



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 9 May 2012 – 31 October 2012

INTERNAL MARKET, INFRASTRUCTURE AND EMPLOYMENT

(SUB-COMMITTEE B)

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APPROVAL OF AGRICULTURAL OR FORESTRY VEHICLES (12604/10)

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

I am writing further to the Supplementary Explanatory Memorandum which I sent your committee on 7 July 2011, enclosing an Impact Assessment.

I am now in a position to update you more fully, following developments in negotiations and consideration at Committee level in the European Parliament. I am pleased to be able to inform you that, on the whole, the direction that the draft Regulation is moving in is acceptable to the UK, as set out below.

COMPULSORY OR OPTIONAL APPROVAL

The most important points for the UK relate to whether approval would be optional or compulsory for different categories of agricultural vehicle, and the fitment of appropriate braking for the higher speed tractors.

We have worked closely with influential UK MEPs and the general consensus between Member States in the working group and the Internal Market and Consumer Protection (IMCO) Committee in the European Parliament is now favourable to the UK position.

The consensus seems to be that approval should be **optional** for trailers and towed equipment (categories R and S). This is in line with the UK position as it will prevent burden on smaller manufacturers whilst still permitting EU approval for those who want it, leading to simplified procedures for UK manufacturers who export. We have secured the vital option of manufacturers continuing to comply with UK domestic regulations, which do not require a third party approval process.

Presently, conventional tractors and some more specialised types, such as narrow tractors for vineyards (categories T1, T2, T3 and T4.3) are already subject to **compulsory** approval. There seems to be general support to add fast tractors (T5 category) to the list of tractors subject to compulsory type approval, which would ensure a level playing field for manufacturers of such tractors. This would ease the burden for a UK-based exporter who currently has to deal with multiple foreign approval schemes, and welcomes compulsory approval for this category.

The remaining tractor categories are Special Purpose tractors (categories T4.1 and T4.2) and “crawler”, i.e. tracked tractors (categories C1-C5).

The Parliament’s IMCO Committee are in favour of making approval **optional**, rather than compulsory (as in the original Commission proposal) for these tractors. Therefore, the manufacturers

of such tractors could opt to continue with the current domestic regime, which in the UK does not involve third party approval. We would not object to this, in line with our wish to avoid imposing additional burdens on manufacturers. (The UK-based manufacturer mentioned above does not sell vehicles in these categories).

We also support IMCO's intention to **exclude** agricultural machinery (e.g. combine harvesters, telescopic material handlers) from this regulation, and instead to require the Commission to conduct a separate review as to the best method of harmonising the rules across the EU for such vehicles, which could also cover similar machinery not intended for agricultural usage or intended for multiple uses (e.g. diggers and other construction machinery). This is something UK stakeholders have pushed for.

We would therefore support a First Reading deal to secure these points, if one becomes likely in the coming weeks.

DETAILED STANDARDS AND MARKET SURVEILLANCE

The detailed technical standards (e.g. Braking) will not be discussed in this negotiation; instead powers will be delegated to the Commission to draft standards after taking the views of member states. However, the latest position is that the Commission will be required to ensure that fast tractors have a similar level of braking performance as heavy trucks. This is in line with the UK position that for safety reasons, fast tractors should be fitted with similar braking systems to those fitted to heavy trucks.

The proposal has been expanded to cover Market Surveillance, a topic also relevant to the current Motorcycle EU Regulation under negotiation (EM 14622/10). Our policy has been to attempt to strike a balance, leading to clarity for both manufacturers and the enforcement authorities, with the minimum of reporting obligations for the responsible manufacturers and clear penalties for those manufacturers/importers breaking the law.

OPEN ISSUES

The main remaining open issue is the inclusion of utility All-terrain vehicles (ATV) or "quad bikes", as well as vehicles known as "side-by-side utility vehicles". This is an important issue for UK stakeholders, and officials have worked closely with trade bodies AEA and ATVEA to develop our position. Our aim here is to ensure that working vehicles used mainly off-road are subject to suitable safety standards, and can continue to be used in many applications, as at present. There is considerable debate over whether these vehicles (or certain sub-classes thereof) belong in the Tractor or the Motorcycle frameworks. Some Member States favour classification of these vehicles in the Motorcycle framework. Our position is that vehicles designed for working use should be classified under the Tractor framework, whilst those for leisure should be classified under the Motorcycle framework, notwithstanding that some versatile vehicles could be classed in both categories. There is a risk that resolution of this issue will delay both dossiers and prevent a First Reading deal.

It is not yet known whether a First Reading deal will be possible, or when the Presidency intend to put the proposal to the Council of Ministers. The European Parliament is scheduled to consider the proposal in plenary in early July. I will, of course, keep you informed of further developments, but in the meantime I hope that this update is helpful.

12 June 2012

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 12 June 2012, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at the meeting on 18 June 2012. It was decided to clear the document from scrutiny.

We note that many of the developments you have outlined as to the regimes applicable to fast tractors and trailers were foreshadowed in your July 2011 letter. We see no issue with the options chosen in the light of your explanations, nor do we raise a specific query with the proposal to exclude agricultural machinery. We would like, though, a brief outline of your views as to the safety implications of a tractor bound by mandatory standards towing a piece of machinery which does not adhere to those standards.

As for the proposal to include market surveillance, we share your caution. You are right to seek to guard against unnecessary burdens for those affected, as well as ensuring that obligations and penalties

are clear; we trust that you will be vigilant in both respects in future negotiations, as we saw during the progress of the parallel motorcycle framework proposal.

The question of braking standards remains live. We are content with the negotiating position you have taken, but ask that you update the Committee with your views following the publication of draft standards by the Commission.

The final issue concerns the dividing line between the tractor and motorcycle frameworks as far as “quad bikes” and “side-by-side utility vehicles” are concerned. We would be concerned if progress on both dossiers was held up as a result of this issue, particularly since we believe your proposed approach is a pragmatic and compelling one. We hope that you will take a strong stance to prevent needless delay. However, we would appreciate your assessment as to the impact of the application of different type approval standards for such vehicles as far as user safety is concerned.

We look forward to an update within the usual 10 days.

19 June 2012

Letter from Mike Penning MP to the Chairman

I am writing further to your letter of 19 June 2012 giving clearance from scrutiny, while requesting further information on three specific topics. In addition, I would like to update you on further progress in negotiations.

The first piece of information you requested is a brief outline of my views as to the safety implications of a tractor bound by new mandatory standards towing a piece of agricultural machinery which does not adhere to those standards.

As you may appreciate, to some extent we are in this situation already and I do not anticipate the situation worsening. Many new tractors meet European braking standards whilst trailers and towed machinery are subject to less stringent GB Regulations that do not require third party approval or safety inspection. Our negotiations have ensured that we do not have to impose the burden of full EU type approval (including new braking standards) on the manufacturers of agricultural trailers or towed equipment. However, if we felt that road safety made it necessary, we could decide to implement the technical requirements of the new braking standards at a national level, keeping compliance costs to a minimum.

With respect to your second point, relating to an update on these braking standards, your comments have been noted and we will provide the Committee with the requested update once draft standards are published by the Commission. This would be anticipated to take place during 2013.

Regarding your third point on “quad bikes” and “side-by-side utility vehicles”, you asked for an assessment as to the impact of application of different type approval standards for such vehicles as far as user safety is concerned.

Generally speaking, vehicles categorised as tractors will be used as working vehicles, whilst those categorised as motorcycles will be used for leisure purposes, although inevitably there will be some crossover. The existing EU Directives cater to some extent for these vehicles already, but we anticipate the proposed approach will ease some obligations on manufacturers and we would expect certain standards to be similar across both categories. There may be different safety criteria recognising their primary use. In particular, the tractor category vehicles are likely to be more powerful, provide higher payload and towing capacity, but will have a speed limitation. They will not be required to be fitted with a differential, which may affect on-road stability.

Ultimately we feel that user safety will not be reduced in comparison to current practice, but of course we will keep this under review and if there is evidence of a problem, then we would make representations to the Commission accordingly. If the usage of these vehicles on the public road proliferates then that would need to be looked at closely regarding any safety implications.

Discussions have moved swiftly in the last month, and the outstanding issue on the inclusion of utility all-terrain vehicles in this Regulation now seems to be resolved. All parties accept the position initially proposed by the UK, that both “side-by-side” utility vehicles and “quad bikes” should be capable of approval under a suitable Tractor category, when designed for agricultural or forestry use. This helps manufacturers provide the right product for professional users.

The situation on other topics remains as described in my letter of 12 June and we are therefore close to a First Reading agreement that is acceptable to the UK.

Early indications are that the Cypriot Presidency may ask Member States to confirm their approval of the proposed compromise text before the summer recess, ahead of its consideration by the European Parliament in plenary during October and subsequent final adoption by the Council.

11 July 2012

BETTER AIRPORTS PACKAGE (18008/11, 18009/11)

Letter from the Rt. Hon Justine Greening MP, Secretary of State, Department for Transport, to the Chairman

I am responding to Lord Roper's letter of 1 May regarding the above document [18009/11]. I am grateful to the Sub-Committee on the Internal Market, Energy and Transport for updating me on the conclusions drawn from the related Committee evidence session and the subsequent written evidence received by the Committee.

The Committee asked for more details regarding the Government's oversight of the slot allocation process and to what extent the UK's independent coordinator is accountable to Government.

EU Regulation 95/93 ("the EU Slot Regulation") provides common rules throughout Europe for slot allocation, which are aimed at providing airlines with fair and equal access to airports across the EU through independent and transparent slot allocation procedures. Under EU law, Member States are required to ensure that airport slot co-ordinators are appointed to manage slot allocation at airports where capacity problems occur. The responsible Member State must ensure:

- (a) the independence of the coordinator by separating the coordinator functionally from any single interested party, the system of financing the coordinator's activities must be such as to guarantee the coordinator's independent status; and
- (b) that the coordinator acts according to the EU Slot Regulation in a neutral, non-discriminatory and transparent way.

The Government's oversight role is therefore to ensure that the EU Slot Regulation is applied appropriately in the UK. The EU Slot Regulation was transposed into UK law under the Airport Slot Allocation Regulations 2006 (Statutory Instrument 2006 No. 2665), which came into effect on 1 January 2007.

In the UK, Heathrow, Gatwick, Stansted, Manchester and London City airports are all "coordinated" under the Regulation by Airport Co-ordination Limited (ACL), a private, independent company jointly owned by nine UK airlines. In terms of accountability, ACL is required by the Airport Slot Allocation Regulations 2006 to operate and allocate airport slots in accordance with the EU Slot Regulations. The UK Government does not have any role in the slot allocation process.

You noted that during the Committee's evidence session some witnesses suggested that the existing EU Slot Regulation is not being consistently applied across all Member States. In relation to the enforcement of the existing EU slot regulations in other Member States, it is the responsibility of the European Commission to ensure that EU legislation is applied consistently across Europe.

The Committee highlighted that some elements of the Commission's proposals are at odds with international norms and could put Europe at a disadvantage. It is acknowledged that some of the Commission's proposals, such as the proposed changes to the "use it or lose it" rule, would mark a departure from the IATA world slot guidelines. Although such inconsistencies with international norms may not be ideal, provided such measures are not discriminatory in nature, we would not expect them to have a significant negative impact on the European air transport market in a global context.

The Committee asked for details of our definitive position on the proposed changes to the "use it or lose it" rule. Through our engagement with industry stakeholders, we are aware that varied views exist surrounding the change proposed to the "use it or lose it" rule. This is a measure on which we intend to seek further views from the industry to help inform our negotiating position. In particular, we have noted the potential benefits asserted in terms of additional capacity and opportunities for new entrants, but are mindful that the benefits calculated may not take into account that airlines may adapt their behaviour to retain airport slots, which may result in additional burdens being placed on airlines.

In relation to emissions, I am not aware of any evidence indicating that airlines are operating services with fewer passengers than justifiable due to the existing “use it or lose it” rule. We believe that scope to introduce safeguards relating to emissions alongside an increase to the “use it or lose it” rule threshold would be very limited, without imposing significant additional administrative burdens on the aviation sector.

In terms of engagement with the aviation sector, DfT officials have already discussed the Commission’s slot regulation proposals with range of industry stakeholders, including BAA, Gatwick Airport Ltd, British Airways, Virgin, and TUI. In addition, later this month, DfT and the Civil Aviation Authority will be hosting an industry stakeholder event to discuss and seek industry views on the Slot Regulation proposals. I confirm that the BALPA has been invited to attend this event.

My original Explanatory Memorandum on the Better Airports Package noted that we expected that the slots proposal would not be taken forward until the Cypriot Presidency. The latest indications are that the Cypriot Presidency will commence consideration of the slots proposals in July 2012.

I hope that this additional information is useful and will, of course, keep the Committee informed of developments on these proposals.

14 May 2012

Letter from the Rt. Hon Justine Greening MP to the Chairman

I am writing to update you on progress with negotiations on this proposal [18008/11] and to respond to the request for further information in Lord Roper’s letter of 27 March 2012.

Lord Roper explained that the Lords EU Sub Committee B on the Internal Market, Energy and Transport had decided to retain this proposal under scrutiny. The Committee asked for further information on the results of consultation with stakeholders with the aim of ensuring that the proposal does not introduce disproportionate administrative burdens and any amendments which we aim to introduce into the proposal during negotiations.

Since then there have been a number of working groups on this proposal. At these meetings the UK has successfully argued for or supported the following changes:

- Making the role of the independent competent authority less burdensome, in particular by ensuring that the authority no longer has to lead the noise assessment process itself. It would remain responsible for approving any new operating restriction and it would have to monitor the implementation of noise mitigation measures and take action as appropriate. Although there would be some small additional costs, we can see potential benefits in an independent body having such a role at larger airports with noise problems.
- Ensuring that the new requirements for a more detailed assessment only apply where noise has been identified as a problem or where new noise related operating restrictions are being considered.
- Ensuring that the new process aligns more closely with the existing process to produce noise action plans every five years and does not duplicate or create inconsistency. This was a concern which has been raised with us by both industry stakeholders and by colleagues in the Department for Environment, Food and Rural Affairs.
- Limiting the Commission’s power to amend the regulation in future to updates of a technical nature only.

The Presidency now hopes to reach a General Approach on the proposal at the Transport Council on 7 June. We consider that these changes make the proposal less burdensome and therefore more acceptable.

There is one significant unresolved issue which we expect will require discussion at the Transport Council. This is the proposed power for the Commission to scrutinise a decision to introduce a noise related operating restriction prior to its coming into force and to take legal action to prevent its coming into force where the Commission finds the decision does not respect the requirements of the Regulation.

As explained in our Explanatory Memorandum on this proposal, the proposed power to take prior legal action would satisfy a condition reflected in the Protocol to Amend the Air Transport Agreement between the USA and the European Community and its Member States signed on 25

March 2010, fulfilment of which will trigger enhanced rights for EU airlines and investors. UK airlines stand to benefit from these. We have successfully argued that this right of scrutiny should only apply to the process under which a decision was taken and not to the decision itself. However, at present a number of Member States oppose granting the Commission an explicit power to take prior legal action and insist that the Commission should instead use the usual legal mechanisms for failure to comply with European obligations. We do not consider that this would fulfil the EU-US Agreement. The Presidency has been attempting to find a compromise, but it is not clear how this will be achieved. We therefore continue to support efforts to find a solution which delivers the EU-US commitment whilst minimising the scope of the Commission's power.

I appreciate that the Committee may not wish to lift its scrutiny reserve on the proposal before the outcome of these discussions is known. However I would be grateful if the Committee could indicate that it is content for the Government to support a General Approach, pending completion of scrutiny at a later date.

I hope that this further information is helpful and will, of course, keep the Committee informed of further developments on this proposal.

16 May 2012

Letter from the Chairman to the Rt. Hon Justine Greening MP

Thank you for your letter of 14 May 2012 on the above proposal [18009/11]. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 28 May 2012. It was decided to hold this proposal under scrutiny.

We appreciate your helpful answers to the Committee's questions, although we note that several of your observations differ from those put forward to us in oral and written evidence from stakeholders, for example on the international context to the legislation.

We realise that you are still conducting your own stakeholder consultation on the proposal before reaching a definitive position and we await the results of this with interest. We also recognise that negotiations in the Council have not yet begun. We will therefore continue to hold this proposal under scrutiny and await updates from you on your position and the progress of negotiations as these become available.

29 May 2012

Letter from the Chairman to the Rt. Hon Justine Greening MP

Thank you for your letter of 16 May on the above proposal [18008/11]. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 28 May 2012.

The Committee is content to provide you with a scrutiny waiver on the Regulation on noise-related operating procedures, if this proves necessary. Whilst we find it regrettable that full details of the final proposal were not available in advance of a General Approach at the Council, we recognise the constraints which prevented you from providing these and are grateful for your efforts to keep the Committee updated on developments during the course of negotiations. We also welcome the amendments you have made to the proposal, in order to ensure it does not introduce disproportionate administrative burdens.

We look forward to receiving an update from you following the 7 June Transport Council.

29 May 2012

Letter from the Rt. Hon Justine Greening MP to the Chairman

Thank you for your letter of 29 May. I am grateful to the Committee for providing a scrutiny waiver on this proposal, and am writing now to provide the update you requested on the outcome of the 7 June Transport Council.

In the lead-up to the Council there was further discussion about the proposed power for the Commission to scrutinise a decision to introduce a noise related operating restriction prior to its coming into force and to take legal action to prevent its coming into force where the Commission finds the decision does not respect the requirements of the Regulation.

Although, as explained in my previous letter, this would have satisfied a condition in the EU-US Air Transport Agreement and given EU airlines some limited additional traffic rights, a majority of member states opposed giving the Commission a power to take legal action prior to the decision coming into force. The Presidency therefore put forward a compromise text shortly before the Council which would allow the Commission to issue a notification to member states where it finds that the introduction of a noise related operating restriction does not follow the process set out in the Regulation. The compromise text would also require member states to ensure that due account is taken of such notification before the restriction is introduced.

At the Council itself the Commission tabled a proposal to tighten up their power to take action over operating restrictions in member states, but delegations supported the Presidency's compromise text as detailed above. The Council therefore reached a General Approach on the proposal based on the Presidency's text.

