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 4 June 2014 - 4 December 2014

INTERNAL MARKET, INFRASTRUCTURE AND EMPLOYMENT
(SUB-COMMITTEE B)

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

I am writing to update you on progress to date with the above proposals, collectively known as SES II+, and the development of our views on them following further consultation with stakeholders.

The proposals were considered at the Informal Transport Council on the Single European Sky on the 16 September. At this meeting all Member States supported the Single European Sky initiative and recognised the need to make further progress. However, the vast majority said that the SESII+ proposals were too much too soon and that we should not be adding more regulation before the current regulatory framework is fully implemented and has had time to deliver improvements.

No further working group discussions have taken place since then but are expected to commence in the Italian Presidency. However, the European Parliament has been considering the proposals and completed its first reading in March. My officials actively engaged with briefing MEPs, and I am pleased to say that the Parliament incorporated a number of the amendments that we suggested.

The key areas in the proposal on the Implementation of the Single European Sky are as follows.

ICAO NORTH ATLANTIC REGION (NAT) (SES RECAST ARTICLE 1)

We believe that it is inappropriate to extend the scope of SES to cover the international Civil Aviation Organization’s NAT region, as this is high-seas airspace outside the scope of the EU treaties. Additionally, the airspace is not complex with services already provided in a cost efficient manner, so it would be disproportionate to apply SES rules to it. EP Amendment 25 helpfully excludes the NAT region.

NATIONAL SUPERVISORY AUTHORITIES (SES RECAST ARTICLE 3)

We believe that it is appropriate to pursue the institutional independence of National Supervisory Authorities (NSAs) from Air Navigation Service Providers (ANSPs) and to help them ensure they have sufficient resources. However, we consider that some of the Commission’s provisions are excessive and could act as an impediment to NSAs ability to bring in skills and experience from industry and vice versa, which is beneficial to the entire Air Traffic Management system. Even those NSAs that are already institutionally independent rely heavily on the ability to recruit and second staff from industry and need current industry experience to provide effective oversight. Failure to address this might make it even more difficult for NSAs to recruit staff and could reduce NSA resources rather than benefit them. An additional issue is that in trying to ensure NSA separation from ANSPs the Commission has also – apparently unintentionally – restricted the ability of Member States to have any input into the recruitment of senior NSA staff.

The EP amendments make some improvements but do not fully address our concerns, and in some respects increase them by substituting the EASA term “National Aviation Authorities” in place of “National Supervisory Authorities”. The EP intention may be to ensure consistency between EASA and SES regulations but it will actually result in a number of changes to National legislation and regulatory documents with no real benefit. Furthermore, we do not support the amendment that staff from National “Aviation” Authorities shall not be seconded from ANSPs or companies under their control.

PROVISION OF SUPPORT SERVICES (SES RECAST ARTICLE 10)

We support market liberalisation where it can be demonstrated to be in the interests of the users of airspace. However, the proposal would force the unbundling of support services without setting out a vision or a pathway for how these services should or could be delivered. No evidence has been presented to suggest the current bundled model of provision is inefficient or presents harm to the users of airspace. The proposal would also preclude the possibility of competition arising between integrated and specialist providers of support services. There is a risk that the mandating of unbundled support services may increase costs to airspace users, create additional regulatory
burdens, stifle innovation and potentially have a safety impact. Ultimately we may be able to support some unbundling of services but a lot more work is needed to understand the market that may emerge.

The EP adopted the amendment we proposed to MEPs requiring an in-depth study into the feasibility of a market for support services, including an assessment of its likely impact on safety. However, this does not appear to preclude the Commission taking action before the study is complete or require it to take the conclusions into account.

We also suggested amendments aimed at providing greater structure on unbundling and greater understanding as to what the market may look like. The EP amendments have moved away from ensuring that provision of air traffic services is separated from the provision of support services to requiring ANSPs to call for offers from different service providers, with a view to choosing the financially and qualitatively the beneficial provider. This is an improvement on the Commission’s proposal, but we will need to work further on this in working group negotiations to ensure that there is a sound process and evidence base to proceed with mandating unbundling.

**PERFORMANCE SCHEME (SES RECAST ARTICLE 11)**

We have a number of concerns about the proposed amendments to the Performance Scheme, some of which have been addressed by the EP.

The EP has not amended the Commission’s proposal to make local targets in national performance plans compliant with EU targets, rather than consistent with them as is the case in current legislation. We do not support this because the term ‘compliance’ could be interpreted as taking any local control out of the process.

We support the aim of making the Performance Review Body (PRB) more independent, but think it is important to introduce some criteria for the appointment of members to ensure they have the appropriate expertise and independence. This was not addressed by the EP, although they did adopt our suggested amendment to ensure that the PRB has the opportunity to give some input into national plans ahead of the single formal assessment process.

We are also concerned about the extensive use of delegated acts in this part of the proposal, which could impact on the input States have into key decisions in the performance scheme. The EP has not addressed this.

Finally, the Performance Scheme focuses mainly on service providers as the main actors in the ATM system. However, other actors within the system have the capability to affect performance outcomes across the European ATM network, for example airports and airspace users. Therefore, I am pleased to say that the EP adopted our suggested amendment that the Commission, supported by the PRB, should conduct a study to understand how other ATM actors’ impact on network performance with a view to developing additional Key Performance Indicators and Performance Indicators for those actors for implementation in future Reference Periods of the Performance Scheme.

**FUNCTIONAL AIRSPACE BLOCKS (SES RECAST ARTICLE 16)**

We support the Commission’s aim for a strategic redirection of Functional Airspace Blocks (FABs) towards ANSP led-co-operative entities focused on performance outcomes. However, the regulatory requirements in this proposal could act as a disincentive to ANSPs to drive improvements through FABs. The proposals need to be reconsidered and scaled appropriately, depending on the nature of the FAB. We will also seek more clarity on what must be demonstrated and by when to ensure that the requirements can be implemented at all. If the outcomes are made clear, it should be for the ANSPs to decide how they achieve them, thus enabling FABs to become more performance orientated on a geographical and/or industrial partnership basis.

Some of the EP amendments address some of our concerns. However, they have introduced new provisions on Industrial Partnerships which we will need to consider further, in liaison with stakeholders, to ensure they are not too prescriptive and limiting.

In addition, we will need to stress the importance of the overall supervisory arrangements by NSAs, which risk becoming more complex and fragmented with flexible service provision.
USE OF DELEGATED ACTS (PRINCIPALLY SES RECAST ARTICLE 11)

We believe that the proposed use of delegated acts in some areas needs further consideration, and might be inappropriate. The EP has extended the scope of the proposed delegated acts to include the adoption of Union-wide performance targets. We do not consider this appropriate, and believe Member States are unlikely to support giving the Commission greater powers in this particular area.

GIBRALTAR

The Commission included Gibraltar within the scope of the SES II+ proposals, but the European Parliament has voted to replace the existing text, suspending the application of the regulation to Gibraltar airport until the arrangements set out in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 are applied.

Retaining the inclusion of Gibraltar within the scope of the SES legislation will be a key objective when the proposals are considered by Council.

EASA BASIC REGULATION

The proposed amendment to the EASA Basic Regulation was less controversial than the SES recast, dealing mainly with changes to incorporate SES safety provisions removed from SES in order to simplify and remove the current dual legal basis for air traffic management safety. The proposal would, however, also introduce changes to governance arrangements and change a number of implementing acts to delegated acts. Although the EP amendments make some improvements on the issue of governance, they do not completely resolve the issue for the UK so we would be seeking further improvements once Council discussions commence.

I hope that this further information is helpful, and will keep your Committee informed of further developments.

24 June 2014

Letter from the Chairman to Baroness Kramer, Minister of State, Department for Transport

Thank you for your letter of 24 June 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 14 July 2014.

We are grateful for your detailed update on the status of negotiations on this proposal.

Like you, we are concerned about some of the amendments made by the European Parliament to the proposal. Two of the European Parliament amendments are of particular concern to us. The first is on the issue of Gibraltar. We have consistently maintained that Gibraltar should be included in EU aviation agreements, as provided for in the 2006 Cordoba agreement. In addition to the diplomatic difficulties which would arise from excluding Gibraltar from the text, excluding Gibraltar would also be disadvantageous in terms of safety, which is one of the key aspects of the proposal. We therefore support your commitment to push for Gibraltar to be included in the text of the agreement. We would be grateful for information on the impetus behind this particular amendment.

We are also concerned with the European Parliament’s amendments to extend the scope of the proposed Delegated Acts in the package, and would urge you to negotiate for a reduction of the number and scope of Delegated Acts in the package.

We are grateful that you have shared with us your view that the EU does not appear to have competence to extend the SES to cover the International Civil Aviation Organization’s (ICAO’s) North Atlantic Region. On this point, we would like to know whether this view is shared by Member States. We ask for an undertaking that you will oppose this aspect of the proposal.

Your letter of 27 September 2013 failed to reassure us that a variety of stakeholders had been properly consulted. We wish to reiterate our view that you should explore other avenues of consultation beyond the usual forums, in order to better connect with relevant groups that represent passengers. We would be grateful if you could confirm whether you intend to take such further action on consulting passengers.
We note from your letter that a number of issues remain unresolved, and that you are still waiting for the Commission to address Member States’ collective concern that the proposal is “too much too soon” and that more regulation should not be added before the current regulatory framework is fully implemented.

We note that your letter addresses developments on the provision to centralise the management of Functional Airspace Blocks. In our view, this provision is central to the proposal, despite the Commission’s introduction of other provisions. Therefore, we ask that you keep us updated on changes to this aspect of the text in the Council, and would be grateful for further detail on your views with respect to this part of the proposal.

We have therefore decided to hold the proposal under scrutiny, pending an update as and when negotiations develop on this dossier.

We look forward to a response in due course.

16 July 2014

Letter from Robert Goodwill MP to the Chairman

I am writing further to my letter of 24 June 2014 to update you on developments with the above proposals known as SES II †.

Working group discussions started in July this year under the Italian Presidency. Good progress has been made and there is a strong possibility that the Italian Presidency will be seeking a General Approach on both the SES Recast and EASA Basic Regulation amendment at the 3 December Transport Council.

The UK has been working hard with the Italian Presidency and other Member States to secure our objectives. We have been proactive in proposing drafting amendments to both the Commission’s original proposal and on the Presidency’s proposed compromises, and I am pleased to say that much of our drafting has been accepted. We have had a very productive working relationship with the Presidency who have welcomed our assistance and support.

I have set out below the position we have reached, which addresses our key objectives for these proposals. The one area where we have not yet reached a positive conclusion is on the important matter of the application of the Regulations to Gibraltar.

ICAO NORTH ATLANTIC REGION (NAT) (SES RECAST ARTICLE 1)

The UK believes that it is inappropriate to extend the scope of SES to cover the International Civil Aviation Organisation’s (ICAO) NAT region. This is high-seas airspace outside the scope of the EU treaties, where the UK and Ireland are jointly responsible for the provision of air traffic services under a delegation from ICAO; but have no sovereignty over the airspace itself. I am pleased to say that we have received strong support from other Member States and the European Parliament on our position and have successfully secured the removal of the NAT from the scope of the Regulations.

This will assist us in resolving an infringement that has been launched against our Functional Airspace Block with Ireland; as the Commission are arguing that our FAB should include the portion of the NAT in which UK and Ireland provide services. Exclusion of the NAT from the overall scope of SES Regulations would mean that it is clear SES does not apply here.

NATIONAL SUPERVISORY AUTHORITIES (SES RECAST ARTICLE 3)

As you may recall, we were concerned that some of the Commission’s provisions were excessive and could act as an impediment to NSA ability to bring in skills and experience from industry and vice versa, which is beneficial to the entire Air Traffic Management system. With strong support from other States we have successfully argued for new drafting that ensures NSAs have the necessary freedoms to bring in expertise from industry and protects the ability of Member States to have a role in key appointments. We are content with the current text that is consistent with the current arrangements in place in the UK, and the separation that already exists between the Civil Aviation Authority and NATS.
NSA CO-OPERATION (SES RECAST ARTICLE 5)

Additionally we are content with amendments to the text that deals with collaboration between NSAs. This formalises current co-operative arrangements in which the UK already has a leading role, with a CAA official holding the chair, and has proved to be useful in helping to share knowledge and best practice.

PROVISION OF SUPPORT SERVICES (SES RECAST ARTICLE 10)

The Commission proposed the unbundling of support services from the core of air navigation services, which could be provided by separate undertakings under market conditions (the usual public procurement rules).

We were concerned that the Commission had failed to adequately explain what services would be exposed to competition and the benefits and impact of this. As a result it was not clear to us that enough had been done to consider the market that would result before regulating for it. As an alternative we proposed amendments to ensure States can remove barriers that might prevent market conditions and that this would allow time for a market to emerge naturally before further regulation was required. We also proposed that the Commission carry out some further work through a study on the competitive provision of services in order to fully assess the benefits and impacts before any further regulation is proposed. The Presidency and Commission were supportive of this alternative approach and it has been the basis for the Presidency’s suggested revisions to the text.

PERFORMANCE SCHEME (SES RECAST ARTICLE 11)

The Commission proposed to make local targets in national performance plans compliant with EU targets rather than consistent with them, as is the current requirement. We were concerned that this would remove a degree of local control. This view was supported by all Member States and the Presidency in working group discussions and the current working text has restored the requirement for consistency.

We were supportive of more independence for the Performance Review Body (PRB) who play an important role in advising the Commission on the running of the Performance Scheme. However, we wanted to ensure that Member States through the Single Sky Committee (SSC) would be able to oversee the criteria for appointment of the PRB. This point received strong support from other Member States and the current working text now requires decisions on both the criteria for and the appointment of the PRB to be dealt with by the SSC through the examination procedure. The text also now includes provisions that the PRB’s methodology and evaluation process for the performance plans should be made available to the national supervisory authorities before the EU targets are set. We support this as it will be very helpful in ensuring that the appropriate targets are set.

With strong support from other Member States we have also secured the removal of delegated acts from this Article retaining the current State input to and controls over key decisions through the SSC.

FUNCTIONAL AIRSPACE BLOCKS (FABS) (SES RECAST ARTICLE 16)

We were supportive of the Commission’s objective to allow for more flexibility for FABs through recognition of other collaborative mechanisms such as industrial partnerships. In negotiation our objective was to remove some of the prescriptive requirements for FABs which we felt could work against the flexibility the Commission were aiming at. We have been successful here with the current text much less rigid and allowing more recognition of other mechanisms of collaboration such as industry partnerships. This should allow for recognition of work the UK NATS is doing with other Air Navigation Service Providers outside of our FAB to make efficiencies to the delivery of air navigation services.

NETWORK MANAGEMENT FUNCTIONS (SES RECAST 17)

We had some concerns about the expansion of some of the tasks currently performed at a Network Level, particularly due to the proposed use of delegated acts to add to them; as well as giving power to the Commission to change the governance arrangements without State input in the detail. Again
with strong support from other Member States we have restored the use of the examination procedure through the SSC to make decisions on adding to these functions and on their governance. This restores State controls and resolves our concerns. At the same time we are content there remains a mechanism to allow for additional services to be delivered at a Network Level once a clear and compelling case has been made for doing so, such as the evolving Eurocontrol concept of Centralised Services.

EASA BASIC REGULATION (REGULATION (EC) NO 216/2008)

We were largely supportive of this proposal, which was focused on simplification by moving some safety elements of SES into the EASA Regulation to ensure a single clear regulatory framework. However we had concerns about an apparent extension of scope to include the Military; changes to the naming and governance of the agency in line with an inter-institutional agreement on all EU agencies; and the extensive use of delegated acts proposed to replace implementing acts.

Discussions started in October, with the Presidency choosing only to deal with the transfer of some SES provisions into the EASA Regulation. They considered that other issues should not be dealt with at this time as EASA and the Commission are conducting a much wider review of the EASA Basic Regulation, with further legislative proposals expected within the next few years. This has meant that discussions have focused on provisions we support and have moved quickly. We have managed to achieve our key objectives of ensuring the military is excluded from the scope of the EASA Regulation and, with support from other States, have removed the extensive use of delegated acts.

USE OF DELEGATED ACTS

As you will recall we were of the view that the proposed use of delegated acts in some areas needed further consideration and were concerned these might be inappropriate. All Member States and the Presidency shared our concerns and the role of comitology has been restored in key decisions.

In all other respects we are content with the proposals, which we feel are appropriate and proportionate with the right level of State input into decisions on implementing legislation. In particular we are supportive of new text that clarifies the arrangements for the deployment of new technologies through the SESAR programme, in which UK industry already has a leading role.

CONSULTATION WITH PASSENGER GROUPS

In addition to our ongoing engagement with stakeholders through our European Air Traffic Management Policy Committee and Air Traffic Management Stakeholder Forum, we have followed up your suggestion about exploring options to engage passenger groups. In August, a DfT official made a presentation on SES II+ to the CAA’s Consumer Panel and sought advice on whether and how to approach passenger representative groups for views. The panel advised that, as SES II+ is highly technical, it would be difficult to get meaningful input from consumer or passenger groups and in this area it was appropriate to rely on input from airlines, who would be able to represent the passenger on this issue as their interests were likely to be aligned (reduced cost and delays, better routing etc).

Nevertheless, in addition, we also conducted a 6 week informal consultation through UKACCS (the liaison group representing Airport Consultative Committees). Many airport Consultative Committees have passenger representatives. Whilst little was received in the way of responses, what we received did mirror the views from airlines, whom we had already consulted when developing our policy and objective on SES II+.

IMPACT ASSESSMENT / FINANCIAL IMPLICATIONS

The SES II+ proposals are a recast and rationalisation of existing Regulations. Negotiations have confirmed our initial observations that these proposals will not lead to additional financial burdens or have significant material impacts. As a result of this an Impact Assessment Checklist has not been completed.
The Commission included Gibraltar within the scope of the SES II+ proposals, but as you will recall the European Parliament voted to replace the existing text, removing Gibraltar from the scope. This issue has received limited discussion to date in working group and so it is still to be resolved. Aware of the dispute between the UK and Spain, the Presidency have placed the text dealing with scope in relation to Gibraltar in square brackets, indicating that it might be removed. We have firmly objected to this and insisted that as EU territory Gibraltar should remain within the scope of EU Regulations. Spain have proposed alternative text suspending the application of the Regulations to Gibraltar airport until the arrangements in the Joint Declaration made by the Foreign Ministers of the Kingdom of Spain and the United Kingdom on 2 December 1987 enter into operation.

The UK will continue to argue strongly for Gibraltar to be included in the scope of the proposals. Some further working group discussions will take place ahead of the 3 December Transport Council to resolve the remaining details, but it is not clear whether the Presidency will seek to resolve the Gibraltar issue during these discussions or whether it will have to be discussed at the Council itself.

Overall, having secured our key priorities from the negotiations, I consider that the terms of the general approaches will represent a successful outcome for the UK and would therefore wish to support them, provided that the texts do not exclude Gibraltar from the scope of the Regulations.

I appreciate that your Committee may want to hold the dossiers under scrutiny pending resolution of the Gibraltar issue, and may not have the opportunity to consider a further update on Gibraltar ahead of the Council if the matter is not speedily resolved. I would be grateful if you could therefore consider granting a scrutiny waiver ahead of the Council, on the understanding that we would not, of course, wish to support general approaches that would exclude Gibraltar from the application of the Regulations.

14 November 2014

Letter from Robert Goodwill MP to the Chairman

I am writing further to my letter of 14 November 2014 to update you on further developments with the above proposal, known as SES II+, and in particular on the matter of its application to Gibraltar.

In negotiations, the Spanish tactic has been to seek to suspend application to Gibraltar until talks between the UK and Spain resolved the issue. As we believe that they have little intention of achieving a resolution, this would in all likelihood amount to an indefinite suspension, which we have made clear we could not accept. Instead we have pushed for a version of the text in line with the Cordoba Agreement, which stated that the application of the legislation to Gibraltar was without prejudice to the UK and Spain's respective positions on sovereignty.

Further working group meetings have taken place since my previous letter, but the question of Gibraltar was not addressed until Wednesday 26 November. At that meeting, the Italian Presidency put forward a proposed version of the text which deleted paragraph 5 from Article 1 (scope), giving no specific mention of Gibraltar.

By default, EU aviation legislation applies to Gibraltar as Gibraltar is included under the Treaty on the Functioning of the European Union (TFEU). Gibraltar can only be excluded from legislation by means of an explicit suspension. Therefore, the current position proposed by the Presidency is more favourable to the UK than the position we were initially seeking: Gibraltar is included in the legislation and there is no mention of any sovereignty dispute over the territory where the airport is located. As such, it is also consistent with our public commitment to the Government of Gibraltar to robustly contest Spanish attempts to see Gibraltar excluded from EU aviation legislation.

The Government therefore welcomes the text proposed by the Presidency and would wish to support a general approach on those terms. We also feel that if we were not to support this approach it could have the effect of reducing sympathy for the UK's position on Gibraltar, both on the SES Recast and on other proposals in the future. We would not, of course, support a general approach or partial general approach that would exclude Gibraltar from the application of the Regulation.

I would also reiterate that we are content with the text in all other respects. Further discussions in working groups since I wrote on 14 November have not affected the achievements I reported in that
letter. In particular we remain keen to be able to support the general approaches as the text will assist us in resolving the current infringement proceedings against the UK and Ireland’s Functional Airspace Block.

I will, of course, keep your Committee informed of the outcome of the Council, and of further stages in the negotiation process. There is still some way to go before the proposal reaches any form of final agreement and the Government will continue to resist any move to exclude Gibraltar from the scope of the Regulation. I recognise that your Committee may want to hold this proposal under scrutiny pending further developments, but would be grateful if you could consider granting a scrutiny waiver ahead of the 3 December Council.

I December 2014

**Letter from the Chairman to Robert Goodwill MP**

Thank you for your letters of 14 November 2014 and 1 December 2014 on the above proposal. These letters were considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 1 December 2014.

We welcome your detailed letter regarding recent developments on the proposal for a recast of Single European Sky (SES) and the adoption of SES safety policies by the European Aviation Safety Authority (EASA).

We recognise that significant developments that have been made since the Commission published its Communication on accelerating the implementation of the Single European Sky. For this reason, we have decided to clear document 11490/13 from scrutiny.

Your update on Regulation 11496/13 satisfied the Committee that the main concern with this proposal, namely the reference to military operations which falls outside the competence of the EU, has been addressed. Accordingly, we have decided to clear document from scrutiny.

With regard to the recast of the SES 11501/13, we are pleased that ICAO’s North Atlantic Region (NAT) will be excluded from the scope of this proposed Regulation.

The Committee has also taken note of the efforts made by the Government to engage with passengers about the implications of these proposals, through a meeting with Civil Aviation Authority and running a consultation process.

You stated clearly in your first and second letter that the Government would not support a General Approach which excluded Gibraltar from the scope of this regulation. We know that you share the Committee’s concern that a decision which excluded Gibraltar, would set a dangerous precedent and undermine the Cordoba Agreement.

We appreciate the efforts you have made to keep the Committee informed about the ongoing negotiations regarding Gibraltar, through your most recent letter and your discussion with the Committee. We have decided to grant a scrutiny waiver on this dossier 11501/13, on the conditions specified in your correspondence, namely that the Government would not support a general approach or a partial general approach that would exclude Gibraltar from the application of the Regulation.

We look forward to an update from you regarding the outcome this Council meeting.

2 December 2014

**A EUROPEAN STRATEGY FOR MORE GROWTH AND JOBS IN COASTAL AND MARITIME TOURISM (6875/14, 6872/14)**

**Letter from the Chairman to Sajid Javid MP, Secretary of State for Culture, Media and Sport and Minister for Equalities, Department for Culture, Media and Sport**

Thank you for the letter we received from Helen Grant MP dated 30 April and for your letter and revised Explanatory Memoranda (EM) dated 29 May 2014 on the above proposals. These were
considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 16 June 2014. We have decided to clear both documents from scrutiny.

Your letter and revised EM provide a much fuller description of the content of the EU documents and their policy implications for the UK. We are pleased to note that the Department for Transport is recognised as a key stakeholder in developing coastal and maritime tourism.

Further to our recommendations in our recent report *Youth unemployment in the EU: a scarred generation* (12th Report, 2013–14, HL Paper 164), we welcome the fact that your EM highlights the importance of Local Enterprise Partnerships in determining the spending priorities for EU regional and structural funding.

A response to this letter is not required.

18 June 2014

A NEW APPROACH TO BUSINESS FAILURE AND INSOLVENCY (7859/14)

Letter from the Chairman to Jenny Willott MP, Parliamentary Under-Secretary for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum of 23 April 2014 on the above document. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 9 June 2014.

In principle, we welcome the idea of a common insolvency approach, which would provide security to businesses in carrying out cross-border transactions and would raise standards across the EU. However, we would only support legislation in this area if there was an appropriate legal base in the TFEU to justify it.

We question whether there is the competence to do so: Article 50 TFEU is concerned with cross-border rules that facilitate the right to establishment; the proposals in the Recommendation, if ever enacted, appear to stretch well beyond cross-border elements into substantive questions of insolvency and bankruptcy policy. There does not appear to be a legal base in the TFEU which confers power on the EU to introduce legislation of this kind. We note from your Explanatory Memorandum that you may share these doubts, and would welcome a more detailed legal analysis from the Government on EU competence to act in this field.

The Commission reports in its explanatory memorandum that a number of Member States are already in the process of reforming their insolvency laws. It is important that these Member States are given sufficient opportunity to make changes at national level before EU level legislation is introduced. Do you consider that 18 months is a reasonable timescale to allow those Member States to make the necessary changes at national level?

In a letter of 1 March 2013, on the Communication which foreshadowed this document, Jo Swinson MP outlined that the UK has a highly regarded insolvency regime, which is ranked in the top 10 globally by the World Bank. She confirmed that on this basis, she would be against any form of harmonisation which affected the UK Government’s ability to continue to develop its national insolvency regime. We welcome this viewpoint, and would encourage you to complete a detailed assessment of the impact on the UK’s insolvency regime, if legislation is brought forward by the Commission. Given that the UK’s insolvency model is an example of good practice, we ask whether you would push for any legislation to mirror the UK’s approach to insolvency.

In our consideration of the Communication, we noted that some of the definitions in the Commission document was too vague – such as the use of the terms “dishonest bankrupts” and “dishonest entrepreneurs”. These terms have not been further clarified in the Recommendation, and we urge you to ensure that they are clarified before use in any future legislation. We also observe your concern with the potential impact of the proposed length of standalone stays on creditors. We agree with your view that if secured creditors are prevented from enforcing their debts, this could cause problems for the availability and cost of credit.
Given that there are still a number of issues to be addressed ahead of any legislation, the Committee decided to retain the document under scrutiny. We would be grateful if you could update us on the outcome of the Commission’s assessment of the implementation of the Recommendation, and any other developments related to it.

We look forward to a response to the questions raised in this letter within 10 working days.

18 June 2014

Letter from Jenny Willott MP to the Chairman

Thank you for your letter of 18 June in response to my explanatory memorandum. I am most grateful for your detailed consideration of this issue. I note that you share my concerns about EU action in this area.

Your letter sought answers to several questions, which I will deal with in the order they were raised for ease of reference.

COMPETENCE

If in due course a Directive along the lines of the Recommendation is proposed it would be new ground for the EU – it has not previously proposed substantive insolvency law measures. The EC Regulation on Insolvency Proceedings, currently under review, focuses on cross border recognition and judicial assistance. If such a proposal for domestic insolvency laws were forthcoming, the Government would of course want to be sure that there was an appropriate legal base in the Treaties to justify such a measure.

A future proposal might cite Article 50 (freedom of establishment) or Article 114 (measures for the approximation of Member States’ laws which have as their object the establishment and functioning of the internal market). The Government has concerns as to whether these Articles would give the Commission competence to act in insolvency and this will be carefully considered should any legislative proposal be made.

Any such future proposal might also cite a Title V legal base and, in the Government’s view, would need to do so even if only some of its content was “Justice and Home Affairs”. The “opt-in” would apply to any such content and, if not cited, the Government would still argue that the opt-in protocol applies.

The issues around legal basis are convoluted. Article 50 looks to Article 49 which, read in conjunction with Article 54, prohibits restrictions on the freedom of establishment of nationals/companies “of a Member State in the territory of another Member State”. Prima facie, it is difficult to see that Article 50 could be engaged. This is because the fact that one Member State’s national law may not, for instance, provide for a restructuring framework similar to that proposed in the Recommendation, or imposes a relatively lengthy bankruptcy discharge period, cannot be said to disadvantage someone from another Member State – as within a Member State a person or company from another Member State would be treated the same as domestic companies and residents. As the Committee doubtless knows, the issue is complicated further by ECJ rulings. In certain circumstances the ECJ has found that the existence of national rules, applying equally to those from another Member State and the home Member State, which have the effect of hindering or making less attractive the exercise of Treaty rights, could breach Article 49. This is the so-called “restrictions” approach. Arguably, a lengthy discharge period, for instance, could act as a deterrent to an individual moving to and setting up in business in another Member State and, if the Commission can, under Article 49, challenge national rules it can, under Article 50, propose remedial legislation. This notwithstanding, the Government is aware of the limits of the restrictions approach and the reluctance of the ECJ to allow the Commission to force changes to national legislation where the effect on inter-state trade is in fact too theoretical or inconsequential.

Article 114 is the harmonisation of national laws legal base – “measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market”. At first blush, Article 114 is perhaps more of a fit than Article 50 and the language used in the Commission Communication of 12 December 2012 and in the Recommendation’s Recitals points to Article 114 as a possible base the Commission might use for future legislation. The Government is aware that the power in Article 114
is by no means unlimited, however. There is ECJ jurisprudence to the effect that the mere existence of disparities between national laws is not enough – for Article 114 to be relied upon it needs to be shown that removing those disparities would improve the functioning of the internal market, that the obstacles to (in this case) freedom of establishment would have to be appreciable. The Government does not believe that the Commission has clearly and convincingly made this argument to date in connection with the subject-matter of the Recommendation.

TIMESCALE

I do agree that the proposed timescale is ambitious – the Commission invites Member States to implement the principles of the Recommendation within 12 months, which allows little time for policy development and proper consultation by Member States, and to collect statistics on the procedures opened. Those statistics would be expected to be used by the Commission in their assessment of implementation by Member States 18 months after adoption. If such procedures were introduced within 12 months, a further six months is unlikely to provide a useful evidence base for their assessment.

IMPACT ON UK INSOLVENCY REGIME

Given the excellent reputation of the UK’s insolvency regime, and that the UK is an active participant in international fora, including the United Nations Commission on International Trade Law (UNCITRAL), the International Association of Insolvency Regulators (IAIR) and other ad hoc projects, including liaison with the World Bank in promoting best practice; it is crucial that the UK retains competence to develop its insolvency law and to continue to be a leading nation in this field.

I note your suggestion that the Government conduct a detailed assessment of the impact on the UK regime should legislation follow, and I am in agreement. It is our intention to conduct a call for evidence later this year to seek the views of UK stakeholders on the detailed recommendations set out by the Commission to assess whether there is appetite or need for such change in our domestic legislation and the likely impact. I will keep you informed of the outcome of any such consultation.

ENGAGEMENT (LEGISLATION TO MIRROR UK AND CLARIFICATION OF TERMS)

You ask whether, in the event that legislative proposals emerge, the Government will push for such proposals to mirror the UK approach to insolvency; and that terms such as “dishonest bankrupts” are properly defined.

When considering any aspect of substantive harmonisation, we believe that any such proposal should reflect the best practice, so should not be a retrograde step for any Member State.

Since the publication of the Communication, my officials have engaged with the Commission to discuss these proposals. While the Government believes that substantive insolvency policy should remain within the sole competence of Member States, if the Commission were to bring forward proposals for harmonised insolvency legislation the Government would seek to promote the UK’s insolvency regime as an example of a proven, successful system and encourage the use of clearly defined terminology to promote legal certainty.

I hope you find this response useful, and I would be pleased to deal with any further queries you may have. I will keep you informed of the outcome of the stakeholder consultation on this matter.

21 July 2014

Letter from the Chairman to Jenny Willott MP

Thank you for your letter of 21 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We are grateful for your detailed response. We were very pleased to note that you intend to ensure national competence is retained in this area given the UK’s excellent insolvency reputation, and that you will consult with stakeholders on the necessity of legislation in this area. We are grateful for your offer to update the Committee on the outcome of the planned consultation.
We found your analysis on the issue of competency particularly helpful and agree that, should legislation be brought forward by the Commission, the Government would need to consider carefully whether or not the legal basis is appropriate. With respect to your suggestion that the a Title V legal basis would likely be appropriate, we wish to restate the view we have outlined in previous correspondence, that unless the legislative proposal includes a specific Title V legal basis, the UK’s opt-in is not engaged, regardless of whether the content is relevant to Justice and Home Affairs issues.

Although the issue of competence remains unsettled, we acknowledge that the Recommendation is non-legislative and non-binding, and any further negotiations will be related to legislation in this area, if the Commission decides to bring forward a proposal. We have therefore decided to clear the document from scrutiny, and consider separately any forthcoming legislation in this area, if and when it is proposed by the Commission.

I look forward to a response within 10 working days.

11 September 2014

AVIATION: REMOTELY PILOTED AIRCRAFT SYSTEMS (8777/14)

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

Thank you for your explanatory memorandum of 6 May 2014 on the above Communication. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meetings on 16 June and 30 June 2014.

We note the Government’s broad support for the Commission’s aims to integrate drones into European airspace, albeit with some scepticism about the timelines given.

The Communication has no direct legislative or financial implications for the UK, and we have decided to clear it from scrutiny. However, given the likelihood of the Commission issuing legislative proposals in the near future to address the issues it identifies in its Communication, and the potential economic benefits that the greater regulated use of drones could bring to the Single Market, we have decided to conduct an inquiry on this issue.

We intend to publish a Call for Evidence before the beginning of the summer recess, and we will be inviting representatives from the relevant Government departments and agencies to give written and oral evidence in due course.

A response to this letter is not required.

3 July 2014

BALANCE OF COMPETENCES REVIEW (UNNUMBERED)

Letter from David Lidington MP, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

I am writing to update you on progress of the Balance of Competences Review. This follows my update to you on 22 May. I am pleased to inform you that the reports for semester three – covering Agriculture, Cohesion Policy, Competition and Consumer Policy, Energy, EU Budget, Fisheries, Fundamental Rights, Single Market: Financial Services and Free Movement of Capital, Single Market: Free Movement of Services, Social and Employment Policy, and Single Market: Free Movement of Persons - have today been published at https://www.gov.uk/review-of-the-balance-of-competences. The reports were written by departments leading on these particular policy areas.

As with previous semesters, calls for evidence for semester three reports were open for three months from October 2013. We saw a high level of interest and received over 800 contributions, including from business groups, professional bodies, the Devolved Administrations, Crown

The reports have undergone rigorous internal challenge to ensure they are balanced, robust and evidence-based. Evidence submitted (subject to the provisions of the Data Protection Act) has been published alongside the reports on the gov.uk website to ensure transparency. With publication of the third semester, 25 of the 32 reports are now complete. By bringing all the evidence together in one place, the review enables people to judge for themselves how the current arrangements are working, as well as providing a valuable contribution to the wider debate on EU reform.

The call for evidence period for semester four reports closed in July 2014. Reports in this semester cover: Economic and Monetary Policy; Education, Vocational Training and Youth; Enlargement; Information Rights; Police and Criminal Justice; Subsidiarity and Proportionality; and Voting, Consular and Statistics. The final reports are expected to be published by the end of 2014.

I would like to thank you again for your continued interest in the Review and for submitting the European Union Select Committee’s previous relevant work as evidence, which we encouraged departments to draw on. I would also like to thank you for the separate piece of evidence the Committee has submitted on the fourth semester Subsidiarity and Proportionality report. If you would like to receive further updates or to discuss the published reports, I can arrange an informal briefing by officials.

22 July 2014

CABLEWAY INSTALLATIONS (8436/14)

Letter from the Chairman to Baroness Kramer, Minister of State, Department for Transport

Thank you for your helpful explanatory memorandum (EM) of 28 April 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 16 June 2014. We have decided to hold this proposal under scrutiny.

Your EM explains clearly that this proposal does not have any major financial or legal implications for the UK, and that the Government do not have any concerns about what is being proposed by the Commission. We welcome the emphasis of the proposal on ensuring the safety of cableway installations. However, given that a number of charitable trusts operate cliff lifts in the UK, we ask for clarification on whether installations built and put into service before 2004 will be included within the current proposal.

I look forward to a response in due course.

18 June 2014

Letter from Baroness Kramer to the Chairman

Thank you for your letter of 18 June in response to the Explanatory Memorandum on the above proposal. I am writing to provide the further information you sought and to inform you of the progress we have made in negotiations ahead of the expected agreement of a general approach at the Competitiveness Council on 4 December.

You asked for clarification on whether installations built and put into service before 2004 will be included in the scope of this proposal. As you will recall, the main issue for the United Kingdom was to seek an exemption from the Regulation to those installations which are categorised as of ‘historic’ construction.

The Explanatory Memorandum explained that we would seek clarification from the Commission in respect of whether installations built and put into service from 2004 were included within the revised Regulation. Historic systems in the UK include funicular and cliff lift systems of which there are approximately twenty in operation around the country, mainly in seaside towns. The reason for seeking this exemption was because many of these systems are operated on a charitable/not for profit
basis or owned by small visitor attractions or by local councils. None of the systems generate profit for their owners and the majority either break even or lose money.

Officials from my Department, along with Health and Safety Executive colleagues, have attended the Working Group meetings in which the text of the proposal has gone through a number of iterations. In these discussions we made the case that, while we do not want historic systems to be included in the Regulation, we will still require the safety of the systems and the safety of users, workers and third parties through our existing national health and safety legislation.

Many other Member States were broadly sympathetic to our position but were not prepared to classify systems installed as recently as 2004 as ‘historic’. As a compromise, at the last Working Group meeting on 11 November we therefore obtained agreement for those systems which are older than forty years to be exempt from the proposed Regulation. Therefore those installations, including funiculars and cliff lift railways still in operation and dated between 1875 and 1974, will now be exempt. This will ensure the future of these important cultural and heritage systems. Of course, the continued safety of these systems will still be ensured through our national legislation.

We believe that this is an acceptable compromise and a positive result for the UK as all but two of the United Kingdom’s pre-2004 systems will be exempt from the Regulation. These two systems are not operated by a charity or voluntary sector but by private organisations alongside other facilities.

