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 2009.

**INTERNAL MARKET, ENERGY AND TRANSPORT**

**(SUB-COMMITTEE B)**

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

I am taking this opportunity to update the Committee on the latest developments since the European Commission’s consultation White Paper on damages actions for breaches of EC anti-trust rules (Doc 8235/08). Your Committee decided to retain the document under scrutiny and your predecessor, the Lord Grenfell, wrote to mine, Gareth Thomas, on 10 October 2008 reiterating the Committee’s interest in the results of the consultation and to express a specific concern about any proposal to codify the definition of damages.

The current position is that, following a report by the European Parliament on 9 March 2009, the European Commission moved on from their proposals in the White Paper to produce a draft proposal for a directive on private damages actions. This was put into interservice consultation on 27 March 2009 with the aim of adoption by the College of Commissioners before the Commission’s summer break and subsequent referral to the Council of Ministers. Early drafts of the proposal were leaked and based on these early drafts business groups have staked out their principled opposition to the proposal. We are told that as part of the interservice consultation the draft proposal has undergone substantial change but we do not know the detail of these changes. Neither do we know what the final version will look like as the interservice consultation is, apparently, still continuing. I should add at this point that we understand the European Commission have launched an internal inquiry into the leaks. It now seems increasingly unlikely that the proposed directive will be ready to be put to the College of Commissioners for consideration and possible adoption before the summer break.

You may be aware that the CBI, who have had sight of an early draft, have come out strongly against the proposed directive. Apparently this is in line with strong German business opposition to the proposal, where the argument is one of principle based on the issue of subsidiarity and, specifically, concerns about the so-called ‘opt-out’ provision for representative actions. These are not new arguments but, as you will understand, the Government cannot comment on the basis of leaked drafts and without sight of the final proposal properly cleared through interservice consultation and by the College of Commissioners.

What I can say is that the Government does expect the proposed directive to follow closely the proposals in the European Commission’s White Paper. Where there are concerns, such as the point your Committee has raised about any attempt to codify the definition of damages or the implications for our civil law regime as a whole, we would expect these to be addressed in formal negotiation with Member States.

The Government was not in a position to respond formally by the July 2008 deadline to the European Commission’s White Paper because we had not launched our, now postponed, separate consultation on improving the UK competition regime. At the same time, we wanted to take account of the Civil Justice Council’s (CJC) report Improving Access to Justice through Collective Actions, which was published in December 2008. The Ministry of Justice are about to publish the Government’s response to the CJC report, including on proposals on collective redress and ‘opt-out’. This response will of course inform our position on the European Commission’s proposed directive.

I will keep you informed of developments, in particular on the outcome of the interservice consultation and the decision of the College of Commissioners.

13 July 2009

Letter from the Chairman to Kevin Brennan MP

Thank you for your letter of 13 July. This dossier has now been transferred to Sub-Committee B and was considered by them on 2 November.

We are grateful for the information on the latest developments following publication of the Commission’s White Paper, from which we surmise that the Commission is likely to publish draft legislation in the near future. Noting that the Government’s relevant consultations have either been postponed or are concluded, we should like to know the Government’s view of the various proposals made by the Commission which you expect to form the basis of the draft legislation. In particular, do you agree with the Committee’s concerns as to the proposal for codification of the rules on damages?

Looking at the matter more broadly, do you consider that the EC has competence to enact all the proposals in the White paper and, if so, what would be the appropriate legal bases for legislating? To
which of the proposals do the business organisations have concerns about Subsidiarity and do their concerns have merit?

Finally, you mentioned the position taken informally by the CBI and German business organisations. Do you know what views are taken by organisations representing consumers?

3 November 2009

AVIATION: SECURITY: CARRIAGE OF LIQUIDS IN HAND LUGGAGE

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

Following Transport Council on the 9 October, the Minister of State for Transport laid a Written Statement in both Houses providing details of the discussions, which included an AOB item on liquids. I also made a reference to the liquids work in the recent Explanatory Memorandum 13712/09 that I submitted to you on 29 October on the Fourth Report on the implementation of Regulation (EC) No 2320/2002 establishing common rules in the field of civil aviation security. We said we would write separately to your Committee to update you further on this subject.

The current EC restrictions on the carriage of liquids in hand luggage (presently EC Regulation 820/20081) were adopted in 20062 after the ‘OVERT’ liquids plot was disrupted in the UK. They are considered temporary arrangements pending the development of an effective technology-based screening solution which would allow passengers to carry liquids, aerosols and gels (LAGs) through search combs again in unlimited quantities.

Work on developing the technology began in 2006 and is being led by the EU, given Community competence in this area. Nevertheless the UK has a significant involvement in this, particularly on technical issues where we chair the European Civil Aviation Conference (ECAC) technical task force liquid explosives study group. In order to help guide the work, the European Commission has developed a “liquids road map” which had originally envisaged removal of all restrictions in Europe by April 2010 at the latest, since this is the date on which the present EC regulation restricting the carriage of LAGs expires.

Whilst the prospects are good that some liquid screening technology will be available in the not too distant future, the April 2010 deadline for deployment at all EU airports will not be met. This means that - given the very real threat to aviation posed by liquid explosives – the Commission will need to ask the European Parliament (EP) to extend the restrictions on liquids until such time as technology providing robust detection performance and a better passenger experience is ready for deployment.

As the Department’s Statement post-Transport Council said, at the Council meeting the Transport Commissioner spoke on the possible way to proceed in April 2010, when the current restrictions are due to expire. He gave details of his three step transitional proposal. This involves alleviations for 3 country transfer passengers carrying duty free liquids, potentially from next April, and introduction of technological checks by 2012 in large airports and by 2014 for smaller airports. This was the first opportunity for EU Transport Ministers to collectively consider the Commissioner’s proposal.

My Ministerial colleague Sadiq Khan MP was one of many Ministers strongly supporting an extension of the existing liquids restrictions after April 2010. We are keen to move from the current restriction-based system to one using new screening technologies but only when we are convinced that these can meet the challenge of providing robust security for passengers, whilst also striving to improve their air travel experience. We do not consider that April 2010 is a realistic target for the introduction of technology to screen transfer duty free liquids as suitable equipment will not be available by then.

The TRAN Committee of the European Parliament is expected to have an initial exchange of views on liquids with the Commission on 10 November as the Commission proposal to extend the liquids restrictions will be subject to the regulatory procedure with scrutiny, which gives the European Parliament the right of veto. There is also an International Civil Aviation Organization (ICAO) working group on liquids in Brussels on 16 and 17 November. Separately, Member State aviation security experts are due to consider the detail of the Commission proposal (which is not yet available in a formally published document), at the European aviation security regulatory committee meeting in Brussels on 18 and 19 November. This meeting will be preceded by an aviation industry stakeholder meeting chaired by the Commission.

1 Draft Commission Regulation scrutinised by your Committee on the basis of unnumbered EM dated 28 June 2007
2 Draft Commission regulation scrutinised by your Committee on the basis of unnumbered EM dated 25 September 2006
We will be continuing to consider the UK’s position in relation to the roadmap proposals during November and we are actively engaged with the Commission, the European Parliament, manufacturers and the aviation industry to find a solution which protects the travelling public but also provides a better passenger experience.

Given all these discussions and negotiations, it is likely that there will be continued media interest in the carriage of liquids in hand luggage over coming weeks. I therefore wanted to be sure that I wrote at this stage to update you on the issue, as I know it is a matter which will be of interest to your Committee.

4 November 2009

AVIATION: SECURITY CHARGES (9864/09)

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

Thank you for your Explanatory Memorandum dated 17 June. Sub-Committee B considered it on 6 July and agreed to hold the document under scrutiny.

The Committee welcomes the Proposal on the basis that is a positive step towards a better control of the level of security costs, which is essential to ensure fair competition between airlines and airports. The Proposal seems to be in line with the principles underpinning the Single Market.

The Committee recognises the significance and the sensitive nature of the Proposal. The Government have expressed a series of concerns with the Proposal and are still considering whether the Proposal is justified in terms of the principle of subsidiarity.

According to the Committee’s Legal Adviser, the scope of the proposed Directive (with no provision to exclude small airports) appears to be the most significant point in terms of a potential breach of the principle of subsidiarity. It could be argued that this provision goes beyond what could be best achieved by Community action.

On the other hand, according to the Commission’s impact assessment, regional and small airports are expected to benefit from the introduction of mandatory transparency of security costs more than other airlines. So this point seems to justify the fact that small airports are included in the scope of the Directive.

We look forward therefore to hear from the Government an update on their thinking on subsidiarity issues.

The Government are also concerned that the Directive might restrict the ability of Member States to impose MSM for aviation security when needed by requiring an impact assessment to be completed first. We would like to receive clarification on whether the interpretation of this provision is correct as we understand that you are seeking clarification from the Commission on a number of aspects of the Proposal. In principle this provision could lead to a reduction in the number of more stringent measures, pointing towards a more harmonised security regime across Europe. It is our view that by limiting the charges for aviation security this proposal will limit the security measures airports will be able to afford. We believe that this would be harmful and that each airport needs to have the flexibility to respond to its own security needs.

The Committee would be glad to know the Minister’s view on Option 4 proposed in the Commission impact assessment, proposing that Member States should fully finance airport security through an amendment to the framework Regulation on aviation security.

Finally, we look forward to receiving the results of the Government’s consultation and further detail on the financial implications for the UK. We understand that this dossier is due for agreement in Council on 8–9 October. We would be grateful, therefore, if you could write to us during September with an update.

7 July 2009
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 European Commission's proposal to temporarily suspend the ‘Use It or Lose It’ (UIOLI) rule under the EC Slot Allocation Regulations, further to my recent Explanatory Memorandum which is awaiting consideration by Sub-Committee B.

As noted in the Explanatory Memorandum, the proposal was discussed under ‘Any Other Business’ at the Transport Council on 30 March 2009. At the Council, the Secretary of State stressed that the proposal should be restricted to the summer season, and an extension should be considered only with an accompanying impact assessment looking at consumer/competition implications. He also pressed for a wider review of the slot allocation regulations to be undertaken by the Commission in 2010, to include an examination of how environmental considerations could be taken into account more fully. The Commission agreed to the UK request and underlined the temporary nature of the proposed suspension.

Due to the urgency of proposals, the European Parliament decided to apply the accelerated procedure to this file. Proceedings are accordingly well advanced; on 22 April the Transport Committee voted in support of a suspension of the UIOLI rule for the summer 2009 scheduling period subject to an amendment, which allows the Commission to present an extension of these arrangements to the winter 2009/10 period only if accompanied by an impact assessment and a proposal for a general revision of the Regulation. This position was reached after the Parliament made clear their reservations on the merits of suspending the UIOLI rule without a general revision of the EC Slot Allocation Regulation.

The plenary vote will take place during the 4-7 May session. The Government’s view is that the proposal as amended is not ideal as it makes a suspension of the winter 2009/10 scheduling period extremely difficult by linking it so directly to the timing of a general review of the Regulation. However the proposal remains acceptable to UK interests and the Secretary of State intends to support it along these lines at Council. The great majority of other Member States are also expected to support the amended proposal, and the Czech Presidency hopes that agreement will be possible by the Transport Council on 11-12 June.

8 May 2009

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

Thank you for your Explanatory Memorandum dated 30 March and your subsequent letter. Sub-Committee B considered the documents on 11 May and agreed to clear the proposal from scrutiny.

The Committee understands that the proposal was developed over a short period of time and now is going through an accelerated procedure which might lead to a quick agreement with the Council. We would be glad to know whether the Government is planning to produce a full impact assessment of the proposal. We would also like to receive further details about why a full revision of the slot allocations Regulation is necessary.

We look forward to receiving an update on the results of the decision making process.

13 May 2009

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

Thank you for your letter of 13 May detailing the decision of Sub-Committee B to clear from scrutiny the European Commission’s proposal to temporarily suspend the ‘Use It or Lose It’ (UIOLI) rule under the EC Slot Allocation Regulation.

To update you on the latest progress on this issue, on 7 May the Plenary of the European Parliament supported the position taken by the Transport Committee and outlined in my earlier letter, and voted overwhelmingly in favour of the Commission’s proposal, which is expected to be formally adopted at Council shortly. Slot coordinators are now putting in place the detailed rules setting out how the suspension of the UIOLI rule for the summer 2009 scheduling season will work.

You asked whether we are planning to produce a full impact assessment of this proposal. Given that the suspension of the UIOLI rule was so speedily proposed and agreed for the summer 2009 season, it was not felt that there would be much benefit in the Government carrying out an impact
assessment of the current suspension. The proposal allows that, should the economic situation of airlines continue to deteriorate, the Commission may propose to renew the arrangements for the winter 2009/2010 season. Such a proposal would have to be preceded by a full impact assessment analysing the possible effects on competition and consumers. In such circumstances, the UK Government would carry out its own assessment of the impact of the proposal upon British interests.

The Committee also asked for further details about why a full revision of the slot allocation Regulations is necessary. Such a review is considered necessary to take account of current aviation policy priorities and address certain areas of weakness in the regulation. As mentioned in my letter of 8 May, Commissioner Tajani agreed at the Transport Council on 30 March to the Secretary of State’s suggestion that the slot allocation Regulation should be reviewed. The Secretary of State has recently written to Commissioner Tajani setting out a number of issues that the review should consider. These include the allocation of significant numbers of new capacity slots; how competition and efficiency might be increased; transparency and fairness in the operation of the regulation; and how environmental factors might be given more prominence in the allocation of slots.

25 June 2009

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AVIATION: TRANSPORT COUNCIL

Letter from Paul Clark 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 agreed to grant a mandate to the European Commission to negotiate a Memorandum of Cooperation (MoC) in Civil Aviation Research and Development with the US Federal Aviation Administration (FAA).

This follows direction from the Council in its Resolution on “Endorsement of the European Air Traffic Management Master Plan” which was agreed at the Transport Council on 30 March. The Master Plan is the product of the Definition Phase of SESAR, the technological project to modernise the European air traffic management (ATM) system which is an essential component of the European Commission’s Single European Sky initiative.

The mandate is aimed initially at cooperation on SESAR and the FAA’s ATM equivalent, NextGen, particularly in terms of achieving interoperability between the two systems both of which involve significant technological programmes affecting airlines operating globally. However, it envisages the expansion of the scope of the MoC to include other Civil Aviation R&D related issues in order to pursue common objectives such as the reduction of the environmental impact of civil aviation.

The Commission will be assisted in the negotiations by a Special Committee of representatives from the Member States. Once concluded, the MoC will replace the existing Memorandum of Understanding between the Commission and the FAA signed on 18 July 2006 and updated on 17 March 2009.

23 October 2009

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BETTER REGULATION: REDUCING ADMINISTRATIVE BURDENS (15019/09)

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

Thank you very much for your Explanatory Memorandum. Sub-Committee B considered it at its meeting on 23 November and decided to clear this document from scrutiny. The Sub-Committee might pursue matters arising from this document when you appear before the Committee to give evidence on its inquiry on Better Regulation.

24 November 2009
Letter from the Chairman to Lord McKenzie of Luton, Parliamentary Under Secretary of State, Department for Work and Pensions

Thank you for your explanatory memorandum dated 3 July 2009. Sub-Committee B considered it on 12 October and agreed to hold it under scrutiny.

We share your general support for the Regulation, but would be interested to know in more detail why you feel that the inclusion of treated materials in its scope would be disproportionately costly to UK businesses.

We note that your initial Impact Assessment was prepared prior to consultation, and by relying of figures extrapolated from the IA prepared by the European Commission. We would be very grateful to receive the full UK IA when it is ready. The Sub-Committee takes a strong interest in the production of Impact Assessments, and you may be aware that Sub-Committee B is currently undertaking an Inquiry into Better Regulation. With this in mind, the Sub-Committee would appreciate the opportunity to discuss the progress of the IA with you or the Minister concerned at a public evidence session.

Finally, you mention that negotiations have been in progress since July. We would be grateful for an update on the progress of those negotiations, and particularly for a clearer explanation of how the Government is seeking to achieve a more “streamlined” regulatory system.

13 October 2009

Letter from Lord McKenzie of Luton to the Chairman

Thank you for your letter of 13 October inviting me to discuss the progress of the UK Impact Assessment (IA) relating to the proposal for a European Regulation on biocides at a public evidence session of Sub Committee B.

I will take this opportunity to respond briefly to the points you raise in your letter, although I will of course be happy to discuss any issues at the public evidence session.

Firstly, you refer to a point made in the explanatory memorandum that the inclusion of treated materials in the scope of the new Regulation would be disproportionately costly to UK businesses. The key issue is that the proposed Regulation would bring into scope all materials treated with biocides, that are not themselves biocidal products and impose significant labelling requirements. Although simple in concept the potential scope of this new duty is huge, as the definitions of terms such as ‘article’ and ‘placing on the market’ are very wide. Most clothes are treated with biocides as well as furniture, carpets, plastics, paper, wood and numerous other items. Even the embalmed deceased could be considered to be in scope.

There is further uncertainty on how the proposal would apply to an article made up of many parts, each of which has been treated with biocides. For example, a simple chair made of wood, the textile and filling may have biocides in each component.

Of course we understand why the Commission has brought forward this proposed extension of scope. EU industry has expressed concern that there is presently no restriction on the biocides present in treated articles and materials that have been imported, whilst there are restrictions on the biocides that can be used for treating materials and articles in Europe. The question is whether there are more proportionate approaches that could be used, or even whether resolving other recognised problems in the working of the biocides regime should be given greater priority at this time.

Secondly, you mention that the initial UK IA was prepared prior to consultation, based on the IA prepared by the European Commission. The IA was prepared prior to public consultation so it could be presented as part of the Consultation Document in order to promote discussion and gather further information from industry. The consultation exercise closed on 5 October and, despite a good response overall, early analysis suggests that little hard data has been provided that might help inform the final IA. I understand the Health and Safety Executive is now looking to other ways of gathering data, and I look forward to providing you with progress on this at the public evidence session.

Turning finally to your interest in the progress of negotiations, again I will be happy to expand when we meet, but I am pleased to report that under the Swedish Presidency five meetings have so far been held. First discussions have taken place on several key points in the proposal, concentrating on getting a clearer understanding of the issues and Member States’ early thoughts. A further two meetings will be held before the end of the year and a policy debate will take place in the Environmental Council on 22 December. However, negotiations are at an early stage.
As you mention, the Government will be using the opportunities presented by the development of this new Regulation to encourage a more streamlined regime. The current system for regulating biocides under the Biocidal Products Directive (BPD), 98/8/EC, has run into significant problems resulting in very slow progress in the review of active substances and authorisation of products. Many have welcomed this revision and the chance to improve the system.

Further analysis of consultation responses and discussion with the industry will assist the Government in identifying opportunities for improvement. One proposal is the option for authorisation of biocidal products at Community level rather than in each Member State. We and UK industry support this idea, but few products would be eligible under the proposal as it presently stands. We have suggested broadening the range of eligible products, but so far other Member States are reluctant.

I look forward to the opportunity to expand on these points at the public evidence session.

13 November 2009

BIS: EU BUSINESS DURING SUMMER RECESS

Letter from Lord Davies of Abersoch, Minister of State, Business, Innovation and Skills

July sees the start of the Swedish Presidency of the European Council, and I would like to take this opportunity to set out what we anticipate to be their priority areas. Some of these will of course progress throughout summer recess and I thought you would welcome an update now to cover the period that your Committee will not be sitting.

SWEDISH PRESIDENCY

The Swedish Presidency will take forward discussions on the future of the Lisbon Strategy for jobs and growth after 2010. Within this BIS interest will lie in:

— Promoting external and internal openness, sound competition and a well-functioning single market
— Making full use of the labour supply potential and fulfilling the target of full employment, while strengthening social cohesion
— Promoting investment in human capital and research
— Helping businesses become more eco-efficient and improving the innovation and business climate.

In addition, the Presidency is looking to make swift progress on the better regulation agenda focusing on effective use of Impact Assessments in policy development and decision making and the delivery of administrative burdens reduction proposals. This will be an opportunity to shape the direction of better regulation at the European level.

The Presidency is also aiming to take forward work on the European Research Area (ERA) and focus on actions to strengthen the “knowledge triangle” (the inter-relationship between higher education, research and innovation), arguing that higher and more efficient investment in education is crucial in response to the economic downturn, and to ensure that education can fulfil its role as a key driver of a knowledge-based society.

SUMMER RECESS

There are several specific proposals that may progress during the summer period. They are:

— Late Payment Directive (8969/09) – Member States are still formulating their national positions, but it is clear that the main points of debate in Council are:
  ▪ the new 30 day limit (mandatory for Government to business, and default for business to business if no other contract exists);
  ▪ the 1% ‘compensation and recovery’ fee; and
  ▪ the 5% public authority ‘compensation’ fee

The Swedish Presidency will hold a series of Working Group meetings over the autumn, and their intention is to try to achieve a First reading deal between Council and European Parliament by the
end of December 2009. I understand a response to the Committee's outstanding query will follow shortly.

— **Pregnant Workers Directive (13983/08)** – In May the European Parliament referred back the report of the Gender Equality Committee for further consideration. The PWD continues to be a priority for the Swedish presidency it is likely they will look for a signal of the direction of the European Parliament before taking further steps.

— **Copyright Term Directive (12217/08)** – The European Parliament voted in favour of:
  - extending copyright term for performers and sound recordings from the current 50 years to 70 years
  - permanent benefits for performers

Although the text agreed by the European Parliament meets the UK’s key objectives, a blocking minority currently exists in Council. The issue may need to be progressed under the Swedish Presidency if this blocking minority dissolves. Scrutiny clearance is outstanding, pending the completion of an impact assessment.

— **Consumer Rights Directive (14183/08)** – Then Presidency see this as their major achievement during their term and are aiming for a ‘general approach’ at the December Competitiveness Council. However, there is disagreement over large parts of the Directive which potentially may delay agreement until the end of 2010. The Swedes will hold a series of Working Group meetings over the summer and autumn and the Directive will be debated at the September Competitiveness Council.

In addition, the Commission is proposing to publish a communication on issues around enforcement of consumer rules and also revisit the current consultation on consumer collective redress during the autumn.

You should also be aware that there is one formal Competitiveness Council (24-25 September) and one Informal Competitiveness Council (14-16 October) during recess. Likely topics for discussion are single market enforcement, economic recovery plan, innovation, Services Directive Implementation, Lisbon post-2010, eco-efficiency (the Swedish equivalent of what we often term “low-carbon”, female entrepreneurship and possibly SME policy. The Department will provide Pre and Post Council statements in the usual way.

**AUTUMN: LOOKING AHEAD**

Subsequently the Presidency is keen to take forward the following policy areas:

— **Electronic Communications (Telecoms) Regulatory Framework (6622/09)** – The Framework Review is entering conciliation, as the Council have indicated they will not accept the Second reading under the Czech Presidency due to a European Parliament amendment on fundamental rights of Internet users which contravenes the United Kingdom’s position in terms in which references the Charter of Fundamental Rights are made. The Presidency is hoping to approve a revised regulatory framework in the autumn, and is concentrating solely on achieving a revised amendment whilst making it clear that they will resist revisiting other elements of the package. The UK agrees with the Presidency’s approach and believes that by continuing to work together with other Member States, including France and Germany whom also have difficulties with the current wording of this amendment, a compromise will be agreed.

— In addition, the Presidency will lead work on the design of Europe’s new ICT strategy, the successor to i2010, to ensure that Europe harnesses the true potential of the electronic communications sector which underpins our knowledge based economies and should play a central role in the renewed Lisbon Agenda. HMG’s Digital Britain report, published last month, sets out the UK’s perspective on the digital economy and echoes the view that Europe’s digital economy has tremendous potential for supporting growth – the roll out and development of high speed broadband internet alone could create around an estimated one million jobs in Europe, and spur
related growth in economic activity of around €850 billion. In addition the Swedish Presidency is proposing either Council Conclusions or a Resolution on Critical Information Infrastructure Protection and possible Council Conclusions on Internet Governance and the Digital Dividend. Depending upon the timing of a forthcoming Commission, the Swedish Presidency may also progress a review of the existing e-Commerce Directive and discussions upon the Commission’s future Broadband Strategy.