I gave careful consideration to whether the provisions on the Commission's right of scrutiny over member state processes should be strengthened in order to satisfy the condition in the EU-US Air Transport Agreement. Other member states did not consider that giving the Commission additional powers to intervene was justified or necessary. Having listened to these views, I decided that it would not be appropriate to give the Commission new powers to suspend noise-related operating restrictions agreed at the local level. I therefore concluded that the Presidency's text was a pragmatic way forward which would incentivise compliance with the process set out in the Regulation whilst maintaining an appropriate balance of powers between the EU and member states.

21 June 2012

Letter from the Chairman to the Rt. Hon Justine Greening MP

Thank you for your letter of 21 June 2012 on the above proposal. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 2 July 2012.

We would like to thank you for the information you have provided during the course of negotiations. We are now content to clear this proposal from scrutiny. No response to this letter is expected.

3 July 2012

Letter from the Rt. Hon Patrick McLoughlin MP, Secretary of State, Department for Transport, to the Chairman

I am writing further to your letter of 29 May 2012, to provide you with an update on progress in relation to the European Commission's proposals to recast the EU Slot Regulation.

The Cypriot Presidency commenced discussion of the recast EU Slot Regulation proposals in Council working group on 2 July 2012 and has held weekly meetings throughout July, September and October. The Presidency intends to seek the agreement of a General Approach at the Transport Council on 29 October.

In Council working group negotiations, the UK has made good progress in minimising the additional cost and administrative burdens resulting from the proposed recast Regulation. In particular, we have successfully secured the deletion of the new Network Airport concept, which would have placed unnecessary data collection requirements on uncongested Union airports, without any clear benefits. In addition, the proposals to establish a single European slot coordinator have been deleted. The UK has supported proportionate measures to facilitate cooperation between slot coordinators, such as the sharing of best practice, but has opposed the creation of a European slot coordinator. At present, coordinators may compete to become the slot coordinator at individual airports, which we consider leads to greater efficiency and more customer-focused coordination providers through encouraging competition. The creation of a single coordinator could have led to more costly and less customer-focused coordination services.

We have also successfully pushed back on the Commission's proposals to develop detailed "one size fits all" approaches for the assessment of airport capacity and determining airport slot coordination parameters. The latest version of the Council text proposes a guideline based approach for capacity assessments and allows for the expert airport coordination committees to continue to determine airport coordination parameters.

In relation to the provision of slot coordination activity reports (which are prepared by airport coordinator and submitted to the Commission after each scheduling period), we have secured

amendments to the text which allow for the Commission to provide guidance on the content of these activity reports, rather than a “one size fits all” template, as originally proposed.

The UK has been supportive of the Commission’s slot utilisation proposals, where they have been demonstrated to improve slot utilisation. Although there has been broad support for the improved sanctions proposed to address the misuse of slots and the introduction of slot reservation fees, there has been no appetite in the working group to increase the “use it or lose it” threshold to 85%; and only limited support for increases to the minimum slot series length. On this issue, the UK is continuing to push for the inclusion of measures that would allow airports to introduce local rules to increase the minimum slot series length, where this would help maximise the efficient use of slots.

The UK has fully supported the Commission's proposals to formalise the secondary trading of slots within the new Slot Regulation. Secondary trading has taken place at UK airports for many years and the UK experience has shown that such trading can bring considerable consumer benefits, including competition between air carriers and the alleviation of inefficiencies in the original administrative allocation. Secondary trading enables slots to be put to the most effective use from the consumer perspective.

However, a number of Member States have proposed amendments, with the stated aim protecting the access of regional or intra-Community services to congested EU hub airports, which could have a major negative impact on the UK’s existing secondary trading market. Experience in the UK has not highlighted secondary trading as posing a threat to regional services. At present, the Commission, with support from the Presidency and a number of Member States including the UK, is holding fast and has so far resisted any such amendments to the text in Council working group. However, we remain concerned regarding the threat of such amendments and the risks that they pose to the UK’s existing secondary trading and the consumer benefits that trading provides.

We do not expect that these amendments will be included in the proposed General Approach text, but if they are introduced we intend to oppose the General Approach. The position may not be certain until the Council itself, and I appreciate that the Committee may, therefore, not wish to lift its scrutiny reserve on the proposal at this stage; however I would be grateful if the Committee could indicate that they are content for the Government to support a General Approach provided that it does not include such amendments, pending completion of scrutiny at a later date.

Finally, there has been general support in Council working group for the Commission's proposals to strengthen the independence of airport slot coordinators and the transparency of slot allocation procedures.

16 October 2012

Letter from the Chairman to the Rt. Hon Patrick McLoughlin MP

Thank you for your letter of 16 October 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 22 October 2012. The Committee decided to grant a waiver under the Scrutiny Reserve Resolution for the 29 October Transport Council meeting.

We are grateful for your update on negotiations. In broad terms, the results appear to be positive. We encourage you to continue to take a strong stance on ensuring flexibility for UK airports where this does not compromise the Commission’s drive to better utilise EU airport capacity. To that end, we reiterate our support for an increase in the “use it or lose it” threshold from 80-20 to 85-15, but accept that the general appetite among Member states tends against that outcome.

As to the proposed amendments to secondary trading provisions, we repeat our earlier view that the UK sets a good example in the operation of its slot allocation process, though we would wish to see a greater focus on encouraging new entrants. We would be concerned were any amendments to jeopardise that system, and so would be grateful for further information on the “major negative impacts” that you consider to be attendant upon such amendments being agreed.

However, you note that were the provisions to be altered, you would not support a General Approach. Given that, and given that you present a welcome picture of negotiations otherwise, we are therefore content to grant a waiver under the Scrutiny Reserve Resolution ahead of the 29 October Transport Council meeting, on the understanding that detailed correspondence on the results of that meeting are received as soon as possible afterwards. A response is thus not expected prior to 5 November 2012.

23 October 2012

BIOCIDAL PRODUCTS: PLACING ON THE MARKET AND USE OF (11063/09)

Letter from the Rt. Hon Chris Grayling MP, Minister of State for Employment, Department of Work and Pensions, to the Chairman

Further to my letter of 13 December 2011 to the then Chairman of the Committee, Lord Roper, I am writing to inform you about the adoption of the European Regulation concerning the placing on the market and use of biocidal products. This follows earlier updates to your Committee on the progress with the negotiations on the Regulation.

Your Committee released the proposal from scrutiny on 14 December 2010, ahead of Political Agreement in the Environment Council on 20 December 2010. An informal second reading agreement on the dossier was endorsed by Member States in the meeting of the Committee of Permanent Representatives on 23 November 2011. The European Parliament (EP) voted positively on the agreed package of amendments on 19 January 2012, effectively endorsing the final text of the Regulation.

The European Commission's response to the text was generally favourable and so it did not stand against a Qualified Majority Vote. However, the Commission made three declarations that it would:

- 1) reserve the right to seek clarification by the Court on the use of implementing acts for the setting of fees to be paid to the European Chemicals Agency;
- 2) ensure the fee for mutual recognition applications does not constitute a disproportionate burden on companies (particularly SMEs); and
- 3) seek to take steps to ensure in future proposals that the definition of 'nanomaterial' was consistent with the Commission Recommendation of 18 October 2011 on a definition of 'nanomaterial'.

The agreed text was not altered by the EP during this vote, and it remains favourable to the UK for the reasons set out in my 13 December 2011 letter. We therefore agreed the adoption of the Regulation in Council on 10 May 2012, and it was subsequently published in the Official Journal on 27 June 2012.

NEXT STEPS

The Regulation will apply from 1 September 2013. I will write soon to Ministerial colleagues to set out how I plan to approach implementation of the Regulation in line with the Government's Guiding Principles for EU legislation. This will include plans to consult on proposals to ensure that provision is made for enforcement of the Regulation, establishing a UK competent authority, and for recovery of costs arising from the Regulation's operation.

5 July 2012

COMPETITION LAWS: AGREEMENT BETWEEN THE EUROPEAN UNION AND THE SWISS CONFEDERATION (10785/12, 10786/12)

Letter from the Chairman to Norman Lamb MP, Minister for Employment Relations, Consumer & Postal Affairs, Department for Business, Innovation & Skills

Thank you for your explanatory memorandum on 6 July 2012 on the above proposal. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 23 July 2012.

We agree with Government's position on this proposal and are content to clear it from scrutiny.

24 July 2012

Letter from Lord Green of Hurstpierpoint, Minister of State for Trade and Investment, UK Trade and Investment, to the Chairman

The EU Competitiveness Council will take place in Luxembourg on 10 and 11 October 2012. David Willetts, Minister of State for Universities and Science, will represent the UK for research items on 10 October and Shan Morgan, Deputy Permanent Representative to the EU, will represent the UK for the Internal Market and Industry items on 11 October.

The Research substantive agenda items on 10 October will be: agreement of partial general approaches (i.e. political agreement) on a Proposal for a Regulation of the European Parliament and of the Council amending the Regulation establishing the European Institute of Innovation and Technology (EIT) and on a Proposal for a Regulation of the European Parliament and of the Council laying down the rules for participation and dissemination in 'Horizon 2020' – The Framework Programme for Research and Innovation (2014-2020), and policy debates on a Communication from the Commission on a reinforced European Research Area Partnership for Excellence and Growth, a Communication from the Commission : Towards better access to scientific information: Boosting the benefits of public investments in research and a Commission Recommendation on access to and preservation of scientific information.

The Internal Market and Industry substantive agenda items on 11 October will be: adoption of a Council Resolution regarding the European Consumer Agenda; a communication from the Commission on the Industrial Policy Communication (update); a communication from the Commission on the Strategy for the sustainable competitiveness of the construction sector and its enterprises; an exchange of views on Cultural and creative sectors for creative growth in the EU; adoption of Council Conclusions on Key Enabling technologies and the European Innovation Partnership on Raw Materials; and; a debate on the state of play of the Single Market Act I.

Four AOB points will be discussed; information from the Commission on the report from the high level round table on the future of the European steel industry; information from the Presidency on the 12th European Tourism Forum; information from the German delegation on state aid for films and other audio visual works; and; information from the Commission on Single Market Act II.

The Government's objectives for the Council are:

- To agree to a partial general approach on the EIT [and on the Rules of Participation on Horizon 2020];
- To contribute to discussions on the future development of the European Research Area;
- To contribute to discussions on access to and preservation of scientific information;
- To adopt the Council resolution on a European Consumer Agenda;
- To contribute to discussions on European Industrial policy;
- To confirm agreement on Council Conclusions regarding Key Enabling technologies and the European Innovation Partnership on Raw materials;
- To contribute to discussions on Single Market Act I.

5 October 2012

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

I represented the UK on Research issues on 10 October, and also for some items on 11 October on Internal Market and Industry issues, at the October 2012 Competitiveness Council in Luxembourg. Shan Morgan, Deputy Permanent Representative to the European Union, also represented the UK for a number of items. Please see attached a Post-Council Written Ministerial Statement on the subject, which will be laid in both Houses on Thursday 18 October.

17 October 2012

COMPLETING THE EUROPEAN RESEARCH AREA (12846/12, 12847/12, 12848/12)

Letter from the Chairman to David Willetts MP, Minister for Universities and Science, Department for Business, Innovation and Skills,

Thank you for your memorandums of 7 August 2012. They were considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 8 October 2012. The Committee decided to clear the documents from scrutiny.

Turning first to the broader Communication on the ERA, we are glad to see clear political leadership from the Commission to take forward the aim of completing the ERA by 2014, and are glad too to see the UK's strong engagement with the agenda thus far. We agree that, at this stage, stronger linkages with stakeholders, and a more focused use of the Horizon 2020 instrument, present the most pragmatic means of taking the agenda forward. We would be grateful for your view as to whether the changes proposed do make completion by 2014 a realistic possibility, particularly given the threat of legislative action if insufficient progress is made.

Moving to the question of open access, we have stressed previously our support for a strong commitment to open data, and welcome the Commission's focus here too. The UK is once again identified as a good practice example in this field, as it was in terms of the re-use of public sector information. We urge you to use your position as 'first mover' to ensure that other Member States take their responsibilities seriously. However we are concerned that private funders of research, and indeed researchers themselves, may view open access as a financial disincentive, and we query whether the public funds available to implement open access will sufficiently offset any loss of existing research income. We would, therefore, appreciate more information on how the mixed economy model you have suggested would work, and how workable it would be on a Europe-wide basis.

Furthermore, whilst we welcome your desire to stimulate an open-access model worldwide, it is important that worldwide uptake is monitored and EU policy adjusted to take account of developments. We would be keen to hear how the UK will seek to stimulate change, how the level of open access worldwide will be monitored, and what policy options you have considered should the UK prove to be disadvantaged by its stance.

We would also be grateful for your response on the Commission's invitation to Member States to ensure that at least 40% of the under-represented sex participate in committees involved in recruitment, career progression and in establishing and evaluating research programmes.

Otherwise, we look forward to seeing this agenda develop in the coming years. We believe, like you, that it promises extensive benefits for European innovation, competitiveness and education.

I look forward to hearing from you within the usual 10 days.

11 October 2012

Letter from David Willetts MP to the Chairman

Thank you for your letter of 11th October.

I was pleased to learn that the Committee has cleared the Explanatory Memoranda from scrutiny, and you are supportive overall of the Government's intended stance with the European Commission for the issues at hand. I respond here to the questions and points that you raised.

Turning to your question about the broader ERA Communication, completion of the ERA by 2014 was what the Council of Ministers asked for in 2011. Completion was not defined but, understandably, that was the word the Commission picked up and ran with. The Commission's language has shifted recently in this respect, for example the October European Council minutes talk about the need to "finalise the ERA by the end of 2014". Our aim is to have the conditions in place such that the ERA can function effectively by 2014 but the notion of a 'complete' ERA is not realistic. The ERA is a dynamic and evolving landscape and not one that can be considered to be complete at any single point in time. Putting semantics to one side, the measures proposed have the potential to shift the research landscape in Europe in a positive direction; the fact that the Commission has proposed a common sense, non-legislative, approach reflects sustained UK lobbying. However, the non-legislative approach leaves the Commission with few real levers to encourage reforms in less developed Member States (aside from Commissioner Geoghegan-Quinn's threat to "name and shame"). The challenge for us is to find ways to support the Commission in delivering their priorities and counter any arguments for future legislation, without undermining the independence of our own institutions and Research Councils.

On the question of Open Access (OA), I was pleased to note your expressed support for Open Data (OD) for which the UK is again identified as a good example. We have made excellent progress through the Finch Report on expanded access to research publications and the Government's response to it. OD is at a relatively early stage. Some initiatives are already in train under Government's Transparency Agenda, as detailed in the Cabinet Office White Paper, Open Data: Unleashing the Potential. This includes establishment of the Research Sector Transparency Board, which I shall be chairing. The Board will want to examine the complex issues around increasing the sharing of research data. The Research Councils' published Open Access policy makes appropriate reference to research data, and the recent Royal Society report has informed the discussion, but work is needed on deciding further measures and implementing these appropriately, with the right terms and conditions and timing for disclosure.

As should be evident from our EM, I am taking advantage of our 'first mover' position to strongly encourage other Member States to consider what they can also do on OA, as discussed further below, consistent with the Commission's Recommendation which is in line with the UK's OA policy. Allow me to first address some of your concerns.

The Government's OA policy applies only to the publication of publicly-funded research. Publication options available to private researchers are a matter between them and their journal of choice. Furthermore, the usual considerations given to the publication of privately-funded research, including the protection of Intellectual Property Rights (IPR) still apply.

The timing of publication is not affected by OA, but once the decision to publish has been taken then it should be in accordance with the Government's OA policy, preferably on Gold basis where public funds are involved. UK policy carries a preference for Gold OA because it allows immediate release of research findings upon publication for all to view, and the full use and re-use of content under a Creative Commons ('CC-BY') licence, enabling, for example, data mining. The policy therefore also complements Hargreaves' recommendations from his review on IP, which the Government has accepted in full.

Even so, we envisage the 'mixed economy' for OA, as referred to in the Finch Report, for some time. To accelerate the shift to Gold OA, block funding will be provided by the Research Councils to research institutions to allow them to create Publication Funds. This will incentivise uptake of Gold OA from April 2013 but the option for researchers to utilise the less effective 'Green OA' remains. The decision on which route to OA will be for researchers and their institutions. The Government's strong preference for Gold has already been made clear in part through the release of an additional £10million to the Research Councils to 'kick start' the transition to Gold OA. This will also 'pump-prime' the formation of Publication Funds at research institutions. Research Councils will allocate funds from existing budgets and will be monitoring future compliance with Green and Gold OA; they will undertake a review in 2014 and will adjust future financial allocations for Publication Funds accordingly. The mixed economy model is also suggested by the Commission for Horizon 2020.

There is an opportunity cost to OA by way of a marginal increase in overall publication costs during transition and a commensurate marginal reduction in available research funding. The Government has accepted this cost. The Finch Group's report included a financial analysis of its impact; BIS also undertook modelling in-house, and the resulting 'Economic Analysis of Alternative Options for the UK Science and Research System' informed Government's policy. We believe that the cost represents only one per cent of the Science & Research Budget. It is a cost worth bearing for the greater benefits discussed above – and formal publication is considered a legitimate part of the scientific process. Admittedly, the duration of the transition period is unknown, but early indications of the outcome since July 2012 are encouraging. One major research publisher has informed BIS that they are now rapidly increasing availability of the Gold OA route in their journals, with this now being available for 1,200 of their journals, and demand from researchers for publishing through Gold OA increasing. The move to Gold OA is also being assisted by the Open Access Implementation Group (OAIG).

I would also draw your attention to the initiative now being proposed by the UK Publishers' Association, as a result of their participation in the Finch Group, for 'walk-in' OA in the UK's public libraries. This would enable the public to freely access all published research in participating companies' research journals, not just the less than seven per cent of global research published by the UK. Technical preparations for this public library initiative are underway through the Publishers' Licensing Society and, if finally introduced, will constitute a significant fillip for widening access to published academic research in the UK.

As you point out it will be important to influence international attitudes to OA. Formal debate of the Commission's intents for Horizon 2020 is already underway. Earlier this month I attended a Competitiveness Council meeting where I set out the UK position to encourage adoption of Gold

OA as the preferred route; I also proposed a refinement of the Commission's policy for embargo periods for Green OA, to bring it into line with UK policy. I have already written to Commissioners Geoghegan-Quinn and Kroes to reiterate this, and would be happy to share that letter with you in due course.

