HOUSE OF LORDS
European Union Committee

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

This edition includes correspondence from 1 January 2017 – 30 April 2017

EU INTERNAL MARKET SUB-COMMITTEE

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PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ENFORCEMENT OF THE DIRECTIVE 2006/123/EC ON SERVICES IN THE INTERNAL MARKET, LAYING DOWN A NOTIFICATION PROCEDURE FOR AUTHORISATION SCHEMES AND REQUIREMENTS RELATED TO SERVICES, AND AMENDING DIRECTIVE 2006/123/EC AND REGULATION (EU) NO 1024/2012 ON ADMINISTRATIVE COOPERATION THROUGH THE INTERNAL MARKET INFORMATION SYSTEM (5278/17)

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 30 January 2016 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 30 March 2017.

We share your support for a liberalised EU services market and note the Government has called strongly for better enforcement of the notification procedure. However, we require further information about the potential impact of this proposal and have some concerns regarding subsidiarity.

We welcome your commitment to further examine the possible implications of the timelines in the proposed procedure and the potential additional administrative burdens and cost to the UK. Please would you share your findings with us? Do you have, or plan to undertake, analysis on the legal consequences of non-compliance with the proposed procedure? If so, please would you also share the outcome with us?

We understand that that the French Sénat and Assemblée Nationale and the German Bundestag and Bundesrat have issued Reasoned Opinions in relation to this proposal. Please would you comment on these and any other subsidiarity concerns that have been expressed in the working groups? We ask that your response specifically refers to the following views raised in the Reasoned Opinions:

- The Commission has not adequately justified the need for a new procedure.
- The proposal is disproportionate, particularly given the existence of infringement proceedings and the EU pilot procedure.
- The TFEU Articles cited by the Commission are unable to serve as an adequate legal basis for the proposal.
- The proposal may be undemocratic and would subject "every parliamentary activity bearing any relation to services…to approval by the European Commission, an executive institution".

Lastly, please would you give us an indication of when this proposed Directive is expected to be implemented?

We have decided to retain this document under scrutiny. We look forward to a response to our questions and a general update on working group negotiations within 10 working days.

30 March 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

I am writing to respond to your questions dated 30 March and to request that you consider granting a scrutiny waiver for this proposal, as you will be unable to seek further clarification before the prorogation. Negotiations in working group are proceeding at pace, with the Presidency having now produced two compromise texts. Divergences of opinion amongst Member States remain. We understand that the Presidency hopes to reach a General Approach on the text during their term, although this may not be possible given current Member State positions. In response to your specific requests:

1) ***To provide updates on the possible implications of the timelines in the proposed procedure and the potential additional administrative burdens and cost to the UK.***

Under the 2006 Services Directive, Member States are already required to notify the Commission of new or amended rules affecting businesses that provide services. The current proposal introduces an obligation to notify draft regulation at least three months prior to adoption. To implement this, we would need to amend the Provision of Services Regulations 2009 to require competent authorities (such as regulators, local authorities and the devolved administrations) to notify draft measures with at least three months' notice. We envisage that improved coordination measures would be necessary to ensure all competent authorities meet those timelines.

The proposed Directive would extend the scope of the notification procedure for regulations affecting establishment and cross-border provision of services, which currently lacks clarity and coherence. The scope of the notification requirement for regulations affecting cross-border provision is currently wider than that for establishment: the scope for cross-border covers any requirements on service providers, while for establishment the scope covers only those requirements listed in the Services Directive's Article 15 'grey list'. This proposed Directive expands the scope of the notifications required for restrictions on establishment to cover all authorisation schemes, professional indemnity insurance requirements and restrictions on multi-disciplinary practice.

As the proposal currently stands, if the Commission has concerns about the compatibility of a measure with the Services Directive, it would be able to issue an 'alert' resulting in a further three month period where the legislation may not be adopted to allow for proper evaluation of the measure. Member States will be required to justify why the measures are required and demonstrate proportionality. The proposed Directive would also extend the existing Decision procedure whereby the Commission requests a Member State to refrain from adopting measures deemed incompatible with the Services Directive. This procedure would be extended to cover cross-border provision, as it currently applies only to requirements for establishment listed under the Article 15 'grey list'.

At EU level, this proposal will improve the functioning of the Single Market by ensuring that new measures comply with the Services Directive. At the UK domestic level, we do not believe the extended scope of the proposal will significantly increase the cost or administrative burden of notification. The UK has an excellent approach to domestic regulation due to our commitment to better regulation principles and independent Regulatory Policy Committee, which ensures that our regulation of services does not impose a disproportionate burden on business and therefore does not constitute a disproportionate barrier to trade. In the development of in-scope measures, we already assess compliance with the Services Directive. This greatly reduces the risk of our own legislation being challenged after notification through the 'alert' mechanism or extended Decision procedure.

2) To provide analysis on the legal consequences of non-compliance with the proposed notifications procedure.

The Commission and the Council Legal Service's assessment is that committing a 'substantial procedural breach of a serious nature' in the adoption of a measure may render the measure inapplicable, with impacts on relations between individuals, as is the case with the notification procedure set out in the Technical Standards Directive (2015/1535) (see the case of CIA Security International SA v Signalson SA and Securitel SPRL (C-194/94) [1996] ECR I-2201). This could have the effect of making the enforcement of the Services Directive through the notifications procedure significantly more effective.

3) To comment on the reasoned opinions of the French Sénat and Assemblée Nationale and the German Bundestag and Bundesrat, and any other subsidiarity concerns that have been expressed in the working groups.

I note the reasoned opinions of the French Sénat and Assemblée Nationale, as well as those of the German Bundestag and Bundesrat, which you referred to in your letter. I do not share the concerns expressed in these reasoned opinions: the objective of deepening the Single Market through reform of the notifications procedure cannot be achieved at national level, and these proposals do not represent a concern for the principle of subsidiarity. The Commons Scrutiny Committee has also agreed that the proposal does not breach the subsidiarity principle. In response to the specific concerns highlighted in your letter:

a) Whether the Commission has adequately justified the need for a new procedure.

The Commission has adequately justified the new procedure on the grounds that the current procedure is ineffective. A need for effective notification is significant, as Member States frequently adjust their services regulation to account for market developments and policy objectives. In the current notification procedure, possibilities to prevent the introduction of disproportionate national regulation are limited: Member States are not obliged to notify draft regulations before they have been adopted and external stakeholders have no access to notifications, leading to a lack of transparency. Regulatory requirements are permitted if they are non-discriminatory, justified by a public interest and proportionate. However the current notification procedure doesn't contain a clear obligation for Member States to provide a thorough and explicit assessment against these criteria. Current notification obligations are wide in scope for requirements on temporary cross-border service provision, but are more limited regarding establishment requirements. Moreover, there is a lack of clarity and, in practice, an absence of consequences for failure to notify.

The UK has consistently advocated for improving the notifications procedure, including by ensuring that the proportionality of proposed measures is properly assessed before they are adopted; by increasing transparency for Member States and stakeholders; and by strengthening the ability of the Commission to prevent the adoption of a proposed measure where it has concerns about the compatibility with EU law, as currently exists in the regulation of goods. I believe the current proposal achieves these objectives.

b) Whether the proposal is disproportionate, particularly given the existence of infringement proceedings and the EU pilot procedure.

The current procedure does not allow for sufficient scrutiny of proposed measures, fails to encourage a constructive dialogue before measures are finalised, and allows too many disproportionate measures to be enacted. The infringement procedure is slow and the number of successful infringement proceedings has historically been low. This procedure leads to remedial changes to already adopted legislation and fails to prevent the enactment of disproportionate barriers. The current proposal improves several aspects of the existing notification procedure, enhancing the Commission's power to prevent Member States from adopting any clearly disproportionate measures. Member States will be required to justify why the measures are required and demonstrate proportionality.

The three month consultation period prior to adoption will also improve transparency and promote dialogue between Member States and the Commission, providing the latter with a broader understanding of measures adopted by Member States. This is particularly important as the Commission has indicated that the EU pilot procedure will be used in fewer circumstances in future and will no longer act as an automatic first stage in the infraction process. In this context, the current proposal has added value as a potential mechanism for promoting dialogue between Member States. The proposed Directive will improve the enforcement of the Services Directive, and the procedural requirements are proportionate to that aim. I would note that the requirement to notify three months in advance of adoption is already present in respect of draft technical regulations and standards that apply to goods and information society services, in accordance with the Technical Standards Directive (2015/1535).

c) Whether the TFEU Articles cited by the Commission are unable to serve as an adequate legal basis for the proposal.

The aim of this proposed Directive is to increase the free flow of services in the Single Market by enhancing the notification procedure to ensure compliance with the Services Directive. The Services Directive aims to effectively eliminate obstacles to the freedom of establishment and the free movement of services. This proposal is based on Articles 53(1), 62 and 114 TFEU. Article 53(1) concerns the take-up and pursuit of activities as self-employed persons, and Article 62 provides that Article 53(1) is applicable to the free movement of services. This corresponds to the legal basis provided for the Services Directive. Article 114 is the legal basis for measures approximating national laws which have as their object the improvement of the conditions for the establishment and functioning of the internal market. Our analysis suggests that Articles 53(1), 62 and 114 TFEU provide an adequate legal basis for this proposal, for which there are clear legal precedents.

The reasoned opinions of the German Bundesrat and Bundestag also argue that the proposal represents a fundamental shift in the legal relationship between the Commission and Member States. I do not agree with this view; I believe this represents a procedural change rather than a fundamental shift in policy. As the Council Legal Service has argued, the proposal corresponds to the logic of the

Services Directive which sets out the role of the Commission as guardian of the Treaties on Services. The Commission Legal Service has also noted that under ECJ case law, once the Commission has established the existence of a barrier to the Single Market in Services, the burden of proof shifts to Member States to demonstrate that the proposed measure is justified and proportionate – this proposal is entirely in line with that principle.

d) Whether the proposal may be undemocratic and would subject "every parliamentary activity bearing any relation to services…to approval by the European Commission, an executive institution".

I do not believe this proposal would significantly constrain the ability of the UK Parliament to legislate. I would note that Member States are already required under EU law to make sure that the measures they adopt in relation to cross-border services and establishment are in compliance with the Services Directive. This proposal relates to the procedure for notification of those measures and poses no additional substantive restrictions on the content of the legislation that may be adopted by Member States.

4) To provide an indication of when the proposed Directive is likely to be implemented.

At this moment, it is not possible to reach a judgement on this issue. As the proposal stands, the transposition deadline is 1 year following the Directive's adoption by the Council of Ministers and the European Parliament. The Maltese Presidency is aiming to reach General Approach during its term. On March 29, the UK invoked the Article 50 exit procedure, beginning a two-year exit negotiation period that may be extended by unanimous agreement. While we remain a member of the EU, the UK will comply with all of its responsibilities and obligations, including the implementation of EU legislation.

I hope these answers are useful. As you will be unable to seek further clarification before the prorogation, I would like to request that you consider granting a scrutiny waiver for this proposal. We will provide further updates as negotiations progress and I will gladly answer any further questions after the prorogation

19 April 2017

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

5278/17: PROPOSAL FOR DIRECTIVE LAYING DOWN A NOTIFICATION PROCEDURE FOR AUTHORISATION SCHEMES AND REQUIREMENTS RELATED TO SERVICES

5281/17: PROPOSAL FOR A DIRECTIVE ON A PROPORTIONALITY TEST BEFORE ADOPTION OF NEW REGULATION OF PROFESSIONS

Thank you for your letters dated 19 April 2017 on the above proposals. The EU Internal Market Sub-Committee considered these letters at its meeting on 27 April 2017.

We welcome your clear and detailed responses to our questions. However, in relation to the proposed notification procedure, we are unclear on the meaning of part of your response regarding the legal consequences of non-compliance. Please would you clarify how a procedural breach of a serious nature "impacts on relations between individuals"?

The Committee has agreed to grant scrutiny waivers on both of these proposals, if they are put forward for a General Approach at a Council meeting during dissolution. If no agreement is reached during this period then the documents will once again be under the scrutiny reserve.

We look forward to a detailed update and response to our question in due course.

27 April 2017

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 30 January 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 30 March 2017.

We share the Government's support for a liberalised EU services market. However, there are several areas of this proposal where we require more information.

You set out your intention to ask the Commission for greater clarity on when a proportionality test would need to be conducted. Please would you keep us informed of the outcome of this request? We also welcome your intention to investigate the administrative costs that would be incurred as a result of the Directive and request that you share the outcome of this with us.

Please would you also set out how this proposal interacts with the proposed revisions to the notification procedure as set out in your EM dated 30 January 2017, numbered 5278/17? Would this proposed proportionality test for the regulation of professions be a part of the revised notification procedure?

The EM notes a general concern, from relevant organisations, that healthcare professionals should not be included in the scope of the proposal. We are also aware that Reasoned Opinions have been issued by the Austrian Federal Council, German Bundestag and Bundesrat and the French Sénat and Assemblée Nationale, some of which raise concerns about the potential impact on Member State's ability to regulate matters relating to public health. Please would you outline the specific concerns expressed by the healthcare sector in the UK? How does the Government believe this proposal would impact the UK's healthcare sector?

Finally, the EM highlights the uncertainty around what would happen if another Member State, stakeholder or the Commission challenges, or otherwise finds fault with, a proportionality test. In our view, significant subsidiarity concerns would arise if this scenario resulted in any binding action on a Member State. In this case, the process would, in effect, impact a Member State's ability to decide whether or how to regulate a profession. Please would you set out the Government's position on this issue and let us know if greater clarity on the process has been gained through discussions in the working group? We ask that your response also refers to the proportionality concerns raised in the abovementioned Reasoned Opinions.

Lastly, please would you give us an indication of when this proposed Directive is expected to be implemented?

We have decided to retain this document under scrutiny. We look forward to a response to our questions and a general update on working group negotiations within 10 working days.

30 March 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy

I am writing to respond to your questions dated 30 March and to request that you consider granting a scrutiny waiver for this proposal, as you will be unable to seek further clarification before the prorogation. I am pleased to be able to inform you negotiations in working groups are progressing well, and we are hopeful that a compromise text that is acceptable to the UK will be agreed shortly. To answer your specific questions:

1) ***"You set out your intention to ask the Commission for greater clarity on when a proportionality test would need to be conducted. Please would you keep us informed of the outcome of this request?"***

The Commission has stressed that while the requirement to conduct a proportionality assessment covers a wide range of potential regulatory changes, its intention is that the depth and comprehensiveness of such an assessment should be proportionate to the scale of the regulatory change envisaged. Member States including the UK have sought in working groups to clarify this point within the text and this is reflected in the drafts currently being considered.

2) ***"We also welcome your intention to investigate the administrative costs that would be incurred as a result of the Directive and request that you share the outcome of this with us"***

The Government already conducts proportionality testing that is broadly in line with the requirements of the proposed Directive. We have an excellent approach to domestic regulation due to our better regulation principles and independent Regulatory Policy Committee, which ensures that our regulation of services does not impose a disproportionate burden on business and therefore does not constitute a disproportionate barrier to trade. As such, any new administrative costs incurred by the Government will be minimal.

Directive 2005/36/EC ("the Qualifications Directive") already includes an obligation for Member States to assess the proportionality of professional regulations. This means that the devolved administrations and competent authorities throughout the UK will have processes in place to ensure that legislative, regulatory and administrative changes that restrict access to or pursuit of a profession are proportionate. For this reason, we do not expect administrative costs to increase significantly, as the costs will relate largely to ensuring that the process in the proposed Directive is followed.

3) ***"Please would you also set out how this proposal interacts with the proposed revisions to the notification procedure…Would this proposed proportionality test for the regulation of professions be a part of the revised notifications procedure?"***

It is the Commission's intention that, where a proposed regulation falls within the scope of both this Directive and the proposed Directive on notification procedures, that the requirements of both will apply.

4) ***"Please would you outline the specific concerns expressed by the healthcare sector in the UK? How does the Government believe this proposal would impact the UK's healthcare sector?"***

The Department of Health has been liaising with UK healthcare bodies concerning the proposed Directive. These bodies have been broadly supportive of the proposals and consider they are in line with the criteria that UK would expect its healthcare regulatory bodies to apply before introducing new regulation. An initial concern was raised that patient safety was not included as a justification for new regulation, but the Commission has since made clear its view that patient safety falls within public health, which Member States enjoy a higher margin of discretion in regulating to protect.

Healthcare bodies are also keen to ensure that the adopted Directive does not impose an unnecessary administrative burden, or represent an erosion of Member State competence in the area of professional regulation. For the reasons outlined above, I am satisfied that the additional administrative burden on healthcare regulators will be minimal. I am also satisfied that there has been no erosion of Member State competence, as Member States continue to be responsible for the regulation of professions, although they will be required to justify the proportionality of their regulations in line with the framework set out in the proposed Directive.

As the UK government already conducts proportionality testing broadly in line with the requirements of the Directive and the Qualifications Directive requires Member States to assess the proportionality of professional regulations, competent authorities throughout the UK will already have processes in place to ensure that legislative, regulatory and administrative changes that restrict access to or pursuit of a profession are proportionate. Whilst there may be some increase in administrative costs due to the need to comply with the process set out in the proposed Directive, I do not believe that these costs will be significant. The UK will retain the right to regulate on the grounds of patient safety and public health, which I believe will ensure that users of healthcare services are appropriately protected. For these reasons, I do not believe that there will be a significant impact on the UK's healthcare sector.

5) ***"Please would you set out the Government's position on [enforcement] and let us know if greater clarity on the process has been gained through discussions in the working group? We ask that your response also refers to the proportionality concerns raised in the abovementioned Reasoned Opinions"***

Failure to comply with the process laid down in the Directive may lead to enforcement action but the Directive does not provide for enforcement action in the event the Commission or another Member State simply disagrees with the outcome of a proportionality test. Regulatory measures that fall within the scope of EU law are required to comply with the principle of proportionality so the courts would be able to consider the proportionality of a new measure. However, the principle of proportionality and associated powers of the court already exist and are not modified by the proposed Directive.

The Government notes the Reasoned Opinions published by the Austrian Federal Council, German Bundestag and Bundesrat and the French Sénat and Assemblée Nationale. However, it is my view that the proposed Directive is proportionate. Currently, proportionality assessments are conducted inconsistently across Member States, with some assessments being comprehensive and others more cursory. There is also a lack of clarity as to what considerations should be taken into account. The result is that the full functioning of the Single Market is hindered, as disproportionate regulatory barriers to trade may still be created. It is therefore my view that existing legislation is inadequate to the task of removing barriers to the free movement of services.

6) ***"Lastly, please would you give us an indication of when this proposed Directive is expected to be implemented?"***

At this moment, it is not possible to reach a definitive judgement on this issue. Discussions in working groups are proceeding rapidly, but it cannot yet be foreseen how quickly the European Parliament will act and when the Directive will therefore enter into force. The timetable for transposition of the proposed Directive remains a matter for negotiation; the Council working group appears to be heading towards a deadline of 24 months from the date of its entering into force, but the European Parliament may push for a shorter period. The UK remains a member of the EU until two years after the date Article 50 is triggered, unless an extension is agreed by the negotiating parties, and will continue to meet its obligations under EU law until it is no longer a member.

I hope these answers are useful. As you will be unable to seek further clarification before the prorogation, I would like to request that you consider granting a scrutiny waiver for this proposal. We will **provide further updates as negotiations progress and I will gladly answer any further questions after the prorogation.**

19 April 2017

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

5278/17: PROPOSAL FOR DIRECTIVE LAYING DOWN A NOTIFICATION PROCEDURE FOR AUTHORISATION SCHEMES AND REQUIREMENTS RELATED TO SERVICES

5281/17: PROPOSAL FOR A DIRECTIVE ON A PROPORTIONALITY TEST BEFORE ADOPTION OF NEW REGULATION OF PROFESSIONS

Thank you for your letters dated 19 April 2017 on the above proposals. The EU Internal Market Sub-Committee considered these letters at its meeting on 27 April 2017.

We welcome your clear and detailed responses to our questions. However, in relation to the proposed notification procedure, we are unclear on the meaning of part of your response regarding the legal consequences of non-compliance. Please would you clarify how a procedural breach of a serious nature "impacts on relations between individuals"?

The Committee has agreed to grant scrutiny waivers on both of these proposals, if they are put forward for a General Approach at a Council meeting during dissolution. If no agreement is reached during this period then the documents will once again be under the scrutiny reserve.

We look forward to a detailed update and response to our question in due course.

27 April 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE LEGAL AND OPERATIONAL FRAMEWORK OF THE EUROPEAN SERVICES E-CARD INTRODUCED BY REGULATION ....[ESC REGULATION].... (5283/17)

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 30 January 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 30 March 2017.

We share your view that services sectors are a vital part of the EU's economy and we recognise that the UK's services sector is exceptionally well-developed and competitive. Therefore, we welcome proposals that seek to break down administrative barriers to cross-border trade in services, particularly where they would disproportionately benefit SMEs.

We welcome your intention to undertake a full assessment of the impact of the proposed application process on coordinating authorities and request that you share this with us. Please would you also include an examination of whether the short proposed timeframes for a coordinating authority to process e-card applications are realistic? In addition, does the Government anticipate that an existing UK authority would adopt the role of e-card coordinating authority, or would this be a new undertaking?

Regarding the costs of setting up and maintaining an e-card system, does the Government expect that these would be recovered entirely through charges for using the service?

The EM notes that the e-card was formerly known as the 'services passport'. Are there any features of the 'services passport' that are not replicated in the proposed e-card? Additionally, does this proposal include any provisions that would extend the use of an e-card to third countries?

The impact assessment accompanying the EM notes that the provision to include insurance coverage information in the e-card is intended to address difficulties faced by service providers in obtaining

insurance in other Member States. It is unclear what these difficulties are and so difficult to judge whether this measure would adequately address them. Would you clarify these difficulties? Does the Government believe there would be sufficient benefit to services providers to justify obliging insurers to provide information for an e-card on request?

We are aware of Reasoned Opinions issued by the Austrian Federal Council and German Bundestag in relation to this proposal. Please would you comment on the concerns raised in these Reasoned Opinions, particularly the German Bundestag's view that an e-card application not processed within the specified time limits would be deemed granted and so circumvent national requirements?

Lastly, please would you give us an indication of when the e-card proposal is expected to be implemented?

We have decided to retain this document under scrutiny. We look forward to a response to our questions within 30 working days.

30 March 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

I am writing to respond to your questions dated 30 March on our Explanatory Memorandum covering the Commission's proposal regarding the services e-card. This is an important proposal with the potential to improve the way businesses are able to offer their services across EU Member States. I set out below responses to your questions.

Discussions on the proposal are on-going and I will continue to keep the Committee updated on progress. The initial meetings of the working group have focused on how the e-card will work in practice, including the opportunities for dialogue between Member States and the possibilities for the host Member State to recognise requirements fulfilled in the home Member State. There has also been substantial discussion of legal points, including the structure of the proposal, and the concerns raised in the Reasoned Opinions to which you refer.

1) ***Will you include an examination of whether the short proposed timeframes for a coordinating authority to process e-card applications are realistic, as part of your overall assessment of the impact of the proposed application process on coordinating authorities?***

We are considering the impacts of conducting verification procedures. The intention of the process is to verify information already held by Government and in the course of negotiations I intend to ensure that the Government is not committed to unrealistic timetables for conducting verification procedures.

2) ***Does the Government anticipate that an existing UK authority would adopt the role of e-card coordinating authority, or would this be a new undertaking?***

The Government is considering this issue, in light of time, resource and budget implications. We will update the Committee on this in the future.

3) ***Regarding the costs of setting up and maintaining an e-card system, does the Government expect that these would be recovered entirely through charges for using the service?***

The Government is considering its position on charges and will update the Committee on this in the future.

4) ***The EM notes that the e-card was formerly known as the 'services passport'. Are there any features of the 'services passport' that are not replicated in the proposed e-card?***

The Commission has indicated that the change of name is presentational rather than on specific content. The 'services passport' was presented as part of the Commission's Single Market

Communication in 2015[1]. This gave a short summary of what could be expected in the later detailed proposal. I believe the e-card broadly reflects what was set out in the original 'services passport.' However, the 2015 Communication made reference to action, possibly as part of the passport, "to address regulatory barriers such as diverging legal form, shareholding requirements and multidisciplinary restrictions in key business services[2]." I am disappointed that this does not appear as part of the final e-card proposal. We continue to seek opportunities to strengthen the proposal in this vein.

5) ***Does this proposal include any provisions that would extend the use of an e-card to third countries?***

As currently drafted the Directive does include reference to third countries within Recital 22. EU subsidiaries of third country service providers have access to the single market as EU nationals, i.e. with the rights and obligations set out under the Treaties. Therefore, EU subsidiaries of third countries should be able to apply for an e-card.