— **Parental Leave Directive** – On 18 June, the European Social Partners signed a revision of their Framework Agreement on parental leave. The original agreement of 1995 is the basis of the European Directive 96/34/EC on parental leave. We would expect the Commission will shortly put forward a proposal for an amending directive to implement the revised Framework Agreement which will be taken forward alongside the Pregnant Workers Directive.

The 1996 Parental Leave Directive has been implemented in the UK to provide working parents with 13 weeks’ parental leave for children up to the age of 5. The revised framework agreement increases the duration of parental leave from three to four months per parent and applies to all employees regardless of their type of contract.

— **Intellectual property/Innovation** – Patents will be a main priority under the Swedish Presidency and is looking to gain political agreement on proposals for a Community Patent Regulation and a European patent court at the December Competitiveness Council. The UK supports Sweden with a view to promoting innovation and reducing costs for business in order to boost the UK industry.

In addition, the Commission is due to publish its package on innovation, this will be used to develop the European Innovation Plan which was called for by the European Council last December. There is uncertainty at this stage on whether this will be discussed at the September Competitiveness Council. A communication is also expected on Google Books in September. This will look at potential problems of copyright infringement identified by Member States and how these can be reconciled with the opportunities provided by projects such as Google Books in a digital age.

— **Electrical and Electronic Equipment** – Commission proposals for recasts of the Waste Electrical and Electronic Equipment (WEEE) and the Restriction of Hazardous Substances (RoHS) Directives were published in December 2008 and the Swedish Presidency is looking for a first reading conclusion to the negotiations or political understanding in the December Environment Council.

The UK has serious reservations about some aspects of the WEEE proposals – less so on RoHS – and is currently seeking scrutiny clearance for its negotiating position.

8 July 2009

**COMPETITION: MERGERS (11286/1/09)**

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

Thank you for your Explanatory Memorandum of 16 July. This was considered by Sub-Committee B at its meeting of 2 November. We decided to clear this Communication from scrutiny.

In doing so we noted the general consensus that the present rules allocating jurisdiction for the review of mergers between the Commission and national competition authorities was, overall, working satisfactorily and that the Commission did not appear in any hurry to bring forward any proposal for amending regulation 139/2004. We do, however, support simplification of the pre-and post-notification referral mechanisms and an adjustment of the monetary thresholds in line with inflation.
ECALL (13233/09)

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

Thank you for your Explanatory Memorandum of 12 October. It was considered by Sub-Committee B who decided to hold it under scrutiny.

The Committee shares your concern with road safety, and believes that systems such as eCall can play a vital role in protecting Europe’s citizens. We would, however, be interested to know the Government’s assessment of how eCall would compare, or could co-exist, with other systems of road monitoring, such as that currently employed in Portugal.

We accept that you are unwilling to commit the Government to the project until a proper Impact Assessment can be conducted. However, we would be interested to know what steps the Government are taking to ensure technical specifications are agreed, in order to enable an IA to be conducted.

We note with interest the results of the 2006 analysis that the system would impose an overall cost outweighing any benefits. Given the speed with which technology develops, is it not likely that this analysis is now out of date? We also note that later in the EM you refer to a cost-benefit analysis as being “inconclusive”. Is this the same analysis, and if so, how do you explain the discrepancy?

We would be very interested to see the results of the Commission review of UK implementation when they are available, and would expect to be provided with the IA when the Government are in a position to produce it.

27 October 2009

ENABLING TECHNOLOGIES IN THE EU (13000/09)

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

Thank you for your Explanatory Memorandum of 21 October. It was considered by Sub-Committee B who decided to clear it from scrutiny.

We support the development of Key Enabling Technologies in Europe and are glad that the Government share this view.

We do, however, have one question in regard to the composition of the “high-level” group to consider strategy: your EM says it will comprise “Member States, industrial and academic experts” whereas the Communication itself says “Member States’ industrial and academic experts”. Whom do you envisage being part of this group, and what role do you see for the UK Government on it?

3 November 2009

Letter from the Rt Hon Lord Drayson to the Chairman

Thank you for your letter of 3 November clearing this Explanatory Memorandum but seeking clarification on the composition of the “high level” group.

The statement in the Explanatory Memorandum that membership of the “high level” group will comprise “Member States, industrial and academic experts” reflects our informal discussions with Commission services on progressing the proposed EU strategy to encourage the deployment of Key Enabling Technologies. These discussions have indicated that the group is likely to also include officials from a few Member States although, as you correctly point out, the Communication refers to only industrial and academic experts.

Membership of this group is a matter for the European Commission, and decision may await a new Commissioner for Enterprise and Industry. I believe that a senior official from the Technology Strategy Board could play a valuable role in the development of an EU strategy for Key Enabling Technologies, sharing the UK’s experiences promoting technology-enabled innovation across the UK and helping identify issues best addressed at the European level. The Department will ensure your Committee is sent details of the Group’s membership in due course.
ENERGY AND ENVIRONMENT INFORMAL COUNCILS

Letter from the Rt Hon Ed Miliband MP, Secretary of State, Department of Energy and Climate Change, to the Chairman

I am writing to inform the Committee about the discussions at the EU Energy and Environment Informal Councils in Sweden last week, where I represented the UK along with Dan Norris, Parliamentary Under Secretary of State for Rural Affairs and Environment. UK officials also represented the UK in parts of the Council.

The Informal Energy Council agreed a timetable and methodology for agreeing the venue of the Agency for Cooperation of Energy Regulators.

The Commission presented its proposals for a Regulation on security of gas supply. The Council agreed that as much progress as possible should be made on the Regulation during the Swedish Presidency.

There was a wide-ranging discussion on energy efficiency, including presentations from the International Energy Agency and the European Investment Bank. Ideas raised will contribute to the development of an Energy Efficiency Action Plan, for which the Commission expects to publish proposals later this year.

The Council held a discussion on the draft revised Directive on the energy performance of buildings in the light of the European Parliament's proposed amendments, with the aim of reaching agreement if possible on the dossier during the Swedish Presidency.

The Council discussed the need for the EU to move to a competitive low carbon economy; the real opportunities that this provided and the links with the global Climate Change negotiations. Ministers supported the idea of incorporating this as a central element of the Lisbon agenda post-2010.

The Council discussions on international climate change focussed on EU processes, the conditions necessary for the EU to move from a 20% to 30% emissions reduction target and climate financing.

30 July 2009

ENERGY: EMERGENCY OIL STOCKS (15910/08)

From Mike O'Brien MP, Minister of State, Department of Energy and Climate Change, to the Chairman

I am writing to advise your Committee that the Council Directive imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products will now be discussed at the Energy Council on 12 June with a view to securing political agreement. The Czech EU Presidency has made agreement on this directive a priority and progressed this much faster than we had anticipated. Notably, however, following extensive discussion within the Energy Working Group, the early draft text has been significantly revised in line with UK concerns.

After considering the Explanatory Memorandum on the oil stocking documents for debate, your Committee agreed to hold the proposal under scrutiny. I have set below the progress that has been made in addressing the UK’s main concerns.

COMPULSORY CENTRAL STOCKING ENTITY AND ITS IMPACT ON PUBLIC FINANCES

While the Commission remain keen for Member States to adopt central stocking entities (CSEs), any mandate for their compulsion has been removed from the draft directive. This has been a key UK negotiation objective and allows the UK to retain the flexibility to design and operate an emergency stocking regime best suited to our national conditions.

POTENTIAL OBLIGATION TO HOLD SPECIFIC STOCKS

The greater restrictions on holding specific stocks inherent in the earlier draft Directive have meant that no Member State has yet volunteered to hold them. As a result, a new requirement has now been introduced for Members States not having specific stocks to hold a third of their emergency
stocks in the form of petroleum products. This is compatible with the UK’s industry based system where we typically hold half of our obligation in products (with the rest held as crude oil).

**COMMISSION OVERSIGHT OF MEMBER STATES’ IMPLEMENTATION**

At the moment, it appears that the extent of the Commission’s power to oversee how Member States implement their stocking obligations will be the main issue on the draft Directive for discussion at the Energy Council. It has already been generally accepted that Member States should be able to decide how they fulfil their stocking obligations with the Commission having an audit function to ensure that Member States have appropriate policies and procedures in place to comply with those stocking obligations. Much of what is proposed in the Commission’s procedures for authorising the release of emergency stocks is sensible and proportionate, and our expectation is that the ability of Member States to draw on oil stocks for domestic crises will remain as it is in the existing Directive.

There is a concern that the text could have the potential to extend the EC’s external competence with regard to international matters. On a practical basis, the UK is a member of the International Energy Agency (IEA) which takes decisions by consensus and we are therefore able to protect our own position in the IEA, but we do not want to set a precedent elsewhere and are working with others to address this.

I would be happy to discuss with you how best to take forward this issue in the context of the work of your Committee and whether there is scope to clear this in correspondence.

28 May 2009

**ENERGY: ENERGY INFRASTRUCTURE INVESTMENT PROJECTS (12235/09)**

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

Thank you for your Explanatory Memorandum 12235/09 concerning a proposal to notify to the Commission of investment projects in energy infrastructure.

We hope that this proposal will help to anticipate the potential risk of infrastructure gaps and threats to a secure energy supply of the EU with very little additional burden for the UK. However, we would be grateful for some clarification as to the minimum threshold for the requirement to inform the Commission.

Whilst you also seem to adopt a favourable attitude towards this proposal it is not clear what the UK position will be in the negotiation. Also, we would appreciate further clarification on why you believe an impact assessment is not necessary as your view on the impact of the proposal seems blurred.

We are content to release the proposal from scrutiny but we will wait to hear further detail on progress of negotiation.

20 October 2009

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

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

Thank you for your Explanatory Memorandum of 16 July 2009 which was considered by Sub-Committee B on 12 October. They decided to hold the document under scrutiny.

We agree with you that there is some doubt over the competence of the Community in this area, and that the Commission has yet to make a compelling case for its need to join in its own right. With this in mind, we find your statement that “it is consistent with the principle of subsidiarity for the Community to become a member” slightly surprising.

The difficulty is exacerbated by the unsatisfactory lack of precision in the draft Declaration of Competence. This points to competence in respect of the entire Statute being shared. This would be inconsistent with the recognition in the Code of Conduct that some matters fall within the exclusive competence of the Member States.
ENERGY: LABELLING OF ENERGY RELATED PRODUCTS (15906/1/08)

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

Sub-Committee B considered this item on 26 January and agreed to hold it under scrutiny. We wrote to your predecessor on 27 January 2009 asking to be kept up to date with how this issue is dealt with in negotiations. We also asked that, once this proposal has been agreed, you submit to the Committee details of any Impact Assessments drawn up as a consequence of proposed implementing measures.

We would be grateful for an update on this Proposal.

7 July 2009

Letter from Dan Norris MP to the Chairman

The European Parliament (EP) completed its first reading of the recast of the Energy Labelling Framework Directive on 7 May 2009. The Commission have since circulated a position paper setting out those EP amendments that they are content to accept. The UK’s position remains close to the preliminary view set out in the Explanatory Memorandum. I enclose a copy of the UK non paper, submitted to the Swedish Presidency and setting out our position as agreed by NSID(EU).

The European Parliament amendments were largely clarifications to the text, adding further detail. It accepted the broad substance of the Commission’s proposal including the new provisions that would enable the possibility to set minimum energy classes below which Member States could: a) not provide incentives, and b) not procure for public bodies. The UK firmly opposes the provision on incentives, in line with Government policy, as we oppose the inclusion of tax measures (incentives) in non-tax legislation agreed by Qualified Majority Voting (QMV) and also oppose the use of comitology for such provisions. We are still considering the provision on public procurement.

The most significant EP amendment is a reference to keeping the closed A to G label. The Commission have broadly accepted this but moderated the language to, “retain as a basis the main elements of the current label (A-G classification).” This is helpful to the UK: we continue to firmly support a regularly and pre-agreed revalorised A to G label, as being the best outcome for consumers, and it is important to ensure consistency in approach and appearance – and to this end we could support setting out the general principles for the label layout in the Directive. However, we also believe that a range of labels and product information will be needed. For example, in other situations where more detailed or complex information is required where, for example, the provision of information via a public searchable database may be more appropriate. Thus decisions on the most appropriate approach will need to be taken on a product by product basis as we review existing labels and expand into new product areas.

Other EP amendments taken up by the Commission include a reference to including the energy class in any technical promotional literature, and strengthening protection against unauthorised use of the label. These are both proposals the UK Government supports as they will improve the standing of the label.

The Commission have rejected the European Parliament’s amendment for a feasibility study into labelling of whole life-cycle impacts. As agreed in the UK’s preliminary position paper submitted to the Commission consultation, the Government believes that the EU Energy Label should continue to focus on the energy used by products during their “in use” phase rather than throughout their whole life cycle. We consider that actions already being proposed via measures such as the Eco-design for Energy Using Products Framework Directive (EuP) and a revised EU Eco-labelling Scheme are more appropriate for dealing with wider energy life cycle issues.

As requested, I will ask my officials to ensure that impact assessments on each of the implementing measures are submitted to you for scrutiny.

22 July 2009

ANNEX

3 Correspondence with Ministers, December 2008 to April 2009
The UK welcomes the recast of the Energy Labelling Framework Directive (ELD) and supports the extended scope of the Framework from household appliances to cover a much wider range of energy-related products in line with the recently revised Eco-design for the Energy Using Products Framework Directive (EuP). We also welcome the measures included to capture distance selling, for example internet and catalogue sales.

We stress the importance of ensuring an appropriate balance between costs and benefits, and to this end the continuing safeguard of an extensive evidence collection and consultation process with all stakeholders to inform and direct the development of implementing measures under this framework where such intervention is justified.

The introduction of dynamic labelling should be a first order priority for the recast. In order to be effective, any scheme must be capable of being regularly updated in order to stimulate innovation and to avoid the current problem where stagnation of the standards means that for long periods of time the large majority of products are in the 'best' category. Without such a revision the ability of labelling schemes to provide meaningful information to consumers and supply chains will be seriously undermined. The introduction of automatic future uplift of the criteria for the label categories that cover a long period of time (e.g. 10 years) in each implementing measures is important if we are to ensure that we effectively communicate to industry our policy ambitions to raise standards and thus to stimulate their timely response. We should also signal clearly that we intend to establish the most energy efficient class at levels equivalent to best international performance levels.

The UK continues to believe that the best outcome for consumers, retailers and manufacturers of energy efficient appliances would be to establish ambitious and dynamic minimum standards and a regularly and pre-agreed revalorised A to G label that reflects the range of performance of current and future products on the EU market. This will ensure that consumers are able to easily identify the most energy efficient appliances available. It is important to ensure consistency in approach and appearance – and to this end we could support setting out the general principles for the label layout in the Directive.

The UK would in principle support a restriction on the use of the A to G labels in ways that might undermine its credibility, e.g. leg room on aircraft, provided potentially beneficial schemes for use of the label that were not EU-wide could be considered within (yet to be) agreed broad principles.

In all cases, the utmost care should be taken to ensure the enforceability of implementing measures and we welcome the proposal for strengthened enforcement and the inclusion of co-operation and exchange of information between Member States. It is good that proposed provisions on market surveillance are consistent with those agreed under the Eco-design Directive. In addition, the possibility to implement the framework through regulations or decisions is welcomed and will ensure increased consistency across the single market.

We cannot accept the provision on fiscal incentives. The proposal is too prescriptive and not consistent with the principle of subsidiarity. Moreover, the UK opposes the inclusion of tax measures (incentives) in non-tax legislation agreed by Qualified Majority Voting (QMV) and also oppose the use of comitology for such provisions.

While we agree that public procurement has an important role to play in moving markets in the right direction through creating a demand for environmentally friendly goods or services, and providing incentives for companies to develop new technologies, we need to consider further whether the proposed provision is realistic and achievable, both in terms of the proposed scope and threshold (currently all public bodies and €15,000 respectively) and whether such standards should be restricted to being criteria that are taken into consideration in purchasing decisions rather than being mandatory requirements.

**Letter from the Chairman to Dan Norris MP**

Thank you very much for your letter dated 22 July concerning a proposal for a Directive on energy labelling. Sub–Committee B considered it at its meeting on 20 October. We note that this letter was sent to us with considerable delay and we would appreciate a more proactive approach in the future.

We understand that negotiations in the Council have been slow and we would like to be kept informed of how they progress in the future. We are holding the proposal under scrutiny until further up-date is provided.

We look forward to seeing the impact assessments on this proposal, particularly as we are currently conducting an Inquiry into the Better Regulation agenda.
**Letter from Dan Norris MP to the Chairman**

Thank-you for your letter dated 20 October 2009. The European Parliament (EP) completed its first reading of the recast of the Energy Labelling Framework Directive on 7 May 2009, and trialogue discussions commenced in October. The next trialogue is expected to take place on 3 November. The Swedish Presidency are keen to reach a second reading deal before the end of the year, and although that is ambitious it currently looks achievable as most parties seem willing to compromise in order to reach agreement. I am happy to provide you with further information as necessary.

The UK’s position remains close to the preliminary view set out in the Explanatory Memorandum, and the text on the table looks broadly similar to when I provided you with my last update in July. There remain three areas of contention between the European Parliament and the Council. The first two of these are the two new provisions originally proposed by the Commission that would enable the possibility to set minimum energy classes below which Member States could: a) not provide incentives, and b) not procure for public bodies. The UK firmly opposes the provision on incentives, in line with Government policy, as we oppose the inclusion of tax measures (incentives) in non-tax legislation agreed by Qualified Majority Voting (QMV) and also oppose the use of comitology for such provisions. On public procurement, we are seeking for the commitments to be voluntary or at least for the scope to be reduced from the wider public sector to central government authorities only. The majority of Council support our views on this.

The final area on which Council and Parliament are still to reach agreement is on the layout of the label. The UK Government has continued to robustly defend the merits of the closed A-G scale with regular revalorisation but we recognise the need to reach a compromise as the current label is ‘broken’ (i.e. a large majority of products are in the highest classes) and an alternative is required. To this end, we are seeking a compromise that would be clear to consumers without additional burden to industry and that would include an element of (infrequent) revalorisation.

The impacts of the Directive will only be felt through Implementing Measures (daughter directives, regulations, or Voluntary Agreements) on specific products and the necessary impact assessments are therefore carried out on a product by product basis. As I said in my July letter, I will ask my officials to ensure that impact assessments on each of the implementing measures are submitted to you for scrutiny.

31 October 2009

**Letter from the Chairman to Dan Norris MP**

Thank you very much for your letter dated 31 October which was considered by Sub-Committee B on 23 November. We will clear the proposal from scrutiny as we understand that the Council is due to come to an agreement on 7 December. We would like to be informed of the result of the Council discussion, with specific reference to the compromise text on the specific points of divergence between the Parliament and the Council.

24 November 2009

**ENERGY: NUCLEAR SAFETY (16537/08)**

**Letter from Lord Hunt of Kings Heath, Minister of State, Deputy Leader of the House of Lords, Department of Energy and Climate Change to the Chairman**

I write in response to the Lords EU Select Committee’s request for further information on the above proposal for a Council Directive made in your letters of 20 January and 24 February 2009\(^4\) and further to my initial response of 4 February 2009.

In my letter of 4 February, I explained that the Czech Presidency had decided to consult Member States extensively on the structure and wording of the proposed Directive and I proposed to respond to the Committee’s request once the outcome of the Presidency’s consultation became clearer and a revised document was produced. The Presidency has now restructured and significantly amended the draft Directive and I enclose the version of the draft Directive that was issued by the Presidency on 26 May 2009\(^5\). This now addresses our earlier concerns.

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\(^4\) Correspoendence with Ministers, December 2008 to April 2009  
\(^5\) Correspondence with Ministers, December 2008 to April 2009
As the Committee will see, the proposed Directive is now structured so that there are Articles dealing respectively with objectives, scope, definitions, national legislative regulatory and organisational framework, competent regulatory authorities, licence holders, expertise in nuclear safety, transparency and reporting.

In your letter of 20 January you stated that the Committee would appreciate details on what the Government expect the policy implications of the proposal to be. You also asked for details of how this framework will differ from existing international agreements.

The Government now believes that the draft Directive, after extensive negotiations, is consistent with UK policy and legislation.

BACKGROUND

As the Committee will be aware, in 2003 and 2004 the Commission brought forward proposals for a Directive on the safety of nuclear installations6 (subject to EMs on Council Documents: 12386/04 and 8990/03). At that time, the Government was concerned that the proposals were very detailed and overly-prescriptive. In addition, doubts were expressed as to whether the proposals would add any value to the existing nuclear safety regime and it was considered that by imposing an addition layer of regulation, the proposals could even reduce the effectiveness of the regime.

Since the 2003 and 2004 proposals, it has become clear that there is no longer a blocking minority of Member States who would be prepared to oppose the adoption of a Directive in this field. In the circumstances, although the Government considers that nuclear safety is adequately dealt with by the existing national law and International Atomic Energy Agency (IAEA) framework, it has taken an active part in both the work of the High Level Group on nuclear safety (discussed below) and in negotiations on the current proposal in order to influence as much as possible the terms of the Directive.

In 2007 the High Level Group on nuclear safety was established7. The group, which is made up of the heads of the national regulatory bodies for nuclear safety, agreed ten principles with which any Euratom legislation in the field of nuclear safety should comply. These principles are set out in the attached annex.

The Government believes that the current proposal for a Directive (as amended by the Presidency) represents a significant improvement on the 2003/2004 proposals. It has taken into account the principles set out by the High Level Group and, in particular, it has the following features (which are discussed in more detail below):

- It seeks to set out a general framework and high level principles while leaving flexibility for Member States to decide how to achieve the requirements that are laid down;
- It seeks to build on and reinforce the role of national regulators;
- It seeks to build on and reinforce principles on the IAEA Convention on Nuclear Safety (the IAEA Convention)8 and the IAEA Safety Fundamentals9;
- It recognises the importance of transparency and expertise in this area.

On this basis the Government believes that the current proposal has the potential to add value to the existing regime for the regulation of nuclear safety. Nuclear safety has clear cross-border implications and the UK has a strong interest in ensuring there is a high level of safety in the nuclear installations of other Member States. In particular, it will impose enforceable obligations on Member States in relation to nuclear safety. By contrast, compliance with the principles laid down in the IAEA Convention and the Safety Fundamentals is essentially voluntary and based on peer pressure. Further, the proposal contains some provisions, for example on transparency and emphasising the need for the continuous improvement of safety and safety regulation that are not present in the Convention.

GENERAL FRAMEWORK AND FLEXIBILITY IN IMPLEMENTATION

In policy terms, the Government believes that any Community legislation in this area should give sufficient scope and flexibility to Member States to regulate in the manner that is most likely to secure effective safety regulation in the context of the legislative regime of each State. For example, it is

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7 Commission decision of 17 July 2007 (2007/530/Euratom)
8 Reproduced in IAEA Information Circular INFCIRC/649
desirable to allow for safety requirements to be imposed either through legislative provision or through a licence based system of regulation.

The Government is working closely with industry regulators at the Health and Safety Executive and with like minded Member States to ensure that this remains the case as the Directive moves through the drafting process. To this end, the Government has argued for the obligations in the Directive to be formulated in such a way that Member States retain as much discretion possible with regard to how they implement those obligations.

It should be noted that the current proposal does not contain the detailed and prescriptive requirements in relation to the availability of financial resources for the costs of decommissioning that were included in the Directive proposed in 2003. Nor does it contain the more general requirement in relation to financial resources included in both the 2003 and 2004 proposals that would have required Member States to take the appropriate steps to ensure that adequate financial resources are available from the regulatory body and the operators to support the safety of nuclear installations throughout their life.

At present, the requirements in relation to financial resources are more specific: Article 5(3) would require Member States to ensure that the competent regulatory authority has the financial resources necessary to fulfil its regulatory functions and Article 6(5) means that Member States would be required to ensure that the national legislative and regulatory framework in place requires licence holders to demonstrate adequate financial resources to fulfil the licence holder’s other obligations set out in Article 6.