I would therefore wish the UK to support the general approach on this proposal at the 4 December Competitiveness Council and would be grateful if the Committee could clear this proposal from scrutiny ahead of the Council.

24 November 2014

Letter from the Chairman to Baroness Kramer

Thank you for your letter of 24 November 2014 on the above proposal. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 1 December 2014. We have decided to clear this proposal from scrutiny.

You appear to have reached a satisfactory outcome in your negotiations with the Commission and other EU Member States, and we welcome the emphasis on the continued safe operation of these installations in the UK.

A response to this letter is not required.

2 December 2014

Civil Aviation: Passenger Protection (7615/13)

Letter from Robert Goodwill MP, Parliamentary Under-Secretary of State, Department for Transport

Thank you for your letter of 14 May. I am grateful to the Committee for granting a scrutiny waiver on this dossier, and am writing to provide an update on these proposals as you requested. Despite the intense work undertaken in negotiations, it was clear that further time and work would be needed to find compromises on a number of significant outstanding issues, specifically the trigger points for when delay compensation is due and connecting flights. The issue over Gibraltar’s suspension from the Regulation has also not been resolved. As a result, the Greek Presidency decided not to seek any form of agreement at the Transport Council on 5 June, and instead submitted a Progress Report.

This dossier has not been identified as a priority by the incoming Italian Presidency. I will, however, continue to keep your Committee informed of any developments.

26 June 2014
Letter from the Chairman to Robert Goodwill MP

Thank you for your letter of 26 June 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 7 July 2014.

We reiterate our strong support for the Government’s attempts to seek a diplomatic solution to the issues concerning Gibraltar.

In your last letter to the Committee on 24 April, you stated your intention to conduct an urgent analysis of the impact that moving to a system of trigger points for compensation at 3/5/7 hours would have. In our reply to you on 14 May, we asked whether this assessment would examine the costs and benefits to stakeholders other than airlines, such as passengers, airport vendors and those working at airports. We would be grateful to receive a response to this question.

We have decided to retain this document under scrutiny and look forward to hearing from you.

9 July 2014

CONSUMER PRODUCT SAFETY - MARKET SURVEILLANCE OF PRODUCTS (5890/13, 5892/13)

Letter from Matthew Hancock MP, Minister for Skills and Enterprise, Department for Business, Innovation and Skills, to the Chairman

I am writing further to your letter of 13 June 2013 to Michael Fallon to bring you up-to-date with the above package. Although this was proposed by the Commission in February 2013 there has been little by way of developments in either Council or the European Parliament (EP) during 2014. This is due to the issue of country of origin labelling emerging as a key focus of this negotiation.

The overall status of the package is that the European Parliament’s Internal Market Committee voted on both Regulations on 17 October last year and had a negotiation mandate for informal three way discussions attended by representatives of the European Parliament, the Council and the Commission. However Member States were split over the issue of mandatory origin marking (Article 7, Indication of Origin, in the Consumer Product Safety Regulation, see below) and both the Lithuanian and Greek Presidencies were not given a mandate to start informal negotiations with the European Parliament. Subsequently, the European Parliament has adopted its first reading position on the package which includes changes to the earlier texts agreed by the Internal Market Committee.

COUNTRY OF ORIGIN MARKING (OM)

While we continue to support the overall aims of the Consumer Product Safety and Market Surveillance package, together with the Commission’s overarching objective of simplifying existing legislation, on the issue of mandatory country of origin labelling, we believe this is inappropriate in a product safety context since it would introduce new burdens on business whilst doing nothing to improve the traceability of a product through the production and supply chain that could not be achieved in other ways. Moreover, the Commission did not include this issue in its Impact Assessment and we have no evidence to demonstrate the costs or benefits of such a provision.

CURRENT POSITION

Member States are almost evenly split on origin marking.

The Greek presidency attempted to break the deadlock by tabling a series of compromise proposals for discussion. Two of these involved mandatory origin marking and therefore we could not support them. The third, although requiring some drafting changes, appeared to seek to empower the Commission to produce an assessment of the potential costs and benefits of origin marking. Although we believed it had potential for discussion it did not receive the support of the Member States in favour of OM.

A further compromise suggestion involving mandatory OM in the ceramics sector was presented to Coreper. The UK and the rest of the anti-OM camp did not support this as it introduced mandatory OM even though only limited to one sector. This is in line with the agreed Government line as set out
previously. It was also rejected by the pro-OM camp. Therefore, again, no deal was reached. The Presidency had planned to return to Coreper with yet another compromise proposal involving mandatory marking on selected industry sectors, which we could not support, but the item was withdrawn from the agenda without explanation.

A vote by the European Parliament in the run up to the European Elections was in favour of retaining the country of origin marking proposal. This means that it is very likely that this proposal will be further discussed when the Working Group negotiations resume in the autumn.

Under these circumstances, it is difficult to envisage a compromise being found that is acceptable to both camps, which each have comfortable blocking minorities in Council.

I will keep you informed of any developments.

5 September 2014

Letter from the Chairman to Matthew Hancock MP

Thank you for your letter dated 5 September on the above proposals. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014.

We are grateful for your update on the progress of negotiations and note the difference of opinion between Member States on the country of origin principle.

We have decided to retain the documents under scrutiny and we look forward to receiving further updates in due course.

17 October 2014

CROSS-BORDER EXCHANGE OF INFORMATION ON ROAD SAFETY RELATED TRAFFIC OFFENCES (12107/14)

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

I am writing to provide you with an update on this proposal, further to my Explanatory Memorandum of 19 August.

In the Explanatory Memorandum I said that the timetable for consideration by the Council of Ministers was not yet known, though we expected that the proposal would be taken forward quickly because of the deadline set by the ECJ for replacement of the annulled Directive by May 2015.

Since then, the Italian Presidency have given strong indications that they would like to take this dossier to the 8 October Transport Council for a General Approach. Although we are conscious of the tight timetable in which this proposal must be finalised – including the need to reach a deal with the European Parliament and bring the proposal back to Council for final adoption - we have asked the Presidency and the Commission for more time to fully consider the text and have explained that the timing of Conference Recess means that it is very unlikely that we will be able to complete our domestic processes, including Parliamentary Scrutiny, before the October Council.

Since publication of the Explanatory Memorandum, there has been a single working group meeting on 4 September to discuss the text, with three more planned on 11, 23 and 25 September. I am pleased to report that in this initial discussion we have gained broad support from other Member States and from the Commission for the UK in terms of transposition times.

As originally proposed, the Directive would require that Member States transpose by 6 May 2015 in line with the decision of the European Court of Justice on the annulment of the previous Directive (2011/82/EU). As this is effectively a new text for the UK (together with Denmark and Ireland), we have requested the same two-year transposition period afforded to other Member States in the annulled Directive. 25 of the 28 Member States were required to transpose the original Directive by November 2013 and many of these Member States are therefore reluctant to support anything more than minor changes to the text. This affords the UK, Ireland and Denmark little opportunity to
suggest amendments at this time. However, even those Member States who are averse to changes to the current text spoke in support of additional time for the UK, Ireland and Denmark to transpose the Directive.

Although there is clearly limited appetite to amend the current proposal, by 7 November 2016 the Commission will be required under the terms of the Directive to produce a report on the effectiveness of the Directive to date and to produce evidence supporting improvements to the Directive such as allowing for the transfer of fines by harmonisation with the Framework on the Mutual Recognition of Financial Penalties (Paragraphs 29-31 of the EM) or harmonisation of penalty point regimes. The Commission have urged the UK to consider using this report as a vehicle by which changes to the Directive can be effected. My officials are already considering what amendments the UK would like to see with regard the text, particularly in light of the limited room to negotiate at the moment.

The Commission has indicated that it would have no concerns, in principle, with the UK potentially amending domestic legislation to enhance measures for dealing with non-compliance where drivers and registered keepers fail to respond to the Cross-Border notices outlined in Annex II of the text. Under the proposal, if a vehicle is identified as breaking the law in another Member State, the Member State concerned will request the keeper data of that vehicle from the state where the vehicle is registered. Upon receipt of that data, the Member State may write to the keeper either using the letter template in Annex II of the Directive or in a letter drafted by the Member State requesting details of the driver, not unlike a section 172 Notice required as part of the Road Traffic Act 1988. Our section 172 notices only have territorial effect within the UK, but in the future we could send them to foreign drivers with the appropriate penalties for non-compliance subject to legislative change.

The working group discussion on 4 September suggests that there is only one sticking point with regard to the text and that concerns the change of the underlying principles of Data Protection from the Prüm Framework to the Data Protection Directive (Paragraphs 32-34 of the EM). We are still considering our position on data protection, though I can report that Member States are divided on whether or not the change to the text should remain.

As you are aware, the Home Office and Ministry of Justice also have an interest in this proposal and we are continuing to work closely with them. It will be necessary to reach cross-Whitehall agreement on the UK’s policy position ahead of any General Approach, and as such at present I am unable to confirm formally our voting intentions until the cross-Whitehall process is complete. We will of course continue to seek deferral to a later Council in the remaining working group negotiations and to keep your Committee updated as to any developments.

I will of course continue to keep your Committee apprised of any developments in this dossier.

8 September 2014

Letter from Robert Goodwill MP to the Chairman

I am writing to provide you with an update on this proposal, further to my Explanatory Memorandum of 19 August and my subsequent letter of 8 September. As we anticipated, the Italian Presidency decided to take this dossier to the 8 October Transport Council for General Approach.

When I wrote to you in September I was unable to confirm our policy position because we were seeking cross-Whitehall views on it. However, ahead of the Council meeting on 8 October, the Government agreed that we should abstain on this proposal.

The UK and Ireland lodged a joint minute statement expressing concerns over both the speed with which the Commission and Presidency were moving and the possible precedent set by the ECJ decision for future measures. I attach [not printed] a copy of this for your information. I also reiterated these points orally in the Council meeting. It was however not possible to obtain any pause in the timetable for discussion and agreement of this measure.

Some useful agreements and concessions have been granted. As reported in my letter of 8 September, during the Working Group discussion of this measure there was widespread support for the UK, Ireland and Denmark to receive the same two year transposition period as the other Member States originally had. We thus have until May 2017 to make the necessary changes to allow this measure to be introduced. This was confirmed at the Transport Council.
The UK also secured a clear understanding of the basis on which personal data should be transferred. Personal data should be shared in accordance with the 1995 Data Protection Directive (in keeping with this measure being negotiated under Article 91(1)(c) of the Treaty on the Functioning of the European Union (TFEU)) rather than Title V (Justice and Home Affairs). In our view this is entirely proper and this was also the view of the European Data Protection Supervisor.

Although we had hoped that it would be possible to delay the General Approach to allow more time to fully consider the text and complete Parliamentary Scrutiny, we do recognise that the deadline set by the ECJ for replacement of the annulled Directive by 5 May 2015 limited the Presidency’s options. There are a number of further stages that must be completed before the Presidency can reach a deal with the European Parliament and bring the proposal back to Council for final adoption to allow it to come into force ahead of the 5 May deadline. The European Parliament’s TRAN Committee will need to grant a mandate for its Rapporteur to open trilogue discussions with the Presidency, and the next available Committee meeting is for this to take place will be the week beginning 3 November. The Council will also hold a working group in early November to discuss its approach for the trilogues.

The TRAN Committee will also have to have a post-trilogue vote to ensure that the mandate was kept. The earliest opportunity for this is 2 December. The Jurist Linguist process will then begin. The Council Secretariat hopes that this process can be completed in time to allow the European Parliament to adopt the proposal in Plenary by February. The proposal will then go back to the Council for final adoption in February or March. It will then need to be published in the Official Journal of the European Union, which the Council Secretariat hopes will be a matter of 2-3 weeks. A further 20 days must elapse before entry into force. The expectation therefore is that the Directive will come into force in late April or early May in advance of the 5 May deadline set by the Court.

We will seek to engage proactively with MEPs during the European Parliamentary discussion of this measure and I will of course continue to keep your Committee apprised of any developments in this dossier.

14 October 2014

Letter from the Chairman to Robert Goodwill MP

Thank you for your Explanatory Memorandum (EM) of 19 August and letter of 8 September and 14 October 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meetings of 13 and 20 October 2014.

It is unfortunate that the recess period prevented this document being considered by the Committee ahead of the 8 October Transport Council. Nevertheless, we note your view that there was little room for negotiating changes to the text because 25 of the 28 Member States had already been required to transpose the original Directive.

We welcome the news that there is widespread support for the UK to have an extended transposition period. On this point, we seek clarification as to whether the changes that you hope to introduce via the Commission’s 2016 progress review will, if successful, come into force before the UK is required to implement the draft Directive. We would also be interested to know what improvements to the Directive you intend to put forward.

Article 11 of the proposed Directive outlines the areas on which the Commission’s 2016 progress report will focus. It states that the Commission will look at the possibility of harmonising traffic rules where appropriate. We would be grateful for your view on the Commission’s competence in this area. We also ask whether the Commission has given any indication as to the types of measures that are envisaged.

We acknowledge that there are a number of aspects of the detail of the proposal that you are still considering – for example, whether the inclusion of a Delegated Act is appropriate. We ask that you share your views on these issues, when you have fully assessed them.

As you say in your EM, changes to data protection legislation at EU level are currently being negotiated. We would like to know what impact, if any, you expect new data protection legislation to have on the protection of data for the purposes of the Directive. We would also be interested in your view as to whether your decision not to opt back in to the Prüm Decisions will impact on your participation in this proposal, and whether it will limit the full flow of information on driving offences between the UK and other Member States.
The Committee recognise the headway you have made in negotiations on the issue of registered keepers. You say that the Commission would have no concern with the UK amending domestic legislation to enable section 172 penalty notices to be sent to drivers in other Member States. We would appreciate further information as to how payment of penalty notices sent to drivers in other Member States would be enforced.

There are a number of questions that your EM and letter leave unanswered, and as such, we decided to retain the document under scrutiny. We look forward to an update on negotiations following the 8 October Transport Council.

I look forward to a response within 10 working days.

23 October 2014

DEPARTMENTAL PRIORITIES UNDER THE ITALIAN PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION (UNNUMBERED)

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

I am writing to inform you of our priorities for the next 6 months under the Italian Presidency of the Council of the European Union.

The Italians indicated that we can anticipate activity clustered around three main pillars identified by the Presidency: regulatory, physical and human.

On the first, we can anticipate the continued negotiation of the Connected Continent package under the Italian Presidency, who have made its completion towards the latter stages of their Presidency a priority. The passage of this single market measure has been somewhat laboured to this point and it remains unclear whether an agreement will be reached, with Council, the European Parliament and the Commission holding divergent views on key elements of the package. The other indicated regulatory priorities of the incoming Presidency – the proposed directive for Network and Information Security and a directive on the accessibility of public sector websites - fall outside the remit of DCMS but have clear digital single market links.

The second pillar is focused on infrastructure and networks and the Presidency is looking to steer debates on how a stable and transparent regulatory environment can be created that will drive investment and make full use of existing EU funding through structural funds, European Investment Bank initiatives and the Horizon 2020 programme.

The Presidency are also aiming to further developing the current situation regarding cloud computing by pushing to further develop an ‘EU Cloud Partnership’ and further developing the existing network of Digital Champions.

The third pillar will see further work on supporting the ‘Grand Coalition for digital jobs’ and a flagship project with aims around creating and managing citizens’ electronic identity.

The Italian Presidency is hosting an event that will focus on the ratification of the Venice Declaration. This is a manifesto for the content of the Digital Agenda for Europe during its second phase (2015-20), falling under the aegis of a new Commissioner. It is generally in line with HMG policy, with a strong emphasis on digitally-driven growth.

Internet governance will undoubtedly be on the agenda again during their Presidency, with further discussions likely on the extent to which the EU should coordinate its position along the lines of the Commission’s recent communication. The Commission may also try again in their efforts for enhanced status in the International Telecoms Union (ITU) and renegotiating the International Telecoms Regulations. Pressure from the Commission will intensify in the run-up to the ITU Plenipotentiary

In the field of culture, the Italians will take forward the work started by the Greeks on the new work plan. Much of the discussions under the last Presidency focused on how to enhance the role of culture across all EU policy areas, particularly in areas where it is most affected, for example copyright and trade. Our key aim here will be to ensure that the work plan does not disproportionately impinge
on other policy areas and remains within the framework of the treaties. We will also want to ensure that our policy priorities are incorporated into this document, for example, statistics reporting and alternative methods of funding for the cultural and creative industries.

The Presidency will also table Council conclusions on cultural heritage, which also follows on from the work done by the Greeks on the same topic. These conclusions however will seek to establish a greater role for cultural heritage within the EU2020 Strategy by feeding into the ongoing review. As most Member States support broadening and strengthening the process to incorporate culture, this text will require some careful handling. It is expected that recognition of culture in the EU 2020 strategy will form the basis of the discussion paper for culture ministers to debate at the Council in November.

In the audiovisual sector the incoming Presidency will seek agreement from culture and audiovisual ministers on conclusions entitled; European audiovisual policy in the digital age. This text could influence the forthcoming recast of the audiovisual and media services (AVMS) Directive. A new proposal on audiovisual policy is not expected imminently however, the recast process is gaining momentum so we need to ensure that we are steering it in the right direction.

On sport there will be Council Conclusions on the contribution of sport to jobs and economic growth, which are not set to be controversial. We will focus our attention on influencing the pending Commission decision on the signature and conclusion of the recently negotiated Council of Europe convention on the manipulation of sports competition. Although a decision is not expected much before the end of the year, it is important that when the convention is open for signature a government position has been agreed on regarding next steps. The Commission is also due to publish a recommendation on match fixing.

I hope this gives you a general overview of our EU engagement work, and look forward to providing you with further updates as we approach the Ministerial Councils.

17 July 2014

DEPARTMENT FOR BUSINESS, INNOVATION & SKILLS: EU BUSINESS UNDER THE ITALIAN PRESIDENCY (UNNUMBERED)

Letter from Vince Cable, Secretary of State for Business, Innovation and Skills, Department for Business, Innovation and Skills, to the Chairman

Italy will assume the EU Presidency on 1 July 2014. I am writing to set out the areas of BIS policy that we expect to be most active during the Italian Presidency, although their Presidency will be dominated more by the institutional changes of the European Parliament and Commission.

The Italians have identified economic growth, migration and the Mediterranean as their main priorities. They will promote growth by addressing youth unemployment, deepening Single Market, especially Digital Single Market. They also have a growing interest in better regulation and the Transatlantic Trade and Investment Partnership (TTIP).

INTERNAL MARKET

The Italian Presidency will focus on tackling youth unemployment. It will give special attention to the integration of education and training systems, the labour market and work-based pathways. DWP is the main lead on this agenda but there are areas that relate to BIS responsibilities in education and training.

The UK supports the development of the EU skills agenda where it adds value to action being taken by Member States, but we believe that Member States should adopt initiatives with regard to their own needs and existing systems.

The Italian Presidency has already expressed their intent to discuss undeclared work and collective redundancies.

The Commission proposed a platform to tackle Undeclared Work across the EU, about which the UK Government had some initial concerns. However, following negotiations, we are now
considering with other Member States how we will take this forward. This was a priority for the Greek Presidency and we expect the momentum to continue under the Italian Presidency, who will seek an urgent agreement on this file as it was not possible to achieve an agreed Council position under the Greek Presidency.

We continue to defend against the potential changes to the Information and Consultation Directives that the Commission is believed to be considering. In particular, the Directive on Collective Redundancy carries risks of significantly increasing the costs of compliance with employment law for businesses. We will push the Commission for an impact assessment to show any Europe-wide problem, before considering these issues any further.

Italy will aim to agree conclusions on industrial competitiveness, the review of the Small Business Act, and the competitiveness aspects of the Europe2020 review at the December Competitiveness Council. We aim to ensure that the conclusions, and the forthcoming Industrial Policy roadmap, reflects our open market approach and focuses on action to: deepen the single market in goods, services and digital; complete ambitious trade deals with the world’s largest economies; reduce unnecessary regulation; maintain robust state aid and competition rules; and promote innovation.

Italy also plans to agree conclusions on better regulation in December, and we want to see strong references to the prioritisation of REFIT. We look forward to working with the Italian Presidency to ensure that better regulation remains a top priority for the next Commission, and our priority will be for the Italian Presidency to take a leading role in promoting the case for a reduction in the overall burdens of EU regulation. The Presidency will have a key role to play in taking forward a recent Council agreement to consider impact assessments more systematically during Council negotiations, and we will support this.

On Company Law, the proposal to amend the 2007 Shareholders Rights Directive is already proving a complex file and the Italian Presidency will aim to find a compromise. The UK could support this approach on specific aspects of the proposal, but on others, we question the evidence of benefits in creating level playing fields and regulating areas where existing codes of conduct seem to be working.

The Italian Presidency has indicated that it will work towards achieving a general approach on the Single Member Company legislative proposal, despite the reservations expressed by a number of delegations around the Treaty base and the added value of EU legislation.

The UK welcomes the rapid progress that was made on the proposed Directive on Antitrust Damages during the Greek Presidency. The final wording of the Directive has been agreed, and we are expecting it to be formally approved by the Parliament and Council in the autumn. We have been very supportive of the proposals in the Directive that will give consumers greater access to redress and further deter anti-competitive behaviour.

The Presidency would like to reach political agreement on the proposed Directive on package travel and assisted travel arrangements in early December. However this might be overly ambitious as there is much yet to be discussed and the issues are complicated. We expect an intensive period of negotiation in the autumn.

Progress on the Product Safety and Market Surveillance Package in negotiations has stalled due to difficulties around a key provision on Country of Origin Marking. Member States are evenly split on this issue, with no immediate prospect of a compromise. The Italian Presidency wants to make progress on getting an early second reading deal and supports the European Parliament’s text because of the inclusion of origin marking. They also hope to reach agreements on some technical harmonisation legislative files like Personal Protective Equipment and Gas Appliances.

The Italian Presidency has expressed its intention to press on with the revision of the Insolvency Regulation, in particular the trilogues following the Council’s General Approach, which will be a key civil justice priority. The Government welcomes the priority devoted to these proposals. The European Parliament passed the Women on Boards Directive (which aims to improve the gender balance among non-executive directors of companies listed on stock exchanges) in November 2012. The Directive is currently blocked in Council with eleven member states opposed to it, including the UK. The incoming Italian presidency see this topic as a priority and are exploring drafting changes in order to persuade those opposed to the directive to change their position.
The negotiations on the reform of the European trade mark system are approaching their conclusion and the Italians are keen for the Council to adopt a position before the summer break. Good progress has been made and this is an ambitious target, but with sufficient effort this may be feasible. The Government welcomes the reforms and has been active in Council working group to ensure that the UK’s priorities are reflected in the negotiated package. Once implemented, the reforms will provide a coherent and efficient trade mark system across the EU. This more harmonised system will benefit British business through the subsequent reduction in the costs of protecting their trade mark in the EU.

The Council agreed a General Approach on the Trade Secrets Directive under the Greek Presidency. The Directive is intended to increase businesses’ confidence that they can protect their trade secrets throughout the EU. It is possible that trilogues may start in the Italian Presidency, but, given that the European Parliament has not yet begun its work on the dossier, the timings are uncertain. The text of the General Approach answers the UK’s key concerns and our objective for the trilogues will be to maintain those amendments.

Work on the Network and Information Security Directive (NIS) increased in pace under the Greek Presidency and we are keen that the Italians maintain this with a view to reaching agreement with the Parliament before the end of the year. The Council position should fully respect the principles for future work outlined in the Greek Presidency’s Progress Report, as these broadly reflect UK priorities for the negotiation. It will be important to maintain the strong alliances we have built with other Member States on pan-EU cooperation to prevent any moves towards stronger operational cooperation.

REGIONAL POLICY

The Italian Presidency will focus on the Commission’s Sixth Cohesion Report, which we expect to be published in late July. The Cohesion Report is a strategic document, highlighting current issues in the policy area and setting the direction for the years ahead. To promote high level debate, the Commission will host the Cohesion Forum in early September.

In the autumn the Council will produce conclusions on the report, which are likely to be considered at the General Affairs Council dedicated to cohesion policy. The Commission has recently published two Communications on macro-regional strategies: on governance and the new Adriatic-Ionian Macro-Regional Strategy. Both will be considered during the Italian Presidency.

TRADE

The Italians will also prioritise growth through promoting ongoing trade negotiations with the US and other strategic partners.

The Transatlantic Trade and Investment Partnership (TTIP) will be a priority for the Italian Presidency. Securing significant progress on TTIP negotiations is also the Government’s top trade priority for 2014. Our assessment at this stage is that the negotiations are broadly on track. The UK is pushing the EU Commission and US negotiators to ‘break the back’ of the technical negotiations this year, opening the possibility of a political agreement between the EU and US in 2015.

Regarding other bilateral trade negotiations, agreements with Canada and Singapore are in their final stages and are very close to conclusion. The EU-Singapore agreement has already been initialled and may be signed in October. The EU-Japan negotiations should accelerate with an exchange of offers on services and procurement. We are also hopeful of receiving an exchange of market access offers from Mercosur during the Italian Presidency.

The Italian Presidency fully supports progress on the WTO Doha Development Agenda (DDA), including the ratification and implementation of the Trade Facilitation Agreement and the management of the post Bali agenda by building on the decisions taken at the Ninth WTO Ministerial Conference. The Presidency will encourage the ongoing WTO accession negotiations, including those of Algeria, Azerbaijan, Bosnia and Herzegovina, Kazakhstan and Serbia.

The Italian Presidency will have a potentially busy programme on the regulatory front. In addition to progressing the relatively non-controversial Commission proposal for reform of the EU anti-torture regulation (which would govern the trade in certain goods which could be used for capital punishment and torture), it will try to break current Council impasses and enter into trilogue with the EP on the
proposed Modernisation of the EU’s Trade Defence Instruments and on an International Procurement Instrument. This will not be easy given the strength of opposition from many Member States (including the UK) to the increased trade-restrictive elements in the two proposals.

RESEARCH AND SPACE

The 2014 European Research Area (ERA) Progress Report is expected to be published by September and the Italians will aim for Council Conclusions on the report at the December Competitiveness Council. These will draw on the European Research Area and Innovation Committee (ERAC)’s Opinion on the Report. ERAC will continue to oversee the process of monitoring ERA developments and on the development of an ERA Roadmap (where the UK is playing a leading role) which will be finalised under the Latvian Presidency.

Following the recent Communication “Research and Innovation as new sources of growth”, the Presidency will hold a policy debate leading to Council Conclusions that will address research & innovation (R&I) in the context of the Europe 2020 Strategy. The debate and conclusions are likely to focus on increasing the impact of R&I on growth, reforms needed on the R&I policy-making process, improving the quality and effectiveness of R&I programmes and strengthening the innovation ecosystem. These are areas where the UK can draw on national experience to provide an informed contribution to the debate.

Work will continue on the relationship between the European Space Agency and the European Union during the latter part of 2014, with a view to reaching conclusions by December. The Presidency is expected to promote a European Space Surveillance and Tracking capability that develops and exploits existing national and European civil military assets to help ensure that spacecraft avoid collisions with space debris. The Decision establishing a programme was concluded earlier this year. Negotiations will begin on the Commission’s proposal for a Directive on the sale and transfer of data from Earth observation satellites. The proposal is part of the Commission’s Space Industrial Strategy.

I hope you find the above information useful. The Department will keep you updated on progress throughout the Presidency.

3 July 2014

DEPLOYMENT, OPERATION AND USE OF THE EUROPEAN GLOBAL NAVIGATION SATELLITE SYSTEM (UNNUMBERED)

Letter from Greg Clark MP, Minister of State for Cabinet Office (Cities and Constitution) and Minister of State for Universities and Science, Department for Business, Innovation and Skills, to the Chairman

I am writing with regard to the Council Decision which enables an “Emergency Response” for managing the Galileo and EGNOS satellite navigation systems in times of crisis or where the security of the EU or one of its Member States is under threat.

The attached [not printed] Explanatory Memorandum explains the issue in full but, in sum, the intention of this Union act is to update the previous Joint Action from 12 July 2004 to reflect post Lisbon changes to the European institutions and maintain the ability of the Galileo and EGNOS Satellite Navigation Systems to be switched off if the need were ever to arise. This Union act has also enabled to Member States to further constrain the ability of European authorities to act unilaterally in this respect.

As you know, the responsibility to keep your Committee informed on issues concerning emerging EU legislation is something that I take very seriously. The need to override scrutiny on this occasion was regrettably unavoidable due to the limitations on distribution and circulation that were imposed by European institutions prior to the final text being adopted. This Union act is of a non-legislative nature.

17 August 2014
**DEPLOYMENT OF THE ECALL IN-VEHICLE SYSTEM (11124/13)**

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

Thank you for the letter of 22 April 2014 from Robert Goodwill MP, and for your letter of 29 May 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 16 June 2014.

Your letter explains clearly the recent amendments to the proposal, which we believe are positive, and the Government’s concern about the unfavourable cost to benefit ratio in the UK.

Your letter is dated 29 May but talks about agreement on a General Approach at the Competitiveness Council on 26 May on the proposal in the future tense. We would therefore be grateful to receive an update on the outcome of the Competitiveness Council meeting, and the Government’s vote against the proposal. In the meantime, we have decided to retain this document under scrutiny.

18 June 2014

**EARTH OBSERVATION SATELLITE DATA FOR COMMERCIAL PURPOSES (11002/14)**

**Letter from the Chairman to Greg Clark MP, Minister of State for Cabinet Office (Cities and Constitution) and Minister of State for Universities and Science, Department for Business, Innovation and Skills**

We congratulate you on your new role in Government and wish you the very best in the future.

We are grateful to your predecessor for the explanatory memorandum (EM) dated 9 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 21 July 2014. We have decided to hold the proposal under scrutiny.

We note the importance placed by Government on the space sector in its response in April to the UK Space Innovation and Growth Strategy 2014–2030. We were therefore surprised that the EM was not more enthusiastic about the Commission’s proposal. We generally welcome initiatives which facilitate greater trade across borders within the single market, and we consider that the Commission’s arguments in favour of EU action in this area are justified. The use of Earth observation satellite data in the EU for commercial purposes is likely to grow as more Member States develop the capacity to disseminate it. If it is accepted that the dissemination of this data is an emerging commercial market, which there is evidence to support, then the case for it being regulated on internal market grounds is a sound one. We also note that the proposal recommends partial, rather than full, harmonisation of the regulatory environment in the EU. This is reflected in the fact that only key regulatory elements are addressed, and in the Commission’s choice of proposing a Directive rather than a Regulation, which allows Member States legislative flexibility.

We note your concerns about the consultation process and impact assessment which informed the Commission’s proposal. However, in our view, the Government’s argument that the consultation procedures were flawed is not borne out by the details of the consultations undertaken by the Commission, as set out in the impact assessment.

We would be grateful for your answers to a number of specific questions, which we have outlined below:

— The EM refers to ‘fused data’, where additional non-satellite data is added to a basic satellite image to make it more informative, as an example of why “a more sophisticated and nuanced recognition of what constitutes sensitive data” is required. This is an extremely broad requirement to set for a legislative proposal and strays across multiple policy areas. Do you have an alternative definition of “sensitive data” you could offer the Commission?

— The EM says that the dissemination of HRSD data could give rise to security concerns in the UK, but the UK’s current export licencing regime for
satellites does not cover the dissemination of HRSD. Do you plan to change the licencing regime to allay these concerns?

— The EM says there is a lack of clarity in the proposal about how disputes between Member States would be resolved. As one of only four EU Member States with HRSD companies active within its borders, do you have a solution you could suggest to resolve this issue?

— Can you clarify the argument made in the EM in favour of a Common Security and Defence Policy legal base?

— Do you think the proposal is compatible with non-EU or international regulatory frameworks, for example, the US? Could solutions to your concerns be found by borrowing elements from other regimes?

We look forward to receiving your response within the standard 10 working days.

23 July 2014

Letter from Matthew Hancock MP, Minister for Skills and Enterprise, Department for Business, Innovation and Skills, to the Chairman

Thank you very much for your letter of 23 July to Greg Clark.

In your letter you raise a number of specific questions relating to the issues set out in Explanatory Memorandum 11002/14. I will deal with them in the order they appear in your letter.

You have asked whether we are able to offer an alternative definition of ‘sensitive data’ to the Commission. The Government is actively working on developing an acceptable definition which will address our concerns and can be offered to the Commission. The sensitivity of data can depend on a number of variables – some unknowable in advance - including how often the image is taken and at what time intervals, the location of the site that is being imaged, and who is requesting the data. The key issue is that it is for the originating Member State to determine whether the data is sensitive or not. Article 346 of the Treaty of the Functioning of the European Union states that a Member State cannot be obliged to hand over data when it judges that disclosure could harm its security. We would wish to ensure this point is clearly understood and set out within the Directive.

The National Space Security Policy published in April this year stated that the Government will ensure that export control policy considers the complex issues surrounding service provision agreements and data, and imagery capture and transfer. Officials have attended a number of meetings with international partners to understand how other countries approach controls on satellite images. The Government does not currently have a firm proposal for a change in the UK export licensing regime at this time.

We are currently developing our position on how disputes between Member States may be resolved. During our discussions with international partners we are also examining how they manage national security concerns relating to the release of data by another country who may not perceive the data as sensitive.

Although the Directive is proposed under Article 114 (internal market) we are concerned that the impact of the proposal could result in sensitive military operations being revealed e.g. troop or ship movements. In order to avoid such scenarios, there would need to be some exchange of information between Member States with High Resolution Earth Observation capacity, but this would not sit easily under Article 114 and may be more appropriately dealt with under a Common Security and Defence Policy legal base or via a series of bilateral agreements.

As mentioned above, officials have been discussing alternative regimes with international partners. The United States of America has recently revised its restrictions on the sale of imagery from commercial satellites, and we are examining the new arrangements and their implications for sensitive data.

I will also update you further as negotiations progress.

27 August 2014
Letter from the Chairman to Matthew Hancock MP

Thank you for your letter dated 27 August 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014. We have decided to retain the proposal under scrutiny.

We are grateful for your answers to the questions we posed in our letter of 23 July. We note the work being undertaken to understand better the responses of other countries to national security concerns raised by the transfer of HRSD data, and the Government’s intention to engage with the Commission about the definition of sensitive data in the context of the current proposal.

We have decided to retain the proposal under scrutiny, and look forward to receiving updates on the progress of negotiations in due course.

17 October 2014

E-TRUST SERVICES (10977/12)

Letter from Lord Livingston of Parkhead, Minister of State for Trade and Investment, Department for Business, Innovation and Skills, to the Chairman

I am writing to confirm that the Electronic Identification and Trust Services (EIDAS) Regulation has now been agreed and come into force following its publication in the Official Journal of the European Union (see: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2014:257:TOC).

10 October 2014

Letter from the Chairman to Lord Livingston of Parkhead

Thank you for your letter of 10 October 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

We are grateful to you for informing us of the Council’s adoption of the proposal and its entry into force.

We now consider our correspondence on this proposal to be closed, and a response to this letter is not required.

19 November 2014

ESTABLISHING A QUALITY FRAMEWORK FOR TRAINEESHIPS (17367/13)

Letter from the Chairman to Matthew Hancock MP, Minister for Skills and Enterprise, Department for Business, Innovation and Skills

Thank you for your letters of 10 February (received on 26 February) and 2 April. We were disappointed that because we did not meet on 3 March, the first letter was not sent in time for the Committee to consider it ahead of the 10 March Council meeting. This made it impossible for the Committee to comment on the dossier ahead of the Council.

Both letters were considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 10 June 2014. Since negotiations on this dossier are complete, we have decided to clear the document from scrutiny. However, we wish to register our disappointment with your decision not to support the proposal.

During the Committee’s inquiry into youth unemployment in the EU, we heard evidence that there were issues around the “loose vocabulary” being used to define traineeships, which resulted in doubts about the quality of the available opportunities. The ETUC noted that the quality and quantity of apprenticeship schemes varied between Member States due to different industrial fabrics and social

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1 European Union Select Committee, Youth unemployment in the EU: a scarred generation?, 2014-14, HL paper 164, p.49
partnership models. For that reason, it said that the Quality Framework for Traineeships represented an important milestone. We also heard concerns about the proliferation of schemes being identified as apprenticeships but whose quality and applicability to the labour market is questionable. As we set out in our report, we believe that it is important to ensure that internships enable young people to access the labour market, and are not offered as a substitute for employment. In the light of this, we endorse the European Commission’s attempts to create a common understanding of what constitutes an apprenticeship or traineeship in the EU.

We urge you to reconsider your decision not to implement at least some aspects of the Recommendation. In any case, we think it is important that future UK policies are developed in line with EU definitions, so far as possible.

I look forward to a response in 10 working days.

18 June 2014

Letter from Matthew Hancock MP to the Chairman

Thank you for your letter of 18 June. I’m afraid that I do not agree that diversity in the provision of apprenticeships and traineeships across Member States in the European Union should lead to EU action aimed at producing greater consistency. I do not dispute the evidence of “loose vocabulary” highlighted by your Committee’s inquiry into youth unemployment. Nor do I doubt the accuracy of the ETUC’s comment that “the quality and quantity of apprenticeship schemes varies between Member States due to industrial fabrics and social partnership models”. Indeed, I would be astonished if that were not true. But as I made clear in my evidence to that same inquiry, I do not accept that normative, quasi-prescriptive EU Council Recommendations would help.

I would argue that variety in the design and implementation of policy in this area is almost certainly very necessary. Different EU countries have different education systems, different labour market conditions and different policy/institutional frameworks. It is for national governments to determine the right quality and quantity of provision, taking into account that diversity. That is why the principle of subsidiarity in education policy applies not only across the EU, but within the UK.

Our own example is a case in point. In England, Traineeships and Apprenticeships are very clearly defined. In the Quality Framework for Traineeships, the Commission has sought to define traineeships as “a limited period of work practice, whether paid or not, which includes a learning or training component, in order to gain practical and professional experience with a view to taking up regular employment”. This definition of traineeships therefore covers what UK employers and individuals would know as internships. It does not embrace the Traineeships offered under the Government-funded programme launched in England in August 2013 or Apprenticeships. Apprenticeships in England are defined as real paid jobs with training for at least 12 months both on and off the job which meets employer-led occupational standards; and delivers new learning.

Definitions of internship, traineeship and apprenticeship clearly vary across Europe. I believe that attempts to apply a common approach across all Member States actually risk creating greater confusion amongst employers and individuals about what is being offered.

