unclear in a couple of key areas. An update on the negotiations is given below.
FUEL LIFECYCLE GREENHOUSE GAS REDUCTION TARGETS

The Commission proposed that fuel suppliers be obliged to reduce the lifecycle greenhouse gas emissions of petrol, diesel and non-road gas oil by 1% per annum between 2011 and 2020, relative to a 2010 EU average baseline, giving an overall 10% reduction target. You will recall that the Government was seeking to reduce the level of the target to one consistent with the Renewable Energy Directive's (RED) 10% biofuel target.

This is one of the elements of the proposal on which discussions are still ongoing. At official level the Council is moving towards a 6% reduction by 2020, with a single non-binding interim target in 2015. The 6% is consistent with the Government's assessment of what might be achievable with 10% biofuel uptake (a 5% greenhouse gas saving coming from biofuels and around 1% from improvements in fossil fuel extraction and refining). Understanding of the greenhouse gas, and other environmental, impacts of biofuels is still evolving. In addition there is also uncertainty over the scope for fossil fuel refining and extraction to deliver emissions savings. For this reason the Government has been pressing for a review of the target in 2014 when further evidence is likely to be available. We have been able to gather support for this approach.

The European Parliament has been pushing for retention of the Commission's proposed 10% by 2020 target with interim targets every two years. In order to enable this to be achieved, the EP has proposed extending the scope of the greenhouse gas savings which could be counted towards the target.

BIOFUEL SUSTAINABILITY CRITERIA

A joint set of sustainability criteria are being developed for use in both the Renewable Energy Directive and the Fuel Quality Directive. Any biofuels contributing towards the greenhouse gas reduction target will be obliged to comply with these sustainability criteria. The criteria include requirements on minimum greenhouse gas savings thresholds, biodiversity impacts and impact on land carbon stocks. In addition the Commission are obliged to monitor and report on impacts on water, soil and air quality, impacts on food prices and workers rights. The Government has been pushing for the inclusion of a factor to account for indirect land use change impacts in assessing whether or not biofuels meet the greenhouse gas thresholds. Indirect land use change i.e. biofuel cultivation displacing existing crops onto potentially previously uncultivated land, can significantly affect overall greenhouse gas savings. There is support for this approach from the European Parliament and a number of Member States and we are hopeful it will be included in the final package.

PETROL SUMMER VAPOUR PRESSURE LIMITS

This is another issue where the final content of the package is yet to be agreed. At official level the Council is tending towards maintaining the current summer vapour pressure limits for petrol (60% or, in the case of regions such as the UK with cool summer conditions, 70%). The Government strongly supports this. The European Parliament continues to press for tightening of these limits by 4kPa to partially offset the increase in vapour pressure that will be allowed for petrol containing ethanol (up to a maximum of 8% depending on ethanol content). The Government's view is that it would be preferable to retain the current vapour pressure limits and delete the vapour pressure waiver for ethanol, since the increases in vapour pressure due to ethanol blending can readily be offset by modifications to the base petrol into which ethanol is blended. However, several Member States and the European Parliament seem to be in favour of the vapour pressure waiver and this may form part of the final agreement. Our modelling suggests that the impact of the waiver on air quality emissions is negligible.

PETROL-ETHANOL BLENDS

The Commission's proposal included two grades of petrol, one permitted to contain up to 5% ethanol (E5) and the other permitted to contain up to 10% ethanol (E10). In line with the Government's objectives, the Presidency's current draft text simply contains a single petrol specification with a 10% maximum permissible ethanol content and no minimum ethanol content. This will give industry maximum flexibility to supply petrol which meets market needs, in terms of compatibility of the vehicle fleet, whilst making progress towards their greenhouse gas reduction targets.

However, we seem to be moving towards inclusion of a requirement that fuel suppliers continue to make petrol containing no more than 5% ethanol available until 2013. This is intended to support existing vehicles which are not warranted for 10% ethanol content petrol, however in practice we believe that these vehicles are already a very small proportion of the fleet and will be even less
significant by 2013. However, we do not anticipate that this will cause UK fuel suppliers major problems in practice.