**ROLE OF NATIONAL REGULATORS**

The Government considers it to be important that any Directive should enhance, rather than diminish, the role and effectiveness of national regulators in Member States. As noted above the current proposal is aimed at building and reinforcing the role and independence of national regulators. The Government supports this “bottom-up” approach which contrasts with the “top-down” approach taken in the 2003 and 2004 proposals. One of the UK’s objections to the 2003 and 4 proposals was that they contained a requirement for Euratom level safety verifications which the UK thought would detract from existing safety regulation as it would divert national experts from their existing duties. This requirement has not been included in the current proposal.

The 2003 draft Directive included a proposal for the Commission to carry out “verifications of safety authorities”. The Commission would have been able to call upon national experts to assist and Member States would have had three months from the date of a Commission report to remedy any shortcoming. The Government expressed concern that this would duplicate existing mechanisms and that, by diverting national experts to this Community level regulation, could undermine the existing regime.

This proposal for a system of Commission verification was not retained in the 2004 proposal. Instead, a proposal for a “Committee of Regulatory Authorities”, made up of representatives of national regulatory bodies, was included. One of the tasks of the Committee was to assess national reports on implementation of the Directive and on the safety of nuclear installations. It was required to give an opinion, possibly containing recommendations to the Member States concerned, on each of the national reports, on request of the Commission.

Neither the 2003 nor 2004 proposals for a specific Community layer of verification have been carried forward into the current proposal. Under Article 4(3), Member States will be required at least every ten years to carry out self assessments of their national legislative and regulatory framework and competent regulatory authorities. Within this time frame they will also be required to invite an international peer review of particular aspects of the national framework and/or regulatory authority. Recital (19) notes the open and co-operative nature of the assessment and peer review process.

Member States will be subject to the obligation in Article 9 to report on the implementation of the Directive, but there is no obligation to report on the safety of nuclear installations generally. It is intended that these reporting requirements should co-ordinate with the review and reporting cycles under the IAEA Convention.

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10 Article 11 and the Annex
11 Article 14
12 Article 12.
INTERNATIONAL ARRANGEMENTS

The Government believes it is important to ensure the Directive is consistent with existing national and international arrangements, in particular the IAEA Convention and the IAEA Safety Fundamentals, which we consider provide for an international regime that works well. In particular, the current proposal reflects Articles 7-9 and 11-13 of the IAEA Convention and aspects of Principle 8 of the Safety Fundamentals (see Article 6(3) of the current proposal). We have sought to argue that the language used in drafting the Directive should, where appropriate, closely reflect the language of the IAEA Convention and IAEA Safety Fundamentals.

Both the IAEA Convention and the Safety Fundamentals are broader in scope in some respects than the proposed Directive. In particular, one of the objectives of the proposed Directive is the protection of workers and the general public whereas the comparable objective of the IAEA Convention extends to the protection of the environment, as well as individuals and society. In addition, the proposed Directive does not reproduce the detailed provisions in the IAEA Convention on the siting, design and construction and operation of nuclear installations.

The Safety Fundamentals are much broader in scope than the proposed Directive, covering the protection of the environment, medical uses of radiation, production and transport of radioactive material, security, and management of radioactive waste. Further, they are intended to provide a useful framework for parties to assess their performance under international conventions such as the IAEA Convention, rather than to lay down binding obligations. In view of these factors, there has been some discussion on how the Safety Fundamentals should be reflected in the proposed Directive. The Government agrees with the approach now taken in Recital (12) of the current proposal which we believe takes into account the factors mentioned above.

I should also note that the current proposal now contains some provisions that are not present in the Convention (although we believe they are consistent with it). There is a provision on ‘information to the public’ (in Article 8) that was not included in the previous proposals and is not included in the Convention. The Government believes that transparency in the field of nuclear safety is important as public scrutiny of nuclear safety and its regulation should strengthen the regulation of nuclear safety; it should also help to build public confidence in this area. We therefore welcome the inclusion of this provision.

In addition, the current proposal places a greater emphasis on seeking to improve the safety of nuclear installations than the Convention. The former now contains a number of references to continuing to improve nuclear safety, for example in Articles 1(1), 4(2) and 6(2).

EDUCATION AND TRAINING

The Government is looking to encourage training and education within the entire nuclear sector. For example, NDA responsibilities for training are established in legislation. Therefore, the Government is content with the inclusion of Article 7, which fits well with wider Government initiatives on nuclear skills.

CONCLUSION

The UK has taken a full part in the negotiations and the Government now believes that the draft Directive is now consistent with UK policy and our international obligations.

15 June 2009

ENERGY PERFORMANCE OF BUILDINGS (15929/09)

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

My predecessor, Iain Wright, wrote to you on 27 February 2009 in response to your letter of 27 January about the Recast of the Energy Performance of Buildings Directive (EPBD). In his letter, he noted that a supplementary memorandum would be submitted to the Committee together with an Impact Assessment as soon as we had formulated our position on the recast of the Directive.

Following consultation across Whitehall and with the Devolved Administrations, we have now come to a view on the recast and I am pleased to be able to submit the attached supplementary
memorandum and Impact Assessment. The memorandum summarises the proposals in the recast, outlines their implications and sets out the Government’s current position.

The Government strongly supports efforts to reduce carbon emissions. We have set a legally binding target to reduce our carbon emissions by 80% with a deadline of 2050. As the energy used in buildings accounts for almost 50% of all UK carbon emissions, it is clearly vitally important that we rapidly improve the energy efficiency of our building stock.

The UK is generally recognised as being amongst the top 5 Member States in implementing the original Directive. We support the vast majority of the proposals in the recast, which to a large extent reflect domestic UK policy on improving the energy efficiency of buildings. Indeed in a number of cases, the UK has actually gone further or is proposing to do so.

However, there are some areas where we do have concerns about the proposals in the recast. This is mainly because we believe they raise issues of subsidiarity or the costs may outweigh any benefits. Key areas of concern are:

— Proposals for a single methodology, developed by the Commission, to calculate cost optimal levels of energy efficiency in buildings;
— A definition of low and zero carbon properties set by the Commission and accompanied by targets for an increase in the number of such properties;
— Extending the requirement for a Display Energy Certificate for public buildings larger than 250m².

The European Parliament held a first reading of the Recast on 23 April and proposed a large number of amendments. The European Commission is currently considering the proposed amendments and will take a position on them in due course. At that stage, we will consider the extent to which we support the view adopted by the Commission.

We will be holding a public consultation exercise before finalising the UK position on the redraft. I expect to publish a consultation paper covering England & Wales shortly. Scotland and Northern Ireland will be holding separate consultation exercises.

2 July 2009

Letter from the Chairman to Ian Austin MP

Thank you for your Supplementary Explanatory Memorandum dated 2 July. Sub-Committee B considered it on 13 July and agreed to hold it under scrutiny.

The Government are committed to reducing carbon emissions but many of the objections to this proposal would limit its impact on emissions. Why has the Government taken this position?

We note your concerns about subsidiarity. Could you describe more fully why you believe that many aspects of the proposal contravene the principle of subsidiarity?

You object to a single methodology for calculating the energy performance of buildings because of concerns about variations in conditions between Member States. Could the methodology itself not accommodate variations in climate, types of building and methods of construction throughout the EU? The Commission has already stated that provisions will be made for different categories of building and the minimum energy performance requirements will take account of general indoor climate conditions, local conditions and the age of the building.

We are aware of your concern that the cost of a number of measures may outweigh their benefits. Why, then, do the Government accept a £20m measure that has limited gains but object to other measures that would cost less?

We acknowledge your uncertainty about whether the term “European Standards” refers to new or existing standards and would appreciate notification of any clarification you receive.

We would also be grateful if you could let us know what you expect the impact of the recast to be on listed buildings and what the Government’s policies are towards reducing the energy performance of listed buildings.

Finally, the Committee would find it useful if you could let us know what you expect the timetable for this proposal to be.

14 July 2009
Thank you for your letter of 14 July about the Supplementary Explanatory Memorandum on the recast of the Energy Performance of Buildings Directive (the Recast) that was submitted to Subcommittee B of the Select Committee on the European Union on 2 July.

The Government welcomes the Recast. To a large extent, the proposals reflect existing domestic policy. In a number of cases, the UK has actually gone further or is proposing to do so. We are committed to achieving a radical reduction in the level of carbon emissions and have put in place the world’s first ever legally binding target to cut emissions by 80% by 2050. Buildings account for almost 50% of carbon emissions in the UK. It is, therefore, vital that carbon emissions from buildings are reduced to as near zero as possible. The position we have adopted on the Recast reflects our strong commitment to substantially reducing carbon emissions. Even in those instances, as highlighted in the Memorandum, where further consideration is required, the Government believes that the Commission’s broad policy objectives have considerable merit.

On the proposal for a single methodology, it is likely that the minimum performance requirements for buildings as determined by using the current UK methodology would at least equal and probably exceed cost optimal levels of energy performance. The Commission have confirmed that to be the case and have provided helpful further clarification on how the proposed methodology would work in practice, including confirming that their intention is to establish a broad framework within which Member States will have freedom to set their own variables. As a result, we are more comfortable with what is being proposed and no longer have concerns about potential subsidiarity issues on this point. Further information has been requested from the Commission about how the cost optimal methodology would work in practice.

The Directive includes proposals for the Commission to establish common principles for the definition of low and zero carbon buildings. Member States will retain the ability to develop their own definition of low and zero carbon buildings but that definition will need to be in accordance with those common principles. Further information has been requested from the Commission seeking clarity on exactly what those common principles would be. Our concerns about potential subsidiarity issues on this point have been lessened following a meeting with the Commission. We will be in a position to have a more complete understanding about this proposal once we have received that further information.

Display Energy Certificates are currently required for buildings larger than 1,000m² that are occupied by a public authority and which are frequently visited by the public. The Commission have now proposed as part of the Recast that this requirement should be extended to buildings occupied by a public authority that are larger than 250m².

While a DEC provides very useful information to the occupants and visitors on the energy efficiency of a building, it is not an end in itself. What matters is whether the recommendations in the accompanying Advisory Report are implemented as that is what will reduce the building’s carbon emissions. It is reasonable therefore to consider whether the £8m that would be spent on producing DECs for additional buildings would be better spent on implementing the recommendations in those larger buildings that already have a DEC. Comments on this point in response to the consultation paper will be taken into account in determining the pros and cons of this measure.

Your reference to a cost of £20m appears to be a reference to the proposed Article 15 which specifies the information that has to be included in inspection reports for air-conditioning systems. In fact, as explained in the IA, we estimate that this measure would cost £5m per year which would be in addition to the £15m currently spent each year on the inspection of air conditioning systems.

Article 15 would have the effect of making air-conditioning inspection reports more useful to the occupier of a building with transparent information on the cost-effectiveness of recommended improvements. As a result, there is an increased likelihood that the recommendations will be implemented thereby reducing carbon emissions.

The original Directive gave Member States a discretion whether or not to apply its provisions to listed buildings. The Recast keeps this discretion. Under the Building Regulations the exemption for historic buildings is conditional on the nature of the work, they are not exempt per se. The current consultation on Part L of the Regulations proposes that the exemption is removed, but the accompanying guidance strengthened so that an appropriate balance between heritage and energy conservation is achieved.

We have previously noted that clarity was needed as to whether the European Standards referred to at Article 3 were new or existing standards. The Commission have now confirmed that this is a reference to existing standards. This is no longer, therefore, an issue.
The timetable for adoption of the Recast is very challenging. Both the Presidency and the Commission are very keen to ensure that it has been adopted before the Copenhagen Summit on 7 December. We strongly support this goal and have made it clear to the Commission and the Presidency that we are ready to play our part to ensure that this deadline is met.

I hope that I have now been able to satisfy your Committee in relation to the proposed Recast as it currently stands and that the Committee can support the Government’s approach to further negotiations on this proposal.

16 September 2009

ENERGY: MEASURES TO SAFEGUARD SECURITY OF GAS SUPPLY (11892/09)

Letter from the Chairman to the Rt Hon Ed Miliband MP, Secretary of State, Department of Energy and Climate Change

Thank you for your Explanatory Memorandum 11892/09. The Committee considered it at their meeting of 12 October. It was agreed to hold this proposal under scrutiny.

We look at this proposal favourably as far as it seeks to guarantee the continuation of gas supply across Member States, even in the event of a major gas disruption. We are convinced that greater co-ordination across Europe and better assessment of the risks to gas supply are required to avoid national responses that risk hampering the functioning of the gas internal market. Furthermore, we believe that this proposal, in the form of a Regulation, is suitable to avoid implementation problems and guarantee that Member States are equally and consistently prepared to prevent or cope with a gas crisis.

However, there are aspects of this proposal that we would like to explore further, in particular the legal basis for this proposal and certain provisions affecting the principle of subsidiarity. Have the Government formed their view on whether this Regulation, and specifically the rules concerning the Commission’s powers, are in line with the principle of subsidiarity and proportionality?

The Government is right to consider further the legal basis for this measure. It appears that there is reasonable justification for recourse to Article 95 or Article 100 or both. What is the Government’s final judgment of the appropriateness of the legal basis?

We also like to clarify certain provisions and how they apply to the UK. First, we understand that the N-1 indicator refers to the capacity to satisfy the gas demand in the case of a disruption of the largest gas infrastructure in a Member State. We understand that the UK is expected to meet the N-1 principle for 2009/2010 by a comfortable margin. How will the UK achieve this N-1 benchmark? What will be the repercussions if another Member States fails to achieve the N-1 benchmark?

Secondly, the Regulation gives the Commission the power to declare a Community Emergency for the whole EU. What will be the criteria to declare a Community Emergency and what is the Government’s view on this point? To what extent does the requirement for a Member State to maintain open access to storage apply in the event of an emergency?

Finally, we are aware that the proposal is at the very early stage of discussions in the Council and therefore it may be significantly modified. We would like to be promptly informed about the progress in the negotiation of the proposal.

13 October 2009

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

Thank you for your letter of 13 October which raised a number of questions and sought clarification on specific areas in the draft Regulation.

On the issue of the legal base, the view is emerging that the Energy Article 194 in the new Treaty on the Functioning of the European Union (TFEU) is now considered to be the most appropriate base for this Regulation. Article 194, under the new Energy Title in the TFEU, provides that:

‘In the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, Union policy on energy shall aim, in a spirit of solidarity between Member States, to:

a. ensure the functioning of the energy market;
b. ensure security of energy supply in the Union;

c. promote energy efficiency and energy saving and the development of new and renewable forms of energy; and

d. promote the interconnection of energy networks’.

The Article 194 captures the elements of the draft Regulation in so far as it deals with the functioning of the internal energy market (including promoting greater interconnection to fill gaps in infrastructure), as well as security of energy supply. We would not dissent from this view since there is a strong emphasis throughout the draft Regulation that a well functioning market is the best means of enhancing security of supply and that the market should be allowed to function for as long as possible, including into early stages of an emergency. If Article 194 TFEU is confirmed as the appropriate legal base, the ordinary legislative procedure would apply. Ordinary legislative procedure is defined in Article 289(1) TFEU as joint adoption by the European Parliament and the Council on a proposal from the Commission – in essence this is the same as the co-decision procedure as set out previously in Article 255 EC Treaty.

On the issue of the Commission’s powers under the proposed Regulation, and whether such powers are consistent with the principle of subsidiarity and proportionality, the Government’s view is that:

i. This area an area of shared competence. Internal market legislation in natural gas has been an area of shared competence since Directive 98/30/EC, the first internal market package, which also dealt with aspects of security of supply. Subsequently, security of gas supply Directive 2004/67/EC confirmed that security of supply was a shared competence with an emphasis towards greater Community action in order to work further towards an internal market and a co-operative approach between Member States on security of supply;

ii. the proposals in the main, but subject to our views set out below, are consistent with the principle of subsidiarity. It is clear that the Commission is best placed to oversee Community wide application of the Regulation, the appropriate interaction of emergency plans of Member States, and the co-ordination of action in a Community Emergency e.g. in declaring a Community Emergency or requiring a change of action where an action by a Member State or Competent Authority impacts negatively on the interests of other Member States and/or distorts the internal market. One or two Member States have indicated that they consider that the Commission should not have powers to require changes in Member States’ preventative and emergency plans in respect of actions to mitigate purely national risks. However, even with the current level of integration between Member States (and in particular that between the UK and continental Europe and Ireland) and the expected increase in interconnection when current internal legislation is fully implemented, we consider that it is now difficult to envisage how a national market can remain isolated – and thus we accept that some strengthening of the Commission’s powers in this area is consistent with the principle of subsidiarity.

iii. on the issue of proportionality, the arguments turn on the degree to which some level of central action (be it direction or co-ordination) is necessary to ensure energy security when market measures prove inadequate to deal with a crisis in the supply of natural gas. The effects of the Russia/Ukraine gas dispute in January do show that greater co-ordination of Member State preparation and the existence of some overall co-ordinating powers during a crisis could help the EU should a similar crisis arise in the future.

Nevertheless, the Government does have some concerns over the apparent open-ended scope of proposed Commission powers in a number of areas. For example, we have concerns over the potentially wide scope of proposed Commission powers to require Member States to change their emergency and preventative plans without clear criteria as to how the Commission might make its judgement. We also recognise the proposed Commission powers to require changes to a Member State’s course of action during a national or an EU emergency needs clarification. We have sought greater clarity from the Presidency and will, with other Member States, press for these powers to be more narrowly defined. We hope that these issues will become clearer once the Presidency produces a revised text reflecting Member State discussion so far (expected in early December). There are also a number of ambiguities in the text relating to flows of gas and access to storage that need to be clarified. My officials will continue to make these points in the interim – as I shall do so at the Energy Council on 7 December.

You asked what the criteria are for declaring a Community Emergency for the whole of the EU. The current draft would permit the Commission to declare a Community Emergency at the request of one Member State, when the Community loses more than 10% of its daily gas imports from third countries or where more than one Competent Authority has declared a national emergency, although such an Emergency could be restricted to a particular region of the EU. We consider that these thresholds are too low and potentially too localised to constitute a need for a declaration of a
Community wide emergency and have asked the Presidency to reconsider them. We are aware that the Regulation must specify more clearly what powers are afforded to the Commission in the light of such a declaration.

Finally, you also asked how the UK would achieve the N-1 benchmark – the formula for ensuring that in the event of a disruption of the largest gas supply infrastructure, the remaining infrastructure (N-1) has the capacity to deliver the necessary volume of gas to satisfy total gas demand during a period of 60 days of exceptionally high gas demand. National Grid calculations show that even under worst case high demand scenarios (i.e. in a 1 in 20 winter scenario) covering (i) a peak period on a very cold day, (ii) a very cold 7 day spell and (iii) a very cold 60 day spell, the system has capacity to meet all three scenarios. This would be the case even in the event of the Langeled pipeline or a major supply terminal being out of action for an extended period.

As for the consequences of other Member States failing to achieve the standards specified in the Regulation (including the N-1 benchmark), that would be a matter for infraction proceedings against that Member State. We do note however, that the Regulation allows for the N-1 standard to be met in a number of ways, including through the application of demand side measures and specific regional arrangements. This recognises, in particular, the situation of a number of Member States in the East of the Union who are dependent on a single source of gas through a single route. A number of Member States (and industry) are seeking greater clarity on the precise formula for the N-1 standard, particularly with regard to transit pipelines and reverse flow pipelines (and how that capacity should be calculated).

I look forward to discussing these issues with your Committee in the near future.

23 November 2009

ENERGY: TRANSITION TO A LOW-CARBON ECONOMY

Letter from the Chairman to Rt Hon Stephen Timms MP, Parliamentary Under Secretary of State, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum. It was considered on 23 November by Sub-Committee B who decided to clear it.

We welcome measures to improve coordination in the ICT sector in order to reduce carbon emissions but note your concerns over recommendations regarding smart meters.

We are aware that several initiatives have recently emerged in the area of energy efficiency and welcome the Government’s efforts to coordinate action on these matters.

24 November 2009

ENVIRONMENT: ECO-MEASURES (12026/08, 12119/08, 12074/08, 12041/08, 12108/08)

Letter from the Chairman to 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 your supplementary Explanatory Memorandum. Sub-Committee B considered it and agreed to continue to hold the proposal under scrutiny.

On 15 October the Committee wrote to you asking why, given that the ISO 14001 has proved more popular than and performs many of the same functions as the EMAS, it is proposed that the EMAS be revised rather than abolished. We were disappointed to note that the supplementary explanatory memorandum does not address this question. The Scrutiny Guidance issued by the Cabinet Office says that all “letters require a substantive reply from the relevant Minister unless they state otherwise”. We would be grateful if such a reply to our question could be provided.

The guidance also says, “The Government has given the Committee a commitment that it will aim to reply to correspondence from the Committee within 10 days”. We would be grateful if you could explain why this supplementary explanatory memorandum was submitted only in May given that the Committee wrote to you in October 2008.

We would also like to know whether a Common Position, General Approach or similar was agreed in Council before the European Parliament’s First Reading. If this did happen, we would like to know why scrutiny clearance from the Committee was not sought beforehand.
Furthermore, the guidance commits the Government to providing the Committee with updates both as a First Reading deal is approached and as soon as it has been achieved. We received no such correspondence before the European Parliament session on 2 April and do not consider a supplementary explanatory memorandum a month later as conforming with the guidance’s requirement that an update be sent “immediately”. We would be grateful if you could explain why it was not possible to keep the Committee informed of the negotiations on this proposal.

20 May 2009

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

I refer to your letter of 20 May to my predecessor, Lord Hunt, about the Sub-Committee B’s decision to hold the EMAS dossier under scrutiny and requesting further information.

You asked why the supplementary explanatory memorandum, (SEM) Lord Hunt submitted on 1 May 2009, did not address the question raised by the Committee in Lord Grenfell’s letter of 15 October 2008. This was because my predecessor had already answered the question in his substantive reply addressed to you, dated 30 January 2009 (copy attached for ease of reference) unfortunately it has since transpired that this letter never reached the Committee, and there was no further need to repeat this in the SEM. I regret that due to administrative delays in my department we did not meet the 10-day deadline for a reply to your Committee.

The SEM was to inform the Committee about the significant changes to the EMAS regulation that the UK had secured during the working level negotiations. It also served to accompany the EMAS Impact Assessment (IA), which had not been ready when the original EM of 27 August 2008 was submitted.

Lord Hunt had undertaken to forward the IA to Michael Connarty MP, Chairman of the House of Commons European Scrutiny Committee as soon as it became available, as conveyed in his letter of 9 March 2009. The timing of this coincided with the official notification from UKRep on 20 April, of the reaching of first reading agreement and it was decided to include this information in the SEM. On reflection, I accept that it would have been more appropriate to convey this information in a Ministerial letter, to speed up the scrutiny process.

I can confirm that as soon as we became aware of accelerated negotiations on the EMAS dossier, Lord Hunt informed Michael Connarty MP, in his letter of 9 March. The letter informed Michael Connarty of our view that as the EMAS dossier was moving quickly towards first reading agreement under the Codecision process, we were likely to have to take a UK position in Coreper before receiving scrutiny clearance from the Committee.

I can confirm that no General Approach, Common Position or Political Agreement was reached in Council before the European Parliament First Reading on 2 April 2009. The Council has not yet formally adopted the proposal, although this is likely to happen in late autumn.

30 June 2009

Letter from Lord Hunt of Kings Heath to the Chairman

Thank you for your letter of 15 October 2008, which confirmed clearance of a number of explanatory memoranda connected with the EU Action Plan on Sustainable Consumption and Production and Sustainable Industrial Policy, but reserved scrutiny on the EM on the EMAS Regulation.

You had some questions on some of the documents and I have set out responses to these below.

1. **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?

As mentioned in the Explanatory Memorandum, we are at a relatively early stage of the process of agreeing implementing measures under the current Eco-design Directive. Although this experience has brought out a few practical issues of implementation, we believe that the process is basically sound, as it allows for in-depth study of each product and adequate opportunity for discussion with stakeholders before measures are adopted. The European Commission has indicated it wants to use the lessons from this early experience to guide the process in future.