Admittedly, there is a risk that the UK could be disadvantaged in the short term as 'first mover' with a policy preference for Gold OA, since the Commission sees Green and Gold routes as equal options. However, our internal economic analysis (to be released in due course) shows a global trend towards OA. The Government's policy seeks to simply accelerate and steer that trend towards Gold OA, which is considered most likely to stimulate commercial innovation and growth.

Further afield the Government will also be encouraging adoption of a 'Gold OA preferred' policy beyond the ERA, wherever the opportunity presents itself. In the US, the Committee for Economic Development published a report on *The Future of Taxpayer-Funded Research: Who Will Control Access to the Results?* This concluded that the US National Institutes of Health public-access policy (based on Green OA) had '...substantially increased public access to research results with benefits ... that far outweigh the costs', but also stated that OA should go further to include full use and re-use of content, for example for data mining, as now provided for through the UK's Gold OA policy. This provides further evidence of the prospects of a longer-term international shift towards Gold OA.

Adoption of an approach similar to the UK by the Commission would significantly add strength to our argument in international discussions. To this end, Research Councils UK (RCUK) is also promoting UK OA policy through Science Europe (an association of European research funding and performing organisations), and through the Global Research Council where the UK is recognised as being at the forefront of the debate worldwide. The latter forum is a recently established informal grouping to discuss key research policy issues; it is aiming to reach an international consensus on OA at its next meeting in Germany in spring 2013.

We cannot be complacent and we will want to consider how best to monitor the take-up of Gold OA both here in the UK and overseas. The HEFCE-funded Joint Infrastructure Systems Committee (JISC), OAIG, and the Research Innovation Network (RIN) are already active in monitoring OA trends generally. HEFCE also envisages a possible role for JISC in monitoring the effectiveness – and effects – of Government OA policy. I expect that the Research Sector Transparency Board will also take an interest in OA policy implementation.

On the question of gender balance on committees, I very much agree that women should play an increasing role in the UK's science and innovation agenda. As I said in the Explanatory Memorandum, around twenty five per cent of Research Councils' funding panels are women. But the forty per cent target in the ERA Communication will be challenging for the UK, and potentially even more challenging for some other Member States. This target will be difficult to implement in practice if operated at the committee level, especially in particular disciplines (e.g., Physics and Engineering). Nonetheless, Government and the HE sector are committed to ensuring that the research workforce is reflective of wider society and makes use of all talents. There are many current national initiatives to improve diversity including the Concordat to support the career development of researchers, the Research Excellence Framework and the Athena SWAN Charter.

We suggested that the recommendation from the Commission's Expert Group on the Research Profession 2012 would be more appropriate: "Member States and employing institutions are urged to reflect on their current practices to ensure that selection committees are representative of the population they serve and remember that women now outnumber men amongst graduates." We have also suggested (including in our response to the Commission's consultation exercise last year) that the EU could do more to develop the evidence base, especially in the area of working practices and career development (including barriers to choice, support for return to work especially after maternity leave, and drop-out rates). As a related example, you may be aware that since Lord Davies's report on the barriers preventing more women from reaching the boardroom, the number of women appointed to the boards of the UK's top companies has reached unprecedented levels. That is the sort of practical approach that we would welcome from the EU in respect of the ERA.

25 October 2012

CONNECTING EUROPE FACILITY (15629/11, 15813/11, 16006/11, 16176/11)

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

Thank you for Lord Roper's letter of 24 January on the Connecting Europe Facility (CEF) received after the evidence session inquiry by the Select Committee on the European Union on 19 December 2011 and the Sub-Committee on the Internal Market, Energy and Transport on 23 January 2012.

He raised a series of questions, which were to be addressed once negotiations had progressed further.

On 7 June the Transport, Telecoms and Energy Council reached Partial General Agreement on the Connecting Europe Facility. The UK made a statement that, despite the progress seen in the text, we could not support it ahead of agreement on the overall Multi-annual Financial Framework (MFF) negotiations. This was because the funding proposed for CEF is substantially higher than for the previous seven year period, and agreeing the extended scope of the regulation at this stage may pre-judge the overall MFF EU budget. This was consistent with positions taken on other EU budget dossiers, such as GALILEO.

IN HIS LETTER HE ASKS ABOUT FUNDING LEVELS; WHAT IS THE GOVERNMENT'S PREFERRED LEVEL OF EXPENDITURE ON THE INSTRUMENT AND THE PREFERRED SPLIT OF RESOURCES BETWEEN TRANSPORT, ENERGY AND TELECOMS? HOW COULD IMPORTANT EUROPE 2020, DIGITAL AGENDA AND CLIMATE CHANGE GOALS BE ACHIEVED WITHOUT THE PROPOSED LEVEL OF INVESTMENT? AND, WHETHER WE ARE SATISFIED WITH THE PROPOSED SYSTEM OF INTERACTION BETWEEN THE COHESION FUND AND CONNECTING EUROPE EXPENDITURE?

The Government has been clear that, at a time of ongoing economic fragility in Europe and tight constraints on domestic public spending, the Commission's proposal for the Multi-annual Financial Framework is unrealistic. Within this context, the UK cannot support the huge increase in infrastructure funding proposed by the Commission for the CEF for 2014-20: €50bn (£43.7bn), including €10bn (£8.7bn) earmarked in the Cohesion Fund for transport infrastructure. A real freeze on 2011 EU Budget payments on equivalent TENs funding in these areas over the seven years of the MFF would be below €7bn (£6.1bn). Our preferred level of expenditure on the CEF is contingent on a number of factors, not least the outcome we achieve on overall EU budget size. Like most other Member States, at this early stage in MFF negotiations we do not wish to set a specific figure for our desired final level for the CEF.

The Government's preferred split of resources between transport, energy and telecoms will be covered as part of the overall MFF deal. Our priorities will be based on the Government's clear principles for EU spending. These are threefold: firstly, that it is restrained and contributes to domestic fiscal consolidation; secondly, that it promotes sustainable economic growth in the EU; and thirdly, that it respects the principle of subsidiarity, meaning that the money would not be better spent by domestic governments or the market.

We recognise that considerable investment in infrastructure will be needed between now and 2020 to meet the Europe 2020, Digital Agenda and climate change goals, but the bulk of this investment can be delivered through markets and regulatory measures. The overriding priority for the Government in MFF negotiations is achieving restraint in the budget and the Government is not seeking increases in any area.

The Commission has made some effort to respond to some of the issues surrounding the transfer of ring-fenced funding from the Cohesion Fund to the CEF, including noting that national envelopes will form part of the consideration during the process to award CEF funds to Member States who qualify for the Cohesion Fund. While recognising the Commission's attempt to respond, we remain concerned that the transfer will not fully respect national envelopes under the Cohesion Fund and may therefore privilege some Member States over others and it is also not clear how this will impact on the ranking of projects overall. Other questions also remain, such as how the ring-fence will take into account projects submitted jointly by Member States that both do and do not qualify for the Cohesion Fund. We will continue to follow negotiations both to find a response to these questions and to look at the evolving views of the Member States who qualify for the Cohesion Fund.

On his specific question of whether we are satisfied that the proposal for a transfer only includes transport projects, we are content with this. The Commission has said it is proposing the transfer as investment in transport infrastructure that has an important cross-border aspect, and so it would be useful to concentrate funding on this aspect through the transfer. Therefore a transfer focused on

transport infrastructure and not other aspects of the CEF seems a logical approach. The Cohesion Fund is also limited by the Treaty on the Functioning of the European Union to funding in the fields of the environment and of trans-European networks in the area of transport infrastructure.

HE ASKED FOR MORE INFORMATION ON FINANCIAL INSTRUMENTS, IN PARTICULAR THE BALANCE BETWEEN EU FUNDS AND PRIVATE SECTOR FUNDS, AND THE APPROPRIATENESS OF THE PROPOSED BALANCE OF RISKS AND BENEFITS IN THE FINANCIAL INSTRUMENTS OUTLINED.

We are supportive of the proposals to involve the private sector in infrastructure investment in a more significant way, where they are within the set financial envelopes for CEF. We think that the greater use of financial instruments as a tool to attract private sector funding can be beneficial because of the potential firstly to create a multiplier effect, through increasing private financial leverage and reducing pressures on public sector match funding; to ensure EU added value, by encouraging financial intermediaries to pursue EU policies and utilise their institutional knowledge we can gain a wider policy impact; and, finally to address sub-optimal investment situations, through targeting funding at market gaps which exist due to economic uncertainty, high transaction costs and asymmetric information.

Within CEF there are two types of financial instruments proposed; participation in equity funds that provide risk capital to actions contributing to projects of common interest, and loans and/or guarantees to projects of common interest facilitated by risk sharing instruments, including enhancement mechanisms for long-term bank lending and for project bonds issued by project companies.

The co-financing levels and corresponding balance between EU funds and private sector funds is differentiated for specific types of projects within each sector, to take account of the level of market failure and the expected risks and benefits. We think that safeguards introduced in Financial Regulations and in the CEF text, including the introduction of ex ante assessments for each proposed financial instrument, annual monitoring and reporting and clauses for discontinuing appropriations where the European Parliament and/or Council find the financial instrument has not achieved its objectives, will be sufficient to mitigate risk. Furthermore, the Project Bond Initiative is subject to a full independent evaluation to be carried out in 2015 as defined in Regulation (EC) No 680/2007.

HE ASKED TO BE KEPT UP TO DATE ON THE GOVERNMENT'S POSITION ON CENTRALISED CONTROL AND MANAGEMENT AND ISSUES OF SUBSIDIARITY AND PROPORTIONALITY. HE NOTED PARTICULAR CONCERN WITH MANDATORY REQUIREMENTS IMPOSED ON ALL CORE TRANSPORT NETWORK INFRASTRUCTURE THAT DO NOT DEMONSTRATE EUROPEAN ADDED VALUE.

We note the concern on the issue of centralised control by the Commission, and agree that national competence should be respected throughout the proposals. In this respect, we have ensured the involvement of the Member States concerned in all delegated acts to change the priorities projects for investment.

During the evidence session and in the Explanatory Memorandum we had concerns in the transport regulations on subsidiarity grounds over the use of Core Corridors as an implementation mechanism. We are pleased to report that amendments have been secured to ensure that corridors are no longer mandatory. By working with like minded Member States, the proposals for their management and governance have been simplified and provided Member States with a stronger role in making decisions. This has also helped address the concerns we and other Member States had in relation to subsidiarity. However the draft TEN-T Regulation is now with the European Parliament to consider and we understand they are supportive of the Commission's original proposals, we expect the European Parliament to issue its draft report in September.

It should be noted that, while HM Treasury has coordinated and submitted this response and is responsible for policy concerning the EU Budget, relevant departments retain responsibility for the CEF policy areas. Further details on the CEF policy areas may be best addressed directly by DfT, DECC and DCLG.

15 July 2012

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

I am writing to give you an update on E-TEN following the Telecommunications Council held on 8 June at which an orientation debate was held on the proposals.

Discussions on E-TEN in the telecommunications working group have been slow to progress, as the group has focused on more immediate issues such as mobile roaming charges.

We are broadly supportive of the proposals, in particular, of the objective of supporting projects contributing towards meeting the EU targets for broadband rollout and take-up which are broadly consistent with our own approach and policy in this area, that is, direct support for broadband in areas the market will not serve.

We are also supportive of a number of the digital service infrastructure projects covered by the proposals. These elements of the proposals directly relate the responsibilities of a number of other Government departments, such as the Department of Health, the Ministry of Justice, but many others too; and we will be working closely with them over the coming months as the negotiations in Brussels progress.

We are exploring the potential for the proposed use of innovative financial instruments (IFIs) for these projects, and would be supportive only where these substitute rather than supplement spending in the Budget. In particular we are looking at whether and how these might work for rural broadband deployment in the UK which we consider to be more suited to subsidy where the commercial investment case is particularly weak.

Budgetary restraint is of course of paramount importance in the current economic climate, and the UK is seeking significant reductions in the negotiations on the Multi-annual Financial Framework (MFF). I understand that HMT is due to update the Committee separately on MFF progress before Recess.

17 July 2012

Letter from the Chairman to Greg Clark MP, Financial Secretary, HM Treasury

Thank you for your letter of 15 July 2012 on the above mentioned proposals. This was considered by EU Sub-Committee B on the Internal Market, Energy and Infrastructure at its meeting of 8 October. It was decided to hold the proposals under scrutiny.

We thank you for your response to the questions posed in our letter. We are aware that negotiations on this proposal are ongoing. Please keep us updated on developments in the text as the Committee remain concerned with this dossier.

You will be aware that the Committee's position on this proposal was set out in our April 2012 report on the Multiannual Financial Framework 2014-2020. In this report, the Committee noted that while it appreciated the importance of EU-level action in the areas covered by Connecting Europe, the proposed budget would be difficult to accommodate within the MFF without radical reallocation of funds away from the CAP. It therefore called for a strategic review of the Connecting Europe facility, with European Added Value as the guiding principle, noting that public investment should only be deployed where the market has failed to act. It also stressed the importance of respecting national competences. All these points are of real significance.

We look forward to receiving an update from you in due course, and in particular your opinion on the issues we have alluded to.

11 October 2012

CYPRIOUS PRESIDENCY: DWP PRIORITIES

Letter from the Rt. Hon Chris Grayling MP, Minister of State for Employment, Department for Works and Pensions to the Chairman

Now that the Cyprus Presidency of the EU is underway and it is clearer what business the Presidency is expecting to take forward, I would like to update you on my Department's plans and priorities over the coming months. This letter sets out the key dossiers that will be progressed.

The theme of the Cyprus Presidency is 'Towards a Better Europe', with a focus on making Europe more efficient and sustainable; a better performing and growth-based economy; and more relevant to its citizens in terms of solidarity and social cohesion.

The following legislative dossiers that my Department leads on are currently active in the Council and are likely to reach agreement stage during the Cyprus Presidency:

- Electromagnetic Fields Directive;
- Programme for Social Change and Innovation (PSCI);
- Association Agreements for social security; and the
- European Globalisation Fund (EGF).

Discussions may also restart on the Pensions Portability Directive, setting minimum standards for the acquisition and preservation of supplementary pension rights, with the Commission announcing its intention to re-table the Directive before year end.

ELECTROMAGNETIC FIELDS DIRECTIVE

The Presidency will continue the negotiations on the Directive to replace the 2004 Electromagnetic Fields Directive, with a view to seeking a general approach at the October Council. The key issues for discussion in the Council continue to centre on the scope and duration of the derogations proposed for certain activities, although the derogation specifically aimed for the magnetic resonance imaging sector, the original driver for the proposal, is supported by the majority of Member States, including ourselves. I understand that the European Parliament's Employment and Social Affairs Committee currently plans to vote on its draft report on the proposal in October.

PROGRAMME FOR SOCIAL CHANGE AND INNOVATION

The European Parliament is keen to reach a first reading deal with the Council on the PSCI. The Cyprus Presidency will try to facilitate this through a partial general approach at the December Council.

ASSOCIATION AGREEMENTS FOR SOCIAL SECURITY

The Cyprus Presidency will continue the discussion of the proposal regarding the Council Decision for Association Agreements between the European Union and its Member States and Albania, Montenegro, San Marino and Turkey with regard to the provisions on the coordination of social security systems. It hopes to reach a political agreement at the October Council.

EUROPEAN GLOBALISATION FUND

Negotiations on the EGF will continue throughout the Cyprus Presidency and probably the forthcoming Irish Presidency as negotiations on the Multi-annual Financial Framework begin to be finalised. It will seek a partial general approach on this dossier at the December Council.

EMPLOYMENT AND SOCIAL POLICY COUNCIL (EPSCO)

Informal Council

The Informal meeting of Ministers for Employment and Social Affairs met in Nicosia on 12-13 July 2012. Discussions at this Informal centred on boosting Europe's employment rates, fighting poverty and social exclusion and strengthening the involvement of the social partners and NGOs throughout the European Semester process. The Commission's Employment Package was also discussed.

Formal Councils

The two Employment, Social Policy, Health and Consumer Affairs (EPSCO) Councils scheduled to take place during the Presidency will be held on 4 October in Luxembourg and on 6 December in Brussels. Although we have provisional agendas for these meetings, the content is likely to change during the run up to each Council. My officials will provide your committee with annotated agendas and I will make the usual written statement in advance of, and report following, each Council meeting to set out the final outcomes that the Presidency will be aiming for, and how these fit with UK objectives.

Provisional EPSCO Agenda – 4 October 2012

At the October Council, as well as a possible general approach on the Electromagnetic Fields Directive and possible political agreement on the Association Agreements with Albania, Montenegro, San Marino and Turkey, we also anticipate a policy debate and three sets of Council Conclusions, on the employment situation in Europe, youth employment and child well-being and child poverty.

At the December Council, as well as possible partial general approaches on both the EGF and the PSCI, we also expect Council Conclusions to be adopted on the follow-up of the second European Semester and thematic surveillance in employment and social policies, and a Council Declaration on the European Year 2012 on Active Ageing and Solidarity between Generations.

We have established contact with key Ministers and officials in Cyprus and will be working closely with them on their forward agenda. I look forward to continuing to work closely with your committee to achieve the necessary scrutiny clearance before any agreement at Council.

I hope you find this information helpful.

20 August 2012

CYPRriot PRESIDENCY EXPECTATIONS: TRANSPORT

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

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

Two Transport Councils are planned, the first in Luxembourg on 29 October and the second in Brussels on 20 December. There will be an informal Council on 16-17 July in Nicosia on the role of ICT in the implementation of the European Transport Policy, addressing multimodality through the development of Intelligent Transport Systems such as the creation of an electronic multimodal journey planner.

Other events

There will be a meeting on maritime policy on 8th October in Nicosia, focusing on the Integrated Maritime Policy. This is expected to agree a statement on sustainable and inclusive growth in the marine and maritime sectors (the "Limassol Declaration"). On 25-26 September there will be a Commission-led stakeholder event on the future of ports policy, at which point it may become clearer whether and in what form legislation may be proposed in 2013.

A High Level Conference will take place on 24th September to prepare for the fourth rail package, and TEN-T days will be held on 27-28 November.

On aviation, the Presidency intends to hold a conference on Functional Airspace Blocks (FABs) on 11-12 October. The event will be for all major stakeholders. It will discuss how FABs can be established before the deadline of early December 2012, and will promote initiatives towards improving aviation performance with the adoption of a detailed set of rules, performance targets and guidance on FABs. The UK/Ireland FAB, the first in Europe, has been operating successfully since it was established in June 2008 and is helping to meet the objectives of the Single European Sky legislation.