6) ***The impact assessment accompanying the EM notes that the provision to include insurance coverage information in the e-card is intended to address difficulties faced by service providers in obtaining insurance in other Member States. It is unclear what these difficulties are and so difficult to judge whether this measure would adequately address them. Would you clarify these difficulties? Does the Government believe there would be sufficient benefit to services providers to justify obliging insurers to provide information for an e-card on request?***

The Commission have set out difficulties faced by businesses trying to access insurance for cross-border activity. Firstly, insurance policies are not always clear regarding whether cross-border activities are covered. Secondly, host Member States do not take into consideration the insurance coverage previously acquired in other Member States. Thirdly, there are large differences regarding obligations on professional indemnity insurance between different Member States within the same services sector. The UK Government has heard from business stakeholders on their challenges in accessing the correct insurance and its effect in inhibiting the cross-border provision of services. We have also heard from insurance providers that some insurers do offer cover for markets other than their own. The Commission's 2014 staff working document on access to insurance for services provided in another Member State[3] provides a more detailed assessment of the situation. I am seeking a policy solution that meets the needs of business and is workable for insurance providers.

7) ***We are aware of Reasoned Opinions issued by the Austrian Federal Council and German Bundestag in relation to this proposal. Please would you comment on the concerns raised in these Reasoned Opinions, particularly the German Bundestag's view that an e-card application not processed within the specified time limits would be deemed granted and so circumvent national requirements?***

As stated above, I intend to ensure that the Government is not committed to unrealistic timetables for conducting verification procedures. Nevertheless, in developing the e-card it is important that Member State authorities take appropriate responsibility in processing e-card applications. We do not share the view of the German Budestag on this issue. The Services Directive makes specific reference to the "introduction of the principle of tacit authorisation by the competent authorities after a certain period of time elapsed[4]." Under the Services Directive, if an application for an authorisation scheme is not processed within the set time period, the authorisation will be deemed granted. Time limits for the e-card are in line with this principle.

8) ***Please would you give us an indication of when the e-card proposal is expected to be implemented?***

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[1] Communication from the Commission, Upgrading the Single Market: more opportunities for people and business COM (2015) 550 final

[2] Communication from the Commission, Upgrading the Single Market: more opportunities for people and business COM (2015) 550 final, p8-9

[3] Commission Staff Working Document, Access to insurance for services provided in another Member State SWD (2014) 130

[4] Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market p44 (Recital 43 and Article 13(4))

Working Group discussions on the e-card are progressing, focused on the legal structure and operational procedures of the card. We hope agreement on a General Approach could be achieved in the second half of the year; however, it may take longer. The e-card procedure will require a start-up period following its adoption by the Council of Ministers and the European Parliament.

I appreciate the Committee taking the time to review this proposal in detail and will keep you updated on the progress of the discussion.

19 April 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strateg

ADDENDUM To EXPLANATORY MEMORANDUM (EM 5283/17) On Proposals For A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL And A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Introducing A European Services E-Card And Related Administrative Facilities

I am writing to give the Committee further information regarding delegated and implementing acts contained within the proposals for a Directive and Regulation, regarding a European services e-card and related administrative facilities.

Following a detailed legal assessment, we have highlighted implementing and delegated acts within the proposals. I include information on these within this addendum, which supplements the explanatory memorandum submitted to the Committee in January.

We will of course keep the text of these under review as discussions in Working Group develop and inform the Committee as necessary.

31 March 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS "BUILDING A EUROPEAN DATA ECONOMY"(5349/17)

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 31 January 2017 on the above Communication. The EU Internal Market Sub-Committee considered this at its meeting on 30 March 2017.

We welcome your overview of the Government's position on this Communication and of the principles the Government believes should guide consideration of next steps. Does the Government intend to respond to the Commission's public consultation? What engagement have you had with UK businesses and other stakeholders to inform your position?

The EM confirms that the free flow of data is a key priority for the UK and Lord Prior's (separate) update to this Committee on the Digital Single Market (DSM) Strategy notes the Government's support for a legislative proposal to tackle unjustified data localisation. Does the Government expect a proposal enshrining the free flow of data to be introduced in the next 12 months?

In a recent inquiry, techUK told the Committee that DSM initiatives on data localisation could liberalise the flow of data within the EU but also require certain data from third countries to be hosted within the EU. They warned that this might be a mechanism by which UK digital businesses could be attracted to relocate part of their operations to the EU after Brexit.

What is the Government's assessment of these risks? Will the Government seek to influence any proposals resulting from this Communication to reflect its desire (noted in Lord Prior's letter) to

"tackle unjustified data localisation not just at the EU level, but also in data flows between the EU and third countries"?

The Committee has decided to clear this document from scrutiny and would be grateful for a response to the above questions as soon as possible. We would also welcome an update on the timeframe for taking forward any measures emerging from the Commission's consultation in due course.

30 March 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture

Thank you for your letter of 30 March, in which you ask a number of questions concerning the explanatory memorandum on the above communication. I shall take your questions in turn.

I can confirm that the UK Government does intend to submit a formal response to the Commission's consultation in advance of the deadline of 26 April. A copy of the response will be sent to the Scrutiny Committees in both Houses.

Since the 10 January publication of the Commission's communication, and the launch of the public consultation, the Government has engaged with a range of stakeholders. This includes representative bodies from the tech sector (e.g. TechUK and Tech City UK) and other sectors, such as gaming (The Association for UK Interactive Entertainment); banking (The British Bankers' Association); and automotive (The Society of Motor Manufacturers and Traders). We have also spoken to data organisations such as the Digital Catapult and the Open Data Institute, in addition to individual businesses. This engagement will inform the Government's response to the consultation.
Our understanding is that the Commission, and some member states, believe there is insufficient evidence of the need for a new legislative proposal and that existing regulations could be used to tackle data localisation. We hope that the public consultation – and direct engagement with member states and other stakeholders – will gather important evidence and show that the current legal framework is too complex and fragmented to reduce the use of localisation measures. The Commission has not given a timescale for action following the public consultation. We, along with other like-minded member states, continue to press for a regulatory proposal on data localisation as soon as possible.

We believe that data should flow freely across global borders, subject to appropriate safeguards, as this is how data markets operate. It is therefore in the best interests of both the UK and the EU to ensure that any intervention by the Commission takes into account data storage and transfers to and from third countries. We will argue for such an approach in our response to the consultation. It is too early to assess the likelihood of the risk highlighted by TechUK, but we will be pushing hard for measures that do not adversely impact on UK businesses and the UK data centre sector.

I hope you find these answers helpful and I shall keep both Scrutiny Committees updated of any significant progress.

18 April 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE RESPECT FOR PRIVATE LIFE AND THE PROTECTION OF PERSONAL DATA IN ELECTRONIC COMMUNICATIONS AND REPEALING DIRECTIVE 2002/58/EC (REGULATION ON PRIVACY AND ELECTRONIC COMMUNICATIONS) (5358/17)

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 31 January 2017 on the above proposal for an 'ePrivacy' Regulation. The EU Internal Market Sub-Committee considered this at its meeting on 30 March 2017.

We welcome the comprehensive initial overview of the proposed Regulation provided in the EM. However, we note that the Government intends to assess numerous aspects of the proposal further to determine whether they are necessary, add value, and avoid overly burdensome requirements.

Has the Government produced its own Impact Assessment of the proposal, including the potential financial impact? If so, could you provide us with a copy of this as soon as possible? Is the Government reassured by the Commission's assessment that the proposal's impact on data protection authorities (DPAs), such as the Information Commissioner's Office, would be minor?

We note that the Government also intends to consider whether all areas of the proposal are fully consistent with the principle of subsidiarity. Can you clarify what, if any, aspects of the proposed Regulation the Government has specific subsidiarity concerns about?

In relation to consultation, you mention that the Government welcomes the views of interested parties to inform your approach to the proposed reform. What engagement have you had with UK stakeholders on the proposal so far, and will the Government undertake a formal consultation process?

You note that the Government is not convinced that a Regulation is required to achieve the proposal's goals. Can you clarify the relationship between the proposed Regulation and the General Data Protection Regulation (GDPR) and explain why the Government is not convinced by the Commission's assessment that using the same instrument would be beneficial in terms of harmonisation and consistency in enforcement? Is the Government concerned that perceived overlap between the respective scopes of the GDPR and this ePrivacy Regulation could cause legal uncertainty both for data-holders and data subjects?

Following the UK's decision to leave the EU, we recognise that forthcoming exit negotiations will determine what arrangements apply in the UK in relation to EU legislation after Brexit. However, we note that the proposed Regulation is likely to affect the UK, regardless of the specifics of the future UK-EU relationship, given the proposal's extraterritorial scope.

Your EM indicates that the Commission is aiming for the ePrivacy Regulation to apply from 25 May 2018, to ensure consistency with the GDPR. In light of the time taken to reach agreement on the GDPR, and the fact that negotiations on this proposal are at an early stage, what is the Government's assessment of the feasibility of this timeframe?

We have decided to retain this document under scrutiny. We look forward to a response to our questions, and an update on any developments in negotiations on this proposal, within 10 working days.

30 March 2017

COMMISSION REGULATION SUPPLEMENTING REGULATION (EC) NO 715/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON TYPE-APPROVAL OF MOTOR VEHICLES WITH RESPECT TO EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 5 AND EURO 6) AND ON ACCESS TO VEHICLE REPAIR AND MAINTENANCE INFORMATION, AMENDING DIRECTIVE 2007/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, COMMISSION REGULATION (EC) NO 692/2008 AND COMMISSION REGULATION (EU) NO 1230/2012 AND REPEALING REGULATION (EC) NO 692/2008 (5365/17) (*AND RELEVANT ANNEX 6215/17*)

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

5365/17 - SUPPLEMENTING REGULATION ON TYPE-APPROVAL OF MOTOR VEHICLES WITH RESPECT TO EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES WITH RESPECT TO EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 5 AND EURO 6) AND ON ACCESS TO VEHICLE REPAIR AND MAINTENANCE INFORMATION, AMENDING DIRECTIVE 2007/46/EC

Thank you for your Explanatory Memorandum (EM) dated 23 January 2016 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 2 March 2017.

We welcome proposals that support efforts to improve air quality and recognise the importance of the World Harmonised Light Duty Test Procedure (WLTP) for aligning laboratory testing with real-world driving conditions.

While we support the aim of this proposal, we note that the short timeframe for implementation – specifically September 2017 for new vehicle types – will be challenging. Please would you outline what steps the Government has taken to ensure that UK vehicle and component manufacturers will be prepared for the introduction of WLTP by September 2017?

We have decided to clear this document from scrutiny. We look forward to a response to our questions in due course.

3 March 2017

Letter from the Chairman to the Rt Hon John Hayes CBE MP, Minister of State for Transport

6215/17 - ANNEXES TO THE COMMISSION REGULATION AND DIRECTIVE 2007/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS REAL-DRIVING EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 6)

Thank you for your Explanatory Memorandum (EM) dated 23 January 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 9 March.

We welcome proposals that support efforts to improve air quality and recognise the importance of real-driving emissions (RDE) testing to ensure that emissions testing is aligned with real-world driving conditions.

The EM helpfully explains a number of the RDE proposals but it is unclear on the measures that would be introduced for testing plug-in hybrid vehicles. Please would you explain what these are, how they disadvantage these vehicles and outline the expected changes for these types of vehicles in the forthcoming RDE package?

We would also request clarity on the provisions for multi-stage build vehicles. Please would you explain the RDE testing obligations that would apply to the original vehicle manufacturer and how the original manufacturer is determined for a vehicle built in multiple stages?

We note that RDE testing obligations will be limited for small-volume manufacturers and that this will be of assistance to some UK manufacturers. Please provide details on the RDE monitoring requirements that will apply instead. Do you believe these measures will encourage small-volume manufacturers to develop cleaner vehicles?

Lastly, please would you also set out the overall timetable for the introduction of RDE-testing, noting whether this is aligned to the proposals for the World Harmonised Light Duty Test Procedure (WLTP) laboratory tests and if the timetable differs for light commercial speed-limited vehicles?

We have decided to retain this document under scrutiny. We look forward to a response to our questions within 10 days.

9 March 2017

Letter from the Rt Hon John Hayes CBE MP, Minister of State for Transport

6215/17 - ANNEXES TO THE COMMISSION REGULATION AND DIRECTIVE 2007/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS REAL-DRIVING EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 6)

Thank you for your further letter regarding my Explanatory Memorandum (EM) dated 23 January 2017 requesting further clarification on certain points. I have addressed these in more detail below and I hope this answers your questions satisfactorily.

You asked for more details on the measures that would be introduced for testing plug-in hybrid vehicles. RDE Package 3 introduces changes to allow RDE testing of plug-in hybrids. These changes relate to post-processing of the emissions data collected during the RDE test. For conventional petrol and diesel vehicles, post-processing data normalisation tools are already used to reduce the test-to-test variation in RDE results that can be caused by differences in the severity of each individual test (for example as a result of driving style, route choice, etc.). These tools cannot, however, be used for plug-in hybrids as they do not function correctly for vehicles capable of running in a zero emissions (electric only) mode for significant periods of time.

To address this, RDE Package 3 introduces a simpler data normalisation approach which can be used specifically for plug-in hybrids. While this is an essential step forward that allows plug-in hybrids to be type approved, there are risks this approach could result in greater stringency for these vehicles, although it is not yet clear whether this will be the case. We are therefore pressing the Commission to include a common approach which can be used for all powertrains in RDE Package 4, expected to be voted in November this year.

I am grateful that you also asked for clarity on the provisions for multi-stage vehicles as this is a particularly complicated technical area for vehicle emissions approval. Multi-stage vehicles are built using a process whereby a base vehicle (normally a chassis or chassis/cab) is produced by one manufacturer, and then another 'second-stage' manufacturer (normally a body builder or converter) subsequently finishes the vehicle. It is the manufacturer of the base vehicle who is defined as the original manufacturer. The regulatory obligation to comply with RDE requirements lies with this original manufacturer. The RDE 3 package permits second stage manufacturers to utilise the emissions Type Approval obtained by the original base vehicle manufacturer.

You also asked about the testing obligations for small volume manufacturers. The RDE monitoring at Step 1 (from September 2017) will require that the vehicles presented for type approval by small volume manufacturers should be RDE tested in exactly the same way as other vehicles, however the conformity factor limits will not be applicable to them. The vast majority of small volume manufacturers' vehicles are fitted with petrol engines and three-way catalyst exhaust aftertreatment systems. These are expected to result in good real-world NOx emissions control. In addition, small volume manufacturers typically source their engines and aftertreatment systems from high volume vehicle manufacturers, rather than developing them in-house. It is therefore expected that as RDE requirements come into force, any further improvements in emissions control in these systems will

be subsequently passed on to small volume manufacturers. In any case, for RDE Step 2 (from January 2020), the full RDE requirements will apply to small volume manufacturers.

You also asked for further information on the overall timetable for introduction of RDE requirements and its alignment to WLTP. The timetable for cars is as shown below (note: PN = Particulate Number). For commercial vehicles falling within scope (whether speed-limited or not), all these dates are one year later.

- 1st September 2017 – RDE Step 1 and WLTP requirements apply for all new type approvals (RDE conformity factors: NOx = 2.1, PN = 1.5).
- 1st September 2018 – RDE Step 1 PN and WLTP requirements apply for all new vehicle registrations.
- 1st September 2019 – RDE Step 1 NOx requirements apply for all new vehicle registrations.
- 1st January 2020 – RDE Step 2 requirements apply for all new type approvals (RDE conformity factors: NOx = 1.0, PN = 1.0 plus 0.5 allowance for measurement uncertainty on both).
- 1st January 2021 – RDE Step 2 requirements apply for all new vehicle registrations.

Finally referring to your letter dated 3 March, I have noted your question regarding steps the Government has taken to ensure that UK vehicle and component manufacturers will be prepared for the introduction of WLTP by September 2017, and I will respond in due course.

27 March 2017

Letter from the Chairman to the Rt Hon John Hayes CBE MP, Minister of State for Transport

6215/17 ANNEXES TO THE COMMISSION REGULATION AND DIRECTIVE 2007/46/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS REAL-DRIVING EMISSIONS FROM LIGHT PASSENGER AND COMMERCIAL VEHICLES (EURO 6)

Thank you for your letter dated 27 March 2017 on the above proposal. The EU Internal Market Sub-Committee considered the document at its meeting on 6 April 2017.

We have decided to clear this document under scrutiny. We note your commitment to respond regarding the steps taken by the Government to ensure manufacturers are prepared for the introduction of WLTP laboratory testing. We look forward to receiving this in due course.

6 April 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROVAL AND MARKET SURVEILLANCE OF MOTOR VEHICLES AND THEIR TRAILERS, AND OF SYSTEMS, COMPONENTS AND SEPARATE TECHNICAL UNITS INTENDED FOR SUCH VEHICLES (5712/16)

Letter from Andrew Jones MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Thank you for your letter of 20 July. I am writing to update you on the progress of negotiations and the Government's view of the measures it contains.

In the Council working group negotiations there are a wide range of views about the overall level of ambition for the proposal, with some Member States appearing to want to maintain the current system as far as possible. Given this, significant progress has so far been very slow.

As you know the Government shares the proposal's overall objectives of raising the standards of all EU type approval authorities and ensuring that manufacturers face a level playing field in seeking the approvals needed to place their vehicles on the EU market. We urgently need to restore trust in the EU vehicle approval system, particularly following the cheating by Volkswagen that emerged last year. To maintain the credibility of the Regulation the Council must avoid any substantial weakening of the overall package of measures. Baroness Neville-Rolfe made these points at the Competitiveness Council on 28 November. Departmental officials are working with likeminded Member States and the Maltese Presidency to seek positive progress over the next six months and we continue to seek views from interested stakeholders.

Turning to the content of the proposal, I intend to support the majority of the measures included in the draft text with some refinements. The Government is particularly supportive of the proposals regarding market surveillance, peer review of type approval authorities and joint assessments of technical services, the forum for the sharing of information between Member States and the Commission, and the enhanced safeguarding clauses.

On the proposed increased powers for the Commission, as an overarching position I intend for us to only support conferring new powers where they are fully justified and clearly achieve the stated objectives of strengthening the type approval system. The Commission are seeking powers to intervene in the designation of technical services, in the review of type approval authorities, to intervene where type approvals are challenged, and to undertake their own market surveillance. These should help ensure greater consistency between type approval authorities and I can see the case for each of these powers if they are sufficiently defined and used appropriately.

I am pleased to tell you that the UK's new Market Surveillance Unit has started its initial testing programme. This is focusing on emissions for a wide range of vehicles including petrol cars, vans, buses and HGVs. This will complement the investigation we completed earlier this year into diesel cars. There will be full transparency and the results will be published in full. I expect this to happen in the spring for this first set of tests. In future years we intend to expand the testing to a wider selection of vehicle types (motorcycles and tractors) and components such as tyres, bulbs and child seats.

The forthcoming Maltese Presidency intends to continue working group discussions, and the proposal is also under consideration by the European Parliament, although no date has yet been set for plenary consideration. I will, of course, continue to keep you informed of further developments in the negotiations.

17 January 2017

Letter from the Chairman to Andrew Jones MP, Parliamentary Under Secretary of State for Transport

Thank you for your letter dated 17 January 2017 on the above proposal, which was considered by the EU Internal Market Sub-Committee at its meeting on 16 March 2017.

We welcome your update on the progress of negotiations and are particularly pleased to learn that the UK's new Market Surveillance Testing unit has begun its initial testing programme. We look forward to publication of the first set of test results and would be grateful for your notification once these becomes available. Please would you also tell us how big the unit is?

Your most recent letter explains that progress in Council working group negotiations has been slow. Even so, we would welcome an update on two issues on which you had previously told the Committee you would be seeking greater clarification in the working group. Firstly, have you gained any clarity on how the Commission proposes to generate fees to support its new surveillance activities?

Secondly, have you received any clarification on the apparent inconsistency between Article 71, which proposes separation of technical services and type approval authorities, and Article 72(2), which proposes that an approval authority can be designated a technical service? If so, what impact will this have on the Vehicle Certification Agency, which currently undertakes both functions and its role in the UK's new Market Surveillance Testing unit?

We would also like to take this opportunity to share several concerns raised during a visit by the Committee to the Millbrook testing facility last year, specifically:

- Article 30 – How will a national fee structure for the type approval process operate given the many different variables and components of a single motor vehicle which have to be approved? We were told, as an example, that a model of a Vauxhall car may have as many as 1,300 variations and it would be very difficult to imagine a single fee covering the type approval and certification required for all those variants.

- Article 33- How appropriate is the proposed five-year time limit for type approval certification for all of the different types of systems and components that form part of a vehicle? We were told that a five year time limit may be appropriate for some systems and components but for others it might not. We were also told that this would place a large burden on industry.

- Would you provide further detail on the approval obligations that would apply to final-stage manufacturers, and whether these obligations will affect final-stage manufacturers who may only make minor changes, such as vehicle converters?

- Article 73 – What is the Government's view of how provisions to require technical services not to be part of the vehicle design and manufacture process will impact UK businesses that currently engage in both activities? Is this proportionate given that testing procedures are already being reformed to reduce the likelihood of foul play?

Lastly, what is the Government's expected timetable for the progression of negotiations at Council working group and for consideration of the proposal by the European Parliament?

We have decided to retain this document under scrutiny. We look forward to a response to our questions within 30 working days.

16 March 2017

Letter from Andrew Jones MP, Parliamentary Under Secretary of State for Transport

Thank you for your letter of 16 March 2016 seeking an update on this negotiation and asking for further detail on some of the proposed measures.

I am pleased to report that the negotiation in the Council Working Group has proceeded well under the Maltese Presidency and their intention is to reach a General Approach on this file at the Competitiveness Council on 29 May. We believe this may be achievable, subject to the progress made in the next Working Group on 26 and 27 April. I am seeking a scrutiny waiver for this file as it will not be possible for your Committee to consider a further update before the Council.

The European Parliament recently voted to agree a number of amendments to the proposal, which in general are more radical and more stringent for manufacturers than the amendments made in Council Working Group. We will be assessing these carefully ahead of the trilogue discussions and will then be able to provide you with an update on our views.

I am generally content with the indicative outcomes from the Working Group negotiations as we have managed to retain the key measures of the proposal, against the early reluctance we saw from a range of delegations. We have also been successful in removing the few provisions which we

considered to be our red lines. Here is a summary of the key areas, including references to the specific questions that you asked in your recent letter.

Market Surveillance
We have been very supportive of the proposals to introduce a market surveillance requirement, and had previously agreed to this in the equivalent frameworks for motorcycles and agricultural and forestry vehicles. At a late stage of the negotiation a minimum level has been proposed which would require Member States to conduct 1 test for every 50,000 vehicles registered in the previous year. Based on the 2016 figures this would require the UK to conduct 54 tests. This is approximately in line with what the UK's new Market Surveillance Unit is doing under its current programme of emissions testing. We were initially reluctant to agree to a minimum level as it also specifies categories that these tests should be selected from and we wanted to retain full flexibility. However as some Member States were concerned about their ability to conduct this testing, without a legislative requirement to do so, we are persuaded that this is an appropriate method to increase the testing that will take place across the EU. We will continue to work with the Presidency to refine the requirements.

We have also been supportive of the Commission undertaking their own testing and are pleased that this has remained a part of the proposal, despite some opposition. You asked for an update on the funding of this testing. The original proposal was for this testing to be funded by a levy on type approvals within Member States – via a national fee structure (Article 30). This was not acceptable to us and many other Member States and we are pleased to have successfully secured its removal. This testing will now be funded from the Commission's existing budget.

Our own market surveillance unit is likely to consist of around 3 dedicated staff with additional senior oversight. They will oversee the various testing programmes which will be conducted by the VCA or contracted out to third parties. Our recent market surveillance testing has required us to seek type approval data from other EU authorities and so we have pressed for an addition to the text to require that this must be provided without undue delay, which has now been included.

Peer Review
We have strongly supported the proposed system of peer review, both of type approval authorities (Article 71) and by including other Member States in the assessments required for the designation of a technical service by a Member State (Article 77). However there has been substantial opposition to both of these systems and so we have seen changes to both of them throughout the negotiation. The current proposal for type approval authorities is for them to be subject to peer-evaluation in respect of any activity which they carry out related to the assessment and monitoring of technical services. If all of their designated technical services have been accredited by a national accreditation body then they are exempt from this requirement. Whilst we have pressed to retain the wider scope of the original proposal we believe that this will still be a useful improvement on the current system. Similarly technical services will either be subject to evaluation by a joint assessment team - consisting of the Member State intending to designate the technical service, representatives from at least two other Member States and the Commission – or must be accredited by the national accreditation service. The joint assessment was originally proposed to be repeated every five years but this is now covered by the peer evaluation of the type approval authorities' assessment of the operations of their designated technical services.