The proposed revision to the directive includes an Article which will require the Directive to be reviewed no later than 2012, with assessment against a number of factors including the effectiveness of the implementing measures. This should establish the robustness of the case for further widening of the Directive’s scope or other amendments.
1. **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?**

At present we have no intention to reject or modify the proposal contained in the Communication to introduce a GPP target of 50% by 2010. The UK wishes to be a leader across the EU in sustainable procurement by 2009 and this political target, which is voluntary, will be one of several mechanisms to help us achieve our objective. The target is flexible in that public sector authorities may select which of the priority sector core criteria they will seek to comply with, in order to meet, or exceed, the 50% target. It is hoped that the initiative will simultaneously help raise the profile of environmental and sustainability issues amongst procurers across the public sector.

2. **DOCUMENT 12108/08: AS THE ISO 14001 HAS PROVED MORE POPULAR THAN AND PERFORMS MANY OF THE SAME FUNCTIONS AS EMAS, WHY IS IT PROPOSED THAT THE EMAS BE REVISED RATHER THAN ABOLISHED?**

Consultation on the effectiveness, benefits and future role of EMAS began in 2005. In response to the consultation, the UK encouraged the Commission to consider the case for winding down the scheme in the light of more competitive and market-facing initiatives and standards that had been developed since EMAS was first introduced, not least the success of ISO 14001.

The Commission decided not to propose closure of the scheme for a number of reasons. One was the existing commitment by some large European institutions (such as the European Parliament, European Environment Agency, the European Investment Bank and the European Commission itself) to use EMAS to drive improvement in their environmental performance. Another was the possibility of businesses and other organisations already registered to pursue a case for liability. The Commission’s view has been that there is still significant potential for Member States to help stimulate greater take-up of the scheme by increasing their marketing activities to raise awareness of the benefits of EMAS.

It is our intention in debating the Commission’s proposals for the revision of EMAS to recommend that an amendment be incorporated to include a ‘sunset clause’. This would provide for the scheme to be terminated if, after the next five years of its operation, it has not met the Commission’s stated objective of increasing participation to a level that “equals the average of the three Member States with, in 2007, the highest number of registered sites per million of inhabitants, which results in an envisaged total of 23,000 EMAS registered sites.”

I hope that you will find this information helpful, but please let me know if there is any further explanation I can provide.

30 January 2009 (received by the Chairman 30 June 2009)

**Letter from Dan Norris MP to the Chairman**

Following on from my letter of 30 June 2009, I am writing to inform you of the progress of the Explanatory Memorandum submitted by my Department in September 2008 on revisions to the above voluntary scheme. The proposal for a revised scheme had been presented by the European Commission in July 2008 as part of a package of measures forming the Sustainable Consumption and Production and Sustainable Industry Policy Action Plan.

Defra received notification on 6 May 2009 of clearance of scrutiny by the House of Commons on the EMAS dossier. The House of Lords Select Committee on the European Union decided to hold the dossier under scrutiny pending a request to Defra for further information. Your committee had been due to consider the dossier, at its meeting on Monday, 26 October.

We received notification in the morning of 26 October that the Regulation was to be adopted as an ‘A’ point by Ministers at Council, without discussion, at the General Affairs Council (GAERC) meeting the same day in Luxembourg. (The dossier had not appeared on the list of ‘A’ items for the GAERC Council previously circulated on 22 October.) This unfortunately means that the Council vote took place ahead of obtaining final Parliamentary scrutiny clearance.

Given this understanding about timing and the notification of clearance, the Government had agreed to the EMAS regulation being suitable for adoption as an “A” point at Council: the dossier is uncontroversial, and the UK negotiated a number of changes to the original Commission proposal at the Working Group level, as a result of which the compromise text being adopted broadly reflects UK objectives and interests.

27 October 2009
Letter from the Chairman to Dan Norris MP

Thank you for your letter of 27 October, which was considered by Sub-Committee B. Thank you also for your letters of 30 June and 30 January (which was not received until 30 June). We have now cleared the document from scrutiny.

We were extremely disappointed to learn that an override had occurred on this dossier, particularly given the difficulties encountered in its scrutiny. You will remember that Sub-committee B held an evidence session in July with your Permanent Secretary, prompted by previous inadequacies in the handling of scrutiny for this particular dossier. The Permanent Secretary gave undertakings that the situation would be improved, and almost the very first example we have since then suggests the situation has not been improved. This reflects badly on the professionalism of the Civil Service, and we look forward to further conversations with the Permanent Secretary on this matter.

We are interested in how the item came to be agreed as an “A point”. Given that the dossier had not cleared scrutiny, was a Parliamentary Scrutiny Reserve placed on it at COREPER? Your letter implies that at some point the Reserve was removed. Is this the case, and if so, why and when did this occur? In any case, why was the item allowed to remain as an A point on the General Affairs Council agenda when scrutiny had not been cleared?

On the substance of the proposal, we are still not convinced that EMAS is necessary. We welcome the addition of a sunset clause to the proposal. The Commission have argued that abolishing EMAS would invite liability claims from business who have already adopted it. Surely this same consideration would apply when the sunset clause takes effect after five years? What is the Government’s view?

6 November 2009

Letter from Dan Norris MP to the Chairman

Thank you for your letter of 6 November clearing the above document from scrutiny and asking how the proposal came to be agreed as an “A” point at the General Affairs and External Relations Council (GAERC) on 26 October.

My letter to you of 30 June drew attention to the first reading agreement reached on the proposal last spring, and informed you that it was likely to be formally adopted in late autumn. I considered it helpful to give this estimate, although it is of course the case that a politically cleared proposal can be formally adopted by Council as an “A” point at any time.

Sub-committee B considered the EMAS proposal at its meeting of 13 July, at which Dame Helen Ghosh also gave evidence on Defra’s overall Parliamentary scrutiny performance. Officials here contacted the clerk to the sub-committee during the summer recess to inquire about the latest position on scrutiny clearance. They were informed that clearance had not yet been given, and that my letter of 30 June would be considered by the sub-committee at its first meeting after the recess, on 19 October.

In the event, sub-committee B was unable to consider my letter of 30 June at its meeting on 19 October. Following its passage in Coreper on 21 October, Defra was informed, on the morning of 26 October, that the proposal had been added to the agenda of the GAERC and would therefore be up for adoption in the afternoon. The clerk to sub-committee B was duly informed of the latest position.

Throughout this process, a UK Parliamentary Scrutiny reserve was maintained until GAERC on 26 October. I very much regret that scrutiny was overridden in this case, but I consider sub-committee B was kept well informed by Defra of progress on the proposal in its final stages, especially from the date of the first reading agreement in April to eventual formal adoption of the Regulation on 26 October.

With regard to the inclusion of a sunset clause as part of amendments to the original Commission EMAS proposal, the final text does not include a provision to abolish the scheme if after five years the Commission’s targets have not been reached. The final agreed text submitted to the Council and on which EU Ministers voted on 26 October as an “A” point now states, under Article 50:

“The Commission shall review EMAS in the light of the experience gained during its operation and international developments by ... 15. It shall take into account the reports transmitted to the European Parliament and to the Council in accordance with Article 47”.

The wording of this provision therefore leaves open the future of the EMAS scheme following its five-yearly review.

On the second point about abolishing the EMAS scheme after five years, and how businesses affected will react, the Government’s view is that no liability claims could be successfully made if an

15 OJ: five years after the entry into force of this Regulation.
organisation’s EMAS registration were able to run its normal course prior to the abolition of the scheme or transitional provisions were put in place. Moreover, a transition period to wind down the scheme could easily be agreed to prevent such circumstances arising.

We will continue to monitor uptake of the scheme in the UK.

In relation to Defra’s overall scrutiny performance, there has been an improvement in the timeliness of submitting Explanatory Memoranda to Parliament. However, I accept we need to do more to achieve further improvements, on which we will report on progress before the end of the year.

25 November 2009

ENVIRONMENT: LOW CARBON TECHNOLOGIES (SET-PLAN) (14230/09)

Letter from the Chairman to David Kidney MP, Parliamentary Under Secretary of State, Department of Energy and Climate Change

Thank you for your Explanatory Memorandum. Sub-Committee B considered it on 2 November 2009 and decided to clear the document from scrutiny.

We welcome this Communication as we recognise the need to increase investment in research in technologies if we are to achieve the shift from our current energy system into a low carbon model.

You mention your disappointment towards the Commission call for significant increase in Member State public expenditure on energy technology in the current financial climate. We would be grateful if you could explain more fully from where, in the Government’s view, the extra funding is to come, and whether any inter-conditionality is to be attached. Furthermore, we would like to know if there is any indication as to the proportion of investment in each type of technology which would be spent in the UK.

9 November 2009

Letter from David Kidney MP to the Chairman


Whilst we are all keen to see increased investment in these areas, and the Government has made available a further £405m over 2 years for low carbon technologies, we are not the only player - for example, it is important that the private sector plays its part; and that Government helps to create the conditions for such investment.

To clarify, what was disappointing about the Communication in my view, was the inability of the Commission to identify significant re-prioritisations in its own budgets, whilst calling for very significant increases in expenditure in Member States and by the Private Sector. I recognise that a significant part of that inability was an issue of timing, as the current European Financial Framework runs until 2013. We want to see a significant re-prioritisation of how the EU spends its money towards low carbon related spending, which would send out a powerful message in order to leverage and mobilise spending from the Private Sector. In the meantime, I don’t think that any of us can say from where, or even if, further UK public money will be forthcoming. There is no point pretending. We need to wait for the next spending review before we can consider making any further commitments.

We do, of course, welcome the specific linking to the spending priorities of the Framework Programme’s Energy budget. Also, the Communication’s suggestion that additional funding could emerge from the ETS New Entrants Reserve and through innovative use of loans from the European Investment Bank. These will provide important contributions to SET Plan funding needs.

In terms of proportion of investment to be spent in the UK for each type of technology, this will depend on the engagement of our companies and research institutions in the various SET plan Industrial Initiatives and in the European Energy Research Alliance (EERA). We have already set-up information networks to ensure details of the opportunities are easily available to potential UK participants and we are founder members of EERA. We continue to take an active part in the development of these and other SET Plan structures. In doing so, we are giving ourselves every opportunity to benefit from project funding as it is identified. Indeed, we have already won funding for UK Offshore Wind and CCS projects in a recent competitive round of project bids for European
GALILEO (11860/09)

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

Sub-Committee B considered the EM 11860 on 12 October 2009 and decided to clear the document from scrutiny.

The Committee has always maintained a vivid interest on the vicissitudes of Galileo and therefore welcomes this document as it adds knowledge on facts related to the history of Galileo. Recently, the Committee had the opportunity to express its view on the Commission’s proposal on the management of Galileo through evidence sessions held with both Commission’s and Department for Transport officials.

The Committee regrets the fact that it did not have the opportunity to consider the document before the October Transport Council as it was only informed at a very late stage. Although it does not constitute an override, the Committee would appreciate a more proactive approach in future.

13 October 2009

Letter from Paul Clark MP to the Chairman

Thank you for your letter of 13 October 2009 in which you also confirmed that Sub-Committee B has cleared EM 11860/09.

I am grateful for your understanding and it is unfortunate that on this occasion it had seemed likely that it would not have been possible for the scrutiny process to be completed in the Lords before the formal adoption of Conclusions on the document as expected at the 9 October Transport Council. However the document was subsequently not taken up at the Transport Council but is now due to be adopted, without discussion, at the Agriculture and Fisheries Council taking place on Monday 19 October 2009. You had considered the EM and sifted it to Sub-Committee B on 23 September and subsequently cleared it on 12 October.

The ECA report did not require action to be taken by Member States and raised no legislative, financial or policy issues. The Swedish Presidency was keen however that Council should acknowledge the report in some form and at a late stage brought forward a set of Council Conclusions which simply welcomed the document. All Member States were keen to support the Presidency by endorsing their approach. I am afraid, however, that the late introduction of the Conclusions as an item for adoption at the Transport Council would have meant that the position was not realised in time for the Sub-Committee to consider the EM. Nor would the Sub-Committee be able to consider a letter by written procedure, as it so helpfully did in the case of the proposed Regulation on the rights of passengers travelling by sea and inland waterway (EM 11990/08), following the letter from the Minister of State for Transport on 25 September. Moreover, given the nature of the ECA report and the terms of the Conclusions we felt that the issue would either not constitute a scrutiny breach or would fall within the terms of paragraph 3 a) of the Scrutiny Reserve Resolution which allows for the agreement of items that are considered routine or trivial.

Nonetheless, we would of course have preferred that scrutiny could have been completed ahead of the planned adoption of these Conclusions at the Council. It was therefore decided that my officials would prepare a letter for me to send to you setting out the reasons for Ministers agreeing to the adoption of the Conclusions before the document had fully completed the scrutiny process. This letter was in the process of being prepared, as part of our follow-up to the Transport Council, when we received your letter and belated confirmation that the Conclusions would now be taken up at a later Council.

I am grateful for your understanding in this instance and appreciate that Sub-Committee B maintains a strong interest in Galileo. I will be writing to you shortly to bring the Committee up to date with the latest developments in the Galileo programme.

19 October 2009
Letter from the Chairman to the Rt Hon Lord Drayson, Minister of State, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum of 5 October. It was considered by Sub-Committee B who decided to hold the document under scrutiny.

We appreciate that the Communication was largely a “stock-taking” exercise, but were slightly surprised that the EM gave no explicit indication of the Government’s assessment of progress so far in the field of innovation. Perhaps you would be able to provide this in a letter?

We were also interested in the idea of a European Innovation Act, and would appreciate an indication of what form this is likely to take, and whether the Government welcomes the move. We shall, of course, scrutinise any proposed legislation in due course in the usual manner.

20 October 2009

Letter from the Rt Hon Lord Drayson to the Chairman

Thank you for your letter dated 20 October asking for the Government’s views on the progress of Community-level innovation policy over recent years and on the idea of a European Innovation Act, particularly in the context of the recent European Commission’s Communication “Reviewing Community innovation policy in a changing world”.

The Government broadly agrees with the analysis set out in the Communication. As an example of the overall good progress the Communication highlights evidence from the European Innovation Scoreboard for 2008 showing that although the EU’s innovation performance still lags behind the US and Japan, the EU is catching up. While overall progress has been satisfactory, there are specific areas, such as access to finance and IPR, where there hasn’t been as much progress at Community-level as would have been hoped.

Turning to specific policy areas, the section on framework conditions highlights the importance of the Small Business Act (SBA). We welcome the SBA commitments to nurture SME innovation, which include better information on and simplification of SME access to EU funding and encouraging the active participation of SMEs in activities carried out by the European Institute of Innovation and Technology.

The section on building synergies includes the establishment of five Joint Technology Initiatives as a key achievement. The task of establishing the bodies to implement the JTIs has been long and involved and EU industry, the European Commission and Member States all recognise the slow progress, in large part down to the Commission’s Financial and Staff Regulations, is a barrier that needs to be addressed. However we also need to recognise that in spite of these problems the JTIs have issued calls for proposals, projects have started and that there is a model here that can be built on for future public-private partnerships.

The section on removing bottlenecks outlines a number of areas where there has not been as much progress as had been expected. One of them is the fragmentation of the venture capital market in the EU and this is an area where I believe we need to take action. The Commission is clearly also of the view that the venture capital community does not benefit from a single market so there are clear opportunities for working together to increase progress in this policy area. The Government agrees we need to look at ways of strengthening provision of venture capital across Europe, building on existing schemes run by the EIB/EIF.

Intellectual property has been identified by key stakeholders as a policy area in which progress has been unsatisfactory. Given the importance of the effective exploitation of IP to innovation, the EU needs a Community patent and a unified patent litigation system to encourage innovation; overcome the relative lack of patenting by EU companies in comparison with their US counterparts; and to support economic recovery.

We agree with the Commission’s opinion on the slow implementation of the Lead Markets Initiative and consider that we need to await the outcome of the evaluation due in 2010 before deciding how this should be taken forward.

Finally, in view of the central importance of innovation in promoting sustainable growth and jobs in the medium term, the Government supports the Commission’s intention to come forward with proposals in early 2010 for a European innovation plan (or “act”), as called for at last December’s European Council. The Government will of course report to your committee as and when the Commission comes forward with specific proposals.
MACHINERY FOR PESTICIDE APPLICATION (12876/08)

Letter from Ian Lucas MP, Minister for Business and Regulatory Reform, Department for Business, Innovation and Skills, to the Chairman

I am writing to update you on the proposal for an amendment to the Machinery Directive concerning, specifically and uniquely, machinery for pesticide application. BERR submitted an Explanatory memorandum on this proposal in October 2008 followed by a supplementary Explanatory memorandum attaching an Impact Assessment in December 2008.

The European Parliament has completed its first reading of the proposal. In the course of this, and of discussions proceeding at the same time in Council Working groups, it became apparent that there was a very good opportunity for agreement between the institutions at this stage. The introduction to document 8891/09 describes this situation and presents the resulting compromise amendment (amendment 39) that has been agreed at the EP plenary and by Deputy Ambassadors in the Council. On that basis the document anticipates that, following the customary scrutiny by legal linguists that the compromise amendment is currently undergoing, the Council will adopt the text. This is expected to occur shortly. I have attached this document to this letter for your information.

The UK agrees entirely with this assessment and therefore will support adoption of the text at Council. That support is based upon the achievement of all of the negotiating objectives described under ‘policy implications’ in the original Explanatory Memorandum. There were three of these laid out in paragraphs 22-25 (inclusive). Thus the compromise amendment text has, in turn,

— restricted the application of the new essential requirements beyond all possible question to pesticide application equipment alone

— retained self assessment for this equipment in the face of strong, initial pressure from the European Parliament’s rapporteur to introduce third party assessment

— adopted clear but non-prescriptive drafting for those new requirements, similarly requiring careful handling of the rapporteur.

24 June 2009

RESEARCH: ERI (12259/08)

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

On 11 December 2008¹⁶ I wrote to you about developments relating to the above proposal and in particular the failure of the Competitiveness Council on 2 December to reach political agreement on it, not least because some Member States could not agree to a text which did not provide an exemption of facilities which adopted this legal form (now known as a European Research Infrastructure Consortium or ERIC) from VAT and excise duties.

Since that date negotiations on the Regulation have been ongoing under the Czech Presidency. At the UK’s insistence the proposal was examined by the VAT Committee, which unanimously concluded that research infrastructures which met the criteria for ERIC status would qualify as “international bodies” for the purposes of the relevant VAT Directives, meaning that they would qualify for tax exemption. The Regulation then returned to the Research Working Group where there were further negotiations over the circumstances under which the tax exemption would be granted. The UK, with the support of other Member States, made it clear that the ultimate decision on whether to grant tax exemption should lie with the tax authorities of the host country rather than flowing automatically from a decision to make use of the ERIC legal form. I am glad to be able to report that, at the COREPER meeting of 13 May, we were able to obtain wording which corresponded to this position. The UK therefore proposes to support giving political agreement to the Regulation as amended when it is submitted to the Competitiveness Council for approval on 29 May.

19 May 2009

¹⁶ Correspondence with Ministers, December 2008 to April 2009
Letter from the Chairman to the Lord Drayson

Thank you for your letter dated 19 May. Sub-Committee B considered it on 1 June and agreed to clear the item from scrutiny.

We regret the fact that, because Political Agreement was reached while the proposal was under scrutiny, the scrutiny reserve has been overridden. We note, however, that your letter suggests that compromise on the Government’s key objection to the proposal was only reached on 13 May. We are also pleased to note that the Government secured the changes to the proposal that they and this Committee believed necessary.

We would be grateful if you could send the Committee some information on which UK organisations will be eligible to become ERICs and how accreditation as an ERICs is to be achieved.

3 June 2009

Letter from Lord Drayson to the Chairman

Further to my letter of 19 May concerning this item on the agenda for the Competitiveness Council on 28-9 May and to my post-Council statement, I thought I should write in slightly more detail to explain why the Government agreed to this text in advance of scrutiny clearance.

As I explained in my earlier letter, the text submitted to the Council met the concerns of the UK and of those other Member States who had previously had reservations about the wording of the proposal as it concerned the provision of exemptions from VAT and excise taxes for installations which adopted the legal form created by the draft Regulation. This satisfactory outcome was the result of complex negotiations. During these the Czech Presidency had consulted the VAT Committee at the UK’s suggestion and all parties concerned had made considerable efforts to craft a text which would be acceptable to the UK and meet the concerns voiced, not least by the Scrutiny Committees. It was clear at Council that the tax elements of this revised text commanded unanimous support, including from Member States who had previously shared the UK’s concerns. Against this background, and given that the substance of the text was acceptable to us, the Government felt that a failure to support the final proposal would not have been easily understood by our partners, would have endangered overall agreement and could have led to further discussions on the tax issue with potentially unacceptable language for the UK. We therefore decided to agree to the text at Council; I apologise for the fact that, due to time constraints this meant that we had to do so before it had fully cleared scrutiny.

You also ask which UK organisations might be able to become ERICs and how the designation process would work. The ERIC legal form is essentially designed to facilitate the construction of new facilities rather than being adopted by existing ones. As far as the process is concerned, if a UK research organisation (e.g. one of our Research Councils) entered into an agreement with similar organisations in two or more other EU Member States or Associated States by which the parties agreed to come together to construct a new research infrastructure facility in the UK, the partners would first seek designation as an “international body” from the relevant UK tax authorities. Once this designation had been agreed, and assuming that the partnership agreement met other requirements, they would then be able to obtain designation as an ERIC from the European Commission.

17 June 2009

TELECOMS: ELECTRONIC COMMUNICATIONS NETWORKS AND SERVICES
(16497/1/08, 16498/1/08, 6622/09)

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

The purpose of this letter is three-fold: to formally inform you of the results of the European Parliament (EP) vote on the Second Reading text; to inform you of progress on a number of outstanding issues with regard to the UK’s negotiating objectives as identified to you in my letter dated 15 December 2008; and the report on a matter arising that has had a large impact on the progress of negotiations.
EUROPEAN PARLIAMENT VOTE ON SECOND READING DEAL

To begin, the EP voted, with large majorities, in favour of all three elements of the package: the Better Regulations directive (amending the Framework, Access & Interconnection and Authorisation directives); the Citizens’ Rights directive (amending the Universal Service and e-Privacy directives); and the proposed Regulation (that establishes the ‘Authority’).

However, during this process the EP also voted to re-insert Amendment 138 which has caused a UK, more specifically a Ministry of Justice, ‘red line’ to be crossed; I will deal with this issue in more detail below.

PROGRESS OF IDENTIFIED OUTSTANDING ISSUES

This section of the letter outlines progress of the issues that I previously identified as unresolved and ones that Her Majesty’s Government (HMG) would focus on during the round of negotiations following the adoption of the Common Position papers at the November 2008 Telecoms Council meeting.

Spectrum management and International Telecommunications Union (ITU) Regulations (Better Regulation directive amending Framework directive Article 9):

You may recall that HMG had concerns over the proposed wording agreed by Council within the Common Position papers. It was my view that the wording would constrain Member States in their ability to manage spectrum by giving legal precedence to the ITU Radio Regulations in European law. I am pleased to confirm to you that HMG has been successful in negotiating wording that has removed this concern by placing a simple obligation on Member States to “respect” the ITU Radio Regulations and I believe that this new wording has removed my identified concerns.

Funding for Next Generation Access (NGA) networks (Better Regulation directive amending Framework directive Articles 8 and 13, and Access directive Article 12):

HMG’s negotiating objectives with regard to this issue were to ensure that the new legislative framework contained certain regulatory principles that not only reflected the need for a return on this potentially higher risk investment, but also be guided by competition principles and provide fair access obligations, along with seeking wording that would prevent the continued practise of ‘regulatory holidays’. This issue was one that required a great deal of negotiating attention and was also subject to discussion during the European Summit that preceded the G20 meeting last month. I am now content that the newly agreed wording fully meets the objectives above and am pleased to note that this interpretation is one shared by the Commission.