You say it is important to define future UK policies “…in line with EU definitions, so far as possible”. I’m afraid I do not see any evidence that this is either important or desirable. Our responsibility, as the democratically elected UK Government, is to develop UK policies in the best possible way for the UK and for our young people. In doing that, we need to learn from best practice all round the world, within and beyond Europe. I am all in favour of that and I can see that EU co-operation on best practice exchange may have a role to play alongside global best practice so ably exchanged through OECD. I have no difficulty with the proposition that through our various formal and informal interactions with the EU (of which there are many in this policy area) we can move some way towards your objective of “…a common understanding…”, at least of each other’s systems and policies, if not of definitions.

We do not, however, need EU Council Recommendations to achieve that outcome. For this reason, as well as for the reasons of policy substance, I am clear that it was right to oppose.

7 July 2014
Letter from the Chairman to Nick Boles, Minister of State for Skills and Equalities
Department of Business, Innovation and Skills, to the Chairman

Thank you for your letter of 7 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We were very disappointed with your response, and we still adhere to the views expressed in our report. We would like to hear from either you or the Minister of State for Employment on this dossier, and on the other issues raised in our report, before the dissolution of Parliament.

We will be in touch with your officials to organise the session.

18 September 2014

EU COMPETITIVENESS COUNCIL, 26 MAY 2014 (UNNUMBERED)

Letter from Lord Livingston of Parkhead, Minister of State for Trade and Investment,
Department for Business, Innovation and Skills, to the Chairman

I am writing to inform you of the discussion that took place at the Competitiveness Council in Brussels on 26 May. The UK was represented by Shan Morgan, the Deputy Permanent Representative to the EU. Internal Market and Industry was discussed during the morning session with research, innovation and space being discussed in the afternoon session.

The Council opened with a presentation by the Commission on the current state of play of the State Aid Modernisation Programme. In the discussion that followed the UK expressed its support for strong state aid rules and added that further work should be undertaken by the Commission to streamline and accelerate the approval system.

Modernisation of Trade Defence Instruments was then discussed as an any other business item. The discussion focussed on the Commission’s decision to adopt the non-legislative guidelines before agreement of the legislative proposal. Several Member States, including the UK, intervened stating that the initiative should have been presented as a package. However the Commission rejected this noting that it has exclusive competence on matters relating to trade and that no undertaking had been made, committing the Commission to issuing the guidelines and legislation as a package.

Following this, the Commission presented a progress report on the Package Travel Directive, which the Council noted.

The Council then considered three intellectual property issues. First, the Commission provided a progress report on the Trade Mark Package (there was no substantive discussion). Second, the Council agreed a general approach on the Trade Secrets Directive. During discussions, the UK, with support of other the Member States, intervened to praise the Presidency’s draft and confirm this was the only draft that could result in an agreement. Finally, the Presidency presented an information point on the European Patent and Unitary Patent Court, during which it noted the positive outcome of a referendum in Denmark on the establishment of the Unitary Patent Court. The UK, along with several other Member States, intervened to note the importance of the court and to emphasise that implementation should not be rushed so as to ensure that systems are right.

Denmark and the Netherlands introduced an any other business item on the Frontrunners Initiative. The initiative is designed to further improve the single market through the sharing of best practice, peer review and ambitious approaches to the implementation of single market rules.

The UK is a participant in the Frontrunners Initiative and intervened to express its support for it. The initiative was welcomed by both the incoming Presidency and the Commission.

The Council agreed a general approach on the Regulation on the deployment of the eCall in-vehicle system. This is an automatic system which alerts the emergency services when a vehicle has been involved in an accident. The UK has long opposed this and intervened, opposing the general approach, maintaining a voluntary approach would be best given the costs of the regulation outweigh the benefits.
The Commission updated Member States on the current state of play of Key Enabling Technologies and Raw Materials, during which it announced the adoption of a new list of critical raw materials.

In the afternoon the research, innovation and space agenda opened with a discussion on the draft Council conclusions on improving relations between the EU and the European Space Agency (ESA). During the discussion the importance of improving the relationship between these institutions was stressed, with a number of Member States noting that the best way to achieve this was through revision of the existing framework agreement or the creation of a new EU pillar in the ESA.

The Council agreed with the conclusion on European Research Infrastructures. The UK intervened to explain why a declaration with eight other Member States had been tabled. All of the signatories explained that they felt strongly that the Commission should spend no more than half of the monies set aside for research infrastructures this year (90M€) on the top three priority projects. The Presidency outlined its paper which argued that there should be a public – public partnership (article 185 of the Treaty) for Euro-Mediterranean cooperation. Eight member States gave their full support. The UK, along with four other Member States were all supportive of the general ambition of the initiative, but asked for additional information about the likely added value and an impact assessment before taking a final stance. The Commission welcomed the progress made.

Finally, the Italian delegation gave a presentation on their Presidency, noting that they will prioritise mainstreaming competitiveness, industrial competitiveness, SMEs and the review of the Europe 2020 Strategy.

9 June 2014

EU COMPETITIVENESS COUNCIL 25-26TH SEPTEMBER (UNNUMBERED)

Letter from Baroness Neville-Rolfe, Minister for Intellectual Property, Parliamentary Under-Secretary-of-State, Department for Business, Innovation and Skills, to the Chairman

The European Competitiveness Council will take place on Thursday 25th September and Friday 26th September. I will represent the UK on day one (industry and internal market) and the Minister of State for Universities and Science the Rt Hon Greg Clark MP will represent the UK on day two (research, innovation and space).

The internal market and industry substantive agenda items are a presentation by the Council on Mainstreaming Industrial Competitiveness and a policy debate on the mid-term review of the Europe 2020 strategy.

There will be four any other business items: a report from the Commission: ‘A New Deal for European Defence - a roadmap for communication towards a more competitive and efficient defence sector'; a report from the Commission on the functioning of Consumer Protection Cooperation Regulation; a presentation from relevant Committee Chairs on the implementation of the Patent Package; and an item on President Juncker’s proposed €300 billion public – private investment to promote boost growth.

The substantive research, innovation and space items are two policy debates, one on the implications of the Europe 2020 mid-term review with particular emphasis on innovation and one on the second progress report on the European Research Area (ERA).

There is only one any other business item, a presentation from the Commission on ‘Big Data.’

Our objectives for the internal market and industry day are:

— The adoption of council conclusions on mainstreaming industrial competitiveness;
— Ensuring that those conclusions do not endorse a proposed Commission target to increase industry’s share of EU GDP to 20%;
— To support the Presidency in their calls for an ambitious review of the Europe 2020 strategy while resisting any calls for this to happen at the expense of fiscal discipline.
Our objectives for the research day are:
—— To express our support for the overall aims of the Europe 2020 strategy but to highlight that the rate of structural reform needs to be increased;
—— To welcome the recent publication of the second ERA progress report.

A copy of this letter will be placed in both Libraries and a post-Council statement will be made once Parliament has returned.

22 September 2014

EU INFORMAL COMPETITIVENESS COUNCIL-21-22 JULY 2014 (UNNUMBERED)

Letter from Lord Livingston of Parkhead, Minister of State for Trade and Investment,
Department for Business, Innovation and Skills, to the Chairman

I am writing to inform you of the discussion that took place at the Informal Competitiveness Council in Milan on 21 – 22 July.

The UK was represented by Peter Stephens, Deputy Director responsible for Europe, Department for Business, Innovation and Skills and David Wilson, Deputy Director responsible for International Knowledge and Innovation, Department for Business, Innovation and Skills.

On day one (internal market and industry) the main focus was on industrial policy and mainstreaming competitiveness. The opening session started with the Presidency setting out that the Europe 2020 strategy should be updated to include the 20% target for re-industrialisation, along with new industrial governance. The Presidency highlighted the need for a reinvigorated high level group with an elected chair to support the work of Competitiveness Council and the introduction of a medium term work programme.

The Commission noted that 4 million jobs had been lost in industry during the economic crisis and European industry needed to be globally competitive. The Commission laid out four main priorities: access to markets – both internal and external; access to resources (including credit); innovation/smart industry; and creating a business-friendly regulatory framework. There was disagreement amongst the Member States as to whether the 20% industrialisation target should be agreed at EU level. Some Member States stated the target was crucial as a political objective, whilst others added the target would only help promote harmful policies.

The breakout session focussed on mainstreaming competitiveness. The Commission suggested that one of the four Competitive Councils should focus on SMEs, with the Chairman of the High Level Group (HLG) attending SME Envoy meetings and vice versa. Member States variously called for the HLG to become more like the Economic Policy Committee which supports ECOFIN.

The importance of climate policy and trade (in particular TTIP) to industrial competitiveness was noted by some Member States whilst others raised the importance of impact assessments to contribute to competitiveness proofing.

The UK intervened to note the importance of boosting the competitiveness of SMEs, taking action to deepen the single market in digital, liberalising service sectors such as construction and business services and reducing regulation – where there should be a target to reduce burdens on business.

On the role of the HLG, the UK noted that it could play a key role in supporting the work of the Competitiveness Council – particularly in mainstreaming competitiveness – and agreed with the Commission that the link with the SME Envoys should be explored further.

Day two (research, innovation and space) focussed on research infrastructures. The Italian Presidency called on Member States to take a more strategic and longer term perspective on this issue, particularly in relation to planning, evaluation and the best use of resources and the long term sustainability of research infrastructures.

Member States broadly agreed on the need for rigorous prioritisation of projects and on the need to take account of decommissioning costs in considering projects’ viability. There was some disagreement between those delegations who favoured completely open access to research.
infrastructures and those who argued that some degree of reciprocity was needed. Many Member States indicated that they had, or were preparing, national research infrastructure roadmaps.

The UK intervened to reaffirm the Government’s commitment to the present model of Member State collaboration on research infrastructures, while reiterating that it saw no need for further centralisation of decision making in this area. The UK also drew attention to its recent consultation on proposals for long-term capital investment in science, and to the forthcoming Science and Innovation Strategy.

A copy of this letter will be placed in both libraries.

4 August 2014

EUROPE 2020 STRATEGY STOCKTAKING COMMUNICATION (6713/14)

Letter from Nicky Morgan MP, Financial Secretary to the Treasury, HM Treasury, to the Chairman


In your letter you welcome the European Commission’s plans to consult on the Europe 2020 Strategy. We share your view that other Member States could benefit from the UK’s experience of undertaking structural reforms. As you are aware, the government has set out a plan to secure the recovery and build a resilient economy. The plan is working, and the government’s programme of structural reform is creating the right environment for businesses to invest, export and grow. The UK engages actively in the peer review process, and is keen to see a closer focus on practical reforms to support growth and jobs across the EU.

You also ask about the complexity of the Semester. The government shares your view that excessive complexity risks undermining the practical impact the Semester process can have on delivering practical reform. More broadly, the Semester does not always give Member State government’s sufficient ownership of the recommendations addressed to them. This ownership can be generated by a robust evidence base, an open and frank dialogue between the Commission and Member States, and a clear and transparent process.

You ask specifically about Research and Development (R&D) spending, which is key to delivering a strong economy with high valued-added jobs. The government is therefore committed to ensuring that the UK has the R&D capability it needs, as evidence for instance by the identification of the ‘8-great’ technologies and the substantial investment the government has made to turn technology into innovation in those areas. However, the government also recognises that there are other drivers of innovation, including investment in infrastructure and intangible investments, for example training, marketing and design, and a supportive, pro-innovation regulatory framework. The National Graphene Institute is one example of such investment. It therefore follows that R&D spending in isolation is not a reliable proxy for innovation activity, since it is one input among many and hence does not measure outcomes.

You point out that the proportion of UK 18–24 year olds not in employment, education or training (NEET) is above the EU average. The government is addressing this through the Youth Contract. Provisions under the Youth Contract includes wage incentives worth up to £2,275 each; an extra 250,000 work experience places; extra adviser support through Jobcentre Plus for all 18-24 year olds; and an extra 20,000 apprenticeship incentive payments worth £1500 each. The number of 18-24 year olds who NEET are has fallen by 107,000 since the 2010 general election.

The Minister for Employment will respond to you separately setting out the government’s view on your report on youth unemployment.

As you point out in your letter, the UK has not set any new targets under the Europe 2020 Strategy. In line with the government’s aim to be the most open and transparent government in the world, the Public Services Transparency Framework provides information on performance and spending to allow the public to form their own view of whether they are getting value for money. The framework replaces traditional bureaucratic accountability with democratic accountability. It contains no new
targets or top-down performance management systems and avoids intervention in frontline public service providers, focusing instead on the changes that are within departments’ control.

In November 2010, the government for the first time published business plans for each of the main government departments. The business plans set out how each department aims to implement the reforms set out in the Programme for Government,\(^2\) including specific actions and deadlines and the key indicators and other data they will publish to show the cost and impact of public services. Members of the public are able to track implementation progress online via the Prime Minister’s website.

In terms of measuring the UK’s progress against Europe 2020 targets, the 2014 National Reform Programme\(^3\) includes an Annex which reports on qualitative data in the broad policy areas underpinning each headline target. Given the need to take into account a wide range of individual Member State circumstances, it is not clear that numerical targets alone are an effective way to ensure a cross-country comparison of progress with structural reform.

4 June 2014

**Letter from the Chairman to Nicky Morgan MP**

Thank you for your letter of 4 June on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 7 July 2014.

As you know, we have already cleared this document from scrutiny.

We are satisfied with your responses to our questions, and are content to close correspondence on this dossier.

9 July 2014

**EUROPEAN NETWORK OF EMPLOYMENT SERVICES, WORKERS’ ACCESS TO MOBILITY SERVICES AND THE FURTHER INTEGRATION OF LABOUR MARKETS (5567/14)**

**Letter from the Chairman to Esther McVey MP, Minister of State for Employment, Department for Work and Pensions**

Thank you for your letter of 8 April 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 14 July 2014.

We have decided to retain this proposal under scrutiny.

We are grateful to you for the detailed answers you provided to our questions.

You explained how the GB EURES team works with jobcentres to raise awareness of the scheme. We would be grateful to receive figures on how many people in the UK are using the service, and the number of fraudulent adverts on EURES originating from the UK.

What is the Government’s assessment of the contribution of EURES to reducing unemployment in the UK and the wider EU? Have you consulted employers in the UK on whether they find EURES useful in recruiting staff, and if yes, what are their views? Finally, how confident are you that ensuring a common agreed legal base for future vacancy sharing between public employment services will lead to an increase in the share of vacancies posted by other Member States?

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

17 July 2014

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Letter from Esther McVey MP to the Chairman

Thank you for your letter of 17 July 2014 seeking further information on some aspects of my letter to you of 8 April 2014.

In response to your question about how many people use the EURES service, unfortunately I am unable to share any figures with you as we do not publish any official statistics on EURES.

You also asked for an assessment of the number of fraudulent adverts on EURES originating from the UK. Since we upload all Universal Jobsmatch (UJ) vacancies to EURES, the pools of UK vacancies on UJ and EURES are identical. Consequently we do not have separate counter-fraud measures for EURES and our information on the number of fraudulent vacancies is the same as for UJ. As outlined in my letter of 8 April 2014, we have taken robust action to remove fraudulent vacancies, and all the vacancies on UJ are subject to regular monitoring. Moreover, ensuring the quality of vacancies uploaded to EURES is at the heart of the current discussions on the new regulations.

In terms of the impact that EURES has had at a UK and EU level on unemployment, we have not carried out any formal analysis of this. This is because the current system does not systematically collect data on job placements or matches. However, the new draft regulations will make more provision for collecting and analysing data in order to better understand the impact of EURES activity. We support this aspect of the regulation and are working with the Commission on making this as effective as possible.

As far as consulting with employers on the effectiveness of EURES, we regularly seek feedback from employers on individual recruitments, but we do not survey employers more generally given the relatively niche nature of EURES. The feedback about the effectiveness of EURES - as a tool for targeted recruitments where skills gaps in the UK have been identified - is generally very positive.

Finally, we are confident that the current renegotiation of the EURES regulation will lead to an increase of vacancies being shared by other Member States (MS), and that our proportionate share will decrease. We are currently in positive discussions with other MS on the policy around vacancy sharing, with many supporting our position of limiting the vacancies we share to those where the employer has actively chosen to share the vacancy across the EU.

23 August 2014

Letter from the Chairman to Esther McVey MP

Thank you for your letter of 23 August 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014. We have decided to retain this proposal under scrutiny.

We are grateful to you for the answers you provided to our questions, and we support the move in the proposed Regulation to make more provision for collecting and analysing data in order to better understand the impact of EURES activity.

Your original explanatory memorandum dated 6 February 2014 stated: “Article 14(1), paragraph (a) will require all Member States to make available to the EURES portal all the job vacancies they publish on their PES”. The Government’s practice up until now seems to meet this criterion in the proposed Regulation.

We would therefore be grateful for a more detailed explanation of how the Government’s plans to restrict the number of UK vacancies on EURES can be accommodated in the text of the proposed Regulation.

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

17 October 2014

Letter from Esther McVey MP to the Chairman

Thank you for your letter of 17 October 2014 seeking further information following my letter to you of 23 August 2014.
In response to your request for a more detailed explanation of how the Government’s plans to restrict the number of UK vacancies on EURES can be accommodated in the text of the proposed Regulation, I am pleased to report that we have made good progress.

We have negotiated text in the draft regulation that enables us to introduce an element of employer choice in the vacancy sharing process. We anticipate this will subsequently result in fewer UK vacancies appearing on EURES because only employers who have actively chosen to advertise EU-wide will have their vacancy uploaded to EURES. Under the current system, all vacancies on our national jobs portal – Universal Jobmatch – are automatically uploaded to EURES.

We have worked closely with the Commission, the Italian Presidency and other Member States to successfully influence the wording of Article 14 (on vacancy sharing) in line our desire to make EURES a more targeted and effective labour market tool. The revised approach we have agreed at this point in the legislative process gives employers a choice about whether they want to advertise on EURES or not. It also requires them to take into account whether the employer can find candidates with the suitable skills and aptitudes from the local area. We believe this will encourage employers to recruit local jobseekers, but also give them the option to cast their net wider if they so wish. We have secured support from Austria, France, Spain, Luxembourg and the Netherlands, amongst others, to introduce this concept into the draft regulation and the current text has withstood subsequent rounds of negotiation in Council.

Although we are optimistic, I should stress the co-decision process has yet to begin, so we will be working with the European Parliament to make our case for why it is important to make this change to the Commission’s original legislative proposal.

In parallel, we have been progressing with domestic changes to EURES to reflect this policy even before the new regulation comes into force. This is due to go live by the end of November 2014.

We believe that we have a reasonable legal argument to implement this change under the current regulation. Moreover, in light of the positive direction of the negotiations of the new regulation and informal discussions with the Commission, we believe that they would be sympathetic to our introduction of employer choice, as long as this is based on objective criteria as outlined above. Indeed, under the current arrangements, many Member States do not share all their vacancies, and one of the reasons that the Commission put forward a proposal is to clarify this aspect of the current regulation.

In conclusion, we are optimistic about the direction of travel of the current negotiation and that the new regulations will be in line with UK policy objectives.

4 November 2014

Letter from the Chairman to Esther McVey MP

Thank you for your letter of 4 November 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

We are grateful to you for the answer you provided to our question about how the Government’s plans to restrict the number of UK vacancies on EURES could be accommodated in the text of the proposed Regulation. We do not, however, agree with the Government’s stance on this matter. We believe that the free movement of labour is an integral part of the Single Market, and tools such as EURES help to facilitate it. As such, we believe it should be utilised as much as possible.

We understand that agreement on this proposal may be sought at a Council meeting in December. We are grateful for your answers to our questions so far, and while we disagree with the Government’s position, we are content to clear the proposal from scrutiny.

We would be grateful to be notified once the proposal has been agreed to.

19 November 2014
Letter from the Chairman to Mark Harper MP, Minister of State for Disabled People, Department for Work and Pensions, to the Chairman

Thank you for your Explanatory Memorandum (EM) of 3 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 14 July 2014.

We agree with the objectives set out by the EU in this area and as you know, we have already cleared this document from scrutiny.

We note that you are currently making inquiries as to whether a Resolution will arise from this Communication, and that you would resist any legislative or enforcement action arising from it. Therefore we ask to be kept updated on the outcome of this Communication and look forward to a response in due course.

16 July 2014

Letter from Mark Harper MP to the Chairman

You wrote to me on 16 July asking to be kept informed of developments on the European Union Strategic Framework on Health and Safety at Work 2014-2020, particularly concerning the possibility of a Council resolution on the framework. This followed your earlier notification that you had cleared the document from scrutiny.

The Italian Presidency has recently told member states that it will not be proposing a Council resolution on the framework. Latvia has, however, indicated that it will look to agree some Council conclusions at the March 2015 meeting of the Employment and Social Policy Council during its presidency next year. I will write again when we have further information.

The Italian Presidency is instead concentrating on the health and safety of ageing workers, an aspect of the framework. The Presidency held a discussion on this topic at the 8 October meeting of the Council's Social Questions Working Party during which the United Kingdom outlined the measures it had taken to address the challenge of the ageing workforce. The Presidency also plans to hold a ministerial debate on this topic at the December meeting of the Employment and Social Policy Council.

18 November 2014

EU TRANSPORT COUNCIL, 5 JUNE 2014

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

I will attend the final Transport Council under the Greek Presidency, taking place in Luxembourg, on Thursday 5 June.

The Presidency is aiming for political agreement on the following elements of the Fourth Railway Package: proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Railways and repealing Regulation (EC) No 881/2004; proposal for a Directive of the European Parliament and of the Council on the interoperability of the rail system within the European Union (Recast); proposal for a Directive of the European Parliament and of the Council on railway safety (Recast). All UK interests and objectives are maintained by the proposed texts, which are substantively the same as the general approach texts reached at previous Councils.

It is also seeking political agreement on the proposal for a Directive of the European Parliament and of the Council amending Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating with the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic. This important measure will enable
more aerodynamic and safer vehicle designs. The UK broadly supports the compromise text, in particular the greater alignment of the Directive with type approval legislation. The Transport Council will discuss the outstanding issue of cross-border movement where the UK will continue to seek legal clarity on the continuation of existing practices.

There will be two progress reports, the first on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of the cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air. There has been significant progress over the last six months and the UK supports much of the text to be presented in the progress report. However, I am still concerned about the risk to passenger and industry interests posed by some parts of the text, particularly on the issue of connecting flights.

The second progress report concerns the proposal for a Regulation of the European Parliament and of the Council on market access to port services and financial transparency of ports. The UK welcomes this progress report but feels that more work is required to avoid introducing bureaucracy for unsubsidised, competitive ports.

The Presidency will aim to adopt the draft Council conclusions on the 'Mid-Term Review of the EU's Maritime Transport Policy until 2018 and Outlook to 2020' following discussions at the 7 May Informal Transport Council, as noted in my letter of 20 May.

Under Any Other Business, the Presidency will provide information on several dossiers. Following the 8 May Informal Transport Council, held in Athens, the Presidency will put forward its own paper on the outcome of the lunchtime ministerial debate on road haulage, and will provide information on the progress of implementation of Shift2Rail. The Commission will provide information on proposals to improve methods of tracking and locating aircraft, made in response to the disappearance of the Malaysian Airlines flight MH370. It will also report on the implementation of the Airport Charges Directive and on the recent ECJ judgement on cross-border enforcement of motoring offences. The Spanish delegation will present a paper on preserving EU influence at the International Civil Aviation Organization and the Italian delegation will outline the programme for its Presidency of the EU, which begins on 1 July.

4 June 2014

EU TRANSPORT COUNCIL, 8 OCTOBER 2014 (UNNUMBERED)

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

I will attend the first Transport Council under the Italian Presidency, taking place in Luxembourg, on Wednesday 8 October.

The Presidency is aiming for general approach on the Proposal for a Directive of the European Parliament and of the Council facilitating cross-border exchange of information on road safety related traffic offences. The proposed Directive will replace Directive 2011/82/EU, which was annulled by the European Court of Justice in May 2013. Negotiations have progressed rapidly, with the Commission and majority of Member States not wanting to make substantial changes to the text. The UK is keen to preserve the changes we negotiated to the transposition time for the Directive (which would allow us two years to transpose it into national law), and on data sharing, which is to share data on the basis of the Data Protection Directive.

It is also seeking a general approach on the Proposal for a Regulation of the European Parliament and of the Council establishing a framework on market access to port services and financial transparency of ports. Negotiations on this dossier have been difficult and discussions are continuing, with some outstanding issues to be discussed at the Council itself, but the text has been improved in terms of the prospective burdens on the UK’s highly competitive ports sector.

There will be one progress report, on the Proposal for a Regulation of the European Parliament and of the Council on the implementation of the Single European Sky (SES II+). The UK is supportive of the SES initiative, due to its potential to bring efficiencies to the air navigation system across the EU,
which will ultimately reduce costs, fuel burn and flight time. Overall we welcome the opportunity which SES II+ presents to reconsider some of the tools to deliver the Single European Sky. However, we feel that some elements need more development and therefore we welcome the approach the Presidency has taken to date by focusing on the more contentious issues such as the competitive provision of support services. We consider that good progress is being made and we welcome the progress report.

There will also be two policy debates, the first on the following elements of the Fourth Railway Package: Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU of the European Parliament and of the Council of 21 November 2012 establishing a single European railway area, as regards the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure; and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning the opening of the market for domestic passenger transport services by rail. The UK welcomes the opportunity for the Transport Council to hold an opening discussion about these important elements of the Fourth Railway Package.

The second policy debate concerns the Communication from the Commission entitled "A new era for aviation: Opening the aviation market to the civil use of remotely piloted aircraft systems in a safe and sustainable manner (RPAS)". The UK welcomes the Communication, but considers that the Commission’s plan for integration of RPAS into European Airspace from 2016 onwards is highly ambitious. We acknowledge the importance of the growth of the Remotely Piloted Aircraft sector and we recognise that the current lack of regulatory framework and harmonised rules is the biggest barrier to growth. We will seek to ensure that any proposals for further regulation or new Implementing Rules are proportionate and do not cause additional barriers to growth in this sector.

Under Any Other Business, the Presidency will provide an update on the outcome of the Informal Transport Council, held in Milan on 16 and 17 September. My letter of 24 September gave a report of these discussions. The Presidency will also provide information on the subject of European representation in the 2016 elections to the International Civil Aviation Organization (ICAO) Council.

Also under Any Other Business the Commission will provide information on the Galileo satellite navigation system following the launch problem in August that left two satellites in the wrong orbit. The Commission is expected to set out the likely cause of the incident and the options for next steps. The Netherlands delegation will present a paper on Aviation Safety as a follow up to the crash of Malaysian Airlines Flight MH 17 and the Polish delegation will provide information on the situation of road hauliers in the context of Russian import ban on certain EU products.

7 October 2014

EXTERNAL COORDINATION OF SOCIAL SECURITY SYSTEMS - THIRD COUNTRY AGREEMENTS (16231/11)

Letter from the Chairman to Esther McVey MP, Minister of State for Employment, Department for Work and Pensions

Thank you for your letter of 8 March 2014. This was considered by the Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 28 July 2014.

We are grateful for the update on the outcome of litigation, and for confirmation of your position on the applicability of a Title V legal base. We have decided to clear document 16231/11 from scrutiny. However, we would be grateful to receive an update from you in due course on the implications of the result of the Swiss referendum on 9 February 2014 on the implementation of the Decision.

We would also be grateful to receive an update on the outcome of legal proceedings concerning the implementation of social security provisions contained in the EU-Turkey Association Agreement. In the meantime we decided to retain the document 8556/12 under scrutiny.

29 July 2014
Letter from the Chairman to Andrea Leadsom MP, Economic Secretary to the Treasury, HM Treasury

Thank you for your most helpful explanatory memorandum (EM) of 30 April 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 9 June 2014.

We share your concern about the compliance of this proposal with the principle of subsidiarity. We were also struck by the strength of the concerns expressed in the two negative opinions of the Impact Assessment Board. We note that a positive opinion was never given but nonetheless the proposal was proceeded with.

Unlike the Tweede Kamer in the Netherlands, we were not able to issue a Reasoned Opinion before the deadline of 29 May 2014. The proposal was sent to the Committee for consideration on 6 May 2014. This meant there were seven working days for a Reasoned Opinion to be agreed by this Sub-Committee, the EU Select Committee and then to be debated and agreed in the House before the Parliament was prorogued on 14 May. This reinforces the point that the EU Select Committee made in its report The Role of National Parliaments in the European Union (9th Report, Session 2013-14, HL Paper 151) that the time limit within which national parliaments can issue a Reasoned Opinion should be extended, to 12 or 16 weeks. If such a time limit applied, we could have issued a Reasoned Opinion.

In addition to subsidiarity, we believe a question of competence arises. As you say in your Explanatory Memorandum, the Commission’s proposal extends the scope of the Directive into consumer protection policy, without a legal base being proposed to do so. We would be grateful to know how you intend to approach this in negotiations.

We will be writing to the Commission setting out our subsidiarity concerns in full. In particular, we will explain that if the proposal is adopted as it is currently drafted, we will consider recommending the House to consider a legal challenge under Article 8 of Protocol No 2 to the EU Treaties. We will copy that letter and its response to you, which may provide you with useful support in negotiations on this proposal.

We look forward to being kept informed of significant developments in the negotiations.

In the meantime, we retain the proposal under scrutiny.

We look forward to a response within 10 working days.

10 June 2014

Letter from Andrea Leadsom MP to the Chairman

Thank you for your letter of 10 June 2014. I am grateful to you and to the European Union Committee for considering the Commission’s proposal on IORPs and for consideration of the Explanatory Memorandum I submitted to Parliament on 30 April. Occupational pensions play a crucial role in the Government’s drive to ensure that individuals save adequately for their retirement so it is important that the Commission’s proposal receives proper scrutiny. The Committee’s assessment will form an important part of that scrutiny.

I share the Committee’s concerns that the Commission’s proposal is not consistent with the important principle of subsidiarity and seeks an increase in the competence of EU institutions which is not warranted in this policy area. I am grateful for the Committee’s proposal to write to the Commission setting out these concerns. I would be very grateful if you could keep me informed of the Committee’s engagement with the Commission.

I note with interest the Committee’s view that there might not be a valid legal basis for the proposed measures on information requirements for occupational scheme members, which appear to extend EU competence into the field of consumer protection policy. The Treasury and DWP are currently looking into this issue and discussing with other Member States. I will write to you again once we have a clearer view on this issue.
We are at an early stage in the legislative process on this dossier. Council negotiations have not yet commenced, but there have been 2 Council working group meetings with policy leads from Member States attending. These meetings have confirmed that concerns with the Commission’s proposal are widely shared across Member States. Issues of subsidiarity and proportionality, the importance of maintaining Member State flexibility in the design of pension systems, and the need to avoid introducing additional administrative costs for pension schemes have been prominent in the concerns expressed by other Member States.

In discussions, the UK is focussing on high level issues around this proposal which include:

— The need to be clear about what the policy challenges are for occupational pension schemes and whether these really do need addressing through additional EU legislation and competence;
— Whether the evidence supports the Commission’s objectives and the policy measures the Commission is proposing to achieve them;
— The importance of preserving Member State flexibility in the regulation of IORPs so that national governments and regulators can respond to the very different pension policy challenges and circumstances in Member States.

At this stage I believe it is premature to move to a detailed negotiation of the measures in the Commission’s proposal. Member States must first determine whether further legislation is needed in this area at all. The UK has been working to focus discussion on these high level issues and to subject the Commission’s impact assessment to proper scrutiny.

In any case, we will need time to complete a detailed appraisal of the Commission’s proposal and how it will impact the UK’s current arrangements. The Treasury will be working closely with the Department for Work and Pensions and the UK pensions sector to fully understand the implications of the Commission proposal. This proposal must be given proper consideration and we see no reason for the legislative process to be rushed.

27 June 2014

Letter from the Chairman to Andrea Leadsom MP

Thank you for your letter of 27 June on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We are grateful for confirmation of the Government’s position on the proposal, and for your explanation of the views of other Member States.

Further to the process for dialogue with national parliaments established by former European Commission President, Jose Barosso, we wrote to the European Commission on 9 July expressing the House of Lords EU Select Committee’s concerns about the IORP proposal. We have not yet received a response, but will be sure to share it with you once we receive it.

We have decided to retain the proposal under scrutiny and look forward to receiving further updates on the progress of negotiations at EU level, and on the development of a UK impact assessment.

11 September 2014

Letter from Andrea Leadsom MP to the Chairman

I am writing to update you and Committee colleagues on progress with Council consideration of the Institutions for Occupational Retirement Provision (IORP) II proposal.

As you know, the Government shared the concerns that the Committee raised on this proposal, namely that the proposal was not consistent with the principle of subsidiarity and that the case for further IORP legislation had not been made by the Commission. The Government also had very real concerns that the practical impact of the proposal would be to raise administrative costs for IORPs without providing any meaningful increase in protection for IORP members.
In my last letter to you, I outlined the Government’s intended approach to Council discussion of this proposal. Our intention was to focus on high level issues around the need for this legislation – whether the Commission had identified real problems that needed addressing, whether further legislation at EU level was really necessary and whether the Commission’s impact assessment was reliable. We received support from a number of Member States for raising these concerns and Council working group discussions focussed on these high-level issues for quite some time. It seemed that this proposal would proceed slowly, with no certainty that a Council agreement could be reached.

However, in recent weeks it has started to become apparent that, while several Member States share the UK’s principled concerns about this proposal, there is little support in Council for blocking the proposal outright. Instead, concerned Member States began to concentrate on securing substantial amendments to the proposal to address their practical concerns about how the legislation would work in practice. While the UK has not withdrawn its principled reservations on this proposal, the Government decided it should work closely with other Member States to explore whether it would be possible to substantially revise the proposal so that it addressed all of our concerns.

If the proposal could not be withdrawn, it would be important to influence development of the Presidency compromise so that IORP II did not damage UK occupational pension schemes.

Only in the last two weeks has it become clear that the Presidency is determined to reach a Council agreement on the proposal before the end of its term. It is now also clear that other Member States will almost certainly support a General Approach based on the latest Presidency compromise, which has radically amended the original Commission proposal. While the Government remains of the view that a real need for this legislation has not been established, the Presidency compromise would lead to an EU IORP regime which still leaves very significant flexibility with Member States and which would not damage UK IORPs or the UK supervision of IORPs. By moving the proposal away from its original maximum-harmonisation approach to a principles-based minimum-harmonisation framework, the proposal also addresses much of our concern around subsidiarity. The key amendments made by the Presidency compromise address our concerns as follows:

— All powers for the Commission to make Delegated Acts, or for EIOPA to develop technical standards or guidelines, have been removed. There is now no possibility of the Commission or EIOPA increasing EU competence further through implementing measures;

— The Pension Benefit Statement (PBS) is now principles-based and leaves flexibility with Member States on the detailed content and format of statements. This is no longer a maximum harmonised approach to the information that IORP members should receive but a more modest requirement that members should receive basic information about their pension on an annual basis. The mandated elements for the PBS are now high-level and are compatible with information already required in the UK. While there is a requirement for members to receive information about pension projections, this does not have to be included in the PBS so UK IORPs could continue with their current approach. The format of statements is also left to Member States. This should help minimise any increase in administrative costs that flow from the PBS;

— The requirement for all Defined Contribution IORP schemes to appoint depositaries now exempts Member States using equivalent protection, including the UK’s trustee obligations. We were concerned that this would significantly increase costs for no meaningful increase in protection of IORP assets, and, in particular, could undermine the low-cost model necessary for auto-enrolment of lower paid workers in the UK. Member States that already have equivalent protections in place, such as the UK’s fiduciary duties owed by IORP trustees, are now exempted from this requirement;

— The Risk Evaluation which IORPs must perform is also principles-based with a very high level of flexibility left to national authorities on what is required of individual IORPs. The measure now sets out a core list of high-level risks that an IORP would normally be expected to evaluate, but it is left to Member States to make the detailed rules on what is required and for
national authorities to decide what is applicable in the circumstances. This will mean that current UK arrangements should meet the requirements of the Directive, but the provision does represent helpful progress in that all IORPs will now be required to submit one document on risk evaluation to the supervisor. This means that administrative costs flowing from the provision should be minimal;

- All references to quantitative requirements in risk evaluation, which could have paved the way towards a standardised EU-wide approach to the supervision of solvency requirements, have been removed. Any legislation which paves the way for EU-wide solvency requirements for defined benefit IORPs has always been one of the UK’s biggest concerns. There is now nothing in this proposal which could extend EU competence over quantitative requirements for IORPs;

- Requirements around IORP governance and functions are now much less prescriptive. Stripping out the detail on how IORPs should be governed and how key functions must be discharged means that current UK arrangements should now meet these more high-level requirements. In particular, the revised governance requirements will allow the current UK system of trustees to continue, with the ability to include social partners in governance arrangements through the appointment of lay trustees left intact;

- Prudential supervision requirements are now high-level with significant flexibility for Member States. Many of the detailed requirements have been removed leaving core elements that supervisors would normally be expected to review. This should enable the UK Pension Regulator to continue with its risk-based approach, focusing supervision resources where they are needed most; and

- There are now much more substantial safeguards in place around the operation of cross-border IORPs and the transfer of liabilities across borders. The safeguards introduced effectively introduce a national supervisor veto to prevent cross border activity where a supervisor is concerned this is not in the interest of IORP members.

I am sure you will agree that these changes are a radical departure from the Commission’s original proposal. It is on this basis that the Presidency looks likely to achieve a large majority of Member States in support of General Approach at next week’s meeting of COREPER.

While the Presidency compromise appears to meet our concerns about the impact IORP II would have on the UK IORP system, the UK will not support General Approach at COREPER next week for three key reasons. Firstly, the principled concern about whether there is a real need for this legislation has not been addressed. Secondly, we do not see why Council consideration of this proposal should be rushed. Very significant amendments have been made to the proposal in recent weeks and we think it would be sensible to allow time for Member States to perform thorough checks on the revised text. And finally, the new Commission has made its intention known to review pending proposals that do not represent best practice on better regulation. We do not know if the IORP II proposal will be a candidate for this review, but I believe that Council should give the new Commission an opportunity to consider this before concluding Council discussions.

For these reasons I am not seeking a waiver of the scrutiny reserve the Committee currently has in place on this proposal. At the COREPER discussion next week, we will make it clear that the Lords and Commons European scrutiny committees continue to hold this file under scrutiny reserve. I will let you know the outcome of IORP II discussions under the Italian Presidency and how the UK will approach this file following next week’s COREPER discussion.

2 December 2014
Thank you for your Explanatory Memorandum (EM) and letter of 30 April 2014 on the proposal on interchange fees and the draft Payment Services Directive. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 30 June 2014.