Forum
We have been very supportive of the introduction of an advisory forum to promote good practice, exchange information and develop working methods and tools. This has been widely supported within the discussions and the changes to the proposal have mostly been to set out in more detail the topics that the Forum should discuss. We are content with this development and expect this to be a sensible system for sharing knowledge and expertise across type approval authorities which should improve the consistency of testing and approvals.

Time Limits on Type Approvals
In response to the question in your letter, we were also unsure about the suitability of the 5-year time limit on the range of systems and components that form part of a vehicle (Article 33). This was amended early in the negotiation to cover only the whole-vehicle type approval and we successfully

pushed for the timeframes to be extended to fit in with natural product cycles. We had also been concerned about the impact on final-stage manufacturers and so had pressed for the time limit to only apply to the approval of the base vehicle. However, the time limit has been a controversial requirement as the views were mixed on whether it would be effective and it has now been removed from the proposal as a concession. We see some merit in ensuring that new regulations are brought in in a timely way, which is the intention behind this proposal. If the time-limit requirement remains out of the final Regulation then it will need to be considered in negotiations on future proposals on new environmental and safety standards.

Impact on VCA
Your letter sought an update on the inconsistency between Articles 71 and 72 regarding the separation of technical services and type approval authorities. This has been clarified within the last draft version of the document and it is now clear that a Member State may continue to designate an approval authority as a technical service.

Separation of design and testing services
Technical services in the UK have expressed concern that the requirement for them '*not be involved in the process of design…..of the vehicle*' is a risk to their business model. It has been suggested that, if required to choose, they would continue their work with manufacturers in the run up to testing, rather than remain as a designated technical service, which could impact on the availability of technical services for manufacturers. While I understand the intention behind this aspect of the proposal, I am therefore sceptical that this change will contribute to the proposal's overall aims. However, for now it remains in the draft and I believe its removal is unlikely. This will mean that a manufacturer will need their vehicle to be tested by a different technical service to any that have been involved in the design process.

End of Series
The Commission want to use this opportunity to simplify the EU-wide procedures for end-of-series vehicles, which are those produced just before a change of standard. The proposal made the system automatic rather than permission based. We supported simplification of the system but resisted removal of the control that we have around the number of these vehicles that can be sold in the UK market. We have succeeded in retaining control but it was not possible to simultaneously simplify the procedures.

Renewal and Maintenance
The proposals for the provision of Renewal and Maintenance Information mirror the current procedures. However this is an area where the European Parliament have proposed several amendments which are of concern to industry. We intend to follow this closely during the trilogue discussions to seek a suitable and proportionate outcome.

Safeguard Procedures
An important improvement over the current system is the introduction of the process for Member States to challenge approvals where doubt is cast on their compliance or safety, and introduce restrictive measures in the short term until an EU-wide decision is taken on the compliance or safety of a product. The Commission will be the arbiter in any cases of dispute between Member States, with the final decision agreed via an Implementing Act. This has been refined during the Working Group discussions but remains broadly as originally proposed.

Administrative Fines
The Commission are seeking a power to fine non-compliant manufacturers where Member States have not taken action. We see this as an area where responsibility falls to Member States. However as the proposal is clear that the Commission could only act where a Member State has failed to act then we have not pressed for its removal at this stage. This is contentious with many Member States though and so may still be removed from the draft text.

The outcome of the negotiation will have a continuing effect in the UK after we exit the EU as the vehicles approved and manufactured in accordance with these requirements are likely to continue to be the majority of UK new registrations for many years. It is therefore important that we continue to

seek the best outcome for the immediate and longer term, in the remaining negotiations. Additionally, the UK is currently very influential in the vehicle standards work of the United Nations Economic Commission for Europe (UNECE) and we fully expect this to continue. Regarding the adoption of standards, the recently revised voting arrangements for the 1958 Agreement increase the ability of non-EU governments to influence international regulations in this area.

19 April 2017

Letter from the Chairman to Andrew Jones MP, Parliamentary Under Secretary of State for Transport

Thank you for your letter dated 19 April 2017 on the above proposal. The document was considered by the EU Internal Market Sub-Committee at its meeting on 27 April 2017.

We welcome your helpful answers to our questions and detailed update on the progress of negotiations. In relation to the separation of design and testing services, we would make you aware of the significant concern brought to us by the testing facility at Millbrook. The facility said that these activities were a core part of their business model and, if this provision came into force, they would be forced to withdraw from certification. However, we note that you believe that this measure is unlikely to be removed from the text.

The Committee has agreed to clear the document from scrutiny. We would be grateful for an update on the outcome of the Council meeting in due course.

27 April 2017

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE USE OF THE 470-790 MHZ FREQUENCY BAND IN THE UNION (5814/16)

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

The EU UHF decision completed its first and final trilogue discussion on 14 December. The final version will be raised at COREPER on Friday 20 January where it is expected to be approved to go to a Council Meeting as an "A" Point. The date it will be raised at a Council meeting has not been confirmed, but we expect it will take 4-6 weeks after the COREPER meeting. The text of this decision meets the objectives and red lines set out by the Government in previous correspondence. I am therefore writing to update you on progress since my last letter on 7 December 2016 and to seek full release from the scrutiny waiver to allow me to support the decision when it is presented to Council. As an annex to this letter, I provide more details of each article in the decision, any issues there have been in its development, and the potential impact each will have on the UK's current plans for the 470-790MHz spectrum band.

Progress since last update

As mentioned in my last update, we were expecting the first trilogue discussion to be held on 14 December. This happened as scheduled. It was noted that the Presidency compromise text and the Council-agreed version were very similar so it was decided that the trilogue phase would be completed at that meeting.

At the trilogue meeting, final amendments to the draft decision were agreed. The main amendment was re-inserting a closed list of justifiable reasons for delaying clearance of the 700MHz band beyond June 2020. I recently announced our ambition to complete clearance of the 700MHz band for mobile broadband by mid-2020, with a review of progress in August 2017, so we are content with the overall target of completing clearance by June 2020. The biggest risk for our ambition to complete the clearance programme within those timescales is a period of bad weather which means that it is too dangerous for engineers to carry out the upgrade work to the 200m+ high TV masts. Initially, this

was not taken into account in the list of justifiable reasons for delaying clearance but, in recent weeks, UK Representatives have been successful in getting agreement for *force majeure* to be included in that list. While our preference would have been to remove the closed list, the addition of *force majeure* means we are content for the closed list of justifiable reasons to be included as it covers the major risk to which the UK is exposed.

In addition, my last update referred to Article 6 being deleted on the basis of it not being in the Commission's mandate to develop an EU position for WRC negotiations. An Article 6 has been included in the final version but it is significantly different to the version that Member States have continuously rejected throughout the process. The current version requires the Commission to monitor use of the 470-694MHz band and to report on any developments to the Council and Parliament. We are content with this compromise.

Next Steps
As mentioned previously, the final version will be raised at COREPER on Friday 20 January where it is expected to be approved to go to a Council Meeting as an "A" Point. The date it will be raised at a Council meeting has not been confirmed but we expect it will take 4-6 weeks after the COREPER meeting.

Brexit Implications
As mentioned in my last update, the UK made the decision to reallocate the 700MHz band for mobile broadband in November 2014. We therefore believe that it is not necessary to introduce specific UK legislation once the UK exits the European Union, or to repeal the proposed decision. Our view on this has not changed.

Annex

Article 1
Article 1 provides the overall ambition for Member States to complete clearance by 30 June 2020. Member States may delay clearance by up to 2 years for justifiable reasons, those reasons being listed as an annex to the decision.

The timelines for clearance and justifiable reasons for delaying beyond June 2020 caused the most discussions at the various working groups as the Commission's original proposals were more rigid than was recommended in the Lamy Report (which recommended clearance by end-2020 +/- 2 years). In particular, there were a lot of discussions as to what could be considered a justifiable reason.

I recently announced our ambition to complete clearance of the 700MHz band by mid-2020, with a review of progress in August 2017. The biggest risk for our ambition to complete the clearance programme within those timescales is a period of bad weather which means that it is too dangerous for the engineers to carry out the upgrade work to the 300m+ high TV masts.

Initially, the list of justifiable reasons did not include reasons of *force majeure*; however, on our recommendation, this is now included in the list. We are, therefore, content with the overall target for clearance as well as the justifiable reasons for delaying by up to 2 years.

Article 2
Article 2 states the need for Member States to complete the award process of the 700MHz band in an open and transparent manner. This article reflects the competition guidelines that all Member States adhere to and has not been a major cause for debate throughout the whole process.

Article 3
Article 3 requires Member States to consider coverage and speed obligations when setting licence conditions for mobile services in the 700MHz band.

Initially, there was some significant differences between the Council-agreed text and the Parliament's text. The Parliament wanted to include specific coverage and speed obligations, as well requiring Member States to take due account of the opportunity to ensure that Mobile Virtual Network Operators (MVNOs) are able to obtain wholesale access to spectrum.

While there was agreement that the 700MHz band provides an opportunity to increase coverage and capacity within mobile networks it should be for Member States to decide how that should be achieved and be based on national priorities. In addition, whether or not to include specific requirements around MVNOs is a competition issue for national regulators and, as referred to in Article 2, there are strict guidelines to ensure open and fair competition during spectrum awards processes, so we could not support those measures. The result is that the final version of Article 3 is very similar to and reflects the version that was agreed by Telecoms Council on 26 May.

Article 4
Article 4 ensures that the remaining 470-694MHz band shall be primarily used for broadcasting services until at least 2030, although it does allow a degree of flexibility for allocating the band for other uses based on national need. Most of the debate around this article focussed on Member States that do not have a strong DTT platform and would consider alternative uses of the spectrum much sooner than 2030.

The UK has one of the strongest DTT platforms in Europe (75% of households use DTT) but we did not want to restrict those countries that do not have a strong DTT platform (e.g. Germany where DTT is used by 6% of households). Nor did we wish to restrict our own freedom to use spectrum as best suits the UK. We therefore supported the commitment for maintaining the 470-694MHz band for DTT until at least 2030 but giving Member States flexibility based on national need and priorities.

Article 5
Article 5 requires Member States to publish their national roadmaps for completing clearance of the 700MHz band. The current text is very similar to the text agreed by Council on 26 May. In addition, Ofcom have already consulted on and published our national roadmap for completing clearance by mid-2020.

Article 6
Article 5 refers to ensuring that the direct cost of migration, particularly for end-users, is adequately compensated in accordance with Union law. This article relates to the State Aid guidelines that all Member States adhere to and has not been cause for much debate throughout the whole process.

Article 7
Article 6 was the cause of the biggest differences between the Council-agreed text and the Commission's position to the extent that the Council completely rejected this Article. The original version, as well as the Parliament-agreed draft, suggested that the Commission should take more responsibility for spectrum management throughout Europe and that a common EU position should be developed for the World Radiocommunications Conference in 2019. As mentioned in my update on 7 December, it is not entirely in the Commission's mandate to develop an EU position for WRC negotiations. Nor is it necessarily effective: the main European coordination is done by CEPT, which comprises the telecoms and postal administrations of both EU and non-EU states within geographical Europe.

The current version requires the Commission to monitor use of the 470-694MHz band and to report on any developments to the Council and Parliament. We are content with this compromise.

20 January 2017

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture

Thank you for your letter of 20 January 2017, which was considered by the EU Internal Market Sub-Committee at its meeting on 23 February 2017.

We were grateful for your update regarding the outcome of trilogue negotiations. We note that the final text respects the Government's red lines for negotiations. We have decided to clear this proposal from scrutiny. A response to this letter is not required.

23 February 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON "THE FOURTH RAILWAY PACKAGE - COMPLETING THE SINGLE EUROPEAN RAILWAY AREA TO FOSTER EUROPEAN COMPETITIVENESS AND GROWTH". (5855/13)

Letter from Paul Maynard MP, Parliamentary Under Secretary of State for Transport, Department for Transport

Further to your letter of 5 May 2016, I am writing as requested to update you on final agreement of the Market/Political Pillar of the Fourth Railway Package.

The final texts of the Market Pillar were adopted by 14 December 2016 and were published in the Official Journal of the European Union on 23 December 2016.

As you will know, the Government has been clear that while we remain in the European Union, we continue to be full members with all the rights and obligations that brings, including the obligation to implement adopted legislation in full.

The Market Pillar will have limited impact on franchising or how we structure our railway market in Great Britain. It will, however, significantly open up other EU member state railway markets to greater competition, providing opportunities for UK-based operators.

21 February 2017

PROPOSAL FOR A COUNCIL DECISION AMENDING DECISION 2008/376/EC ON THE ADOPTION OF THE RESEARCH PROGRAMME OF THE RESEARCH FUND FOR COAL AND STEEL AND ON THE MULTIANNUAL TECHNICAL GUIDELINES FOR THIS PROGRAMME (6411/16)

Letter from Nick Hurd MP, Minister of State for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

I am writing to confirm the UK's intention to vote in favour of the proposed governance changes to the Research Fund for Coal and Steel (RFCS), and to seek scrutiny clearance for this position. I previously wrote to you on 30 November 2016, to update you on this proposal.

The European Commission has made proposals to the existing arrangement to achieve more consistent programme management and to maximise synergies between projects and research areas, supporting cross-disciplinary research projects and outcomes. It has set out its objectives as follows:

- ensuring transparent management of a programme funded by the EU general budget and under Commission responsibility through the implementation of Commission rules concerning expert groups;
- facilitating access to funding for beneficiaries by simplifying rules and through alignment with the rules of the 'Horizon 2020' research programme; and
- updating provisions in the legal basis in particular concerning comitology.

I confirm that we consider the Commission's approach to be sensible and one that could deliver benefits. In particular, we support greater transparency around European funding programmes, and the attempts to align with Horizon 2020 should reduce administrative burdens. Whilst it is fair to say that industry's direct influence might diminish under the new rules, as the evaluation of the Fund's programme would be carried out by independent experts rather than industry, they will still be able to able to advise on the programme's scope and put forward proposals, and will be able to engage with Member States to ensure their interests are addressed.

Most in the sector, including UK stakeholders and Eurofer (the European trade association for the steel sector), did not object to the original proposal when consulted on this. However, Tata Steel Europe objected, arguing that the RFCS is exceptional, and should continue to be managed in the way it has been. Their principal objections were to the suggestion by the Commission that there were conflicts of interest in the current operation of the Fund. In order to assuage concerns that the industrial focus of the programme may diminish, the UK pressed for changes to the proposals to ensure a continued strong role for Member States in RFCS procedures. This ensured that the Dutch Presidency tabled a number of proposals to address these issues. This has resulted in some changes to the proposals, including the reintroduction of a clear role for Member States. We consider this to be particularly positive and Tata Steel Europe and other stakeholders have since made it clear that the revised text is acceptable to them.

The European Parliament discussed the proposed changes to the RFCS at the Industry, Research and Energy Committee on 12 October. These were formally adopted by the Parliament on the 15 December. We expect that the European Council will be asked to adopt the text in early February

4 January 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 1996 CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES (6987/16)

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 2 December 2016 concerning the Directive on the posting of workers in the framework of the provision of services. I write as the Minister responsible for employment law to respond to the questions you have asked and to provide a general update on this proposal.

The proposal was discussed at the Employment, Social Policy, Health and Consumer Affairs (EPSCO) Council on 3 March 2017. At this EPSCO Council, the Presidency commented that good progress has been made toward a compromise, whilst noting that further discussions are still needed including on the concept of remuneration. The Presidency said it hoped to reach a General Approach at the EPSCO Council on 16 June 2017. Several Member States commented on the application of the Posting of Workers Directive to the road transport sector. The Commission confirmed that it intended to bring forward a specific proposal to address this issue as part of a road transport package later in the year.

In the European Parliament, Elisabeth Morin-Chartier of the European People's Party and Agnes Jongerius of the Socialists & Democrats have been appointed as the co-rapporteurs on this proposal

in the Employment and Social Affairs (EMPL) Committee and have produced a draft report. A discussion of the proposal took place on 16 February 2017. There was broad support for a revision of the existing directive to address perceived loopholes in the current situation, including the duration of the posting and the concept of remuneration. However, the discussion was marked by a significant geographical divide. Doubts about the revision of the proposal were expressed in particular by MEPs from Central and Eastern Europe. A discussion of amendments to the draft report is due to take place in the EMPL Committee later this month with a vote scheduled for 12/13 July 2017.

Turning to the detail of the proposal, as you are aware, the Government has decided not to opt in to aspects of the proposal relating to the Rome I Regulation. In your letter of 2 December, you asked the view of the Commission and other Member States on the UK's position; the Commission and other Member States have not expressed a view on the UK Government's decision. Discussions in Council are continuing and amendments to this area of the text are being considered, some of which may help to address our original concerns and move the text away from impacting upon the Rome I Regulation. I will continue to update on this as negotiations progress.

You also asked the impact on workers posted to the UK of the proposal to replace the term "minimum wage" with "remuneration". Discussions on the exact definition of "remuneration" are continuing with the Commission and other Member States, including in the Expert Committee on Posting of Workers which is carrying out analysis to support consideration of the change. However, our current assessment is that this change is likely to have very little or no impact given that, as you point out, we do not have a system of collective agreements such as those found in other Member States. I would also note that National Minimum Wage legislation in the UK already sets out a requirement for paid holiday. We therefore believe there would not be additional mandatory obligations for the UK as a result of broadening the definition to "remuneration".

Currently, the Posted Workers Directive provides that only universally applicable collective agreements in the construction sector must be applied to posted workers. The proposed revision text provides that Member States will be required to apply the terms of universally-applicable collective agreements to posted workers not only in the construction sector but in all sectors of the economy. In addition, the draft revision text also provides that Member States may choose to legislate to require the same terms and conditions in relation to pay as the contractor at the top of the chain is bound by. It will be for Member States to decide whether to apply this provision and it could only be applied to companies posting workers if similar rules also apply to host member state companies.

You asked about the impact of this provision on workers posted to the UK. The provision would capture company level as well as regional or sectoral level agreements. Since no information is held by Government on company level collective agreements, it is not possible for us to currently assess the impact of such a measure, should the UK decide to legislate to apply the sub-contracting arrangements in the UK.

The UK has not yet reached a position on this proposal; I will provide further information on the UK position as soon as it is available as well as providing further updates on the progress of the dossier. In the meantime, I hope that you have found this update useful.

21 March 2017

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy

I write as the Minister responsible for employment law to provide an update on this proposal. At this stage the UK does not have an agreed position as our analysis is not yet complete. However, as I explained in my letter of 21 March 2017, the Presidency hopes to agree a General Approach at the Council in June. As it has been agreed that there will be a General Election on 8 June and that Parliament will shortly be dissolved, there will now not be sufficient time to obtain Parliamentary scrutiny clearance in advance of this Council. I would therefore like to request a scrutiny waiver on this proposal, based on the information we have been able to provide so far and a commitment to provide detailed information following the Council.

I am also writing today in similar terms to the House of Commons EU Scrutiny Committee. In this letter, I have included further information about the proposal in response to questions asked by that Committee. I thought you may also find this information of interest and I have therefore included it below.

The Committee asked for clarity on the relationship between the Rome I Regulation and the proposal. Our view is that Article 1(1) of the proposal, which adds a new Article 2(a), impacts how the Rome I Regulation (which determines the law applicable to contracts) operates on posted workers' employment contracts. It states that workers who are posted for more than 24 months are deemed to be 'habitually working' in the host Member State. The Rome I Regulation currently states that in the absence of a choice, the law of the worker's home Member State applies by default, even if there is a 'temporary' posting abroad. In essence, this ensures that a posting of more than 24 months is not 'temporary' for the purposes of Rome I.

As you are aware, the Government has decided not to opt in to aspects of the proposal relating to the Rome I Regulation. The Commission and other Member States have not expressed a view on the UK's position here. However, as discussions in Council continue, amendments to this area of the proposal are being actively considered. These could move the text away from impacting upon the Rome I Regulation and remove the issue of the UK opt in. I will continue to update on this as negotiations progress.

The Committee also highlighted the need to establish consistency between this legislation and a UK outside the EU's single market. I fully agree that the outcome we seek from negotiations on this legislation needs to be aligned with our future outside of the EU. My officials are analysing the possible options for our future relationship with the EU in this area. However, given that this will be a matter for the negotiations, it would not be appropriate to set out our position in advance of those negotiations taking place.

Since my letter of 21 March, which provided an update on the progress of discussion in the Council and the European Parliament, the Employment and Social Affairs Committee of the European Parliament has met to discuss possible amendments to this proposal. The Committee is scheduled to vote on its report on 12 July.

19 April 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy

Thank you for your letters dated 21 March and 19 April 2017 concerning the Commission's proposed revision of the Posting of Workers Directive. These letters were considered by the House of Lords EU Internal Market Sub-Committee at its meeting on 27 April 2017.

We are grateful for your answers to the questions outlined in our previous letter, and that you proactively wrote to us again following the announcement of an early General Election.

Although the UK's position on this proposal has yet to be decided, due to prorogation and the dissolution of Parliament, there will be no opportunity for further scrutiny or to grant a waiver in advance of the EPSCO Council meeting on 16 June. Consequently, the Committee has agreed to grant a scrutiny waiver on the proposal for this Council meeting - if no agreement is reached at the meeting then the document will once again be under the scrutiny reserve.

We welcome your commitment to provide us with a detailed update following the Council meeting and look forward to receiving this in due course.

27 April 2017

COMMUNICATION FROM THE COMMISSION ON STEEL: PRESERVING SUSTAINABLE JOBS AND GROWTH IN EUROPE (7195/16)

PROPOSAL FOR A COUNCIL DECISION AMENDING DECISION 2008/376/EC ON THE ADOPTION OF THE RESEARCH PROGRAMME OF THE RESEARCH FUND FOR COAL AND STEEL AND ON THE MULTIANNUAL TECHNICAL GUIDELINES FOR THIS PROGRAMME (6411/16)

Letter from the Chairman to Nick Hurd MP, Minister of State for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letters 30 November 2016 and 4 January 2017 on the two above documents. These were considered by the EU Internal Market Sub-Committee at its meeting on 12 January 2017.

We welcome the creation of the Global Forum on Steel Excess Capacity and the Government's multilateral efforts to tackle the root causes of the steel crisis.

6411/16: Proposal for a Council Decision on the adoption of the Research Programme of the Research Fund for Coal and Steel

We also welcome your most recent letter on the RFCS. We note the steps the Government has taken to address industry's concerns and that the amended proposal has their support. We have decided to clear this proposal from scrutiny.

A response to this letter is not required.

12 January 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON THE EUROPEAN CLOUD INITIATIVE - BUILDING A COMPETITIVE DATA AND KNOWLEDGE ECONOMY IN EUROPE (8099/16)

Letter from Jo Johnson MP, Minister of State for Universities, Science Research & Innovation for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 5 July 2016 on the above proposal. I apologise for the time taken to provide you with this update, you requested further information in due course on the progress of the 'European Cloud Initiative' and we wanted to ensure that sufficient progress had been made that any reply would be meaningful and helpful. There have been a number of recent developments in the project which I believe help clarify its future direction and as such this seems an opportune time to bring the Committee up to date.

I am pleased to say that the first major project of the initiative has begun and moreover that this is being led by the UK. The EU Open Cloud Pilot (EOSC) is a £8.5m project being led by the Science and Technology Facilities Council (STFC). This project aims to lay the ground rules for a pan-European Science Cloud by developing a specification for interoperability and data sharing across disciplines and infrastructure. It will also develop a pan-European governance structure.

Funding for further projects within the European Cloud Initiative have recently been announced and these are outlined in the table below. Applications to lead these individual projects will be invited over the next few months and will be reviewed within the normal Horizon 2020 process. The successful bids will be announced approximately 2-3 months after the submission deadline.

Project	Amount of call	Submission deadline
European Science Cloud (EINFRA-12-2017)	€40m	29 March 2017
European Science Cloud (EINFRA-21-2017)	€20m	29 March 2017
Exascale HPC (FETHPC-02-2017)	€40m	26 Sept 2017
Exascale HPC (FETHPC-03-2017)	€4m	26 Sept 2017
Quantum Computing (FETPROACT-02-2017)	€5	24 Jan 2017

The UK response to these and any future calls is being managed through the Research Councils and other UK based research institutions and they will join and/or lead European-wide consortia when making specific bids for this money. Subject to Parliament, we expect that UKRI will coordinate UK input into this project from 2018 onwards.

In addition, the European Commission is developing a programme of work for announcement during 2018-20. It is during this period that we expect the majority of the funding for this initiative to be granted. The UK, as the host country of the EOSC project, is in a good position to take full advantage of this additional funding and ensure UK scientists are in the forefront of delivering the overall project.

Otherwise, we do not anticipate any major decision points on this topic over the next 12 months. In the meantime, the Research Councils and other research institutions are monitoring new grant call announcements regularly.
I hope you will agree that the UK's success in winning the bid to lead the pilot for this project clearly demonstrates our ability to become a world-leader in collaborative cloud computing. I will of course be happy to update you further as the project develops.