The ‘Authority’ (The proposed ‘Regulation’):

The proposals covering this item have seen a number of changes as the negotiations progressed, with each avatar of the ‘Authority’ having seen a different name. One of the main stumbling blocks to agreement has been that the Commission has consistently argued that any secretariat support for the ‘Authority’ should be a Community Body. The current agreement was derived from a Franco-British proposal which took into account the Commission’s objections by making the secretariat a Community Body and was an idea which has proved to be acceptable to the European Parliament. This agreement has resulted in another name change, this time to the ‘Body of European Regulators for Electronic Communications’ (BEREC). I believe that the current proposal fully meets the UK’s primary policy objectives of creating an independent advisory body capable of providing expert advice to the Commission on the exercise of its powers, with a small and flexible secretariat.

The Commission ‘veto’ (Better Regulation directive amending Framework directive Article 7):

The UK supported, along with a small minority of other Member States, the original proposal for the Commission to have the power of ‘veto’ over market remedies proposed by National Regulatory Authorities (NRAs). This, along with politically independent NRAs and the creation of the ‘Authority’, was seen as necessary in order to ensure effective and consistent application of the regulations across the whole of the European Union. Whilst the other two proposals enjoyed the broad support of Member States, many were opposed to this proposal, as they believed it undermined the technical expertise of NRAs and would result in new powers being created for the Commission (who it was felt by some may not be best placed to fully appreciate national market conditions). The latest agreement gives the Commission the option to issue a ‘Recommendation’ on market remedies enacted by NRAs. Whilst this does not over-ride any remedy nor have any legal effect, it does introduce a requirement for the NRA to respond to the Recommendation justifying its actions, as well as the extra potential benefit gained from the collective scrutiny of NRAs acting as BEREC. This should result in sufficient peer pressure to ensure consistent and effective market remedies to be put into place and I am content that this latest agreement meets HMG’s negotiating objectives in this matter.
"Universality of Broadband" (Citizens’ Rights directive amending Universal Service directive)

You may recall that an additional objective that I sought within the package has the aim to remove any specific definition of the speed of “functional internet access” that was contained in a Recital of the Universal Services directive. This was in order to enable each Member State to determine its own value, taking into account unique national circumstances. I also sought this change in order to enable HMG to realise the aim of every UK citizen having access to a broadband connection, as detailed in my interim Digital Britain Report. I am pleased to report that I was fully successful in achieving this aim.

This concludes my reporting of the outstanding issues which I now believe are resolved. However, there remains a new matter that has arisen as a result of the Second Reading vote by the EP and is yet to be resolved; the next section of this letter deals with this issue.

Matter arising from European Parliament vote on Second Reading

Amendment 138 (Better Regulation directive amending Framework directive Article 8f (b) ):

This amendment was first introduced by MEPs during the First Reading and was regarded as a political reaction to a piece of national legislation introduced by France, dealing with piracy and breaches of copyright. The legislation introduced a ‘three strikes and you’re out’ principle whereby consumers could have their internet connection suspended by Internet Service Providers (ISPs) if they breached copyright legislation on three occasions. Amendment 138 sought to introduce a requirement for a legal hearing to take place following the third ‘strike’ and before disconnection could take place. This amendment was removed by Council during ensuing discussion and when reaching the Common Position at the November 2008 Telecoms Council meeting. Despite clear indications from several Member States that the inclusion of the text of Amendment 138 in the Second Reading was unacceptable (with France, Finland and UK publicly indicating their disquiet) the EP voted in favour of Amendment 138 being re-inserted in the text.

The latest insertion of Amendment 138 – which in itself is much broader than the original version of Amendment 138 that was rejected during the First Reading – has caused a number of unfortunate consequences, all of which are having a negative impact on the UK’s objectives. They are:

The inclusion of a direct reference to the Charter of Fundamental Rights of the European Union in the Articles of the Framework directive, and indeed any piece of European legislation, is a long established UK ‘red line’ and one that falls within the policy remit of the Ministry of Justice;

If implemented, this amendment will create the requirement for a legal hearing for every such case, thus creating an unwieldy and potentially protracted and costly legislative process, as well as tie the hands of other Member States who may also wish to introduce similar legislation;

The amendment creates new concepts relating to ‘Internet rights’ which are undefined and places them on a par with those rights already enshrined in the Charter. Their creation could result in a whole series of legal cases that seek to determine if such rights exist, what they are, their limits and ramifications – all of which creates a large corpus of legal uncertainty; and

There are a number of other issues impacted upon by the creation of ‘Internet rights’ and include issues relating to Net Neutrality and traffic management; this amendment may make decisions related to such activities liable to legal challenge by users.

Additionally, officials from key government departments met on Thursday 14 May to discuss this specific problem and its impact on the package. Ministry of Justice officials explained why this was a ‘red line’ issue, both in legal and policy terms.

My officials had received early indications that a number of Member States, including UK, may be forced to vote against the entire package as the inclusion of Amendment 138 in the text creates a number of legal and constitutional problems at a national level.

These indications have proved to be accurate, in that when Member States were asked to give an indication on whether the package should be voted on at the June Telecoms Council at the Coreper (The Committee of the Permanent Representatives) meeting that took place on Wednesday 13 May 2009, there was an overwhelming majority indicating that the package should move straight to Conciliation – the ‘Third Reading’ process – in September 2009.

The Czech Presidency now have a number of options open to them and discussions are currently taking place on both Conciliation, along with the viability of splitting the package so that the Citizens’ Rights directive and the Regulation establishing BEREC can be approved before issues relating to Amendment 138, and thus the Better Regulation directive, are resolved through the Conciliation process.
Given that the important issue regarding Amendment 138 has yet to be resolved, it is currently difficult for me to indicate my voting intentions at the next Telecoms Council, due to take place on 12 June and, indeed, whether the package will be considered at this Council meeting. However, I would be grateful if the committee could considering lifting the scrutiny reserves that are currently in place, so that I have the necessary freedom to act in accordance with outcomes that best align with HMG’s negotiating objectives for this package.

I understand that you have requested that I appear before the Committee in order to provide further detail on the issues covered by this letter. I can confirm that my officials and the clerks are liaising in order to progress arrangements for such an appearance, if it is still deemed necessary after receipt of this letter.

Finally, I would like to thank both Committee members and clerks for your continued cooperation and understanding during what have proved to be both a complex and protracted negotiating process that began in November 2007 and will hopefully be concluded by the end of 2009.

15 May 2009

Letter from the Chairman to Lord Carter of Barnes

Thank you for your explanatory memorandum dated 6 April and letter dated 15 May. Sub-Committee B considered them on 1 June and agreed to clear the Communication from scrutiny.

We would like to thank you for providing updates on both the Common Positions and the subsequent compromises. We regret the fact that the package is now likely to go to conciliation but note that the Government had achieved its objectives on most points.

It is our opinion the European Parliament’s objection to the French “three strikes and you’re out” legislation is justified, although we accept the Government’s view that this package of legislation is not the appropriate medium for expressing that objection. We recommend that the Government oppose any moves to introduce a similar system in the rest of the EU and take every opportunity to encourage all Member States, including France, to liberalise and open up their telecoms markets.

We would be grateful if you could send us an update on the outcome of conciliation at an appropriate time.

4 June 2009

Letter from the Rt Hon Stephen Timms MP to the Chairman

Lord Carter wrote to you on 15 May 2009 to notify you that the Council and the European Parliament (EP) failed to reach an agreement at Second Reading of the telecoms package. The principle point of contention was the EP’s inclusion of an amendment to the Better Regulation directive (known as A138).

The package was not considered at the June Telecoms Council meeting, and whilst Council is still yet to formally reject the EP’s Second Reading text, the package has now moved to Conciliation following an overwhelming majority vote for this action at the Coreper (The Committee of the Permanent Representatives) meeting that took place on Wednesday 13 May 2009. It is expected that Council will formally reject the outcome prior to the Conciliation process in order to ensure that due process is followed.

PROGRESS UPDATE

Despite a failure to reach an agreement at Second Reading, there have been clear statements over the Summer from Council, the EP and the Commission that all three institutions are keen to reach an agreement on the package during the Conciliation process.

Further, the Commission issued three opinions in early August – one for each amending directive and the Regulation – that indicated that they were content with the outcome of the Second Reading and would be amending their original proposals to bring them into line with the text of the Second Reading.

The Swedish Presidency have indicated that is it their preference not to ‘split’ the package ie for Council to agree the text of the Citizens Rights directive and the Regulation establishing BEREC (the new European Body of Regulators) whilst attempting to resolves issues related to A138; you may recall that this proposal was put forward by the UK but did not attract further support from the
Presidency. Therefore, the Conciliation process will cover the package in its entirety and I will cover Conciliation in more detail below.

**Summary of Impact of A138**

Lord Carter’s letter of 15 May 2009 set out the impact of A138, in summary, the three major impacts on our policy are:

- It has been long-standing HMG policy not to accept references to text of, or derived from, the Lisbon Treaty until the Treaty is ratified – the reference to the Charter of Fundamental Rights of the European Union in the text of A138 breaches this HMG Red Line;

- The inclusion of a requirement of a “prior judicial hearing” when referencing the Right of Freedom of Speech creates a legal inconsistency in that this Right can be curtailed in certain circumstances without such a hearing taking place. Any agreed text must address or avoid the creation of legal inconsistencies; and

- HMG is currently consulting on certain technical measures that can be used to prevent unlawful peer-to-peer file sharing. Two such measures include reducing a user’s bandwidth to the extent that file-sharing is no longer viable or by temporarily suspending a user’s Internet connection. If there is a requirement for a “prior judicial hearing” to take place before such actions can be taken, this may make such measures unwieldy and potentially create a protracted and costly legislative process.

Whilst A138 is being considered in the context of an impact on HMG policy ambitions regarding unlawful file-sharing, if the requirement for a “prior judicial hearing” were to remain, it may also limit policy options for taking action in other areas. This view is underlined when considering the impact of this requirement has had on two other Member States: for Finland and their policies on dealing with scam websites and websites associated with malware; and for Germany when dealing with illegal images, in particular child pornography.

Whilst there was also an initial impact on the French government’s legislation for addressing unlawful file-sharing, I believe that their process now includes a judicial element and as such, they are unlikely to have a problem with the amendment. Therefore, we may no longer be able to rely on their support when dealing with this particular issue.

Finally, there is also a wider implication, in that the amendment creates new concepts relating to ‘Internet rights’ which are undefined and places them on a par with those rights already enshrined in the Charter. Their creation could result in a whole series of legal cases that seek to determine if such rights exist, what they are, their limits and ramifications – all of which creates a large corpus of legal uncertainty.

**HMG Negotiating Aims and Tactics**

HMG’s three negotiating objectives (currently being cleared by cabinet) are:

- To reach an overall agreement on the package whilst attempting to preserve the major gains for the UK (as detailed in Lord Carter’s letter of 14 May);

- To remove the requirement of a “prior judicial hearing”; and

- To address issues relating to the Charter and any arising legal inconsistencies.

To this end, my officials have held a series of bilaterals with other Member States (including France, Germany and Poland) and with the Swedish Presidency. These meetings included providing alternative texts that take into account the EP’s concerns but do not unnecessarily constrain the current and future options of Member States to act on a national level in this and other areas.

My officials are also currently considering how we can garner support for the UK’s objectives from MEPs, and in particular how we can influence those who constitute the EP delegation to the Conciliation committee.

Finally, whilst there is an accepted risk that the scope of Conciliation may widen to include issues other than A138, current indications from the Presidency, the EP and Council are that it is their collective desire that A138 remains the sole focus of Conciliation. However, in preparation for the
event that the scope is widened at the request of the EP, my officials have begun to identify other areas that may also be considered; how HMG should react to such proposals; and which compromises can be offered in order to reach an overall agreement.

**ANALYSIS OF PROBABILITY OF ACHIEVING HMG’S AIMS**

As the package is subject to Qualified Majority Voting the UK will have to attract enough support for each aspect of A138 to form a blocking minority in order to avoid the package being passed.

Given that the UK enjoys strong support from a number of Member States with regard to the issue of “prior judicial hearing”, and there has also been an indication from the EP by the Chair of the ITRE Committee that a reference to the Charter is not required and any text should take into account matters of Member State subsidiarity, I believe that there is a high likelihood of success during Conciliation of achieving this aim.

Additionally, I understand that the matter of legal inconsistencies has been raised with the Presidency and that this will also be addressed during Conciliation by avoiding direct reference to any current pre-existing or as-yet-to-be ratified Rights.

However, as the issue of the non-ratification of the Treaty is a matter particularly unique to the UK, it may prove difficult to form a blocking minority. As such, my officials have been using the bilateral activities (mentioned above) to explain both the UK’s position on its policy regarding unlawful file sharing, and to create understanding, and garner support for our position on the Treaty. Early indications are that other Member States may support the UK in order that an agreement is reached overall.

Finally, it has yet to be decided how HMG should react should we fail to succeed to address the above issues but there is currently a clear steer from the Ministry of Justice and the Prime Minister that HMG should not be prepared to breach its Red Line on the Charter issue.

**CONCILIATION TIMETABLE**

Progress over the summer was slowed by the EP elections and a change of Presidency but is now speeding up.

The Chairs of the relevant committees – Industry, Research and Energy (ITRE), Internal Market and Consumer Protection (IMCO) and Civil Liberties, Justice and Home Affairs (LIBE) – are now confirmed and the EP membership of the Conciliation committee was confirmed on 22 September.

The EP has requested that two Trialogue sessions take place before Conciliation commences and these meetings are provisionally due to take place on 29 September and 6 October. This would mean Conciliation would begin on 13 October and run until 23 November (or until 1st December, if the option of a two-week extension was exercised in order to reach an agreement).

Further, the Presidency has stated their ambition to reach agreement by 1 November to coincide with the earliest date that the Lisbon Treaty could pass into effect. We think this timetable is extremely ambitious but not impossible should the scope of Conciliation remains tightly focussed on dealing with A138 alone.

However, if we fail to reach agreement during Conciliation, the package will fall and the Commission will need to put forward a new set of proposals in order to re-instate the process. I remain focussed on reaching an agreement and avoiding such a negative outcome.

Given that a successful negotiation will be conditional on an agreement being reached on A138 that addresses the UK and other Member State concerns, it is the intention of my officials to update your Clerks on progress as negotiations progress and I will write again during the process should the need arise and in agreement with your Clerks.

I will of course write to you again once the Conciliation process has completed and report its outcomes, along with HMG’s intended reaction to same.

To conclude, I would like to thank you and your committee, along with your respective Clerks, for your continued understanding and cooperation during what has proved to be a protracted and complex negotiating process.

*30 September 2009*
You may recall from my last letter – dated 30 September – that the Better Regulations directive contained within this package was to move into Conciliation as there had been a failure between Council and the European Parliament to reach agreement after the Second Reading. This failure to reach agreement was due to an amendment, inserted by the European Parliament, which became known as Amendment 138.

Further, you may also recall that Council had until 26 October to indicate if they were content with the Second Reading text of the Citizens’ Rights directive and the Regulation establishing the Body of European Regulators of Electronic Communications (BEREC).

As there were no points of disagreement between Council and the European Parliament on these latter two elements of the package, they were adopted as an ‘A Point’ during the General Affairs Council of Monday 26 October.

OUTCOME OF CONCILIATION

Following a series of Trialogue and CoReper meetings in the previous three weeks, with the aim of deriving a text for the commencement of Conciliation Committee discussions, the first meeting of the Conciliation Committee took place during the evening of Wednesday 4 November.

It was at this first meeting of the Conciliation Committee that a compromise text was formally agreed; I include full copy of both the text of Amendment 138 and the Conciliation-agreed text for your reference in Annex A of this letter.

ANALYSIS OF OUTCOMES

You may recall that HMG had three priorities when entering into Conciliation. To recap, they were to: reach an agreement without compromising the gains for the UK made between the First and Second Readings; remove any requirement of a “prior judicial hearing”; and address issues relating to references to Charter of Fundamental Rights, and any arising legal inconsistencies.

I believe that the text agreed during Conciliation fully meets HMG’s objective because:

— Incorrect legal references to the Charter of Fundamental Rights have been removed;
— It does not refer to a specific requirement for a “prior judicial ruling”;
— Reference to a “judicial review” is in a separate sentence from the word “prior”, which again adds legal certainty for us that any “judicial hearing” itself need not be “prior”;
— The new text states that Member States must guarantee a prior, fair and impartial procedure. I can confirm that this is consistent with current proposals for potential technical measures for dealing with unlawful peer-to-peer file-sharing;
— The new text requires that any access to a judicial review has to be ‘effective and timely’. Again, I believe that this is consistent with our proposals whereby someone would have the right to a secondary appeal to a Tier 1 Tribunal; and
— As the scope of Conciliation never widened beyond the issue of A138, the gains in the Second Reading for the UK were preserved.

Further, officials from my department, as well as those from the Ministry of Justice, were on-hand during the Conciliation Committee meeting and were able to review and comment directly on the texts as they were generated by the meeting. Ministry of Justice officials have indicated that they are content with the Conciliation text and that it does not cross any of HMG’s Red Lines with regard to this issue.

Therefore, I am content that the outcome of Conciliation is a positive one for HMG and its negotiating objectives and has secured some solid benefits for the UK and its citizens. I am, therefore, content for the package to be adopted and I hope that you agree with this assessment.
This element of the package, with its amended text, is now due to be put to a full plenary vote of the European Parliament during w/c 23 November and I am anticipating a positive outcome. The package will then need to be approved by Council and I believe that it will be taken as ‘A Points’ during the Education and Youth Council during the same week.

I have been informed that it is necessary for approval of the package to proceed before 1 December, when the Lisbon Treaty comes into force, in order to avoid amendments to take into account changes in comitology that are included within the Treaty.

Once this element of the package has cleared the co-decision process and checks by the jurist-linguist process, it will be published in the Official Journal of the European Union along with the other two elements (the Citizens Rights Directive and the BEREC Regulation) and I anticipate that this will take place in December 2009; Member States will then have eighteen months to implement the new package from that point.

To conclude, I would like to thank you and your committee, along with your respective Clerks, for your continued understanding and cooperation during what has proved to be a protracted and complex negotiating process over the past two years.

11 November 2009

TELECOMS: GSM DIRECTIVE (16155/08)

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

I refer to your letter of 23 April 2009 asking to be kept informed of the details of the expected first reading deal regarding amending the GSM Directive (16155/08 COM(08) 762).

The first reading deal has been voted through by the European Parliament (EP) on 6 May. The amended text voted through is close to that originally proposed by the Commission, which in itself was welcomed by the Council. Significantly the original amendments in the ITRE report (which would have given the European Parliament a role in determining which mobile technologies could be used in the 900 MHz band) have not been carried through.

I attach the text that has been approved by the European Parliament.

I understand that the proposal will finally be agreed before the end of the summer, probably as an ‘A’ point at a Council in July. I would therefore be grateful if the Committee will consider lifting this document from scrutiny.

29 May 2009

TELECOMS: RADIO-FREQUENCY IDENTIFICATION (RFID) (7544/07)

Letter from Lord Carter of Barnes, Minister for Communications, Technology and Broadcasting, to the Chairman

Further to the Explanatory Memorandum (7544/07) which we submitted to the Committee regarding a Communication from the Commission on RFID policy, we are now writing to notify the Committee, as per Lord Grenfell’s request in his letter dated 1 May 2007, that the European Commission published a Recommendation on the implementation of privacy and data protection principles in applications supported by radio-frequency identification (RFID) on 12 May 2009.

When we last wrote to the Committee the Commission had published a Communication on 15 March 2007 called ‘RFID in Europe: Steps Towards a Policy Framework’ wherein the Commission decided that a legal framework which set effective safeguards for data protection and privacy was essential to encourage take-up of RFID technology. The Communication stated the Commission’s intention to produce a non-binding Recommendation at a later stage. Our Explanatory Memorandum set out the policy implications and your Committee cleared the proposal.

In the Communication the Commission requested a joint effort between it, Member States and industry to develop a framework. An EU RFID Experts Group consisting of industry, NGOs and

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academia was set up to support the Commission. There was one UK representative in this group who came from the Centre of Excellence for Auto-ID and Data Capture (AIDC), a venture developed in partnership with Yorkshire Forward and the Association for Automatic Identification and Mobile Data Capture (AIM UK). We were able to feed into the group and directly to the Commission the strong concerns of UK Retailers about the disproportionate costs retailers would incur to remove all tags at checkouts. We also encouraged stakeholders to contribute to the Commission’s consultation exercise.

The Recommendation which has now been published stipulates that a framework for safeguarding privacy and personal data needs to be developed to provide guidance to operators on their use of RFID. It does not create new legal obligations but aims to provide clarity on existing obligations under data protection legislation.

The implications for the retail sector are key because RFID is being increasingly used to improve stock control and productivity. Retailers will have to conduct privacy impact assessments as they are already obliged to do but if there is no risk to privacy retailers will not have to remove tags at the checkout (unless a customer specifically requests its’ removal). However, the fact that retailers have strong security systems on their back office operations and no personal information is stored on the tag itself mitigates against the risk to consumers. Retailers will have to provide a kiosk in store for tags to be removed but we understand from discussions with large retailers that they are content to do so. Small retailers are excluded from the scope of the Recommendation because they will not meet the description of RFID operators.

The Recommendation states that the use of codes of conduct and best practice can help to manage privacy and security measures and the Commission encourages all stakeholders to be involved in their preparation. In the UK we propose to set up a working group involving RFID users and suppliers, ICO and consumer and employee representatives who will work collaboratively to establish a code and best practice. We have held initial discussions with possible members of the group who have welcomed this approach.

The Recommendation states that Member States should take measures to inform and raise awareness of the risks and benefits of RFID technology. The UK is already doing a lot in this area. There are two regional RFID centres, in Halifax and in Camberley, which have the remit to promote the take up and use of RFID technology in the locality. The centre in Halifax, for example, holds training seminars to raise awareness and has a demonstration suite. BERR funded the publication of a compendium on RFID last year. The compendium explains the technology and lists the possible uses it. The UK currently chairs the Raising Awareness and Competitiveness in Europe RFID Network (RACE RFID) which aims to provide a network of excellence in Member States in the development, adoption and usage of RFID. RACE aims to position RFID within the mainstream of information and communications technology.

Member States have two years to inform the Commission on the steps they intend to take to meet the objectives of the Recommendation. Within three years the Commission will report on the Recommendation’s implementation and produce analysis on the impact to companies, public authorities and on citizens. We will send the Committee a copy of the UK’s report back to the Commission.

29 May 2009

TRANSPORT: ACTION PLAN ON URBAN MOBILITY (14030/09)

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

Thank you for your Explanatory Memorandum. Sub-Committee B considered the document on 23 November and decided to clear the item from scrutiny. We welcome the Action Plan and its approach to improve urban transport through voluntary commitments rather than through legislative initiatives. As you will seek clarification on some of the Actions, we would like to have an account of your discussions with the Commission and subsequent developments under the Spanish Presidency.

The Action Plan does not contain much detail on how to deal with traffic in urban areas and it is not clear whether congestion charges are seen as an effective policy tool or whether other measures are preferred. We would appreciate a clarification on this point.

24 November 2009
Letter from the Chairman to Paul Clark MP, Parliamentary Under Secretary of State, Department for Transport

Sub-Committee B considered this item on 19 January and agreed to hold it under scrutiny. We wrote to you on 3 February asking to be kept up to date with details of negotiations. We also noted from your explanatory memorandum that there are a number of areas where details of the labelling scheme will need to be clarified: the relationship between the ratings and type-approval process, the test specifications for C2 and C3 tyres and the administrative burden on manufacturers in making this information available. We asked to be kept informed of discussions of these issues.

We would be grateful if you could provide us with an update on negotiations.

7 July 2009

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your Supplementary Explanatory Memorandum of 7 July 2009 which was considered by Sub-Committee B on 12 October. They decided to hold the document under scrutiny.