We welcome initiatives to improve aviation performance, but we will need to fully understand the effect of any new rules and targets to ensure they work in a UK context where we have the only privatised en-route air navigation service provider in Europe. We would expect any new rules and targets to fall within current legislation and Implementing Rules but cannot rule out further regulation in the future if the desired results are not achieved.

TRANSPORT COUNCIL BUSINESS

We are expecting quite a number of proposals from the Commission in the autumn. Some of these are mentioned in this letter, but many will not arrive in time for consideration during the Cyprus Presidency.

Land Transport

The Cyprus Presidency hopes to achieve a political agreement in October on the proposed amending Regulation on **Tachographs** (EM 13195/11). The European Parliament adopted its first reading position on 3 July.

This included a proposal to reduce the weight threshold where drivers' hours rules apply from 3.5 tonnes to 2.8 tonnes, for new generation tachographs to be fitted to all eligible vehicles by 2020, and

a compromise proposal for the Commission to produce an impact assessment on the card merger proposal.

As the dossier is further considered at EU level, the Government will continue to press for adoption of the measures in the general approach reached in June and will resist, as far as possible, those provisions that might impose unnecessary burdens or additional costs on Government or industry and which we think would add no value.

The Commission had been hoping to table the **4th Rail Package** early in the autumn. This will include proposals for further market opening (for domestic passenger markets). Work has begun on the Commission's impact assessment, but there have been delays and the earliest we can now expect to see the package is towards the end of the year.

The Commission is expected to table a new legislative proposal to amend the directive on **Roadworthiness Tests for Motor Vehicles and their Trailers**.

The proposed directive will be discussed during the Cyprus Presidency, with the aim of reaching a general approach or a progress report. The Commission have also indicated they will propose an amendment to the rules on **Circulation of Vehicles between the Member States** towards the end of the year.

The Presidency will continue the coordination of EU positions on issues like **OTIF** and **AETR**.

Aviation

The Cypriots will pick up the last component of the **Airports Package** (EM 18007/11, 18008/11, 18009/11, 18010/11), the proposed revision to the airport **Slot Allocation** Regulation. This will be a priority for the new Presidency. They are hoping for a general approach on the file by the October Transport Council, though this will slip to December if negotiations take more time than planned by the Presidency.

The Commission is due to adopt its proposal on **air passenger rights** at the tail end of the Cyprus Presidency, so there will be little or no opportunity for the Presidency to make progress on this file. However, there have been indications that the Commission may make a presentation on the issue at the December Transport Council.

The Commission is expected to publish a Communication on **external aviation policy** in September, and the Presidency aim to achieve Council Conclusions on this for the December Council. We will want to give careful consideration to any questions of external competence and representation raised by the Communication.

Maritime

The Presidency will seek a general approach in October on two proposed amending Directives, covering **Port State** (EM 8239/12) and **Flag State** (EM 8241/12) responsibilities. These measures would bring EU law into line with the **Maritime Labour Convention**.

Previous discussions have made good progress, so we expect that the Presidency will be able to achieve its goal. The European Parliament has not yet started an examination of the text.

The Presidency also plan to take forward a proposal, expected in September, for a Regulation to provide a future budget for **EMSA** (European Maritime Safety Agency), and will aim for a partial general approach or a progress report at the December Council.

Two other maritime files were expected shortly but will now be delayed.

The first is a proposal to amend the rules on **Marine Equipment** (essentially a single market measure governing standards of marine safety equipment). The second file covers **Passenger Ship Safety** Review, and issues which primarily relate to the Costa Concordia incident. It also covers additional regulations for domestic passenger vessels. It is expected these will now come out in December.

Intermodal Transport

There is unlikely to be much progress on the proposed revision of **the Trans European Transport Networks (TEN-T) guidelines** (EM 15629/11) under the Cypriots as the European Parliament will probably not start looking at the proposal in earnest until the autumn.

Our aim remains to retain the flexibilities obtained in Council negotiations on binding deadlines and the need to take account of Member States public finance capabilities and own development plans.

The Presidency will also do some work on the **Connecting Europe Facility (CEF) Regulation**. The June Transport Council agreed a partial general approach, but did not touch the material on telecoms. There is scope for the Presidency to achieve agreement on the remaining provisions and recitals (but not the budget numbers at this stage), and to enter into discussions with the European Parliament in due course.

Galileo now falls under the responsibilities of the Department for Business, Innovation and Skills, but is taken forward at Transport Council. The Presidency hopes to secure a first reading deal with the European Parliament on the future **governance regulation**; however this is all dependent on the outcome of the overall negotiations on the Multiannual Financial Framework (MFF) 2014-2020.

The position of the European Parliament should be confirmed in September, allowing negotiations to begin soon afterwards between the Council and the Parliament. The Commission is also likely to come forward with a proposal to review **Regulation 912/2010** which deals with the functions of the Galileo Supervisory Authority. This proposal is expected in the autumn.

BUSINESS IN OTHER COUNCILS

Competitiveness Council business – vehicle standards

The proposal to reduce **Noise Levels in Motor Vehicles** (EM 18633/11) will probably be discussed in working group, but we do not expect any Council discussion. The European Parliament first reading is currently scheduled for December.

There are no plans at present to take forward the proposed Regulation on **Re-Registration of Vehicles** (8794/12) during the Cyprus Presidency, and the timetable for consideration in the European Parliament is not yet known.

The Commission is expected to table a legislative proposal on **Maritime Spatial Planning**. The Presidency is not planning to open discussions on this dossier.

Environment Council business

Aviation ETS will be an ongoing topic for discussion in both Environment and Transport Councils, but the real action will be taking place in ICAO and in bilateral contacts between the Commission and third parties. We can expect activity to build as we approach the next ICAO Council meeting in November and then again in the run up to the April 2013 compliance deadline.

New Vehicle CO2 Regulations (covering passenger cars and light commercial vehicles) are to be reviewed and proposals are due out in mid-July. The Commission is expected to confirm the current targets for 2020 and the derogations, including the important ones for the UK for “niche” and small volume manufacturers. We expect the Cyprus Presidency to start discussions on the proposal.

The Commission is expected to bring forward proposals on **Indirect Land Use Change (ILUC)** of biofuels this year but it now seems unlikely this will be before the summer break. If relevant proposals emerge, the Presidency has indicated that they would be willing to take these forward, but it is not expected that agreement will be reached during their term. We also await the Commission’s **Alternative Fuels Strategy**.

Work has begun on the Commission’s impact assessment on the proposal to set default values for crude sources under the **Fuel Quality Directive** (unnumbered EM).

The Commission’s proposal assigns separate default values for oil derived from ‘conventional’ and ‘unconventional’ crudes (such as those derived from oil sands and oil shale), and questions remain on how best to measure and implement any such distinctions. No further developments are expected until the Impact Assessment is available.

A Commission proposal is expected by the end of the year **greenhouse gas emissions from shipping**. The Presidency is unlikely to be able to take this forward during their term.

The Presidency will continue work on the proposed Regulation on **Ship Recycling** (EM 8151/12). The Department for Environment, Food and Rural Affairs has the lead interest in this dossier, but it is also of considerable interest to DfT. We understand that the Presidency is still considering how to take the dossier forward and has yet to decide whether to hold an orientation debate at Environment Council in October.

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.

18 July 2012

DEVELOPING A EUROPEAN TRANSPORT-TECHNOLOGY STRATEGY (13806/12)

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

Thank you for your Explanatory Memorandum of 28 September 2012 on the above mentioned Communication. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 15 October 2012. The Committee decided to clear the document from scrutiny.

We feel that this Communication gives a useful insight into the Commission's ideas on how research and innovation activities in different areas of the economy can help to achieve the overarching goals of Horizon 2020. Aligning and coordinating research and innovation activities across transport modes is also in line with the recommendations of this Committee in its report 'Tunnel vision? Completing the European rail market'. However, we encourage the Government to emphasise the importance of better utilising the existing transport infrastructure in Member States, to ensure safety standards are not compromised in any way, and to ensure that research and innovation in the transport sector responds to the needs and concerns of consumers.

The Commission will ask the Council of Ministers and the European Parliament to consider the content of the Communication, although no timetable has yet been set for this. If the Commission then goes ahead and develops specific legislative proposals, the Government should try to ensure that proper evidence is provided that action at EU level is appropriate. This Committee will be very keen to scrutinise any future specific legislative proposals that emerge.

17 October 2012

DIGITAL SINGLE MARKET (5494/12)

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

I am replying to the letter dated 24 April 2012 from your predecessor Lord Roper which indicated that he had hoped for a corporate Government position to be set out in relation to the Commission's Communication on e-commerce and the Digital Single Market. The Cabinet Office, DCMS and BIS are currently refining the UK's position in pursuit of the creation of the Digital Single Market, in the wake of that Communication. You may find it useful if I set out the key points emerging from that work, as this will effectively summarise the Government's position.

The UK is supportive of the Digital Single Market and its potential to enable economic growth and encourage greater social benefits. Following our initial response, we are continuing to assess the Commission's proposals, with a focus on where the greatest impact might be achieved in removing the constraints identified by the Commission and how we might best support the Commission in achieving these. Some of these proposals, such as cost reduction techniques to reduce the cost of deploying infrastructure are still under consultation and so we need to continue to be responsive as more detail becomes available. However key areas are likely to be around the availability of infrastructure and implementing the intellectual property strategy.

The UK is already seen as a world leader for both the ICT and creative content sectors and a leading country in Europe for e-commerce, but we wish to use the opportunities offered by the Digital Single Market to continue to build on that advantage. To that end we will continue to work with like-minded member States to keep up momentum on identified priorities, which we believe will have the most impact.

Lord Roper also asked for clarification in relation to the status of the Department for Education's note in the Explanatory Memorandum relating to age-restricting online purchasing. The Department for Education made the remark as a suggestion for possible exploration, but I can confirm that there are no proposals to make any changes in this area and that under age sales are already prohibited through any medium.

17 May 2012

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

I am writing to provide a further brief update on these proposals.

Mike Penning's previous letter of 13 March explained that the General Approach would be sought on the proposed tachograph Regulation (13195/11) at the next Transport Council meeting on 22 March.

Unfortunately, this proposal was removed from the agenda at the last moment. However, it is hoped that the General Approach can be agreed at the Transport Council meeting on 7 June. As set out in Mike Penning's letter of 13 March, we expect that this General Approach will be essentially the same as the partial General Approach reached in December 2011, and will not include any provisions on merger of the driver card and driver license.

In the meantime, the European Parliament is considering its own potential amendments to the draft Regulation, which were discussed (although not voted on) at the Transport and Tourism Committee meeting on 7 May. It is clear that compromise proposals in a number of areas are likely to emerge in advance of the Committee's vote on the amendments, expected on 31 May, with the Plenary vote in July.

The Government, as stated previously, will continue to resist, as far as possible, other provisions that might still impose unnecessary burdens or additional costs on Government or Industry which we think would add no value, when the dossier is considered in further detail at EU level. We will of course continue to keep your Committee informed of developments.

16 May 2012

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

I am writing to provide a further brief update on these proposals.

Norman Baker's previous letter of 16 May explained that a General Approach would be sought on the proposed tachograph Regulation (13195/11) at the Transport Council meeting on 7 June.

In the event the Presidency did not include this item for discussion on the Transport Council agenda and the previously agreed text was approved at the EU General Affairs Council on 26 June, without discussion as an "A" point. The General Approach does not include any provisions on merger of the driver card and driver license.

The European Parliament adopted its First Reading position on 3 July. This comprised of 135 amendments to the original Commission proposal. The main ones are:

- Requiring the European Commission to undertake a full impact assessment on the feasibility and merits of merging all the cards used by professional drivers.
- Reducing the weight threshold of vehicles whose drivers must comply with EU drivers' hours rules from 3.5 tonnes to 2.8 tonnes gross laden weight.
- Submitting revised tachograph rules for bus drivers by the end of 2013.
- Retrofitting all vehicles with new generation tachographs by 2020.

Member States and the new Cypriot Presidency are advocating the General Approach over the Parliament's amendments, and following further discussions in Working Group over the last two weeks, the Presidency has a mandate for the trilogue discussions to accept only 8 of the Parliament's proposed amendments, all of which are consistent with the substance of the Council's General Approach and include none of those bulleted above. The Presidency intends to incorporate the eight amendments into the General Approach and submit the revised text to the Transport Council in October. If these revisions are adopted, trilogue discussions with the European Parliament and the Commission are expected to begin.

The Government will continue to resist, as far as possible, any provisions that might impose unnecessary burdens or additional costs on Government or Industry which we think would add no

value, as the dossier is considered in further detail at EU level. We will of course continue to keep your Committee informed of further developments.

I would also like to take this opportunity to bring the Committee up to date with an issue in relation to the Communication document (13189/11) on the Roadmap for future activities. The Committee will wish to be aware that, by the end of the year, it is understood that the Commission intend to make an application to the Council for a mandate for the EU becoming a contracting party to the AETR (the European Road Transport Agreement - a multilateral agreement negotiated under the UNECE banner). We will of course continue to report progress to your Committee as it develops, but I should emphasise that this proposal is not a part of the General Approach.

21 August 2012

EARTH MONITORING: GMES (10035/12)

Letter from the Chairman to Lord Taylor of Holbeach, Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your explanatory memorandum of 28 May 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 11 June 2012, where the Committee agreed to clear the document from scrutiny.

Our position is clear: funding for programmes of this nature should remain within the Multi-Annual Financial Framework process, as is the case with Galileo. This is clear, intelligible and accountable. We outlined this position in January, and it was reflected in the Select Committee's report on the Multi-Annual Financial Framework.

We are disappointed to see the Commission pursuing this agenda in this context, having not heeded the previous calls for a change of direction, and are entirely supportive of your negotiating position. As a result, we are content to clear the document from scrutiny, with the expectation that we would take up a more robust position should the Commission bring forward legislative proposals to enact the proposed GMES Fund.

We do not expect a response to this letter.

12 June 2012

E-CALL SERVICES (14070/11)

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

I am writing in response to Lord Roper's letter of 18 October, which sought further information following the Government's expected report to the Commission by the end of March 2012 on the measures taken regarding this Recommendation.

There was no legal requirement to send a response to the Commission's Recommendation, and after consideration we therefore decided not to do so. Our position is well established and the Commission are already aware that that the UK would oppose any proposals for the mandatory fitment of eCall to new vehicles.

There are likely to be two proposals later this year on eCall. The first is a delegated act on how eCalls will be handled by Public Safety Answering Points (PSAP), the initial contact for emergency calls, and the second on how it will be implemented in new vehicles by manufacturers. If the Committee would be interested in receiving an Explanatory Memorandum on the PSAP issue please let me know. I anticipate the proposal on fitment in new vehicles will be under Ordinary Legislative Procedure, though we do not currently have any further information on this.

I expect both proposals may be published in the final quarter of 2012, and I will, of course, keep you informed of further developments on this matter.

18 July 2012

Letter from the Chairman to the Rt. Hon Chris Grayling MP, Minister of State for Employment, Department for Works and Pensions

Thank you for your Explanatory Memorandum dated 26 June 2012 on the above proposal. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 16 July 2012, where the Committee decided to clear the proposal from scrutiny.

Overall, we broadly agree with the Government's position. It is our view that co-operation in respect of free movement of workers and social security falls within, not outside the four freedoms.

We also find it unusual and undesirable to define the area of co-operation by reference to budget lines rather than substantive EU legislation as elsewhere in Protocol 31. Could you please provide us with further information on the Commission's justification for this?

We note the Government's argument that social security for third country migrants requires a legal base of Article 79(2)(b). We are aware that this issue is already the subject of litigation.

Whilst we are content to clear this proposal from scrutiny, we would be grateful to be kept updated on the outcome of negotiations on this proposal.

17 July 2012

**EMPLOYMENT, SOCIAL POLICY, HEALTH AND CONSUMER AFFAIRS COUNCIL: 4
OCTOBER 2012**

Letter from Mark Hoban MP, Minister of State for Employment, Department for Work and Pensions

As you are aware, Departments are required to provide a factual written Ministerial Statement before each Council, setting out how each agenda item will be handled. However, as this Council falls during the recess period, I am writing to you now to advise you of these details, in line with the Cabinet Office agreement.

The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) will be held on 4 October 2012 in Luxembourg. There are no health or consumer affairs issues on the agenda and Shan Morgan, UK Deputy Permanent Representative to the European Union, will represent the UK.

There will be a policy debate on evaluation of the second European Semester and thematic surveillance in employment and social policies. The UK will emphasise that the European semester is a valuable tool to help us to make the reforms we need to encourage growth and jobs. We welcome the commitment from the Commission for more bilateral engagement with Member States but need time for the Committees and Council to work effectively. The UK will stress the importance for National Parliaments to have the opportunity to scrutinise the recommendations properly.

The Council will seek political agreement on proposals for EU agreements with third countries on social security rights. The UK disagrees with the legal base for the amendments to the EU-Turkey Agreement, and has submitted a minute statement jointly with Ireland to make this clear. The UK will stress that it does not intend to opt in to EU agreements with third countries which extend social security rights.

The Council will also seek general approach on the proposal for a Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). Although the UK looks favourably on this proposal, we were unable to clear UK parliamentary scrutiny in time so the UK will abstain from supporting the general approach.

Ministers will consider two sets of Council Conclusions. These will cover towards a job rich recovery and giving a better chance to Europe's youth, which call on Council to decide on employment package proposals to address this, and preventing and tackling child poverty and social exclusion and promoting children's well-being, which stress the need for Member States to support parents' participation in the labour market and provide adequate income support and access to services.

Under any other business, the Commission will report on the Jobs for Europe conference which took place on 6-7 September 2012. The Presidency will provide information on the proposed ESF

Regulation for 2014-2020 which is being negotiated in the Structural Actions Working Party as part of a package of regulations on the future of EU structural and cohesion funds and France will provide information on the social dimension of the Millennium Development Goals.

I will continue to keep you informed of any developments and a post-Council letter will be sent in due course.

2 October 2012

Letter from Mark Hoban MP to the Chairman

Departments are required to provide a factual written Ministerial Statement after each Council, setting out how each agenda item was handled. However, as this falls during the recess period, I am writing to you now to advise you of these details, in line with the Cabinet Office agreement.

The Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) took place on 4 October 2012 in Luxembourg. Shan Morgan, UK Deputy Permanent Representative to the European Union, represented the UK.