The amendments made by the European Central Bank seem practical, we agree with your decision largely to support them. We agree with your rejection of the ECB’s view of the ‘honour all cards rule’. Allowing retailers to choose to reject cards with the same or lower interchange fees seems to contradict the underlying aims of the proposal - to ensure that consumers can make secure card transactions anywhere in the EU.

We note that consumer rights bodies have expressed concerns that the gains made by retailers through capping of interchange fees will not be passed on to consumers. They cite the experience of the US, Australia and Spain, where consumers have not benefitted from such reforms. They raise concerns that the Commission’s proposals will result in less competition in the market, thereby punishing consumers. We would like to know whether you have consulted widely with consumer groups on this aspect of the proposal, and what their views are.

We would be grateful for further information on your decision to negotiate for the independent ATM exemption to be reinstated. The proposal to remove the exemption from the text was put forward by the Commission because of the current proliferation of independently operated ATMs charging higher fees. Thus, we believe that the removal of the exemption would have clear benefits for consumers.

In its Opinion, the ECB states that the provisions in the PSD which would give unconditional refund rights to consumers actually weaken consumer protection in practice. We seek clarification as to why the ECB believe this to be the case, and would also like to be appraised of your view on this point.

With respect to the Payment Services Directive, we would like to understand the rationale behind your decision to negotiate to prevent card schemes from being forced to legally separate their business into two parts. We are aware that non-bank payment providers have suggested that the bundling together of the two sides of the business prevents new players from entering the market. This argument is supported by the large share of the market held jointly by Mastercard and Visa. We would be grateful for sight of an assessment to support your view that a separation would not provide any benefits in terms of competition.

We note that negotiations on both proposals are at a relatively early stage, and that there are many contentious issues which remain to be discussed. Therefore, we decided to retain the draft Directive and Regulation under scrutiny. Since the Opinion from the ECB is not legally binding we are content to clear it from scrutiny.

We would be grateful for regular updates on these dossiers as negotiations progress. We note that Mastercard’s appeal on the use of MIFs is not expected to be decided until July this year, and we would appreciate an update from you on the outcome.

More broadly, we would be interested in your view of what impact an evolving card market has on data protection for consumers, given the growing importance of ‘big data’ as an asset. We would be grateful to know whether you think this issue should be addressed in the Directive.

I look forward to a response in due course.

3 July 2014
planning to hold any further meetings and the intention is to reach a General Approach within the next month and potentially go to Ecofin on 7 November.

The Payments Service Directive is moving more slowly. I will write to update you on that dossier following further technical discussions over the next few weeks.

**INTERCHANGE FEE CAPS LEVELS**

On debit cards, all Member States agreed that low interchange fee caps are a positive development. As such, a 0.2% cap across all cross-border transactions has been agreed. This is in line with the UK’s negotiating position and is aligned with the position of the EU Parliament.

However, the most contentious issue in the Regulation has been the setting of cap levels for direct debit at a domestic level. This is due to the way in which some Member States currently apply interchange fee caps, for example, the Netherlands apply a flat cap, rather than a percentage cap.

We welcome the fact that the Presidency has provided some flexibility for the application of the interchange fee cap to domestic debit card transactions; Member States may provide for a lower percentage or flat cap, as long as it equates to 0.2% or below on each transaction.

On credit cards, there was swift agreement at Council that this should be set at 0.3% for both domestic and cross-border transactions. This is in line with the UK’s negotiating position and similarly aligns with the position of the European Parliament.

**TIMING OF IMPLEMENTATION**

The UK has succeeded in ensuring that the interchange fee caps for both domestic and cross-border transaction will come into force simultaneously to ensure that small merchants and small national acquirers are not disadvantaged. This will be within 6 months of finalising the Regulation.

**SEPARATION OF SCHEME AND PROCESSING**

The Council has decided against forcing card schemes (Visa and MasterCard) to legally separate their business into two parts; the scheme function and the processing function. This is a positive outcome given that the benefit of this separation is unclear and the costs of separation are likely to be passed onto small merchants. This is in line with the UK’s negotiating position.

**REVIEW OF THE REGULATION**

The European Commission will review the Regulation 4 years after adoption. I am supportive of this outcome, as the intended impact of the Regulation will not be fully discernable after 2 years. However, we have succeeded in having more aspects of the Regulation reviewed, including the appropriateness of the levels of interchange fees.

**HONOUR ALL CARDS RULE**

This provides customers with certainty that their particular card will be accepted by merchants worldwide, as long as the brand is accepted (e.g. Visa). The Council agreed that this will apply to one particular card type i.e. if a merchant accepts one type of Visa debit card, they are obliged to accept all types of Visa debit card which gives consumers certainty. However, in this example, merchants will not be obliged to accept Visa credit cards also. This allows merchants to limit the choice of payment cards they offer to low(er) cost payment cards only, which would also benefit consumers through reduced merchants’ costs.

It may be helpful to note that as part of our engagement with stakeholders, we have engaged particularly positively with the British Retail Consortium (BRC) throughout the negotiation process.

As stated above, the Italian Presidency is looking to reach General Approach on this dossier by the end of November. The Government would look to support the Regulation as currently drafted, however if things move substantially I will write to you as a matter of urgency. Appreciating the
limited opportunity over the next few weeks for the Committee to consider this proposal again, hopefully the information provided finds you able to clear or waive scrutiny on these documents.

24 October 2014

**Letter from the Chairman to Andrea Leadsom MP**

Thank you for your letter of 27 October 2014 on the proposal on interchange fees and the draft Payment Services Directive. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 27 October 2014.

The Committee has considered your request to clear or waive scrutiny on the aforementioned documents. However, as your letter does not address many of the concerns raised by the Committee in its letter, dated 3 July 2014, the Committee have decided to retain this document under scrutiny.

We welcome the news that the Council has agreed to apply the ‘Honour all Cards Rule’ to one particular card type. This helps to ensure that consumers can make secure card transactions anywhere in the EU, which was of course one of the underlying aims of this proposal.

It has come to the Committee’s attention that in other respects, this proposal may go against consumers’ interests. Consumer rights’ bodies have expressed concern that the gains made by retailers through capping interchange fees will not be passed on to consumers. We raised this issue in our previous letter and asked you for more information about whether you have consulted widely with consumer groups on this proposal. This was not addressed in your recent letter, and we feel this important issue needs to be investigated.

Moreover, in our letter dated 3 July, we requested to see an assessment to support your view that a separation in card scheme businesses would not provide any benefits in terms of competition. Although it now seems likely that the Council will be in agreement with you on this issue, the Committee would like to see the evidence upon which the Government’s view is based. It has come to our attention that non-bank payment providers have remarked that the bundling together of the two sides of the business prevents new players from entering the market. This argument is supported by the large share of the market held jointly by Mastercard and Visa.

I look forward to a response in the course of the next 10 days.

29 October 2014

**Letter from Andrea Leadsom MP to the Chairman**

Following my recent update to the Committee on the progress of this file in the Council, I am writing again to address some of the more specific concerns that you have raised. As noted previously, the Italian Presidency is not planning to hold any further meetings and the intention is to reach a General Approach in the next fortnight.

**CONSUMER GROUP REACTION TO THE INTERCHANGE FEE REGULATION**

The Government has consulted with consumer groups on the Interchange Fee Regulation and taken on board the points raised. The Government also looked at the examples of the US, Australia and Spain when building up its negotiation position, speaking to the relevant Government and central bank officials as well as local financial institutions, and looking into economic studies to build up a picture of the impact of capping interchange fees. The Government found that, contrary to the findings of one study published in the UK, some studies point to tangible benefits for consumers. For example, one US study points to $5.87 billion in savings for consumers in lower prices.

In Australia, an evaluation recently completed by the Reserve Bank of Australia on its own regulation of interchange fees has found no negative impacts on competition. In fact, capping interchange fees managed to reverse the previous situation where card schemes were competing on how high they could set the interchange fee, to the detriment of merchants and consumers.

It is worth noting that the European Consumer Organisation, which UK consumer groups feed into, supports the proposal to cap interchange fees.
SEPARATION OF SCHEME AND PROCESSING

As I noted in my previous letter, the Council has decided against forcing card schemes to legally separate their business into two parts; the scheme function and the processing function. It is unclear what benefit this could deliver in terms of increasing competition in the cards market, as the card scheme part of the business would still be intact and function as before.

There could be potential benefits, however, in the payments processing market, as merchants and their banks might choose to shop around for a payments processor, rather than automatically selecting the processing function of their card scheme. To this end, the Council has required that scheme and processing entities should be independent in terms of accounting and decision making processes. This compromise provides the benefit of ensuring that the processing market should be opened up to competition, but avoids the costly legal separation which could translate into higher fees for merchants.

It also complements the voluntary Single Euro Payments Area (SEPA) Cards Framework, whereby payment systems are obliged to unbundle the provision of scheme services from processing, allowing merchants and their banks to freely contract with their processor and network of choice.

Appreciating the limited opportunity for the Committee to consider this proposal again, hopefully the information provided finds you able to clear or waive scrutiny on these documents.

29 October 2014

Letter from the Chairman to Andrea Leadsom MP

Thank you for your letter of 29 October 2014 on the proposal on interchange fees and the draft Payment Services Directive. This has been considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment on the 6 November 2014.

The Committee has considered your request to clear or waive scrutiny on the aforementioned documents. Your recent letter addressed the Committee's main concerns about the Interchange Fee Regulation, regarding the possible negative impact of this legislation on consumers and competition between card scheme businesses. Consequently, the Committee has agreed to grant a scrutiny waiver for the purposes of this meeting.

However, as the proposal is likely to be amended as negotiations progress, the Committee do not wish to clear the document at this stage and will keep it under scrutiny.

The Committee look forward to an update on negotiations following the Ecofin Council meeting on the 7 November, 2014.

6 November 2014

Letter from Andrea Leadsom MP to the Chairman

I am writing to update the Committee on the progress of the Payment Services Directive II (PSDII) in Council. Since I last wrote referencing PSDII in late October, progress has been rapid. Expectations had been that negotiations would continue into the Latvian Presidency. However, at the latest official level working group on 24 November, the Italian Presidency put forward a draft text that meets the UK’s objectives and also has the support of the rest of Council. The Presidency is not planning to hold any further meetings and have expressed an intention to reach a General Approach within the next few weeks.

CURRENT PSDII COMPROMISE TEXT

The current compromise text has been amended significantly since my last letter, and now addresses the Government’s key priorities. We have:

— Ensured that Third Party Payment Service Providers (TPPs) are within scope of PSDII so that consumers will be protected when using these services;

— Ensured that security requirements are balanced against the need to encourage new technological services into the payments market;
— Ensured that charitable donations are not negatively impacted; and
— Reinstated the exemption for independent ATMs.

THE INDEPENDENT ATM EXEMPTION

In your last letter, you asked for more information on the Government’s position to reinstate the exemption for independent ATMs. The Government believes that including independent ATMs in the scope of PSDII would not provide any benefit for consumers. For example, with regard to your point about independent ATMs charging higher fees, PSDII does not contain any provisions that would address the fee structures of charging ATMs.

This is because no other Member State operates a free banking system, and the vast majority of both independent and bank-owned ATMs across Europe charge a fee. There is no appetite among other Member States to reverse this through legislation, as most consider this standard practice.

In fact, the Government believes that removing the exemption for independent ATMs would have a negative impact on the UK. The Government has engaged with financial inclusion groups and industry on this issue, and we consider that removal of the exemption could have a negative impact on vulnerable consumers in particular. Those ATMs which do charge fees, do so in areas with a low number of transactions (such as very rural areas) in order to make these machines commercially viable. The additional costs which would be incurred with having to comply with the Directive could make it impossible for these providers to continue to operate.

The majority of Member States have agreed with the Government’s assessment, and we are confident that the exemption for independent ATMs will be reinstated in the final compromise text.

UNCONDITIONAL REFUND RIGHTS

Your last letter also asked for more information on the Government’s position on unconditional refund rights for direct debits, given that the view of the European Central Bank is that providing these rights could in fact weaken consumer protection. The reason the European Central Bank gives for this is that:

“[…] payment service providers would probably have to collect information about their customers’ purchases. This is an issue which might raise concerns over privacy, as well as increase the burden on payment service providers.”

The Government does not agree with this assessment. The UK currently has in place a system of unlimited time limits for direct debit refunds, and has seen no problems relating to customer information arise. I am therefore supportive of maintaining this status quo, which is working well for consumers.

Finally, in your letter, you reference the separation of card schemes’ businesses into two parts. To clarify, this is an issue covered in the Interchange Fee Regulation, on which we provided separate advice on in our letter of 29 October, and which has since reached General Approach.

As a consequence of the above, our expectation is that the General Approach will fully address our key concerns, and would therefore be one we would look to support.

I hope that the information provided finds the Committee able to clear or waive scrutiny on this document.

I am thankful for the Committee’s flexibility in granting a scrutiny waiver on the Interchange Fee Regulation. I am pleased to report that on 10 November 2014, Council unanimously agreed a General Approach on the dossier, a position that was entirely in line with my previous update letter and one that represents a positive outcome for the UK.

26 November 2014
Letter from the Chairman to Andrea Leadsom MP

Thank you for your letter of 26 November 2014 on the above proposal. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 1 December 2014.

We believe it is important that the internal market is able to benefit from technological advances which enable convenient electronic payments. We support the aims of this Directive to achieve this through increased transparency, competition and security for payment services.

We are grateful for your clarification on the Government’s support for reinstating an exemption for independent ATMs under this Directive. We accept that this exemption is supported by a majority of Member States. In relation to unconditional refund rights, we recognise that such a system is in place in the UK and that this has not led to concerns regarding the handling of customer information.

Your letter addressed our outstanding concerns and we have decided to grant a scrutiny waiver to allow you to vote in favour of a General Approach on this Directive. As this proposed Directive is likely to undergo change during subsequent negotiations, we have decided to retain this document under scrutiny. We would be grateful to receive a letter on any significant decisions regarding this proposal in the near future.

2 December 2014

FINANCIAL TRANSPARENCY OF PORTS (10154/13, 13764/14)

Letter from Stephen Hammond MP, Parliamentary Under Secretary of State, Department for Transport, to the Chairman

Further to my letter of 12 November 2013, I am writing to provide you with an update on the progress of the above proposal.

As you may recall, little progress was made on the dossier during the Lithuanian Presidency, and the Greek Presidency initially took the view that it would start working group discussions following the outcome of the vote of the European Parliament’s TRAN Committee in mid-February.

However, the TRAN Committee was not able to complete its consideration in February, and the matter was deferred. At the TRAN Committee’s meeting on 17 March, the Rapporteur for the dossier explained to the Committee that the vote would not take place before the European elections because several key questions remained open. The view of the Rapporteur was that to present something to the European Parliament which did not provide an agreed compromise, risked creating an empty regulation. Factors in this include linked issues of State Aids as well as the scope of the proposal, especially in the chapters relating to market access.

The Greek Presidency has held a number of Council Working Party meetings on the dossier. Progress has been slow, and work on the dossier was temporarily halted after it was clear that the EP TRAN Committee would not vote on the dossier ahead of the European elections. The Presidency gave a progress report to the 5 June Transport Council, which noted that while a majority of Member States support the aims and objectives of the proposal there are concerns regarding:

— The legal instrument, which some Member States consider should be a Directive rather than a Regulation. The Italian Presidency is expected to focus on the content of the proposal before any decision is taken on the legal form, and we agree that this is the right approach;
— The scope (the provision of services currently included, particularly in relation to pilotage, dredging and cargo-handling);
— Whether diversity of ports – including unsubsidised ports – has been properly taken into account;
— The proposed mechanisms for limitation of the number of providers of port services;
— Consultation and supervision, where some Member States consider that the proposal would create additional and unnecessary burdens. In the UK we encourage ports to consult but think they should be free, so far as possible, to determine their own best methods of doing so;

— The impact of the proposal on the autonomy and commercial freedom of ports. This is particularly the case for the provisions on port infrastructure charges and as regards the consequences for already concluded contracts. A broad majority of Member States, including the UK, is against the proposed right of the Commission to harmonise port infrastructure charges through delegated acts;

— State Aid, where some Member States have pointed out that it is important that the Commission clarifies the scope and extent of how the State aid regime is to be applied to the ports sector. State aid in itself falls under a separate legislative framework and whilst the Commission has indicated that they will review their State aid guidance, little movement has yet been detected.

Working group discussions have resumed following the June Transport Council, and we understand that the Italian Presidency hopes that it will be possible to reach a general approach on the dossier at the next Transport Council on 8 October. This is ambitious, but the Italians are making the dossier one of their top priorities and are likely to devote substantial working group time to it.

The European Parliament TRAN Committee is likely to continue its consideration of the proposal when it resumes work on dossiers in September, but it is unlikely that the Committee’s consideration will be complete ahead of the October Transport Council.

The Government will continue to work closely with other Member States, MEPs and the Commission to seek sensible outcomes to the proposal which can deliver benefits to the Single Market without imposing unjustified burdens on UK business.

I will, of course, continue to keep you informed of developments in negotiations.

1 July 2014

Letter from the Chairman to Claire Perry MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letter of 1 July which the House of Lords EU Sub-Committee B on the Internal Market, Infrastructure and Employment considered at its meeting on 14 July 2014.

We are grateful for your update on the progress of negotiations in the European Parliament and in the Council.

As there are clearly still fundamental differences to be resolved between Member States, the Commission and the European Parliament, we have decided to retain this proposal under scrutiny. We look forward to receiving further updates in due course.

16 July 2014

Letter from John Hayes MP, Minister of State of State, Department for Transport, to the Chairman

Further to the letter of 1 July 2014 sent by my predecessor, Stephen Hammond, I would like to inform you of further developments on this important dossier.

As you will recall, the Italian Presidency has made the dossier a priority and is aiming to secure a general approach at the 8 October Transport Council. This objective is peculiarly ambitious and, in my judgement is premature. Nonetheless, the Presidency has been working hard on this dossier, and is actively seeking to develop a compromise text through discussions with Member States. It is therefore possible that they will be able to achieve a general approach in October, and we should be prepared for such an outcome.
We have, from the outset, sought to work with the Commission, the Presidency and other Member States in seeking sensible and workable solutions that can, as far as possible, ensure our highly efficient, competitive and liberalised port sector is not adversely affected by measures intended to address failings elsewhere, and which also moves closer towards achieving and enhancing the kind of competition that the Commission seeks to reach for Continental ports.

Four working group discussions were held in July, and five are planned in September. We have been actively involved in these negotiations and in additional bilateral discussions and, as a result, there are good grounds to hope for some very significant improvements to the text. The tendency of negotiations so far has been, on the whole, towards diluting unwelcome administrative burdens. We are achieving progress in negotiations in a number of important areas such as:

— Discretion to exclude certain service categories (e.g. dredging) from the chapter covering market access;
— Recognition that the 'open port duty' in the UK does not constitute a public service obligation for the purposes of the Regulation;
— Reducing the scope of the Commission's power to use Delegated Acts; and
— Making the consultation requirements less prescriptive, thus allowing ports greater discretion in deciding their own consultation processes.

However, nothing is yet assured and many problems remain.

I am also conscious of how much concern this dossier has created for the UK ports sector, and would like to assure you that we are working very much with their concerns and interests in mind. We have gone through the text of the proposal, article by article, with industry experts and lawyers, seeking to remove or neuter the most harmful elements, either by seeking exemptions that could apply to UK ports as a whole, or exemptions from particular requirements; and we continue to press these points. In some areas we have won support for our arguments and in others (including exemptions) there is still more work to do. We will continue, with industry, to scrutinise any proposed amendments to the original text to see how our remaining issues can be resolved.

We will, of course, continue to engage vigorously with other Member States, MEPs and the Commission to seek an outcomes which could deliver benefits to the Single Market without imposing unjustified burdens on our thriving ports industry.

I realise that the proposal remains under scrutiny by EU Sub-Committee B, and the Committee cannot be expected to clear the dossier from scrutiny while so many outstanding issues remain. I also note that after its 8 September meeting the Committee will not formally meet again until after the Transport Council. However, if the Presidency continues to seek a general approach in October I will of course write to you again ahead of the Council to provide an update on further negotiations and our voting intentions. I would be grateful if the Committee, or the Chairman on behalf of the Committee, could consider such a later letter if necessary during recess. My officials will, of course, continue to keep the Committee Clerk closely informed of developments in negotiations and we will seek her advice on the handling of any further letter ahead of the Council.

I also assure you that, as I have made clear previously, I will continue to provide both Houses with any salient documents that can reasonably be made available.

4 September 2014

Letter from John Hayes MP to the Chairman

I am writing to provide your Committee, in confidence, with a copy of the latest proposed Presidency compromise text on the above proposal, and a corrigendum to that document.

The attached [not printed] documents are being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of significant EU documents carrying a limité marking. They cannot be published, nor can they be reported on in any way which would bring detail contained in the documents into the public domain.

However, I have taken steps to explore whether it is possible for the limité marking to be lifted in order to provide the House with a better opportunity to scrutinise the documents.
As I said in my letter of 4 September, I realise that the proposal remains under scrutiny by EU Sub-Committee B, and the Committee cannot be expected to clear the dossier from scrutiny while so many outstanding issues remain. I am aware that the Committee is holding the proposal under scrutiny while there are so many uncertainties, and I will of course write to you again ahead of the Council.

I will also continue to provide both Scrutiny Committees with any salient documents on this proposal that can reasonably be made available under the agreed arrangements.

10 September 2014

Letter from the Chairman to John Hayes MP

Thank you for your letter of 4 September which the House of Lords EU Sub-Committee B on the Internal Market, Infrastructure and Employment considered at its meeting on 8 September 2014.

We are grateful for your update on the progress of negotiations in the Council and the working groups.

As there are clearly still fundamental differences to be resolved between Member States, the Commission and the European Parliament, we have decided to retain this proposal under scrutiny.

We ask that any request for a scrutiny waiver or scrutiny clearance arrives at least five working days ahead of the Transport Council meeting on 8 October to give us sufficient time to consider it. Any such request should include a detailed explanation of how the concerns of UK stakeholders have been taken into account, which Member States share the UK’s position, and what the implications of an agreement would be for the ports industry in the UK.

11 September 2014

Letter from John Hayes MP to the Chairman

I am writing to provide your Committee, in confidence, with a copy of the latest proposed Presidency compromise texts on the above proposal.

As I indicated in my letter of 10 September, the attached [not printed] documents are being provided to the Committee under the Government’s authority and arrangements agreed between the Government and the Committee for the sharing of significant EU documents carrying a limité marking. They cannot be published, nor can they be reported on in any way which would bring detail contained in the documents into the public domain.

I would however like to assure you that the Government will not override scrutiny on this proposal, and we have made this position extremely clear to the Presidency.

A further Transport Council Working Groups is scheduled for 26th September, and COREPER will be meeting on 1st October.

I will continue to keep you informed of developments and provide both Scrutiny Committees with any salient documents on this proposal that can reasonably be made available under the agreed arrangements.

26 September 2014

Letter from John Hayes MP to the Chairman

Thank you for your letter of 11 September. As you may know, the House of Commons European Scrutiny Committee has asked the Government to provide a new Explanatory Memorandum on this proposal. I have therefore done so, and I hope that your Committee will find the EM helpful in providing the further information you requested on the concerns of UK stakeholders and the position of other Member States.

I am writing now to bring the Committee up to date with the outcome of the 8 October Transport Council. Despite our representations to the Presidency, they did present a text to the Council with a view to securing a General Approach.
I am pleased to be able to report, however, that the UK was able to secure our central negotiating aim, the competitive market exemption to protect ports from unnecessary burdens imposed by the Regulation. This was achieved despite the Commission’s original preference to limit the competition test to port services only, rather than to the ports sector as a whole.

The UK ports sector was also concerned about pilotage being in scope of the Regulation. At Council the UK was able to support Presidency compromise texts that ensure Member States have the discretion to exclude pilotage from the market access Chapter (subject to notification to the Commission) and that a number of smaller ports are excluded from some of the requirements in the Regulation that would have been disproportionate for them.

The “general approach” text agreed at the European Council reflects this progress. In essence, the UK will be exempt from key elements of the regulation and other parts will be implemented at the discretion of the UK Parliament. So, the text now:

— Reduces the scope: dredging, as well as cargo-handling and passenger services, are effectively excluded from the market access Chapter thus reducing regulatory burdens on our port sector;

— Increases national discretion: e.g. to exclude pilotage from the access to services Chapter, and to determine complaints-handling arrangements including where devolved;

— Provides for a competitive market exemption covering the most potentially burdensome parts of the Regulation. Given the highly competitive nature of the UK ports sector we expect to make an early, and successful application for such an exemption;

— Simplifies the compliance requirements for the smallest ‘comprehensive’ TEN-T ports;

— Protects commercial discounting: free negotiations on confidential commercial discounts (for both ports and shipping lines, an essential feature of the effectiveness of this market) can continue;

— Imposes less bureaucracy: much simplified rules for procuring port services and for consultation with port users and others; while still securing …

— Better financial transparency where continental European ports receive public funding.

In the run-up to the Council, officials constantly monitored the position of other Member States. I and my officials were fully aware that our ports industry would have liked to see the Regulation halted altogether in Council. However, our assessment continued to indicate that there was no possibility of a blocking minority developing. In the event, no Member State indicated an intention to vote against the proposal in the discussion at Council. Spain changed its previous position to support the General Approach and Lithuania did not speak – although the voting record post-Council shows that it formally recorded a vote against. The UK lodged its abstention given the Parliamentary scrutiny reserve.

Overall, I believe the outcome we have achieved demonstrates that the UK can and will protect its competitive industries from unnecessary interference. Work will now move to the European Parliament, but I believe it is unlikely to start its deliberations in earnest until early 2015. I have been in touch regularly with the ports sector unions, the Opposition and the European Scrutiny Committee of the House.

Finally, I am pleased to say that following a request by the UK Government the limité marking has been lifted on document 12705/14 which I sent to you on 10 September, and also on documents 12026/14 and 13238/14. I attach [not printed] all three documents in their public form. The latest document 13764/14 has also been published without a limité marking, and has been deposited in Parliament to form the basis of the new EM submitted on 7 October.
In summary, this is a considerable success. All the elements of the Regulation most feared by the industry are either covered by exemption or subject to UK Parliamentary discretion. I will, of course, keep you informed of further discussions with the European Parliament.

13 October 2014

**Letter from the Chairman to John Hayes MP**

Thank you for Explanatory Memorandum of 7 October and for your letter of 11 October 2014 which the House of Lords EU Sub-Committee B on the Internal Market, Infrastructure and Employment considered at its meeting on 20 October 2014.

We are grateful for the comprehensive explanation provided in both documents of how the contentious issues such as market access and increased transparency of financing were resolved. The Government appear to have been successful in securing many of the UK’s priorities.

We note that some members of the ports industry and trade unions continue to object to the proposal, and that the European Parliament has not yet finished its deliberations on it. We are conscious that fundamental differences of opinion may emerge during trilogue negotiations, and we have decided to retain this proposal under scrutiny. We look forward to receiving further updates in due course.

24 October 2014

**FOURTH REPORT ON MONITORING DEVELOPMENT OF THE RAIL MARKET**

(11091/14)

**Letter from the Chairman to Baroness Kramer, Minister of State, Department for Transport**

Thank you for your Explanatory Memorandum (EM) of 1 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 14 July 2014.

The Committee has already cleared this document from scrutiny.

We were interested in some of the figures that your EM calls attention to, particularly the statistic at paragraph four of the EM, which sets out that in the UK there has been a significant growth in rail usage (over 70 per cent since 1995).

We also note from your EM that the rail freight sector is still relatively small in the UK although it is showing signs of growth. We would be grateful if you could share statistics which show the size of the rail freight sector in the UK as compared to that of other Member States.

We also ask for your estimate of the expected growth to the rail freight sector in the UK and the EU.

I look forward to a response within 10 working days.

16 July 2014

**Letter from the Baroness Kramer to the Chairman**

Thank you for your letter of 16 July following up several issues contained in paragraph 4 of my Explanatory Memorandum (EM) on rail market monitoring (RMMS).

To respond to your points in turn:

You noted the significant growth in domestic rail usage highlighted in the EM. The statistics given below describe this growth in more detail. Please note that these are drawn from the Department’s Transport Statistics Great Britain (TSGB) publication. Though not directly comparable with the EU figures the underlying source data are the same; TSGB rail data are for financial years whilst the EU totals the EM refers to are for calendar years.

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Rail usage has grown quite substantially in the period since 1995 in Great Britain. Over the period broadly covered in the EU report, rail passenger kilometres rose from 30 billion in 1995/96 (4.2 per cent of all kilometres travelled) to 57.3 billion in 2011/12 (7.1 per cent of all kilometres travelled.) The change from 4.2 per cent to 7.1 per cent equates to the 70 per cent referred to in the EU report. You may wish to note that in 2013/14 the provisional total published by the Office for Rail Regulation (ORR) shows that rail passenger kilometres rose again in the year to reach 60.1 billion

Table 1. Transport Usage by Mode: billion kilometres, GB, 1995-2012

<table>
<thead>
<tr>
<th>Year</th>
<th>Buses &amp; coaches</th>
<th>Cars, vans &amp; taxis</th>
<th>Motor cycles</th>
<th>Pedal cycles</th>
<th>All Road</th>
<th>National Rail</th>
<th>Other Rail</th>
<th>Rail</th>
<th>Air (UK)</th>
<th>All modes</th>
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<td>1995</td>
<td>43</td>
<td>618</td>
<td>4</td>
<td>4</td>
<td>669</td>
<td>30.0</td>
<td>7.2</td>
<td>37</td>
<td>6</td>
<td>712</td>
</tr>
<tr>
<td>1996</td>
<td>43</td>
<td>622</td>
<td>4</td>
<td>4</td>
<td>674</td>
<td>32.1</td>
<td>7.1</td>
<td>39</td>
<td>6</td>
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<td>4</td>
<td>4</td>
<td>685</td>
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<td>7.5</td>
<td>42</td>
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<td>4</td>
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<td>689</td>
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<td>7.8</td>
<td>44</td>
<td>7</td>
<td>740</td>
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<td>642</td>
<td>5</td>
<td>4</td>
<td>697</td>
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<td>8.3</td>
<td>47</td>
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<td>2011</td>
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<td>694</td>
<td>57.3</td>
<td>10.9</td>
<td>68</td>
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<tr>
<td>2012</td>
<td>42</td>
<td>643</td>
<td>5</td>
<td>5</td>
<td>694</td>
<td>58.4</td>
<td>11.5</td>
<td>70</td>
<td>8</td>
<td>773</td>
</tr>
</tbody>
</table>

1 Financial years. National Rail (franchised operators only to 2008, franchised and non-franchised operators from 2009), urban metros and modern trams
2 UK airlines, domestic passengers uplifted on scheduled and non-scheduled flights.
3 Excluding travel by water.
Source: Transport Statistics Great Britain

The dramatic growth experienced in rail usage compared to other transport modes can be seen in the following chart. In absolute terms whilst the growth in road kilometres travelled has risen by only 4 per cent between 1995 and 2012 (and within that bus travel has decreased by 3 per cent), rail usage has increased by 88 per cent over the same period.
Regarding freight, the size of the rail freight sector compared to that in other EU Member States is contained in Table 2 appended. It is difficult to make general comparisons with, for example, countries like Germany and Poland that are bigger than the UK and so have far more scope for long freight hauls by rail (the report itself notes that the rail transport of coal in Poland is greater than the total rail freight markets of 20 Member States). Rail freight in the UK has to work in an island market incorporating a number of entry and exit points for freight which means that generally rail only starts to compete effectively with road on distances over 70 miles.

You also asked for our estimate of the expected growth to the rail freight sector in the UK and the EU. We do not hold equivalent figures for the EU, however figures for the predicted growth of the rail freight sector in the UK are as follows:
Table 3: Total Freight moved (billion tonne kilometres), GB

<table>
<thead>
<tr>
<th></th>
<th>growth</th>
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<tbody>
<tr>
<td>2011 (actual)</td>
<td>22.9</td>
</tr>
<tr>
<td>2023 (forecast)</td>
<td>32.5</td>
</tr>
<tr>
<td>2033 (forecast)</td>
<td>43.7</td>
</tr>
<tr>
<td>2043 (forecast)</td>
<td>57.7</td>
</tr>
</tbody>
</table>

Overall, forecast growth is reckoned to be about 3% per year.

Source: Network Rail Freight Market Study (October 2013) which can be downloaded from [http://www.networkrail.co.uk/improvements/planning-policies-and-plans/long-term-planning-process/market-studies/freight/](http://www.networkrail.co.uk/improvements/planning-policies-and-plans/long-term-planning-process/market-studies/freight/)

These are unconstrained forecasts – that is, they are on the basis that there is nothing to prevent the growth. Whether or not they are achievable would depend on the extent to which this can be accommodated on the network alongside projected passenger growth, as well as on external factors such as the availability of rail interchanges.

The European Commission’s Roadmap for the Future of Transport 2050 calls for 30 per cent of road freight over 300 km to be shifted to other modes such as rail or waterborne transport by 2030, and more than 50 per cent by 2050. One estimate for a Rail Freight Corridor suggests an increase in freight on that corridor of between 9 per cent and 24 per cent by 2030 based on low and high growth estimates. It is difficult to find overall forecasts for the EU, which of course the RMMS report does not provide.

31 July 2014

Letter from the Chairman to Baroness Kramer

Thank you for your letter of 31 July 2014 on the above report. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We are grateful for your response to our questions about the growth in rail usage in the UK, and what share of this is made up of rail freight.

A response to this letter is not required.

11 September 2014

FREE MOVEMENT OF WORKERS DIRECTIVE (9124/13)

Letter from the Chairman to James Brokenshire MP, Minister of State for Immigration, Home Office

Thank you for your letter of 22 April 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 16 June 2014.

We are grateful for your answer to our query on how free movement rights are being upheld in the UK.
Given the concern you have recently voiced over employers failing to pay their workers the minimum wage, we ask whether your views on the necessity of this Directive have changed.

We would also be grateful for further details on how you intend to implement the Directive.

The Committee cleared this document from scrutiny in March, and has expressed its views on the proposal and related issues in previous correspondence. Since negotiations have now come to a close, the Committee is content to close correspondence on this dossier.

No response to this letter is necessary.

18 June 2014

Letter from James Brokenshire MP to the Chairman

Thank you for your letter of 18 June on the above Directive, adopted in April 2014. I understand that you would welcome my comments on two specific points.

First, you asked whether the concerns I have expressed about employers failing to pay their employees the National Minimum Wage mean that I have changed my view that this Directive is unnecessary.

I have not changed my view. As I mentioned in my letter of 22 April, complaints and queries about rights for workers, including issues related to the National Minimum Wage, can be made via the Pay and Work Rights Helpline. This service refers any complaints or complex queries to the relevant enforcement bodies if appropriate. The Government is also taking measures to be tougher on rogue employers, by increasing the maximum civil penalty for non-payment of the National Minimum Wage to £20,000 and making it easier to enforce unpaid civil penalties in the civil courts. The Government is committed to taking tough enforcement action against employers and employment agencies that employ illegal immigrants, or exploit workers. The Directive will not affect or contribute to the measures we are taking in this area.

Secondly you asked for further details on how we intend to implement the Directive. As you are aware, the deadline for implementation is 21 May 2016. We have begun a detailed, Article by Article examination of the Directive and we are considering the options for implementation. We believe that we are already compliant with many of the provisions of this Directive, such as those in Article 3 on enforceability of rights. The rights referred to in this Article are embodied in existing EU law, in particular Regulation 492/2011, which has direct legal effect. A number of the functions set out in Article 4 are already being discharged by the Equality and Human Rights Commission or by other agencies. We are considering whether there are any gaps in our compliance with the Directive and, if so, whether certain provisions could be implemented for example through additional administrative guidance or instructions. As part of this process we will consider the possible need for Regulations under section 2(2) of the European Communities Act.

19 September 2014

Letter from the Chairman to James Brokenshire MP

Thank you for your letter of 19 September 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014.

We are grateful for your response regarding how the Government plans to implement the Directive and to learn that your views have not changed regarding the necessity of this Directive as a result of employers failing to pay their workers the minimum wage.

The Committee cleared this document from scrutiny in March, and has expressed its views on the proposal and related issues in previous correspondence. Since negotiations have now come to a close, the Committee is content to close correspondence on this dossier.

17 October 2014
FUND FOR EUROPEAN AID TO THE MOST DEPRIVED (15865/12)

Letter from the Chairman to Esther McVey MP, Minister of State for Employment, Department for Work and Pensions

Thank you for your letter of 26 April 2014 on the above proposal. This was considered by EU Subcommittee B on the Internal Market, Infrastructure and Employment at its meeting of 23 June 2014.

Thank-you for the update on the progress of negotiations on this proposal in Brussels.

We were disappointed to learn that despite your vote against the proposal based on our shared concerns, it was agreed by a qualified majority in the Council.

However since the proposal has now been agreed, we have decided to clear the document from scrutiny.

No response to this letter is necessary.

26 June 2014

HIGH SPEED ELECTRONIC COMMUNICATIONS NETWORKS (7999/13)

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

I must begin by apologising for failing to keep the Committee informed of the progress of the negotiations on this proposal. This was an oversight on the part of the Department which we will work to avoid in future.

The negotiations have completed and the instrument was adopted by the European Council by Qualified Majority Voting on 8 May. The United Kingdom was obliged to abstain as of course our scrutiny reserve remained in place.

On a more positive note I am able to report that the final instrument has been amended in a number of ways that address the concerns of the Committee and mean that it is compatible with our negotiating objectives.

First and foremost, the final legislative instrument has been changed from a Regulation to a Directive. This was a key negotiating objective for the UK, responding to concerns raised by your Committee and the House of Commons European Scrutiny Committee. We worked hard with the European Council and with the European Parliament to achieve that aim.

This change means that the UK has preserved the flexibility to implement the Directive taking account of the specific circumstances of the UK’s highly competitive broadband market, while at the same time giving a boost to our efforts to drive down the cost of deploying high-speed broadband infrastructure.

I am attaching an Annex [not printed] to this letter which sets out the key features of the new Directive. Implementing measures are required to be in place by 1 January 2016 and effective from 1 July 2016.

9 June 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 9 June 2014 on the above proposal. This was considered by EU Subcommittee B on the Internal Market, Infrastructure and Employment at its meeting of 23 June 2014.