In our previous letter to you we shared your concern over Article 10 of the proposal and its impact on national fiscal sovereignty. The European Parliament amendments (endorsed, it would seem, in the amendments proposed by the Commission) would compound the situation, even though it now seems likely that powers to set the parameters for tyre performance by comitology have been limited.

It seems that the requirement for labelling tyres now applies only to those classed as C1 and C2. Is this the Government’s current interpretation of the proposal? We are concerned that C3 tyres seem to have been excluded and would like to know more about the reasons for the Government’s opposition to the inclusion of that class of tyre. We would also be interested to know what the position is in regard to run-flat tyres, which do not seem to be mentioned in the proposal.

We agree that amendments to extend the scope of the proposal to cover dealers of vans, lorries and buses, and the requirement for car dealers to provide information on the poorest performing tyres for each size, would impose unnecessary burdens on dealers.

We look forward to receiving your further Supplementary Explanatory Memorandum in response to the Commission’s amendment of the proposal, and would appreciate being kept informed on the progress of negotiations.

13 October 2009

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your Supplementary Explanatory Memorandum of 2 November, which was considered by Sub-Committee B on 9 November. They decided to clear it from scrutiny, along with its predecessor, document 15920/08.

The revised proposal certainly seems to be more in accord with the Government’s negotiating aims, in particular the explicit exclusion from the scope of Article 10 of fiscal incentives and taxation.

While we accept the argument that tyres are sometimes not seen by the purchaser prior to sale, we are not entirely convinced that the change from labelling individual tyres to providing a label for the entire batch will be robust enough. Is there not a risk that tyres could be mis-labelled, for instance if a batch is split and moved around a warehouse? The Government seem to share our scepticism about the relative merits of the two approaches. With this in mind, we welcome the reduction of the review period from five years to 40 months.

We note, however, that the proposal contains no provision for the marking of tyres with respect to the minimum safe tread depth, and suggest that this might contribute greatly to road safety across Europe.

10 November 2009
Letter from the Chairman to the Rt Hon Sadiq Khan MP, Minister of State, Department for Transport

Thank you for your predecessor’s Supplementary Explanatory Memorandum on a European rail network for competitive freight. Sub-Committee B considered it on 8 June and agreed to clear the proposal from scrutiny.

We note that the progress on the negotiation has substantially modified the original version of the Commission’s proposal. We are glad that your Supplementary Memorandum provides an accurate description of amendments by both the Council Working Groups (CWG) and the European Parliament.

The amended proposal addresses many of the concerns of the Committee and the points made by different stakeholders in the consultation. In addition, the Government’s Impact Assessment provides a much better understanding of the effects of the proposal.

We are pleased that you clarified the reasons behind the choice for a Regulation rather than a Directive on the basis that a Regulation would avoid an inaccurate transposition as was the case with the First Railway Package. This is in line with the Committee’s view expressed in its report on the Recast of the First Railway Package where an incorrect transposition has been recognised as a key factor preventing the adequate interpretation of the Package and therefore the establishment of competitive rail freight across the EU.

We would be grateful if, by 13 July, you would let us know the results of the Transport Council.

We would also like to know what input a Member State will have in the planning of a corridor between two other Member States.

9 June 2009

Letter from the Rt Hon Sadiq MP to the Chairman

Thank you for your letter of 9 June 2009 in which you advised me that your Committee had cleared this proposal from scrutiny. I am responding to your request to let you know the results of the Transport Council and to answer a question raised in your letter.

As predicted in our Supplementary EM, the Transport Council reached political agreement on the proposal in Luxembourg on 11 June. I joined several other Ministers in expressing the view that the text put to the Council struck the right balance in terms of passenger transport and the designation of rail corridors. Some minor changes were made to address remaining concerns of some Member States and the political agreement was reached. The form of this political agreement is a success for the UK: we managed to safeguard important market-opening measures that some Member States sought to dilute during last-minute negotiations and we achieved all our key negotiating objectives, such as: a two-tier governance structure for freight corridors which preserves executive powers over national infrastructure; the right scope with a focus on international rail freight services; a balance between the interests and requirements of freight and passenger services; a workable approach to capacity allocation and traffic management; realistic deadlines for the selection and establishment of international rail freight corridors; and robust provisions ensuring regulatory oversight.

Amendments made by the European Parliament during its First Reading have not been reflected in the Council’s political agreement except where they mirrored a similar effect to that intended by changes introduced by the Council. We will now work to ensure that this positive outcome in Council can be preserved during the European Parliament’s Second Reading later this year.

For your information, I attach the version of the text agreed at the Transport Council on 11 June.

In your letter, you also asked what input a Member State will have in the planning of a corridor between two other Member States. According to Article 4(6) of the proposal, the Commission is obliged to examine Member State proposals for the establishment of freight corridors. It adopts its decision on compliance of such proposals with Article 4, including the criteria laid down in Annex II, with assistance by a regulatory committee composed of the representatives of the Member States in accordance with the regulatory procedure set out in Articles 5 and 7 of Council Decision 1999/468/EC (as amended by Council Decision 2006/512/EC). The same procedure applies to the modification of freight corridors as envisaged by Article 5 of the proposal.

Also, in accordance with Article 6 of the proposed Regulation, when two or more Member States concerned do not agree on the establishment or modification of a freight corridor, the Commission,
at the request of one of the Member States concerned, must consult a committee composed of the representatives of the Member States as referred to in Article 11(a) of Directive 91/440/EEC.

9 July 2009

TRANSPORT: GREENING TRANSPORT (11841/08, 11842/08, 11851/08)

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

Thank you for your letter dated 28 April 2009. Sub-Committee B considered it on 11 May and agreed to continue to hold document 11841/08 under scrutiny.

We are grateful for the update on the progress of the revision of the Eurovignette. In our view, the Government’s position concerning the legal base for this Directive is correct. We very much hope that in negotiations the Government continue to press for the legal base to be changed to a tax one. We would like to continue to receive updates outlining the different positions taken, as it seems likely that the arguments used on this dossier will influence the negotiations on the internalisation of external costs strategy.

As your letter reports that very little progress has been made on the internalisation of external costs strategy, we will continue to hold the Commission’s Communication under scrutiny and look forward to receiving updates.

13 May 2009

Letter from Chris Mole MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Further to the Evidence given by Jim Fitzpatrick to Sub-Committee B on 2 February, I am now writing to provide the Committee with an update regarding the European Commission’s Communication on rail noise abatement. The Evidence Session also touched on the issue of the development of the Freight Wagon Technical Specification for Interoperability (TSI), and Jim Fitzpatrick promised that the Department would keep the Committee informed on progress with that TSI’s revision.

The Freight Wagon TSI has recently been amended in order to re-establish the principles of mutual acceptance that existed on mainland Europe before the TSI was introduced. However, the technical content that has caused UK wagon constructors difficulty is still under a process of revision. This revision, which is being carried out by the European Railway Agency (ERA), is expected to be completed in 2011 and railway sector representatives from the UK are now fully involved.

UK members of ERA’s drafting group have reported a positive attitude from ERA to requests for “UK Specific Cases” in the technical requirements (these are national exemptions that take account of compatibility of freight wagons with the UK’s existing network). The working group is also considering how to make the technical solutions in the body of the TSI text more flexible. In the meantime, the Department has supported a number of industry requests for UK national solutions that can be applied in the short term, until the TSI is revised to take account of the UK’s needs.

The Department is also currently taking work forward to transpose the new Directive on railway interoperability into national law, and will be recasting the UK Regulations that govern the application of TSIs. As part of this work the Government is reviewing options for the scope of application of the interoperability regime and will take account of the commercial needs of the UK’s rail freight industry. The new interoperability Directive has to be transposed by July 2010 and officials from the Department continue to work closely with representatives from the freight sector in order to refine the implementation plans.

On matters directly related to requirements for noise I can advise you that ERA has commenced revision of the Conventional (Rolling Stock) Noise TSI, which includes limits for the starting noise and rolling noise emitted by railway vehicles. The UK industry has already responded to this initiative by creating a ‘mirror group’ to ERA’s TSI drafting group, in order to coordinate UK input to ERA’s work. Any changes to technical requirements related to the generation of noise from brake blocks, as suggested by the Commission’s Communication, will be dealt with as part of the revision exercise for the Noise TSI. Revision to the Noise TSI is expected to be completed by the end of this year.

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However, the principal measure on rail noise abatement that was proposed in the Commission’s Communication is to consider introducing noise-differentiated track access charges to incentivise the retrofitting of composite brake blocks to the existing fleet of railway wagons. The Communication indicated that the Commission proposes to take this initiative forward in a future recast of the Directive on access and management (2001/14/EC). This would be a major piece of European legislative work, and proposals would naturally be subject to Parliamentary scrutiny in their own right. The European Commission has not yet put forward its proposals for the recast of this Directive, and we understand that they are unlikely to progress any such initiative until the end of 2010 at the earliest.

On a more general note, the Committee may wish to be aware that DEFRA has published draft noise action plans for consultation with respect to the Environmental Noise (England) Regulations, including a plan for major railways that describes the process to be followed to manage noise levels including noise reduction where necessary, in the context of sustainable development. These Regulations implement requirements of the EC Directive on Assessment and Management of Environmental Noise (2002/49/EC), also known as the Environmental Noise Directive. The draft Noise Action Plan: Major Railways can be seen at DEFRA’s website.

8 July 2009

TRANSPORT: INTELLIGENT TRANSPORT SYSTEMS (17564/08)

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

Thank you for your letter of 25 March 2009 concerning Sub-Committee B’s consideration of my letter of 9 March on the above proposal on the Intelligent Transport Systems (ITS) draft Directive. As requested I am now writing to update you on the progress of negotiations, including information about the progress on an impact assessment, ahead of my attendance at Sub-Committee B’s meeting on 8 June.

As predicted in my letter of 9 March, Council Conclusions on the Action Plan (EM 17563/08) were agreed at the Transport Council on 30 March. The draft Directive was then discussed at a number of working party meetings during April and at the Informal Transport Council, hosted by the Presidency in the Czech Republic on 29 April. The Secretary of State reaffirmed the UK position supporting the objectives of the Action Plan, but reiterated that the Government favours a non-legislative approach of co-operation and co-ordination.

This position has been maintained at Council working groups, at which amendments have been made to the draft Directive. Member States have expressed particular concerns about the:

a. Appropriate levels of implementation for each priority area (i.e. at Community vs. Member State level),

b. Scope of the comitology procedure and obligations resulting thereof,

c. Priorities of the different actions envisioned,

d. Impact of the draft Directive on existing ITS and national policies,

e. Financial and administrative implications for Member States.

The majority of Member States, including the UK, have also asked for a thorough cost-benefit analysis on the impact of ITS deployment, and the Commission has indicated that it will carry out an impact assessment on the specific measures to which the comitology procedure would apply.

Subsequently, at the 14 May working group meeting, the Commission placed a general scrutiny reserve on the draft Directive as they believe that it (as amended) no longer represents their intentions, or those of the agreed Council conclusions. There will be no further working group meetings on the draft Directive during the Czech Presidency, although the Presidency will present a progress report at the 11 June Transport Council meeting. We anticipate that the change in Presidency may bring about a change in approach.

The external stakeholders we consulted broadly support the objectives of increasing ITS deployment, and would prioritise among these objectives the implementation of safety-related ITS. However, there is concern that a pan-European approach to ITS fails to appreciate region-specific safety issues (for example, the impact, severity and regularity of snow on the roads). Stakeholders share the
Government view that the actions in the Action Plan are wide-ranging, complex and highly ambitious, particularly as the time frames suggested for implementation do not seem realistic.

Moreover, they commented that the recommendations ignore extant ITS services in countries including in the UK, and therefore disregard existing legacy schemes and operating practices, in particular the where delivery involves the private sector. We will continue to use their recommendations to inform our negotiations at the Council Working Groups and my Department will continue to work with ITS (UK), and consider how best to action their recommendation to extend our consultation to include freight and automotive sector representative bodies, as well as local authorities.

The European Parliament held their Plenary first reading of the proposal on 22 April. MEPs voted in favour of both the ITS Action Plan and draft Directive. They are keen to maintain the scope of the proposed measures on road transport and its interfaces with other transport modes. Like Members States however, they have requested more detail on the targets and deadlines along with an impact assessment prior to their adoption.

I look forward to attending the Committee on 8 June, where I know that you will want to discuss these and other issues in greater detail. I will, of course, continue to keep the Committee updated on further developments.

3 June 2009

Letter from the Chairman to Paul Clark MP

Thank you for your letter dated 3 June and thank you for giving evidence to the Committee on 8 June. Following that meeting, Sub-Committee B agreed to continue to hold this item under scrutiny.

The Commission’s “general scrutiny reserve” suggests that it is likely that further significant negotiations will take place on this proposal. The Committee would be grateful if you could continue to keep it updated.

In general, the Committee agrees with the Government’s position that ITS roll-out can be encouraged through coordinating measures between Member States. However, we believe that there is still a role for EC action in the harmonisation of some systems.

10 June 2009

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

Your Committee last considered this proposal in an evidence session with my colleague Paul Clark on 8 June 2009, at which time it did not seem likely that rapid progress would be possible in negotiations. I am now writing to update the Committee and alert you to the Swedish Presidency’s plans for priority consideration and agreement of this dossier.

The Swedish Presidency has identified this proposal as a priority for their term, and has indicated that they hope to seek political agreement on it at the Transport Council on 8/9 October 2009. We still believe that this represents an ambitious timeframe, but we need to be prepared in the event that the Presidency succeeds in this objective, and therefore I wanted to ensure that your Committee was notified of this as quickly as possible.

There has been one working group meeting since the 8 June. Though the focus of the meeting was on reiterating and clarifying existing positions with regards to the Action Plan for the deployment of Intelligent Transport Systems (which was the subject of EM 17563/08), my officials used the opportunity to investigate further the positions of other Member States, several of which share our desire for further clarity from the Commission regarding the actions in the plan.

We intend to use the five further working group meetings scheduled for July and September to find further common ground with other Member States, and to seek clarity on the scope and detail of the actions.

I will, of course, continue to keep you apprised of progress, with a further update in September.

9 July 2009

Letter from Sadiq Khan MP to the Chairman

I last wrote to your Committee about this dossier on 9 July alerting you to the Swedish Presidency’s plans for priority consideration and agreement of this dossier at the October Transport Council. I
considered this timetable to be ambitious, and in the event the Presidency was not able to achieve its objective and the proposal was withdrawn from the Council agenda. There have been a number of working group discussions of the proposal in recent weeks and I am now writing to update you on progress and to alert you to the Presidency's intentions to reach political agreement on the dossier at the Transport Council on 17 December. In parallel, the Presidency is seeking an early second reading deal with the European Parliament.

From our earlier correspondence you will be aware that the Government believes Intelligent Transport Systems (ITS) technologies can make an important contribution to achieving our transport objectives where they are well-targeted and there is a sound business case, and believes a coordinated approach to deployment across the EU will help deliver the full potential of these technologies. However, we have not been supportive of this particular legislation. You shared the Government's concern about the proposal for the use of a Directive and a Comitology procedure as the most appropriate instrument to promote the use of ITS applications across the EU. This position was also supported in our consultations with ITS stakeholders and by the House of Commons European Scrutiny Committee. My officials continued to make this case during negotiations in July, but by September it had become apparent that a majority of Member States were in favour of the legislative approach.

Against this background, we have been working hard in negotiations to secure changes to the Directive which are more palatable to the UK. The key issues for us have been that:

- decisions on the deployment of ITS applications and services should be for Member States;
- the Directive should focus on the development of standards to allow ITS to be interoperable across borders;
- the Directive should focus on a narrower set of priority actions and be confined to actions which required co-operation at European level;

I am pleased to say that we have made good progress in all areas of concern to the UK, and I am content that, provided there is no significant slippage in the gains we have secured, the Directive is now in a much better shape. Although the European Commission continues to maintain a general scrutiny reserve on the entire Directive, arguing that it is not ambitious enough, it is unlikely that the Commission will use this to block the Directive in its current form, if political agreement is reached at the December Transport Council. Moreover, if agreement is not reached at the Transport Council, negotiations are likely to restart under the upcoming Spanish Presidency. The current Swedish Presidency has been largely sympathetic to the UK position. If negotiations are restarted under a Presidency with different priorities, this may put at risk the substantial gains we have achieved. While I would like to go further in proposing further amendments, at this stage of negotiations I will be concentrating on securing the progress we have made.

We have made particularly good progress on the issue of mandatory deployment. The latest working version of the draft Directive no longer contains provisions for the mandatory deployment of ITS systems. Decisions on deployment will remain the responsibility of Member States, in accordance with the principle of subsidiarity. Early indications are, however, that the European Parliament remains in favour of mandatory deployment, a position reflected in its proposed amendments to the Directive. The Presidency is entering into discussions with the Parliament with a view to reaching a compromise. I shall continue to resist strongly any compromise which takes decisions on deployment away from Member States, and will continue to seek support from other Member States for this position.

I have been concerned that the scope of the actions initially envisaged in the Directive was both wide and unclear. With the support of other Member States, we have made some progress in confining the scope of the Directive to actions for cross border interoperability. There is also now greater clarity on the scope of the actions and a clear hierarchy of priorities.

I am supportive of measures to facilitate the interoperability of applications and services across borders, but I was concerned that the original proposal went well beyond the standards necessary for this purpose, potentially dictating roles and responsibilities and taking little account of different requirements between Member States. The draft Directive now recognises the important role to be played by existing standards organisations. We will need to play a full part in future discussions over the implementation of this Directive to ensure that specifications do not go beyond those necessary to secure interoperability.

Given the nature of this framework Directive, the lack of precision on the range of possible actions, the uncertain scope of specifications and the fact that deployment decisions are out of scope, it is difficult to predict with any certainty at this stage what the impacts might be in the UK, both across the private and public sectors. The attached Impact Assessment seeks to give a broad indication of
potential impacts, but I do not think there is sufficient evidence to support a clear conclusion. I am, however, pleased to say that as a result of strong lobbying, including from the UK, the Directive now includes an obligation for the Commission to undertake a full impact assessment prior to the adoption of any specifications.

Although there are still some details for Member States to resolve, there are no further Working Group meetings scheduled and we do not expect that there will be any further significant changes to the proposal between now and the Council. I will, of course, continue to keep your Committee informed of the progress of this proposal through the further stages of consideration by the European Parliament and the Council.

27 November 2009

TRANSPORT: “MARCO POLO II” (17294/08)

From Paul Clark MP, Parliamentary Under Secretary of State, Department of Transport to the Chairman

I am writing to update you on the outcome of the EU negotiations on the revision to the Marco Polo II Regulation.

Following discussions between the European Parliament’s Rapporteur, the Czech Presidency on behalf of Member States and the European Commission, the basis for a first reading deal has now been reached and was accepted at a European Parliament Plenary in April. We expect the Council to vote formally to accept the agreement in September.

While most of the provisions remain the same as those presented in the Commission proposal, following the EU negotiations there are some important changes which your Committee may want to note. These concern the modal shift calculation, the further lowering of project thresholds, infrastructure funding conditions and a revised administrative procedure.

MODAL SHIFT CALCULATION

The calculation of modal shift tonnes-kilometres (tkm) has been refined further than the Commission’s original proposal. Currently it is calculated using only the weight of the freight shifted and the Commission proposed that the calculation should be made using the tare weight (i.e. the weight of the freight plus the container in which it is carried and the vehicle by which it is drawn). Following the EU negotiations, it was agreed that the calculation should include the goods transported plus the intermodal transport unit plus the road vehicle, including empty intermodal transport units and empty road vehicles (NB. for the return leg of the round trip). This should give a more accurate reflection of the actual weight transferred off the road in the modal shift.

PROJECT THRESHOLDS

The Commission proposals on eligibility thresholds (i.e. contract value) was supported by a clear majority of Member States. However, some Member States, particularly smaller countries following the 2004 accession to the EU, favoured a further reduction of the thresholds in order to facilitate the participation of smaller projects, in particular projects put forward by SMEs, which could benefit from the financial support of the programme.

The Commission was fairly firm in resisting further changes to its proposal but finally agreed to a further lowering of the threshold for Motorways of the Seas projects, following consultation with the Executive Agency for Innovation and Competitiveness (who manage the programme on behalf of the Commission) to ensure that the Agency could cope with the extra burden of an even greater number of new project bids than were already anticipated by the proposed reductions.

PROJECT THRESHOLDS – MOTORWAYS OF THE SEA

The current existing threshold of 1.25b tkm modal shift over the life of the project and €2.5m (£2.233m) subsidy requested will now be replaced by a 200m tkm per year (equivalent to 600 tkm project lifetime), rather than the 250m tkm per year originally proposed by the Commission. This should encourage more and smaller Motorways of the Sea projects, which are under-represented currently in successful projects.
INFRASTRUCTURE FUNDING CONDITIONS

Currently, there is a complex set of conditions that apply to the infrastructure funding, which varies across action types. Different time and financial limits, different eligibility costs, as well as environmental and other legislative conditions, could apply. This has lead to a situation where only the amortisation of movable assets has been financed through Marco Polo under this part of the programme. Therefore the Commission proposed to simplify the rules to allow spending on ancillary infrastructure for all projects (with the exception of Common Learning Actions) in the same way as any other necessary expenditure. The Commission proposed that infrastructure costs could not be funded if they represent more than 10% of the eligible costs. However, following the EU negotiations this amount was increased to 20% in recognition that infrastructure was often an important deciding element in the consideration of start-up costs for projects.

ADMINISTRATIVE PROCEDURES

The current procedure is for the work plan and projects selected to be agreed by comitology process on a yearly basis. The Commission proposed that in future a three year work plan would be agreed by comitology, and Marco Polo management will be advised of the outcome of the bid round by the Commission, but with no formal vote. During the discussions, several Member States opposed this proposal in spite of the fact that there has never been a single vote against the Commission’s list of selected projects under Marco Polo I or Marco Polo II. So, the Presidency put forward a compromise proposal maintaining an obligation for the Commission to inform the committee before it takes a final decision on the selected projects (NB. In effect an obligation to consult Member States informally). The Commission has agreed to make a statement in order to clarify the modalities of this information obligation, which will be attached to the Council minutes.

Overall, the Government regards the outcome of these EU negotiations as a positive one. We believe that the deal achieved is a good one because it means that bids can be submitted under the new rules from 2010. The changes will help to increase the number of SMEs that submit bids and receive funding and ensure that all the available funding is allocated. It should also help to improve reductions in congestion and the environmental impact of the road haulage sector in line with the overall objective of the Marco Polo programme.

18 June 2009

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

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

I am writing to update you on progress on the Road Transport Package of three proposals affecting the road haulage and passenger transport sectors.

As you may recall, a Political Agreement was reached on the package at the June 2008 Transport Council. Following discussions between the European Parliament’s Rapporteur, the Czech Presidency on behalf of Member States and the European Commission, the basis for a second reading deal has now been reached and was accepted at the recent European Parliament Plenary. We expect the Council to vote formally to accept the agreement in the next few months.

While most of the provisions remain the same as those presented to the Transport Council at the time of the Political Agreement, the compromise reached with the European Parliament includes two new provisions which were not included at that time. The first is the introduction of the new cabotage rules in the Access to the International Road Haulage Market Regulation within six months of the entry into force of the new Regulation. The other is the reintroduction of the 12 day rule for drivers undertaking international occasional coach tours under the Access to the International Coach Market Regulation.

EARLY IMPLEMENTATION OF THE NEW CABOTAGE RULES

The Access to the International Road Haulage Market element of the package was the most sensitive issue throughout the negotiations, with some Member States seeking a firm date for the full liberalisation of the cabotage market (i.e. domestic haulage activity in a Member State by a haulier from another Member State). Unlike other modes, where we have led calls for liberalisation of transport markets, the UK was reluctant to commit to a firm date before we had evidence of more consistent enforcement standards being applied because there is currently inconsistent application and enforcement of international safety standards for road haulage operators. We need to be confident
that the appropriate action will be taken by Member States’ authorities against any of their hauliers who commit infringements while they operate in another Member State. As you know, the Political Agreement included a commitment for the Commission to review enforcement standards and other issues across the Community by the end of 2013 before considering further liberalisation of the cabotage market.