2 February 2017

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE TAKEN ON BEHALF OF THE EUROPEAN UNION WITHIN THE ASSOCIATION COUNCIL SET UP BY THE AGREEMENT ESTABLISHING AND ASSOCIATION BETWEEN THE EUROPEAN ECONOMIC COMMUNITY AND TURKEY WITH REGARD TO THE PROVISIONS ON THE COORDINATION OF SOCIAL SECURITY SYSTEMS (8556/12)

Letter from Damian Hinds MP, Minister of State for Employment for Work & Pensions, Department for Work & Pensions

I write pursuant to your letter of 14 July 2015 to the then Minister for Employment Priti Patel in which you asked to be kept informed of any developments in the EU-Turkey Association Council on the above Decision, which your Committee holds under Scrutiny. I write now by way of update.

There have in fact been no developments on this Decision in the EU-Turkey Association Council. The EU-Turkey Association Council has not met since my predecessor last wrote to you, and no date is presently foreseen for it to do so. I will write to you again at such time as there is news about this.

20 March 2017

Letter from Simon Kirby MP, Economic Secretary to the Treasury, HM Treasury

I am writing to update you on the latest developments on the European proposal for activities and supervision of institutions for occupational retirement provision (IORPs) and also provide greater detail on why the Government was content with the final version of the proposal.

Development of the proposal

In February 2015 my predecessor wrote to you to explain that the Economic and Monetary Affairs Committee (ECON) of the European Parliament would have their first exchange of views on the proposal in March 2015. Subsequently, the ECON Committee passed their proposal with a large majority on 25 January 2016 (corrected from my previous letter dated 5 December 2016). Encouragingly, the proposal amended by European Parliament did not significantly change from the form presented by the Council at COREPER in December 2014.

Though we believed there was not clear justification for the EU acting in this area, there was no appetite among our key allies to block the proposal, given it had been stripped of its most controversial elements prior to arriving in Trilogues. As this measure was subject to Qualified Majority Voting, there was little chance of the UK successfully blocking the proposal alone. As such, we began working with other Member States and friendly MEPs to push for further amendments to ease the Directive's transposition and minimise its impact on industry. Opposing the proposal outright would have hampered our ability to secure such changes to a Directive that was almost certain to pass.

Subsequently, the European Parliament, Council and Commission then reached an agreement on the revised proposal on 30 June 2016. As stated in my last letter, the approved version, like the Council text, removed the possibility of the Commission or the European Insurance and Occupational Pensions Authority (EIOPA) introducing level 2 or 3 measures, removed the need for compulsory depositors and also does not require professional qualifications for individual trustees – protecting the current UK approach to pension governance. The outcome reinforced the case for the approach the Government took.

Adoption of the proposal and next steps

Following procedural checks and translations, on 24 November 2016 the proposal was voted through European Parliament. The dossier remained under scrutiny at the time of the Council vote on 8 December and therefore the UK abstained. Given our success in negotiating down to a minimum-harmonising directive and the news that EIOPA also concluded against harmonising capital or funding requirements that had previously concerned UK stakeholders from a consumer and industry perspective, we were content with the proposal. The file was adopted by the Council.

The legislation was published in the Official Journal for the European Union on 23 December 2016. Consequently, Member States have until 12 January 2019 to transpose the Directive into national law. The Department for Work and Pensions (DWP) takes the lead for policy and domestic legislation and they will lead on the transposition.

I hope this letter has been helpful and the reasons surrounding the UK's approach to the Directive's final proposal are now clear, and that the Committee has enough information for full consideration of the Directive.

23 January 2017

Letter from the Chairman to Simon Kirby MP, Economic Secretary to the Treasury, HM Treasury

Thank you for your letters dated 5 December 2016 and 25 January 2017, which the House of Lords EU Internal Market Sub-Committee considered at its meeting on 9 March.

We were disappointed that we did not receive timely updates on the progress of negotiations on this proposal – especially given the substantial subsidiarity concerns we expressed when the proposal was first introduced. We recognise that the Government respected the scrutiny reserve at the Council meeting on 8 December and that, on the whole, the final text reflects a relatively good outcome for the UK.

As this proposal has been finally adopted, we have decided to clear this document from scrutiny. A response to this letter is not required.

9 March 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2007/36/EC AS REGARDS THE ENCOURAGEMENT OF LONG-TERM SHAREHOLDER ENGAGEMENT AND DIRECTIVE 2013/34/EU AS REGARDS CERTAIN ELEMENTS OF THE CORPORATE GOVERNANCE STATEMENT (8847/14)

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

I would like to provide you with an update on the status of the Shareholders Rights Directive and to ask you to lift the scrutiny reserve. The compromise text agreed in December is consistent with our negotiating objectives and we intend to vote in favour at the prospective Ministerial Council, expected in March.

Following informal exchanges with the Slovak Presidency and progress in Council on the proposal, amending the Accounting Directive, to introduce tax transparency measures, the European Parliament (EP) eventually decided to drop the amendments on "country-by-country" tax reporting from the SRD. The shift in the Rapporteur's position therefore provided an opportunity to explore compromise options.

The first working party meeting in Council under the Slovak Presidency was held on 13 October. Two further meetings were held on 7 and 25 November. The Presidency worked effectively with the Commission and the EP in identifying drafting changes, which met most of Member States' concerns.

The compromise text was agreed at the last trilogue meeting on 7 December.

The legal-linguistic revision is currently underway. The EP will be voting on this text at a forthcoming plenary meeting, tentatively in March. Should the Parliament adopt the current draft, it is expected that EU Ministers would adopt the proposed Directive in the Council of Europe at the earliest opportunity, following EP vote.

While at this stage I am not able to anticipate the impact of Brexit on the transposition of EU proposals, the measures proposed by this Directive are broadly consistent both with the UK's existing framework as well as with the Prime Minister's focus on corporate governance reform.

Following two years of negotiations, all the UK Government's objectives have been achieved. While we welcomed the proposal for an EU wide framework, which would facilitate investors' stewardship activities and enhance transparency across Member States, we have been mindful not to accept unhelpful and burdensome compliance exercises.

The main changes, which the Government has consistently supported, are limited to measures aimed at increasing transparency amongst institutional investors and asset managers. The impact of the new requirements is moderated by a "comply or explain" approach. With regards to the transparency measures for proxy advisers, these are less prescriptive than originally envisaged in the Commission proposal and have been generally welcomed by stakeholders.

In areas such as: facilitation of shareholders' rights, executive remuneration and related party transactions, the provisional agreement enables the UK to retain its current regime.

We have also succeeded in ensuring the Directive would not introduce delegated acts. The scope for the Commission to adopt implementing acts is subject to "comitology" procedure, therefore still

allowing EU member states representatives to take part in their development. In this particular instance, such acts will also be limited to identifying technical standards, in order to facilitate the transmission of information and exercise of shareholders' rights.

In line with previous correspondence with both you and Lord Boswell, I am satisfied that this minimum harmonisation directive leaves Member States appropriate levels of flexibility and will have a low impact on our current corporate governance framework. I attach the latest compromise text for your information.

Therefore, in view of a Ministerial vote in Council, I shall be grateful if the Parliamentary Committee could lift their scrutiny on this proposal.

27 February 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy

Thank you for your letter of 27 February 2017 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 9 March.

We were grateful for your summary of negotiations under the Slovakian Presidency. We have already cleared this proposal from scrutiny.

Please note that this letter does not require a response.

9 March 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2010/13/EU ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES CONCERNING THE PROVISION OF AUDIOVISUAL MEDIA SERVICES IN VIEW OF CHANGING MARKET REALITIES. (9479/16)

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

Thank you for your letter dated 25 November 2016 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 12 January 2017.

We found the information you provided about the different aspects of the Commission's proposal helpful. Nonetheless, we have a number of further questions. In particular, we would like you to update us on the progress of negotiations on this proposal in Council working groups, and the views of other Member States to the aspects of the proposal which the Government does not currently agree with.

Derogation from the 'Country of Origin' principle permitting Member States to impose levies on video-on-demand (VoD) services

Your letter notes that this is a voluntary levy – presumably this means that the UK and others would not be required to adopt this part of the proposal? Therefore, while this may have a limited impact on consumers in the UK, is the Government worried about the impact this part of the proposal might have on VoD providers based in the UK transmitting their content to other EU Member States where they may face such a levy?

Derogation from the 'Country of Origin' principle on grounds of national security

We agree that it is important to ensure that this derogation is only used in severe cases. How will this be made explicit in the final text of the proposal? On what grounds and in what situations could this derogation be used? How would this be assessed?

A quota for European works

We welcome your assurances that UK works will still be considered European works after Brexit. However, does the Government believe that the European Transfrontier Television Convention is robust enough to withstand any future changes proposed by other EU Member States to this definition or their possible non-compliance with this wider definition?

The proposed co-regulatory approach for video-sharing Platforms

Could you clarify whether 'co-regulatory' refers to co-operation between Member States and the Commission on national guidelines; or to the co-operation between national and European regulators and industry? Is it correct to that the Government thinks a self-regulatory approach, where video-sharing platforms regulate their own activities, is appropriate in some cases? Or does the Government think it is appropriate for video-sharing platforms to take on more responsibility for the content posted on their websites?

How will this aspect of the proposal fit in with the Government's Digital Economy Bill?

Accessibility

The Commission's proposal removes reference to accessibility requirements for disabled consumers of audiovisual media services on the grounds that this is now included in the proposed Accessibility Act. Do you think the provisions in the Accessibility Act ensures similar or improved levels of accessibility for those with disabilities? What might happen if the revised AVMSD is agreed and in force before the Accessibility Act?

The Committee has decided to retain this document under scrutiny and awaits a response to this letter in due course.

12 January 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture

I am writing to address the points raised in the Committee's report in response to my earlier correspondence in relation to the proposed amendments to the Audiovisual Media Services Directive ('AVMSD') in June and October 2016. Given the process that the UK is preparing to undertake to leave the European Union, our negotiating position on this Directive will remain flexible.

The negotiations are currently ongoing, there are 11 council working groups between January and April. The working group is aiming to achieve a general approach by the Education Youth Culture and Sport council meeting on 22 May. I would expect to be able to update you on the progress and potential timeframes in late March, once these discussions are more progressed. It is worth noting that in the first of these Council Working meetings in January it was made explicit that the meetings are not public and considered confidential, this will limit the information which can be circulated prior to a general approach being agreed.

1. With regard to the country of destination proposal to impose levies on a video on demand (VOD) services, this is the main area of divergence between the UK and other Member States, where there appears to be considerable support for this. This is a voluntary levy and we have concerns about the undermining of the Country of Origin principle. The UK VOD providers contribute to the diversity of content across Europe, so this levy does have the potential to impact them. We consider that such a levy will dramatically reduce the cross-border circulation of audiovisual media services within Europe. This could directly discourage providers from offering services across borders (including UK providers). Service providers (with the exception maybe of large ones) might choose to avoid expanding into markets that impose a levy, or limit such expansion to the large markets only given the extra costs that such a levy would impose on their business. Furthermore, if smaller markets were to decide to impose such a levy, this could directly result in a reduction of the range of services on offer.

2. Member States currently have the ability to derogate on grounds of national security for on demand services. The proposal would extend this derogation to linear services. The proposal sets out that the derogation applies to a broadcast 'which prejudices or presents a serious and grave risk of prejudice to public security including safeguarding of national security and defence'. As for other derogations, the proposal continues to require that there be two contraventions to ensure

proportionality. We are working to ensure that the wording reflects and provides clarity that such measures should only be considered in extreme cases.

3. With regard to your query regarding 'European Works', this is defined to include works originating in European states party to the European Convention on Transfrontier Television of the Council of Europe. As the UK is a party to this Convention, UK works will continue to meet this definition. As 'European Works' is defined in the Directive itself (rather than in the Convention), an amendment to the Directive would be required to change this. At present there are no proposals to amend the definition as part of the renegotiation.

4. There has been much discussion in the working groups about the meaning of co-regulatory, as many Member States do not have an existing established approach for co-regulation. It does not refer to either model you described in your letter; co-regulatory refers to national models where typically there is industry as well as governmental involvement, rather than statutory regulation. This can be particularly effective when there is widespread industry support for the objectives of regulation. The Advertising Standards Authority in the UK is an example of such co-regulation.

5. Self-regulatory models are industry designed and led, allowing the industry to define an approach best suited to achieving its desired outcomes. Self-regulatory systems rely on a strong alignment between the motivation of participants and the wider public interest. For the video-sharing platform proposals within the directive, most of these are aligned to the community guidelines of larger video sharing platforms such as 'you tube', and therefore we do believe this approach should be appropriate for the current market. Our support for self-regulatory models in the directive is to allow the flexibility for government to choose the appropriate model at the time of implementation of the Directive.

6. We consider that the proposals within the AVMSD for video-sharing platforms are more aligned with the proposals within the Digital Economy Bill, as both require that age verification and other restrictive measures be in place for the content that is most likely to harm minors. Whilst we recognise that there may be some cultural differences in consideration of what is most likely to be harmful material, we believe at a minimum this would include pornographic works. The UK is committed to ensuring that minors are protected on-line and welcomes an approach across Europe that increases the protection of children from harmful material.

7. You have also asked about the proposed removal of the accessibility requirements. We consider that the arrangements in the Accessibility Act, relate largely to technical matters, and do not fully take into account the specific nature of audiovisual material, and so do not support their removal. Early indications are that a number of Member States are in agreement with this view and so we are confident of retaining some sector specific measures within the AVSMD in relation to accessibility.

I trust that this helps to provide some clarity on the current positions within AVMSD, and I remain at your disposal for any further clarifications. I should be able to provide an update at the end of March regarding the progress towards a general approach in the Council working groups.

17 March 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture

I am writing to provide a general update on the Council working groups in the lead up to the vote on this Directive in the Education, Youth, Culture and Sport (EYCS) Council on 23 May and to respond to issues you raised in your letter to me of 12 January/33rd report from 1 March where I am able to provide updates.

On 7 April we received an updated compromise text from the Presidency following the working groups that have taken place this year (Annex 1). My officials have done an initial analysis of this proposal, considering both the initial Commission proposal and where the Presidency's compromise proposal aligns with the UK's position (Annex 2). You will see that there are three areas that do not align with the UK's view. There is wording in relation to jurisdiction which we believe could further deteriorate the Country of Origin principle, there is considerable extension to scope for video-sharing platforms, which has the potential to create burdensome regulation for business and the

country of destination levies for video-on-demand services has been extended to include linear channels.

The next steps are to attend further working groups, Coreper, and an attache only meeting in the next three weeks and to ascertain what the red lines are for other Member States. My Department will continue to assess other Member States' positions but we are aware that many Member States retain flexible positions and remain under scrutiny.

We are aware that is still under scrutiny reserve and I will be writing for a waiver for the vote at the Education, Youth and Culture Council on 23 May if we decide we want to support the proposal, once the above mentioned meetings have taken place, and once we are clearer about the general position of other Member States. I will also update you if we decide to vote against the proposal when it comes to Council.

I have shared the Presidency's compromise proposal, noting that it is marked Limité and not in the public domain, and not likely to be until after the EYCS Council meeting on the 23 May. For the purposes of scrutiny, I believe it is necessary to share this, but would request that you handle the information in accordance with the agreement for sharing such texts. As our analysis makes explicit reference to this document, we would request that this assessment is treated similarly for the time-being.

If you have any questions you would like my department to address, we are at your disposal but I would appreciate if these queries could be sent before the end of this month. This is in order to ensure that a full response can be given in advance of your committee meeting prior to the EYCS Council on 23 May.

25 April 2017

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture

Thank you for your letters dated 17 March and 25 April 2017 on the above proposal. These were considered by the EU Internal Market Sub-Committee at its meeting on 27 April 2017.

We welcome your helpful responses to the questions outlined in our previous letter. However, we note that the Government still has concerns about several aspects of the proposal including the wording on jurisdiction, potential regulatory burden for businesses, and the extension of country of destination levies to linear channels. We agree that the Country of Origin principle is of fundamental importance to the UK broadcasting industry and support the Government's efforts to preserve it.

You also indicate that, in spite of a new compromise text, several other Member States have ongoing concerns with the proposal and, like the UK, retain flexible negotiating positions.

We take note of your letters and would welcome a detailed update on negotiations and any progress made to address the Government's outstanding areas of concern following the EYCS Council meeting on 23 May.

27 April 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ADDRESSING GEO-BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS' NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET AND AMENDING REGULATION (EC) NO.2006/2004 AND DIRECTIVE 2009/22/EC. (9611/16)

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy

I am writing in response to the letter dated 19 December 2016 from your predecessor, Baroness Neville Rolfe DBE CMG, on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 30 March 2017.

We note the agreement of a General Approach on this proposal by the Council of Ministers in November 2016 and welcome the letter's helpful responses to the Committee's outstanding questions.

In a separate letter to this Committee, you noted that this General Approach met all the Government's negotiating objectives and described it as "particularly good news for UK consumers, who … have been subject to numerous instances of geo-blocking in the past." The Committee is aware of concerns that, post-Brexit, UK-based businesses who operate in the EU may be expected to comply with this Regulation but UK consumers will not necessarily benefit from the protections the Regulation provides when purchasing goods and services from EU businesses. How does the Government intend to protect UK consumers from unjustified geo-blocking by EEA businesses following the UK's withdrawal from the EU?

We have agreed to clear this document from scrutiny and request that you respond to our question, and update us on the outcome of trilogue negotiations, in due course.

30 March 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CROSS-BORDER PARCEL DELIVERY SERVICES (9706/16)

Letter from the Chairman to Margot James MP, Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy

Thank you for your letter dated 19 December 2016 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 12 January 2017.

Your letter helpfully answered our main question and brought to our attention some of the Government's concerns about the proportionality of some aspects of this proposal. We also welcomed your update on the progress of negotiations in general. We request that your forthcoming update letter explain what in more detail which aspects of the proposal the Government find to be disproportionate (in addition to the application of Article 3 noted in your latest letter) and any progress that has been made in changing the text to address these concerns.

We look forward to an update in due course.

12 January 2017

Letter from Margot James MP, Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy

Thank you for your letter of 12 January, in which you asked for more detail on which aspects of the above proposal the Government finds to be disproportionate. I am pleased that you found my earlier response of 19 December helpful.

As the regulation is drafted we have specific concerns around four areas:

- the definitions, which were covered in the previous response on 19 December;

- the affordability assessment;
- mandated access; and
- the list of items contained in the annex which will be subject to article 4 (price transparency) and article 5 (affordability).

The affordability assessment (Article 5) will see National Regulatory Authorities (NRAs) potentially having to carry out an assessment on 15 different tariffs in line with the items included in the annex to the regulation, to 27 different destinations, within the space of three months. The blanket assessment of all tariffs, rather than a focus on those which are considered problematic (the Commission estimates this would be 5-10% of tariffs), would place a significant burden on all NRAs.

We and several other Member States did not feel that the most recent presidency compromise text, fully addressed these concerns.

Mandated access (article 6) provides for third party access to all network elements, associated facilities and relevant services and information systems necessary to provide cross-border parcel delivery services under multilateral agreements on terminal rates concluded by universal service providers. Given that the Commission has failed to demonstrate a specific market failure here which cannot be addressed through existing competition law, the inclusion of this Article is unnecessary. The potential involvement in the facilitation of agreements between Universal Service Providers and third parties by the NRAs is a further unnecessary burden.

The Annex to the regulation contains both letter items and premium products such as track and trace, which increases the number of tariffs subject to the affordability assessment and thus increases the level of burden on NRAs. Alongside increased regulatory oversight and price transparency, the regulation seeks to increase the availability of reasonably priced cross-border parcels services to SMEs and individuals, and the inclusion of letter items and premium parcel products does not add any value in terms of achieving this objective.

On the status of the negotiations, the Maltese Presidency has yet to resume negotiations on this file so the status remains unchanged. No further texts have been issued for consideration. We will seek to make changes to the text once negotiations recommence. I will send the Committee a detailed letter on any text that is put forward for General Approach and any remaining concerns as the Regulation moves towards agreement.

24 January 2017

Letter from Margot James MP, Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy

Following my letter of January 20, I would like to update you on progress with this regulation. and also ask the Committee to consider granting a scrutiny waiver ahead of the 9 June Telecoms Council.

On 21 March the Maltese presidency published a new compromise text. This text made some progress towards a satisfactory outcome for the UK, however it was not yet a text which could be agreed by many Member States (MSs) including the UK. We continued to actively engage with this file and push for the necessary changes. A further text was published on 18 April, which moved significantly closer to a text the UK which met our objectives.

As set out in my letter of 20 January, there were specific concerns with the draft regulation around the following areas:

- the definitions;
- the affordability assessment;
- mandated access; and
- the list of items contained in the annex which will be subject to article 4 (price transparency) and article 5 (affordability).

On the definitions (Article 3), we have been successful in influencing changes to ensure that undertakings which deliver only their own goods e.g John Lewis and Tesco, are not included in the

regulation but that companies such as Amazon, who deliver for third parties through their logistics arm, are covered. This should mean that regulatory burdens are not unnecessarily imposed on undertakings which do not form part of the cross-border parcels market. We have also been successful in introducing language concerning subcontractors to ensure that double-counting does not take place for certain steps in the delivery chain, again meaning an accurate picture of the market can be achieved with minimal burdens.

The transparency provision (Article 4) which is linked to the list of items in the annex on which operators are required to provide tariff information, has been restricted to operators which provide cross-border delivery services and have more than 50 employees. Many Member States (MSs) were pressing for this to be extended to all operators, whereas the UK along with other likeminded MSs wanted this restricted to Universal Service Providers (USPs) only. The Presidency considers this to be an appropriate compromise. While we would have liked to have seen this provision restricted to USPs, we do not believe the Presidency are willing to make this change. With that in mind, and in the light of Article 3 now applying only to cross border rather than all operators, this is likely to limit the impact to 80-90 operators rather than a possible 1200. We will continue to press for this to be limited to USPs.

The affordability assessment (Article 5), was applicable to all parcel service providers in the previous draft and this was something we considered unnecessary. On this point we have successfully negotiated the scope of this to be applicable to USPs only which is in line with the concept of the provision of affordable services as in the Postal Services Directive.

On the affordability assessment (Article 5) itself, we have been clear that we would like to see an assessment which takes into account whether consumers or small or medium sized enterprises are likely to suffer significant adverse consequences as a result of the cost of sending cross-border parcels. The impact on groups such as those with low incomes, living in rural areas or who are likely to be particularly reliant on parcel services (such as those who are aged over 65, have a disability or are without access to the internet), should be taken into consideration. While changes have been made, we remain unconvinced that the changes achieve a true affordability assessment which should be a fundamental aim of this Regulation. We do not consider the Article is in a position for the UK to support it at this stage.

Mandated access (Article 6) has now been deleted from the Regulation as a result of pressure from a number of MSs. As previously set out, we did not believe that the Commission had demonstrated a specific market failure which cannot be addressed through existing competition law and therefore considered this Article unnecessary, so the removal of this is a positive outcome.

The Annex to the regulation still contains both letter items and premium products such as track and trace, which increases the number of tariffs subject to the affordability assessment and thus increases the level of burden on National Regulatory Authorities. We still consider this to be outside of the scope of the regulation which should be focusing on basic cross-border parcel services and are still working to achieve changes here.

Alongside increased regulatory oversight and price transparency, the regulation seeks to increase the availability of reasonably priced cross-border parcels services to SMEs and individuals, and the inclusion of letter items and premium parcel products does not add any value in terms of achieving this objective.

The Presidency has confirmed that they intend to reach General Approach for this Regulation at the next Telecoms Council on 9 June. We are actively engaged in the negotiation and are fully participating in Council Working Groups with the aim of achieving further changes to the file to ensure minimal burdens on the UK market.

We are unable to predict the approach which will be taken at the Council meeting. It is our intention to vote in support of the approach if we are able to make satisfactory progress towards our broad objectives for in line with the position set out above.

Following the announcement this week of a General Election in June, this letter asks the Committee to consider granting a scrutiny waiver ahead of the June Telecoms Council.

21 April 2017

Letter from the Chairman to Margot James MP, Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letters dated 24 January and 21 April 2017 on the above proposal. These letters were considered by the EU Internal Market Sub-Committee at its meeting of 27 April 2017.

Your letters provided helpful clarification on the Government's concerns regarding this proposal and progress made achieving your negotiating objectives. We note that you remain actively engaged in negotiations with the aim of securing further changes and that, if sufficient progress is made, the Government intends to vote in favour of a General Approach at the Telecoms Council meeting on 9 June.

We have decided to grant a scrutiny waiver for this Council and look forward to an update on the outcome of the meeting in due course.