We are disappointed that you have not updated the Committee on the progress of the dossier for over a year, especially as we had raised concerns with the proposal and were holding it under scrutiny. The fact that we were not updated prior to the vote taking place on 8 May meant that we had no opportunity to share our views on the draft Directive with you, prior to it being adopted. We note that you have made good progress in negotiations, and it is therefore a shame that you were not able to vote to approve the proposal because of your failure to ask the Committee to lift the scrutiny
reserve. We acknowledge your apology for this occurrence, and trust that you will keep us updated
more regularly in future.

We welcome the headway made in negotiations on this dossier, resulting in the draft proposal being
put forward as a Directive, rather than a Regulation. We welcome the flexibility this will give you to
take into account UK specific circumstances when transposing the Directive into national law. We
trust that in transposing the Directive, you will take into account the concerns we raised with respect
to the detail of the proposal (for example, the importance of maintaining the current model for
wayleaves, and the potential burdens on businesses).

In our 12 August letter, we queried the economic feasibility of administering a single contact and
information point. You informed the Committee that you had not yet had a chance to explore this in
detail and would look to do so in the forthcoming Council Working Groups. You stated that it is
likely that these would incur start-up and ongoing costs, and also noted that the additional
requirement to maintain a dispute resolution body would incur costs in terms of bolstering the
powers of an existing body such as Ofcom, or indeed, setting up a new body. We are disappointed
that you did not give us an update on whether this was discussed prior to the agreement of the
proposal, and we would be grateful for a response to our query.

Since negotiations on this dossier have now come to a close, we are clearing it from scrutiny.
We look forward to a response within 10 working days.

26 June 2014

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 26 June advising that the scrutiny reserve on the broadband cost
reduction dossier had been lifted, and asking for further information about the implementation costs
relating to the costs of the single information point and dispute resolution provisions in the directive.

During the Council Working Group discussions on the proposed measure, a number of other
Member States, in common with the UK, raised concerns about the proposed role of the Single
Information Point (SIP). Concerns centred on the additional costs of setting up this body, and that it
would introduce an additional and unnecessary layer of bureaucracy that would remove rather than
add value. While it did not prove possible to remove references to the SIP altogether, we were
successful in introducing a series of drafting changes to dilute the role of SIP envisioned in the original
draft, largely reducing its role to a portal and ensuring that it had less of an active role.

In relation to the dispute resolution provisions, there is no question of Ofcom becoming the default
dispute resolution body, or a new body being established. This would have involved additional cost
for Ofcom, not least because it would have meant that that they would have become responsible for
dealing with disputes outside their current areas of competence. During negotiation of the directive,
it was agreed that dispute resolution should rest with the body with the most relevant expertise to
the dispute raised. While this means that there will be a number of dispute resolution bodies, it will
not involve the additional costs that would have been incurred had all the dispute resolution been
vested in one organisation, as the dispute resolution function will be an adjunct to their existing
responsibilities. In the past, cross-sectoral issues have been dealt with by the regulators on an ad hoc
basis. You will probably be aware that in March of this year the UK regulators launched a new
network – the UK Regulators Network (UKRN) – which has been tasked with improving co-
ordination across regulated sectors. The UKRN will allow regulators to work closer together on
issues of cross-sectoral significance, and to learn lessons across industries which help to improve
regulation and the promotion of competition in order to secure better outcomes for consumers. We
will be working closely with the UKRN to ensure cost effective implementation of the dispute
resolution provisions of the directive.

7 July 2014

Letter the Chairman to Ed Vaizey MP

Thank you for your letter of 7 July on the above proposal. This was considered by EU Sub-Committee
B on the Internal Market, Infrastructure and Employment at its meeting of
21 July 2014.
We are grateful that your response clearly addresses the questions raised in previous correspondence, although we reiterate our disappointment that we were not given the opportunity to comment on the proposal as it was being negotiated.

We would be grateful for further information on the work of the UK Regulators Network (UKRN) and what it does in practice. What is the view of regulators and other key stakeholders as to whether the UKRN has made a practical difference in enabling better coordination of street works? How are you learning from other Member States’ best practice in the area of coordinating street works?

I look forward to a response within 10 working days.

23 July 2014

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 23 July asking for further information on the work of the UK Regulators Network (UKRN); whether the UKRN has made a practical difference in improving the coordination of street works; and how we are learning from other Member States’ best practice in coordinating street works.

The UKRN has not been in existence for very long, having been launched in March of this year, as the successor organisation to the Joint Regulators Group. The UKRN brings together the Civil Aviation Authority (CAA), the Financial Conduct Authority (FCA), Office of Communications (Ofcom), Office of Gas and Electricity Markets (Ofgem), Office of Water Regulation (Ofwat), Office of Rail Regulation (ORR), and the Northern Ireland Authority for Utility Regulation (UREGNI). Monitor and the Water Industry Commission for Scotland (WICS) are also participating as observers. In my letter to you of 7 July when I noted that the UKRN had been tasked with improving coordination across regulated sectors, I should have made clear that I was referring to economic regulation. The responsibilities of the various regulators do not extend to the coordination of street works. That remains the responsibility of local council highway authorities.

Rather than outline here what the UKRN does, you might find it more helpful to have a look at the UKRN website - http://www.ukrn.org.uk/ - which sets out the UKRN’s objectives and their work programme.

As to your question about how we are learning from other Member States best practice on street works coordination, I would point to the successful track record of the Coalition Government in encouraging the adoption of permit schemes by many local authorities which ensures that street works are carried out quickly and efficiently, and to the innovative lane rental schemes now in place in London and Kent where utility companies have to pay a fee for every day that they work at the busiest times on the busiest streets.

The prime aim of the street works coordination administered by local authorities is however slightly different to the aim of the coordination provisions of the directive. The former is about minimising the cost of traffic disruption caused by street works activity, while the latter is more about minimising utility deployment costs by coordinating their civil engineering works.

5 August 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter of 5 August on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014.

We are grateful for your informative response to our query about the role of the UK Regulators Network (UKRN) and what it does in practice.

Your letter and previous correspondence address our concerns and questions about the Directive. We are therefore content to close correspondence on this dossier.

17 October 2014
Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing to update you on the current position of the EU Directive on Improving the Gender Balance among Non-Executive Directors of Companies Listed on Stock Exchanges following on from my update in November.

EU OVERVIEW

On 14 November 2012, the Commission adopted a proposal for a Directive. The stated objective is that by 2020 women should constitute a minimum of 40% of the non-executive directors, or 33% of all directors, on the boards of all listed companies registered in an EU member state. Small and medium enterprises (SMEs) are exempted. The Directive is currently blocked in Council with 11 member states opposed to it, including the UK. The incoming Italian presidency see this as a priority and are exploring drafting changes in order to persuade those opposed to the directive to change their position. From the blocking minority, the Czech Republic, Estonia and Germany are seen as potential candidates to change their position, as none of them have decided their positions following internal political elections. However, as things stand, the blocking minority remains stable for the time being.

UK POSITION AND PROGRESS TO DATE

Government is committed to seeing more women on the boards of UK’s top companies but we still believe that mandatory processes at the EU level are not the right mechanism. It remains our view that action taken in each country should be different, according to that country’s starting point, legal system and unique business environment. Therefore we continue to oppose this Directive on grounds of subsidiarity and proportionality.

In 2011 we set the target of achieving 25% women on the boards of our largest 100 companies by 2015. Women’s representation on FTSE 100 boards now stands at just over 22%, up from 12.5% in 2011, and there are now no all male boards. The FTSE 250 have more than doubled the number of women on their boards since 2011 and it now stands at just over 16%, up from 7.8% in 2011. There remain 48 all male boards in the FTSE 250, down from 132 in 2011. This is clear evidence that the UK’s business led, voluntary approach is working and we are starting to see a cultural change take place right at the heart of British business.

We respect the right of others to put quotas in place, but we remain committed to self-regulation and are confident that with sustained and continued action we will meet our target of 25% by 2015.

2 July 2014

INFORMAL TRANSPORT COUNCIL, 7-8 MAY 2014 (UNNUMBERED)

Letter from Lord Livingston of Parkhead, Minister of State for Trade and Investment, Department for Business, Innovation and Skills, to the Chairman

I am writing to inform you of the discussion that took place at the Informal Competitiveness Council in Athens on 12-13 May. I apologise for the delay in writing and I have asked my office to investigate the reasons for this delay.

The UK was represented by Peter Stephens, Deputy Director responsible for Europe, and David Wilson, Deputy Director responsible for international knowledge and innovation, both from the Department for Business, Innovation and Skills.

On day one (internal market and industry) the Council discussed three main issues: European industrial competitiveness and the importance of innovation; the challenges facing energy intensive industries; and mainstreaming competitiveness across EU policy making.
The Council opened with a discussion about innovation and industry and focussed on closing the innovation gap. Discussion covered the contribution of the smart specialisation strategy (an innovation concept designed to promote the efficient and effective use of public investment in research) to industrial competitiveness and the role of Key Enabling Technologies. The Presidency set out the main conclusions reached by the European Council in March 2014: high energy costs were undermining industrial competitiveness, a positive entrepreneurial environment needed to be fostered, investment in innovation was required and a cross-cutting approach to competitiveness should be adopted. The main priority actions being taken forward since the European Council discussion are the development of a roadmap on industrial competitiveness and delivering the competitiveness element of the Europe 2020 Review. The Commission noted its plans to introduce competitiveness proofing into impact assessments (the UK was singled out for best practice on quantitative measures) and to measure cumulative regulatory costs following successful programmes in relation to aluminium and steel. The Commission also made reference to the importance of strengthening the Competitiveness Council.

The second session focussed on the challenges facing energy intensive industries, the current state of play and possible measures to prevent potential carbon leakage. The discussion started with the Commission emphasising that the 2030 target of 40% reduction in greenhouse gases gave a degree of flexibility to Member States. The Commission also noted that the Energy Efficiency Directive was being reviewed with a proposal for new 2020/2030 targets to come into force in June 2014. A new governance strategy has also been adopted, with new national action plans and technical factsheets that the Commission are producing. Energy security, in the context of the crisis in Ukraine was also discussed.

Five priorities were raised: (i) reducing demand through energy security; (ii) growing indigenous supplies (e.g. shale gas); (iii) completing the single market in energy; (iv) developing 'solidarity measures' against shocks; and (v) speaking as one international organisation.

A number of Member States intervened, stressing the importance of competitiveness proofing; the need to consider cumulative cost impacts; the risk of carbon and investment leakage; and the need for innovation on new energy technologies. There was broad consensus on the impact of high energy prices on industry as well as a need to competitiveness-proof climate change policies.

The lunch discussion focused on mainstreaming competitiveness throughout the EU policy-making process and the role that the Competitiveness Council should play. The Presidency noted that there was broad agreement on the need to strengthen governance arrangements and stated that industrial competitiveness should be mainstreamed through impact assessments, fitness checks and ex-post evaluation. The objective was to create greater coherence on policy and to follow up on implementation at the national level. There was broad support for cumulative cost assessments. There was agreement on the need to monitor industrial competitiveness and report to the European Council, and to introduce the Small Medium Enterprise (SME) dimension through the SME Envoy Network. This is an advisory group for the Small Business Act and is comprised of a representative from each of Member State, who aim to enable better consultation with SMEs in Member States.

The Italian delegation also set out their Presidency priorities during the lunch discussion, namely: access to finance, small and medium sized enterprises, and international trade and standardisation.

Day two (research, innovation and space) began with a discussion on Euromed co-operation, and particularly the proposed PRIMA initiative under Article 185 (to support collaboration on research with Euromed countries) Commissioner Geoghegan-Quinn was positive about PRIMA, but also emphasised the need to ensure value for money and a good fit with existing initiatives. The UK noted the importance of PRIMA, particularly to Mediterranean area Member States but highlighted that it was not a priority for the UK.

Finally, the Council discussed European Innovation Partnerships (EIPs). A presentation was made by Esko Aho, chair of the Independent Expert Group reviewing the overall performance of EIPs, setting out the group’s main recommendations. The UK along with a number of other Member States expressed their support for EIPs.

4 June 2014
Letter from Robert Goodwill MP, Parliamentary Under-Secretary of State, Department for Transport, to the Chairman

I am writing to let you know the outcome of the Informal EU Transport Council held under the Italian Presidency which I attended in Milan on 16 and 17 September.

The Council began with a working lunch and a short discussion on Sustainability, Mobility and Social Inclusion in cities. I took the opportunity to highlight the importance of inter-modal connections in cities and the value of open and free data to enable travellers to make better decisions.

The main focus of the Council was a discussion on Planning, Governance and Funding Instruments for the Trans-European Transport (TEN-T) Corridors. Prior to the Informal Council meeting, the Italian Presidency issued a discussion paper on “Building infrastructure to strengthen Europe’s economy”. The paper sought views on a wide range of topics including:

- Targets for implementation and strengthening governance of the Corridors;
- Boosting financing through the use of Innovative Financing Instruments;
- Internalising external costs;
- The TEN-T Core Network as the frontrunner of an efficient and sustainable European mobility system;
- Making the best use of competition policy and enhancing coordination; and
- Creating synergies between the different Trans-European Networks (Communications, Energy, and Transport).

The discussions were held over two working sessions: the first dealt with planning and governance for the Corridors, the second with policy and funding instruments to assist in their development.

In the first session I welcomed the debate outlining in the strongest terms our position on planning and governance and supporting the views of a number of other Member States.

I made it clear that as a peripheral part of the TEN-T Network, the need for coordination for the implementation of projects is less evident for the UK. Transport planning is a Member State competence and decisions on which projects should be developed and invested in on national networks should remain with the Member States concerned. We do not support additional structures or governance that might impede this.

The role of the Corridor Coordinators should be focussed on the cross-border gaps between Member States and significant bottlenecks and the Corridor Work Plans should reflect this. The Work Plans should be flexible documents able to take account of changes in circumstances, we do not support them being made legally binding through an Implementing Act. I also stressed that the Work Plans should not be presented as an ‘alternative’ to Member States’ own transport planning processes so they do not appear to challenge Member State’s competence or lead to confusion.

I did not agree with the paper’s suggestion that the rules for Structural Funds should be reinforced. The Department for Business, Innovation and Skills, which leads on this area, advised that as changes to the rules on Structural Funds were only recently agreed in December 2013, time should be allowed for these to take effect and to have continuity for successful programming. However, this does not preclude continuing to look for opportunities to simplify processes while maintaining effective financial disciplines.

The second session dealt mainly with how to fund TEN-T projects, in particular the possibility to revisit the conditions of the Stability and Growth Pact, on which HM Treasury has the lead, to allow Member States to finance transport projects. The session also covered the use of Innovative Financial Instruments to maximise the value that the Connecting Europe Facility (CEF) can bring to the development of transport infrastructure, user charging and the use of Public Private Partnerships (PPPs).

Following HM Treasury’s advice I supported other Member States in the need to look for measures that improve investment levels and encourage productivity-enhancing structural reform, which should
not be seen as incompatible with fiscal discipline. Recognising that the existing Stability and Growth Pact rules already allow some flexibility, opportunities could be taken to explore how this could be used most effectively without weakening the need for fiscal sustainability.

I supported the view that that the use of Innovative Financial Instruments and Project Bonds in particular, as innovative vehicles for infrastructure financing, could amplify the value of the CEF for TEN-T projects. I expressed concerns about the EU being allowed to raise funds directly on the financial markets for infrastructure financing. This has typically been the role of the European Investment Bank and the additional direct risk this would place on the EU Budget would need very serious consideration, and is rightly a matter for finance ministers.

On the question of user charging and the hypothecation of charging revenues for transport purposes I made it clear that we see no single market justification for any EU legislation on these issues. The UK’s position has always been that proposals that mandate or restrict the types of charges that Member States can introduce should be considered under the tax base of the Treaty. In our view any compulsion or Regulation with respect to hypothecation of revenues would seriously breach the principles of subsidiarity and proportionality.

I reinforced comments made by another Member State that, as PPPs are only likely to support a limited number of infrastructure projects, any proposal that aims to assist the development of this type of project should not artificially support PPP delivery over conventional procurement, it should look at the approach which offers the best value for money.

The Presidency will continue to work on these themes with a view to further discussion by Transport Ministers at the Transport Councils scheduled for 8 October and 3 December 2014.

24 September 2014

Letter from Robert Goodwill MP to the Chairman

My letter of 24 September advised the Committee that the 16-17 September Informal Transport Council included a discussion on Planning, Governance and Funding Instruments for the Trans-European Transport (TEN-T) Corridors.

At the Informal Council the Presidency sought views on a wide range of topics including targets for implementation and strengthening governance of the Corridors and a range of wider finance proposals. I am writing now to advise you that the Italian Presidency is seeking agreement to proposed draft Conclusions on transport infrastructure and the Trans-European Network at the 3 December Transport Council.

The Presidency has held five Working Group meetings to discuss the draft Conclusions. As originally drafted the Conclusions lacked clarity and could be taken to mean that they cut across issues of Member State competence by referencing the planning, financing and prioritisation of transport projects in the context of the TEN-T and TEN-T Corridors. Whilst we support the development of, and investment in, transport infrastructure this is a competence of Member States and we do not want the Conclusions to imply otherwise.

We have been working with HMT and the Department for Business, Innovation & Skills (BIS) on the finance issues raised by the draft Conclusions, to ensure consistency with previous conclusions from the Economic and Financial Affairs Council (ECOFIN). We have also worked with like-minded Member States to push back on any further development or expansion of the TEN-T beyond the infrastructure requirements and deadlines which were agreed in the TEN-T Regulation. To date we have secured the removal of references to seeking any acceleration of implementation of TEN-T.

Discussions on the draft Conclusions are still taking place and we are hopeful that agreement can be reached on the Conclusions but I thought that your Committee would wish to be aware of this matter ahead of your final meeting before the Transport Council. I am, of course, happy to send you an update on the outcome after the Transport Council.

20 November 2014
Letter from Robert Goodwill MP, Parliamentary Under-Secretary of State, Department for Transport, to the Chairman

I am writing to inform your Committee of our expectations for the transport agenda during the Italian Presidency of the EU Council of Ministers.

Given the events currently taking place in the EU we do not expect to see many new proposals for legislation in the next few months. Nonetheless, the Italians are very keen to make progress in those areas where there are currently proposals on the table, and the overarching theme for their Presidency is jobs, growth and competitiveness.

The Presidency’s priorities will be to make early progress on Single European Sky II+, Fourth Railway Package and Port Services. The Presidency will then look to engage the new EP in trilogues on the technical pillar of the Fourth Railway Package and Weights and Dimensions. Transport Councils will be on 8 October (Luxembourg) and 3 December (Brussels) with a two-day informal Council in Milan on 16 and 17 September.

In more detail:

**AVIATION**

In a wide-ranging aviation agenda, the Italian Presidency is clear that its top aviation priority is the Single European Sky II+ package (EM 11496/13 & 11501/13). Some opposition is anticipated from Member States who still consider the proposal as “too much too soon” and that more time should be given for the current regulatory framework to deliver. The Presidency would prefer to keep the proposed EASA Regulation as part of the SES II+ package and has signalled an ambitious goal of seeking a General Approach in the December Transport Council. They are also planning a SESII+ event in Rome in November, possibly at Ministerial level, to discuss the development of SES over the next five years. Overall we are supportive of considering how to improve the implementation of SES, but will seek amendments to the text to ensure the right scope and to avoid unintended consequences. The European Parliament voted positively on some amendments that support our positions, so we will seek to introduce these into Council discussions too.

As we have seen under the Greek Presidency, however, the dispute between Spain and UK over Gibraltar Airport will continue to impact upon aviation dossiers, including the Presidency’s other aviation priority, the Slots Regulation under the Airports Package (EM 18009/11). The Presidency has confirmed that they will not pick up the remaining proposal on groundhandling (EM 18008/11) under the Airports Package. They are not currently taking forward discussions on the Air Passenger Rights proposal (EM 7615/13), however, should a solution for the Gibraltar issue be forthcoming, Italy would prioritise Air Passenger rights over Slots and would look to prepare the EU-Ukraine Common Aviation Agreement (EM 6587/14 & 8290/14). If time allows, Italy would also bring forward proposed aviation agreements with Armenia, Mexico and ASEAN.

The Italians will also seek an exchange of views on the Commission Communication on Remotely Piloted Aircraft Systems (EM 8777/14) and will plan related events in Brussels and Rome (dates to be confirmed). The Presidency will take forward an amendment to the EU-US Aviation Safety Agreement to allow the newly negotiated annexes to come into effect and will work on Spain’s call to prepare EU coordination on elections to the ICAO Council, possibly taking this at a future Transport Council.

Remaining activities will focus on EU coordination for Eurocontrol Provisional Council and next February’s ICAO High Level Safety Conference. Italy is expected to leave the forthcoming proposal on revision of Regulation 868/2004 on unfair pricing practices in aviation to the Latvian Presidency.

**MARITIME**

On maritime the Presidency’s top priority is the Ports Services Regulation (EM 10154/13) with the ambitious aim of securing a General Approach by October Transport Council. Working groups began in earnest at the end of the Greek Presidency and the Italians are actively seeking compromise texts.
Member States continue to have strong reservations on many provisions in the proposal. Discussions will progress quickly, and we will continue to work to secure genuine Single Market benefits whilst safeguarding competitive, unsubsidised ports from the most burdensome provisions of the Regulation.

In other areas, the Italians are taking forward the proposed Council Decision authorising Member States to accede to the international convention on standards of training, certification and watchkeeping for seafarers (STCW(F), EM 13350/13) and routine coordination for both the IMO and IMSO. The STCW(F) dossier has had little discussion lately but the Italian Presidency plans to schedule a discussion at the end of July and may seek agreement to the Decision at the October Transport Council.

The Presidency do not plan to take forward the expected proposals on Pilotage Exemption Certificates or Port Reception Facilities. They will host a Coastguard Forum on 23 September, a National Single Window event, and an eCustoms event in Venice.

The Italians are also optimistic about closing an early second reading agreement with the EP on Monitoring, Reporting and Verification of CO2 emissions from Maritime Transport (EM 11851/13) in the latter half of their Presidency. This will, however, depend largely on how quickly the new European Parliament is able to take this forward, and on how quickly the Council can resolve the outstanding political issues on publication of data, and use of delegated and implementing acts. The UK will continue to work to ensure that the Regulation is practicable and proportionate and compatible with the ongoing activity in the IMO.

The Italian Presidency has opened discussions on the proposal to remove seafarer exclusions from five (formerly six) EU labour law Directives (EM 16472/13), and may seek a general approach at the 16 October Employment Council. The main concern expressed by Member States, including the UK, is the economic and competitive impact the proposed changes could have. The concern is that if ship-owners decide that the burdens imposed under the EU Flag are too great, they will simply flag-out elsewhere, undermining the EU economy and failing to provide seafarers with the protections this proposal seeks to offer them.

A new proposal for a Decision on Working Time in inland waterway transport (EM 11688/14) is also included on the 16 October Employment Council agenda, for possible political agreement or adoption.

On rail, the Presidency has opened negotiations on the political pillar of the Fourth Railway Package (EM 5960/13, 5985/13, & 6020/13). They aim to hold a policy debate on both proposals at the October Transport Council, the outcome of which will shape whether they seek a General Approach or Progress Report in December. A planned UK rail event in Brussels in September will be an opportunity to influence this debate.

Italy’s other rail priority is to engage the EP in trilogue discussions on the technical pillar (EM 6012/13, 6013/13, 6014/13 & 6017/13). They plan to have sequential trilogues on each of the three dossiers subject to appointment of EP Rapporteurs. We expect this will be the focus of the second half of their Presidency, and we will need to see to what extent this may impact progress on governance negotiations.

The Presidency may also seek a general approach at the October Council on the proposal to repeal Regulation (EEC) No 1192/69 of the Council on common rules for the normalisation of accounts of railway undertakings (EM 6015/13).

On roads, the two main priorities will be to reach a first reading agreement on Weights and Dimensions (EM 8953/13) and start negotiations on the Cross-border exchange of information on traffic offences (CBE).

On Weights and Dimensions, the Presidency aims to reach agreement at the December Transport Council with trilogue negotiations starting in October, subject to appointment of the EP Rapporteur. We welcome the declaration made by the Commission at the 5 June Transport Council, reaffirming that their interpretation of the Directive is that if two neighbouring Member States both allow vehicles that deviate from the requirements in the Annex, then those neighbouring Member States may permit the cross border movement of these vehicles (but not more widely). This was a positive outcome for the UK as it confirms that our existing cross-border practices could continue.
Following the recent ECJ ruling in May, which annulled the cross-border offences Directive 2011/82/EU under a JHA legal base, the Commission will adopt a new legislative proposal shortly. The Court found that the measures under the directive did not concern “crime” as defined under the police co-operation rules, but rather road safety, which is a transport issue. However, it decided that the effects of the directive would be maintained until the entry into force of a new directive, provided that this takes place within twelve months (before May 2015). According to the Commission, the new proposal will include the transport legal basis without changing the directive's substance. The adoption of the new CBE proposal is expected in July, and discussions are expected to progress quickly as other Member States will seek to achieve a rapid resolution.

The Presidency may also take forward discussions on the proposed Regulation on Vehicle Re-registration (EM 8794/12). The Commission is currently undertaking further work to assess the impact on domestic taxation regimes, as requested by Member States. This work may be completed by the end of September, in which case the Presidency would resume working group negotiations with a view to a possible political agreement at the December Competitiveness Council.

On eCall (EM 11124/13), the Presidency is waiting for the European Parliament to complete its internal procedures in order to start negotiations with them towards a second reading deal.

The Presidency is taking forward the proposed Regulation on Cableway Installations (EM 8436/14) and is likely to seek a quick deal on it.

In addition, there may be some non-legislative items taken forward, including the AETR agreement, Interbus, the Western Balkan Treaty as well as bilateral agreements with Turkey and Ukraine. The Italians have confirmed that they will not be taking forward the planned proposals on cabotage, NAIDES II, training of professional drivers or Intelligent Transport Systems.

INTERMODAL

On the intermodal agenda, Galileo and TEN-T will be the focus of discussions with TEN-T infrastructure being the main subject of the informal Council on 16-17 September. We believe that one day will be a technical discussion and one day a political discussion, probably focusing on infrastructure financing and how to promote a different vision of funding in the current economic climate. The Presidency may seek to develop Council Conclusions on this. The Presidency will host a TEN-T event on 10 December in Italy on the inter-relation of the TEN-T network. Urban Mobility (EM 18136/13) may also be discussed at the informal Council, although this would not generate Council Conclusions.

ENVIRONMENT

Following the political agreement at the June Energy Council on the proposed Directive relating to the Indirect Land Use Change (ILUC) impacts of biofuels (EM 15189/12), the next step is for the European Parliament to award a mandate to a new Rapporteur to enter trilogue negotiations with the Council. The Presidency has included the dossier on the agenda for the 9 December Energy Council, for a possible update.

The Italians expect to hold the long-awaited next discussion on implementation of Article 7a of the Fuel Quality Directive (Unnumbered EM). However, timing of this will depend on the timing of the publication of the new proposal by the Commission, which is unconfirmed at the moment.

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

17 July 2014
I am writing to update you on progress in the negotiations on the proposal for a Regulation on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport.

Our Explanatory Memorandum (EM) of 17 July 2013 set out the Government’s initial reaction to the Commission’s proposal. Since then, we have given further consideration to the Government position, in consultation with other interested departments. There has been no significant change in the Government position, and our aim continues to be to ensure that the Regulation is practicable, proportionate and compatible with the ongoing work of the International Maritime Organization (IMO).

We engaged early with the Commission, the European Parliament and the other Member States to gain support for the UK’s concerns. This meant that we were able to make substantive points ahead of many other Member States in the ensuing Council working group negotiations. We also made efforts actively to engage with MEPs to influence them in favour of changes that were in line with UK objectives and to reduce the likelihood of amendments which are contrary to UK policy.

The Council of Ministers

There have been a number of working group discussions of the proposal. We have worked hard to push for the UK’s objectives, with a view to ensuring that the Regulation is practicable and that it is proportionate in terms of the burden imposed on industry. Several Member States share the UK’s view that the Regulation should not extend to other gases besides carbon dioxide (eg nitrogen oxides and sulphur oxides) which are covered by other international and EU instruments. Several others share our concerns on the disproportionate burden of ‘per voyage’ reporting on short sea shipping (notably ferries).

During an initial ‘Exchange of Views’ at the Environment Council on 13 December 2013 the Secretary of State for Environment, Food and Rural Affairs, who was representing the UK, set out the UK’s objective of securing a global agreement through the IMO, but confirmed the UK’s broad sympathy with the scope of the Commission’s proposal. The majority of other Member States who spoke agreed with the UK that a global measure is the main objective and that the scope of covering ships over 5,000 Gross Tonnage, and no gases other than carbon dioxide, is appropriate.

The Greek Presidency originally had hopes of a First Reading deal with the European Parliament. However, they quickly realised that this was unlikely because insufficient progress had been made on the dossier in working groups, and there would not be enough time ahead of the European Parliament elections to resolve the differences between the emerging positions of the Council and the European Parliament.

The Greek Presidency has still made substantial progress, nonetheless. Greece has held a number of working group meetings during its term, and I am pleased to say that these discussions have been positive for the UK. The UK proposal to exempt vessels engaged in short-sea shipping that undertake several voyages in a day (notably ferries) from the requirement to monitor and report on a ‘per-voyage’ basis continues to gain substantial support in the working group. The vast majority of Member States share the UK’s position on the scope (ie that the Regulation should cover carbon dioxide emissions and ships over 5,000 Gross Tonnage). The UK has joined with a number of other Member States in pressing for the inclusion of text which would require that delegated acts be adopted only after consulting Member States at expert level.

Greece concluded its activity on this dossier by presenting a Progress Report to the Environment Council on 12 June 2014.

Our understanding is that the key priorities of the forthcoming Italian Presidency are largely aligned with those of the UK and that, like the UK, their aim is to ensure that the Regulation is practicable, proportionate and compatible with the ongoing work of the IMO. We understand that Italy considers that the outcome of the European Parliament’s plenary vote on 16 April 2014 has removed the major
obstacles to a possible Second Reading agreement, and that Italy hopes to achieve such an agreement in the latter half of its Presidency. The Government will continue to participate actively in the negotiations with a view to ensuring that the UK’s concerns are addressed and that the text on which a Second Reading agreement is reached is one which we can support.

**THE EUROPEAN PARLIAMENT**

In parallel, the dossier has been progressing in the European Parliament. The Environment, Public Health and Food Safety (ENVI) Committee is leading on the dossier in the European Parliament. The report from the ENVI Committee contained some amendments which were in line with the UK’s objectives. In particular, it proposed the removal of the requirement to monitor ‘per voyage’ in the case of short sea shipping. The proposal to remove the need to differentiate fuel inside and outside emission control areas (ECAs) was also aligned with our position.

However, we were opposed to certain amendments in the ENVI report that were contrary to our objectives. In particular, we strongly opposed the proposals to extend the Regulation to cover other pollutant gases such as nitrogen oxides and to increase the threshold making the Regulation applicable to all ships above 400 Gross Tonnage. However, most of these amendments were rejected in the vote on 16 April 2014 in the plenary of the European Parliament which decided the outcome of the First Reading.

I will of course keep you informed of further negotiations on this dossier.

24 June 2014

**Letter from the Chairman to Baroness Kramer, Minister of State, Department for Transport**

Thank you for your letter of 24 June on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 7 July 2014.

We welcome the progress made in negotiations, and are reassured that other Member States share the view that further action, such as Market Based Measures, should be taken at global rather than EU level.

Negotiations appear to be moving at a faster pace than when you last updated us on this dossier in October 2013. We would therefore be grateful for a further update as and when substantial changes are made to the text.

9 July 2014

**Letter from John Hayes MP, Minister of State of State, Department for Transport, to the Chairman**

Thank you for your letter of 9 July.

In your letter, you asked for a further update on the proposal for an EU regulation on monitoring, reporting and verification of carbon dioxide emissions from maritime transport as and when substantial changes were made to the text.

As Stephen Hammond informed you in his letter of 24 June, the Greek Presidency concluded its activity on this dossier by presenting a Progress Report to the Environment Council on 12 June.

The Italian Presidency has built on the work done under the Greek Presidency, and scheduled discussion of the proposed Regulation at three working group meetings during September in advance of opening negotiations with the European Parliament.

As Stephen Hammond indicated in his letter, the Italian Presidency’s aims are substantially aligned with the aims of the UK, which are to ensure that the Regulation is workable, proportionate in terms of the burden which it imposes, and compatible with (and able to inform discussions on) a global data collection system developed in the International Maritime Organization. Consequently, in the working group discussions during September we have been able to support the positions taken by the Presidency (or, in some instances, to build on and improve them).
The Italian Presidency has been successful in achieving agreement in the working group on most of the outstanding issues. This includes limitation of the scope of the Regulation to ships above 5,000 GT and to carbon dioxide emissions only. It also includes the UK proposal for exemption from ‘per voyage’ monitoring for ships which undertake numerous voyages in a day, which we sought in order to reduce the administrative burden on the industry (particularly the ferry industry).

The main elements which the European Parliament wishes to include in the proposal which differ significantly from the position agreed by the Member States in working group discussions are:

— The replacement of references to ‘CO₂’ with references to ‘greenhouse gas’. We consider this unhelpful. It is important for the Regulation to focus on CO₂ and not to dissipate its effort, or impose an unjustified and disproportionate burden on industry, by widening its scope.

— The insertion of an explicit reference to EU market-based measures (eg pricing of emissions or a levy) for maritime transport. We strongly oppose any reference to an EU market-based measure. We only support a global market-based measure developed in the International Maritime Organization.

— The suspension of monitoring while a ship is engaged in emergency situations, including life-saving activities. We consider this unhelpful and that it is based on a misunderstanding about how monitoring is conducted. The ship will not be disadvantaged by recording emissions for its entire voyage including any time spent in emergency situations. Moreover, a requirement to subtract emissions made during emergency situations would actually impose an additional administrative burden (albeit not a large one).

— The removal of ‘cargo carried’ and ‘transport work’ from the monitoring regime. On the contrary, we believe this information is essential to ensure consistency with the ongoing work of the International Maritime Organization. The cargo information reported would be at such a general level as to ensure that it would not be commercially sensitive.

— Mandatory (as opposed to voluntary) recording of the ship’s ice class. We consider this unhelpful. We can see no merit in making it mandatory to record the ice class of the ship.

— Particular powers for the Commission to make Delegated Acts. We recognise that, in some circumstances, Delegated Acts are appropriate. Nonetheless, we have concerns about the amount of control which Delegated Acts give to the Commission. Accordingly, the question of powers to make Delegated Acts is a sensitive one.

— The introduction of a fifth methodology for monitoring, which would use modelling instead of actual data. We consider this unsound. The four methodologies which are contained in the proposal all have a sound practical basis and are derived from a technical submission to the International Maritime Organization. We therefore oppose the proposal to use modelling instead of actual data.

— Expansion of the scope to include fish catching and processing vessels. While we are content with the negotiating position reached in discussions with the Member States (which is to exclude fishing industry vessels), we do not perceive a compelling argument against the inclusion of fishing industry vessels above 5,000 GT.

Negotiations with the European Parliament are in progress. The first informal trilogue with the European Parliament took place on 15 October, and the second informal trilogue will take place on 18 November. The Italian Presidency hopes to be able to achieve a Second Reading deal with the European Parliament during its Presidency, and I am advised that this dossier is likely to be on the agenda when the Environment Council meets on 17 December.

I will, of course, continue to keep you informed of developments.

18 November 2014
Letter from John Hayes MP to the Chairman

On 18 November, I wrote to inform you about progress in the negotiations on the proposal for an EU regulation on monitoring, reporting and verification of carbon dioxide emissions from maritime transport. In my letter, I advised you that the Italian Presidency had held the first trilogue meeting on 15 October 2014 and that the second trilogue was scheduled to take place on 18 November.

The second trilogue meeting on the Regulation did indeed take place on 18 November, and the Italian Presidency successfully secured a proposed deal with the Parliament’s negotiating team.

The effect of the proposed deal would be that:

— The range of data to be monitored and reported is broad enough to support discussions on data collection at a global level, while ensuring that it minimises the additional burden on industry. (‘Cargo carried’ and ‘transport work’ are retained in the monitoring regime. We believe this information is essential to ensure consistency with the ongoing work of the International Maritime Organization);

— Ships which make a very large number of voyages annually will not be required to monitor on a ‘per voyage’ basis. (This is, in fact, largely because of the efforts of the UK);

— The verification process is relatively simple, and not disproportionately onerous and costly for the industry.

The main elements which were introduced into the compromise text as a result of the second trilogue were:

— A biennial assessment, to be carried out by the Commission, of the maritime transport sector’s overall impact on the global climate including through non-CO2-related emissions (in Article 21);

— An extension of the implementing act to specify the parameters for other categories of ships than passenger ships, ro-ro ships and container ships for possible future revision of these parameters (in Annex II);

— A further specification of the scope of the delegation foreseen in Article 5 which provides the possibility for the Commission to amend the Annexes in order to refine further some of the technical aspects of the methods that are already included therein;

— The potential for issuing an expulsion order for ships which have failed to comply with the monitoring and reporting requirements after two (instead of three, as was stated in the previous version of the text) consecutive reporting periods (in Article 20).

We expect that a political agreement on the proposed deal will be sought at the Environment Council on 17 December. The proposed deal, including the newly introduced elements, meets the UK’s overall aims for a Regulation which is workable and proportionate in terms of the burden it imposes on industry.

As you may recall, at the outset the Commission undertook an Impact Assessment on the proposal and we have no reason to disagree with its findings. It concluded that by introducing monitoring, reporting and verification, greenhouse gas emissions reductions of up to 2% compared to business-as-usual, and aggregated net costs reductions of up to € 1.2 billion by 2030, could be achieved due to reduced fuel bills. The Commission estimated the costs of implementation as €26 million per year. This implies a high benefit/cost ratio.

The decision to allow operators the option to use one of four methodologies as a means of monitoring fuel use means they can use data that is already available on board of ships. Therefore, the Regulation will not impose large upfront costs on industry because no operator will be obliged to undertake any new procedures for the purposes of monitoring. We agree with the Commission’s assessment, which it has continued to make in working group discussions, that increasing operators’ attention to energy efficiency and fuel efficiency in this way will lead to fuel savings which more than outweigh costs.
The UK has, moreover, worked hard at all stages and negotiated robustly to ensure that the Regulation is not disproportionately onerous and costly for the industry.