There was a policy debate on evaluation of the second European Semester and thematic surveillance in employment and social policies. The Presidency said that it was imperative to fully involve Member States and social partners. The Commission welcomed the recommendations from the Employment Committee (EMCO) and Social Protection Committee (SPC) on how to improve the process. The UK said that the European Semester was a valuable tool, but that we needed to ensure political ownership of the recommendations through early and meaningful dialogue between Member States and the Commission, and that more time was needed for national parliaments to engage fully with the process.

The Council reached political agreement on proposals for EU agreements with third countries on social security rights. The Presidency acknowledged the outstanding concerns on the legal base of the Turkey Agreement, related to two ongoing ECJ cases; the Turkey Agreement could not be finalised until the ECJ had ruled, and this was now made clear in the Council Declaration. The UK and Ireland reiterated their opposition to the Turkey legal base, and welcomed the Declaration.

The Council reached a general approach on the proposal for a Directive of the European Parliament and of the Council on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents ("Electromagnetic Fields Directive"). As parliamentary scrutiny had not been cleared the UK abstained.

Ministers adopted two sets of Council Conclusions: in favour of a job rich recovery and giving a better chance to Europe's youth; and preventing and tackling child poverty and social exclusion and promoting children's well-being, which stresses the need for Member States to support parents' participation in the labour market and provide adequate income support and access to services.

Under any other business, the Commission reported on the Jobs for Europe conference which took place on 6-7 September 2012 and the Presidency provided information on the proposed ESF Regulation for 2014-2020. France asked the Commission for regular updates on the social dimension of the Millennium Development Goals.

11 October 2012

ESTABLISHING A EUROPEAN MARITIME AGENCY (15717/10)

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

I am writing to provide your Committee with an update on the development of the European Commission's proposal to amend the Founding Regulation of the European Maritime Safety Agency, including on the outcome of the European Parliament's First Reading, and the immediate next steps for the proposed Regulation.

A key stage in the EU regulatory process is the Plenary session. The European Parliament adopted 84 amendments at its First Reading Plenary. The Presidency made attempts to address the differences between the priorities of the European Parliament (EP) and those of the Member States through working parties prior to the EP's First Reading. The principal remaining differences are:

- whether there should be a monitoring role for EMSA of offshore oil and gas installations
- the possible creation of a Europe-wide coastguard service
- security, in particular measures to combat piracy
- the quality and delivery of seafarer training
- governance.

DEVELOPMENTS POST PLENARY

In the wake of the plenary vote, the Presidency has been seeking compromises in several key areas. My Department has been working with its stakeholders to prioritise the amendments in readiness for possible trade-offs, our intention being to retain national competence over those aspects of the proposal that we consider to be of highest importance, including coastguard services and oil and gas installations - on which the EP is seeking to centralise responsibility through EMSA. On such issues we have been able to forge useful alliances amongst the other Member States.

The EP favours investing the Agency with stronger powers in offshore matters, including an inspection role. The UK stance against such a role has been formulated in consultation with DECC who are the lead UK Government Department with responsibility for oil and gas exploration, and with useful input from the Health and Safety Executive. Given the recent events in the Gulf of Mexico and elsewhere, Member States understand the need to tighten the preparedness efforts but some feel that the extent of the proposed expansion of EMSA's remit is unwarranted. Moreover, Article 194 of the Lisbon Treaty specifically upholds a 'Member State's right to determine the conditions for exploiting of its energy resources'. Any change to that right would seem to contravene that Article and the principle of subsidiarity.

The result of the trade-off between the EP and the Presidency supported the UK's strong line of denying the Agency an inspection role and limiting its offshore involvement to assisting the response effort when requested by the affected Member State(s). However, that may not be the end of the matter. As a concession to the EP, the suggested compromise text alludes to the possibility of an expanded role for EMSA should the proposed legislation on the safety of offshore installations (EM 16175/11), currently being discussed by the EP's Industry Committee, be approved. DfT is supporting DECC in arguing against that measure.

On the possible creation of a European coastguard service, we feel that its likely size would make it unwieldy. However, as a concession to the EP, the suggested compromise text includes reference to the Transport White Paper notification that, within one year of the date of entry into force of the amended EMSA Regulation, the Commission must carry out a feasibility study into coastguard functions focussing inter alia on:

- structured cooperation between Member States
- ad hoc or permanent coordination of Member States coastguards
- handover of certain functions to EU bodies

We intend to make full use of the opportunity the consultation affords us to voice our opposition to this concept.

The extent to which the EU has competence on piracy matters is currently being discussed with the European Commission and other member states. The issue has arisen in the context of consideration of piracy at the International Maritime Organisation, with the Commission insisting that member states cannot formally present their position to the IMO until a position has been agreed with the EU. However we believe the recitals in the proposed Regulation have sufficient caveats to safeguard UK interests.

Our view on extending the Agency's role in combating piracy aligns with the objective agreed in Transport Council last December which argues for "combined preventative measures to protect shipping and port facilities from threats of intentional unlawful acts", "without prejudice to the rules of the Member States in the field of national security, defence and public security, and in combating financial crimes against the State". The EP has accepted the suggested text put forward by the Presidency which would allow the Agency to provide competent national authorities and other Union bodies, such as Frontex and Europol, with detailed information gathered through SafeSeaNet, its vessel traffic monitoring and information system, about the position of vessels flying the flags of Member States and transiting through areas classified as very dangerous.

Regarding seafarer training, the concern mirrors those we have about a combined coastguard service. We were also concerned about possible adverse impact on standards. We understand that the EP has accepted the text of the Council general approach.

On governance, until recently we had not assumed this to be a high priority for the UK but are now of the view that it is an area of vital importance in which we must seek to exert greater influence. We will be doing so in the remaining negotiations on this Regulation.

Our original concern over budget has largely subsided, having seen Presidency working documents clarifying that the new tasks will be undertaken within the limits of the current financial perspective, and within the Agency's budget as thereby provided for, without prejudice to the negotiations and decisions on the future multiannual financial framework.

I trust that this report on developments is helpful. Discussions are continuing, and the Presidency is optimistic on reaching a second reading agreement on a final compromise text during their term, possibly at the Transport Council on 7 June.

15 May 2012

E-TRUST SERVICES (10977/12)

Letter from the Chairman to Norman Lamb MP, Minister for Employment Relations, Consumer & Postal Affairs, Department for Business, Innovation & Skills

Thank you for explanatory memorandum of 4 July 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 23 July 2012. The Committee decided to retain the document under scrutiny.

Like you, we are supportive of the broad thrust of the proposal, and see the potential benefits both in terms of cross-border service provision and in the development of innovative new technologies in the area. However, we too recognise that the proposal as drafted requires greater clarity before it can be taken forward. We agree that the extent of powers to be delegated to the Commission is one area requiring clarity, as indeed are the technological standards to be used as the base for the proposal, whilst a detailed assessment of the proposal's impact is required as well. We would also appreciate from you a more detailed explanation as to the extent of the problem being addressed in the United Kingdom.

In terms of technological standards, we note that you are concerned that any proposal does not "cut across" the Government's plans for electronic solutions. In that respect, we would appreciate your explanation as to the steps that the Government are taking to take into account the possible direction of travel of the Commission in terms of likely standards, as we would be concerned if IT solutions were procured that risked being out of step were the UK to be unsuccessful in negotiations on this proposal. Above all, it is important that the technology used works effectively.

Otherwise, in light of the early stage of the proposal and the need for further information to consider the proposal in depth, we retain the proposal under scrutiny and request an update following the production of the impact assessment, the results of stakeholder consultations and any further clarifications from the Commission during discussions on the proposal. Given that many of these documents will not be available immediately, we are content to defer a response until after the usual 10 day deadline.

24 July 2012

EUROPEAN SOCIAL ENTREPRENEURSHIP FUNDS (18491/11)

Letter from Sajid Javid MP, Economic Secretary, HM Treasury, to the Chairman

I am writing to update the European Union Committee on the outcome of the European Parliament's First Reading of this Regulation.

BACKGROUND

The political agreement reached on the two files (this and European Venture Capital Funds) by the Danish Presidency on the 28th of June with the Parliament ad referendum was not endorsed by the Council.

The particular issue of disagreement concerned the conditions under which the qualifying fund can be established in a country outside of the European Union. Member States have expressed serious reservations about a particular condition which they view as an attempt to define a 'tax haven' outside the appropriate working party of the Council that deals with tax matters. I agree that new tax provisions and definitions should be discussed and agreed upon, under a different legal basis, by the Tax Working Group of the Council, and not by any other body.

OVERVIEW

The Parliament's Committee on Economic and Monetary Affairs voted to adopt several amendments to the European Commission's proposal at First Reading.

A number of informal trilogues had taken place prior to Parliament's First Reading with a view to reaching an agreement on this dossier at First Reading. Although a compromise has arisen during these informal trilogues, it had not received the approval of Coreper when submitted to Coreper for its approval.

As such, Parliament did not vote on the draft legislative resolution, rather they referred the matter back to the Committee for reconsideration.

DEBATE

Prior to the vote, the rapporteur, Mrs Sophie Auconie, called for the plenary to support the agreement reached in trilogues.

Mr Philippe Lamberts, rapporteur for the European Venture Capital Funds proposal, expressed his distaste that Council had not honoured the agreement, which according to him, it had entered into under the Danish Presidency.

Commissioner De Gucht, speaking on behalf of Commissioner Barnier, noted that agreement had not been reached on the issue of tax havens. Whilst recognising that tax havens constitute a major problem and challenge, the Commissioner nevertheless argued that the two proposals should not be blocked over this issue.

Representatives of the EPP political group, the S&D political group and the ALDE political group all supported the compromise agreement reached with the Danish presidency.

Mrs Kay Swinburne (UK) of the ECR political group argued that Parliament should not try to set tax policy through financial services legislation.

Mrs Auconie and Commissioner De Gucht expressed a wish to secure an agreement in First Reading.

AMENDMENTS

The plenary adopted several amendments; in particular the following will be of interest:

- **Definition of a qualifying portfolio undertaking (social business);** Parliament voted to include social businesses with an environmental objective such as those focussing on anti-pollution, recycling and renewable energy. This is very welcome from a UK industry perspective, which has previously pushed for such an inclusion.
- **Investments located or Funds established in tax havens;** Parliament voted to include a provision on tax havens which I oppose very strongly. As stated above, I believe tax measures should not be agreed as part of financial services legislation. The issue of tax havens cuts across a range of files and new provisions and definitions should not be negotiated on each file; there should be a broad and consistent approach. More specifically, the definition of a tax haven includes subjective judgements which may lead to an inconsistent implementation despite this being a Regulation that is supposed to develop a uniform brand. It also requires the competent authority to

judge what constitutes a tax haven and this is neither something appropriate for a competent authority to judge nor is it in their expertise.

- **Investment strategies;** Parliament voted to include a recital stating that EuSEFs should not participate in shadow banking activities nor follow typical private equity strategies. I agree that EuSEFs should not be used as shadow banking vehicles, though the provisions need to recognise the broad range of investment strategies used in social investment. I consider an appropriate balance has been struck.
- **Delegation of manager functions;** Parliament voted to include a provision regarding the EuSEF manager's liability and responsibility when delegating functions to third parties, and a prohibition against letterbox entities. This provision is carried across from AIFMD. I strongly support the principles behind the provision, but will seek to ensure clarity that flexibility to delegate should not be unduly curtailed.
- **Delegated acts;** In addition to the Commission's proposal that it, by way of delegated acts, may specify the types of services or goods and the methods of production of services or goods that embody a social objective and details of measuring social impact, Parliament have also included several other areas which should be delegated to the Commission. These include specifying the circumstances in which profits may be distributed to owners and investors; the types of conflict of interest EuSEF managers need to avoid; and the content and procedure for provision of information for investors. The UK has previously argued that the distribution of profits shouldn't be "exceptional" as the Regulation states, following the UK social investment industry's steer that an inability to distribute profits at all would significantly dissuade potential investors. I will continue to push for the removal of text which allows profit distribution only in "exceptional cases".
- **Annual reporting requirements;** Parliament voted to enhance what the annual report should consist of to include a disclosure of the profits of the EuSEF by the end of its lifetime and, where applicable, distributions during its lifetime. As a fund does not make profits as such, further clarification is needed as to exactly what information the annual report must disclose. Although it isn't necessary for the Regulation to be prescriptive in this regard, given that there are no investor protection issues, this is not particularly onerous and so not a major concern.

I will continue to keep the European Union Committee informed of any developments in this Regulation.

24 October 2012

EUROPEAN SOCIAL FUND (15247/11)

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

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

Further to my previous correspondence to Lord Roper, I am writing to update you on the package of regulations on cohesion policy, published by the Commission on 11 October.

Because the Danish Presidency announced late in the day its intention to seek partial general approach on some blocks at the 24 April General Affairs Council, it was unfortunately not possible to give you much notice of the likely discussion there. I wanted to make sure this time you have early notice.

I understand that the Danish Presidency is likely to seek a partial general approach on a three further blocks at the next General Affairs Council on 26 June: thematic concentration; financial instruments; and revenue generating projects. I have attached a list of the relevant articles.

On thematic concentration, the Presidency will aim to get agreement to the scope of the funds and their specific objectives. This will include provisions to focus future European Regional Development Fund (ERDF) programmes on innovation, SME competitiveness and shifting to a low carbon economy and the European Social Fund (ESF) on only four priorities to be chosen by each Member State from a menu of 18. As set out in the explanatory memoranda we have submitted, the UK supports the principle of thematic concentration but has concerns about the rigidity imposed by the specific ring-fences for low carbon and social inclusion.

On financial instruments, the UK Government wants to see greater use made of repayable assistance, venture capital and equity financing, as an alternative to grants. It is important however that such instruments are designed in a way that works with the markets and leverages private investment. The UK has worked successfully with the European Investment Bank to put in place a some of these instruments in the current programmes (known as JESSICAs and JEREMIES). We and the EIB are concerned that such arrangements would not be possible under the rules proposed by the Commission, particularly in terms of the restrictions on preferential remuneration in Article 38 and we are pressing for changes that allow greater scope for preferential remuneration where it is justified by a rigorous ex ante assessment. We also want more certainty at the beginning of the programming period and are concerned that the number of delegated acts in this part of the Common Provisions Regulation. Financial instruments take time to set and we need to know the rules at an early stage. Furthermore, once contracts with financial intermediaries are signed, it is difficult for changes subsequently to be made.

The rules on revenue-generating operations are also technical, setting out what adjustments need to be made to take account of any income that may come from projects. Substantial amendments have been proposed to reflect the growing importance of public-private partnerships (PPPs). I attach these, as they are new [not printed]. The UK Government has been involved in developing these ideas and supports them as an effective way of engaging private sector partners in large projects supported by the structural and cohesion funds.

Negotiations on the three blocks are still continuing at working level and the texts to be presented to the General Affairs Council are likely to be revised further. I will update you again when the texts are closer to being finalised, around the time of the discussion in the Committee of Permanent Representatives (COREPER) later in June.

I would point out that, as before, agreement at the Council is likely to be on the basis that “nothing is agreed until everything is agreed”. However, Council agreement will signal key its priorities to the European Parliament, which is considering its own reports on the various Regulations and will be voting in Committee on these in July and September.

There will still be some issues outstanding at the end of the Danish Presidency (these include the provisions on information and communication and on territorial development). Furthermore, we will need to look horizontally at the specific regulations for the funds covered by the Common Provisions Regulations, including those for the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund in order to ensure consistency between them and to maximise the opportunities for harmonising the rules to reduce burdens for final recipients and authorities. We would hope that this could take place during the Cypriot Presidency.

25 May 2012

**Letter from the Rt. Hon Chris Grayling MP, Minister of State for Employment,
Department of Work and Pensions, to the Chairman**

I am writing about the above proposal on which I submitted an EM on 26 October 2011 and which your committee is holding under scrutiny. Part of the regulation will be discussed at the General Affairs Council on 26 June, alongside articles from other proposals for EU structural and cohesion regulations.

The Minister for Business and Enterprise is writing to you about the package of regulations as a whole, including EM 15247/11, and to ask you to consider a waiver of scrutiny. As set out in his letter, at the General Affairs Council, Member States will aim to reach a partial general approach on four of the ‘negotiating blocks’ that the Danish Presidency has been taking forward in Council working group.

One of the negotiating blocks is on ‘thematic concentration’ and includes two articles from the European Social Fund (ESF) regulation on the ‘scope of support’ (Article 3) and ‘consistency and thematic concentration’ (Article 4).

The partial general approach would involve the following changes to Article 3:

- The name would be changed from ‘scope of support’ to ‘investment priorities’. Paragraphs 1.b and 1.c would be swapped in order to follow the order of thematic objectives in Article 9 of the Common Provisions Regulation (15243/11). We are content with these changes.
- Paragraph 1.a.ii would be amended to make clear that sustainable integration of young people into the labour market is not restricted to those not in employment, education or training, but is aimed at these young people ‘in particular’. We support this change which clarifies that ESF can be used to help improve the employability of young people in education or training, or who need help to progress at work.
- Paragraph 1.b.i (previously 1.c.i) would be amended to make clear that active inclusion should be ‘in particular with a view to improving employability’. This would strengthen the labour market focus of this part of the social inclusion objective, which was one of the issues raised in my original EM. We will continue to seek to strengthen language elsewhere in the ESF regulation on tackling poverty by improving employment opportunities and skills.
- Paragraph 1.c.i (previously 1.b.i) would be amended to refer to ‘preventing’ as well as ‘reducing’ early school leaving. We are content with this change.
- Paragraph 1.c.iii (previously 1.b.iii) would be amended to add ‘including improving the quality of vocational education and training and establishment and development of work-based learning and apprenticeship schemes such as dual learning systems’. We are content with this addition, and welcome the specific reference to apprenticeships.
- Paragraph 2.b would be amended to include a reference to ‘e-learning’ with which we are content.

In Article 4, a derogation would be added to paragraph 2 to allow resources allocated to the European Regional Development Fund (ERDF) thematic objective on promoting social inclusion and reducing poverty, to be counted towards the requirement to allocate at least 20% of total ESF resources to this thematic objective. We are content with this amendment which would introduce significant flexibility into this ring-fence and recognises that expenditure under ERDF can also contribute to the goals of promoting social inclusion and combating poverty.