27 April 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 98/41/EC ON THE REGISTRATION OF PERSONS SAILING ON BOARD PASSENGER SHIPS OPERATING TO OR FROM PORTS OF THE MEMBER STATES OF THE COMMUNITY AND AMENDING DIRECTIVE 2010/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON REPORTING FORMALITIES FOR SHIPS ARRIVING IN AND/OR DEPARTING FROM PORTS OF THE MEMBER STATES (9964/16)

Letter from the Rt Hon John Hayes CBE MP, Minister of State for Transport, Department for Transport

Thank you for your letter of 19 October 2016 on the proposed Passenger Ship Safety package and your subsequent letter of 24 November 2016.

I am writing to update the Committee on negotiations on the proposed Directive on registration of persons sailing on board passenger ships.

As reported in the original Explanatory Memorandum in July 2016, we broadly welcomed the proposed simplification measures in the Passenger Ship Safety Package but had some concerns which we proposed to address during negotiations. General Approaches were agreed on the other two proposals in the package at the Transport Council on 1 December 2016, and the Maltese presidency has since taken forward negotiations on this remaining proposal to amend the passenger counting and registration Directive.

The proposal was discussed most recently at Council Shipping Working Party on 8 and 13 February 2017, where good progress was made on the UK's objectives. It is now expected to be put to the Council of Ministers shortly for agreement to a General Approach.

The current Directive requires passenger ship operators to count the number of passengers on board before a ship departs and store the information in a shore-based register which can be provided to Member State authorities in the event of an accident. For voyages of more than 20 miles, they must also collect passenger data. The proposal sought to modernise this system by instead requiring operators to report the numbers and data into the online National Single Window maritime reporting system (NSW).

For those ships on international voyages who already use the National Single Window for reporting Immigration and Customs information, this proposal will enable them to report passenger data at the same time, and thus reduce double reporting. Working Party discussions have therefore mainly focussed on the extent to which smaller ship operators, which do not currently use the National Single Window, should have to migrate on to it for the purposes of this Directive.

The UK, working with like-minded Member States, has argued that, for small vessel operators on short voyages (20 nautical miles or below) and those operating domestically, it would be disproportionate for this to be their required means of reporting passengers.

At the 8 February 2017 Working Party, the UK and its allies were successful in protecting these smaller ship operators through three key means. We have:

a. obtained an exemption for ships travelling exclusively in protected sea areas (where search and rescue facilities are assured), on voyages of less than one hour, from the obligation to report to the National Single Window.

b. successfully defended the possibility for ships travelling 20 miles or fewer to report to the Coastguard directly by using the Automatic Identification System (AIS) rather than using the National Single Window.

c. obtained a transitional period of 10 years before ships engaged in other journeys must move to use of the National Single Window system. This provides time for ship operators across the EU to develop technological solutions to facilitate reporting.

In particular, we estimate that these improvements would benefit 39 scheduled seagoing routes within the UK which are under the scope of Article 4 and which only need to report passenger numbers. Some additional routes would also benefit from the one hour exemption. There are also a number of tourist trip services which would come under the scope of the Article 4 reporting requirement, but the number of these cannot be quantified at this time. It should be noted this Directive is applicable to seagoing ships only and does not cover ships operating on UK Categorised waters; such ships will continue to come under the scope of UK national reporting requirements.

It is estimated that the UK has 19 scheduled seagoing domestic passenger ship routes which are under the scope of Article 5 and would need to report all passenger details to the National Single Window instead of the shore-based register. This is due to these voyages being over 20 nautical miles and one hour or more in duration. We estimate that ships operating these voyages would need to transition to report all passenger details including name, year of birth, and nationality and, where offered, special assistance needs, into the National Single Window. The 10 year transition period would, however, limit the initial impact, allowing time for ship operators to develop cost-effective solutions and capabilities to input data, and for the Single Window to reach maturity.

I am content that these exemptions, combined with the transitional period, minimise additional burdens on the industry, whilst maintaining current benefits to safety. I believe that it would be in the UK's interest to secure the improvements that we have achieved by voting in favour of the General Approach, and would be grateful if the Committee could lift its Parliamentary Scrutiny reservation accordingly.

When the Committee considered the initial Explanatory Memorandum it requested further information on the use of AIS for reporting passenger numbers. AIS is not currently used for this purpose at a national level for seagoing passenger ships. However the Port of London Authority has successfully implemented "Thames AIS", and this is used for reporting passenger numbers. Given the 10 year transition period, I am confident that a system could be developed at a national level which, in conjunction with the protected sea area exemption for ships on voyages under one hour, would minimise the impact for our small operators in terms of the need to install new equipment and provide the required data to HM Coastguard.

I will, of course, continue to keep you informed of any developments. The European Parliament is still at a fairly early stage in its consideration of the proposal. However, the rapporteur has just published a draft report for consideration by the Committee on Transport and Tourism. In the main, this supports the same position as that reached in Council Working Party meetings. The rapporteur does, however, propose various amendments which mainly act to clarify and shorten time allowed for reporting and for the Commission to agree exemptions. One proposed amendment to Article 4 of the Directive would allow an operator to develop a system of reporting passenger numbers which is not AIS, so long as it is approved by the Member State. This is welcome as it would allow operators to develop their own reporting system in conjunction with the Coastguard without the potential cost of upgrading the AIS system.

28 February 2017

Letter from the Chairman to the Rt Hon John Hayes CBE MP, Minister of State for Transport

Thank you for your letter dated 28 February 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 2 March.

We note the progress the Government and other Member States have made in amending the proposal to reduce the burden on smaller vessels and those operating in protected categories of water for short periods of time. We also note the lengthy transition period secured for those vessels who will need to update their reporting methods. We have decided to clear this proposal from scrutiny.

Please note that a response to this letter is not required.

3 March 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A FRAMEWORK ON THE MARKET ACCESS TO PORT SERVICES AND THE FINANCIAL TRANSPARENCY OF PORTS

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A FRAMEWORK ON THE MARKET ACCESS TO PORT SERVICES AND FINANCIAL TRANSPARENCY OF PORTS. (10154/13 & 13764/14)

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

Thank you for your letters dated 13 and 15 December 2016 on the above proposal. These were considered by the EU Internal Market Sub-Committee at its meeting on 12 January 2017.

Your letters provided helpful information regarding the implications of the PSR for the UK. We note that the Government has decided not to vote in favour of the PSR during its final adoption in the Council. Accordingly, we have decided lift the scrutiny reserve and request that you update us on the outcome of the Council meeting on this proposal in due course.

We also note that the Government has suspended its application for the CME pending greater clarity on the UK's withdrawal negotiations. Does this decision reflect a wider general approach of the Government to delaying actions regarding implementing EU legislation currently being agreed?

13 January 2017

Letter from the Rt Hon John Hayes CBE MP, Minister of State for Transport

Thank you for your letter of 13 January. I am grateful for the lifting of your scrutiny reserve.

I am writing to inform your Committee that the final vote to adopt the port services Regulation into EU law took place at the meeting of the Agriculture and Fisheries Council on 23 January. The UK voted against the adoption of the Regulation and entered the following Minute Statement:

"The United Kingdom welcomes that this Regulation is significantly less onerous than originally proposed. Nevertheless, even in its amended form, the UK regrets its adoption, considering its provisions (other than those promoting transparency of public funding) unnecessary and largely inappropriate for the promotion of investment and efficiency at European ports, and particularly those in the UK. Believing that it would have a detrimental effect on the UK's competitive and efficient ports, the United Kingdom is voting against the Regulation.

"The experience of the UK's deregulated, competitive, predominantly privately owned and largely unsubsidised ports sector over recent decades demonstrates conclusively that deregulated ports operating in an environment of fair competition, can and will invest to develop in line with current and future transport requirements."

This recognises that UK ports do compete, at the margin, with those on the Continent, that they have to do so often against highly subsidised competition, and that they are more exposed to the

regulatory burdens. The efficiency and competitiveness of the UK ports sector is essential to us as an island trading nation, and I am determined to safeguard that efficiency and competitiveness.

The result of the meeting was that the Council adopted the Regulation with only the United Kingdom voting against. The Commission entered a statement in relation to Recital (45), on State Aid. I agree with the Commission's view here that public funding of certain access infrastructure within the area of a port may constitute State Aid.

You asked whether there were any implications, from the suspension of work on an application for a competitive market exemption (CME) from procurement legislation, for implementation of EU legislation currently being agreed. The answer is 'no'. An application for CME is a discretionary action provided for by existing legislation, and suspending work on this simply represents a sensible use of resources, in view of the decision to leave the EU.

Where European legislation currently being agreed will require transposition before we leave, the Government has made clear the intention to abide by our continuing legal responsibilities. At the same time, it has long been our policy not to transpose European legislation earlier than necessary, unless there is a clear benefit to the UK from doing so. This, too, has not altered.

Returning to the PSR, this will come into force 20 days after its publication in the Official Journal of the EU, which is imminent. It is due to come into effect on ports two years thereafter.

You know, of course, that the Prime Minister has made clear that the United Kingdom will not remain a member of the European Economic Area following our exit from the European Union. The effects of withdrawal will be clear. We will take back control of our laws and bring an end to the jurisdiction of the European Court of Justice in the United Kingdom. While we remain members of the European Union we still have an obligation to ensure that legislation is implemented. The Port Services Regulation will be transferred into UK law at the point of exit and future changes will be a matter wholly and solely for the UK Parliament.

28 February 2017

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE REVIEW OF THE WHOLESALE ROAMING MARKET.

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) NO.531/2012 AS REGARDS RULES FOR WHOLESALE ROAMING MARKETS.(10327/16 AND 10329/16)

Letter from the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

I am writing to update you on progress with the Wholesale Roaming Regulation. This Regulation sets 'caps' to the wholesale charges that mobile operators make across borders when their customers roam to other Member States.

As you know from our previous correspondence, the General Approach to the Wholesale Roaming Regulation was agreed at Telecoms Council on 2 December, supported by the UK. The caps agreed for the General Approach at Telecoms Council on 2 December were:

In Euros	**15 June 2017**	**15 June 2018**	**15 June 2019**	**15 June 2020**	**15 June 2021**	**30 June 2022**
Calls (per minute)	0.0353	0.0353	0.0353	0.0353	0.0353	0.0353
SMS (per SMS)	0.01	0.01	0.01	0.01	0.01	0.01
Data (per MB)	0.01	0.0085	0.0070	0.0060	0.0050	0.0050

The Council subsequently entered trilogue with the European Parliament and the Commission to reach a final agreement, with three trilogue on 15 December, 18 January and 31 January. In the final session on 31 January, agreement was reached on the final outstanding issue - wholesale data caps.

The 'glidepath' for the wholesale data cap is as follows:

June 2017-December 2017 - €7.7/GB (€0.0077/MB)
2018 - €6.0/GB (€0.006/MB)
2019 - €4.5/GB (€0.0045/MB)
2020 - €3.5/GB (€0.0035/MB)
2021 - €3.0/GB (€0.003/MB)
2022 - €2.5/GB (€0.0025/MB)

(The regulation now uses Euros *per* gigabyte (€/GB). Previously Euros *per* megabyte (€/MB) were used. €0.006/MB = 0.6 €cents/MB = €6.0/GB)

As these figures show, trilogue negotiations have led to a significant further reduction in wholesale data caps relative to the caps proposed in the Council's General Approach. This reduction will be beneficial for both UK consumers and mobile operators.
Agreement was also reached in trilogue on the wholesale cap for voice calls, which will be capped at €0.032/minute and SMS text messages, at €0.01/SMS; both from June 15, 2017 (no glide path).

The timetable is now for final agreement in COREPER on 8 February. There will then be an 'A' vote in Ministerial Council, which is likely to be in March or April. We should know the date within the next couple of weeks. The next Telecoms Council is not until June.
I therefore request that you lift the scrutiny reserve in relation to this file.

7 February 2017

Letter from the Chairman to the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture

Your letter, dated 7 February 2017, was considered by the EU Internal Market Sub-Committee at its meeting of 23 February 2017.

We welcome the news that this proposal has been agreed and that the caps on wholesale roaming charges are lower than was originally agreed by the Council of Ministers.

Given the benefits this proposal will have for UK consumers and businesses, what steps is the Government taking to ensure that UK Mobile Network Operators will continue to benefit from these wholesale roaming caps after 2019?

23 February 2017

Letter from the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture

The wholesale roaming markets regulation

1. The General Approach to the Wholesale Roaming Regulation was agreed at Telecoms Council on 2 December, supported by the UK. The Council completed trilogue with the European Parliament and the Commission on 31 January, agreeing wholesale caps as follows:

    - Voice calls: €0.032/minute; and
    - SMS text messages €0.01/message - both from June 15, 2017.

Data caps:	June 2017 - Dec 2017	Jan. 2018 - Dec 2018	Jan. 2019 - Dec 2019	Jan. 2020 - Dec 2020	Jan. 2021 - Dec 2021	Jan. 2022 -

€ / gigabyte	7.7	6.0	4.5	3.5	3.0	2.5
€ / megabyte	0.0077	0.0060	0.0045	0.0035	0.0030	0.0025

2. The draft regulation was approved by the ITRE committee of the European Parliament on February 28, 2017. Adoption by Parliament plenary is expected later in March. There will be an 'A point' vote at a Council of Ministers meeting, which is likely to be in April (the next Telecoms Council is not until June). We should know the date within the next two to three weeks.

3. I would be grateful if you could provide clearance on this file in order for the UK to vote in favour of the agreed text of the regulation at Council.

Implications of the wholesale roaming regulation for UK operators

4. UK operators wanted caps for data lower than in the Commission's original proposal. This is because more UK consumers roam to other Member States (many to holiday destinations in southern Europe) than users from other Member States come to the UK. Therefore the flow of revenue is asymmetric, but the lower the cap, the less the difference. This is particularly relevant to virtual mobile network operators (MVNOs), who must pay outward roaming charges but do not receive revenues from inward roamers. UK operators are generally content with the caps agreed in trilogue.

5. DCMS economists have analysed the possible cost to the UK mobile industry of implementing 'roam like at home' (RLAH), using data on roaming from a study for the Commission by the TERA consultancy[5]. The key input is the amount of data UK consumers use once RLAH comes into effect. Based on TERA data, this would be 2 GB *per* month. The overall impact on UK firms would then be about £110 million *pa*. If consumers used 3 GB a month, it would be in the region of £200 million *pa*.

The implementing regulation on fair use policy and the sustainability mechanism

6. The problems that the fair use policy (FUP) addresses are:
   - the imposition by operators of too restrictive fair use limits, which would endanger RLAH for those periodically travelling in the EU; and
   - the FUP should prevent serious market disruptions by allowing operators to protect against abusive or anomalous use of RLAH.

7. The Commission's first draft FUP (5 September 2016) allowed operators to limit customers' roaming to periods of thirty days, with a maximum of ninety days *per* year. The first draft was withdrawn and replaced on 26 September with an FUP incorporating three main elements:
   (a) The principle of residence and stable links;
   (b) Monitoring abusive and anomalous behaviour; and
   (c) Ancillary measures for prepaid cards and open data bundles[6].

8. UK had two areas of concern:

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[5] https://ec.europa.eu/digital-single-market/en/news/commission-publishes-study-cost-providing-wholesale-roaming-services-eu

[6] An 'open data bundle' is: 'a tariff plan for the provision of one or more mobile retail services which does not limit the volume of mobile data retail services included against the payment of a fixed periodic fee, or for which the domestic unit price of mobile data retail services, derived by dividing the overall domestic retail price, excluding VAT, for mobile services corresponding to the entire billing period by the total volume of mobile data retail services available domestically, is lower than the regulated maximum wholesale roaming charge referred to in Article 12 of Regulation (EU) 531/2012;'

- the idea of placing of a limit on 'open' data packages when roaming; and
- limiting the use of data by PAYG (pre-pay) roamers.

9. Because of these reservations, the UK abstained in the vote at COCOM on 12 December, along with eight other Member States. Seven voted against, and twelve in favour. There was no qualified majority vote (QMV) in favour, but neither was there a majority against - there was a 'plurality' of votes in favour and, by the QMV rules, the Commission was allowed to adopt the regulation, which it did on 15 December 2016.

Features of the fair use policy

10. The regulation specifies fair use policies that mobile operators *may* apply, if they choose to, with the intention of guarding against 'abusive or anomalous' usage. They are not intended to protect against fraud, for which normal contract terms would apply. This is without prejudice to any fair use limits that apply to domestic use - which will continue to apply while roaming.

11. 'Stable links' of customers with the Member State of the provider, or of residence there, are used to determine if the usage might be abusive or anomalous. Operators may require customers to provide proof of residence or stable links, which include 'durable' employment or contractual links, courses of study, retirement and other situations requiring 'an analogous level of territorial presence'. The only other indicators of risk of abusive or anomalous use that operators may consider are:
    a. Long inactivity of a SIM card used mostly for roaming;
    b. Subscription and use while roaming of multiple SIM cards by one customer.

12. For pre-pay (pay-as-you-go) customers, as an alternative to establishing residence or stable links, operators may limit consumption of data roaming services (but not of voice or text messages). The limit must be no less than the volume obtained by dividing the overall amount of paid-for credit remaining at the commencement of roaming by the regulated roaming charge (cap).

13. The Body of European Regulators of Electronic Communications (BEREC) is drafting guidance on implementing fair use policies, aiming to have the guidance finalised before Easter.

Brexit implications

14. I note that you raise some questions about the position of roaming after the UK leaves the EU and in relation to free trade agreements, and bilateral agreements. We will be seeking the best possible deal which delivers for British consumers and business as part of our exit negotiations. We will examine precedents from other agreements, however we will not seek to replicate an existing model unless it delivers the right deal for the UK. The Great Repeal Bill will end the authority of EU law. The same rules and laws will apply on the day after Brexit as they did before, including for roaming. Any decision to diverge will be taken after that point and an assessment of the likely impacts will be made at that time.

22 March 2017

Letter from the Chairman to the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

Thank you for your letter dated 22 March which was considered by the EU Internal Market Sub-Committee at its meeting on 6 April 2017.

We have decided to clear both the above documents from scrutiny.

6 April 2017

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING, FOR THE PURPOSE OF ADAPTING TO TECHNICAL PROGRESS, ANNEX II TO DIRECTIVE 2009/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE SAFETY OF TOYS, AS REGARDS LEAD (12153/16)

Letter from the Chairman to Margot James MP, Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 9 November on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 1 December 2016.

Thank you for responding to all the questions raised in our letter; and for informing us that this proposal was adopted in the Council meeting on 17 October. Thank you for also confirming that the Government abstained from voting.

We have agreed to clear this document from scrutiny. Please note that a response to this letter is not required.

10 January 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN ELECTRONIC COMMUNICATIONS CODE (RECAST) (12252/16)

Letter from the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

Thank you for your letter of 2nd December 2016 in which you request further information on the two Explanatory Memoranda (EMs) submitted to you by my Department on 11 October;

i) 12252/16 - covering a proposal for a Directive of the European Parliament and of the Council establishing the European Electronic Communications Code (Recast); and,
ii) 12257/16 - covering a proposal for a Regulation of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications.

I fully recognise why the relevant Committees in both Houses have held these proposals under scrutiny, and why both Committees have requested further detail on these "extremely technical and wide-ranging legislative proposals". My Department will endeavour to supply the Committees with answers to their questions, and continue to provide regular updates on the progress of negotiations.

Ongoing negotiations and Council Working Groups
Since I submitted the EMs to both Committees on 11th October 2016 there has been a significant amount of further work on the proposals - both in the UK and in Europe. In December, I attended the Telecoms Council. Following the turn of the year, Council Working Groups (CWG) have commenced in earnest under the Maltese Presidency; my Department has analysed the stakeholder responses to our call for evidence; and Departmental officials have continued to work closely with a like-minded group of Member States (MS) in Europe in order to pursue shared priorities in the Council.

These latest developments, along with the queries that both Scrutiny Committees have raised in response to the EMs, make this an opportune time for me to supply you both with an update.

Following publication of the proposals on 14th September 2016 my officials have sought opportunities to raise questions with the Commission and elicit further detail on the proposals, some of which remain articulated in high-level terms. This has included flagging our queries and concerns at the first

Council Working Group (CWG) meeting on 29th November, which addressed general remarks and a read through of articles 1-3 (subject matter and aim; definitions; and objectives).

Since then, as part of an intense programme of CWGs under the Maltese Presidency, the Groups have discussed in more detail proposals for Universal Service Obligations (USO) on 9th January; and end user rights, including transparency, contracts, quality of service and bundled services, on 11th January.

Proposals for full harmonisation of consumer protections were discussed on 27th January. We took this opportunity to reaffirm that the UK does not agree with the need for full harmonisation of consumer protection regulation, nor that the Commission have put forward objective evidence justifying for a need for this. The proposals for full harmonisation risk diluting existing national measures; restricting MS flexibility to deal with national issues; and constraining the NRAs' ability to innovate to anticipate and prevent incidences of consumer detriment. We wish to see minimum harmonisation retained.

Going forward the plan is for CWG to become more frequent with access and investment proposals on the agenda for February, followed by spectrum management in March and governance issues shortly thereafter.

Scrutiny Updates
Given the fast-moving pace and wide ranging territory of these files my officials have agreed with Alicia Cunningham, Clerk, EU Internal Market Sub-Committee, House of Lords and Kilian Bourke in House of Commons Scrutiny Clerk's Office that we will provide a regular programme of updates for the scrutiny committees. This will ensure that you are kept fully informed as further details of the proposals emerge, including any indications of how new measures might work in practice.

It should be noted that some of the proposed amendments to the regulatory framework have less impact on the UK than they might do in other MS.. For example, under new Articles 75 and 76 procedures for the introduction of functional separation are further expanded upon as a remedy for regulating the retail and network operations of incumbent operators. Functional separation has applied to the operation of the incumbent operator in the UK telecoms market since 2006, but was only introduced as an implemented solution into the EU Framework in May 2011. I do not propose to expand on those amendments in great detail as they are not relevant to the UK market.

Similarly, as much will be determined by the UK's negotiations to exit the EU, it is not possible at this stage to give a full account of the impact of Brexit on our negotiating position nor how closely the future electronic communications regulatory regime in the UK will mirror the outcome of these negotiations.

That said, I have set out our responses to the Committees questions, plus updates in so far as we have them, in a series of annexes below:

Annex A - Timetable and negotiating position
Annex B - Subsidiarity Concerns
Annex C - Key Policy developments
Annex D - The Government's negotiating position in view of ongoing stakeholder engagement

I hope this reply is helpful in answering your Committee's questions and in providing greater clarity on the European Electronic Communications Code.

21 February 2017

Letter from the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture

UPDATE ON: 12252/16 - PROPOSALS FOR A REVISED EUROPEAN ELECTRONIC COMMUNICATIONS CODE (RECAST) AND 12257/16 - PROPOSAL TO ESTABLISH A NEW BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS REGULATION

General Update and request for scrutiny waiver

In October 2017 my Department submitted the above explanatory memoranda (EMs) and committed to keeping both Committees updated as negotiations progressed.

The Council of the European Union has now completed its first read through of the entire European Electronic Communications Code (EECC) and the relevant European Parliament rapporteurs - from the Committee on Industry, Research and Energy (ITRE) and the Committee for the Internal Market and Consumers (IMCO) - have published their draft reports on the Code.

We are progressing with preparations for the the Transport, Telecommunications and Energy Council meeting on 8/9th June in Luxembourg, at which we anticipate the Maltese Presidency will look to conclude its term with an agreement on a partial general approach or a progress report on some aspects of the Code. As well as writing to update you on the Code's progress, I am writing to request a scrutiny waiver to enable me to vote in support of any partial general approach at the Council. I am requesting the waiver now, before Parliament is dissolved ahead of the general election. Should the Presidency decide a progress report will be sufficient, the UK will not need to vote. However, a finalised agenda is not likely to be provided until approximately a month before the event.

There are further Council Working Groups (CWGs) scheduled for 26 April, 11 May and 12 May to prepare for COREPER which will meet to discuss the agenda for Telecoms Council on 17 May, and progress on the Code proposals on 24 May.

Negotiations so far

At this relatively early stage of negotiations there are no finalised, definitive agreements that I can bring to your Committee's attention.

The co-decision process has continued apace with CWGs taking place up to three times a week. To date, the Presidency's compromise proposals comply with our position on Universal Service Obligation (USO) funding and opposition to the double-lock veto, which would enable the Commission and BEREC to block regulatory intervention by a national regulatory authority (NRA). The compromise text is also nearer to our preference on returning to minimum harmonisation of end-user rights than we had initially anticipated. We have backing from other Member States on spectrum and are working on a joint paper on this with Germany.

Policy proposal updates:

Spectrum: CWGs on Spectrum took place in March. Like the UK, many Member States still consider that the Commission's proposals unnecessarily extend Commission powers of intervention in spectrum management procedures. The Commission has not provided adequate justification that the proposals are proportionate and necessary for efficient management of Spectrum, nor have they justified removing Member State's flexibility to respond to the unique characteristics of their national markets, demographics and geographies. We also have concern that the Commission's proposals are too broad in scope and inappropriately apply interventions designed for mobile broadband services to all other electronic communications services.