We had a clear vision of what was an essential element of a monitoring, reporting and verification instrument, and what would be disproportionate and excessive. It was essential for it to address emissions of CO₂ (which is the predominant greenhouse gas emitted by maritime transport), to capture the great majority of those emissions by targeting ships at an appropriate threshold, to monitor the relevant data items which demonstrate the ship’s fuel consumption and energy efficiency (including all the data items which would be required for any of the technical and operational measures which are currently being developed in the International Maritime Organization), and to employ a data collection methodology (or methodologies), a reporting system and a verification process which are workable at reasonable cost. It would have been disproportionately onerous and costly for it to have been extended to cover other gases than CO₂, for it to have been applied to small ships below 5,000 Gross Tonnage, to have unnecessarily added further data items for monitoring, to have applied an over-prescriptive approach to the data collection methodology (eg by making the use of sophisticated technology, with its attendant additional capital and running costs, mandatory rather than allowing operators to use the data that is already available on board ships to monitor their emissions), or to have imposed an unnecessarily sophisticated and complex reporting or verification regime.

We successfully worked to resist pressure from the European Parliament to extend the scope of the Regulation to include gases other than CO₂. CO₂ is by far the most significant greenhouse gas from shipping and widening the scope to include other emissions would have significantly increased the burden on industry for very little additional benefit. In particular, we opposed extending the scope to cover pollutant emissions such as sulphur oxides and nitrogen oxides. Whereas CO₂ emissions can be calculated on the basis of the amount of fuel consumed, it is necessary to purchase, install, operate and maintain additional equipment in order to measure pollutant emissions. (In any event, sulphur oxide emissions from ships are already addressed by an EU Directive, and nitrogen oxide emissions from ships are addressed by the MARPOL Convention and Member States’ national legislation implementing that Convention.)

We successfully worked to resist pressure from other Member States and the European Parliament to extend the scope of the Regulation to include smaller ships below 5,000 Gross Tonnage. The 5,000 Gross Tonnage threshold is a more proportionate burden on industry than the alternative proposal of 400 Gross Tonnage as it captures the bulk of global shipping emissions from the larger emitters responsible for approximately 90% of the emissions without imposing an additional burden on smaller emitters. Extending the scope to cover smaller ships below 5,000 Gross Tonnage would have caught not only small ships but also the smaller shipping companies which tend to use small ships, and would have been disproportionately costly and burdensome given that it would have resulted in only a minor increase in the emissions covered.

We also successfully advocated an exemption from ‘per voyage’ monitoring for ships making large numbers of voyages (an issue which was first raised with us by the UK shipping industry). Our objective here was to avoid imposing a disproportionate administrative burden on short-sea shipping (notably ferries) that would result from the requirement to monitor on a ‘per-voyage’ basis. The key point – which other Member States and the European Parliament grasped – is that there is only a small administrative burden involved in summing the emissions for a voyage of three months’ duration, whereas the same administrative task becomes excessively and disproportionately burdensome if carried out after every voyage by a ship (such as a ferry) which completes multiple voyages each day. The shipping industry is supportive of these outcomes as they ensure the burden on industry has been kept to a reasonable level.

The proposed deal represents a good outcome. It meets the UK’s overall aims, which are to ensure that the Regulation is workable in practical terms, proportionate in terms of the burden which it imposes, and compatible with (and able to inform discussions on) a global data collection system developed in the International Maritime Organization.

4 December 2014
Letter from Michael Fallon MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter dated 15th May 2014.

As previously noted in the Explanatory Memorandum on the 7th February we do not believe in a firm target for reindustrialisation. A target may be ambiguous, unachievable for many Member States (including the UK), an inaccurate indicator of the success of industrial policy and may lead to unwelcome policy distortions.

The Office for National Statistics is revising GDP in line with International Legislation on the standards of National Accounts. These changes are being replicated around the world and the amendments to UK GDP will occur at the same time as the rest of the EU.

There are a significant number of changes that are being made to the National Accounts. At present these changes are expected to amount to around 3% additional GDP for the UK. The most significant change is expected to be to the capitalisation of R&D expenditure, that is, the inclusion of R&D expenditure into GDP. It is not known at this stage exactly how the amendments will affect the balance between different sectors, but any change is expected to be very small.

As such, with a manufacturing share of 10.1% and industrial share (including mining and utilities) of 14.6% in 2012 the changes to GDP will not fundamentally affect the UK’s ability to achieve the proposed target. For this reason the changes do not alter the Government’s previous reasoning on this issue.

6 June 2014

Letter from Baroness Kramer, Minister of State, Department for Transport, to the Chairman

I am writing to bring your Committee up to date with progress on this element of the 4th Railway Package and to request scrutiny clearance for it in advance of an expected General Approach at the forthcoming Transport Council on 3rd December.

The normalisation of accounts Regulation is the first element of the “market” or “political” pillar to be considered by the Council.

The Explanatory Memorandum on this proposal noted that Regulation 1192/69 allowed for the accounts of state-owned railway undertakings to be “normalised” through payments by Governments to compensate them for costs which were not incurred by other modes of transport. However, this Regulation predates the liberalisation of the railway market in the European Union, which has radically changed its structures. It is therefore proposed that the Regulation be repealed as part of the 4th Railway Package.

Only five Member States have made payments under this Regulation in recent years. The last payments in Great Britain under this Regulation were made in 1996. In Northern Ireland payments of £100,000 have been made every year to Translink, which owns Northern Ireland Railways, to fund the upkeep of level crossings. However, the Northern Ireland Executive has confirmed that it has no objections to the repeal. In future these payments would be made under Article 7 of Directive 91/440/EC (on the development of the Community’s railways) as implemented in Northern Ireland by Regulation 12 “Infrastructure costs and accounts” of the Railways Infrastructure (Access, Management and Licensing of Railway Undertakings) Regulations (Northern Ireland) 2005. From June 2015 these payments would be made under Article 8 of Directive 2012/34/EU (establishing a single European railway area) which repeals and recasts Directive 91/440/EC.

The repeal of this legislation is therefore welcome and will have no practical impact in the UK.
Two Council Working Groups to discuss the proposed repeal were held on 11th and 18th November 2014. At those Working Groups there was broad agreement among Member States to repeal the Regulation and no substantial issues were raised. One Member State, while agreeing in principle to the repeal, was still examining possible implications for the funding of level crossings and undertaking further domestic consultation. The European Commission reiterated its position that Article 8 of Directive 2012/34/EU permits payments in respect of level crossings. We therefore expect the Presidency to achieve a General Approach on 3rd December at Transport Council.

As we have no concerns about repealing the Regulation I would be grateful if your Committee could consider lifting its scrutiny reservation on the proposal.

19 November 2014

Letter from the Chairman to Baroness Kramer

Thank you for your letter of 19 November 2014 on the above proposal. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 1 December 2014.

We recognise that it is in everyone’s interests to complete the 4th Railway Package as soon as possible. The Explanatory Memorandum and your letter clearly describe the sensible motivations behind the Commission’s decision to repeal EEC 1192/69. As this legislative instrument relates to a pre-liberalised railway market in Europe, it is rarely used by Member States. We support the opportunity to repeal unnecessary legislation and therefore the Committee have decided to clear this document from scrutiny.

We request that you keep the Committee informed of any developments in relation to this proposal at the Transport Council meeting on 3 December.

2 December 2014

NON-ROAD MOBILE MACHINERY: EMISSION LIMITS (13690/14)

Letter from the Chairman to Baroness Kramer, Minister of State, Department for Transport

Thank you for your very thorough Explanatory Memorandum of 14 October 2014 on the above proposal. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 1 December 2014.

We note the Government’s broad approval of the Commission’s proposal, but also its concerns about competence creep and the impact of the proposal on businesses, particularly SMEs. We would be grateful it you could explain further your concerns about plans to prohibit EU manufacturers from exporting engines with superseded emissions standards to non-EU countries.

We have therefore decided to hold the document under scrutiny, and we look forward to hearing from you within the standard 10 working days.

2 December 2014

OPEN DATA - AMENDING THE RE-USE OF PUBLIC SECTOR INFORMATION (18555/11)

Letter from Simon Hughes MP, Minister of State, Ministry of Justice and Civil Liberties, to the Chairman

As requested, I am writing to provide you with a copy of the UK impact assessment for the implementation stage of the Directive 2013/37/EU amending Directive 2003/98/EC on the re-use of public sector information (‘the amending Directive’).
The amending Directive was proposed by the European Commission on 12 December 2011. Lord McNally and Helen Grant, as Justice Ministers responsible for the re-use of public sector information, wrote to the Committee with updates between 16 February 2012 and 30 April 2013. The Committee cleared the proposal from scrutiny on 5 June 2013 and requested to see the UK implementation stage impact assessment once it is complete, which I now attach [not printed].

The impact assessment accompanies the Government’s consultation proposals for the transposition and implementation of the amending Directive in the UK, which can be found at: www.gov.uk/government/consultations/uk-implementation-of-directive-2013/37eu-on-the-reuse-of-public-sector-information.

14 September 2014

Letter from the Chairman to Simon Hughes MP

Thank you for your letter of 14 September 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014.

We are grateful to you for directing us to the impact assessment carried out the Government with regard to implementing the proposed Directive in the UK.

A response to this letter is not required.

17 October 2014

PACKAGE TRAVEL AND ASSISTED TRAVEL ARRANGEMENTS (12257/13)

Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I refer to my letter of 22 October 2013 and to Baroness O’Cathain’s reply of 6 November.

This is to update the Committee on progress and to report on the conclusions drawn from our Call for Evidence. My Department has published the Government’s Response to the Call for Evidence in which we set out the Government’s views in relation to the wide range of issues raised by the proposal. I attach [not printed] a copy for the Committee’s information. Our overall position is set out in the Annex [not printed] to this letter. Detailed arguments in respect of specific provisions are set out in the Response Document; the summary of our response is at page 8.

I have not written before now because progress in the Council Working Group proved to be slow on the run up to the European Elections. It took until April this year to complete the first read through of the proposal under the Lithuanian and Greek Presidencies, at which point progress was halted. The Italian Presidency has prioritised this dossier and has expressed a strong desire to achieve agreement before the end of the year.

Over the same period the European Parliament agreed a first reading position in March. That position has yet to be adopted by the new Parliament. The European Parliament’s position revealed general support for the proposal and consists mostly of minor drafting adjustments which in some respects may be helpful, but it does not address fully the difficulties with the proposal.

Negotiations in Council have confirmed the general support of all Member States for the proposal, but, like the UK, most Member States have raised issues, particularly in respect of the need to clarify the scope, the level of harmonisation, the insolvency provisions, and seeking to ensure that existing longstanding domestic arrangements are not disturbed.

There remain, therefore, several issues of concern which need to be resolved, or which require a change of approach. These are essentially the issues we identified in our Explanatory Memorandum, including in particular, the extension of scope in respect of the business models to be covered and the level of, and proposed change of approach to, insolvency protection for consumers. Please see the 6th bullet point in the Annex [not printed].

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The responses to our Call for Evidence (summarised on page 6 of the Response document) confirmed in large part our initial view of the proposal; identifying points in need of clarification and underscoring our doubts about the practicability of the approach to insolvency protection.

A key issue addressed in the Call for Evidence is the extension of the regime to the “dynamic packaging” models. Responses revealed that views were divided between traditional package organisers and online travel agents. Online travel agents selling dynamic packages (for example Travel Republic or On the Beach) were chiefly concerned about becoming liable for the services which they sell. They also suggested that, unlike the traditional packaging model, their business model did not provide for oversight of the many services providers they offer. They suggested that covering this risk would place their model in jeopardy, that consumer choice would be restricted, or that costs and prices would rise. On the other hand, to the traditional package organisers, this as a valuable levelling of the regulatory landscape. They argue that the dynamic packaging model competes directly in the same market and that liability is manageable. They cited the smaller operators who already manage this risk while not being in the position of the larger operators to maintain oversight or exert pressure on suppliers. I was not persuaded by the arguments of the online travel agents. The Commission’s evidence showed that the dynamic packaging model was a bigger source of consumer detriment, mostly the result of unreliable or misdescribed services, as compared with packages and independent bookings by consumers. I agree with the Commission’s analysis; that making dynamic packagers liable for the services they sell should inject more rigour into how they choose the service providers they offer. This should result in more reliable services, a decreased risk of problems and a consequent decrease in the cost of managing that risk.

I hope this assists the Committee’s understanding of our position on this proposal and that the Committee is able to clear this from scrutiny. I will be happy to answer any further questions the Committee may have.

14 September 2014

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**Letter from the Chairman to Jo Swinson MP**

Thank you for your helpful letter of 14 September 2014 on the above proposal and for the accompanying documents. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 20 October 2014.

We note your request for us to clear the proposal from scrutiny. We have decided to retain it under scrutiny given the number of unresolved issues with the proposal, for example, insolvency protection for consumers. We look forward to receiving updates on the progress of negotiations on the proposal in due course.

23 October 2014

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**Letter from Jo Swinson MP to the Chairman**

I refer to the Explanatory Memorandum on the above, to our subsequent correspondence and to your most recent letter of 23 October.

I am writing to you to report that there has been rapid progress in the negotiations on this proposal, to outline the likely outcomes against our initial objectives and to ask the Committee to lift scrutiny on this document in time for a meeting of the Competitiveness Council scheduled for 3rd and 4th December, or to waive scrutiny for that meeting.

I understand that the Italian Presidency intends to submit a revised text to the Council to agree the general approach and to allow the dossier to progress to the trilogue stage of negotiation.

I have set out in the Annex [not printed] the main areas of the Commission’s proposal which we had identified as being the most in need of improvement, showing how the negotiation has progressed to date and the likely outcome. For information I attach [not printed] also a recent version of the text under discussion which I understand is in the public domain.

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4 “Dynamic packaging” is a mostly online model of trading where a business acts as agent for service providers and enables consumers to create a “package” or combination of travel services for which the consumer, usually at the end of the selection process, pays in one process (even though separate consumer contracts with service providers might be created).
I believe that significant progress has been achieved in all but two of these areas. In respect of our desire to see a change of approach to the application of insolvency protection to sales in the implementing Member State rather than the need to cover sales according to the place of establishment of the trader we have not managed to convince the other Member States, but we have achieved some helpful clarification and have ensured that effective implementation across the Union is acknowledged as being crucial to the success of the new Directive.

The other issue on which other Member States are not prepared to support us is our desire to be able not to apply the Directive to purely domestic packages which simply consist of a hotel booking and some other significant element like a theatre ticket or access to sporting facilities. Regrettably, our experience that these products are not the cause of any significant consumer detriment in the UK is not shared by other Member States, or they were concerned that there would be different requirements across Member States. We are considering arguing for more limited exemption which would apply to small businesses as there appears to be more appetite among Member States to help such businesses in their domestic markets.

On the positive side I am pleased to report a very significant improvement which will allow us, to maintain a risk based approach to providing for insolvency protection and enable the spreading of risk, rather than the original expectation in the proposal that all risk must be fully covered at all times in respect all individual businesses. This would have made implementation extremely difficult, not only for the UK, and would certainly have added needless costs. Achieving acceptable wording on this means that we should still have a range of options open to us as the Government considers reforms for the Air Travel Organiser Licence (ATOL) scheme.

There have been several other more minor improvements which nevertheless have significantly improved the proposal in terms of ease of understanding and practical application. I can report from regular contact between representatives of holiday businesses and my officials that the trade is generally content with the way the negotiations have progressed on the main issues buts remains concerned about the technicalities of applying or complying with some of the elements. We will continue to seek improvements to the text in these respects. There will be those representing the domestic market who will be disappointed that Member States would not support us on a full domestic exemption, but the outbound trade should be relatively content that the proposal as it stands levels the playing field between the traditional package offer and the dynamic packaging operators, that some burdens have been lifted (business travel and brochure requirements for example), and that other requirement have been clarified.

While at this stage we cannot be certain that the current text will survive entirely intact for the meeting in December we are confident that it will not change significantly and that the Government will be in a position to be able to vote. I believe that the text reflects significant movement on most of our important concerns and against the background of our general support for updating and extending this regime, is now acceptable.

I hope this assures the Committee that there has been good progress and that the likely outcome will be a Directive in which the bulk of our concerns have been met; which extends important consumer protections; which furthers the development of the single market in holiday products; and, which is proportionate. I hope, therefore, the Committee is able to clear this from scrutiny, or waive scrutiny so that the UK can play an active role in the negotiations. I will be happy to answer any further questions the Committee may have.

18 November 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 18 November 2014 on the above proposal and for the accompanying documents. This was considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting of 1 December 2014. We have decided to clear the proposal from scrutiny.

We note the progress of negotiations over the last few weeks, and the generally positive feedback that you have received from relevant stakeholders here in the UK.

We would be grateful to receive a letter on any relevant decisions on this proposal taken at the Competitiveness Council meeting on 3 December 2014.

2 December 2014
Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries

Thank you for your Explanatory Memorandum of 23 September 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 20 October 2014.

The Committee agree with the Government’s position that the conclusions from the radio spectrum inventory are in line with the UK’s interests in this area and have decided to clear this document from scrutiny. We recognise that demand for radio spectrum will increase and therefore find this inventory an important tool to achieve key milestones outlined in the Digital Agenda for Europe.

The Committee welcome the Government’s support for the radio spectrum inventory and would like to know if the Government is currently taking any steps to address the challenge a few Member States face in collecting and distributing data on radio spectrum use, in order to improve the accuracy of this inventory in the future?

The EM notes that Article 6(5) of the Radio Spectrum Policy Programme requires the Commission to report by 1 January 2015 on the need for additional spectrum for wireless broadband. The Committee wonder if the Government foresees any implications from this inventory for the Commission’s report in January.

23 October 2014

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 23 October regarding the Explanatory Memorandum of 23rd September clearing the above Report from scrutiny. This letter requested further information on two questions.

You ask if Government is helping to address Member States who are currently struggling to contribute to the spectrum inventory. The EU Commission is responsible for gathering the data and if it asks for any help from UK in collecting or distributing data, either via the Radio Spectrum Policy Group or directly, UK would of course be willing to assist.

You also ask if this inventory will have any implications on the Commission’s obligation to write a report by 1st January 2015 on the need for additional spectrum for wireless broadband. The inventory will enable the Commission to assess how much spectrum is in use; whether there is a need for more spectrum for wireless broadband and whether there are any bands which might be seem suitable realistic candidates for harmonisation.

You may also be aware that Ofcom have published assessments of the ways in which demand for additional mobile broadband services might be met. They concluded that a mixture of smaller cells, more spectrum and new technologies would be required. The UK is working on 5G technologies, in collaboration with Germany, through the University of Surrey’s 5G Innovation Centre and is looking at how we can make more spectrum available through the Public Sector Spectrum Release Programme. The most recent published update on that is at:


I hope this satisfactorily answers your queries and updates you on spectrum progress.

7 November 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter dated 7 November 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

We found your letter to be helpful in responding to all the questions we raised in our previous correspondence. We welcome the news that the Government is investing in development of 5G
technologies, with its German partners and the University of Surrey. We also appreciate the link you provided to the recent work undertaken by Ofcom, which assesses the different ways in which demand for radio spectrum may be addressed.

As this document has already been cleared from scrutiny, a reply to this letter is not required.

18 November 2014

REGULATORY FITNESS (REFIT) (10648/14)

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

Thank you for the Explanatory Memorandum (EM) of 1 July 2014 from your predecessor on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 21 July 2014.

We have previously considered the Commission’s REFIT strategy, and in November 2013 we looked at a Communication setting out the Commission’s programme for forthcoming regulatory reform (COM [2013]685). That proposal put forward the idea of a ‘fast track’ legislative procedure to remove burdensome regulations. The Committee agreed with your view on this, that national parliaments should still have the opportunity to scrutinise such legislation, and that such a procedure should not be used other than for ‘better regulation’ measures. We note that the proposal for a ‘fast track’ legislative procedure has not been mentioned in this report and ask whether it is still being considered, and for an undertaking that you will notify us of any movement on this point.

The report refers in a number of different sections to the Commission’s continued review of its Impact Assessment guidance. Notably, it rejects the need for external scrutiny of the quality of Commission Impact Assessments. In our 2010 report The Effectiveness of EU Research and Innovation Proposals, and our 2012 report Impact Assessments in the EU: room for improvement?, we observed flaws in the impact assessment process – for example, we heard evidence that in many cases, the impact assessment guidelines were not being adhered to. In both reports we called for further work to determine which measures are, and are not, to be accompanied by an impact assessment and whether in practice the selection is appropriate. As such, we are disappointed with this part of the Commission’s analysis and urge you to argue for external scrutiny of the quality of Commission Impact Assessments.

We note that your EM indicates that the Commission is considering withdrawing the Pregnant Workers Directive. As you will be aware, we still have this proposal under scrutiny, and have not yet had a response to our letter of 31 July 2013. We would be grateful for an update on the negotiations on this proposal.

I look forward to a response within 10 working days.

23 July 2014

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

Thank you for your letter to Matthew Hancock of 23 July about the Commission Communication on Regulatory Fitness and Performance (‘REFIT’). I am replying during Matthew’s absence on leave.

You ask whether the Commission is still considering proposing a ‘fast track’ procedure for legislation to amend burdensome EU regulation. As you note, the Commission’s latest REFIT Communication does not indicate that the Commission has taken this idea any further at this stage, but the Government will of course notify the Committee of any developments in this area. The Government’s position is unchanged since the Explanatory Memorandum for COM(2013) 685 was deposited by Michael Fallon on 18 October last year: any fast track procedure should be restricted to burden reduction measures, and not limit the opportunity for scrutiny by national parliaments.

The Government shares the Committee’s disappointment that the Commission continues to resist greater independent scrutiny of its Impact Assessments. The Prime Minister’s Business Taskforce last
October specifically recommended, as part of its ‘COMPETE’ Principles, that a single independent Impact Assessment Board be established at the EU level, to scrutinise all EU Impact Assessments. The Government welcomed all of the COMPETE Principles, and is continuing to press for their adoption in Brussels.

Finally, the Government welcomes the Commission’s decision to consider withdrawing its 2008 proposal to amend the Pregnant Workers Directive. Amendments proposed by the European Parliament in 2010 would, if adopted, cost the UK an additional £2.5bn a year. They would also restrict the UK’s ability to design and manage a system to suit UK circumstances. The Government, working with likeminded Member States, has successfully prevented these European Parliament amendments from becoming law since 2010. The most effective way to avoid the unnecessary burdens in the European Parliament’s suggested amendments is therefore for the Commission to withdraw its 2008 proposal to amend the existing Directive. The withdrawal of this proposal was also recommended by the Business Taskforce.

The possible withdrawal was debated in the European Parliament in mid-July. In responding to the debate, the Italian Presidency signalled that it would explore the possibility of reaching agreement on the proposal, whilst the Commission indicated that in the event that it did decide to withdraw the existing proposal, it would then consider whether to make a new proposal on the subject. The Government will examine any such proposal if it emerges, but will continue to oppose any agreement that reflects the 2010 European Parliament amendments, and work to ensure that any new proposal does not impose unnecessary additional burdens on the UK.

4 August 2014

RE-USE OF PUBLIC SECTOR INFORMATION

Letter from the Chairman to Simon Hughes MP, Minister of State, Ministry of Justice and Civil Liberties

Thank you for your letter of 14 September 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 13 October 2014.

We are grateful to you for directing us to the impact assessment carried out the Government with regard to implementing the proposed Directive in the UK.

A response to this letter is not required.

17 October 2014

REVIEWING THE WORKING TIME DIRECTIVE (5068/11)

Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing to update you about recent developments in the European Commission’s work undertaking an impact assessment of the future of the Working Time Directive, and to invite you to share your own views.

Additionally, it has recently come to my attention that in your letter of 31 July 2013, you requested further information on the Commission’s plans in this area. Please accept my apologies for the delay in responding to your questions. In fact, there has been no communication from the Commission before now.

The Commission is undertaking this impact assessment because, as you will be aware, in 2012 the EU Social Partners were unsuccessful in reaching agreement on the renegotiation of Directive 2003/88/EC concerning certain aspects of working time (the Working Time Directive).

In order to inform their impact assessment the Commission has recently written to Member States seeking national reports on the practical implementation of the Working Time Directive. This is
required by Article 24(2) of the Directive which stipulates that "Member States shall report to the Commission every five years on the practical implementation of the provisions of this Directive, indicating the view points of the two sides of industry". The Commission has requested information about the current legal situation, any changes to our implementing legislation and relevant court judgments. As part of our response we have the opportunity to set out the wide variety of impacts of the current Directive, and changes we may wish to see. I would particularly welcome any views your Committee would like to put forward - especially around the impacts of the Directive and recommended changes. We will be submitting the UK response by the end of October 2014.

Additionally, the Commission has written to Social Partner Organisations, informing them of the request for national implementation reports, and asking for their responses a questionnaire which asks about the adequacy of national implementing measures, enforcement and monitoring action, and any evaluation work undertaken. The questionnaire also asks social partners for their outlook; including any priorities for their organisation in this area, any proposals for additions or changes to the Directive, stating the reasons, and any flanking measures at EU level which they consider would be useful.

The Commission has also contracted out two research studies. The first of these is considering the economic impacts of various possible changes of EU working time rules. The second is examining the economic, financial, and organisational implications for public health/care services of various possible changes to EU working time rules. We understand the Commission is looking for these to complete by the end of 2014.

This is an important opportunity for the UK to make clear our views on this Directive. It is crucial that any new proposal resolves problems caused by European Court of Justice judgments, is fit for purpose for today's working patterns, does not impose unnecessary burdens on businesses, and respects the principle of subsidiarity.

I will of course write to you again in due course, outlining the contents of the UK Government’s national implementation report. However, in the meantime I wished to bring these developments to your attention, in order to allow the committee the opportunity to submit their views, and help inform the UK’s report.

1 September 2014
development as it removes the risk of this Council Decision being used as a basis for claims of Union Competence well beyond the scope of the STCW(F) Convention.

In addition, a new recital has been added which provides the clarification we sought as to which parts of the STCW(F) Convention fall under Union Competence. The new recital makes clear that it is only Chapter I, Regulation 7 of the Annex of STCW(F) that falls within the exclusive competence of the Union. Regulation 7 deals with the recognition of other States' certification and therefore relates to Directive 2005/36/EC. This new recital correctly describes, and appropriately limits, the scope of Union Competence over the STCW(F) Convention.

We also sought clarification on the Commission’s assertion that EU law, through Directive 2005/36/EC, takes precedence over STCW(F). We wanted further explanation on how this could be applied in the context of provision in the Convention which prevents the recognition of certificates issued by States which are not party to the Convention. This concern has now been addressed. During the negotiations there has been the opportunity to clarify how the relationship between the STCW(F) Convention and Directive 2005/36/EC would operate in practice. The Commission has accepted our position that 2005/36/EC allows for the application of "compensatory measures". This would allow an EU Member State that was party to STCW(F) to request additional training to bring fishermen from a non-party EU State up to the standards required by STCW(F). Therefore, there is no substantive conflict between STCW(F) and 2005/36/EC.

Despite this acceptance the Commission has yet to concede that the proposed reservation against STCW(F) to be submitted to IMO by EU States upon ratification is unnecessary. I am determined to continue to push for the removal of the reservation from the Council Decision and believe there is a realistic possibility of securing this in the final round of negotiations towards the end of September.

Further working group discussions are anticipated during September. Unfortunately, the timing of Conference Recess means that it will not be possible for your Committee to consider any further report on the outcome of these discussions ahead of the Transport Council. However, we expect that Assuming that the Presidency will achieve its objective of adoption at the Transport Council, as we have secured a positive outcome to our principle concerns, we expect that this will be in a form that we would wish to support.

20 August 2014

Letter from the Chairman to John Hayes MP

Thank you for your letter dated 20 August 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting on 8 September 2014.

We are grateful for your clarifications about which aspects of the International Convention on Standards of Training Certification and Watchkeeping for Fishing Vessels, 1995 (STCW(F)) the Commission would like to regulate as part of the Professional Qualifications Directive.

We note that you are hopeful that you will secure further amendments to the text, and be in a position to agree to the proposal if it is put forward for agreement at the Transport Council on 8 October. We have therefore decided to clear the document from scrutiny.

We would be grateful to receive a final notification if and when the proposal is agreed to by the Council.

11 September 2014

Letter from John Hayes MP to the Chairman

I am writing to provide your Committee with an update on this proposal ahead of its possible adoption at the Transport Council on 3 December.

My letter of 20 August 2014 provided an update on the progress of the negotiations and noted that the Presidency hoped that it would be possible for the Decision to be adopted at the 8 October Transport Council. I am grateful to the Committee for clearing the measure from scrutiny in advance of the October Council, however due to other more pressing matters the Presidency decided not to seek adoption at that Council and are instead hoping to achieve adoption in December.
As you may recall, the outstanding issue of concern on this proposal relates to the requirement for a reservation to be submitted to the IMO alongside any accession to the STCW-F convention due to perceived conflict between the Convention and EU Law, namely the Professional Qualifications Directive.

The Presidency have reactivated the negotiations with a Shipping Working Party meeting on 3 November. Those discussions focused solely on the issue of the reservation, and the UK presented the attached [not printed] non-paper in support of our view that the reservation should be removed. I am pleased to say that as a result there was increased support among Member States for our argument that the Decision should not include the reservation. Although the Commission remained committed to the inclusion of the reservation, the Presidency were willing to explore compromises that would allow the Decision to be concluded during their term.

Following the Shipping Working Party the Presidency has issued a revised draft of the Decision which removes reference to a formal reservation. Instead it would require Member States at accession to STCW-F to provide the IMO with information about the interface between that Convention and EU Law, and the methods used to comply with both sets of requirements.

I welcome the removal of the reference to a formal reservation, which is a significant achievement for the UK. In my view the suggested provision of information to the IMO is unnecessary, however this is a minor matter and this option does acknowledge the UK’s underlining position that there is no legal conflict between Union Law and the STCW-F convention. Therefore the proposed Decision in its latest form is acceptable to the UK.

20 November 2014

SEAFARERS (16472/13)

Letter from John Hayes MP, Minister of State of State, Department for Transport, to the Chairman

Thank you for your letter of 14 January 2014. I am writing to bring your Committee up to date with developments on the above proposal, including the Italian Presidency’s intention to seek a general approach at the Employment, Social Policy, Health and Consumer Affairs Council on 11 December.

When the proposal was published it was expected that the Greek Presidency would take negotiations forward, however they did not do so and it fell to the Italian Presidency to open Working Group discussions on the dossier.

The Italian Presidency opened discussions in July to reintroduce the proposal after the protracted period of inaction, and seek initial views. Following the summer break, Working Group discussions resumed in September, and a number of Member States raised concerns on the legal base proposed, with some stating that this did not directly correlate with the legal base behind some of the Directives being amended.

Initially the Commission proposed to amend three of the Directives under article 153(2) of the TFEU and two under article 115 of the TFEU but Member States and the Commission ultimately concluded that article 115 should not be used given the availability of a more specific base. In addition, the Commission and Member States considered whether article 153(1)(d) was an appropriate basis, and concluded that it was not as the protection of workers when their contract is terminated as the measures fitted better under the other headings. The UK did not agree with this position and remains cautious that a precedent may be set that change the legal base for the Insolvency Directive and the Transfer of Undertakings to one permitting QMV. However, the UK also recognises that the Insolvency Directive has already been amended previously under a legal base that provided for QMV.

The Government also shares and supports the substantive objectives pursued by the proposal and recognises that there is insufficient support from other Member States to challenge the legal base. We are therefore considering whether to submit a joint Minute Statement with like-minded States to place on record and reinforce our legal opinion regarding the legal base and that may be referenced if a similar approach is proposed in a future proposal.
In late October the European Social Partners wrote to the Council on the draft text. Their letter was to trigger real progress in the discussions and the proposal has moved forward very quickly as a result. The Social Partners suggested some minor changes to the text that were agreeable to both the unions and the industry and these were accepted by Member States. However their biggest contribution was to provide their full support to the proposed Directive which reassured those Member States who had been concerned about the effects on their industry.

The principle changes to the proposal are therefore;

**Directive 2009/38/EC on the establishment of European Works Council (EWC).** The Commission proposal removed article 1(7) that stated ‘Member States may provide that this Directive shall not apply to merchant navy crews’.

The amendments to the proposal mean that merchant navy crew will be allowed to participate but with the following minor restriction a member, or his alternate, of a special negotiating body or EWC may only participate in a meeting only if he/she is not scheduled to be, at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.

Such meetings are usually arranged considerably in advance and ship operators would be expected to take every effort to ensure that crewing requirements are arranged to allow direct participation by either the member or his/her alternate. The Directive still allows for ICT on board to be used as an alternative but this should be secondary and not seen as the default option.

**Directive 2002/14/EC on the framework for informing and consulting employees.** Member States can still derogate from the Directive for ‘crews of vessels plying the high seas, provided that such particular provisions guarantee an equivalent level of protection of the right to information and consultation and its effect exercised by the employees concerned.’ This allows for Member States to stipulate that the informing and consulting of employees may be conducted remotely via electronic means of communication. The use of ICT is a sensible proposal that will allow employees to be consulted even when at sea and should reduce the burden on smaller companies.

**Directive 2001/23/EC on safeguarding of employees rights in the event of transfers of undertakings** has been the most contentious for Member States. The amendments to the proposal strike a compromise between providing protection to the employee while also providing reassurances to business that it is recognised that seagoing vessels are mobile assets and not fixed. The proposal now provides that where the object of the transfer consists exclusively of one or more seagoing vessels then the terms of the Directive shall not apply. It is only where a seagoing vessel is part of a wider transfer of undertaking that the Directive will apply in full. The Government considers this to be a sensible compromise.

**UK POSITION**

The Government has been fully engaged with UK social partners on this proposal, and UK Social Partners were at the forefront of the discussions leading to the European Social Partners’ suggestions on the text. Nautilus International (the officers’ union) and RMT (the ratings union) have been fully supportive of the proposal from the beginning. The UK Chamber of Shipping was more cautious but this was because of concerns over the direction the proposal might take in negotiations, rather than concern over the original proposal which they supported. The Chamber and the unions have been instrumental in steering the discussion among the European Social Partners. The trilogue between industry, unions and Government has allowed the UK to present a unified position in dialogue at the European level.

The UK already has a high level of employment protection for seafarers although we acknowledges that it does currently exclude seafarers from certain legislation. The Government therefore fully supports the objectives of the proposal and the extension of these employment rights to all seafarers.

In addition, the Government recognises the importance of the harmonisation of employment legislation in regard to seafarers. The levelling of the regulatory playing field in Europe, thereby bringing other Member States up to our standards, will greatly improve the competitiveness of UK companies. We therefore welcome the improvements that have been made to the proposal, which are supported by UK Social Partners, and would wish to support a general approach at the Employment, Social Policy, Health and Consumer Affairs Council on 11 December.

27 November 2014
Thank you for your explanatory memorandum (EM) of 1 May 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 9 June 2014.

We note that the proposal is particularly relevant in the current post-crisis climate in the financial sector, in which corporate transparency is being scrutinised to a greater extent. We observe that the Commission’s view that there are shortcomings in terms of stakeholder engagement is in line with the findings of the Kay review, the World Economic Forum and the views of others calling for more openness. We also welcome the added strength that a Directive would give to the UK corporate governance code.

We are aware that you published a paper in April 2014, ‘Transparency & Trust: Enhancing the Transparency Of UK Company Ownership And Increasing Trust In UK Business’ in which you outlined your plans to improve corporate governance in the UK, including plans for a central registry of company beneficial ownership information. We would be interested for your view on whether the EU's plans dovetail with this national initiative.

Given the importance of transparency and good corporate governance, we agree with your view that the proposed Directive should be more than a bureaucratic “box-ticking” exercise and that the measures brought forward should introduce real change. Therefore, with respect to the provision which would give companies the right to identify underlying shareholders, we would be interested in your opinion on whether it is feasible in the case of the UK for the full ownership chain to be uncovered, rather than just the ‘legal owner’.

We urge you to ensure that the measures in the final draft Directive are sufficiently flexible to allow the UK and other Member States to maintain their current standards, where these provide for greater transparency of corporate governance, or more rights for shareholders.

We observe that many of the measures are already present at UK level, and that in some areas UK policy goes beyond what is being proposed. For example, in the area of Related Party Transactions (RPTs), the Financial Conduct Authority requires “premium listed companies” (those which choose to adhere to higher standards) to disclose RPTs that are worth 0.25 per cent of the company’s assets before the transaction takes place. This is more onerous than the proposed EU threshold of one per cent and provision for the transaction to be announced at the point of completion - although the draft Directive would mean that all listed companies would be covered by the requirement rather than “premium listed companies”.

A significant provision in the draft Directive is the measure which deals with the transparency of proxy advisers, since it would introduce regulation in an area which is not currently regulated in the UK. We understand that you are currently in the process of considering the possible impact on competition and the other costs and benefits of this. We would be grateful for details of this analysis when it is complete.

The impact assessment that accompanies the EM indicates that the benefits of the transparency provisions are difficult to quantify at this stage, and the costs depend on the level of detail required for the disclosure. With respect to the RPT provision, you say that the costs are difficult to quantify due to the lack of certainty around the number of additional RPTs which would need to be reported because of the inclusion of “standard listed companies” in the scope of the Directive. We would like to be updated when you have enough detail on the proposal to be able to quantify better the benefits and the burden on companies.

Your impact assessment makes clear that the proposal will affect all listed companies, including SMEs. We would appreciate details of the number of SMEs that will be affected, and would be grateful if you

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could confirm whether you are consulting groups that represent SMEs, and what their initial views on
the proposal are.

We were interested in the “say on pay” provisions, but noted that the EM did not provide detailed
analysis on this. We would be interested in your views on this aspect of the proposal.

Given that there are a number of aspects of the proposal which require further clarification, and that
you are still in the process of consulting relevant stakeholders, we have decided to hold the document
under scrutiny.

We look forward to receiving a response to our questions within 10 working days.

18 June 2014

Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs,
Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter to Jenny Willott of 18 June, requesting further clarification on specific
points. I am responding following my return from Maternity Leave.

It is important that the UK is able to ensure corporate transparency and good governance. I note the
Committee’s interest in this and, as the proposal is not aiming at maximum harmonisation, hope that
the UK will be well placed to continue to show leadership.

One area where the UK is leading by example is on company beneficial ownership reform. The
Government introduced the “Small Business, Enterprise and Employment Bill” on 25 June. This includes
provisions for the creation of a publicly accessible central register of beneficial owners, reflecting
responses to our discussion document on transparency and trust.

The directive does not cover exactly the same ground but does look at shareholders. We are
satisfied that there is, on the whole, no unhelpful interaction between the two. We will work
proactively with the EU and other Member States to address any inconsistencies that may arise.