**Diesel Polycyclic Aromatic Hydrocarbon (PAH) Content**

The compromise likely to be reached between the Presidency and the European Parliament’s rapporteur is to tighten diesel PAH content from 11% to 8% as proposed by the Commission in order to control emissions of particulate matter (PM). We believe the air quality benefits of this will be minor, since advances in vehicle emissions control systems will make much greater reductions in PM emissions. However, current diesel PAH content is sufficiently far below 8% that, even with a move away from relatively ‘light’ North Sea crude to heavier crudes, this requirement is unlikely to adversely impact on refining costs or greenhouse gas emissions.

**Metallic Additives**

In response to pressure from a number of Member States to delete the current derogation, allowing continued sale of small quantities of leaded petrol, the allowance has been significantly tightened from 0.5% to 0.03% of total petrol sales. The UK makes use of this derogation to support historic vehicles, but current sales are well within the 0.03% allowance and have been falling year on year.

The European Parliament’s rapporteur and several Member States have called for an outright ban on the use of the manganese-based additive MMT. This is a controversial area. Excess quantities of manganese in the atmosphere are harmful to health, but there is not conclusive evidence to show that MMT use would lead to harmful concentrations. Furthermore MMT use in the EU is minimal with no expectation of it increasing. The Government’s preference is to await further evidence before legislating.

**Sulphur Free Gas Oil**

In view of the protracted negotiations the implementation date for reducing the sulphur content of gas oil from 1000mg/kg to 10mg/kg (‘sulphur free’) gas oil has been moved back one year to 1st January 2011. The Government has so far been successful in securing flexibility to accommodate minor contamination with higher sulphur heating oil in the distribution chain. This flexibility, which allows the fuel to contain up to 20mg/kg sulphur at point of delivery to the use, will avoid the need for separate tanker fleets for non-road gas oil and heating gas oil deliveries, which would have been a major burden for small fuel distributors. The Government has also secured a permissive derogation which allows the continued supply of 1000mg/kg sulphur gas oil for rail vehicles until 31st December 2011. This fuel is not required for rail engines until 2012, since sulphur intolerant emissions control equipment is not introduced on rail engines until that date. The derogation secured allows similar flexibility for agricultural tractor fuel, at the request of Member States with older tractor fleets. However, since some new tractors will require sulphur free fuel in 2011 it is not anticipated that this derogation would be implemented in the UK.

**Maintenance Standards**

In your letter of 26 February you requested information on what vehicle maintenance standards would be included in the proposal. The proposal introduces new requirements into the EU Fuel Quality Directive. These requirements define mandatory fuel quality specifications and targets for reducing the lifecycle greenhouse gas emissions of road fuels. These requirements are addressed at fuel suppliers only and as such the proposal does not contain any requirements in respect of vehicle maintenance.

**Enforcement Mechanisms**

In your letter of 26 February you also asked for further information on what enforcement mechanisms would be included in the proposal. In respect of the mandatory specifications that apply to petrol, diesel and gas oil there are no new enforcement requirements. The Directive will need to be transposed into UK law. In terms of the amendments to fuel specifications this is likely to be via amendment to the Motor Fuel (Composition & Content) Regulations. No changes to the enforcement mechanisms in these regulations are envisaged. The existing requirements already in the Fuel Quality Directive requiring Member States to monitor and report on compliance with fuel specifications will also continue to apply. In the UK monitoring is achieved using returns from industry. Industry provide fuel quality analysis data on every batch of fuel released from UK refineries, in addition to which oil companies provide analysis data from forecourt sampling of their own and competitors fuels.
In support of the greenhouse gas target the proposal requires fuel suppliers to report annually on the greenhouse gas intensity of their fuels, including data on the volumes and sources of biofuel supplied. These requirements would also need to be transposed in UK law, probably by means of new regulations. These regulations would need to include sanctions against fuel suppliers who fail to meet the greenhouse gas reduction targets. The proposal also requires Member States to report to the Commission every two years on the sustainability impacts of biofuel use. No other enforcement provisions are specified in the proposal.

I hope that this information is helpful to the Committee. I will, of course, keep you informed of the outcome of the European Parliament’s first reading.

19 November 2008

TRANSPORT: SAFETY OF MOTOR VEHICLES (10099/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum sent on 18 June 2008. Sub-Committee B considered it during its meeting on 7 July 2008. It was agreed to hold it under scrutiny.

We are pleased with the Commission’s efforts to simplify legislation. We feel that many of the proposed measures will offer significant environmental and safety gains. However, we note the fact that you are not convinced that the proposal will achieve the simplification it sets out to deliver. We would appreciate it if you could explain why. We also note that you will seek clarification from the Commission in certain areas. We would be grateful if you could update us once you have received these clarifications.