Also in Article 4, derogations would be added to paragraph 3 to allow operational programmes which cover the entire territory of a Member State to concentrate the applicable share of their ESF allocation on five rather than four investment priorities, and to exclude priorities on social innovation and transnational co-operation from the rules on concentration. We are content with these minor modifications to the provisions on concentration which we support. They are unlikely to affect programmes in the UK.

Articles 6-11 (programming) and 13-14 (eligibility) were part of the partial general approach at the General Affairs Council on 24 April on which the Minister of State for Business and Enterprise wrote to you on 17 April.

The main changes in the articles on programming were:

- Article 6 (involvement of partners): allocating an appropriate amount of ESF resources to social partners and NGOs in less developed regions and Cohesion Fund countries would now be optional rather than compulsory.
- Article 8 (promotion of equal opportunities and non-discrimination): specific actions to promote equal opportunities would now be optional rather than compulsory.
- Article 9 (social innovation): it would now be optional rather than compulsory for Member States to identify themes for social innovation.
- Article 10 (transnational co-operation): using ESF to support transnational co-operation would now be optional rather than compulsory.

The UK supported these amendments to Articles 6, 8, 9 and 10 as they would remove prescription and increase Member State flexibility to deploy funding according to need.

On Article 13 (eligibility of expenditure), the only change would be to allow a small percentage, linked only to research and innovation and training, to be spent outside the EU. The reason for the change is

that it is more cost effective in the outermost parts of France such as Martinique and Guadeloupe for these activities to take place in, for example, the USA rather than in France. The derogation is limited to activities linked to research and innovation and training.

On Article 14 (simplified cost options), we are content with the Commission's explanation of the need for delegated acts on simplified cost options in order to improve financial management and simplify administration, and are content that these would not cut across Member State responsibility for employment and skills policy. Other changes to Article 14 would make clear the relationship to Article 57 in Regulation 15243/11 and are not contentious.

The Presidency had planned to include Article 15 on financial instruments in the partial general approach on 26 June, but has taken it out. This and the other remaining articles in the ESF regulation will be considered further in Council working group under the Cypriot Presidency.

On work to prepare for the next round of structural fund programmes in the UK in 2014-2020, the Department for Business, Innovation and Skills launched an informal consultation on initial options for the delivery of Structural Funds, Rural Development Funds and Maritime and Fisheries Funds in England on 28 March 2012. The Government will issue its response to the consultation by 27 July 2012. Evidence gathered from this consultation will be used to inform the England elements of a draft UK Partnership Agreement (Contract in the Commission proposal), on which the UK Government and Devolved Administrations will jointly consult formally in early 2013. The Partnership Agreement is the mechanism through which each Member State will be able to target EU investment in a structured way on Europe's long-term goals for economic, social and geographic growth and job creation, as set out in Europe 2020. Subject to resolving any issues arising from the consultation, the UK Government will submit the Partnership Agreement to the European Commission for approval, following the adoption of the Common Provisions Regulation and taking account of the Multi-annual Financial Framework and the final texts of the regulations.

18 June 2012

Letter from Mark Prisk MP to the Chairman

Further to my previous correspondence, I am writing to ask you to consider providing a waiver of scrutiny to enable the United Kingdom to vote in favour of a partial general approach on elements of the cohesion package of regulations at the General Affairs Council on 26 June 2012. Your Committee is currently holding the above EMs under scrutiny. EM 15247/11 was submitted by the Minister for Employment.

It may be helpful if I set out upfront why I believe that in this case it is a very useful way of taking forward the negotiations and securing UK objectives.

First, this is a complex negotiation. Not only is the Common Provisions Regulation a lengthy piece of legislation, with 147 Articles and five annexes, but there are five interlinked regulations too as part of the cohesion package, let alone the separate regulations for the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund which are being negotiated through different council formation. In my view, it makes sense to break this down into bite-sized chunks that bring together the key themes in each regulation. It means ministers can focus on particular problems and issues within the blocks rather than being overwhelmed by having to consider everything at the same time. It means we can pocket gains without having to become involved in a large-scale trade of different objectives across different pieces of legislation.

Second, the funds are due to become operational from 1st January 2014, although of course this depends on the settlement of the multiannual financial framework (MFF). I want to see effective and efficient spend of the significant sums devoted to cohesion policy across the EU. That means proper preparation and planning, with robust economic assessment of needs. That takes time and that works needs to start as soon as possible if the money is to be spent wisely. Agreeing elements through partial general approaches gives Member States some confidence of the shape of the final regulations to enable them to start planning.

Third, all the Regulations this time round will be co-decided with the European Parliament. Rapporteurs in the European Parliament have already prepared draft reports and these will be voted on in the respective committees over the next few weeks. Agreeing partial general approaches gives the Presidency of the Council of Ministers scope to enter into discussions with the European Parliament. Timely implementation of the regulations is going to require the Parliament and the Council to work closely together. The partial general approaches will facilitate this.

It is important to leave flexibility to take account of changes that might arise from other negotiations that impact on the structural funds, for example the ongoing discussions on the cross-cutting Financial Regulation and the Multiannual Financial Framework itself. That is what we pressed at the last council for the Presidency to write into the minute that the partial general approach was adopted on the basis of “nothing is agreed until everything is agreed” and the Presidency have confirmed they will do the same this time.

Finally, the Government does not believe that agreeing a partial general approach on these regulations represents a risk to overall budget size or prejudicing the MFF deal as a whole.

Turning to the substance, I said in my letter of 26 May that the Presidency was aiming to seek agreement on three blocks: financial instruments; thematic concentration and revenue generating operations, including public private partnerships. They have now added a fourth: performance framework.

FINANCIAL INSTRUMENTS

As I mentioned in my letter of 26 May, the Commission’s proposals on financial instruments were problematic for the UK and would have prevented the use in the UK of instruments such as JEREMIES and JESSICAs where parts of the UK have worked with the EIB to set up funds to provide financing for SMEs and urban development. We also wanted more certainty at the beginning of the programming period and were concerned that the number of delegated acts in this part of the Common Provisions Regulation precluded. The text that will be presented to the General Affairs Council meets all the UK’s objectives. The changes to Article 38 will provide proper incentives for the EIB and private investors to support financial instruments funded by the funds governed by the Commons Provision Regulation. Furthermore, we have been successful in removing several delegated acts and getting the provisions instead written into the main regulation or changed to implementing acts with Member State oversight. So now the requirements for ex ante assessment and the funding agreement will be known from the start, and Member States can start the lengthy work to prepare these, without having to wait for the Commission to bring forward delegated acts. Furthermore, because the requirements are now written into the Regulation, the scope for the Commission to bring in new rules midway through period, and therefore upset agreements already made with the private sector, is limited. Other delegated acts are subject to a time limit, so the Commission have to bring them forward promptly. These changes will help leverage private sector investment and have been warmly supported by the EIB. I would like to say clearly at the General Affairs Council that we welcome these changes and we do not want to see them watered down.

THEMATIC CONCENTRATION

On thematic concentration, the Presidency will aim to get agreement to the scope of the funds and their specific objectives. The Minister for Employment will write about the provisions in the European Social Fund. I will deal here with the other provisions.

I welcome generally the Commission’s approach to thematic concentration. As the Minister for Employment and I said in the various explanatory memoranda we have submitted, we believe it is important, particularly at times of fiscal constraint, that the funds are focused on a few objectives to maximise their impact and that we need to avoid excessive fragmentation. It is also important that they are concentrated on the key drivers of growth. However, we were concerned that specific earmarking of funds in a top down fashion by the European Commission was too prescriptive and risked missing the real challenges facing Member States. We want where possible to ensure that decisions are based on economic evaluation of needs. The Commission had proposed in Article 84 of the Common Provisions Regulation that there should be minimum shares for the European Social Fund. That is, of the allocation for structural funds, at least 52% in more developed regions should be for ESF, 40% in transition regions and 25% in less developed regions. This took no account of national and regional needs. However, the text to be presented to the General Affairs Council proposes a range for the minimum share within which Member States can negotiate with the Commission and is based on objectives rather than arbitrarily by fund. This introduces significant flexibility for the UK and other Member States to take account of national and local needs but still ensures a focus of spending on tackling the challenging for employment, knowledge, youth and social inclusion. Greater flexibility has also been introduced into the ring-fences for low carbon in the European Regional Development Fund and for social inclusion in the European Social Fund to recognise the contribution that other investments can make to these goals

The Government wants clarity as to what areas are eligible for spend from the ERDF. The Commission had proposed excluding investment in infrastructure providing basic services to citizens in more developed regions. This exclusion would have covered ICT and transport, both areas which businesses in the UK believe are important for our competitiveness. It is not clear what basic services would comprise nor how you could differentiate infrastructure for citizens from infrastructure for enterprises. I therefore welcome the changed text which removes this exclusion. Such investment would still be subject to constraints to prevent unnecessary subsidies to large companies and to the overarching principles of thematic concentration.

REVENUE GENERATING OPERATIONS AND PUBLIC PRIVATE PARTNERSHIPS

As I said in my letter of 26 May, the rules on revenue-generating operations are technical, setting out what adjustments need to be made to take account of any income that may come from projects. The Presidency has also proposed new text on public-private partnerships. The Government welcomes measures that facilitate greater involvement of the private sector in projects, particularly if this can also reduce the size of public commitments, including from the EU budget. The measures proposed are sensible ones that the UK should support at the Council.

PERFORMANCE FRAMEWORK

The Presidency has made clear that the issue of the 5% performance reserve will be settled as part of the overall agreement on the multiannual financial framework. Other parts of Articles 19 and 20 of the Common Provisions Regulation can be considered now and have been discussed sufficiently to be presented to Ministers. The Government has two concerns. First, it wants a strong and robust performance framework. It does not believe that poorly performing programmes should expect to continue to be funded. If targets are repeatedly missed, there should be consequences. However, and as the second concern, the Government believes that managing authorities cannot be held responsible for factors outside their control. The text to be presented to the General Affairs Council achieves the right balance between both these concerns.

HARMONISATION

Finally I mentioned in my letter of 26 May that we will need to look horizontally at the specific regulations for the funds covered by the Common Provisions Regulations, including those for the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund in order to ensure consistency between them and to maximise the opportunities for harmonising the rules to reduce burdens for final recipients and authorities. I am asking for a declaration to this effect to be added to the minutes of the General Affairs Council.

18 June 2012

Letter from the Chairman to the Rt. Hon Chris Grayling MP and Mark Prisk MP

Thank you for your letter of 18 June 2012 on the above proposal. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 25 June 2012. The Committee has decided to clear this document from scrutiny.

We are grateful to you for the further information provided on this proposal and the Danish Presidency's intention of reaching a partial General Approach at the General Affairs Council on 26 June 2012.

As you will be aware, the Select Committee's report on The Multiannual Financial Framework 2014-2020 was published on 3 May and was debated by the House on 19 June. Chapter 3 of the report sets out the Committee's views in relation to the various elements of the Cohesion funding package. In the light of this, we are now content to clear this proposal from scrutiny. However, we would wish to continue to be kept informed about the progress of negotiations in relation to this aspect of the next Multiannual Financial Framework, and would particularly ask you to notify the Committee if there are any planned substantial changes to the proposal.

28 June 2012

Letter from the Rt. Hon Michael Fallon MP, Minister of State for Business and Enterprise, Department for Business, Innovation and Skills

This letter seeks to update you on some issues that may be considered at the General Affairs Council on 16 October. I apologise that this letter is sent relatively late. However, we still do not know for definite what issues will be presented to the General Affairs Council.

Our current understanding is that the Cyprus Presidency will seek a partial general agreement to at least four further blocks: certain financial aspects not covered by the Multiannual Financial Framework; information and communication, technical assistance and articles in the Regulation on European Territorial Cooperation not yet agreed. These papers were considered by Coreper on 3 October. I have set down below the main issues in each block and have listed the specific articles in annex A [not printed].

It may also seek agreement on indicators for the European Regional Development, European Social Fund, Cohesion Fund and European Territorial Cooperation. Now that a political settlement has been reached on the overarching Financial Regulation, the Presidency has been reviewing the articles in the Common Provisions Regulation that deal with management and control, and may present these to the General Affairs Council on 16 October. If it does so, they will be considered beforehand at Coreper on 11 October. In case they are put to the General Affairs Council for agreement, I have explained below the main issues and listed the articles in annex A [not printed].

Financial Aspects not covered by the Multiannual Financial Framework

This concerns only articles in the Common Provisions Regulation. The main issue is additionality. The Government supports the principle of additionality in that the EU budget should not be used to substitute for expenditure that would in any case have been spent by Member States. However, it was concerned that the procedure to verify this proposed by the Commission to verify this placed excessive and disproportionate burdens on Member States for whom receipts from structural and cohesion funds represented only a small proportion of GDP (or indeed, of national public spending). Under the Commission's proposal, the Government would have needed to demonstrate in each less developed and transition region that it had maintained the level of Gross Fixed Capital Formation over the whole period, with exceptions to take account of changes in macroeconomic conditions. Furthermore, the UK stopped collecting data on gross fixed capital formation at NUTS II level (at which less developed and transition regions are defined) in 2002. The Government has secured changes so that the UK would no longer have to verify additionality at regional level, although it will continue to provide data on gross fixed capital formation at national level as part of its convergence report.

INFORMATION AND COMMUNICATION

This also concerns only the Common Provisions Regulation. The Government supports greater transparency in how EU funds are spent in order to encourage greater financial accountability, but this needs to be balanced against the need to avoid unnecessary administrative burdens. The Government has been successful in seeking the removal of some excessively burdensome requirements, for example the requirements for summaries of projects to be provided in another EU language. It has also secured the removal of references to the EU flag in annex V, with a requirement instead for each managing authority to show the EU emblem, for example on a sign or plaque that can describe its role.

TECHNICAL ASSISTANCE

Technical assistance is that part of the funds set aside to provide administrative support or build capacity at either national or EU level. The Government's main concern on technical assistance is the increase proposed in the Commission's own allocation (from 0.25% to 0.35% of the overall budget for structural and cohesion funds). This will be considered as part of the negotiations on the multiannual financial framework. The Government has however secured changes to the Common Provisions Regulation so that the Commission's plans for use of technical assistance have to be approved by the relevant committee.

EUROPEAN TERRITORIAL COOPERATION

The European Territorial Co-operation (ETC) objective is financed by the European Regional Development Fund (ERDF) and supports cross-border, transnational and interregional co-operation programmes. The Commission had originally removed the current provisions for flexibility for

Member States to switch 15% of their allocation across the components of ETC and also the provisions relating to the peace and reconciliations activities in Northern Ireland and the border counties of Ireland. These have both now been inserted into the regulations in the Council's compromise position.

INDICATORS

These provisions concern the Regulations for the European Regional Development Fund, the European Social Fund, the Cohesion Fund and European Territorial Cooperation. There are articles in each regulation that set out how the indicators will be used, and there is an annex in each that describes the common indicators that will apply across the EU. These indicators are used only where relevant and they must be supplemented by programmes-specific indicators that the Member state or managing authority chooses itself. These programme-specific indicators will need to reflect the results that programmes wish to achieve, consistent with the new performance management arrangements.

The list of core indicators is largely as proposed by the Commission but the Government has been successful in stripping out some unnecessary indicators, in ensuring the indicators reflect the achievements of the funds and that the indicators are well defined in a way that UK can effectively report against them.

MANAGEMENT AND CONTROL

On management and control, the Danish Presidency had secured a partial general approach in April on some provisions. The Cyprus Presidency's draft text now takes account of the political settlement on the overarching Financial Regulation. This means that designation of authorities is required for bodies administering the structural funds under shared management, rather than the more formal and bureaucratic accreditation system that applies to the CAP. The Presidency text sets out the criteria to be applied, rather than leaving these to a delegated act as the Commission would prefer. The Government believes the text strikes a balance between providing effective discipline and budgetary control and reduced burdens for administrations.

COMMON STRATEGIC FRAMEWORK

Finally, I have submitted separately an explanatory memorandum covering the amended proposal for a Common Provisions Regulation issued by the Commission on 11 September. As I explain there, the Cyprus Presidency would like if it can to get agreement to the Common Strategic Framework which is included as an annex to the new proposal. However it has decided not to put this issue to the General Affairs Council on 16 October.

I will write again to update you post Council.

8 October 2012

Letter from the Rt. Hon Michael Fallon MP to the Chairman

I am writing further to my letter of 8 October to update you on the outcome of the recent General Affairs Council.

At the General Affairs Council on 16 October 2012 the Presidency concluded that there was a partial general approach covering seven blocks: Information and communication; European territorial cooperation; territorial development; financial issues (not covered in the MFF negotiations); country-specific recommendations; management and control; and indicators. The agreement reached at the Council reflected the position as outlined in my letter to your Committee sent on 8 October.

I regret that it was necessary to override parliamentary scrutiny on this occasion. However many of the articles considered were within the Common Provisions Regulation which has cleared scrutiny in both houses. The articles in the other Regulations were, in my view, minor compared to issues in previous blocks and do not prejudice the position on the EU budget and multiannual financial framework. I reiterated the UK position that we only accepted the partial general approach on the basis that 'nothing is agreed until everything is agreed', including cross-cutting issues with other regulations, such as the overarching Multiannual Financial Framework.

It is important that we move towards a conclusion of these negotiations as it is important that the start of the programmes in the next programming period are not unduly delayed. Much work remains

and therefore I considered that the above, rather technical, items were ready for agreement at Council.

I am attaching the texts of the partial general approach [not printed].

I will write separately to update both Houses on the Commission's amended proposal for the Common Provisions Regulation (EM 13701/12)

30 October 2012

EUROPEAN TRANSPORT COUNCIL: 7 JUNE 2012

Letter from the Rt. Hon Justine Greening MP, Secretary of State, Department for Transport, to the Chairman

I will be attending the final EU Transport Council of the Danish Presidency taking place in Luxembourg on 7 June. This is to inform you that the following items are expected to be discussed at this meeting.