The proposed directive does seem to align well with recent UK policy development and frameworks
in some areas. This applies for example to the provisions on directors’ remuneration, which are
overall in line with new UK Regulations that came into force in October 2013.

The Impact Assessment Checklist, published together with the Explanatory Memorandum, included an
estimate of the SMEs that would be affected by this proposal. According to the FAME database, there
are currently 942 listed SMEs in the UK.

We are in regularly contact with a wide range of stakeholders and their contributions and on-going
support and expertise will be important during negotiations. This includes the Quoted Companies
Alliance, the independent membership organisation that champions the interests of small to mid-size
quoted companies.

I am happy to provide further updates on progress as negotiations progress.

1 July 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your letter of 1 July 2014 on the above proposal. This was considered by EU Sub-
Committee B on the Internal Market, Infrastructure and Employment at its meeting of 14 July 2014.

Your response addresses many of our questions. You have answered our query on the impact on and
consultation of SMEs. While we welcome the news that you are consulting with SMEs representatives,
we reiterate our request to be informed of their views on the proposal, as requested.

However, there are a number of questions raised in our 18 July letter which you have not addressed:
the issue of whether it is feasible for the full ownership chain to be uncovered; when the Government
will have enough detail on the proposal to quantify the costs and benefits of the RPTs provision; and
more information on the “say on pay” provisions. We also asked to see details of your analysis of the
measure which deals with the transparency of proxy advisers, when it is complete.
We understand that negotiations are not expected to move forward until the new Parliament convenes in autumn. We would be grateful for an update on negotiations at that point, and answers to our remaining queries.

16 July 2014

SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES (8842/14)

Letter from the Chairman to Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills

Thank you for your explanatory memorandum (EM) of 1 May 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 16 May 2014. We decided to retain the document under scrutiny.

It is unclear from the EM whether you believe that Article 50 of the Treaty on the Functioning of the European Union (TFEU) is the correct legal base for the proposal.

The fact that the Commission previously brought forward a similar proposal under the predecessor to Article 352 TFEU sheds doubt on the Commission’s argument that Article 50 is the correct legal base. In addition, the predecessor of Article 352 was the legal basis of the existing European company forms, i.e. the European Company, the European Economic Interest Grouping and the European Cooperative Society.

We note that you are in the process of considering the issue of competence further. This is a particularly important question, because the requirements for agreement are less stringent under Article 50 than they are under Article 352. The allegation that the proposal goes beyond the competence provided for in the TFEU is a significant one. We would therefore be grateful if you could inform us as soon as possible of your final view on whether Article 50 is appropriate, together with the legal explanation, and let us know the views of other Member States within the Council working group.

I look forward to a response within 10 working days.

18 June 2014

Letter from Jo Swinson MP to the Chairman

I wrote to you on 1 July following your letter of 18th June. I must apologise for the delay in writing again to update you both on the legal base, and on the negotiations of this Directive. I recognise the importance of updating the Scrutiny Committee in a timely manner to ensure that you have sufficient evidence to consider any European proposal and its impact on the UK.

Over the last few months we have been giving consideration to whether the chosen legal base (Article 50) for this Directive is appropriate. The Committee asked for further information regarding
the legal base for the proposal. We have discussed this issue widely and taken note of the views of other Member States.

We remain of the view that there is some scope to argue that the legal base for the proposal should be Article 352. However, we also recognise that, given the manner in which the Commission has drafted the proposal, there are legal arguments to the contrary (i.e. in favour of the chosen Article 50 legal base).

Accordingly, we have decided not to continue to press the legal base issue in our active negotiations on the proposal going forward. We believe that at this stage in the negotiations we should concentrate on trying to obtain changes to the substantive proposal to ensure that the Directive will offer benefits to those UK entrepreneurs or companies who might benefit and to try to align its provisions as closely as possible to the UK company law regime. Therefore we will seek to remove as many burdens as possible from the proposal and to obtain light touch approach where possible.

I would like to draw your attention to an issue that should have been raised with you earlier; I apologise for the oversight. The proposed Directive (Article 1 (2)) would confer a power on the Commission to adopt delegated acts. Part 1 of the Directive applies in relation to the types of company listed in Annex 1, and Part 2 requires that the types of company listed in Annex 1 must be able to convert into a SUP.

The delegated act power would enable the Commission, where there are changes to the types of private limited companies provided for in national law, to amend the list of types of companies contained in Annex 1 to the Directive. We do not believe that the Commission should be given this power and therefore will be seeking the removal of this delegated act power as part of our negotiations.

The Directive would also confer two powers on the Commission to make implementing acts. Article 13(2) confers power to establish a template to be used for the registration of SUPs. Article 11(3) confers power to adopt the uniform articles of association. As part of the Working Group we are considering what elements of these provisions should be left to implementing acts and what should appear in the body of the Directive itself. We will aim to strike a balance between the certainty of wording within the Directive and the flexibility that implementing acts can provide.

The Italian Presidency is considering whether it may be possible to achieve an agreement on the principles of the Directive before the end of the year. With that in mind BIS will continue to argue for the Directive to be light touch and as close as possible to the UK private limited company regime.

I would like to assure the Committee that I recognise that delays on updating the Committee should be avoided. I have therefore asked my officials to ensure that Scrutiny Committees are updated in in a timely manner and reflect progress and changes in the negotiations. Should there be any reason for a delay I have asked that they contact the clerk at the earliest opportunity.

26 November 2014

SIXTH REPORT ON ECONOMIC, SOCIAL AND TERRITORIAL COHESION: INVESTMENT FOR JOBS AND GROWTH (12198/14)

Letter from Greg Clark MP, Minister of State for Cabinet Office (Cities and Constitution) and Minister of State for Universities and Science, Department for Business, Innovation and Skills, to the Chairman

Thank you for your Explanatory Memorandum of 14 August 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

As you are aware, the Committee has a keen interest in the use of EU cohesion funds in the area of jobs and growth, following its recent report on this topic.4 We are aware that the Commission adopted the UK’s Partnership agreement on 29 October 2014. We would be grateful for sight of the European Commission’s response to the UK’s Partnership agreement.

I look forward to a response to this letter in 10 working days.
19 November 2014

Letter from Greg Clark MP to the Chairman

Thank you for your letter of 19 November concerning the adoption by the European Commission of the UK’s Partnership Agreement on 29 October 2014.

I attach [not printed] for your information the Commission’s official decision adopting the UK Partnership Agreement. It should be noted that this decision is a direct notification to the UK and as such will not appear in the Official Journal of the European Union.

The adoption of the UK Partnership Agreement was also accompanied by a press release which can be found on the European Commission’s website at the following address:

Finally, we have placed a copy of the UK Partnership Agreement on the following site:

Please let me know if there is anything more I can assist you with.
27 November 2014

TELECOMUNICATIONS COUNCIL - 6TH JUNE 2014 – POST COUNCIL WRITTEN STATEMENT (UNNUMBERED)

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

I am pleased to enclose [not printed] a copy of my written statement to Parliament outlining the discussions which took place and the positions that the UK took at the Telecommunications Council in Luxembourg on 6th June 2014.

17 June 2014

TELECOMUNICATIONS COUNCIL – 6TH JUNE 2014 - PRE-COUNCIL WRITTEN STATEMENT (UNNUMBERED)

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

I am pleased to enclose [not printed] a copy of my written statement to Parliament outlining the agenda items and the positions that the UK intends to adopt on each of them for the forthcoming Telecommunications Council taking place on 6th June in Luxembourg.

5 June 2014
TELECOMUNICATIONS COUNCIL 27TH NOVEMBER 2014 – POST COUNCIL
WRITTEN STATEMENT (UNNUMBERED)

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

I am pleased to enclose [not attached] a copy of my written statement to Parliament outlining the
discussions which took place and the positions that the UK took at the Telecommunications Council
in Brussels on 27th November 2014.

4 December 2014

TEN YEARS OF ANTITRUST ENFORCEMENT UNDER REGULATION 1/2003:
ACHIEVEMENTS AND FUTURE PERSPECTIVES (11993/14)

Letter from the Chairman to Jo Swinson MP, Minister for Employment Relations and
Consumer Affairs, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum (EM) of 11 August 2014 on the above proposal. This
was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its
meeting of 13 October 2014. The Committee recognise the importance of effective competition law
and thus, welcome the improvements made through Regulation 1/2003. However, we have decided to
retain the document under scrutiny while seeking more information on three separate issues. The
Committee observes that frequently companies are found to be at fault but that no-one is to blame.

First, your EM described very clearly that the concerns raised by the Commission over the powers
and governance of National Competition Agencies are not applicable to the UK. Although the EM
discusses the powers available to the CMA and the independence of its financing and governance, it
does not touch upon the Commission’s concerns regarding sanctions. The Commission states that it
hopes to converge the basic rules of fining practice. The Committee would be grateful to know what
the Government position is on this issue and whether such a regulation would fit into the current UK
framework. Is such a proposal likely to affect decisions in British courts?

Secondly, the EM does not discuss the concerns raised by the Commission about corporate leniency
programmes. These concerns reflect the fact that only a handful of Member States have measures in
place which co-ordinate leniency programmes with corporate sanctions. These measures are
important in order to adequately protect those who come forward with information regarding
infringements. The effectiveness of corporate leniency schemes is essential to incentivise
whistleblowers to take action against cartels. Although the Communication only draws attention to
this issue, without specifying possible solutions, we would be grateful if you could describe current
UK practice in this area, and confirm whether or not it is, in your view, adequate.

Finally, the Committee is interested to know what impact Regulation 1/2003 has had on national
courts. This Committee previously raised concerns that the increased role of national courts caused
by the decentralisation of enforcing anti-trust legislation could lead to divergent approaches in
Member States, encouraging “forum shopping”. Does the Government think that this concern has
become a reality?

17 October 2014

Letter from Jo Swinson MP to the Chairman

Thank you for your letter of 17 October requesting further information on the above Explanatory
Memorandum on the European Commission’s Communication and Staff Working Document on the
operation of the European antitrust regime.

Your first query relates to the European Commission’s concerns about the application of sanctions
and how it hopes to promote convergence of the basic rules of fining practice. The difficulty in
addressing this point lies in the vagueness of the Commission’s proposals. It is difficult to envisage a
way that specific details about the way that fines are calculated could be covered in a revised
Regulation. We do, though, support the existence of a power for national competition authorities to
impose effective fines on undertakings. We would also support discussions on how guidelines are applied, how terms are interpreted and how fines are calculated, with a view to moving toward agreed understandings in this area.

When it comes to the way in which we enforce antitrust provisions we do not believe that the UK is an outlier in Europe so any move to encourage convergence should have a limited impact on decisions taken by British Courts. The UK's model is already aligned with the Commission's fining guidelines so if the Commission should seek to legislate, we would expect that the model used for convergence would be very close to the UK's. However, we would prefer to encourage the Commission to use the softer tools that it has available to encourage more predictable application of European antitrust rules.

Your second point asks for a description of the UK system for coordinating leniency in cartel cases with corporate sanctions. The Commission raises concerns about the effect of the lack of a leniency regime for individuals may have on the likelihood that a whistle-blower would expose a cartel. The UK regime recognises this potential difficulty and provides for complete or partial immunity from prosecution under the criminal cartel offence for individuals who expose the existence of cartels or who cooperate with investigation after an undertaking for which they work has exposed a cartel.

The level of immunity depends on the role of the business in the operation and exposure of the cartel. If a business is the first member of a cartel to come forward and provide the CMA with relevant information relating to a cartel before the CMA begins a cartel investigation, then the CMA will grant immunity from prosecution to that business and any of its current or former employees or Directors who cooperate with the subsequent investigation. If a business is the first to come forward after an investigation has started but before a Statement of Objections has been published by the CMA, then it may still qualify for full immunity, but this not guaranteed. Again, this extends to cooperating current and former employees and Directors. If a business is not the first to come forward or may have coerced another business to take part in the cartel, then the business may only qualify for a reduction in the financial penalty of up to 50%. There is no blanket immunity for employees or Directors in this situation, though the CMA may grant immunity to specific individuals.

I am confident that this leniency regime contributes to a robust and fair system for deterring, exposing and terminating cartel behaviour. The changes to the criminal cartel offence which came into effect in April 2014 were designed to make it easier to prosecute that offence. The criminal and civil sanctions, at both undertaking and individual level are sufficient to provide a real deterrent. The leniency regime, which provides greater leniency for those who blow the whistle on cartels before the CMA starts to investigate, provides effective balance to encourage businesses and individuals to expose cartels and to cooperate in their cessation.

Finally, to address your third point, I am confident that Regulation 1/2003 has not led to an increase in "forum shopping" in respect of anti-trust. Whilst the UK Courts have become a forum of choice, I strongly believe that this is due to the reputation of the UK court system as a robust mechanism for reaching fair and independent decisions. Furthermore, the fact that the Regulation has allowed national courts more easily to liaise with Commission and the success of the European Competition Network has meant that the decentralisation of enforcement has not led to greater divergence in Member States.

I trust that this answers your concerns and I thank you again for writing.

4 November 2014

Letter from the Chairman to Jo Swinson MP

Thank you for your Explanatory Memorandum (EM) of 11 August 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

Your letter covered in some detail the questions we raised in response to this Commission Communication in October. We understand that this Communication has not yet led to any concrete proposals, legislative or otherwise, and we are therefore content to clear this dossier from scrutiny.

We wish to be kept up to date on any proposals that are formed in light of this Communication.

18 November 2014

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Letter from Baroness Kramer, Minister of State, Department for Transport, to the Chairman

I am writing to provide an update on the European Parliament’s consideration of the above proposals and, in particular, its First Reading reports on the Technical Pillar of the Fourth Railway Package, and to note the consideration of “political agreement” texts for the Technical Pillar at the forthcoming Transport Council on 5-6 June.

As you will recall, the Council has already achieved general approaches on the three legislative proposals which comprise the Technical Pillar, namely a recast of the Railway Interoperability Directive, a recast of the Railway Safety Directive and a recast of the Regulation which established the European Railway Agency (“ERA”). The Committee has granted scrutiny waivers in respect of the Interoperability and Safety texts and full clearance for the ERA Regulation.

The Greek Presidency’s provisional agenda for the forthcoming Transport Council did not originally include any aspects of Technical Pillar but, at a very late stage, the Presidency decided to amend the agenda to include discussion of the Technical Pillar political agreement texts. Unfortunately, due to the timing of this change and the Parliamentary timetable, it has not been possible to seek further clearance or waivers from the Committee in advance of the Transport Council. However, the Committee may wish to note that the Technical Pillar political agreement texts are substantively the same as the general approach texts and there are no significant changes. The main amendments are to ensure that the texts are in broad alignment and are consistent with each other following additional Council working groups which have explored some more detailed points.

The political agreement texts remain consistent with the general position the UK supported, and on which the Committee granted waivers or full clearance for, at an earlier stage. However, as the Committee has not had the opportunity to consider the latest position, the UK intends to abstain on the Interoperability and Safety texts, while making it clear in discussions that we welcome the efforts of the Presidency on all three texts and remain supportive of the proposals.

The European Parliament is considering the Fourth Railway Package as a whole and adopted its First Reading position in March. The First Reading positions, including hundreds of amendments across the six legislative proposals which comprise the Fourth Railway Package, are based on the Commission’s original proposals. They therefore do not take account of the general approach texts and, as a result, there are a number of significant disparities in approach which will need to be resolved during the trilogue process. A more detailed analysis of each of the First Reading positions on the Technical Pillar proposals, and the key commonalities or divergences between the texts, can be found in the annexes [not printed] to this letter as follows:

ANNEX A: RECAST RAILWAY INTEROPERABILITY DIRECTIVE; ANNEX B: RECAST RAILWAY SAFETY DIRECTIVE; AND ANNEX C: RECAST ERA REGULATION.

— Many of the divergences are common to all three texts and, in summary, these relate to:
  — Requiring ERA to issue all interoperability authorisations and safety certificates;
  — Requiring Member States to justify all national rules (including existing ones);
  — The development of a number of new registers and databases; and
  — A one-year transposition deadline.

An issue of particular importance to the UK is that the European Parliament’s position does not reflect the ‘choice’ approach agreed at Council, which enables an applicant to seek an authorisation to place a vehicle on the market, which is intended for use in only one Member State, or a safety certificate from the national safety authority or from ERA. In cases of vehicles or operations intended
for cross border operation, the European Parliament and Council are aligned in so far as the only option would be to seek an authorisation or safety certificate from ERA. The UK will be seeking to protect the choice approach as far as possible in further negotiations.

We expect that the trilogue process will not begin until general approach texts on all elements of the Fourth Railway Package have been agreed. We do not expect this to happen until the end of 2014 at the earliest.

The Government will continue to resist, as far as possible, any provisions that might impose unnecessary burdens or additional costs on Government or industry which we think add no value as the dossiers are considered in further detail at European Union level.

We will, of course, continue to keep the Committee informed of progress.

4 June 2014

Letter from the Chairman to Baroness Kramer

Thank you for your letter dated 4 June 2014 on the Technical Pillar in the above package. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 21 July 2014.

We are grateful for your update on the progress of negotiations in the Council and for your analysis of the European Parliament’s First Reading position on the Technical Pillar.

We look forward to receiving further updates on the negotiations on the Package in due course.

23 July 2014

THE PREVENTION AND DETERRENCE OF UNDECLARED WORK (9008/14)

Letter from Jenny Willott MP, Parliamentary Under-Secretary for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing in response to your letter of 15 May and to update the Committee on progress in relation to the proposal to create a Platform on Undeclared Work. The Committee may also want to be aware of the helpful discussion at the Reasoned Opinion debate in the House of Commons on Monday 9 June. The Presidency are pressing hard to secure agreement for a General Approach at the earliest opportunity.

You asked for further analysis in relation to subsidiarity and proportionality. The Commission cited Article 153 (2)(a) of the Treaty of the Functioning of the European Union as the legal basis upon which the Platform would be established. Whilst we had highlighted our concerns about mandation - and these concerns remain - we have secured in negotiation an understanding that any measures proposed by the Platform must remain within the scope of Article 153(2)(a) and, therefore, solely for the purposes of fostering cooperation. It has also been clarified that while participation in the Platform would be mandatory, participation in the specific activities which result, such as cross-border inspection activity, would not.

This would mean that our primary concerns about subsidiarity are lessened. We would, of course, keep this under close scrutiny and as recommendations from the Platform emerge we will want ensure that they are impact assessed for the purposes of subsidiarity and proportionality. Our views are shared by a number of other member states who have similarly raised their concerns.

We also think that the UK’s JHA opt-in is triggered as, for example, the proposal mentions the potential involvement of the police in any future enforcement action.

As I highlighted in the Reasoned Opinion debate, although the shadow economy in the UK is proportionately small, we do take this seriously and have in place enforcement and deterrent measures to tackle the shadow economy. We will press for further detailed analysis of relative issues and cross-border detriment.
This dossier is indeed progressing at a rapid pace and was the only agenda item on which there was substantive discussion at the meeting of Representatives to Council this week. The Presidency introduced its proposal to seek a General Approach at EPSCO on 19 June and sought Member States’ views. The UK was able to form a blocking minority to prevent agreement being reached on the grounds that further time was needed to consider the full implications of the proposal, including the written Council Legal Service (CLS) opinion which was circulated only the previous evening. The Commission has conceded that there were still some issues that needed to be addressed and that it could accept some additional text that would clarify the limitations of the future initiatives of the Platform. The Government will now seek to ensure this further text addresses our concerns set out above.

16 June 2014

Letter from the Chairman to Jenny Willott MP

Thank you for your letter of 16 June 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 23 June 2014. The Committee decided to retain the document under scrutiny.

You say that although membership would still be mandatory, taking part in “activities” would be voluntary. We would appreciate further clarification on this point – what type of action is referred to by the word “activities”? We would also be interested to know what mandatory membership would entail, and whether it is the case that the UK will not be committed to taking any action as a result of its membership to the platform. We urge you to continue pushing for membership to the platform to be non-mandatory – at least for Member States such as the UK, who do not have a large informal economy. Nevertheless, we believe that there would be a benefit to the UK contributing to the platform on a voluntary basis and sharing best practice, given that we have a relatively small informal economy as compared to other Member States.

Your letter suggests that you believe that elements of the proposal dealing with police cooperation are sufficient to engage the UK’s opt in protocol despite the fact that the proposal does not include a Title V legal basis. The House of Lords EU Select Committee’s view on this question, which we have previously shared with you, is that unless or until an EU legislative proposal includes a specific Title V legal basis, we will not comment on whether the opt-in is in operation. Were you to successfully convince the Council that the proposal ought to include a Title V legal basis, the Committee would consider the Government to be bound by the agreed scrutiny procedures which afford the Committee eight weeks to consider the opt-in. We would be grateful for confirmation as to whether you are making representations to the Council to this effect.

Given the contentious nature of this proposal, we ask that you send a copy of the amended text of the proposal well before any agreement takes place.

In our letter of 15 May we asked you to confirm when you will do an impact assessment of the costs that this proposal would introduce at national level, if it were to go ahead. We would be grateful if you could respond to our query and confirm that we can have sight of the impact assessment when it is available.

I look forward to a response in 10 working days.

26 June 2014

Letter from Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills, to the Chairman

I am writing to update the Committee on progress in relation to the proposal to create a Platform on Undeclared work in light of the Reasoned Opinion debate in the House of Commons on 9 June, the Employment, Social Policy, Health and Consumer Affairs Council on 19 June and your letter on behalf of the Committee dated 26 June. I am also writing to seek scrutiny clearance.

Following the helpful debate in the House of Commons and the Reasoned Opinion which was sent to the Council of Ministers and the European Parliament, the Greek Presidency presented a progress report at the Employment and Social Affairs Council on 19 June. Following this, the Italian Minister has indicated that his Presidency would aim to reach agreement on the file as soon as possible.
As you know, when the proposal was first published the Government had a number of concerns which were highlighted in the Explanatory Memorandum (EM). This set out that we were not persuaded that the Commission had established a need for EU-level intervention or that such action will be effective and add value and questioned the mandatory nature of the platform. The Commission has not provided any more evidence. However, as the Committee is aware, negotiations have secured textual amendments to both the Recitals and the Articles which clarify that participation in any activities arising from the Platform’s discussions would be voluntary. This is a significant improvement to the proposal. Although we accept that membership of the Platform would be mandatory, this clarification means that the UK would not be required to take part in activities arising from the Platform, although we might choose to. The only remaining obligations are to nominate an enforcement authority to attend and participate in the meetings of the Platform, and these requirements are not onerous. With that in mind I do not believe we should oppose the requirement for the UK to participate in the Platform. We will need to continue to guard against the possibility that the Commission might try to direct national policy in their pursuit of common principles and guidelines further downstream. Participation will help us to do this. As a result, and because the Government considers that there is JHA content in this proposal, the Government is therefore minded to opt-in.

The Government intends to continue to participate constructively in negotiations on the establishment of the Platform to ensure that participation in all activities remains voluntary.

In your letter dated 26 June you asked a number of questions on behalf of the Committee which I deal with below.

**IN TERMS OF VOLUNTARY ACTIVITIES, WHAT TYPE OF ACTION IS REFERRED TO BY THE WORD ‘ACTIVITIES’?**

Recital 10 states that the Platform ‘should also encourage cooperation between the different enforcement authorities of Member States participating in such cross-border actions on a voluntary basis. Recital 12 gives examples of actions that the Platform could initiate such as ‘joint training, peer reviews and solutions for data sharing…European campaigns or common strategies’.

In terms of what activities are referred to in the main Articles of the proposal, Article 4(1)(e) states that one initiative of the Platform would be to promote and facilitate ‘innovative approaches such as exchanges of staff and joint activities’. Furthermore Article 4(1)(i) states that another initiative of the Platform would be to ‘increase awareness of the problem [of Undeclared Work] by carrying out common activities such as European Campaigns and coordinating regional or Union-wide strategies, including sectoral approaches’.

Therefore the exact nature of the cross-border operational actions arising out of the Platform’s discussions has not yet been decided. However, the UK has been successful in its negotiations to ensure that the wording of the Proposal provides clarity on the non-mandatory nature of these actions. The Government is not against all hypothetical activity arising from the Platform and may take part in activities which suit the national interest. The important point is that the UK is involved in the discussions of the Platform which lead to potential activities in order to negotiate and influence what these activities are. It will then be up to us, following the negotiations, as to whether we wish to be involved in the activities.

**WHAT WOULD MANDATORY MEMBERSHIP ENTAIL?**

The legal base that the Commission has identified for the Platform (Article 153(2)(a) TFEU), can be used to make membership mandatory for Member States, in so far as that membership will in turn encourage cooperation. The obligations that may be adopted on the basis of Article 153(2)(a) may only be of a practical nature for the organisation of the work of the Platform, e.g. requiring Member States to attend meetings. Article 153(2)(a) cannot be used as the legal basis for measures creating any substantial obligations on Member States, whether directly or indirectly.

**IS IT THE CASE THAT THE UK WILL NOT BE COMMITTED TO TAKING ANY ACTION AS A RESULT OF ITS MEMBERSHIP TO THE PLATFORM?**

The only requirement will be for us to nominate an enforcement authority to attend and participate in Platform meetings. I confirm that any activities arising from the Platform will be voluntary.
WE URGE YOU TO CONTINUE PUSHING FOR MEMBERSHIP TO THE PLATFORM TO BE NON-MANDATORY

We accept that membership of the Platform is mandatory in so far as that attendance is a way of encouraging cooperation. This is not onerous and we view it as a measure which seeks to promote cooperation within the scope of Article 153(2)(a).

However, as stated above, the important thing is that the activities arising out of the Platform will not be mandatory, although we may choose to take part in them.

CONFIRMATION OF WHETHER YOU ARE MAKING REPRESENTATIONS TO THE COUNCIL REGARDING THE LACK OF A SPECIFIC TITLE V LEGAL BASIS.

The Government considers that the activity against which the co-operation is directed (failure to declare work) is treated as a criminal matter in many Member States. Furthermore, the co-operation set out in the proposal includes cross-border co-operation – for example, initiatives that facilitate joint operations of inspections and exchange of staff. Recital 13 of the proposal sets out the enforcement bodies that may be engaged, and includes the police, customs authorities, and public prosecutors. On this basis, we consider that the proposal requires law enforcement authorities to collaborate with the Platform, that the proposal therefore engages Article 87 TFEU (police cooperation), and the JHA opt-in is triggered.

The Government accepts that Article 153(2)(a) is an appropriate legal base for this measure as the underlying purpose of the Platform is to enhance cooperation between Member States on the issue of undeclared work which is within the scope of Article 153(2)(a). We consider therefore that the chances of being able to successfully challenge the legal basis of the measure before the CJEU after adoption are very low.

However in addition to Article 153(2)(a), the Government has been pressing during negotiations for Article 87 TFEU to also be added as a legal base to the proposal. The Government has not been successful during these negotiations (although we have been successful in clarifying the language of the Proposal and ensuring that participation in cross-border activities arising from discussions would be voluntary). However, as you are aware, the Government’s policy is that the decision to assert the opt-in is taken on the basis of content, not legal base.

Given the importance that is placed on cooperation of enforcement matters in the proposal, the Government considers the JHA provisions to be a significant part of the Platform’s constitution. We therefore consider this to be a ‘partial JHA measure’ as set out in the Home Secretary and Justice Secretary’s letter to the committee of 3 June. As a result, and as set out in that letter, in the event that a Title V basis is not added, and the UK does not opt-in, we will still be subject to the requirement to participate in the Platform. In other words, we will be obliged to do so whether we formally opt-in or not.

The opt-in period expires on 15 July. By this point, the Government will need to have taken a decision and to have asserted the opt-in.

The opt-in decision will be seen as a political statement of our support for, or opposition to, this measure. Some Member States who share our concerns about fraud and abuse of EU free movement rights consider undeclared work to be a damaging example of such abuse and therefore this measure is very important to them as part of that broader agenda. Whilst the Government considers that the primary responsibility for action on undeclared work lies with Member States, we believe that opting into this proposal would be useful in relation to delivering our wider position on the abuse of free movement rights.

Moreover, given the general support for this proposal amongst a number of Member States, there is a risk that the initiatives and the remit of the Platform (including the role of the Commission) develop and increase over time. UK participation in the meetings of the Platform means that we can help steer the direction of travel and hopefully limit the level of ambition held by other Member States.

For all these reasons the Government believes, in the national interest, the UK should opt into this measure and is minded to do so.
CONFIRM WHEN YOU WILL DO AN IMPACT ASSESSMENT OF THE COSTS THAT THIS PROPOSAL WOULD INTRODUCE AT NATIONAL LEVEL, IF IT WERE TO GO AHEAD.

The Government does not intend to prepare an impact assessment of the cost of this proposal as the legislative burden and regulatory impact arising from the proposal are now minimal and there will be no burden on business. The financial implications (which fall to Government) are also expected to be minimal as the only cost should be attending Platform meetings.

In conclusion, while the Platform remains rather ill defined, the Government thinks through negotiations we have changed it for the better and on that basis we think it would be in the UK’s interests to participate. Accordingly, I would ask for the Committee’s clearance of this proposal.

7 July 2014

Letter from Jo Swinson MP to the Chairman

Further to my letter dated 7 July, this is to inform the Committee that in accordance with Article 3 (1) of Protocol (No 21) to the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, the Government has exercised the United Kingdom’s opt-in in respect of the Proposal for a Decision of the European Parliament and of the Council on establishing a European Platform to enhance cooperation in the prevention and deterrence of undeclared work, to the extent that the Proposal provides for law enforcement co-operation in relation to the prevention, detection and investigation of criminal offences in accordance with Article 87 of the TFEU.

16 July 2014

Letter from the Chairman to Jo Swinson MP

Thank you for the letters of 7 July and 16 July 2014 from Jo Swinson MP on the above proposal. They were considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 21 July 2014.

We see your position on the mandatory nature of the proposal as being unconvincing: your response does not adequately address our concerns with respect to the appropriateness of a mandatory platform. You say that the platform remains rather “ill defined”, that the exact nature of the cross-border operational actions arising out of the Platform’s discussions has yet to be decided, and observe that there is a possibility that the Commission might try to direct national policy in its pursuit of common principles and guidelines further downstream. However, despite this risk of ‘competence creep’ and the lack of certainty around what the proposal will require in practice, you are content not to attempt further negotiations on a non-mandatory membership of the platform for Member States such as the UK, who do not have a large shadow economy. We disagree with the rationale behind this position.

Your position on the question of the JHA opt-in is also hard to understand. You say that you see a challenge to the legal basis as unlikely to succeed and report that you have been unsuccessful in negotiations to change the legal basis to include police cooperation (Article 87). Nevertheless, you maintain that the opt-in is engaged. You say that in the event that a Title V legal basis is not added (which seems most likely) and the UK does not opt-in they will still be subject to the requirement to participate in the platform. Essentially then, the assertion of the Government’s right to opt-in or -out has no legal effect, and operates purely as a political statement. We are concerned that the use of the opt-in measure is a political symbol rather than a legal measure and risks creating legal uncertainty.

Given the contentious nature of this proposal, we repeat our request for a copy of the amended text of the proposal before any agreement takes place.

In light of these concerns we have decided to retain the document under scrutiny.

I look forward to a response in 10 working days.

23 July 2014
Letter from Jo Swinson MP to the Chairman

Thank you for your letter dated 23 July on behalf of the Scrutiny Committee.

I am sorry that the Committee is not convinced by the Government’s view about the mandatory nature of the proposal and that it disagrees with our approach to the Platform. I can reassure the Committee that through negotiation we have managed to achieve changes to the text which clarify that participation in activities arising from the Platform’s discussions will be voluntary. While membership of the platform itself will be mandatory our view is that membership of the Platform, given the improvements we have secured to the text, will not be onerous. We will continue to work with like-minded member states to ensure this continues to be the case. My view is that we would not be able to block this proposal and that therefore it better serves UK interests to engage constructively both in the negotiations and the Platform itself.

In relation to the Committee’s view concerning the Government’s position on the Justice and Home Affairs (JHA) opt-in, I would underline that the Government has acted following careful assessment of the proposal’s content. As I indicated in my letter dated 7 July, the Government considered that the opt-in was triggered by the proposal as it requires law enforcement authorities to collaborate with the Platform and therefore engages Article 87 (police cooperation). The Government is committed to taking all opt-in decisions on a case-by-case basis, putting the national interest at the heart of the decision making process. In this case, the Government decided that it was in the national interest to opt in to this proposal because opting in is likely to complement the Government’s policies on labour market abuse and after considering the wider political implications of opting in.

As set out in the Home Secretary and Justice Secretary’s letter of 3 June, the Government’s starting point is that the UK’s JHA opt-in Protocol is triggered when a proposal contains any JHA content. The Government will then push for the addition of a Title V TFEU legal base. However, the Government recognises that, as in this instance, for measures where JHA is one of the predominant purposes of the measure, notwithstanding our opt-in decision, the UK would be bound by a JHA measure if it is adopted without a Title V legal base. The Government is committed to taking an opt-in decision on all proposals that contain JHA content, whether or not they cite a Title V legal base, and to consider post-adoption whether we wish to bring a challenge before the CJEU to measures that contain JHA content but no Title V legal base.

You asked for a copy of the amended text of the proposal before any agreement takes place and I will send you the final text before any EPSCO meeting to agree it. I note that the Committee has decided to keep the proposal under scrutiny.

4 August 2014

Letter from the Chairman to Jenny Willott MP

Thank you for the letter of 4 August 2014 on the above proposal. It was considered by EU Subcommittee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

In the light of the concerns expressed in our letter of 23 July, we have decided to retain this document under scrutiny, and look forward to receiving a copy of the amended text of the agreement. We appreciate your undertaking to let the Committee have sight of the text, and ask that it is sent in enough time to allow the Committee to scrutinise it before agreement is sought.

I look forward to a response in due course.

11 September 2014

Letter from Jo Swinson MP to the Chairman

Thank you for your letter dated 11 September regarding this proposal. It was considered at Coreper on 24 September where the Presidency’s proposed text was agreed without amendment. I attach [not printed] a copy of the text.

The proposal will now be considered at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 16 October where it will be tabled for a General Approach. The UK maintains its Parliamentary scrutiny reserve, but the Government would be inclined to vote in favour of the
proposal for the reasons supplied in my letter to the Scrutiny Committee dated 4 August, a copy of which is attached [not printed]. I do not believe we are going to be able to improve the proposal beyond what we have at the moment.

Accordingly, in case there is a vote, I must ask whether the Committee is now willing to lift its reserve. In the event that the Committee declines to lift its reserve the Government will abstain should a vote be called for. I do appreciate that that this will pose a difficulty in that, unfortunately, there will be little time for the Committee to respond before the Council takes place, but I would nevertheless be very grateful for a response before then if possible.

9 October 2014

Letter from the Chairman to Jo Swinson MP

Thank you for the letter of 9 October 2014 on the above proposal. It was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

The Committee agrees that it is important to address the issue of undeclared work, not just due to the budgetary implications but the knock on negative social effect this has for the labour market in general. Due to the timing of the receipt of your last letter, on the 9 October, the Committee was unable to consider your request for a scrutiny waiver ahead of the 16 October EPSCO Council meeting. We understand that the House of Commons decided not to grant a scrutiny waiver on this document.

In previous correspondence on this dossier, you informed the Committee that the purpose of supporting this proposal was to make a political statement of the Government’s support for measures which address the abuse of free movement rights. As this dossier progresses through the European Parliament we wish to request more information about the practical implications of this proposal. The EM on this dossier, notes that an Impact Assessment has not yet been completed. The Committee wish to have sight of this assessment once it is complete.

We also invite your views on the following issues. Do you think that the Government’s decision to include this proposal under a Justice and Home Affairs opt-in will affect its implementation? The Committee have in the past disagreed with the Government’s view that the content of this proposal, and not its legal base, makes it eligible for the Justice and Home Affairs opt in.

The Committee would like to know which relevant authority will represent the UK on this Platform and whether you are engaging with this authority on the proposal. Article 5 of the proposal requests that each Member State has a single point of contact from their relevant national authorities to participate in the Platform.

Article 11 declares that after four years of being in force, this Decision will be reviewed and evaluated according to the extent that the Platform contributes to the achievement of the objectives set out in Article 2. There is a risk that improvements on the qualitative objectives for this Decision will be difficult to assess across Member States. We would like to know if the Government has any plans to negotiate on the content of this review and whether you share the Committee’s concerns. If this evaluation were to be effective, it could provide an important means of holding the Platform to account.

Finally, we are interested to know how the Government intends to make best use of this Platform, considering that attendance is mandatory but subsequent action is not. What steps will the Government take to prevent this Platform becoming a box ticking exercise for the national authorities involved?

I look forward to a response in due course.

18 November 2014
Letter from the Chairman to Ed Vaizey MP, Minister for Culture, Communications and Creative Industries

Thank you for your explanatory memorandum of 14 May 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 23 June 2014.

In its consideration of the proposal for a Regulation on a Single Market for Telecoms (13555/13), and other legislation related to radio spectrum policy, the Committee has consistently shared the Government’s position that due to the finite (and highly coveted) nature of radio spectrum, Member States should continue to manage its use. As you note, any further intervention in this area could raise subsidiarity concerns. Your EM states that the Commission will report to the European Parliament and Council on the spectrum inventory by mid-2014. We request that we are kept fully informed at that point about any future action the Commission intends to undertake in order to meet the additional demands in this area.

While this document does not bring forward any legislative proposals, we recall that the Single Market for Telecoms proposal would provide for coordinated spectrum assignment, giving the Commission the power to approve or amend any decision on radio spectrum allocation being taken by a Member State. We have outlined our opposition to this aspect of the proposal in previous correspondence with you, and we welcome your reassurance that you share our concerns. Your EM confirms that other Member States are unanimously against the coordinated spectrum provision. In our 25 March 2014 letter on the Single Market for Telecoms proposal, we asked for an update in due course on the many issues still to be resolved (including the coordinated spectrum provision). We note your response of 16 May and would be grateful for a further update as and when negotiations progress significantly.

We look forward to a response in due course.

26 June 2014

Letter from Ed Vaizey MP to the Chairman

The purpose of this letter is to provide an update of progress on the Connected Continent package following the recent Telecoms Council, as well as address the specific issues arising following the meetings of the committees when this business item was last considered.

During those meetings of the scrutiny committees of both Houses, the Connected Continent proposals were considered alongside a Report covering the implementation of the Radio Spectrum Policy Programme (RSPP) (Ref: 9175/14). It was during the course of those meetings that both committees noted the link between the two business items. Although clearing the RSPP item, the Common’s report asks some points of clarification regarding the spectrum management element of the Connected Continent package and this response also takes those into account below.