8 July 2008

Letter from the Chairman to Jim Fitzpatrick MP

Sub-Committee B has been holding this item under scrutiny since 24 June 2008. The Committee last wrote to you on 8 July 2008, noting the fact that you are not convinced that the proposal will achieve the simplification it sets out to deliver. Members requested that you explain why. The Committee also noted that you were planning to seek clarification from the Commission in certain areas and would be grateful if you could provide an update on these clarifications.

11 November 2008

TRANSPORT: TYPE-APPROVAL OF MOTOR VEHICLES AND ENGINES (5127/08)

Letter from the Chairman to Jim Fitzpatrick MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for this explanatory memorandum. Sub-Committee B consider it during its meeting on 7 July. It was agreed to continue to hold the dossier under scrutiny.

The assumption that the estimated fuel penalty and technology costs will not be offset by technological advancements in the next hundred years means that the impact assessment’s cost-benefit analysis cannot be a realistic reflection of the impact of these standards. We would be grateful if, following the public consultation, the Minister could inform the Committee of stakeholders’ estimates of the impact of the proposal.

The Committee is grateful for the details in the explanatory memorandum concerning enforcement of the proposal. We would appreciate further details of why enforcement will be discussed at a later date, rather than at the same time as the negotiations on the standards. We would also be grateful for details of what the enforcement measures were agreed for the Euro V standards and what the Government assessment of their effectiveness is.

8 July 2008

Letter from Lord Adonis, Minister of State, Department for Transport to the Chairman

Our recent Second Supplementary Memorandum on the above proposal, dated 31 October 2008, outlined the timetable for negotiations on the Euro VI emissions proposal as we then understood it.
Negotiations have progressed further since the date of our SEM, and I think it proper to provide you with the latest information that we have, in particular the fact that it now appears that a first reading deal will be possible by the time of the Environment Council on the 4 and 5 of December.

The European Commission's proposal was considered by the Environment Committee, the Transport and Tourism Committee, and the Internal Market and Consumer Protection Committee of the European Parliament. At the end of the Committee stage, the Environment Committee, as the lead committee on this measure, adopted, after consideration of the opinions of the other committees, a number of amendments to the European Commission's proposal.

The most notable of the adopted amendments were an amendment having the effect of bringing forward the implementation date of the measure by 9 months, a welcome amendment removing the article on financial incentives, and an unexpected amendment reducing the stringency of the standard for emissions of Oxides of Nitrogen (NOx) slightly.

Our SEM suggested that the European Parliament's plenary first reading of the measure was likely to take place in November. We have since been informed that a compromise has been proposed as a result of Trialogue meetings between the Presidency, the European Commission and the European Parliament with a view to a first reading agreement being reached by the time of the Environment Council on the 4th and 5th of December.

The compromise text resulting from the Trialogue includes an amendment bringing the implementation date of the measure forward by nine months, and retains both the original article on financial incentives and the European Commission's original proposed emissions limits.

Although we would have welcomed the removal of the article on financial incentives, we recognise that there was insufficient support for this. The proposed compromise text arising from the Trialogue is, in the Government's view, a text which would constitute an acceptable compromise. We do however intend to table a minute statement recording the United Kingdom's continuing objection to the inclusion of fiscal provisions in measures of this kind, using Article 95 of the Treaty Establishing the European Community as a legal basis.

12 November 2008

Letter from the Chairman to Lord Adonis

Thank you for providing a supplementary explanatory memorandum on this subject. Sub-Committee B considered it during its meeting on 17 November. It was agreed to clear the proposal from scrutiny.

The Committee noted, however, that very little evidence is available on the effectiveness of the self-policing regime for the Euro V standards. We are of the opinion that effective enforcement is fundamental to achieving the desired outcomes of a regulation of this sort. When the Euro V standards have been fully implemented and their enforcement provisions can be properly evaluated, the Committee would appreciate receiving an update from the Minister on this subject. It seems to us sensible that the enforcement provisions for the Euro V standards should be adequately evaluated before similar measures are introduced for the Euro VI standards.

We are also concerned that the fuel consumption penalty will increase CO₂ emissions from heavy duty vehicles. This will need to be considered with other EU emissions policies in mind.

19 November 2008