Services: The Presidency published a second compromise draft of the Services text in March which reintroduced full funding flexibility for the USO. We are supportive of this change. Whilst the Presidency's redrafted text reverts to minimum harmonisation of consumer rights for all electronic communications services other than number-independent interpersonal communications services, we continue to call for further member state flexibility. We continue to lobby for a proportionate approach to regulation of Over The Top services (OTTs), only to be introduced only in the case of consumer harm or proven market failure.

Access and Investment: The Presidency's compromise text on Access was published in March. The text is highly technical and the detail of many articles is still being examined in the Council. Member States in general share the UK's objective of achieving a pro-competition and pro-investment

flexible regulatory framework. We welcome the introduction of further discretion to these articles to give Member States flexibility to respond to the unique characteristics of their own national markets with a range of regulatory tools. We also welcome the deletion of the proposed 'double lock' veto in Article 33(5), and reinstatement of the existing procedure for improving regulatory consistency in the EU set out in the current framework.

BEREC: Proposals for the draft Regulation establishing BEREC as an EU agency have not yet been discussed at Council.

Telecoms Council, 9 June - Waiver Request

We expect the Maltese Presidency to table a partial general approach or progress report on the Services text of the EECC. This partial general approach may also include elements of the Access and Spectrum text. **If this partial general approach meets the UK's policy position, I would like to ensure we are able to vote in favour.** The Presidency is more likely to include the Access and Spectrum elements of the Code in the Telecoms Council agenda in the form of a progress report. The elements included in a **progress report** would not require a UK vote.

I am therefore requesting a Scrutiny waiver to allow the UK to vote on a partial general approach. I will update you on the proposed Telecoms Council agenda once more information has been received in May. I will update you on the outcome of the Telecoms Council meeting.

20 April 2017

Letter from the Chairman to the Rt Hon Matthew Hancock MP, Minister of State for Digital and Culture

Thank you for your letter dated 20 April 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 27 April 2017.

We are grateful for your update on the progress of negotiations following the announcement of an early General Election. We share your concerns regarding a number of aspects of the proposed Directive, particularly relating to looser regulatory obligations for investing operators, the Commission's powers for intervention on spectrum management and the burden of new obligations on OTT providers. We are pleased to learn that the second compromise draft of the Services text has reintroduced full funding flexibility for the USO.

In light of the forthcoming prorogation and dissolution of Parliament, we have decided to grant a partial scrutiny waiver for the Services text of the proposal. If no partial General Approach on this aspect of the proposal is reached at the Council meeting, it will once again be under the scrutiny reserve.

We look forward to an update on the outcome of the Council meeting, and on the progress of negotiations on other aspects of the proposal, in due course.

27 April 2017

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A COMMON FRAMEWORK FOR THE PROVISION OF BETTER SERVICES FOR SKILLS AND QUALIFICATIONS (EUROPASS) AND REPEALING DECISION NO 2241/2004/EC (12947/16)

Letter from the Chairman to the Rt Hon Robert Halfon MP, Minister of State for Apprenticeships and Skills for Education, Department for Education

Thank you for your EM dated 31 October 2016 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 9 February 2017.

It was helpful of you to provide a possible timetable for further consideration of this laudable and important initiative, and to confirm that the UK has no particular difficulties with the proposal. However, we note that this is based on the fact that it creates no binding requirements for the UK to meet, rather than on the specific merits of the proposed Decision.

What is the Government's assessment of the initiatives outlined in the proposed revision to Europass? Do you think that these measures will help to address the low levels of awareness about available Europass services that have affected the impact of the framework to date?

You mention in your EM that Europass has limited take-up in the UK, aside from the Europass CV template. Has use of the Europass CV in the UK been employer or employee led? Does the Government intend to take any further action at national level to promote Europass services to potential beneficiaries?

You also raised a specific concern about potential additional costs related to the proposed National Skills Coordination Points. Are you satisfied by the Commission's assurances that these will be funded from the existing Erasmus+ budget allocated for national centres? Can you clarify how the National Skills Coordination Points differ from current national contact point arrangements? Do you think that their establishment may simplify Europass administrative procedures, and potentially reduce administration costs, as the Commission suggests?

The Committee has decided to retain this document under scrutiny and awaits a response to this letter, including any update you can provide on the progress of Council discussions, in the usual 10 working days.

10 February 2017

Letter from the Rt Hon Robert Halfon MP, Minister of State for Apprenticeships and Skills for Education

Thank you for your letter dated 10 February 2017 asking for further information about the proposals for changes to the Europass. I apologise for the delay in responding.

You asked about the Government's assessment of the initiatives outlined in the proposed revision to Europass.

In general, the Government is content with the proposal for the revision of Europass. The Europass portfolio has seen minimal development (with the exception of the CV) over the 12 years since its launch, and needs updating. The proposed measures make better use of technology and should make the service more flexible and relevant for end users. We do however have some strong reservations about Member States being required to designate a single national Skills Coordination Point.

Europass is an existing EU instrument established by a Council Decision. We will continue to participate whilst we remain members of the EU and have no objections to changes which are designed to modernise and digitalise Europass, making it more user-friendly and efficient for end users. As we prepare to leave the EU, we will consider our future relationship with Europass as part of the withdrawal negotiations.

You asked whether the measures [outlined in the proposed revision to the Europass Decision] will help to address the low levels of awareness about the available Europass services that have affected the impact of the framework to date.

We accept that modernisation and digitalisation of Europass may improve its accessibility and user-friendliness for end users. It is hard to judge what effect this will have on overall take-up and usage.

You asked whether the Government intend to take any further action at national level to promote Europass services to potential beneficiaries.

The UK NEC service is provided by the UK National Academic Recognition Information Centre (UK NARIC), under contract to the Government. Under this contract, and whilst we remain members of the EU (and of Europass), the NEC will continue to provide information on Europass on its website, through newsletters and information and training events. We do not intend to take any further action.

You asked if the use of the Europass CV in the UK been employer or employee led.

We believe that use of the Europass CV has been largely employee-led in the UK as well as across Europe (save for some countries in which it is incorporated into their national careers services).

You asked whether we were satisfied by the Commission's assurances that the National Skills Coordination Points will be funded from the existing Erasmus+ budget allocated for national centres.

You also asked for clarification on how the National Skills Coordination Points differ from current national contact point arrangements and whether their establishment may simplify Europass administrative procedures, and potentially reduce administration costs, as the Commission suggests.

We are not yet persuaded by the Commission's assurances on this set of issues and remain concerned that they may result in additional costs in a UK context, for which no extra allocation has been provided or proposed. We accept that the proposal may cost less for the Commission as they will have fewer national organisations to deal with. We also accept that this element of the cost could be met from the existing Erasmus+ budget.

However, our network of National Contact Points (NCPs) is organised across the four nations, reflecting the devolved nature of education policy. This makes coordination more complex than in some other Member States. Designating a single Skills Coordination Point would add another level of administration to what is already a complicated system, and would mean additional cost in terms of a management fee. We are not convinced that these costs would be matched by any savings flowing from simplification.

We therefore have strong reservations about the proposal, but will continue to clarify these cost/benefit arguments in the negotiations to come.

10 March 2017

Letter from the Chairman to the Rt Hon Robert Halfon MP, Minister of State for Apprenticeships and Skills for Education

Thank you for your letter dated 10 March 2017 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 27 April 2017.

We are grateful for your helpful responses to the questions raised in our previous letter, particularly your clarification of the Government's position and your concerns regarding the requirement for National Skills Coordination Points (NSCP). We note that, if the text is amended to make the NSCP measure voluntary, political agreement on this file may be reached at the Education Council on 22 May

We would also like to take this opportunity to emphasise the importance of ensuring that the insight and expertise of the business community is fed into the further development and implementation of the revised Europass initiative.

We are content to clear this document from scrutiny and would welcome an update on the outcome of the Education Council in due course.

27 April 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT THE COUNCIL THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS SPACE STRATEGY FOR EUROPE (13758/16)

Letter from the Chairman to Jo Johnson MP, Minister of State for Universities, Science Research & Innovation for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your EM dated 14 November 2016. This was considered by the EU Internal Market Sub-Committee at its meeting of 9 February 2017.

We note that the Government broadly welcomes the Commission's Space Strategy for Europe, particularly given its close synergies with and potential to support domestic objectives for the UK space sector. We are also grateful for the information you provided for the expected timetable for further progression and implementation of this Strategy.

As the Committee will have the opportunity to scrutinise initiatives outlined in the strategy further when draft legislation is proposed, we have cleared this document from scrutiny. However, we would welcome more information on areas where you indicate the Government has some reservations.

You mention that discussions between the UK Space Agency and the UK space sector have identified industry concerns on the proposed Govsatcom initiative. We would be grateful if you could provide further information on the initiative and detail the specific concerns UK companies have raised about it. What has led you to believe that the proposed "reliable, secured and cost-effective" services will be offered free of charge?

We note that the Government supports the Commission's aim to enhance the EU's SST service to improve space weather forecasting but not necessarily the consideration of cyber threats. Is this because the Government feels there is insufficient evidence that European space infrastructure is at risk from cyber-attacks or that other services are better placed to monitor these risks?

You also intend to seek clarification on whether the Commission is seeking to change the civilian status of the Galileo and Copernicus programmes through adapting them to meet defence user needs. Could you provide more detail on your concerns in this area? Do you see any role for Copernicus and Galileo/EGNOS in improving the EU's capacity to respond to migration, border control and maritime surveillance challenges?

We note the Commission's intention to step up support to space entrepreneurs to facilitate further financing of investments in the sector. What do you consider is the appropriate balance to be struck between private and public space initiatives to ensure that safety and security is maintained?

We look forward to receiving your response in due course.

10 February 2017

Letter from Jo Johnson MP, Minister of State for Universities, Science Research & Innovation for Business, Energy and Industrial Strategy

Thank you for your letter of 10 February in which you cleared the above Communication from scrutiny and asked questions with respect to the 'Space Strategy for Europe'.

On the proposal for a new telecommunications programme 'GovSatCom', my officials and I are continuing to request clarification from the European Commission. It is not yet clear whether the

Commission will propose an EU initiative to provide improved arrangements for the pooling of EU Member States' existing satellite communication resources or the creation of EU-owned communication satellites. The Commission's Impact Assessment is exploring these and other options, and it may be that the final proposal combines different elements.

The creation of an EU-owned communication system may mean that the EU funds the creation and operation of a satellite communication service from the EU Budget. If the funding model for Copernicus and Galileo is followed, it would seem likely that such a service was provided to the Member States free of further charges. The UK telecoms industry has voiced concerns that this would undermine the current commercial opportunities to provide satellite communication services to Member State institutions. The UK's satellite manufacturing sector sees opportunities to win contracts to construct the spacecraft under this scenario.

Regarding the scope of the EU SST programme, we consider that tackling space weather threats and tackling cyber threats to European infrastructure (including satellites) require substantially different mechanisms and expertise. It is unclear at this stage whether the synthesis of these two separate aims is practical and delivers an improvement on monitoring them separately. We will seek evidence on this point from the European Commission as their plans for the proposed expansion of the EU SST programme develop. It is clear that all space systems are subject to cyber attacks and that they need to be resilient and robust in order to resist them.

On the civilian status of the Galileo and Copernicus programmes, the Government does not support any development of EU-owned military capabilities. That is not to say that EU-owned civilian capabilities cannot be used for military purposes, and the UK's Strategic Defence and Security Review 2015 makes specific reference to Galileo supporting UK military resilience. We support the Strategy's aim to maximise the benefits of space for society, including through use of Copernicus to mitigate migration, border control and maritime surveillance challenges where appropriate.

On the balance to be struck between private and public space initiatives, we support the Strategy's encouragement of private initiatives in the development of innovative products and services. Where such initiatives involve development of infrastructure or access to sensitive information, we would seek evidence that such involvement would not jeopardise the security of those systems. It is worth noting that private companies have designed and constructed the EU's space programmes through procurement contracts and that this has involved appropriate security requirements.

23 February 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES AS REGARDS THE ACCESSIBILITY REQUIREMENTS FOR PRODUCTS AND SERVICES (14799/15)

Letter from Lord Prior of Brampton, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 2 December 2016 which referenced earlier correspondence on this proposal between your Committee and Baroness Neville-Rolfe. I am replying to your letter because the European Accessibility Act now falls within my portfolio of responsibilities, I would like to take this opportunity to introduce myself to the Committee. We welcome your questions with respect to the 'European Accessibility Act' (EAA), on which we continue to participate fully in Working Groups.

The Slovak Presidency gave a progress report at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 8 December, which set out the key changes and the progress of discussions in Council Working Groups. The Presidency explained that it had tried to address the delegations' major concerns by improving legal certainty in the text; reducing the administrative and financial burdens for economic actors; and ensuring that the EAA does not overlap with other Union

acts. The report recognised that a number of Member States have yet to decide their positions. I enclose a copy of the progress report here.

Following the Presidency's report at EPSCO, there was a brief discussion on the EAA, with interventions from four ministers. While Member States welcomed measures which could improve access to goods and services for people with disabilities, ministers also set out concerns about how these aims were best achieved. Whilst the Slovak Presidency has concentrated predominantly on the essential parts of the text (scope, definitions, transitional measures), other aspects will require further attention and discussion.

Proposed amendments

At present, Working Groups have largely been limited to clarifying the proposals' scope and the definitions used. We do however, welcome the removal of retrospective application for the banking and transport sectors. My officials will continue to work closely with other Member States to reduce the regulatory impact of the text where it has an excessive negative effect on business and unintended negative consequences on the provision of accessibility.

In particular, officials have expressed concern that Annex I of the proposal is too prescriptive and would unfairly exclude developing and future technologies, we therefore welcomed the Slovak Presidency's attempts to revise the structure of the proposal to ensure that it avoids the unintended consequences of 'technology lock-in'. We will continue to consider how the proposal could be improved to address our concerns.

We support the removal of public procurement from the scope of the Directive. Although the Commission has argued that the new public procurement directives, which were adopted in 2014 and only came into force in 2016, do not cover accessibility requirements adequately, we believe it is far too early to make an assumption that the EAA provisions are necessary.

We also support the removal of Audio-Visual Media Services from the scope of the Directive. The EAA, as currently drafted, is likely to encourage a regulatory tick-box approach to accessibility and will slow genuine innovation in this area. Instead, the graduated approach in the current Audio-Visual Media Services Directive (AVMSD) (2010/13/EU) would be a more effective approach to improving the provision of accessible services.

Stakeholder engagement

My officials have worked closely with a number of stakeholders to understand their views. Other Government Departments have also been speaking to relevant stakeholders. Business and disability groups have largely expressed general support for the aims of the proposal as an important step forward for EU accessibility law. The Equality and Human Rights Commission provided officials in BEIS with useful insight into the workings of existing accessibility law in the UK, whilst not providing any specific comments on the EAA itself. Most stakeholders, however, think the proposal needs to be revised further in order to balance the need to ensure the provision of accessibility with the need to limit excessive costs to business and unintended negative consequences to technological innovation.

In addition, many stakeholders are particularly concerned by the proposal's lack of legal clarity and overlap with existing legislation. Stakeholders recognise the complexity of using future-proof formulations and some have subsequently suggested that a more sector-specific approach would be more appropriate. Some stakeholders also hold the view that the accessibility requirements are too specific and are, in some cases, different to existing international standards. They have expressed

concern that the proposal has the potential to act as a deterrent to innovation, and therefore has the potential to undermine the principle it aims to support.

We will continue to engage with stakeholders throughout this process and reflect their views and concerns as we develop our position. As the proposal continues to undergo revisions in Working Group, we will keep you informed of any significant changes to their positions.

Next Steps

The incoming Maltese Presidency has committed to taking forward Council discussions on the EAA. The European Parliament has also begun its consideration and is due to release reports early this year.

The Maltese Presidency is aiming for a general approach at the EPSCO Council on 15 June – although this is contingent on the multiple outstanding issues being resolved. The Presidency intends to schedule a number of Working Groups in the coming months, and we will keep you informed about the progress of the negotiations.

8 February 2017

Letter from Lord Prior of Brampton, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy

I last wrote to the Committee on 8 February responding to your questions of 2 December. Given that the Committee might not have opportunity to ask further questions before the Presidency pushes for a general approach at Council I have provided our answers to the European Scrutiny Committees questions. I hope that you find this information useful. I am requesting a scrutiny waiver in order to participate at Council.

The Minister's reply implies that the Government no longer intends to advocate any changes to the legal base. Does this position mean that the Government is now content with the proposed internal market legal base (Article 114 TFEU)?

We cannot see any difficulty, in principle, in using Article 114 TFEU as a legal base for the European Accessibility Act; the proposal is drafted in such a way as to accommodate Article 114. We continue, therefore, to work with other Member States in working groups to ensure that the proposal maintains as its object the improvement of conditions 'for the establishment and functioning of the internal market'.

On access to Council documents, the Minister shares our concern about the timing of publication of documents, but states that the UK has no role. Given its status as one of 28 Member States represented on the Council, we are surprised by this statement. Does the Government share our hope and expectation that, if the Member States of the Council took a position on the timing of publication, the Council Secretariat would respond accordingly?

The Council Secretariat is already obliged to operate within the current deadlines for processing requests regarding public access to European Parliament, Council and Commission documents as set out in Regulation 1049/2001. Article 7 of Regulation 1049/2001 stipulates that within 15 working days of registration of a request for information the institution receiving the request should decide whether to grant access to the document or not; this may be extended by a further 15 working days in exceptional cases. The UK Government will continue to encourage the Council Secretariat to publish documents when possible.

There is a Brexit–related context to the matter of access to Council documents. As the Minister notes, negotiations on this proposal are important despite the vote to leave the EU because UK businesses are likely to continue to trade with the EU and will be required to meet the standards applicable within the EU's internal market. The Prime Minister has made clear her intention to seek a "bold and ambitious" Free Trade Agreement between the UK and the EU. In that light, a substantial amount of the legislation adopted by the EU will continue to be of interest to the UK, but the UK Government will no longer enjoy unfettered access to preparatory documents. It will become reliant on public access to Council documents and may face the same frustrations as other third parties already face. We ask the Minister to tell us whether timely access to Council documents is a matter that has been raised in the Brexit context and to explain what action the Government is taking to improve Council transparency before the UK's withdrawal from the European Union.

The UK's future relationship to the EU, including access to the internal documents of the EU institutions after Brexit, will be determined during the exit negotiations, which are yet to formerly begin.

However, I can confirm to the Committee that we remain committed to the principle of transparency. We will continue to work with the Council on the Inter-Institutional Agreement (IIA) for a Transparency Register and on the implementation of the IIA for Better Law-Making. The Government has supported increasing transparency in the EU legislative process: we see the adoption in May 2016 of the IIA on Better Law-Making as progress in this area, and while we remain a Member State we will seek to ensure that this agreement is fully implemented.

In relation to Brexit, the Minister also observes that the UK will remain a member of the UNCRPD once it has withdrawn from the European Union. From this, we extrapolate an intention to ensure that the UK is aligned with the requirements of that Convention. We ask that the Minister explain the extent to which its accessibility legislation for persons with disabilities already meets the requirements of the UNCRPD and whether — given that UK businesses trading with the EU would need to apply EU rules — the UK would be likely to draw inspiration from the agreed EU approach.

The provision of accessibility for disabled persons in the UK continues to be world-leading. In fact, the UK has been a source of inspiration for other EU countries over the years. At the EU Commission's Accessibility workshop, held on 2-3 February this year, UK measures were highlighted as exemplars on multiple occasions. The EU standards for making rail vehicles accessible are modelled on the UK standards and the city of Chester won this year's EU Access City Award.

The UK ratified the UNCRPD in 2009 and will continue to meet its obligations under this Convention upon withdrawing from the EU. As such we will continue to participate in reporting processes and seek to progressively implement the UNCRPD in UK policies and practices. This year the UK has its first periodic examination of the UNCRPD, which will consider progress made towards the high-level obligations set out in the Convention articles.

The UK is a proponent of sharing learning and experience with other countries in the area of accessibility, which we do on an international level through multiple routes including UNCRPD processes and other UN activity. We will continue to draw inspiration from best practice from across the globe, including from the EU, in order to maintain our high standards in this area.

In a separate letter of 9 November 2016 to the House of Lords EU Committee, the Minister explained the Government's process of stakeholder engagement. Like the House of Lords, we would be grateful if the Minister would share with us the views of the business and disability groups with whom the Government has consulted.

My officials have consulted, and continue to consult, a number of disability groups and businesses. Other Government Departments are also actively engaging relevant stakeholders.

As I highlighted in my letter to the House of Lords, disability groups and businesses support the general aims of the proposal. However, most of the stakeholders we have consulted call for a better balance between the need for provision of accessibility and the need to limit excessive costs to business. They also caution against unintended negative consequences for technological innovation.

A summary of stakeholder views received to date is as follows:

Disability Groups have expressed concern about the effectiveness of the proposal to deliver its potential, arguing its scope is limited, the definitions are unclear, and the transposition times are disproportionately long.

Business stakeholders have shown concern at the proposal's overlap with existing legislation. Stakeholders in the transport sector, for example, were concerned by the proposal's impact on existing EU-wide rail accessibility requirements. Other sectors have put forward similar arguments, such as overlaps with the new Public Procurement Directive (2014) and the proposed Audio-Visual Media Services Directive (AVMSD).

Business stakeholders have also frequently expressed the view that the accessibility requirements are too specific and are, in some cases, different to existing international standards. They are concerned that the proposal has the potential to act as a deterrent to innovation, and therefore has the potential to undermine the principle it aims to support. For example, stakeholders in the audio-visual media services sector have argued that the proposal, as currently drafted, is likely to encourage a regulatory tick-box approach to accessibility, rather than encouraging companies to deploy new and more effective technologies. Stakeholders recognise the complexity of using future-proof formulations and some have suggested that a sector-specific approach would be more appropriate.

We note that the Minister raises the issue of "disproportionate penalties". As the text leaves it to Member States to set the penalties as long as they are "effective, proportionate and dissuasive", we would welcome clarification on the concerns expressed and the type of changes to the text that the Government will propose.

Article 26 of the proposal rightly sets out that "Member States shall lay down the rules on penalties" and that the penalties provided for shall be "effective, proportionate and dissuasive."

"Disproportionate penalties" refer to the safeguards set out in Article 19 of the proposal. Article 19, concerning "the procedure for dealing with products presenting a risk related to accessibility at national level" states that:

"Where the relevant economic operator does not take adequate corrective action within the period referred to in the second subparagraph of paragraph 1, the market surveillance authorities shall take all appropriate provisional measures to prohibit or restrict products being made available on their national markets, to withdraw the product from that market or to recall it."

The proposal text has used safeguard provisions derived from the New Legislative Framework (NLF) which relate to the safety of products on the market. However, products or services that lack a specific accessibility feature do not present a risk to safety, therefore it is disproportionate to require their recall. In the Government's view, **the NLF should be applied proportionately in the context of this Directive.**

We retain the proposal under scrutiny and look forward to a response to our queries within three months. This should include an update on the negotiations, including the various changes being advocated by the Government. It would be helpful to understand how any changes negotiated may affect the various sectors falling within the proposed scope of the Directive.

Following working group discussions, the Maltese Presidency has attempted to improve the legal certainty of the text by trying to **clarify the scope of the proposal and the definitions used. They have made the references to other Union legislation in the text more clear.** The definitions have been revised to distinguish more clearly between the products and services covered. **Most significantly, the Presidency** has removed public procurement, EU funds, the built environment and transport infrastructure from the scope of the Directive; we particularly welcome the removal of public procurement.

The new text has therefore gone some way to addressing the concerns we shared with many Member States regarding the scope of the proposal. However, we continue to have concerns regarding the impact of the proposal on the relevant sectors' ability to innovate. The proposal's continuing lack of legal clarity could lead to uncertainty for businesses. We continue to raise concerns about the potentially disproportionate cost of compliance.

The Presidency and the Commission have demonstrated a willingness to work towards a compromise in working groups and continue to push strongly for a General Approach at the 15 June EPSCO meeting, although many Member States have called for caution. I request a waiver to participate fully at Council on the condition that I update the committee afterwards.

My officials will continue to work with other Member States to improve the text. We will be monitoring progress very carefully in upcoming working groups to determine whether enough has been done to address the UK's concerns ahead of a potential General Approach. I will be writing to the Committee again with another update on negotiations in due course.

19 April 2017

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy

Thank you for your letters dated 8 February and 19 April 2017 on the above proposal. These were considered by the EU Internal Market Sub-Committee at its meeting on 27 April 2017.

We welcome your responses to the Committee's outstanding questions, including information on specific changes to the proposal the Government is advocating for and on the views of UK stakeholder groups. We are also grateful for the additional update on negotiations provided in your latest letter.