POST-COUNCIL UPDATE

I believe a courtesy copy of the post-Council written statement to the House was sent to your committee as it was deposited and I attach as Annex A [not printed] to this letter for reference.

In summary, there was no debate on the relevant business item at Council – a Progress Report from the out-going Greek Presidency – covering the proposal and a single Member State (Estonia) intervened and supported the Report’s Conclusions of focusing efforts on where agreement could be easily reached. Commissioner Kroes also intervened and offered support for taking action on mobile roaming charges and the European Parliament’s proposal on handling the consumer protection elements. These are in-line with current UK policy. However, she also stated that she believed the majority of Member States supported legislative action on net neutrality and spoke in support of the Commission’s spectrum proposals – both current UK Red Lines. She also stated again that the Regulation was not ‘a la carte’ underlining an expectation that each of the major elements would be retained in any agreed Regulation in some form.
In their intervention, the incoming Italian Presidency stated that this package would form one of three priorities for their Presidency and they supported the Commission in terms of its ambition on reaching an agreement by the end of this year, as well a retaining each of the major elements.

In the margins of Council, I hosted a Ministerial multi-lateral with my counter-parts from Italy, Spain, Denmark, Poland and Romania and an official representing the Germany. This was building on the earlier German/UK initiatives. As a result of this meeting, it was agreed that this group would work together on producing an alternative text by shaping the Commission’s original proposals to those more in line with the collective view of Council. This work would form the basis of a planned Council Compromise text. This work is just beginning and I plan on reporting in more detail once the outcomes of this group become firmer, but I believe this group is well-placed to drive a Presidency text which incorporates the major elements of current UK policy on the proposals.

**NEXT STAGES/TIMELINE**

With this in mind, I believe that the following represents the anticipated timetable for progress of the proposal, with relevant major mile-stones:

- **Mid-July:** Working Group to complete first read-through as Italians assume Presidency. Multi-lateral group working on alternative texts. Presidency to call for written comments on Commission’s proposals from Member States

- **End-July & Summer break:** Officials continue to draft & consider alternative texts.

- **August:**

- **September & Presidency produce Council compromise text. Further deliberations**

- **October:** within EP and Council.

- **November:** Negotiations continue. Possible Trialogue sessions with EP after Presidency gains mandate from Council. Draft Telecoms Council agenda indicates Council to adopt General Approach (27th)

- **December Onwards:** Proposal formally adopted by Council and EP

However, there remains a clear risk that Council may not be able to agree upon the compromise text. If this situation arises, it may cause slippage into early 2015. Further, there is another risk that the proposal may be withdrawn by any incoming Commissioner under certain circumstances. This latter risk is largely unquantifiable at the moment, as it is subject to the timetabling of the appointment of the new College of Commissioners. It is likely this process itself will miss its deadline of start of November, and I am aware that Commissioner Kroes will remain in post until that process is complete. These proposals may therefore gain some extra negotiation time during that interregnum.

**SPECIFIC ISSUES**

I now turn to the specific issues raised by the Commons committee in their latest Reports covering 9175/14 and this proposal.

**A. SINGLE AUTHORISATION**

In my previous letter, I noted the risks from this proposal in terms of creating an increase in regulatory burdens, as well as leading to disputes between national regulatory authorities. Since that letter, discussion on this specific element has moved on and a simplification of the proposal has gained support from both Council and the European Parliament (EP). As such, the proposal is now centred on creating a harmonised notification form to be implemented by those administrations that operate a notification process. The outcome should be a simplification of bureaucracy as operators need to engage with a single format with standardised content. Those Member States that do not operate a notification scheme – such as the UK – do not have to introduce its use.
I am content that this outcome, if accepted, will address and mitigate UK’s main concerns with this specific element of the overall proposal and is in line with HMG’s general policy aims.

B. SPECTRUM

In the Report covering 9175/14, the Commons committee asks: detail on the Commission’s long-term concerns that are driving the spectrum proposals; what changes UK is proposing to the existing governance structure; and the prospects for securing an agreement with the Commission and EP that safeguards the existing competence balance. I address each in turn below.

The main locus of the Commission’s concerns is based around what it perceives to be a negative impact of the existing spectrum management processes on the continued integration of the telecoms single market. They believe that the current system prevents operators from securing spectrum on a pan-EU basis, results in a fractured spectrum allocation process and this, in turn, hampers the roll-out of pan-EU digital services (both current and potential new services). The Commission believes that a harmonised approach to spectrum auctions under their oversight will go some way in rectifying what it sees as a collective failure to manage the EU’s spectrum in an efficient and effective manner. The Commission view the partial implementation of the Radio Spectrum Policy programme (RSPP) as symptomatic of the situation.

In terms of what changes the UK would seek to the existing governance structure, the changes we support are around the existing committee known as the Radio Spectrum Policy Group. Its current role is as a high-level advisory group assisting the Commission in developing radio spectrum policy for the EU and it has been noted that this group has played a pivotal role in driving harmonisation of the technical aspects of spectrum management in EU. The UK proposal is based around evolving the RSPG's current role to address the concerns of the Commission that drive their proposals. It has the advantage that it would not create new Commission powers over spectrum management and these changes can easily be brought in action through amending the RSPG Decision (a relatively simplistic process compared to negotiating a directive or regulation). Whilst there is general agreement in Council regarding this proposal, the specifics have yet to be agreed.

In terms of whether this proposal will be successful, it is currently very difficult to judge but is not impossible to draw some general conclusions. Whilst the proposal enjoys a high level of support from Council (and this is in parallel with general opposition in Council to the Commission’s proposals) it does run counter to the known positions of the Commission and the EP. However, the proposal has every chance of gaining traction with both as negotiations progress, as Council continues to resist the spectrum proposals and thus reduce the probability of an overall agreement being reached within the indicated tight deadline. A final acceptance of the proposal covering the spectrum element by both Commission and EP needs to be set against their perceived desire to achieve an agreement that retains populist measures, in particular action on mobile roaming and improved consumer protection, and whether they are prepared to sacrifice such outcomes in order to stick to their current positions on spectrum. I believe that this situation should not be underestimated and may very well result in this proposal being contained in the agreed Regulation.

C. NET NEUTRALITY

The issue of net neutrality is rather more finely balanced than that of spectrum. There are clear supporters for taking regulatory action across Council, many of them larger Member States with accompanying QMV voting weights. However, the final position of many Member States remains unknown at this juncture but many will develop once the Compromise text becomes apparent. The Commission is keen to retain this element of the proposal and this proposal has the firm support of the EP, which tightened-up the original proposals. This has had the effect of firming-up support of the Commission’s text from stakeholders generally as the ‘lesser of two evils’.

I remain convinced that any regulation may stifle innovation and that a self-regulatory approach is most appropriate and has largely worked in the UK. There is some support for this position. This coupled with general opposition to the Commission’s proposals mean that this element of the proposal still requires some further development before being able to offer a firmer view on likely outcome.

However, I believe that it is appropriate, as required by my Cabinet clearance on this proposal, that I consider other options and outcomes at this stage, taking into account the most recent developments
in this policy space. I anticipate that there will be some activity at official level over the next three months as the Compromise text is worked-up and I suggest that I provide a further update on developments at that juncture.

I conclude by noting that agreement on the proposals is still some way off, has a number of obstacles to overcome, and may not be achieved at all; as such it is difficult to predict the exact outcome. I believe that the next 3 months are the most critical and unless the Presidency Compromise text is able to garner support across Council, it is unlikely that any wider agreement can be reached with the Commission and EP. However, the UK is in a prime position to be able to inform the Compromise text and drive wider processes.

With this in mind, I propose that I write my next update once the Presidency has produced that Compromise text; in that update I will compare the text with the UK’s negotiating position, as well as provide an update on wider issues associated with the proposal.

You are, of course, more than welcome to raise any issues regarding the proposal with me in the interim.

10 July 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letter dated 16 May 2014 on the above proposal, and for your letter dated 17 June 2014 on the outcome of the Telecommunications Council meeting held on 6 June 2014. These were considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 7 July 2014.

We are grateful for the comprehensive update you provided in your letter of 16 May on the progress of negotiations on the draft Regulation, and for identifying what you see as the main risks to the UK’s negotiating position. This Committee has on numerous occasions expressed its concerns about various EU proposals concerning the allocation of spectrum, and whether they are within EU competence. The Government share many of these concerns, and we have stated our support for your negotiating position in Europe on spectrum allocation. We therefore note with interest your letter concerning the Telecommunications Council meeting on 6 June that you did not intervene in the discussion when Commissioner Kroes insisted that the proposal’s plans for spectrum allocation did not represent a transfer of competence to the EU. Does this mean you are now satisfied with the proposed Regulation with regard to spectrum?

In your letter dated 30 January 2014, you said that “whilst it is usual for a new European Parliament to be bound by the decision of the previous in terms of First Readings, there is a mechanism whereby the new European Parliament can trigger a new First Reading process. This is a small risk and officials are monitoring the situation.” We would be grateful for an update on the new European Parliament’s position in due course.

Similarly, Neelie Kroes, Vice-President of the Commission, and Commissioner for the Digital Agenda, has been adamant during the negotiation process that the package should not be split up, and that it is “all or nothing”. We would be grateful for an update on whether her imminent departure from the Commission may influence the Italian’s Presidency’s thinking on whether the proposal can be split up into smaller more easily agreeable packages, as called for by the UK and Germany.

We have decided to retain the proposal under scrutiny, and look forward to hearing from you on the above points by the end of the month if possible.

14 July 2014

Letter from Ed Vaizey MP to the Chairman

Thank you for your letter of 14th July requesting some points of clarification on the latest developments; my responses are below.
SPECTRUM

My most recent update – dated 10th July – dealt extensively with issues of spectrum and appears to have crossed with your most recent letter. However, I respond to your specific question below.

Following the Telecoms Council, officials’ discussions confirmed that Commissioner Kroes’ statement regarding competence is not a view generally shared by Council, nor more widely, and that my legal advice remains the same ie the Commission’s original proposals for a role in national spectrum auction processes constitutes the creation of new and extensive powers for the Commission. As such, my non-intervention during the agenda item covering the outgoing Presidency’s Progress Report was more as a result of advice on an approach for handling that item, rather than an indication of being content with any part, or the entirety, of the proposed Regulation.

Thus, I can confirm that I remained convinced that there are serious risks related to the Commission’s proposals regarding national spectrum auction processes, ie a role to review and possibly ‘veto’ a Member State’s auction plans. As such, UK continues to push for alternatives to be adopted ie changes to the existing governance structure through evolving the role of the Radio Spectrum Policy Group. This approach has wide support across Council.

However, the European Parliament (EP) and the Commission still support proposals for a role for the latter and negotiations continue regarding this element. I am anticipating that the Presidency will build on, and take into account the earlier work of the joint UK-German initiative and the ongoing work instigated by the multi-lateral I hosted after Council, as well as taking into account the latest discussions on same when putting forward its Compromise text, due in late-September. As such, this matter remains very much alive and not yet decided, with UK’s main risks and concerns as yet unaddressed but with ongoing attempts to manage this situation.

EUROPEAN PARLIAMENT’S FIRST READING

The newly elected EP is due to enter its own Summer recess after Thursday 17th July. As yet, there has been no indication of any intention to recall the previous EP’s First Reading on this package; I will revert as and when this possible outcome manifests itself.

PRESIDENCY PLANS

At the Telecoms Council, the incoming Italian Presidency confirmed that it supported Commissioner Kroes’ view regarding retaining each element within the proposed Regulation. This view was confirmed when I recently met with my Italian counterpart, where he spoke of retaining the breadth of the Regulation but what was clear that the extent or depth of each element was yet to be decided. As such, the imminent departure of Commission Kroes is not anticipated to have a discernable outcome on the content of the finally agreed Regulation in terms of reducing it to a single (or several) smaller packages.

However, it is clear that some of the proposals - such as changes to the Chair of BEREC - have no support across the European institutions and stakeholders and so we can anticipate that they will fall from the finally agreed Regulation. Further, Commission officials recently stated that they regarded action on roaming, spectrum and net neutrality as their ‘Red Lines’ and this may be an indication of the final content.

Therefore, the final formation and content of the Regulation remains very much in a state of flux and is quite difficult to predict at this stage. With this in mind, I believe that I will have a better understanding of the likely outcome once the Presidency publishes its first draft of its Compromise text in late-September and the European institutions begin to react to its content. My recent letter to you proposes that I send an update upon the publication of the Compromise text and I trust that you are content with this proposed course of action.

However, please feel free to write to me in the interim should you wish to raise any other issues regarding the negotiations of this package.

17 July 2014
Letter from the Chairman to Ed Vaizey MP

Thank you for your letters dated 10 and 17 July 2014 on the above proposal. These were considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We are grateful for the comprehensive update you provided in both your letters, and for your clarification of the Government’s negotiating stance on spectrum allocation, net neutrality, and single authorisation. Your explanation of the Italian Presidency’s position, and timeline for agreeing the proposal was also useful.

We look forward to receiving a further update from you once the Presidency publishes its compromise text on the proposal. In the meantime, we continue to retain the proposal under scrutiny.

11 September 2014

Letter from Ed Vaizey MP to the Chairman

You may recall my last letter in July that set out expectations that, over the Summer, Member States were to provide the Presidency with written comments on the Connected Continent proposals, with suggestions for a way forward and content of the package. The Presidency then committed to create a Compromise text based on these comments and the discussion at Working Group that took place earlier this year. The Presidency has now produced that text and this updating letter provides: an analysis of that text in comparison to the original Commission proposals, highlighting the main points; considers the impact of same on current UK negotiating policy for this package; provides some reporting on progress since, before setting out the next steps in the immediate future.

Comparison of text and assessment on impact on UK policy positions & aims

In order to aid with the process of comparing the Presidency text with the text of the original Commission proposal, I have produced a summary table that is attached [not printed] to this letter as Annex A [not printed].

To begin, Changes to BEREC (Article 38), single authorisation (Articles 3 to 7) and wholesale access products (Articles 17 & 18 and Annexes I & II) have been dropped from the Regulation, although there remains scope to take some form of limited action on the latter two that would be in line with current HMG policy, as is the outcome generally. As such, I am content with this proposed action.

The remainder of the package is clustered around 4 main elements that each presents a series of issues and I cover each of these in turn.

On consumer protection (Articles 21, 22 and 25 to 30) the text addresses the UK’s main concern regarding this element by introducing a ‘minimum’ harmonised approach achieved through changes to the existing Universal Service directive. This is codified through an extensive drafting of existing Article 36. The text also modifies some of the detailed requirements as a balance is sought between providing consumers with relevant information without incurring excessive burdens for operators. I am generally content with this outcome and progress made thus far as this is in line with UK policy on same.

Regarding spectrum (Articles 8 to 16) the text represents an improving situation whereby there is a reduced level of Commission oversight of spectrum auctions and no longer includes an associated transfer of powers. It is worth noting that any Commission ‘veto’ has been dropped. The Presidency text does propose changes to the role of RSPG to harness potential benefits from greater coordination of spectrum management at EU-level. It also adopts UK’s proposal for 25-year licence durations. Thus, the general travel of direction is improving but as is often the case with spectrum management, the devil is in the detail and it is the detail that causes me some concern.

An analysis of the text shows that RSPG’s new role is codified in such a way that it would be, in effect, carrying out the same role that the Commission had originally proposed for itself, but without a veto. Further, this action would only be triggered by Commission ‘permission’ therefore undermining the concept of allowing Member State proactivity for managing spectrum through and amongst peers on the RSPG. There also remain concerns around risks associated with lack of legal certainty created by this process.
Additionally, a new Article 12a allowing for Member States to enter into joint authorisation agreements is, in better regulation terms, unnecessary as there is currently nothing to stop Member States from doing so at this moment.

Further, despite their retention and minor alterations, there seems to be little support for Articles 14 – 16 generally. The subsidiarity concerns with some of these proposals noted in previous letters remain and with limited Member States support, it is not clear this text can remain within any overall agreement.

As such, whilst the text is an improvement on the original Commission proposals, there remain sufficient concerns that would prevent HMG agreeing this iteration and we would seek to address the above before being able to do so.

An interesting development has occurred with the mobile roaming element. The text does put forward the introduction of a ‘roam like at home’ (RLAH) solution but has introduced a new ‘phasing’ mechanism based on a Presidency-proposed version of ‘fair-use’ that was not present in the joint text put forward by UK, Germany, The Netherlands and Denmark.

In summary, the current text proposes that a phasing-in of a ‘RLAH’ solution would begin with a sliding fair use ‘allowance’ based on an EU average of mobile usage in 2015 (‘Year Zero’). Then, in Years One to Three, a consumer would be provided with an increasing allowance of 50%; 75%; and 100%. Current voice usage would see a consumer having an initial allowance of around two minutes per day rising to four minutes per day in Year 3. This is based on assumption of introduction of RLAH in 2016; the Presidency text is mute on this point. Such a minimal ‘allowance’ is clearly not acceptable nor is it a true ‘RLAH’ solution that I am seeking.

Further, this added requirement appears to be introduced not to address the known risk of ‘arbitrage’ but to allow operators time to adjust to an end of roaming. As such, it is highly likely to fail to address the competitive distortions caused by variations in retail prices and wholesale costs across the MSs. It is my view that it is not appropriate to pre-empt discussions on ‘fair use’ in this way, which does not allow for qualitative metrics. This proposal has not featured in prior Council discussions nor in Member States’ written comments and appears to be based on a proposal made by an operator based in an EFTA state.

Whilst the text is not far from the principles that UK seeks, there is a general view is that the text is not acceptable and UK should stick with our current policy and associated text and, as such, I cannot agree to the text as proposed. The matter of net neutrality remains problematic in both that the text retains a regulatory proposal, as well as how it is drafted. Whilst the accompanying explanatory memorandum for the text suggested a move by the Presidency towards a more principle-based approach, the text is much closer to the proposal put forward by the European Parliament than expected and remains overly-prescriptive, could be unworkable in practise and includes definitions of net neutrality and specialised services that UK would find it difficult to live with. The exclusions for legitimate traffic management are also unclear.

On the positive side, the text is clearer regarding child protection measures, including the voluntary filtering of child abuse images by ISPs and parental control filters, but further work would be needed to give ISPs the legal certainty for these measures. Stakeholders have also raised concerns regarding an impact on the existing UK ‘default-on’ parental control regime that ISPs are have asked to implement. It was noting that when this section of the text was discussed at Council Working Group, it was clear that Council is still polarised on this issue. There is a danger that unless there is significant movement, the whole package may be threatened. In response, the Presidency recognised that the Council wished to see a more principle-based approach and have committed to address this.

Given how this is developing, UK retains its view that self-regulation is a viable option but we remain isolated in that position; I am monitoring developments in this area and am considering if UK could have greater influence over the outcome if we change our stance on same.

There is one matter arising in that the EEA/EFTA-states have sponsored an amendment to the BEREC Regulation that seeks to change their membership status on BEREC. Its aim appears to try to address a particular issue around implementation of single market actions derived from BEREC in their domestic markets. I am currently researching whether UK can support, or should oppose, this amendment. There may be single market improvements to be capitalised upon as a result, but there
are also obvious sensitivities around membership status of non-EU states on EU Agencies. There is little support from Council for this amendment and thus it is unlikely to make any final draft.

In summary, the Presidency has produced a text that is largely in-line with UK ambitions for a ‘simplified’ Regulation and that text generally codifies some movement in the right policy direction for the UK overall. However, there still remain concerns regarding the spectrum element and there are new concerns arising from the mobile roaming element; these both represent some challenges for the UK moving forward. In addition, the text retains a proposal for regulation covering net neutrality and this remains a matter that is currently a UK red line.

REACTION TO THE TEXT AND NEXT STEPS

Focusing on reception to the text overall, Council’s initial reactions expressed through a recent Working Group show that, in terms of the package overall, Council remains split. There is some overall agreement to act on both net neutrality and roaming but there is no common agreement on ‘how’ for either. Only the consumer protection element enjoys universal support across Council, as does the action of dropping the proposals I note above.

The text was also the subject to an informal discussion over dinner by Ministers at the recent Informal Telecoms Council (whose main focus was internet governance issues). This roundtable again showed that Council is split regarding the package. There are a core group of Member States, including the UK, who seek to secure an agreement by the end of the year. There are a similar number who have indicated they could reach agreement if a series of issues are addressed. These two groupings are balanced by those who seek further discussion, research and generation of new impact assessments to reflect the new text or those calling for with withdrawal of the package.

As a result of this debate, the Presidency has indicated that they will deprioritise this package and favour progress on the Network and Information Security (NIS) package. This places a large risk on the UK’s priority objective of introducing a RLAH mobile solution by 2016.

Thus, it is clear is that the Presidency text still requires some further development before it will reach a point of universal support across Council and more widely across the European institutions and that this may involve further shaping, and possibly, further simplification of its content. It is also clear that further reinvigoration of the package is required and officials are currently taking action to support the Presidency to do so. One possible action could see this package the subject of Conclusions agreed at the upcoming October European Council.

In the interim, I plan on giving further consideration to what elements of the package where the UK can offer a compromise in order to successfully secure action on mobile roaming. One possible scenario would be for the UK to heavily influence any regulation on net neutrality using its own Internet Code of Conduct to draw up a principles-based regulation (either as a directive or recommendation) that would provide Member States with sufficient bandwidth to take into account their national markets, as well as provide clarity on existing powers for national regulatory authorities. However, such a compromise could only be made should our headline objective of action on mobile roaming be achieved; I would require clearance from Cabinet colleagues before doing so.

Therefore, I do not intend to seek the lifting of the existing scrutiny reserve until it becomes clear that the text has sufficiently evolved and UK’s concerns and aims addressed so that an agreement can be reached across the European institutions.

As such, the next four weeks will see if the package can be progressed in any meaningful way and thus I suggest that I write again towards the end of October once its fate has become apparent. However, you are more than welcome to write to me if you have any immediate questions raised by this letter.

9 October 2014

Letter from Ed Vaizey MP to the Chairman

Following the last meeting of your committee when this matter was considered, it was requested that I provide an update on latest developments as we approached the Telecoms Council, due to be held on 27th November. I believe now is an appropriate time to do so, especially so given the Presidency’s ambition for a General Approach at the Telecoms Council, covered in the relevant section below.
DEVELOPING THE UK POSITION

As we approach what are likely to be the final stages of negotiation, it has become increasingly clear that the UK has been isolated in its opposition to the introduction of any regulation on net neutrality. In order to manage this situation, maximise UK’s influence over the final result, we have reviewed our position with specific regard to net neutrality. We consider that we could support an outcome-focused regulation that embodies the spirit of the current self-regulatory system currently operating in the UK. Such an approach would also help improve the functioning of the single market and provide clear consumer benefits.

However, this change in our approach is intended to ensure that the UK can achieve an overall positive outcome that would lead to the cessation of mobile roaming charges for consumers within the EU – a ‘roam like at home’ solution as detailed in previous letters – as well as securing wider benefits from the package such as those offered by additions to the existing level of consumer protection. I believe that this approach is the most appropriate moving forwards.

PROGRESS AT COUNCIL WORKING GROUP

Since my last letter in October, there have been a number of sessions at Working Group considering the package and the new Presidency text.

The outcomes of these discussions show that there is consensus on how to handle:

— Single Authorisation – remove the original Commission proposals and consider introducing a harmonised notification template;
— Wholesale Access Products – remove the original Commission proposal and consider whether a market review is necessary and act upon any evidence of need for action;
— Consumer Protection – adopt the European Parliament’s approach of minimum harmonisation achieved through changes to the existing Universal Service Directive; and
— Changes to the Appointment of Chair of BEREC Office – remove the original Commission proposal and retain existing provisions.

These are all in-line with UK negotiating objectives.

There is a general political commitment towards abolishing mobile roaming charges within the EU, although questions remain over the mechanism to achieve this and the timing for its introduction. The UK remains committed to achieving a ‘roam like at home’ outcome, effective as soon as is possible and we continue to strive to achieve that outcome.

There is also a general consensus on the introduction of a regulation on net neutrality although, like roaming, there is currently a lack of consensus on approach.

There remain some areas of disagreement between Council and the Commission on how to approach future spectrum management and no detailed discussion yet taken place on this section of the text on how to resolve this lack of agreement. UK’s position remains one where we do not wish to see an oversight role for the Commission in such matters and to evolve the role of the existing Radio Spectrum Policy Group; this remains the favour approach by of Council.

In summary, some progress has been made and the general direction of travel is one that favours a simplified approach as long-championed by the UK and has the potential to realise a demand-side and consumer-centric solution that would help drive the digital single market and be of real benefit to UK businesses and consumers.

TELECOMS COUNCIL AND A PROPOSED GENERAL APPROACH

The Italian Presidency has tabled a General Approach on the package at the Telecoms Council on 27th November. This is an ambitious move given the current state of negotiations but one that the UK supports given our overall commitment towards an early agreement of a simplified package.
In order to ensure that UK is able to take part in the discussion of, and agree to any General Approach, I would like to request that your committee provides a scrutiny reserve waiver, thus allowing UK to support a General Approach that fits our existing negotiating position.

This request is based on the understanding that should the proposed General Approach fall outside the UK’s current negotiating mandate, I will not be willing to agree same.

NEXT STAGES

I will ensure that you will receive, as usual, courtesy copies of my Pre- and Post-Council statements that will provide detail of further developments over the short term, and I propose that I write again following the Telecoms Council to report on outcomes of same and any likely next stages in more detail.

However, you are more than welcome to write to me if you have any immediate questions raised by this letter.

14 November 2014

Letter from the Chairman to Ed Vaizey MP

Thank you for your letters dated 9 October and 14 November on the above proposal. These were considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 24 November 2014.

We are grateful for the comprehensive update provided in your letters, and for the accompanying tables illustrating how the Presidency’s compromise text compares with the Commission’s original proposal and the Government’s objectives.

We have decided to retain this document under scrutiny. However, we have agreed to your request to grant a scrutiny waiver ahead of the Telecoms Council on 27 November 2014. This allows the Government to vote in agreement with a General Approach on the condition that it complies with the terms specified in your letter. We look forward to receiving your post-Council statement on the matter.

24 November 2014

TOWARDS MORE EFFECTIVE EU MERGER CONTROL (11976/14)

Letter from the Chairman to Jo Swinson MP, Minister for Employment Relations and Consumer Affairs, Department for Business, Innovation and Skills

Thank you for your Explanatory Memorandum (EM) of 31 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014.

We welcome the Commission’s thorough approach to consultation on these proposals, and note that the stakeholder views raised in its 2013 consultation are reflected in these proposals. Nevertheless, we seek clarification on a number of points.

We note that although the changes introduced by the Commission’s proposal for a targeted transparency system are fundamental, recent cases have demonstrated the need for greater control over minority shareholdings. The fact that the UK, Austria and Germany are the only Member States where national authorities can rule on minority shareholdings indicates some control is needed at EU level to protect companies transacting across borders.

In its White Paper, the Commission places importance on the fact that any system of overseeing minority shareholdings should not place unnecessary burdens on businesses. We agree that this is an important consideration, and ask for your view on whether the 4-6 month investigation period outlined in the Commission’s proposal for a targeted transparency system risks significantly compromising legal certainty, given that the companies can begin transacting within this window.
There are a number of issues related to definitions that are not addressed by the proposal for a targeted transparency system in its current form. These would need to be resolved in the text of any legislative proposal.

Firstly, as the proposal currently stands, the parties would have to assess whether they are competitors or have a vertical relationship to determine whether their transaction would give rise to a competitively significant link. The White Paper does not provide guidance as to the scope of these definitions and indicated that the term “competitor” in this context should not be limited to competitors in rigorously defined antitrust product and geographic markets. This could risk reducing legal certainty for businesses.

Secondly, the concept of “vertical link” is very broad. The Commission does not discuss the nature of the vertical relationships that would be deemed to create a competitively significant link, or whether a de minimis threshold would apply. To avoid unnecessary information notices, it would seem appropriate to require vertical links to exceed certain thresholds. For example, a vertical link could be said to exist only if the parties’ purchases and sales exceeded both certain absolute values and minimum percentages of their total purchases and sales.

Thirdly, the nature of the rights that would make a shareholding of between 5 per cent and 20 per cent “significant” is also unclear. Presumably the ability to “exert influence” refers to veto rights but this is not clear. Similarly, the right to obtain access to competitively sensitive information implies rights greater than general information rights under applicable corporate law, but again this is not clear. In our view, it is important that a clear definition of competitively significant links is arrived at, to avoid a situation where acquirers err on the side of caution and file information notices in cases where there are no competition issues, in order to obtain legal certainty.

The Commission’s proposal for streamlining case referrals seems to be based on sound logic. The current two-stage process increases burdens on businesses that wish to refer cases to Member States, so a reduction in bureaucracy would seem welcome. Furthermore, the proposal goes some way towards preventing parallel decisions at EU and national level, for example, by increasing the flow of information, and giving the Commission power to invite Member States to request a referral.

The proposals seem to be based on a reasoned analysis of the current EU mergers regime, and on extensive consultation. However, we would be grateful for a response to our questions, and have therefore decided to retain the document under scrutiny.

11 September 2014

WORKING TIME: INLAND WATERWAY TRANSPORT (11688/14)

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

Thank you for your explanatory memorandum of 30 July 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 8 September 2014. We have decided to retain the document under scrutiny.

Your explanatory memorandum explained clearly the possible implications of the proposal on inland waterway transportation in the UK. However, we would be grateful for more detailed information on the number of companies and inland waterway workers in the UK that are likely to be affected by this proposal.

We note your opposition to the proposal as currently drafted, and your view that national legislation which guarantees the same core labour rights to inland waterway workers as the Commission’s proposal should be allowed to remain in Member States with no cross-border links.

We would be grateful to receive an update on the Government’s negotiating position at least five working days in advance of the Employment and Social Policy Council meeting on 16 October.

11 September 2014
Letter from John Hayes MP, Minister of State of State, Department for Transport, to the Chairman

Thank you for your letter of 11 September on the above proposal. I am writing in response to your request for more detailed information and to let you know about progress in negotiations.

The proposal has been discussed at the Social Questions Working Group on 18 September and 3 October. However, it is not yet clear whether there is sufficient support for a political agreement to be reached at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 16 October.

WORKING TIME FOR INLAND WATERWAYS TRANSPORT

This proposal applies to mobile workers in inland waterways transport. It implements maximum daily work periods and minimum daily and weekly rest periods, while providing flexibility on average weekly working hours (which could be calculated over a period of 12 months). This is intended to allow for seasonal peaks and troughs in the workload. It also introduces free annual health assessments for all mobile workers and specifies record keeping arrangements based around those required on sea-going ships.

IMPACT:

An Impact Assessment Checklist is attached [not printed]. The proposals are intended to cover commercial inland waterways transport, which includes carriage of goods and passengers.

The Maritime and Coastguard Agency has records for passenger ships (carrying more than 12 passengers – which the MCA surveys annually) but very limited information about smaller passenger-carrying craft or freight vessels, as these vessels are not subject to regular survey and are usually registered with local navigation authorities. The assessment of the impact on each of those groups has been drawn from discussions with the main trade associations, identified below.

There are currently around 295 companies operating around 540 passenger ships on UK inland waterways. (This data is drawn from the MCA’s certification database.)

The Office of National Statistics figures for employment in inland waterways transport (the latest available are provisional figures for 2012, and are shown only to the nearest hundred) show 800 full time and 300 part time employees working in passenger transport, and 200 full time and 100 part time employees in freight transport. We cannot tell from the data how many of those workers work on the vessels when they are moving and are therefore likely to be subject the proposed directive, but it is expected to be a high proportion.

Although for most of these companies, the tightening of limits on working time will have little or no impact, the new rules may inhibit freight operations on smaller tidal rivers. All operators would however be subject to new administrative burdens which I believe are disproportionate for the majority of UK operators.

The overall cost to the UK economy would be small – well under £1m per year - but with disproportionate impact for those affected, in particular reducing the scope for modal shift of heavy loads onto the smaller tidal rivers.

CONSULTATIONS:

The proposals have been discussed with the Commercial Boat Operators’ Association (CBOA), which represents inland waterways freight operations, and the Passenger Boat Association (PBA), an affiliate of the British Marine Federation which is the largest association representing passenger operations on UK inland waterways.

We have also had correspondence with Nautilus International, which was represented in discussions on the SPA through the European Transport Federation, and supports the proposed Directive.

The PBA is chiefly concerned about the administrative burden of health assessment and record keeping. These burdens are also a concern to the CBOA, but they have a specific concern about the
practicality of the proposals for operations such as those on the tidal Trent, which are constrained by depth of water at low tide and the strength of the flood tide.

Nautilus International supports the Directive, on grounds of health and safety, but has indicated a willingness to discuss the practical implications and to look for solutions which do not compromise the safety benefits of the proposal.

PROGRESS:
Discussions in Working Group have centred around the scope of the agreement, which several Member States, including the UK, feel is unclear. The Commission said that any attempt to define the terms “inland waterways” or “mobile workers” in the Directive would risk limiting the scope of the SPA, which was deliberately broad.

Some Member States object to the proposal on the grounds that they would be required to transpose a directive which has no practical effect because they have no waterways and therefore no waterways transport. The Commission advise that the Directive is addressed to all Member States, and that only those which, as a matter of geography, have no inland waterways could make a case for not transposing it.

Subsequently, the Presidency produced a compromise proposal for a new recital drawing attention to the limitation of the application of the Directive as a result of geography (i.e. those countries with no inland waterways cannot by definition have any inland waterways transport). However, this does not apply to the UK and in discussions to date the compromise proposal has not satisfied the Member States which raised this issue.

On the definition of mobile workers, the Commission argues that it should apply to anyone who works on a vessel when it is moving. This reinforces our concern, shared by some other Member States, about the impact of measures suitable for large commercial freight operations on small passenger vessels offering tourist trips.

We are not the only country to have concerns about the representativeness of the SPA in this case. The Commission argues that the legal process have been followed and all the relevant checks made to ensure that the agreement is representative, legally valid and appropriate. However, I remain unconvinced that, where concerns were raised in consultation with Member States which were not fully represented during negotiations, these have been properly followed up by the Commission.

There has been growing pressure on the Commission to return to the social partners who negotiated the Agreement to clarify the intended scope and application. This step has not been agreed, but the Commission has agreed to bilateral discussions with the UK to consider our concerns, particularly on the workability of the minimum hours of rest on smaller tidal waterways.

We propose also to use this opportunity to make the case for flexibility (within the constraints of what is safe), perhaps along the lines of permitting “authorised exceptions” agreed between the two sides of industry and authorised by the competent authority, which exists for under the social partners’ agreement on seafarers’ hours of work (Directive 1999/63 as amended by 2009/13/EC).

If these discussions persuade the Commission to return to the social partners, the proposal will be withdrawn from the 16 October EPSCO agenda. We would then seek clarification on the scope of the SPA, and if necessary provisions for flexibility in applying the agreement in a practicable way to the UK’s non-linked waterways.

Without further change, we intend to oppose the Directive at EPSCO on 16 October and express our disappointment at the speed with which the Presidency has taken this proposal forward, given Member States’ concerns. We expect that there will be a significant number of other countries also opposing, but it is not yet clear, due to ongoing discussions, whether there will be a blocking vote.

I will write again to let you know how further negotiations progress.

9 October 2014
Letter from the Chairman to John Hayes MP

Thank you for your letter of 9 October 2014 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 17 November 2014.

We are grateful to you for clarifying the number of companies and employees in the UK who will be affected by this proposal. We note that you share some similar concerns about the proposal with other Member States and you appear to be making some progress in convincing the Commission to re-examine the basis of its consultation with social partners. Your suggestion to use a precedent in existing legislation for “authorised exceptions” as a solution to the difficulties in negotiating this proposal seems a reasonable one.

Due to the relatively small impact that this proposal will have in the UK, and the progress you appear to be making in negotiations, we have decided to clear the proposal from scrutiny.

19 November 2014

Letter from John Hayes MP to the Chairman

Thank you for your letter of 19 November. I am writing to advise you of further developments, including the Presidency’s intention to seek a political agreement at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 11 December.

As a result of the concerns Member States continued to raise at the Social Questions Working Group (SQWG) meeting on 3 October, the proposal was withdrawn from the agenda for the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 16 October, as it was clear that there was insufficient support for a political agreement to be reached.

In response to pressure from Member States, the Presidency wrote to the Social Partners who negotiated the agreement seeking to resolve some of the concerns which had been raised by the SQWG, including questions relating to the intended scope. However, as the questions asked by the Presidency did not fully reflect the points which had been made by the SQWG, the answers received have not allayed Member States’ concerns.

The proposal was discussed at a further SQWG on 18 November, but without any progress being made, as Member States did not feel that the consultation with the Social Partners had taken the proposal any further forward. Despite this, it is likely that the Presidency will be able to achieve a political agreement at EPSCO on 11 December.

CONSULTATIONS:

My letter of 9 October reported on the consultations we have undertaken. Since then, the Maritime and Coastguard Agency has continued to discuss the proposals with the Nautilus International, the Commercial Boat Operators’ Association, and the Passenger Boat Association (PBA). There was also discussion of the proposal at the Domestic Passenger Ship Steering Group meeting, which includes non-PBA members.

These meetings confirmed that while the majority of operators will be able to comply with the proposed maximum working time and minimum rest periods, and the rules on working days and rest days and limits on night work, concerns remain about the administrative burdens of health assessment and record keeping, and the inability of those operating on the tidal Trent to comply with the requirement for 6 hours uninterrupted rest in each 24 hour period has not been addressed by the Commission or the Presidency.

Nautilus International has indicated its support for the UK’s need for flexibility to deal with the unresolved issues.

UK POSITION:

The Government will continue to stress the distinct characteristics of different national waterways, and the need for flexibility to deal with this. This would be in keeping with the defined nature of a directive (Article 288 of the Treaty on the Functioning of the European Union) which is -
A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

However, in the light of earlier discussions with the Commission and the Presidency, and given the late stage now reached, it is very unlikely that any explicit provision to this effect will be forthcoming. The Government will not agree to measures likely to adversely affect the industry. Neither should we support a one size fits all approach – we need to consider the peculiarities of the circumstances, and although we acknowledge the objective of the Social Partners in bringing forward this proposal it is against our national interest to support it. We therefore expect to vote against the Directive, and table a minute statement explaining our reasoning, including concerns about the handling of this dossier.

I will, of course, continue to keep you informed of developments.

27 November 2014