The Council will be asked to reach a General Approach on a proposal for a Regulation of the European Parliament and of the Council on the establishment of rules and procedures with regard to the introduction of **noise-related operating restrictions** at European Union airports within a Balanced Approach and repealing Directive 2002/30/EC. As I explained in my letter to you of 16 May, whilst supporting the overall aims of the proposal, the UK had some concerns about the imposition of disproportionate administrative burdens and we consider that these have been resolved following negotiations in working group meetings. The main outstanding issue remains the proposed power for the Commission to scrutinise a decision to introduce a noise related operating restriction prior to its coming into force and to take legal action to prevent its coming into force where the Commission finds the decision does not respect the requirements of the Regulation. As my previous letter explained, this power was inserted to deliver a commitment in the EU-US Air Transport Agreement. A number of Member States have maintained their opposition to granting the Commission an explicit power to take prior legal action and insist that the Commission should instead use the usual legal mechanisms for failure to comply with European obligations. The Presidency has produced a compromise, though we have doubts that this would fulfil the commitment in the EU-US Agreement and we will continue to support efforts to find a solution which delivers the commitment whilst minimising the scope of the Commission's power.

The Council will be asked to reach a partial General Approach on two horizontal and intermodal proposals:

- On a proposal for a Regulation of the European Parliament and of the Council on the **implementation and exploitation of the European satellite navigation systems**. The Government considers that the negotiated proposal should provide for a more effective management of the Galileo and EGNOS programmes by the various European actors which will help address the problems concerning budget and delay that the programme has suffered in the past. However, we will ensure that our position on the partial general approach does not undermine UK efforts to control the size of the overall EU budget and will make a strong and clear statement at the Council to preserve the UK position in this regard.
- On a proposal for a Regulation of the European Parliament and of the Council establishing the **Connecting Europe Facility**. The Government considers that progress has been made in the negotiation of the Connecting Europe regulations under the Danish presidency. We continue to have concerns with the specific text on the delegated acts, co-financing and the transfer of appropriations between sectors. We also remain concerned with the much increased scope of the policy. Again, we will ensure that our position on the partial general approach does not undermine UK efforts to control the size of the overall EU budget and will make a strong and clear statement at the Council to preserve the UK position in this regard.

Progress reports will be provided on two proposals relating to the **Maritime Labour Convention, 2006**:

- Proposal for a Directive concerning flag state responsibilities for the enforcement of Council Directive 2009/13/EC implementing the Agreement concluded by the European Community Shipowners' Association (ECSA) and the European Transport Workers' Federation (ETFW) on the Maritime Labour Convention 2006, and amending Directive 1999/63/EC.
- Proposal for a Directive amending Directive 2009/16/EC on port State control

While discussions on these proposals have generally progressed well there are a number of issues on which Member States and the Commission are not in agreement. In relation to the proposed Flag State Directive most of these are relatively minor and come down to interpretation of the text. However progress on the Port State Directive has been slower and more detailed with majority of Member States opposed to certain articles – particularly if a flag State has not ratified certain specified Conventions (including MLC 2006) its vessels will be categorised as 'Priority II' thus making them available for constant port inspection. The Commission has taken on board Member States criticism and has undertaken to further explain how this inspection regime would function and its possible impact.

A policy debate will be held on the **Blue Belt Pilot Project**. The aim of this project, facilitated by the European Maritime Safety Agency (EMSA), is to allow vessels carrying EU goods in free circulation to move between member states with reduced restrictions and customs paperwork. This is particularly relevant for vessels which, as part of their routing, move out of territorial waters and have to prove the status of their cargo as EU goods again once they re-enter the territorial waters of another member state. The objective of reduced administrative burden to promote economic growth is welcome. However, the Government considers this can be achieved through a change in legislation rather than the introduction of new IT. Although the EMSA IT system gives customs some interesting information, it does not help with the clearance of goods. Our objective is to drive the changes in legislation with DG Taxud to support DG Move's "Maritime Space Without Barriers" White Paper.

1 June 2012

EUROPEAN TRANSPORT COUNCIL: 16–17 JULY 2012

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

The Cyprus Presidency of the EU held an Informal Council of EU Transport Ministers in Nicosia from 16-17 July. The theme was: "Intelligent Communications Transport (ICT) – Integrating the role of ICT in the implementation of European Transport Policy". The UK was represented by officials.

The debate focussed on a number of questions posed by the Presidency. These were principally about promoting the development of public open data policies and intelligent transport systems (ITS) across all transport modes.

There were key points conveyed by the UK at the Council.

First, it was noted that the UK has world-leading capability, facilities and experience in the intelligent transport sector. We work closely with UK stakeholders, the European Commission and other Member States on intelligent transport initiatives at the European level, from research and development to the formulation of legislation.

The EU ITS directive offers the chance to work towards greater interoperability of systems across the EU and the UK has the knowledge, facilities and experience to help with the delivery of more integrated transport services across Europe.

The UK also noted that to make the most of the opportunities that technology can offer, collaboration between public and private sector organisations is vital.

To facilitate this, the development of new standards and specifications arising from the EU directive must recognise and build upon the success of existing practices, keeping legislative and administrative burdens to a minimum, so as to bring new technologies to the market.

The UK recognised that Governments have a major role to play in freeing up and publishing data wherever possible to stimulate the industry to drive innovative solutions.

I understand that the Cyprus Presidency will present the outcome of this debate to the ITS World Congress taking place in Vienna in October 2012.

26 July 2012

FINANCIAL STATEMENTS (16250/11)

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

Thank you for the letter from Lord Roper of 1 May following the Sub-Committee on the Internal Market, Energy and Transport's consideration of my letter of 23 April, setting out my views on the issues of subsidiarity and proportionality, in which Lord Roper advised of the decision by the Committee to hold the document under scrutiny.

He requested further information on:

- the extent to which I am satisfied with assurances received about the proposal's adherence to the principles of subsidiarity and proportionality on the likely practical operation of the proposal; and
- the policy position on issues on which our position was initially deferred e.g. harmonisation, "think small first" and impact on Companies House procedures.

SUBSIDIARITY AND PROPORTIONALITY

It is clear from discussions at February's Competitiveness Council meeting, and at meetings of the Company Law Working Group, that other Member States share our concerns about the application of the principles of subsidiarity and proportionality. I am confident that, when published, the Presidency's compromise text will reflect the discussions to date and provide greater flexibility for Member States, in particular to determine the content of financial statements.

Importantly, while the Commission and the Presidency continue to press for limitations on the number of disclosures a Member State may require of small companies, both have confirmed that this restriction applies only to the content of the published financial statements and that Member States are free to require companies to publish company-related information/data for other purposes outside of the financial statements without restriction.

POLICY UPDATE ON INITIALLY DEFERRED POSITIONS

1. Harmonisation (Chapters 1, 2, 3 and 6)

As described in the Explanatory Memorandum, the proposed new Accounting Directive sets out to increase the level of harmonisation across financial reporting in the EU, in particular it proposes a maximum harmonisation approach to the definitions of size-categories for companies and the reporting regime for small companies. We do not oppose the harmonisation of size criteria. The UK already applies the concept of small, medium and large companies within its legislation and has routinely adopted the maximum permitted size criteria into our national law to provide greatest flexibility in the accounting framework and to reduce burdens on business wherever possible.

However, having consulted with a range of UK stakeholders and considered the proposed small company regime in more detail we do not support this aspect of the proposal as drafted. Specifically, concern has been expressed that the minimalistic approach to notes to the financial statements for this category of company is insufficient to provide a true and fair view of a company's financial statements. The UK has expressed its preference for a minimum harmonisation approach to financial reporting – that is setting an aspirational standard rather than a mandatory one - and, with other Member States, is arguing strongly for greater flexibility in this regard.

We are also opposed to the removal of Member State options related to the alternative layout of the balance sheet and use of merger accounting for business combinations. These options are permitted in the UK and are commonly used. In our opinion, their removal would create significant costs for UK business with little or no economic benefit to be gained from their elimination as options. The UK has argued for the options to be reinstated into the text and has received support from other Member States regarding our position on merger accounting.

As noted in my earlier comments on subsidiarity and proportionality, it is expected that the Presidency's compromise text will reflect discussions and include higher levels of flexibility for Member States across the range of issues.

2. "Think Small First" (Chapters 1 and 2 in particular)

Whilst opposed to the minimalist small company regime proposed, the UK is supportive of the "think small first" principle applied by the Commission in the drafting of this proposal. A limited disclosure regime is provided for small companies with further disclosures being applied cumulatively for medium-sized companies and large companies/public interest entities. This creates a building-block approach to the imposition of reporting obligations as a company grows in size.

3. Public Interest Entities (Chapters 6 and 8)

The UK does not agree that the definition of public interest entities for the purpose of the preparation and publication of financial statements should be determined by the definition in the Statutory Audit Directive 2006/43/EC. This approach is of particular concern given the proposal to widen that definition to include businesses such as Undertakings for Collective Investment in Transferable Securities (UCITS). There is broad opposition to this approach among Member States.

The UK, along with other Member States, has also expressed concern about the proposal to require that all public interest entities, regardless of size, are subject to mandatory audit and the requirement to produce consolidated accounts. It is not clear that any benefit will be derived from imposing these requirements on organisations such as small mutual insurers. The UK has asked the Presidency to clarify if this is the indeed the intent of these provisions and, if not, to provide an appropriate option for their exclusion.

4. Use of Delegated Acts (as summarised in Chapter 10)

The proposed directive provides that the Commission may use delegated acts to:

- a) revise the thresholds for determining company size (to preserve the real value of thresholds over time);
- b) update the types of entity that fall within the scope of the proposed Directive (to ensure references correspond to any changes by a member State); and
- c) determine the threshold at which payments to governments are to be disclosed by those engaged in the extractive industries or in the logging of primary forests.

The UK does not agree the use of delegated acts by the Commission as drafted is appropriate. The UK and Member States have requested the Presidency, as a minimum, sets out revised and restricted approaches to achieving (a) and (b) and that the threshold relevant to (c) is set out on the face of the Directive.

5. Impact of proposals on Companies House (Chapter 3)

Companies House is aware of the implications of changes to the Accounting Directive, particularly with regard to permitted layouts for the balance sheet and profit and loss account. However, it will not be possible to fully determine the system change requirement until later in the negotiation process. The need for such changes will form part of our implementation plan.

REPORTING OF PAYMENTS TO GOVERNMENTS BY THE EXTRACTIVES INDUSTRIES AND LOGGERS OF PRIMARY FORESTS

I note the Committee's support for a review after three years of the measures requiring extractives industries to report payments to governments. We will take every opportunity to promote this approach in negotiations.

In conclusion, the UK is broadly supportive of the proposed new Accounting Directive and its objectives, which include simplification and the reduction of administrative burdens, but we have concerns over some of the detail as I have indicated above. We have taken every opportunity - in Working Group meetings, written representations and bi-laterals - to articulate those concerns and put forward proposals for how these might be overcome. On many issues we have received support from other Member States. Our discussions with the Presidency and the Commission have been constructive and working drafts of the compromise text take account of key points from our representations by, for example, retaining certain Member State options; introducing an element of flexibility in relation to disclosure; and restricting the use of delegated acts. Therefore, at this stage of

the negotiations, I am satisfied with the assurances received on the likely practical operation of the proposal.

I hope the information I have provided is helpful to the Sub-Committee in its further consideration.

17 May 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letter of 17 May. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 21 May. It was decided to clear the document from scrutiny.

We are grateful for your clear exposition of the remaining policy points pertaining to this proposal, and we note our broad support for your position. We hope that the assurances given by the Commission bear fruit, resulting in a compromise text that does not needlessly disturb the UK's regime on financial statements.

However, we consider it unfortunate that you only introduced some rather significant policy matters – including the extent to which delegated acts will be used and disagreeable elements of harmonisation proposals – at a relatively late stage in your correspondence with the Committee. We trust that in future significant negotiating matters will be outlined to the Committee as early as possible, and would appreciate your assurance to that effect.

We continue to be interested in the impact of the proposal on Companies House procedures. You note that it will not be possible to determine required changes until later in the process. We would appreciate an update on the likely implications once you have more information.

We look forward to an update in due course.

22 May 2012

Letter from Norman Lamb MP to the Chairman

I am writing to inform the Committee of progress with in negotiations on the Commission's proposal for a new Accounting Directive.

I would like to begin by addressing comments you made in your letter of 22 May clearing the document from scrutiny. I am sorry the Committee felt some policy matters had been introduced at a relatively late stage. The points raised in my letter of 17 May had been referenced in the Explanatory Memorandum but I apologise for any lack of clarity in the way these issues were presented at that time. I hope this update assures you of my intention to ensure the Committee is informed of developments.

At its meeting of the Employment, Social Policy, Health and Consumer Affairs Council on 21 June, the European Council adopted a general approach on the draft Accounting Directive. This was agreed by a qualified majority - Bulgaria, Estonia and Portugal voted against the proposal and France abstained. I am pleased to report that the general approach adopted reflects many of the changes for which the UK had pressed. In particular:

SIZE CATEGORIES FOR COMPANIES

The proposal sets out harmonised size criteria for small, medium-sized and large companies. We have successfully pressed for greater flexibility in the thresholds for small companies. A small company is now defined as one which does not exceed the limits of two of three criteria –

- a balance sheet total of €4m
- net turnover of €8m
- average number of employees in the year: 50

Member States may now define thresholds exceeding these criteria up to a balance sheet total of €6m and net turnover of €12m. We estimate this will allow an additional 8,000 companies, currently defined as medium-sized companies, to take advantage of the flexibilities available to small companies.

HARMONISATION OF THE SMALL COMPANY REGIME

Working closely with other Member States, the UK has secured a number of Member State options within the small company regime. The UK had expressed concern about the very limited number of disclosures proposed as part of the harmonised regime. We argued the disclosures were insufficient to enable the financial statements to present a true and fair view of a company's financial position.

The general approach now includes options enabling Member States to require small companies to provide a fixed assets note; details of the name and registered office drawing up the consolidated statements; the nature and business purpose of arrangements not included in the balance sheet and their impact; the nature of event arising after the year-end not included in the balance sheet and their financial effect; and details of transactions entered into with related parties. Member States operating a single filing system for financial statements and tax purposes may also require additional disclosures for the purposes of tax collection.

MERGER ACCOUNTING

The UK argued strongly that there was no evidence base to support the removal of merger accounting as an option and that to do so would impose significant cost on business whilst bringing no obvious benefits. Several other Member States supported our position and the general approach now permits its use.

PERMITTED BALANCE SHEET LAYOUTS

The UK explained the alternative balance sheet layout deleted in the original proposal was commonly used and well understood in the UK and that prohibiting its use would inevitably bring costs for business. We pointed out that many people considered a layout which included net current assets as a line item preferable to that permitted by the original text. The general approach permits the use of the alternative layout. However, this is not an issue which attracted support from other Member States and it will be important that we ensure this option is retained as the Council and Commission enter into negotiations with the Parliament.

PUBLIC INTEREST ENTITIES

Member States strongly opposed the original approach to defining public interest entities which relied on the definition in the Statutory Audit Directive 2006/43/EC. The general approach now includes a definition within its text which is acceptable to the UK.

Changes have also been made to the text to introduce flexibilities permitting Member States to exempt non-listed public interest entities from the obligation to prepare consolidated accounts. This will allow the UK to retain its current approach to relieving the burdens on certain small public interest entities such as small mutual insurers.

USE OF DELEGATED ACTS

The original proposal provided that the Commission may use delegated acts to:

- revise the thresholds for determining company size (to preserve the real value of thresholds over time);
- update the types of entity that fall within the scope of the proposed Directive (to ensure references correspond to any changes by a member State); and
- determine the threshold at which payments to governments are to be disclosed by those engaged in the extractive industries or in the logging of primary forests

We argued against the use of delegated acts by the Commission as drafted and have been successful in restricting their use although they do still remain in certain cases. The general approach reflects this by

- specifying the frequency (every 5 years) with which the Commission shall consider if it is appropriate to adjust the thresholds for company size to account for the effects of inflation

- permitting the Commission to update the types of entity that fall within the Directive's scope only in response to a notification from a Member State of a change; and
- removing its ability to determine the threshold at which payments to government by the extractives industries are disclosed. This threshold will now be included on the face of the Directive.

Whilst the UK is generally opposed to the use of delegated acts, the revised text ensures that the Commission's ability to act is constrained and presents a pragmatic approach to updating these aspects of the proposed Directive.

REPORTING OF PAYMENTS TO GOVERNMENTS BY THE EXTRACTIVES INDUSTRIES AND LOGGERS OF PRIMARY FORESTS

This aspect of the proposal remains controversial. At EU level the majority of Member States have argued for payments to be reported at country level only. The UK has worked hard - at all levels - to persuade others to change their position and have been successful in getting other countries to agree to reporting by level of government and listing projects that contribute payments. "Government" includes any national, regional or local authority and, importantly, any department, agency or undertaking controlled by them. Whilst this may not have delivered everything NGOs wished to see, it has brokered a Council level agreement that will provide significant levels of information. Key points to note are:

- Reports shall specify payments to any national, regional or local authority including department, agency or undertaking controlled by that authority
- Where payments derive from specific projects the report shall, for each level of government, contain a list of the projects that contributed to the payment.
- Delegated acts have been removed from this chapter as noted above.
- If the total amount of payments to any level of government (local, regional and national) within a financial year does not exceed 500,000 Euro these payments do not have to be disclosed.
- All Member States and the Commission are keen to avoid dual reporting but it is not possible to refer directly to a regime where the rules do not yet exist. So there is no cross reference to the regime that is being developed in the USA. There is a reference to compatibility with EITI reports.
- Scope remains restricted to extractives industries and loggers of primary forests with no requirement for reports to be audited
- A review will be undertaken five years after the Directive comes into force. As it is usually around two years before a directive is transposed into national law, this should mean the review takes place once three years of reporting has taken place.

MICRO ENTITIES

I have written separately to the Committee on the successful conclusion of negotiations on the Micros Directive. That Directive creates a new size category for the smallest companies and permits Member States to relieve them of certain reporting obligations by amending the 4th Accounting Directive (78/660/EEC). As this proposal for a new Accounting Directive will repeal the 4th Accounting Directive, the Danish Presidency sensibly took the opportunity to incorporate the provisions of the Micros Directive within the text adopted by the general approach. However, we have identified a number of anomalies arising from the interaction of the micros provisions with the rest of the proposed Directive. We will seek clarification on these points from Commission and the Presidency.

NEXT STEPS

The European Parliament has yet to agree its mandate for negotiations with the Council and Commission. Parliament's JURI and ECON Committees are considering a large number of proposed amendments to the original proposal in advance of a vote planned for September. There appears to

be no clear consensus on way forward on several issues – most notably reporting payments to government where a number of MEPs are seeking to extend the scope of the requirement to all business sectors and/or increase the number of disclosures required. Whilst some of the MEPs' proposed amendments support the UK's position on key issues, others do not. On accounting issues, they would impact adversely on current practice; on reporting payments to governments, they would increase the burdens placed on business.