We note that, while progress has been made, the Government has a number of ongoing concerns about the proposal including potential implications for innovation, the cost of compliance, and a continuing lack of legal clarity. In light of the forthcoming dissolution of Parliament, we have decided to grant a scrutiny waiver in order for you to participate at the EPSCO Council meeting on 15 June. You note that many Member States have called for caution regarding the Commission and Presidency's push to agree a General Approach. If no agreement is reached at this meeting, then the document will once again be under the scrutiny reserve.

We welcome your commitment to keep us informed of the progress of negotiations and to provide a detailed update following the Council meeting. We look forward to receiving this in due course.

27 April 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 6 December 2016 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 9 February 2017.

In principle, we are supportive of the idea of a common approach to insolvency that helps to mobilise capital and support borrowers and lenders in carrying out cross-border transactions. However, as expressed previously, we remain concerned about the competency of the EU to act in this area and have a number of questions:

The UK's insolvency framework

- Your EM notes that some elements of the proposed Directive would require substantive legislative change if it were to be implemented in the UK. Please would you clearly set these out these elements with reference to how they differ from the UK's existing insolvency framework?
- We welcome your consultation work on elements of the US Bankruptcy Code that may improve the UK's insolvency regime and ask that you keep us apprised of the outcome. To what extent would the elements consulted on 'bridge the gap' between the existing UK framework and the proposed Directive?

Impact on creditors and credit

- Do you think that the proposed Directive strikes an appropriate balance between the interests of distressed debtors and their creditors?
- Are provisions for cram-down substantively different to those that currently exist in the UK? Do you believe that the proposed 'best interests of creditors' test would be robust enough to fairly protect the interests of creditors?
- What impact do you envisage the proposed measures would have on the cost and availability of credit for UK companies?

Application to entrepreneurs

- We note the Commission's previously stated aim of promoting a 'second chance' for over-indebted entrepreneurs. Does the proposal to permit discharge from debts within three years of commencing insolvency apply exclusively to entrepreneurs and their entrepreneurial ventures? Would the same rules apply to personal debts?
- On what basis would an entrepreneur be deemed honest? Is this prescribed?
- The concept of 'second-chance' has been taken forward from the 2014 Recommendation into the proposed Directive. Is 'second-chance' a defined concept?
- We note that this proposed Directive was published at the same time as the Commission's Start-up and Scale-up Initiative. Has the Government made any assessment of how these measures would affect female entrepreneurs in particular?

Subsidiarity

- We are aware of the relatively short time permitted for non-legislative harmonisation of insolvency regimes between Member States. What is your view on the primary reasons why insufficient progress has been made following the Commission's 2014 Recommendation?
- How has the proposed Directive been received by other Member States?
- Your EM notes that the proposed Directive includes prescriptive and substantive provisions, particularly on preventive restructuring procedures. In your view, are these provisions necessary to provide legal certainty to cross-border investors and companies? Would they represent a significant addition to UK insolvency requirements?

Lastly, do you have an indication of when this proposed Directive might be adopted?

We have decided to retain this document under scrutiny. We look forward to a response to our questions in 10 working days.

10 February 2017

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy

Thank you for your letter dated 10 February 2017 confirming your support in principle for the idea of a common approach to insolvency across Member States and asking a number of questions which I will address in the order they were raised.

The UK's insolvency framework

What substantive legislative changes would be required to implement the Directive into UK law and how would the changes differ from the UK's existing insolvency framework?

The Directive proposal consists of four main elements.

1. *Preventive restructuring framework*

The proposed Directive provides for a preventive restructuring framework designed to enable businesses to restructure at an early stage with the aim of avoiding insolvency. Some of the key aspects of the restructuring framework are: the debtor remains in control of the business; a time-limited stay on creditor enforcement action against the debtor; provisions aimed at preventing the termination of essential supplies by reason of insolvency or restructuring whilst the debtor negotiates a restructuring plan; and cross-class cram-down of dissenting creditors who have voted against the adoption of a restructuring proposal, where sanctioned by a court or authority.

The UK insolvency regime currently consists of a range of procedures designed to apply to different entities in different circumstances. The regime includes procedures intended primarily to facilitate the rescue of a business as a going concern as well as 'terminal' procedures focussed on maximising the return for creditors where rescue is not possible. The regime generally includes most of the elements of the restructuring proposal contained in the proposed Directive, but these features apply only to specified types of entity and/or insolvency procedures and are therefore not all available in one single procedure. For example, a scheme of arrangement provides for court-sanctioned cram-down of dissenting creditors, binding them to a debt compromise or similar arrangement put forward by the company or others. A stay on enforcement action is available to small companies when preparing a proposal for a Company Voluntary Arrangement (CVA) and also operates throughout an administration. Provisions ensuring the continuity of essential supplies are available in some insolvency procedures but these do not currently extend beyond specified categories of suppliers, namely utility and IT suppliers. As such, in transposing this Directive, the UK would have the option to modify existing procedures such as schemes of arrangement or CVAs, or alternatively to introduce a new standalone procedure that incorporated all of the required elements.

It is worth noting that there are certain important aspects of the proposed Directive's restructuring framework that do not currently feature in UK law in the form set out in the proposals. In schemes of arrangement, CVAs and Individual Voluntary Arrangements, dissenting creditors within a class may be "crammed-down", i.e. overruled by the majority of creditors, where they have voted against a proposal if the requisite voting threshold has been met. However an entire class cannot be crammed-down if they have voted against a proposal. Transposition of the cross-class cram-down provisions in the Directive proposal amounts to a substantive change which would require primary legislation.

2. *Second chance for entrepreneurs*

The proposed Directive also contains provisions aimed at giving over-indebted entrepreneurs a second chance by providing for full discharge from their debts within a maximum time period of three years. The UK bankruptcy regime already allows individuals to obtain a full discharge from their debts

(subject to certain exceptions, such as student loan debts) within that time period so no legislative changes would be required.

3. *Efficiency measures*

The proposed Directive also contains provisions aimed at increasing the efficiency of insolvency and restructuring procedures by setting minimum standards on judicial training and practitioner training and regulation. Some small changes may be required but these may not necessarily require legislation.

4. *Data collection measures*

Lastly, the proposed Directive seeks to impose data collection duties on Member States to monitor the effectiveness of restructuring and insolvency procedures. We are currently considering the extent to which existing data collection meets the proposed requirements.

How would elements of the consultation to review the UK Corporate Insolvency Framework 'bridge the gap' between the existing UK framework and the proposed Directive?

The proposals the Government consulted on in 2016 are closely linked to the Commission's 2014 Recommendation which preceded the proposed Directive and as such the proposals are closely aligned. Since the consultation closed in July 2016 we have continued to engage with stakeholders to refine the proposals. Much of this engagement has taken place after the European Commission published the proposed Directive in November 2016 so the proposals are being considered in conjunction with the Directive proposal.

Impact on creditors and credit

Does the proposed Directive strike an appropriate balance between the interests of distressed debtors and their creditors?

The main objective of the proposed Directive is to support the rescue of viable yet distressed businesses. However, significant creditor protections are built in to the framework including: the requirement for court confirmation of any restructuring plan where cross-class cram-down is requested; a maximum time limit for the stay on creditor enforcement action; a 'best interests of creditors test' ensuring creditors are no worse off than in liquidation; and the appointment of restructuring professionals, where necessary, to safeguard creditor interests. Overall, the Government considers these protections achieve a reasonable balance between the interests of creditors and debtors.

Are provisions for cram-down substantively different to those that currently exist in the UK? Would the proposed 'best interests of creditors' test be robust enough to fairly protect the interests of creditors?

The cram-down provisions proposed in the Directive go further than those that currently exist in the UK framework. In some types of existing UK insolvency and restructuring procedures, creditors may be crammed-down where a requisite majority within a class of creditors votes in favour of a proposal, for example, in a scheme of arrangement. Those within the class who voted against the proposal would still be bound by it if it was confirmed by the court. However, there is no current provision to allow cross-class cram-down, which is the cram-down of the restructuring plan onto an entire class of dissenting creditors. Whilst the UK does not have such a facility, in practice the same outcome can be achieved by using a combination of administration and a scheme of arrangement to effect a restructuring. Insolvency professionals have employed this arrangement to achieve cross-class cram-down in UK restructurings.

We are continuing to consider the proposal for a 'best interests of creditors' test. Respondents to the Government's 2016 consultation on the corporate insolvency framework were asked whether or not they agreed that there should be a minimum liquidation valuation basis included in the test for determining the fairness of a restructuring plan which is being crammed-down onto dissenting classes. There was a very mixed response. Many respondents agreed but many thought a higher valuation test, a 'next best option' test, was more appropriate to reflect the possibility of alternative options to liquidation, such as administration, that may produce greater returns to creditors.

What impact would the proposed measures have on the cost and availability of credit for UK companies?

Harmonising insolvency laws across Member States may remove some of the difficulties investors face when assessing risk relating to cross-border investments. Reducing the perceived risks of investment could increase the availability of cheaper credit for businesses. However measuring the likely impact of any proposed legislative change is extremely difficult as availability and cost of credit is determined by many factors including: the nature and value of any assets provided as security; confidence in the borrower's management ability and business model; and wider macroeconomic conditions.

Application to entrepreneurs

Does the proposal to permit discharge from debts within three years of commencing insolvency apply exclusively to entrepreneurs and their entrepreneurial ventures? Would the same rules apply to personal debts?

While the economic rationale set out in the proposals for offering entrepreneurs and consumers a 'second chance' differ, the intention of the proposal is for both consumers and individual entrepreneurs to be discharged from their debts within three years. The 'second chance' provisions as they relate to individuals who are not entrepreneurs are not legally binding on Member States but the Commission does encourage Member States to extend the application of these provisions to individual debtors who are not entrepreneurs.

The debts of the sole trader are often intertwined with personal debts for example where credit cards have been used to fund a sole trading business. Distinguishing between the two can be difficult. The directive allows 'professional' and 'personal' debts to be treated in separate insolvency procedures but these must be coordinated for the purposes of obtaining discharge. The UK bankruptcy framework already provides for automatic discharge from debts within three years of the commencement of the insolvency and does not distinguish between 'personal' and 'professional' debts in an individual insolvency.

On what basis would an entrepreneur be deemed honest? Is this prescribed?

The proposed Directive does not set a prescribed definition of an 'honest 'entrepreneur. The proposals do recommend that Member States provide clear guidance to the courts and authorities on how to assess the honesty of the entrepreneur. For example, in establishing dishonesty, circumstances such as the nature and extent of the debts; the time when debts were incurred; and the efforts of the debtor to meet legal obligations may be taken into account. In the UK we have effective sanctions which help distinguish between debtors who are reckless or irresponsible from those who are wilfully dishonest for example, who take steps to avoid paying back money owed to their creditors. Furthermore, where a debtor has been found to have behaved recklessly (gambling with creditor's money) or dishonesty (making fraudulent applications to obtain credit) they can be prosecuted or made subject to a bankruptcy restrictions order, which extends some of the restrictions of their bankruptcy for between two and 15 years, depending on the severity of the misconduct.

The concept of 'second-chance' has been taken forward from the 2014 Recommendation into the proposed Directive. Is 'second-chance' a defined concept?

There is no defined concept of a 'second-chance' although generally in the UK the view is taken that a dynamic market economy includes an element of risk taking which in some instances may end in failure. The cost of failure on the entrepreneur should be proportionate in order to encourage start-ups and restarts after failure. Entrepreneurs should not be deterred from taking risks and individuals should not be precluded from being able to have a 'fresh start' free of unmanageable debt. The provision of a 'second chance' was one of the key drivers behind changes to the UK insolvency framework introduced via the Enterprise Act 2002. This concept was based on the recognition that honest failure is an inevitable part of a dynamic market economy. The changes introduced, which included reducing the automatic bankruptcy discharge period from three years to 12 months, were backed by a tough bankruptcy restrictions regime to address irresponsible or reckless conduct on the part of the debtor whereby bankruptcy restrictions can be extended for a period of two to 15 years depending on the degree of the bankrupt's misconduct.

Has the Government made any assessment of how the proposed measures in the Directive would affect female entrepreneurs in particular?
From our initial assessment there is no information to suggest that the proposed measures will have a qualitatively different impact on female entrepreneurs compared to male entrepreneurs in the UK, however the Government will consider this point further.

Subsidiarity

What is your view on the primary reasons why insufficient progress has been made following the Commission's 2014 Recommendation?
The non-legislative Recommendation required a significant amount of change within a relatively short period of time (2014-16) which was an ambitious task given the significant degree of divergence between the insolvency regimes of all 28 Member States. As an example, some regimes lacked any form of restructuring framework as the term would be understood in the UK, and others' bankruptcy regimes do not entitle individuals to an automatic discharge of their debts.

We are aware that several Member States have recently (since the Recommendation) undertaken or are undertaking significant reform of their restructuring and insolvency frameworks. The Commission has expressed the view that, in some cases, these do not satisfactorily adhere to the principles laid out in the Recommendation which gives an indication of the amount of work that will be involved in reaching a harmonised approach for the proposed Directive.

How has the proposed Directive been received by other Member States?
Most Member States are still considering the proposals but have expressed some support for the broad objectives of the proposals.

Are prescriptive and substantive provisions necessary to provide legal certainty to cross-border investors and companies? Would they represent a significant addition to UK insolvency requirements?
One of the primary aims of the proposed Directive is to remove obstacles to cross-border investment and contribute to the Commission's Capital Markets Union Action Plan. In this respect, it seems reasonable to argue that some harmonisation may encourage investment across the European Union by increasing the predictability of outcomes. Capital market investors would likely have a greater level of comfort in terms of familiarity with different Member States' frameworks and the cost of assessing investment risk should be reduced. That said, we think it is more important to ensure that the proposals are effective and work in the context of the wider UK business and legal environment, rather than simply achieving a uniform approach across all Member States. The proposals, in their current form, provide for some of the options UK stakeholders have expressed support for in the Government's consultation.

Regarding when the proposed Directive might be adopted, in my letter recent I explained the difficulties of providing a timeframe as this is the first time the EU has sought to harmonise insolvency law. I will keep both Committees updated of the progress of the Directive and whether Government will be in a position to align UK insolvency legislation with the proposals set out in the Directive. I will also keep both Committees informed of the outcome of the UK corporate insolvency review.

24 February 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - AN AVIATION STRATEGY FOR EUROPE (14992/15)

Letter from Lord Ahmad of Wimbledon, Transport Minister for Aviation, International Trade and Europe for transport, Department for transport

Thank you for your letter of 15 September to Andrew Jones MP. I am replying as Minister with responsibility for aviation.

You asked about the Government's position in relation to Gibraltar in the SES II negotiations. As you know, our long-standing position is that EU laws applies to Gibraltar and its airport and there are no legal grounds to suspend application of EU legislations or air transport agreements in respect of Gibraltar.

You will recall that this position was recognised by the Cordoba Agreement of 2006 between the UK, Gibraltar and Spain in which Spain (without prejudice to its position on the sovereignty of Gibraltar) committed to cease to seek the suspension of Gibraltar Airport from EU aviation legislation. The United Kingdom and Gibraltar continue to uphold this agreement. We liaise regularly with the Government of Gibraltar on aviation and many other issues.

The UK remains committed to progressing aviation legislation but this cannot be at the expense of suspended application to Gibraltar airport.

You also asked about the ownership requirements for airlines. Currently, under EU Regulation 1008/2008, on common rules for the operation of air services in the Community, one of the criteria for an airline operating licence, for airlines established in EU member states, is that they are majority owned and effectively controlled by member states and/or nationals of member states.

The UK has long argued within the EU for a relaxation of ownership restrictions in order to help open-up airlines' access to capital and simplify traffic rights.

We will be testing this approach with industry stakeholders in due course but any change of approach to airline ownership and control, given our decision to leave the EU, requires very careful consideration.

8 January 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS INVESTING IN EUROPE'S YOUTH

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS A EUROPEAN SOLIDARITY CORPS (15420/16 AND 15421/16)

Letter from the Chairman to Rob Wilson MP, Minister for Civil Society for Culture Media and Sport, Department for Culture Media and Sport

Thank you for your Explanatory Memoranda dated 11 January 2017 on the above proposals. The EU Internal Market Sub-Committee considered both documents at its meeting on 30 March 2017 and decided to clear them from scrutiny.

30 March 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) 883/2004 ON THE COORDINATION OF SOCIAL SECURITY SYSTEMS AND REGULATION (EC) 987/2009 LAYING DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EC) 883/2004 (15642/16)

Letter from the Chairman to Damian Hinds MP, Minister of State for Employment for Work & Pensions, Department for Work & Pensions

Thank you for your Explanatory Memorandum (EM) dated 4 January 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 9 February 2017.

Your EM helpfully explains that proposed Regulation codifies recent Court of Justice of the EU (CJEU) case law on access to social benefits in relation to rights of residence. We note that the proposal also includes a number of policy initiatives not arising from case law and we are disappointed that the EM did not detail the Government's position on these.

Please would you set out the Government's position on these elements, namely the changes to unemployment benefits, family benefits and special rules for persons who are not necessarily subject to the legislation of the Member State in which they work (PDA1 certificate-holders)? Do these proposals address any existing challenges faced by the UK in the coordination of social security systems? Would any of the proposals exacerbate these challenges?

Regarding the creation of a separate chapter in the Regulation for long-term care benefits, is the Government seeking clarification from the Commission on which benefits will and will not be covered by coordination rules?

We would be grateful to be kept apprised of working group negotiations. Do you have an idea of the proposed timeline for negotiations and whether the proposal is likely to be agreed and implemented in the UK before 2019? Will the Government seek to have any other measures, such as indexation of child benefits, included in the final Regulation?

Finally, what have been the views of other Member States on the proposal?

We have decided to retain this document under scrutiny. We look forward to a response to our questions within 10 days.

10 February 2017

Letter from Damian Hinds MP, Minister of State for Employment for Work & Pensions

I would like to thank the Committee for its consideration of the above European Commission proposal and the request for further information on the Government's policy in relation to the proposals.

The United Kingdom's views on certain policy areas are long-standing and well-known by other Member States, for example our opposition to the way in which reimbursement of unemployment benefit for frontier workers operates, which we are content to see is proposed to be abolished. However, there are other elements of the proposal, such as those relating to family benefits and posted workers, where the Government will be seeking further analysis and clarification during discussions, including exploring the scope for the possibility of proposing further changes, before disclosing a firm policy position. Many of the measures in the proposal, for example the incorporation of recent CJEU case law into the proposed Article 4 (equal treatment), are welcome, provided our continuing analysis supports the Commission's position as to their effect.

Similarly, the majority of other countries have welcomed the proposal as such but want to study it in detail to understand the implications of these changes for their respective country. It is my understanding that all Member States are retaining the proposal under general scrutiny.

I can assure the Committee that the United Kingdom along with other Member States will be seeking clarification of the Commission's intentions regarding the new chapter on long-term care benefits and does not wish to see any extension of the scope of those benefits and services to be included.

In terms of the timing of negotiations, the presidents of the EU Parliament, Council and Commission issued a joint declaration in December 2016 pledging to fast-track a set of EU priority proposals in the next year and to make substantial progress under six initiatives. These included the proposed amendments to the social security coordination Regulation within the social dimension of the EU. Other than that we do not have a precise timeline for the negotiation of each element nor has a date been set for their conclusion.

I will keep the Committee informed of developed positions as the negotiations progress.

27 February 2017

Letter from the Chairman to Damian Hinds MP, Minister of State for Employment for Work & Pensions

Thank you for your letter dated 27 February 2017 on the above proposal. The EU Internal Market Sub-Committee considered this letter at its meeting on 27 April 2017.

We take note of your letter and your commitment to provide a more detailed update after the Government has further analysed the proposed initiatives. Please include information in the update regarding any consultation work the Government has undertaken with workers on the special rules for those who could be subject to the social security rules of more than one Member State.

Is the Government conducting its own impact assessment on this proposal? If so, we would be grateful if you could include a copy of this with your next letter.

In the meantime, we retain this document under scrutiny. We look forward to a further detailed update in due course.

27 April 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON IMPROVING THE GENDER BALANCE AMONG NON-EXECUTIVE DIRECTORS OF COMPANIES LISTED ON STOCK EXCHANGES AND RELATED MEASURES. (16433/12)

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

I am writing to update you on the current position of the above proposal.

This proposal was last discussed by ministers at the EPSCO Council on 7 December 2015 under the Luxembourg presidency. The Luxembourg presidency had proposed changes to the proposal, including further revisions to introduce more, flexibility and extend the original timescales. However, the Presidency concluded that there was insufficient support for the proposal and no general approach was reached.

At the Council, the UK, represented by Baroness Neville-Rolfe, set out the significant success that had been achieved through the UK's business led, voluntary approach, and explained that it could not

support the text on the grounds that Member States should be free to choose the right approach for them. Other Member States shared the UK's concerns about subsidiarity and did not support the proposal.

While the Dutch and Slovak Presidencies chose not to reopen this agenda, the Maltese Presidency has indicated that this topic will be one of its priorities. We anticipate that the Maltese will put forward a compromise proposal in due course. As things stand, we are not aware of a change in the position of Member States.

The Government remains committed to seeing more women on boards and in the senior management of the UK's top companies. In 2016, we commissioned Sir Philip Hampton, Chairman of GSK, and Dame Helen Alexander, Chairman of UBM, to lead a review into women on boards and in the executive pipeline. They have set new targets for women's representation. We are now asking FTSE 350 companies to achieve 33% women on boards by 2020, and for 33% of positions at Executive Committee level and just below in FTSE 100 companies to be filled by women by 2020. It remains our view that action should be tailored to the specific culture, business environment and legal systems of each country. Therefore we continue to oppose the Directive on grounds of subsidiarity and proportionality.

2 February 2017

DIGITAL SINGLE MARKET QUARTERLY UPDATE AND SCRUTINY RESPONSE TO THE E-COMMERCE PACKAGE (UNNUMBERED)

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy

I am writing to provide an update on recent progress made on the European Commission's Digital Single Market (DSM) Strategy. In late 2016 we committed to sending the House of Lords European Union Committee and the House of Commons European Scrutiny Committee quarterly updates on the DSM; this letter is the first such update.

I would also like to address two questions the House of Commons European Scrutiny Committee raised in response to the release of the DSM e-commerce package last year, on the UK's DSM engagement strategy, pending Brexit.

Progress on DSM files

As you know, the European Commission launched its DSM Strategy in May 2015, with the aim of updating the Single Market to make it fit for the digital age. The DSM Strategy outlined 16 initiatives, which are a mix of regulatory and non-regulatory measures designed to break down barriers to trade. These initiatives cover a range of policy areas including consumer protection and e-commerce, VAT, copyright, portability of digital content, telecommunications and the electronic communications framework, the free flow of data, digitisation of industry, the regulation of audiovisual media services, and how to deal with new and emerging models of business, such as online platforms and the sharing economy.

Notable progress has been made on a number of DSM files in recent months. In particular, a General Approach reached in Council in November 2016 on the Geoblocking Regulation will protect online consumers from discrimination on the basis of nationality or place of residence. In addition, in the last few weeks, trilogue agreement was reached on the portability proposal, which will allow consumers to access their digital content when travelling in the EU, and the roaming proposal, which will see mobile roaming charges eliminated from the middle of this year. All three of these agreements were supported by the UK Government.

I have outlined specific progress on DSM live files currently under negotiation below.

Geoblocking
The Geoblocking Regulation seeks to prevent traders from unfairly discriminating against consumers in other Member States. Such discrimination can take the form of a trader restricting access to its website or unfairly applying different terms to the contract on the basis of nationality or place of residence. As outlined in the letter from my predecessor on this subject in December 2016, the General Approach agreed by Member States met government objectives to (i) achieve the main policy aims of the proposal; (ii) preserve consumers' rights in relation to choice of law and jurisdiction in cross-border contracts, while avoiding creating legal uncertainty for businesses; and (iii) exempt microbusinesses which fall under the national VAT limit. This agreement is particularly good news for UK consumers, who are the most active in the EU in terms of e-commerce, and have been subject to numerous instances of geoblocking in the past.

Portability
On Wednesday 8 February 2017 a trilogue agreement was reached that will allow EU citizens to view online content to which they subscribe wherever they are in the EU. These new rules will take effect from the beginning of 2018. The UK was a strong supporter of the proposal and the agreement reached last week shows a real momentum for completing DSM files.

Roaming
On Wednesday 1 February 2017 a trilogue agreement was reached that will eliminate roaming charges from the middle of this year, with wholesale roaming prices (the prices telecoms companies can charge each other for use of their networks) capped and reduced incrementally between 2017 and 2022.

Free Flow of Data
A key priority for the UK within the DSM is the Free Flow of Data initiative. On 10 January 2017 the European Commission published a Communication and
consultation on "Building the European Data Economy". The Communication discusses two main elements: data localisation and emerging issues.