While this represented a good outcome for the UK, in their Second Reading, the European Parliament sought concessions in exchange for dropping a firm date for full liberalisation. One of these was that the new rules outlining the maximum extent of temporary cabotage activity (i.e. a haulier can undertake three domestic jobs in seven days following a loaded international journey into a Member State as set out in Articles 8 and 9 of the Regulation) should be introduced 20 days after entry into force of the Regulation (i.e. 20 days after publication in the Official Journal). Most Member States were prepared to accept this, however the UK, supported by a few other Member States, argued against such speedy implementation. I am pleased to be able to report that, following a series of useful discussions with Members of the European Parliament, we managed to get this changed to implementation of the new rules within six months of entry into force instead. We achieved this by arguing that six months, at a minimum, would be needed to ensure that there was sufficient time for Member States to get their authorities ready to enforce the new rules.

Although key cabotage provisions in the Access to the Market Regulation will come into force earlier than previously anticipated, we are confident that there are sufficient measures in place to ensure that enforcement authorities in the UK can effectively cope with the new rules. For example:

- VOSA has already significantly increased enforcement activity against non-resident hauliers. (In 2005/6 there were 17,538 roadside checks for traffic offences - in 2007/8 this had increased to 30,60620).
- VOSA also has an extra £24m over the next three years to target unsafe and overloaded HGVs on international journeys. This will fund 75,000 HGV checks per year and 97 additional enforcement staff.
- ’24/7’ enforcement checking, already in place on the M6, M25 and in North Wales, will be extended to other sites over the next three years.
- The Graduated Fixed Penalty and Deposit scheme introduced in April 2009 now means that the police and VOSA can issue fixed penalties to non-resident offenders for both traffic and roadworthiness offences.

In addition, despite the rules coming in earlier than we would have liked, breaches of cabotage rules should be easier to enforce against than under the current rules. The new rules mean that the burden of proof will be on the haulier to prove that they are undertaking cabotage operations within the rules of the Regulation and to evidence this with documentation, rather than on the enforcement authority to prove that operators are operating illegally, as is the case now. Furthermore, although some of the enforcement provisions in the new Access to Market regulation will not come into force for two years, very similar provisions in the current Regulation remain in force, in the meantime. These enable a host Member State to take enforcement action if there are breaches of the cabotage rules, including suspending their right to undertake cabotage.

Furthermore, if cabotage “hotspots” develop which distort the UK market, there are existing provisions which enable Member States to ask the Commission to invoke “serious disturbance” measures to address any imbalance, providing sufficient evidence is provided.

THE 12 DAY RULE FOR OCCASIONAL COACH TOURS

Following pressure from the EU bus and coach industry and with the support of the Commission and the Presidency, in its Second Reading of the proposals the European Parliament agreed to change the current EU drivers’ hours rules for international occasional coach journeys (i.e. closed door tours) which were introduced in 2006. Since 2006, coach drivers on these tours have been required to take a weekly rest period after six days. Following the Second Reading Agreement, in certain circumstances and with some accompanying safeguards, this will revert to 12 days under Article 29 of the new Regulation. It will also be introduced six months after entry into force.

The text originally proposed by the European Parliament was based on that which was recently adopted for the purposes of the United Nations AETR Agreement (European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport). This Agreement governs drivers’ hours rules for trips outside the EU. The AETR Agreement allows drivers to postpone their rest for a maximum of 12 days but only for the purposes of undertaking a single manned tour, where

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20 Source Table A1.36 2007/8 VOSA Effectiveness Report
before there were no limits. The European Parliament had been opposed but ultimately accepted the 12 day rule being taken out during the negotiation of Regulation (EC) No 561/2006 on the harmonisation of certain social legislation relating to road transport.

During the First and Second reading stages of the EU negotiations of the Road Transport Regulations, the International Road Transport Union and European Transport Workers’ Federation had lobbied strongly for the introduction of the AETR text into EU legislation, as had the UK Confederation of Passenger Transport (CPT) but without the additional safeguards. They all argued that there was no evidence to suggest that the reintroduction of the rule would have serious negative impacts on road safety. They also argued that such tours are characterised by frequent stops to enable passengers to visit tourist sites, eat or take advantage of comfort breaks, and that these provide frequent breaks for the drivers as well. The tours also tend to be provided at the budget end of the tourist market and are often provided by small and medium sized operators whose profit margins are slim.

The Presidency and the Commission issued a compromise, presented as a better regulatory measure to reduce costs for business. This reintroduced the principle of the original 12 day rule, as requested by the European Parliament, but added additional safeguards to close the original loophole in the regulations and limit the road safety impacts. In particular:

— the rule could only apply to one single international journey (there is no longer an option for it to be applied domestically or across multiple trips);
— 45 hours’ rest must be taken before the journey starts (which was not required before);
— the minimum rest that must be taken after the journey would be 69 hours (rather than 48 hours under the previous 12 day rule); and
— the existing weekly driving hours limit will still apply, and the total weekly rest taken over a period of months would remain the same as under the current EU rules.

In addition, the UK was in the forefront in pressing for the inclusion of a commitment from the Commission to keep the new 12 day rule under review, in particular to monitor its impact on road safety. In the final proposed agreement, there is now a commitment in the regulation for the Commission to draw up a report by 2013 on consequences of reintroducing the derogation in respect of both the safety and social aspects. The Commission can then propose a further amendment if it deems that this is necessary to address the situation.

A table summarising key elements of the old (pre-2006 regulation) 12-day rule, the current drivers’ hours rules, and the proposed new 12-day rule under Article 29, is attached at Annex A. At present, reliable statistics are not available for the number of vehicles which would benefit from a new 12-day rule, although the CPT estimate that about 4,000 coach tours a year operated by UK companies would benefit from the change.

Overall, the Government regards the outcome of these EU negotiations as a positive one. We believe that the deal achieved, in what has been at times a complicated negotiation, is a good one because it balances the need to maintain and improve road safety standards with those of industry and consumers. It should also help to improve the environmental performance of the international road haulage industry by reducing the number of ‘empty runs’.

26 June 2009

ANNEX A

COMPARISON OF DRIVERS’ HOURS RULES FOR OCCASIONAL INTERNATIONAL COACH SERVICES

<table>
<thead>
<tr>
<th>Element of Rules</th>
<th>Old EU Drivers’ Hours rules (pre-2006 Regulation)</th>
<th>Current EU Drivers’ Hours Rules (under 2006 Regulation)</th>
<th>Proposed rules under Article 29 of the International Coach and Bus Market Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Daily driving time</td>
<td>9 hrs (increasable to 10 hours twice a week)</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>Weekly driving time</td>
<td>None specified</td>
<td>56 hours</td>
<td>Same</td>
</tr>
<tr>
<td><strong>Fortnightly driving time</strong></td>
<td>90 hours</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------</td>
<td>------</td>
<td>------</td>
</tr>
<tr>
<td><strong>Breaks</strong></td>
<td>45 minutes after 4½ hours driving.</td>
<td>Same</td>
<td>Same</td>
</tr>
<tr>
<td><strong>Daily rest</strong></td>
<td>11 hours (reduced to 9 hours up to 3 times a week provided reduction is compensated for within a week) Alternatively, 12 hours rest can be split into 2 or 3 periods, one of which must be at least 8 hours (nothing less than 1 hour)</td>
<td>Same, but without the compensation requirement for reduced rest. Alternatively, 12 hours rest can be split into two periods of 3 + 9 hours, which must be taken in this order.</td>
<td>Same as existing EU drivers' hours rules.</td>
</tr>
<tr>
<td><strong>Rest (weekly) after 6 days</strong></td>
<td>45 hours, or 36 hours at base (9 hours compensation within 3 weeks), or 24 hours away from base (21 hours compensation within 3 weeks)</td>
<td>45 hrs, or 24 hours every other week which can be taken anywhere (21 hours compensation within 3 weeks)</td>
<td>Same as existing EU drivers' hours rules, or for international coach operations weekly rest can be postponed for up to 12 consecutive 24-hour periods following a previous regular weekly rest period</td>
</tr>
<tr>
<td><strong>Rest immediately before 12 day rule period starts</strong></td>
<td>None required</td>
<td>N/A</td>
<td>45 hours</td>
</tr>
<tr>
<td><strong>Rest after 12 day rule period</strong></td>
<td>90hrs, or 81hrs (plus additional 9 hrs compensation within 3 weeks), or 69 hrs (plus additional 21 hrs compensation within 3 weeks), or 48 hrs (plus additional 42 hrs compensation within 3 weeks)</td>
<td>Not permitted</td>
<td>90 hrs, or 69 hrs (plus additional 21 hrs compensation within 3 weeks)</td>
</tr>
</tbody>
</table>

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

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

Sub-Committee B considered this item on 26 January and agreed to hold it under scrutiny. We wrote to you on 27 January expressing concerns that this proposal would create unreasonable administrative and financial burdens for the SMEs that make up a significant proportion of coach and bus operators. We also asked for information on how the level of detail in this proposal compares to other consumer rights legislation; and why a Regulation, as opposed to a Directive, was chosen to achieve the aims of this proposal.

We would be grateful if you could provide us with a response to these concerns.

7 July 2009

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

Thank you for your letter of 27 January in regard to the Explanatory Memorandum dated 13 January for the above proposed Regulation. I note your comments and that Sub-Committee B agreed to hold it under scrutiny.
Your letter requested further information on how the proposal compares to other consumer rights legislation, and why a Regulation as opposed to a Directive was chosen. The European Commission chose to use a Regulation, which will have direct force when it is brought into effect, rather than a Directive, to achieve its aims to ensure the most coherent application of the proposed rules in all Member States. A Regulation was used by the Commission in order to protect the rights of air and rail passengers in similar legislation and has also been proposed in respect of the rights of passengers when travelling by sea and inland waterways (detailed in Explanatory Memorandum 11990/08).

In terms of how the proposal compares to other consumer rights legislation, the tables at Annex A produced by the European Commission, compare the existing and proposed rights of air, rail, bus and coach, sea and inland waterway passengers. However, it should be noted that in respect of the draft Regulation on the rights of bus and coach passengers and the draft Regulation on the rights of passengers when travelling by sea or inland waterways, the rights are those set out in the original proposals and do not reflect any amendments that have been proposed during negotiations in the European Parliament or Transport Council.

The Department’s consultation on the EU proposal closed on 14 April and the responses are helping to inform the UK’s position. For information, please find enclosed the Government’s initial consultation impact assessment which accompanied the consultation document. This will be updated in light of consultation responses and as negotiations progress.

In summary, most respondents felt that the proposed Regulation did not achieve a reasonable balance between the rights of passengers and the economics of service provision. There was concern from operators that the proposal was impractical and disproportionate in respect of local bus services and could make insurance extremely expensive, assuming cover could be obtained at all. Passenger representatives gave qualified support to the concept of passenger rights but acknowledged that, as drafted, the proposals could pose practical difficulties in the provision of some services. They suggested that passenger rights could be delivered through a different mechanism. However, disability organisations felt the draft Regulation would provide more consistent rights for disabled people across Europe.

Negotiations have been ongoing both in the European Parliament and at the Council Working Group. In Working Group meetings, the scope of the proposal has been the key issue for most Member States. Other issues include the liability for death and injury of passengers, the advanced payments in cases of death or personal injuries, the possible reasons for refusal of disabled persons or persons with reduced mobility from transport services, the right to assistance especially on board during the journey, the training of all personnel, the responsibility of transport undertakings in the event of cancellations and long delays at departure and the date of entry into force of the Regulation.

At the Transport Council on 11 June, the Czech Presidency gave a progress report and held a policy debate, during which Ministers were invited to comment on options for the scope of the draft Regulation. I stressed that the proposed exemption for urban, suburban and regional transport operated under public service contracts was discriminatory in respect of those Member States, such as the UK, whose markets have moved to open competition beyond public service contracts, and that such a condition should not be attached to the exemption. On that basis, I joined a large number of Ministers in calling for the Regulation’s scope to be limited to long-distance and international journeys.

I also raised UK concerns about the liability provisions. The UK has well-established fault-based principles for determining liability for road traffic accidents. The introduction of strict liability would cut across these, effectively creating a separate system in relation to determining liability and compensation for road traffic accidents involving one particular type of road user. This would cause confusion and uncertainty in UK law.

The European Parliament adopted its opinion at first reading on 23 April 2009. They have proposed a number of amendments including ones to scope, the liability for death and injury of passengers, the advance payments in cases of death or personal injuries, the possible reasons for refusal of disabled persons or persons with reduced mobility from transport services, the right to assistance, the responsibilities of undertakings in the event of cancellations and long delays, and the date of entry into force of the proposed Regulation. Whilst we welcome the intention behind some of these changes, we do not welcome the amendment to the scope of the Regulation which would prevent the exemption of rural bus services and still retains the public service contract condition. We are also concerned that some of the proposed amendments particularly in respect of the responsibilities of undertakings in the event of cancellations and long delays do not take into account the specific characteristics of the bus and coach sector, which consists largely of small and medium enterprises.

Progress in resolving the issues discussed at Working Group level has been relatively slow so far. However, the Swedish Presidency has indicated that it hopes to make good progress with this
dossier, with a view to a possible political agreement at the Transport Council on 17-18 December. We will continue to work to ensure that the final proposal is proportionate and practical in its application and I will, of course, keep the Committee informed as negotiations progress.

8 July 2009

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

Thank you for your letter dated 8 July. Sub-Committee B considered it on 13 July and agreed to hold it under scrutiny.

We reiterate our concern that this proposal will create unacceptably high burdens for operators, particularly SMEs. We are pleased to note that in Council the Government are working to reduce the scope of the proposal and amend it to take into account the nature of the UK’s bus and coach market. We would be grateful if you could keep the Committee updated and write to us again prior to the December Transport Council.

14 July 2009

**TRANSPORT: RIGHTS OF SEA AND WATERWAY PASSENGERS (11990/08)**

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

I am writing in response to your letter of 3 February to Jim Fitzpatrick, to notify you of the outcome of the European Parliament's first reading of this proposed Regulation, and to update you on progress in negotiations.

Your letter advised of the outcome of the Sub-Committee B's consideration, and asked for the Government's view on the Commission's estimate that 12,300–24,600 jobs could be created in the maritime industry by this proposal. We are at present preparing an impact assessment on the proposal, but it is clear from consultations with the UK’s maritime industry that the proposal is unlikely to lead to any significant increase in the number of jobs in the UK maritime sector.

The Commission’s estimate, prepared before the recent downturn in the world economies, was based on the premise that enhancing access to the provision of services would result in more people using them, which would lead to greater employment requirements. Although it is likely that increased access will lead to more passenger activity on some routes in mainland Europe, and thus create new jobs to service that activity, it is by no means clear that many routes in the UK would see any noticeable increase in passenger throughput. The busiest routes in the UK already deal with many persons with reduced mobility and have done so effectively and efficiently for many years. There may, however, be a few jobs created on the less busy ferry routes because of increasing passenger numbers and the need for ferry operators to provide more assistance to passengers than they do at present. The complaint handling and national enforcement body requirements would also create the need for some extra posts, but overall the total net increase in employment in the UK is unlikely to be more than 100. The precise number will be very difficult to determine and will depend on a range of factors such as the future economic situation, the outcome of the negotiations, the time it will take for the new regulations to enter into force, and the reaction of ferry operators and their customers to the new rules.

We are committed, in close cooperation with stakeholders, to ensuring that the new proposal is proportionate and does not create an unnecessarily high administrative and financial burden. Our aim is to enhance the services which our citizens can expect when they travel within the EU, and if this creates more passenger activity and a consequent increase in the overall level of employment in the maritime sector then we would of course welcome this.

**THE EUROPEAN PARLIAMENT’S FIRST READING**

At its first reading of the proposal, the European Parliament supported the need for new rights to be given to all maritime passengers and stressed the importance that persons with reduced mobility should be treated more favourably. Whilst welcoming the proposal, the Parliament adopted 75 amendments which it considered necessary to refine the text and to minimise some of the burdens tousz

21 Correspondence with Ministers, December 2008 to April 2009
be imposed by the proposal. We welcome many of these amendments, although there are several which we would not support. Our views on the key amendments are:

— Amendment 10 would authorise Member States to exclude urban and suburban transport services from the scope of the Regulation. Although the Parliament has acknowledged the desirability of minimising the scope for local transport, its amendment would provide the Member States with a major opt out from the regulation and lacks clarity. During the policy debate at the Transport Council in March, Ministers discussed the scope of the Regulation and agreed that there was a need to minimise it, but there was no consensus on how this objective should be achieved. The Government is continuing to press in the negotiations for the scope of the Regulation to reflect a satisfactory balance between industry and their customers, and we are hopeful that this objective will be achieved;

— Amendment 17 proposes the deletion of the definition of “RO-PAX” (ferries which are principally used and designed to carry cargo). It is not clear why the Parliament is seeking to delete this reference. It may simply be an attempt to tidy up the text, in which case the Government could support the amendment. We, and a number of other Member States, are keen to see the exclusion of such vessels from the scope of the Regulation, and we are continuing to press for this;

— Amendments 23 and 60 propose the inclusion of “force majeure” as a defence which an operator can cite in order to avoid the obligation of paying compensation to a customer. The ferry industry considers the inclusion of these amendments as essential in order to limit their potential to pay compensation for delays over which they have no control, such as the recent dispute involving French trawlermen which stopped traffic at Dover for several days. The Government recognises that if ferry operators are to be liable to pay compensation for delays then the specific operational factors affecting shipping need to be taken into account, and that compensation should only be paid when the operator is at fault. We therefore support the Parliament’s objective on this, but whether there is a need to include a reference to “force majeure” will depend on the progress of the negotiations on the compensatory aspects of the proposal;

— Amendment 27 seeks to provide the carrier with the ability to decline to take onboard his vessel a person with reduced mobility on the grounds of safety, operational feasibility, or the dignity of the traveller. The Government welcomes this important clarification which is one of the key concerns of the operators of small passenger craft;

— Amendments 43, 73, 74 and 75 seek to amend “assistance animal” to “assistance dog”. We welcome these amendments since it is appropriate that only trained dogs should be included in the Regulation. This is also the view of the disability lobby groups we have consulted;

— Amendment 48 concerns the provisions for training of new employees, and proposes that only new employees who have direct contact with passengers should receive disability-related training. We welcome the acknowledgement of the need to minimise the impact on industry of the disability-related training requirements. The amendment goes some way to reducing the overall burden, but there is a need to ensure that the training needs for existing staff are treated in a similar way; and

— Amendment 53 seeks to limit the cost to the carrier of accommodation that must be offered to a passenger delayed overnight to a maximum of twice the price of the ticket paid. The amendment will minimise the burden on ferry operators, and so is welcome, although we are yet to be persuaded that there is any need for an operator to pay for overnight accommodation to a delayed passenger.

PROGRESS OF THE DISCUSSIONS IN THE COUNCIL WORKING GROUP

Working group deliberation of the proposal began in January 2009, under the Czech Presidency but with Sweden chairing the discussions. There have been 8 working groups so far, but progress has been slow. There is as yet no consensus on the scope of the Regulation, its territorial applicability, the
compensation arrangements for delay and/or cancellation, and how the Regulation should be supervised and enforced. A discussion did take place at the March 2009 Transport Council on the scope and territorial applicability of the Regulation, but this did not generate a consensus. Ministers did, however, accept that there was a need for the proposal.

Further discussions will take place under the Swedish Presidency, and it is expected that a common position should be possible by the end of the year. I will, of course, keep your Committee informed of further developments.

29 June 2009

Letter from the Chairman to Paul Clark MP

Thank you for your letter dated 29 June. Sub-Committee B considered it on 6 July and agreed to keep the dossier under scrutiny.

The Committee noted your position that the scope of this proposal must be proportionate and not impose excessive burdens on businesses. The European Parliament amendments summarised in your letter were aimed at reducing the scope but there is no consensus in the Council. We would be grateful, therefore, if in your next letter you could summarise what parts of the proposal the UK would like to be clarified, removed or amended.

We understand that this dossier is due for agreement in Council on 8–9 October. We would be grateful, therefore, if you could write to us during September with an update.

7 July 2009

Letter from the Rt Hon Sadiq Khan MP to the Chairman

Your letter of 7 July reported Sub-Committee B’s consideration of Paul Clark’s letter of 29 June 2008 which provided an update on the proposed new regulation establishing passenger rights in the maritime and inland water sectors. The Sub-Committee noted our position that the scope of the proposal must be proportionate and not impose excessive burdens on business, asked us to summarise in our next letter what parts of the proposal the UK would like to be clarified, removed or amended, and asked that we write again in September before the Council consideration on 9 October.

Since our letter of 29 June the Swedish Presidency has chaired a further six meetings of the shipping working group to consider the proposal and is expecting that this considerable effort will enable it to present Ministers with a text for political agreement at the 9 October Transport Council. Considerable progress was made at the most recent working group meetings on 21 and 23 September, and our expectation is that the Presidency will succeed in this objective.

THE OPTIONS FOR LIMITING THE SCOPE OF THE PROPOSAL

Throughout the negotiations on this dossier, the Government has continually sought to limit the scope of the regulation to those operators who run regular passenger services. We consider that it is not appropriate for the regulation to apply to services such as day excursion or sightseeing trips, and have successfully lobbied for such services to be excluded from the scope.

Another key objective of the Government in the negotiations has been to exclude as many as possible of the smaller passenger services on inland waterways. We have successfully lobbied for the regulation to exclude all vessels certified to carry less than 36 passengers and those which operate with only two crew members onboard. Although the precise wording of the scope of the regulation is still being worked on, we are confident that the Council will be asked to agree a text that is proportionate and which will exclude many small vessels.

Moreover, the Government has also lobbied successfully to minimise some of the requirements which would be placed on those operators which will come within the scope of the regulation, such as:

REDUCING THE NUMBER OF CREW REQUIRED TO UNDERGO THE DISABILITY-RELATED TRAINING REQUIREMENTS

The Government felt that the proposed training requirements for staff employed on ferry and cruise ships was not proportionate, because it seemed to imply that most, if not all, of the crew onboard a vessel would need specific disability awareness training even though many of them worked in areas of the ship where they would not come into contact with persons with reduced mobility. We therefore sought to clarify the training requirements. The Article now says that only staff directly involved in the
handling of passengers with reduced mobility should receive training. This is a considerably lower burden than the original Commission proposal and is likely to reduce the amount of additional training required, which operators would have been obliged to provide to their staff, and its consequent cost; Moreover, the training burden has also been substantially reduced because of the exemptions for small vessels.

**Compensation for Delays/Cancellations**

These articles generated the most concern from vessel operators since the Commission's original proposal was that operators should pay compensation to their passengers regardless of the reason why the passenger service was delayed or cancelled. Operators would therefore have been obliged to compensate passengers for delays caused by bad weather and the actions of third parties which may be completely out of their control. The Government agreed that it was not appropriate for operators to pay compensation in such cases, particularly as the system proposed by the Commission may have encouraged some operators to go to sea in marginal weather conditions in order to avoid paying compensation to their passengers. I am therefore pleased to be able to report that the principle that vessel operators should not pay compensation for delays caused by bad weather or the actions of third parties has been accepted by Member States. Moreover, there is a consensus that the compensation amounts for lengthy delays should be reduced and that there should be a minimum threshold amount for making a claim which will reduce the administrative burden to be placed on operators. These are all important improvements to the proposal which will be welcomed by ferry operators;

**Special Derogations for Cruise Ship Operators**

The original proposal failed to differentiate between cruise ship and ferry operations, so cruise ships, for example, were to be covered by the same compensation arrangements as those applying to ferries. We have stressed in the negotiations that there should be certain exemptions; for example, from being required to compensate passengers for delays or provide them free overnight accommodation. The need for such exemptions was recognised by other Member States and cruise ship operators will benefit from some important exemptions. Naturally, the cruise ship industry will welcome these exemptions;

We have also lobbied successfully to obtain some exemptions from parts of the proposal for very small port operators who only handle less than 100,000 passengers a year. In addition, the Government has taken the lead in developing the text of the regulation dealing with complaints and enforcement. We have been able to clarify the complaint process for passengers as well as operators and also provide the Member States with the maximum flexibility on how to enforce the regulation. Collectively, these changes to the original Commission proposal represent a significant rebalancing in favour of operators and have been welcomed by the UK maritime industry.