Data localisation refers to the practice of public authorities requiring that the personal data of citizens of a particular Member State must be stored on servers located in that Member State. This is typically justified on security grounds but can pose a non-tariff barrier to trade, especially for small firms. In that context, this runs counter to Single Market principles.

We support Commission action to tackle unjustified data localisation, and in December 2016 the Prime Minister joined with 15 other EU Heads of Government to sign a joint letter to European Council President Donald Tusk, calling for a legislative proposal to prevent unjustified data localisation requirements.

Audio-Visual Media Services Directive (AVMSD)
The AVMSD has two main principles – that services (broadcast and on-demand) established in one Member State are free to be received in all other Member States, subject to the rules of the country in which they are established (the 'Country of Origin Principle'); and minimum harmonisation regarding hate speech, protection of minors and commercial communications.

The Commission published a proposal for a new AVMSD on 25 May 2016. The proposal includes clarifying the existing procedures of the 'Country of Origin Principle', changes to the current advertising regime, and extension of scope to include video-sharing platforms such as YouTube, when dealing with illegal content or material deemed harmful to minors.

Working Groups are ongoing on this file and we expect the Directive could be ready for adoption in mid-to-late 2017.

Electronic Communications Code
The current Electronic Communications Framework was adopted in 2002 (revised in 2009) to harmonise regulation across the EU. Its broad scope makes it fundamental to the functioning of the UK's telecoms sector. The Framework has liberalised telecoms markets, stimulated private

investment and extended consumer choice by driving competition. It also provides adequate consumer protection and sets the objectives of Ofcom. The Framework contains inbuilt provision for regular review to ensure it remains fit for purpose.

The Commission published proposals on 14 September 2016, which intend to recast the existing Framework into a new 'Electronic Communications Code'. Negotiations in the Council Working Group commenced in November 2016. The Commission's target for completing negotiations is the end of 2017, with implementation into national law by the end of 2019.

In line with DCMS commitments, Matt Hancock, Minister of State for Digital and Culture, wrote to the House of Commons European Scrutiny Committee and House of Lords European Union Committee last month to provide further clarification and information on the contents of the code.

Copyright Directive
The Commission adopted its proposal for a copyright directive as part of a wider copyright package on 14 September 2016. Working Groups have started negotiating other parts of the copyright package, and we expect substantive negotiations on the directive to begin this year.

The Commission's proposed copyright directive covers a wide range of measures including: mandatory exceptions for data mining, preservation and education; measures to enable digitisation of out-of-commerce works; measures to improve licensing of Video On Demand rights; a transparency obligation and contract adjustment mechanism; the introduction of a new right for press publishers; and new obligations for online content hosting services.

VAT
The VAT strand of the Digital Single Market strategy seeks to modernise and simplify VAT for cross-border e-commerce. Proposals were published in December 2016, and detailed discussions have started under the current Maltese Presidency.

Changes are proposed in two tranches, 2018 and 2021. The 2018 proposals include introducing a common VAT threshold in respect of the place of taxation for cross border supplies; and simplifications to the Mini One Stop Shop single electronic registration and payment mechanism, in order to allow businesses to follow the rules for invoicing and record keeping in the Member State where they are registered, for all their supplies in the EU. The 2021 proposals include the extension of the single electronic registration and payment mechanism (One Stop Shop) from cross-border electronically supplied services to all business-to-consumer cross-border online sales of goods; and removing the VAT exemption for low value goods imported from third country suppliers. These proposals are covered in EM 14820/16, 14821/16, 14822/16 submitted by HM Treasury on 20 December 2016.

Consumer Protection Cooperation (CPC)
The CPC regulation seeks to update the formal framework for cooperation between national enforcement authorities on cross-border infringements of EU consumer law. Since the proposal was introduced in May 2016, the UK has supported the need for a reformed framework, which retains sufficient control for Member States and has powers and procedures fit for the digital age.

Member States agreed a General Approach on the file at Competitiveness Council on 20 February. We sent a full update on the proposal on 1 February in advance of Competitiveness Council, and we wrote again to both Committees after the meeting.

Tangible Goods
The directive on online sales of tangible goods is designed to reduce barriers to, and increase certainty in, the online and other distance selling of physical goods in the Single Market by harmonising after-sale consumer protection rules. The Commission has proposed maximum harmonisation.

Working Group meetings are yet to begin under the Maltese Presidency, although discussions have started in the European Parliament, where MEPs have tabled amendments to the rapporteur's report

on the proposal. Like other Member States, we would like to see further evidence from the Commission as part of their ongoing 'Refit' review of consumer law before negotiations formally begin on this dossier.

We will provide an update to both Scrutiny Committees on this file once negotiations commence.

Cross-border Parcel delivery
The Parcel regulation aims to tackle a lack of transparency and regulatory oversight of the parcel delivery market, which acts as a barrier to reasonably priced cross-border parcel delivery services in the EU. Working Groups are continuing under the Maltese Presidency in 2017, where a General Approach is expected to be achieved.

Digital Content Directive
This proposal seeks to extend consumer contractual rights to the supply of digital content (games, streamed films, CDs) and digital services (cloud storage, cloud based apps). While the UK already has domestic rules covering digital content and services generally, currently there is no EU regime covering these rights and obligations. The Commission's proposal is intended to provide comparable rights across the Single Market, to avoid divergence as Member States address the issue individually, and so to better facilitate cross-border trade. The Commission adopted the proposal in December 2015. Council Working Groups were held under the Dutch and Slovak Presidencies.

The Maltese Presidency is continuing to prioritise the file and has indicated that it aims to reach a General Approach this year. It is likely that the Presidency will press for a Partial General Approach at the Justice and Home Affairs Council on 27 March. The Government will provide both Committees with a full update ahead of this Council meeting.

Response to scrutiny questions
In addition to the above, I would also like to address questions the Committee raised last year following the publication of the e-commerce package:

1. *Will the UK continue to influence negotiations and vote in the Council on DSM proposals pending Brexit, will it abstain from such negotiations as a matter of principle, or will it approach each proposal and vote on a case-by-case basis?*

As the Committee will see from this letter, the UK continues to play an active role in the DSM, influencing negotiations and voting in Council to ensure that the UK's views are heard. Through developing strong and constructive relationships with likeminded Member States, we have achieved successes on the DSM, both in terms of policy content and the speed at which some key policies have progressed through the EU's legislative process – for example, the recent agreements on geoblocking and portability represent a near record turnaround in EU decision-making. We aim to maintain this momentum and influence across other DSM files, working with our Member State partners and the EU institutions.

The UK has been an active proponent of the DSM since the strategy was launched in May 2015, pushing for an open, flexible market with a framework that reflects the dynamic nature of the digital economy.

2. *Which proposals does the Government consider a policy priority and would wish to apply regardless of the withdrawal of the UK from the EU (for example by retaining or adopting them as domestic law or by means of a bilateral agreement with the EU)?*

Our EU exit negotiations are yet to begin. It is therefore premature to comment publically on the nature of future agreements with the EU or on potential changes to domestic law following our EU exit.

Whatever the nature of our relationship with the EU, it is in the UK's economic interests to work with international partners on building a fully functioning global digital economy. For this reason, we continue to push for an open, competitive and flexible Digital Single Market. For example, the free flow of data is fundamental to the functioning of the digital economy and realising its full potential. The

Government sees global data flows as being of high importance, hence the desire to tackle unjustified data localisation not just at the EU level, but also in data flows between the EU and third countries.

We also recognise the importance of consumer rights in enabling the digital economy. Tackling rogue traders and unscrupulous business practices will remain important to the UK, as our citizens and businesses continue to trade with EU partners.

Next steps

The European Commission will release a 'DSM mid-term review' in May 2017, to take stock of progress made on the DSM Strategy, two years on from its publication. The review will not propose any new legislation but will look forward and suggest potential future areas of work beyond the current DSM Strategy, such as cyber-security or online platforms.
I will continue to update the Committee on the progress of the DSM Strategy on a quarterly basis, and will therefore write to you again shortly after the publication of the mid-term review.

13 March 2017

ENERGY COUNCIL BRUSSELS 27 FEBRUARY 2017

Letter from Jesse Norman MP, Parliamentary Under Secretary of State, Minister for Industry and Energy, Department for Business, Energy & Industrial Strategy

I am pleased to enclose a copy of my written statement to Parliament outlining the discussions we expect at the Energy Council in Brussels on 27 February. (Not published here)

24 February 2017

PRE-COUNCIL LETTER ON THE COMPETITIVENESS COUNCIL 20 FEBRUARY

Letter from Lord Prior of Brampton, Parliamentary Under Secretary for Business, Energy and Industrial Strategy, Department for Business, Energy and Industrial Strategy

The first Competitiveness Council of the Maltese Presidency is taking place in Brussels on 20 February. I will represent the UK. There is no second day on Space and Research on this occasion.

Britain will in due course be leaving the EU. While we remain a member of the EU we will continue to participate in Competitiveness Council discussions and vote on legislative proposals, in line with our rights and obligations as a Member State

The Presidency has yet to finalise the agenda for the Council. However based on the current agenda we expect the following items to be discussed:

The Commission will be seeking a general approach on the text of proposed regulation on the enforcement of consumer protection laws. The UK supports the current text and will vote in favour of it. There will also be a progress report on legislation on the approval and market surveillance of motor vehicles and trailers.

As part of the usual competitiveness "check-up" the Commission will give a presentation on investments in intangible assets. Other non-legislative items on the agenda include a discussion on the European Semester 2017, which will have a particular focus on the area of public procurement. There will also be an exchange of views on the start-up and scale-up initiative.

The Council will conclude with a number of AOB items on the European Defence Action Plan, the Unitary Patent Court (UPC) and the Services package. On the UPC, the UK will update the Council on our plans to proceed with the necessary domestic processes to enable ratification.

Our objectives for the Competitiveness Council are to:

- Reach a general approach on the enforcement of consumer protection laws proposal.

- Reassure the Council on the UK's intention to ratify the UPC.

As Parliament is in recess I will not on this occasion be laying a pre-Council Written Ministerial Statement before both Houses.

14 February 2017

DEPARTMENTAL PRIORITIES UNDER THE MALTESE PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION

Letter from the Rt Hon Karen Bradley MP, Secretary of State for Culture, Media and Sport, Department for Culture, Media and Sport

I am writing to inform you of our priorities for the next 6 months under the Maltese Presidency of the Council of the European Union. Overall, the Maltese will continue the work of the trio Presidency to focus on jobs and growth, with a particular emphasis on strengthening the Single Market, and dealing with continuing migration issues.

A significant priority for the Department during the Presidency is the regulation on Wholesale Roaming. The Regulation needs to enter into force by 15 June for the 'roam like at home' service to take effect. One issue we see arising in negotiations is on the wholesale cap for data, but it is encouraging that the European Parliament's text sees lower caps than the Council General Approach. We anticipate that the Maltese Presidency will want to conclude trilogues on the Regulation as soon as possible. Trilogues are also due to begin on the WiFi4EU Regulation in April. You will be aware that the Regulation is currently being held under scrutiny (10329/16).

Another DCMS lead that is a priority for the Maltese is the Electronic Communications Code. Although a decision will be made closer to the time, we expect the Maltese to aim for a partial general approach on the services chapter of the Code at Telecoms Council in June, with negotiations aiming to be completed before this. We also have a strong interest in the Regulation on cross-border parcel delivery services, which we anticipate the Presidency will aim to reach a General Approach on at the June Council.

On Data, the Commission has recently issued a Communication on the free flow of data. As the UK was one of the Member States who urged the Commission to issue legislation banning data localisation, we plan to continue to be vocal in calling for legislative action. On the recently issued proposal for a review of the ePrivacy Directive, it has yet to be determined which working group the Regulation will go through but it is due to be published by 2018.

We also expect the Presidency to play a role in driving forward the Audiovisual Media Services Directive which is a priority item for DCMS. We are currently engaging in working group discussions on the Directive and we expect the European Parliament to conclude its compromise text soon, with it being voted on at the end of February. There are plans for this to go to the May Education, Youth, Culture and Sport Council (EYCS) for a General Approach.

In the culture sector, our priorities include European Year of Cultural Heritage. On European Year of Cultural Heritage, we will be working in conjunction with HM Treasury as we approach further working groups and as the item goes to COREPER and further trilogue mandates. Proactively, the Maltese will propose Council conclusions on a strategic approach to international cultural relations in reaction to the joint strategy adopted by DG EAC and the EEAS in June 2016.

Finally in the sport sector our priorities are May's World Anti-Doping Agency (WADA) meeting which, as with the Slovak Presidency, falls almost immediately before EYCS Council. In general, a lighter work programme on sport is anticipated due to deadlock in talks for EU signature to the Council of Europe Convention on combating the manipulation of sports competitions (match-fixing). We do, however, expect the Maltese to agree the third EU Work Plan for Sport, which will shape the future Trio's agenda.

I hope the above provides you with a substantive overview of my Department's priorities over the coming six months.

6 February 2017

MALTESE PRESIDENCY FORWARD LOOK – TRANSPORT

Letter from Lord Ahmad of Wimbledon, Transport Minister for Aviation, International Trade and Europe for transport, Department for transport

As you will know, the UK continues to engage in normal EU business until exit negotiations are concluded. I am writing to inform you of our expectations for the transport agenda during the Maltese Presidency of the EU Council of Ministers.

The Presidency intends to treat all modes of transport on an equal footing, however Maritime is one of the priority areas across the whole of their programme, with an overall aim to showcase maritime as a modern industry that has embraced digitalisation and environmental issues.

Following the example of recent presidencies, Malta will hold only one Transport Council which will take place in Luxembourg on 8 June. They are also planning a number of other events, including:

- **European Shipping Week, 27 February- 3 March, Brussels:** This will include four workshops on: the role of digital technology in the implementation of the Ship Energy Plan; offshore ocean-based industries and the EU economy (hosted by EMSA); growing the European cruising industry; and social responsibility in shipping.
- **A Ministerial Maritime Conference** in Valetta on 29 March with the theme of "Maritime competitiveness and sustainability".
- **A Ministerial Road safety Conference** on 28-29 March in Valetta.
- **A Ministerial Conference** on 20 April in Valetta with the theme "Blue Growth and Integrated Maritime Policy".

In more detail:

Maritime Transport

The Maltese Presidency have developed an ambitious programme of legislative and non-legislative work on maritime issues. Their main priority will be to continue the work done by the Slovak Presidency on the **Passenger Ship Safety Package** (EM 9953/16, 9964/16 and 9965/16), with the first objective being to conclude a General Approach on the **Registration of Passengers** by March. After this, and the conclusion of the internal European Parliament discussion of the proposals, the Presidency hope to start trilogue discussions with the aim of reaching a political agreement with the EP by the end of their Presidency.

On **Professional Qualifications for Inland Waterways** (EM 6285/16), the Presidency also hope to be able to complete trilogue discussions with the European Parliament by the end of their Presidency.

The Commission plans to publish a proposal to revise the **Port Reception Facilities Directive** in spring/summer 2017. The Presidency will schedule a presentation and impact assessment discussion, and there is a possibility of a Progress Report at the 8 June Transport Council.

In terms of non-legislative work, the Presidency would like to develop **Council Conclusions on maritime competitiveness and sustainability**, building on a declaration to be agreed at their flagship Maritime Stakeholder Conference and Ministerial meeting in Valetta in March. In the area of Integrated Maritime Policy, they have a huge informal agenda based on three main strands of work: **Ocean Governance, Blue Growth and Nautical Tourism, and a Western Mediterranean Sea Basin Strategy**.

The Presidency will also need to agree Council Conclusions in response to the **European Court of Auditors Report on investment into ports** unnumbered EM), and further intend to schedule a political debate at Transport Council on digitialisation of maritime, including the **EU Single Window**.

Aviation Transport

Malta's priority for aviation is to maintain the momentum of the General Approach reached on the **EASA Regulation** (EM 14991/15) during the Slovak Presidency. They plan five trilogue discussions with a view to reaching agreement with the European Parliament by June.

We expect to see publication of the Commission's long-promised proposal to revise **Regulation 868 on protection against unfair pricing practices and subsidisation** by the end of March. The Presidency intend to begin discussions in working group, and will prepare a Progress Report by the 8 June Transport Council to facilitate hand-over to the incoming Estonian Presidency.

On **aviation agreements**, the Presidency intend to follow progress on negotiations between the Commission and third countries on mandates already granted, discuss with Member States whether there is any interest in granting further mandates, and hear Commission updates on bilateral aviation safety agreements with China and Japan.

Following the adoption of a mechanism to offset growth in aviation emissions by the International Civil Aviation Organisation in October 2016 the Commission is expected to publish a proposal in January for the future of the **EU Emissions Trading System for aviation**. Malta will initiate working level discussions with a view to allowing future Presidencies to meet the deadline for a full agreement with the European Parliament by March 2018 (the retrospective compliance deadline for 2017).

Malta has no plans to take forward the Commission's proposal on a **harmonised certification system for airport screening equipment** (EM 12090/16) but may give the Commission a further opportunity to present the proposal to the working group if they wish to do so. There appears to be no appetite at present among Member States to take the proposal forward.

The Commission intends to propose a recommendation for a Council Decision on a Memorandum of Cooperation with the US on **SESAR**, however further details are not known at this stage.

Land Transport

The Presidency expect to see the awaited Commission proposal on the review of the **Regulation on the Certification and Periodic Training of Professional Drivers (CPC)** at the end of January, and will open discussions on it in February. The review is expected to be mainly technical and to focus on three points: mutual recognition of CPC, interpretation of exemptions, and minimum age requirements alignment. The Presidency expect that the proposals will not be controversial and therefore hope to reach a General Approach fairly quickly.

The first of the Commission's expected **Roads Initiatives** are not expected until April or May 2017, and it is expected that the Road Charging proposals will be published first. The Presidency may schedule a policy debate at Transport Council but intends to leave it for the Estonian Presidency to take substantive negotiations forward.

A proposed review of the **Rail Passenger Rights and Obligations** Regulation is expected to be published at the end of March 2017 and is likely to focus on: integrated travel planning and through ticketing, application of exemptions, liability and *force majeure*, major transport disruption and stranded passengers, and training requirements for staff providing assistance to persons with reduced mobility. The Presidency are likely to aim for a Progress Report at the June Transport Council, and do not expect to reach agreement during their term.

The Presidency hope to agree **Council Conclusions on Road Safety**, particularly focusing on serious injuries. An initial Declaration will be drawn up for approval by Ministers at the 28-29 March Stakeholder and Ministerial events. The declaration will then be converted into Council Conclusions for the 8 June Transport Council.

Intermodal Questions

The Presidency will aim to conclude the negotiations on the transport articles of the **Omnibus Regulation**, which will set the multi-financial framework for the next period. They also intend to facilitate a discussion on the future of the **TEN-T** network in the context of the upcoming review of the Connecting Europe Facility (CEF). We expect no specific proposals on **Transport Security** within the timescale of the Maltese Presidency, although the Commission may seek to continue dialogue with Member States at the June Transport Council.

As part of their work on Energy, the Maltese are likely to open discussions on proposed amendment to the **Renewable Energy Directive**, which contains specific provisions relating to the use of renewable transport fuel. There is likely to be some discussion of this at the Energy Councils on the 27th February and 26th June, although it is unlikely that this will get into any level of detail. The overall coordination on the proposal is being led by the Department for Business, Energy and Industrial Strategy.

Vehicle Standards and Emissions

We expect the Council to approve the latest comitology proposals on Real Driving Emissions, known as RDE3, shortly (EM OTNYR & 5365/17). The proposals set out the conformity factor requirements and dates of application for particle number emissions from light passenger and commercial vehicles. The UK is actively involved in development of the forthcoming RDE 4 proposals, which are expected in June 2017 and will cover in-service conformity testing.

The Maltese are keen to progress negotiations on the revision of the **Type Approval and Market Surveillance Framework Directive** (EM 5712/16) and have aspirations for a General Approach at the Competitiveness Council on 29-30 May.

Negotiations with the European Parliament on the proposed **Regulation on the reduction of pollutant emissions from road vehicles** (EM 6202/14) remain stalled over concerns about the balance between delegated and implementing acts, and we also believe that progress is unlikely on the long-running **transfer of car registrations** proposal (EM 8794/12), which is only expected to be discussed at one working group meeting during the Maltese Presidency.

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.

31 January 2017

NETWORK AND INFORMATION SYSTEMS DIRECTIVE (NIS DIRECTIVE)

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital and Culture, Department for Culture, Media and Sport

The Security of Network and Information Systems Directive (NIS Directive) was adopted by the European Parliament on 6 July 2016. Member States have until 9 March 2018 to transpose the Directive. The Department for Culture, Media and Sport (DCMS) is leading a cross government consultation on how the UK should transpose the Directive into UK legislation.

It is important to note that the government supports the overall aims of the NIS Directive which is to increase the cyber security of member states across the EU and protect citizens and businesses online.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation. The Government believes that, through the way it implements NIS, it will deliver an effective regulatory framework through which it can ensure that essential services and key digital service providers take adequate measures to ensure the security of their systems and networks.

As set out in the recent Cyber Security Regulation and Incentives Review the detailed scope and security requirements for NIS implementation will be set out by Government in 2017, informed by the work of the NCSC and lead Government departments with relevant sectors alongside broader Government consideration of critical infrastructure. The Government is committed to ensuring the right regulatory environment for cyber security is in place - which ensures industry implements appropriate security practices but avoids unnecessary business burdens - providing a competitive advantage for the UK as we seek to harness the opportunities presented by leaving the EU. The Government therefore aims to implement the NIS Directive in a manner that is appropriate for the UK, and that ensures the continued security of the UK's essential services and Digital Service Providers both before and after the UK exits the EU.

The NIS Cooperation Group

The NIS Directive requires Member States to ensure that operators of essential services in certain critical sectors put in place appropriate and proportionate information security risk management approaches and report those network incidents that significantly disrupt the continuity of the services that they provide. To assist with this, the Directive requires the creation of a Cooperation Group that will establish strategic cooperation on cyber security between officials from all EU Member States. Cooperation and information sharing will take place on a voluntary basis. The one exception to this is when an incident in one Member State has an impact on another Member State, the first Member State is obliged to notify the second; this is in line with the information we currently share.

The Government judges that this sort of information exchange will help to achieve a greater consistency in the application of the Directive across the EU whilst respecting that much of the final decision making and guidance rests with the Member States themselves.

Implementing Acts

Under the NIS Directive, the European Commission is committed to the production of two Implementing acts, and has the option to produce a third:

1. An Implementing Act to create the Cooperation Group, to be finalised/created by 9 February 2017 to support and facilitate strategic cooperation and the exchange of information among Member States and to develop trust and confidence, and with a view to achieving a high common level of security of network and information systems in the Union.

2. An Implementing Act, to be finalised/created by 9 August 2017, to specify the technical and organisational measures required from Digital Service Providers to manage the risks posed to the security of network and information systems which they use in the context of offering services.

3. The Commission also have the option to produce a third Implementing Act to establish the format and procedures for Digital Service Provides to report incidents under the NIS Directive. The Commission has yet to indicate whether they will exercise this option.

The text of the first Implementing Act has been agreed by Member States through the NIS Security Working Group. The Act establishes the Cooperation Group, with the Presidency as Chair, with the aim to provide strategic guidance for the activities of the Computer Security Incident Response Teams network, exchange information and best practice, and discuss the capabilities and preparedness of the Member States.

The first meeting of the Cooperation Group will take place on 9-10 February. The Government supports the creation of this Group, which it believes will help improve cooperation between Member States, and help establish coherent guidelines. Any guidelines that the Group produce will not be binding on Member States, who remain able to establish their own standards and requirements for essential services under the NIS Directive.

The Cooperation Group meeting will begin the process to negotiate the second Implementing Act, establishing the security requirements for Digital Service Providers which will be applicable to service

providers that fall under the scope of the NIS Directive across the EU, and to those third country providers who want to operate within the EU. The Government will work with industry to ensure that those requirements will deliver increased cyber security standards among Digital Service Providers, whilst ensuring that those requirements do not become a burden on businesses.

Brexit Implications

Although we are leaving the EU, cooperation on security, including on cyber security, with our European and global allies will be undiminished. As the Prime Minister has said, one of the twelve objectives for the negotiations ahead will be to establish a new relationship which enables the UK and EU to continue practical cooperation with other Member States to tackle cross-border crime and to keep our people safe.

Against this backdrop, our continuing membership of the Cooperation Group and complementary network of Computer Security Incident Response Teams will be considered as part of the negotiations. There are provisions within the Directive to allow associate membership through third country agreements.

Companies that wish to trade within the EU's Single Market, and who are within scope of the Directive, will continue to be required to comply with the requirements of the NIS Directive in addition to any UK specific requirements. The Government will seek to ensure that companies are aware of this requirement.

7 February 2017