**Definitions Contained in Article 3 of the Regulation Such as “Ship”**

The Government is content that the definition of the ship is now in accordance with other international and community legislation. We are also content with the changes made to a number of other definitions, in which the Government has played an active role, and we do not have any outstanding concerns on Article 3.

**Consultations with Stakeholders**

Since the proposal was launched, officials from the Department have met to discuss the proposal on a number of occasions with the ferry and cruise sections of the Passenger Shipping Association. Officials have also met the Chamber of Shipping, and the Disabled Persons Transport Advisory Committee (DPTAC). There have also been contacts with individual companies such as P&O ferries, Callmac Ferries, Western Ferries, Orkney Ferries, Carnival, John Sweeney Cruises, as well as organizations such as the European Cruise Council, the Shetlands Islands Council, the British Ports Association, the Royal National Institute for the Blind, the Consumer Council for Northern Ireland, and the devolved administrations. Collectively, this represents a significant amount of effort to understand the concerns of industry as well as those of passengers and to keep them informed as the negotiations develop.

The Department has also prepared a draft impact assessment on this proposal and this is attached. As you will see, much of the impact assessment is based on qualitative rather than quantitative benefits and costs. It is clear, however, that the proposal does provide a positive benefit to passengers through new compensation arrangements and better access provisions for persons with reduced
mobility (PRMs). It will also offer operators the opportunity to benefit from more passenger traffic as PRMs will be encouraged to travel more.

NEXT STEPS

The Shipping Working Group has met four times in September to discuss the proposal. This represents a significant effort by the Swedish Presidency to refine the text ahead of the meeting of the Transport Council on 9 October. The Government considers that the text of the proposal, following the extensive discussions that have taken place this month, will now be sufficiently mature for a political agreement by Ministers on the 9 October, and we would wish to support such an agreement in order to secure the improvements we have negotiated to the text.

If, as expected, the text is agreed at the Council the Government will continue to lobby to ensure that the gains we have secured in the first reading of the proposal will be reflected in the final version of the regulation.

25 September 2009

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your letter dated 25 September. Sub-Committee B considered it by written procedure and agreed to clear the document from scrutiny.

The Committee are grateful for your update on the progress of negotiations over the summer and welcome the reduction in the scope of the proposal which has been achieved. We welcome your commitment to lobby to ensure that gains achieved at first reading are maintained and would be grateful if you would continue to keep us informed of the progress of negotiations.

12 October 2009

Letter from Paul Clark MP to the Chairman

Further to my letter of 25 September I am writing to inform you of the outcome of the discussions on the maritime passenger rights proposal at the 9th October Transport Council. I am grateful to Sub-Committee B for its helpful consideration of this dossier by written procedure ahead of the Council.

Although the proposal was subject to a lengthy debate at the Council, I am pleased to report that the UK was satisfied with the final agreed outcome and therefore supported the political agreement.

The Council made several changes to the text and these were:

— the introduction of a new exemption from the regulation for sea-going ships of under 300 gross tons operating on domestic voyages for a period of two years following its entry into force, providing that the rights of passengers under the regulation are adequately ensured in national law. This addition is likely to provide some vessel operators with more time to prepare for the regulation, although given the other exemptions there may be few vessels which would fall within the scope of this specific exemption;

— that although bad weather could be used to exempt vessel operators from paying for overnight accommodation to their passengers, “extraordinary circumstances” could not be used as an exemption. The Government was pleased to see the text include the exemption for bad weather, since this was a significant concern for our ferry industry. Ideally, we would also have preferred to include an exemption for extraordinary circumstances, but there was strong opposition from several Member State and the Commission for this and we accepted the decision. In the negotiations, however, we were able to minimise the potential impact on vessel operators of paying for overnight accommodation by including a cap of €120 on the possible compensation to be paid to a passenger; and

— to delay the introduction of the regulation from two to three years. The Government considers that the ferry and cruise ship industries will welcome the additional time, although it is possible that the European Parliament may seek to overturn the change in due course.

We understand that the deliberations on the text agreed by the Council will begin next month in the European Parliament. It is possible there may be a second reading deal on this proposal, although
conciliation is likely if the European Parliament wishes to make any significant amendments to the Council agreed text. I will of course continue to keep your Committee informed of further developments.

12 November 2009

TRANSPORT: SWEDISH PRESIDENCY PRIORITIES

Letter from the Rt Hon Sadiq Khan, 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 Sweden’s plans for their Presidency.

The Swedish Presidency have set themselves a range of headline objectives – reducing climate change (with a focus on reaching agreement in Copenhagen in December 2009), strengthening the European economy (in line with the Lisbon Strategy), and a revitalised strategy for sustainable growth and prosperity. In the field of transport, they plan to focus on three key areas:

— EU transport policy post 2010 - based on the Commission’s recently published Communication “A Sustainable Future for Transport” (EM 11294/09)
— New technologies / Intelligent Transport Systems (ITS)
— Efficient freight transport logistics (although there are no concrete dossiers currently on the agenda).

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

— There will be two Transport Councils. The first one will be in Luxembourg on 9 October. The second will be in Brussels on 17 December.
— There will be a Ministerial working dinner hosted by the Minister of Communications Åsa Torstensson on 21 September near Stockholm. This will be devoted to the Future of Transport. (The ITS World Congress will also be taking place at the same time).
— There will be a high level conference on 26-27 October in Göteborg on new technologies for safe and environmentally sound road transport. The Presidency are hoping for senior level attendance.

As part of the focus on reaching a successful agreement on global emissions at the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) in Copenhagen later this year, the Presidency will also be pressing for international aviation and shipping emissions to be included in the global deal. The inclusion of these emissions is a key Government policy and is reflected in DECC’s Road to Copenhagen document published in June22.

AVIATION

The Presidency have started work on the Commission’s proposal on aviation security charges (EM 9864/09), with a view to a possible General Approach at the October Council and achieving a First Reading deal by the December Council. We are separately providing you with updates on the progress of negotiations and the UK position.

On aviation external relations, the Presidency aim to secure agreement to three mandates authorising the Commission to open negotiations. These include: a memorandum of Co-operation in Civil Aviation Research and Development with the Federal Aviation Administration of the US, a Memorandum of Co-operation between the EC and ICAO providing a general framework for an enhanced co-operation, and a safety agreement with Brazil. The Presidency are seeking to agree the three mandates in time for the October Council. Discussions on the former two will commence in July. In addition, negotiations on phase II of EU-US will continue and the Presidency consider either a progress report, or Council Conclusions, at the December Council to be the best way forward.

The Presidency hope to start discussions on a forthcoming proposal to address the nitrogen oxide emissions from aviation a few weeks after publication, with the aim of achieving a General Approach for the December Council (although they recognise this as optimistic) or a political debate/progress

22 www.decc.gov.uk/en/content/cms/what_we_do/change_energy/tackling_clima/copenhagen/copenhagen.aspx
The proposal has now passed the Commission’s Impact Assessment Board and could be ready for publication in September or October. The Government supports the Commission’s plans to address aviation’s NO\textsubscript{x} emissions. However, it is possible that the aviation industry may argue that such a measure may decrease their ability to make progress on CO\textsubscript{2} reduction.

The Presidency also hope to start discussions on another forthcoming proposal for a Regulation to amend the directives on air accident investigation and occurrence reporting, expected to be ready for publication around October. It is expected that the greater part of the negotiations on this proposal will take place during the Spanish Presidency. The Swedish Presidency therefore plan to prepare the ground for the Spanish Presidency on this file, so simply envisage a progress report, or a political debate at most, at the December Council.

The Presidency will continue work started during the Czech Presidency on the proposed Directive on Intelligent Transport Systems (EM 17564/08) with the aim of reaching Political Agreement at the October Transport Council. This timetable is seen as ambitious given the diverging views of Member States, but the Presidency feel this is possible with intensive work in July and September.

The Swedes will also continue the work started by the Czech Presidency on the amending proposal 1321/04 on the establishment of structures for the management of the European Satellite radio navigation programme (EM 6257/09). The Swedish Presidency is aiming for a First Reading agreement by the December Council. The Presidency will speak to the European Parliament’s Rapporteur over the summer break with a view to preparing the ground for this. There have been a number of positive exchanges as all Member States support the aim of amending this regulation, given the substantial changes that have been made to the finance, governance and procurement procedures for Galileo since the original regulation was adopted.

The Commission has submitted an annual report on Galileo to the European Parliament and Council on progress on the Galileo programme which we would expect to be noted but not discussed at the October Council.

A number of other possible items on Galileo are expected to feature during the Swedish Presidency. These include a Commission Communication and Action Plan on Galileo applications; a Commission proposal on the access policy for the use of the Galileo Public regulated Service (the encrypted signal); and draft mandates for the Commission to pursue a Cooperation Agreement with Switzerland and a further Agreement with other non-EU countries on the installation of ground stations. These do not currently feature on the draft agendas but are being considered by the Presidency.

One of the Presidency’s priorities will be the Communication on “A Sustainable Future for Transport (EM 11294/09). The intention is that the ideas put forward in the Communication will stimulate debate and encourage policy options to be identified that will lead to the formulation of concrete proposals for the next European Commission Transport White Paper, expected towards the end of 2010. The first working group on the document is on 17 July when the Commission will formally present the Communication. It is expected that the Presidency will devote working group time on this Communication in September and October leading up to an envisaged policy debate at the October Council. The Communication will also be discussed at the Ministerial working dinner on 21 September, probably focussing particularly on the use of technology. It is believed that the Presidency also hope to agree Council Conclusions in December. The Government welcomes the opportunity to influence the development of policy options well in advance of the next White Paper being produced and is currently inviting views through public consultation. However, the Government is concerned that the Communication does not indicate any real prioritisation or direction. A key objective for the Government in the development of transport policy is to move towards a low carbon transport system whilst continuing to support economic competitiveness.

The Presidency are keen to reach agreement on the Western Balkans Transport Treaty which is part of the strategy for enhancing the European prospects of the countries in the Western Balkans. It is as yet undecided how it will feature on a Council agenda. Given that several Member States still have significant policy concerns, it is likely that the Presidency will wish to wait until at least the autumn. Although we have not been vocal during negotiations up to this point, the UK has made it clear that it supports the wider objectives of regional stability, harmonised safety and environmental standards, and more open markets.

The Presidency expect the Commission to adopt their Action Plan on Urban Mobility in September. This is the follow up to the debate launched by the Green Paper ‘Towards a new culture for urban mobility’ (EM 13278/07). The Plan seeks to identify the obstacles that hinder successful urban mobility
and proposes solutions as to how to remove them – including actions by the industry and individual citizens. However, no Conclusions are foreseen under the Swedish Presidency.

The Commission are likely to push for agreement on the recently adopted Communication: Connecting Africa and Europe: a new step in co-operation in Transport issues dossier. It aims to connect the Trans-European and African networks, in particular through developing a common map of transport infrastructures, implementing a more efficient transport system, and assisting in the development of the African continent in order to face the challenges of poverty, environmental degradation and migratory imbalances. The Presidency are aiming for possible Conclusions at the December Council.

LAND

The Presidency hope to reach political agreement on the Bus Passenger Rights Regulation (EM 16933/08) at the December Council. The UK will try to ensure that the final wording of the scope reflects our concerns around urban, interurban and regional transport services, including local cross-border services into the Irish Republic.

A proposed Recast of the First Railway Package is currently expected to be published in October. The objective of the initiative is to simplify, clarify and modernise the current legislative framework concerning access to the rail transport market. It is possible that this will be picked up in working groups in October and November.

Following the European Parliament Plenary decision to refer the proposed Road transport working time Directive (EM 14461/08) back to Committee, the Presidency are hoping that it will be possible to reach agreement with the new EP. The new rapporteur is yet to be appointed, and it will need to be decided by the new EP if they wish to proceed with the dossier as new or to use the old EP's opinions. The Presidency hope to be able to start lobbying on this in September, aiming for political agreement at the December Council.

The continuing uncertainty caused by the economic crisis means that there will be no major decisions made on the Eurovignette Directive (EM 11857/08) under the Swedish Presidency. The Commission are preparing some further analysis on the potential impacts of the provisions, and therefore there are likely to be some technical working groups in September and October.

SHIPPING

The Presidency are working towards a political agreement on the Maritime Passenger Rights Regulation (EM 11990/08) at the October Council, and feel that an early Second Reading Deal on this dossier is possible. They will start talking to the new EP at the end of August. The Government will continue to feed constructively into discussions, and will monitor negotiations with the EP to make sure that the careful compromises we have negotiated to date are not undone.

The Presidency have planned one meeting in July and two in September on the Port Formalities Directive (EM 5789/09). They will begin work with the EP once a Rapporteur is appointed and are hoping for a First Reading Deal at the December Council. If this is not possible, they will aim for political agreement at the October Council.

There is likely to be at least one working group meeting in July to discuss the Marine Environment Protection Committee in the context of IMO co-ordination. The Presidency are keen to put a lot of focus on this given the importance they will be attaching to getting agreement at Copenhagen.

Work will also be starting on both the forthcoming Marine Equipment Directive (intended to reform the existing system established by Council Directive 96/98/EC) and Regulation establishing a European Maritime Safety Agency (EMSA), currently expected to be published in September and October. The Revision of existing EMSA Regulation 1406/2002 aims to ensure that it is coherent with other legislation in the field of maritime safety in order to avoid uncertainty and encourage "better regulation". This will include looking at activities on the area of Port State Control, new tasks in the area of security, research and general maritime policy. However, no agreements are foreseen under the Swedish Presidency.

ROAD TRANSPORT/VEHICLE EMISSIONS

As you may know, the Government published its carbon reduction strategy on 15 July. This set out the policies and proposals for reducing transport sector emissions through to 2022, and included a commitment to work with European partners to develop a robust mechanism for regulating CO₂

23 www.dft.gov.uk/pgr/sustainable/carbonreduction/
from new vans, including clear targets for the medium and long-term and a mechanism to encourage the development of the ultra-low carbon van market whilst respecting the diversity of the van market.

The proposal for a Directive on CO2 Emissions from Light Commercial Vehicles is expected to be published in September. The proposal seeks to reduce the CO2 emissions of new vans and minibuses that are introduced onto the market in the EU, and extends the principles adopted in the CO2 and cars dossier to a wider range of vehicles, so that all light duty vehicles are covered by the emissions requirements.

There may be a proposal before the end of the year for amendments to the current directive 1999/94/EC on the availability of consumer information on fuel economy and CO2 emissions in respect of the marketing of new passenger cars. The Commission have indicated that the proposal is likely to cover extending the scope of the labelling scheme to light-commercial vehicles, harmonising the design of the label and introducing energy efficiency classes in order to better raise consumer awareness at the time of car purchase.

It is expected that the Swedish Presidency will wish to make progress on the proposed Directive on labelling of tyres with respect to fuel efficiency (EM 15920/08), with the possibility of reaching a political agreement at the Energy Council on 7 December. The proposal aims to promote improved vehicle fuel efficiency through a market transformation towards more fuel-efficient tyres. Reducing the rolling resistance of tyres reduces fuel consumption and therefore also emissions of Carbon Dioxide (CO2), and the Government broadly supports this proposal.

The Swedish Presidency may wish to initiate discussions on a proposed Regulation on the energy efficiency of mobile air conditioning systems, which the Commission are expected to publish later this year. The proposal will aim to promote more efficient air conditioning systems either through setting efficiency requirements or requiring manufacturers to determine and publish the impacts of their air conditioning systems on fuel economy. Use of air conditioning systems can significantly increase fuel consumption and hence emissions of Carbon Dioxide (CO2). The Government supports the objectives of this proposal which will contribute towards reducing CO2 emissions.

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.

17 July 2009

TRANSPORT: TOWARDS AN INTEGRATED, TECHNOLOGY-LED AND USER FRIENDLY SYSTEM (11294/09)

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

On 8 July I submitted an Explanatory Memorandum 11294/09 COM (2009)279 on a Commission Communication – A sustainable future for transport: Towards an integrated, technology-led and user friendly system. The EM is pending consideration by Sub-Committee B.

The EM referred to the Government’s intention to conduct a UK public consultation on the Communication. The public consultation closed on 7 September. A total of thirty four responses were received. A short summary of the consultation has been produced and submitted to the Commission. In addition the responses contributed to the development of a high level UK response which has also been submitted by the Commission’s deadline. In advance of the Committee considering the EM I am pleased to enclose copies of both documents for information (not printed)24.

The formal consultation provided a valuable insight on future trends and priorities. Respondents to the UK consultation broadly agreed with the Commission’s vision but were concerned that there was a general lack of direction in the Communication, and only limited policy instruments. There was near consensus support for the need to move to a low/no carbon transport system.

The UK response proposes that the next White Paper should focus on supporting a liberalised, integrated and decarbonised European transport system. The response emphasises the opportunity Europe has to lead the World in the rapid move to a low carbon future whilst continuing to support economic prosperity. The White Paper must look beyond the next decade and must properly consider long term priorities. Regulation should be risk based, proportionate and non-regulatory approaches should be used wherever possible. The Council, Commission and European Parliament

24 http://www.dft.gov.uk/consultations/closed/eucommunication/
must work together to deliver these goals whilst ensuring that all people and goods are able to move freely, safely, securely and efficiently throughout the single market. Rather than focus on the trends and challenges the UK response identifies priorities for action.

The Presidency will hold a policy debate at the 9 October Transport Council and is likely to want to agree Council Conclusions at Transport Council on 18 December. A high level EU stakeholder conference is also expected in late autumn.

28 September 2009

Letter from the Chairman to the Rt Hon Sadiq Khan MP

Thank you for your Explanatory Memorandum 11294/09 and your letters dated 28 September and 2 October.

The Sub-Committee considered these documents at their meeting on 19 October and released the matters from scrutiny.

We welcome the Commission’s Communication as an opportunity to reflect upon EU transport policy and its future. The White paper will be an important strategic document for the decade from 2010.

We note that whilst the Communication acknowledges that the main environmental challenge for transport is the reduction of greenhouse gas emissions, you regret the lack of references to supporting the use of low carbon transport fuels, the importance of which is also emphasised in your response to the Commission. We hope that this aspect will be fully reflected upon in the forthcoming White Paper.

We are pleased to read that the UK response emphasises the need for the Commission to deliver projects and policies already undertaken such as Galileo and the First railway package, of which we are still awaiting the recast.

Finally, we observe that the Communication was discussed at the Transport Council on the 9 October and we regret that we did not have the possibility to consider the document before the Transport Ministers’ discussion. However, we would like to be kept informed in a more timely manner on this matter especially in light of the expectation that the Council’s conclusion will be adopted at the next transport meeting in December.

20 October 2009

TRANSPORT: TRANS-EUROPEAN NETWORK (6135/09)

Letter from the Geoff Hoon MP, Secretary of State, Department for Transport, to the Chairman

On 17 February I submitted Explanatory Memorandum 6135/09 COM (2009)44 on the Trans-European Network, Transport (TEN-T) European Commission Green Paper: A policy review towards a better integrated Trans-European Transport Network at the service of the common Transport policy. The Green Paper was considered by Sub-Committee B, and you wrote to me on 3 March 2009 advising me that the Committee would hold the document under scrutiny pending the outcome of the informal consultation and the Government’s formal response to the Green Paper.

The Department’s response to the European Commission’ Green Paper was submitted on the 30 April and I am now pleased to enclose a copy as requested. In preparing the response, my officials conducted an informal consultation with interested stakeholders; given the nature of TEN-T, this was mainly limited to Government bodies, sponsored agencies and the Devolved Administrations. We received limited contributions; however we were aware that a considerable number of UK stakeholders, including the Welsh Assembly and the Scottish Executive decided to respond directly to the EC Commission.

The informal consultation exercise did not throw up any real surprises. There was a general agreement with the Commission’s view that the TEN-T programme should be reviewed. There was also a general concern that the new design should not overlook the peripheral needs of the EU. Another issue which attracted significant comment was the Commission’s initial options for the future design of the TEN-T network: Option 1, the current structure; Option 2, priority projects connected into a priority network; and Option 3 core network including the development of the TEN-T network under a conceptual pillar. Most of the responses favoured Option 2 for its simplicity or Option 3 for its potential wider-EU benefit.
In responding to the EC Green Paper there were important points of principle which we felt it was important to stress such as the need for TEN-T to demonstrate value for money. We also expressed our opposition to the inclusion of new TEN-T corridors without a compelling case for EU value-added.

On this, you asked to know my view on how national planning can be better combined with a European dimension to ensure that the TEN-T is more substantial than the sum of the single networks of the 27 Member States. As I said in the UK response (page 1), our view is that the TEN-T network should include transport corridors and components such as major ports or airports that are of strategic interest to a number of Member States. I also stressed (page 7) that the TEN-T should not be artificially created, its design will need to be evidence based. I believe that national strategies, such as in the UK Delivering a Sustainable Transport Strategy report should inform the TEN-T review, but we should also consider the European dimension. As such I have welcomed the EC Connect Study revision of the TEN-T programme, which I believe provides a good starting point for generating options (page 8).

In brief, in our response we have emphasised the following points:

The objectives of the TEN-T programme need to be clarified and more focused on both scope and outcome; any TEN-T funding from the EU budget must be better focused on priority projects, and combined with EIB loan and private finance as a general rule;

The existing TEN-T maps would need to be reviewed. No further “priority corridors” should be set up without a compelling case for EU value-added;

Fundamentally, TEN-T needs to be better focused on projects that provide genuine EU value-added and value for money; Only those transport corridors and transport components (such as major ports or airports) that are of strategic interest to a number of Member States should be part of the TEN-T network;

In order to obtain a true network effect, the network needs to be fully integrated and multimodal and promote sustainable modes of transport; the peripheral needs of the Community should also be taken into account;

The review should also address sound financial management, project scoping and TEN-T management which have each been inadequate in many cases; for instance, the UK would wish to see a clear definition of what defines the TEN-T network as complete.

The Presidency hopes that it will be possible to agree Council Conclusions at the 11 June Transport Council. We expect the Conclusions to invite the Commission to continue discussing the TEN-T review and to submit a proposal amending the TEN-T Guidelines before the end of 2010.

3 June 2009

Letter from the Geoff Hoon MP to the Chairman

Thank you for your predecessor’s letter dated 3 June. Sub-Committee B considered it on 8 June and agreed to clear it from scrutiny.

The Committee would be grateful to know in more detail what is meant by “the network needs to be fully integrated and multimodal”.

10 June 2009

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

Thank you for your letter of 10 June, concerning Sub-Committee B’s consideration of Geoff Hoon’s letter of 3 June. I understand that in considering the response, the Committee expressed their wish to know in more detail what is meant by “the network needs to be fully integrated and multimodal”.

It may be helpful to explain that the TEN-T Guidelines envisage the establishment of a single, multimodal network as the ultimate policy objective. By and large, the TEN-T programme focuses around the completion of the so-called priority projects (those corridors with the highest EU added value). These priority projects cover major rail, road and inland waterway axes across the Community.

Although the corridor approach has been useful in identifying major traffic flows between a starting and an end point, it does not take account of their continuity and it fails to capture any additional “network benefits”, for example how best to contribute to the shifting of freight transport from road to rail or sea.
To ensure that the TEN-T corridors operate effectively we must first ensure that these are adequately linked. Therefore, saying that the network needs to be fully integrated and multimodal would mean, for example, that the future TEN-T development would need to look at rail, road or maritime options in parallel, moving from a corridor approach to a network approach. This kind of network should therefore be multi-modal, enabling major freight and passenger traffic flows across the Community as efficiently as possible.

This is a vision that the UK would support, as we believe that an efficient TEN-T network can contribute to the Community’s climate change and single market objectives.

23 June 2009