We continue to work closely with MEPs and other stakeholder groups to explain the practical effects of some of the amendments under consideration. This work will continue over the summer.

Finally, I have noted the Committee's interest in the impact of the proposal on Companies House procedures. The implications of changes resulting from the proposal remain uncertain. This is because the European Parliament has yet to agree its negotiating position on harmonisation of the small companies' regime and reporting requirements may yet change. I will update the Committee as the position becomes clearer.

30 July 2012

FUEL QUALITY

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

I am writing to provide you with an update on the progress of negotiations on implementing measures for Article 7a of the Fuel Quality Directive (98/70/EC, as amended by Directive 2009/30/EC), which relates to the implementing measures required to measure the lifecycle greenhouse gas intensity of fossil fuels. I last updated your Committee on these negotiations in a letter dated 21st February 2012.

The European Commission's proposal for implementing measures under Article 7a of the Fuel Quality Directive (FQD) was voted on at a meeting on 23 February 2012. Along with a number of other Member States, the UK abstained from the vote. This was because whilst we were and remain supportive of the proposal's aim – to reduce harmful carbon emissions from fuels – there remained many elements within the proposal that we could not support.

Under the Qualified Majority Voting rules a 'no opinion' result was delivered. As a consequence the Commission must forward the proposal to the Environment Council for consideration.

The Commission has now confirmed that it will undertake an impact assessment prior to forwarding the proposal to Environment Council. The Commission has indicated that the proposed implementing measures will not go to Council until early 2013.

We will encourage the Commission to ensure the impact assessment takes account of all key issues and ensure that the final proposal is fit for purpose and can be implemented effectively across Europe.

I shall, of course, continue to keep you informed. However, I do not expect that there will be any further developments to report until the Commission's impact assessment becomes available in late 2012 or early 2013.

14 May 2012

GALILEO (17844/11)

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

I write in response to Lord Roper's letter of 1 May 2012. I apologise for the delay in doing so which is due to an administrative error in my office but I can at least now offer a fuller response.

I am pleased that the Sub-Committee on the Internal Market, Energy and Transport appreciated the evidence I gave on 23 April. As I said in my evidence, I feel that the programme is moving into a new chapter with the creation of a sensible and stable Governance framework and clear progress in delivering the system infrastructure meaning that initial services could begin as early as next year. Vigilance will of course continue to be needed to ensure that the Commission progresses as planned.

The Committee raised a number of points in Lord Roper's letter.

The Committee was concerned about the readiness of the European GNSS Agency (GSA) to accept its proposed responsibilities. It would be a serious mistake to under-estimate the scale of challenge facing the GSA given the pivotal role it will have in the management of the programmes. However, the risks are widely recognised and a number of safeguards have already been put in place. Importantly, the proposed Regulation does not set a date for the transfer of functions to the GSA and the Commission is clear that it intends to undertake the transfer incrementally and only if it is satisfied that the GSA is able to perform at the right standard. The GSA is already proposing to begin expanding its staff in anticipation of its new role. The UK and other MS have called for a clear plan for the transfer of functions and relocation of its offices to ensure that existing EGNOS services are not halted.

The Committee also wanted to ensure that the Member States are properly represented in the new governance structures. The changes proposed by the regulation relate to the respective roles of the Commission, the GSA and the European Space Agency whilst the mechanisms for oversight by Member States remain the same.

I referred to the Programme Committee in my evidence and the central role it has for the Member States in holding the Commission to account and how the UK has used it to secure our objectives in the past. The proposed Regulation sought to reduce the power of the Programme Committee by taking away some decision-making functions. The UK worked with other Member States to restore these functions and enhance the Committee's role, for example by giving it an important new mandate to decide on future evolutions of the Galileo and EGNOS programmes.

The Programme Committee is not the only mechanism through which the UK has influence over the programmes. The UK is active on the GSA's Administrative Board which will continue to approve the Agency's work programme. The UK participates in the other working groups that support the Commission in the management of the programme, including for example on the development of the Galileo safety of life and commercial services. A UK official is currently the deputy chair of the Galileo Security Accreditation Board that authorises that launches can proceed for example, and the UK brings its security expertise to a range of other working groups that support the Commission on security issues. The UK was an active participant in the recent Mission Consolidation Review in order to ensure that the programme remains focussed and did not suffer from mission creep.

Ultimately, it is for the European Commission to deliver the programmes but I can assure you that the UK puts considerable effort into ensuring that we try to secure our own objectives from the programme and hold the Commission to account. In that regard, we have secured additional reporting requirements in the proposed Regulation to provide the Member States with better programme management data. For the period to 2014, we need to ensure that the governance arrangements are put in place smoothly and in a way that does not break existing services or delay the introduction of others.

The Committee wanted assurance that Galileo is leading to real benefits for the UK. As I mentioned in my evidence session, UK industry has won contracts worth over €550m for the construction of this phase of the programme. That amounts to 16% of the Galileo budget for that period - a higher percentage than the UK's pre-abatement contribution to the EU budget at 14.5%.

The UK's successes in Galileo have primarily been in the satellites and operational systems that actually deliver the navigation and timing signals to consumers. This means that applications and services (so-called 'downstream' activities) that use this data will be increasingly important as a route to securing additional large scale benefits. In my evidence, I referred to a 2007 BNSC / DfT report which found that the total annual UK benefit from downstream Road and Location Based Services applications for Satellite Navigation technologies is approximately £1.3bn per annum to 2025. This estimate is composed primarily from product and service revenue from the satellite navigation market in vehicles and mobile phones – disregarding the wider applications of Galileo in sectors as diverse as agriculture, health, and disaster management. These are benefits in the UK, jobs and growth in high-tech businesses developing and selling devices related to applications of satellite navigation signals.

The GSA has undertaken market analysis and produced a "GNSS Market Report" which sets out that the global satellite navigation market was €124 billion in 2010, growing to €244 billion by 2020. The EU is predicted to generate 20% or €32 billion of this. The GSA report does not provide estimates of growth in UK markets but we have asked the GSA for a specific UK report to help us understand the potential for our own markets.

By working closely with the GSA, the European Commission has selected London as the host city for a major conference on satellite applications in fields of navigation and Earth observation in December this year. This conference will enable the UK to derive further information and insights into new

markets for space applications and how it can work to secure the maximum benefits from these future opportunities.

The Committee asked about the potential for a 'foresight' study for Galileo but given the work undertaken by the GSA, I am not convinced that additional estimates of growth would be needed to help us identify UK opportunities. The key to ensuring that the benefits can be secured for the UK is to put in place the infrastructure needed to support industry in realising opportunities. The International Space Innovation Centre at Harwell is intended to support UK industry in exploiting space programmes such as Galileo and GMES to develop new products and services that will generate growth here in the UK. Generating growth in the UK from the space sector is something that I am focussing on. In January I announced that the UK would, subject to agreeing a business case, launch a Satellite Applications Catapult Centre co-funded by industry and Government with the specific aim of commercialising space data and maximising the UK's exploitation of space data and services that are being generated from investment in satellites and new space systems such as Galileo.

I am grateful that the Committee agreed to my request to grant a waiver from scrutiny for the Transport Council on 7 June where the Galileo regulation was presented by the Danish Presidency to secure a partial general approach. On balance, I took the decision to set out that the UK could not support the partial general approach text at that stage and entered a formal Minute Statement to the minutes to make the UK position clear. I was concerned that the text – which sets out that the Galileo infrastructure will be completed and operated to offer specific services – could be said to demand a certain level of budget and so prejudice the wider negotiations taking place on the next EU Budget. The UK statement (attached at Annex A) [not printed] seeks to reserve the UK's position to reopen the text should the final budget for Galileo and EGNOS be lower than the Commission is seeking.

25 June 2012

Letter from the Chairman to the Rt. Hon David Willetts MP

Thank you for your letter of 25 June. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment, which decided to clear the document from scrutiny.

First, may we thank you for your considered and comprehensive response. A feature of the dialogue on this dossier has been your constructive stance, and it is welcome to see this theme continued in your last letter. Secondly, we are grateful for the clear exposition of the Government's position. As was clear from our last letter, the benefits for the UK from the project, and firm oversight to ensure that those benefits are reached, are key to our considerations; we appreciate, therefore, your outlining of the key mechanisms through which influence is employed, and the evidence base for your assertions as to possible benefits for the UK.

We also welcome your stance at the Transport Council. It is right that cost control remains a central imperative, and so we are glad to see that you will push for a Galileo (and EGNOS) programme in line with the MFF budget that is ultimately agreed, rather than acceding to the wording proposed simply to facilitate agreement. This is a practical demonstration of the strong stance that you have argued for; we hope that this will be maintained throughout. Nevertheless, we stress again that we remain focused keenly on the budget allocated to the programme in the final negotiations and would appreciate an update on the settlement as soon as you are able to provide one.

We do not expect a response within the usual 10 days.

11 July 2012

HEALTH AND SAFETY: EXPOSURE OF WORKERS TO RISKS ARISING FROM PHYSICAL AGENTS (11951/11)

Letter from Mark Hoban MP, Minister for Employment, Department for Work and Pensions, to the Chairman

I am writing to update you on how negotiations have progressed on the proposed directive on Electromagnetic Fields (EMF) and to request that the document be released from scrutiny.

Since the Committee was last updated on the negotiations on the proposed new EMF Directive, in November 2011, there has been significant progress, which I have outlined below. In addition, the

transposition deadline of the original, EMF Directive (2004/40/EC) was extended by another 18 months to October 2013. This has allowed the negotiations to continue at a sensible pace.

Despite considerable pressure from a number of Member States, the flexibility in the Commission's proposal, including crucial derogation provisions for Medical Resonance Imaging (MRI), military activities and industrial processes, has been retained. This ensures that life saving diagnostic scans will not be prohibited, that unnecessary cost burdens will not be placed on the Armed Forces and that important industrial processes, vital to the manufacturing sector at large and the automotive industry in particular, will not be restricted or made financially unviable.

The UK was instrumental in safeguarding this justified, and necessary flexibility, as well as rebutting attempts to introduce other requirements not based on robust scientific evidence.

In addition, I am pleased to inform you that the UK was pivotal in securing a number of positive changes to the proposal during the Council negotiations, including:

- A transposition period of three years (as opposed to the standard two years)
- Positive changes to remove overly burdensome elements from health surveillance and reporting requirements.
- Simplified risk assessment procedures for employers.

Whilst I remain of the view that a non-legislative solution would have been preferable, I believe that the current text, which is balanced, proportionate and delivers the UK negotiating objectives, whilst still ensuring that workers are protected, represents the best outcome available.

The UK's initial impact assessment estimated that the cost to industry would be approximately £80 million. Ongoing assessment suggests that these costs are unlikely to reduce further, and only a non-legislative approach would make a significant positive change to the potential impact.

However, much of the uncertainty surrounding the proposal and the risk of additional costs in transposition has been removed through Council negotiations. Furthermore, through extensive engagement with stakeholders, the Government believes that the introduction of a number of cost effective tools and measures on a European, national and sectoral level, to support transposition could reduce these costs by 25% or more. The Government will continue to work with stakeholders as we move towards transposition and implementation to ensure that this directive is transposed in the most effective and sensible way possible.

On 4 October at the Employment, Social Affairs Council, the Cyprus Presidency secured a General Agreement to the current text. Whilst being supportive of the text, for the reasons given above, I decided that because parliamentary scrutiny had not been cleared it was only proper that the UK abstain from the General Approach in this instance. Going forward, I do hope to be able to add the UK's formal support to the position agreed by the Council.

In relation to the next stage, we anticipate that a significant minority of the European Parliament may look to remove or restrict the vital derogation provisions contained in the proposal and to introduce more precautionary requirements that are not based on robust science. Council will need to be strong and firm in its engagement with the Parliament to ensure the proposal remains proportionate, flexible and scientifically justified. This makes it key for us to be able to work closely with our counterparts in Council. This will be difficult if we maintained our abstention.

Looking to the future, I understand that discussions are due to commence with the European Parliament and the Commission in December. To allow for the possibility that agreement on a final text with the European Parliament might be progressed in early 2013, and to ensure that we can influence the discussions effectively, I would be grateful if the Committee would consider releasing the proposal from scrutiny at this time.

I will of course endeavour to keep the Committee updated on further developments.

18 October 2012

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

In Lord Roper's letter of 1 May the European Union Committee granted a scrutiny waiver on the regulation establishing Horizon 2020 in order that the Government could sign up to a Partial General Approach at the 31 May Competitiveness Council. I am now writing to confirm that a Partial General Approach was agreed on this regulation in Council and to update the Committee on the main changes that were secured to the Commission's proposal through the course of the negotiations.

As I set out in the Explanatory Memorandum on this dossier, the Government is satisfied that the broad structure of Horizon 2020 is in line with UK priorities - being focused on excellence, providing support along the innovation chain and addressing societal challenges. Our negotiating stance therefore centred on defending the existing text and seeking some improvements to detailed aspects of the programme. The most significant of the changes that the Government secured or was able to support were as follows:

- Article 6: There is now no reference to a third wave of Knowledge and Innovation Communities (KICs) for the European Institute of Innovation and Technology (EIT) and providing a financial allocation to the second wave has been made conditional on a positive interim review. The Government supported this change as it considers the proposed budget for the EIT to be too high for an unproven programme.
- Article 15a: This is a new article specifying that Horizon 2020 will contribute to reinforcing the single market for researchers in line with the aims of the European Research Area. The Government negotiated with other Member States to ensure that, whilst participation in Horizon 2020 is encouraged from a wide range of participants, this does not impact negatively on the excellence of the research funded.
- Article 18: The target for SME participation in the industrial leadership and societal challenges pillars has been increased from 15% to 20%, but has remained non-binding. The Government supported this more ambitious figure, and favoured a non-binding target since it does not compromise excellence.
- Article 18a: This is a new article specifying that Horizon 2020 should be implemented primarily through transnational collaborative projects. The Government worked closely with the Danish Presidency and other likeminded states in preparing this Article, which will help to restrict the degree to which the Commission can make participation in projects and programmes contingent on a financial contribution from individual Member States.
- Article 20: The Government secured changes to the requirements for Member States to provide up-front financial commitments in order to qualify for Commission support for public-public partnerships. These commitments will now only be indicative.
- Societal challenges: There was widespread concern that the sixth challenge ('Inclusive, innovative and secure societies') contained too many disparate issues, so it was split into two: 'Europe in a changing world - inclusive, innovative and reflective societies' and 'Secure societies- protecting freedom and security of Europe and its citizens', as well as a 'horizontal box' of cross-cutting issues and support measures (e.g. international co-operation, gender). The Government supported this change in exchange for securing the majority of our textual amendments to the two new challenges. In addition the Government secured a number of textual changes across the societal challenges to ensure that Social Sciences, Arts and Humanities research is embedded throughout. Other key UK amendments included the addition of research into cultural heritage within 'Climate action, resource efficiency and raw materials' and 'Europe in a changing world - inclusive, innovative and reflective societies', and the strengthening of references to modal transport

research in 'Smart, green and integrated transport', which should be of particular benefit to the UK aeronautics sector.

Negotiations can now progress on the remaining parts of the Horizon 2020 legislative package under the Cypriot Presidency, who are aiming to agree Partial General Approaches on these documents by the end of the year. We will write again to update you on progress post summer recess and in advance of any further decisions.

13 July 2012

Letter from the Chairman to the Rt. Hon David Willetts MP

Thank you for your letter of 13 July 2012, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meetings on 23 July. The Committee decided to retain the document under scrutiny.

Having granted a scrutiny waiver for the Competitiveness Council in May, we are glad to see that the result was a positive one. The insertion of Article 18a on transnational collaboration, alongside the tempering of requirements for up-front commitments, represent sound assertions of Member State competency. At the same time, the introduction of safeguards for the expansion of KICs is a good example of pragmatic policymaking.

Our only query at this stage concerns the changes to the societal challenges in the proposal. You indicate a likely benefit for the UK resulting from a number of the changes, but do not go into detail. We would appreciate more information on precisely how those textual amendments are likely to lead to benefits for enterprises in the United Kingdom.

Otherwise, we await further updates on other elements of the proposal and retain the document under scrutiny in the meantime. We look forward to your response within the usual 10 days.

24 July 2012

Letter from the Rt. Hon David Willetts MP to the Chairman

Thank you for your letter of 24 July, in which you requested more information about the likely benefits to UK enterprises arising from the changes agreed by Council to the societal challenges 'pillar' in the draft regulation establishing Horizon 2020.

The Government supports the proposed societal challenge approach in Horizon 2020 as it will allow a limited number of major European and global challenges (for example ageing population, energy and food security) to be tackled more effectively by combining the expertise of a variety of disciplines and sectors. The 'Challenge' approach should provide significant opportunities for businesses, both large and small, to develop innovative solutions, working in partnership with the research base. This 'holistic' approach mirrors to a large extent that taken in the UK by the Technology Strategy Board and the cross-council activities of the Research Councils.

As I set out in my previous letter, the main change to the societal challenges during the course of the Council negotiations was the division of the sixth challenge ('Inclusive, innovative and secure societies') into two: one covering issues primarily of interest to Social Sciences and Humanities researchers – 'Europe in a changing world: inclusive, innovative and reflective societies' – and one primarily of interest to the security sector – 'Secure societies - protecting freedom and security of Europe and its citizens'. UK stakeholders were supportive of this split, as they considered that it would give each community clearer access to the relevant funding opportunities. The Government was particularly pleased to secure the additional language on research into cultural heritage, which the House of Lords Select Committee on Science and Technology recently noted in its report on Science and Heritage is an important field for the UK. In the 'Secure societies' challenge we succeeded in including new activities to 'protect... the resilience of critical infrastructures, supply chains and transport modes' and to 'enhance the societal, legal and ethical understanding of all areas of security', both of which had been key requests from stakeholders. In addition, the Council agreed to create a horizontal box of cross-cutting issues and support measures, which will be considered across all challenges in order to ensure that important issues such as gender equality and societal engagement are embedded throughout the programme.

The textual changes agreed to the other societal challenges were also in line with requests from UK stakeholders:

- The ‘Health, demographic change and wellbeing’ challenge was adapted to include references to frailty following discussion at the UK Research Councils cross-council group on ageing. Wording was also included to ensure both medical and non-medical factors were taken into account.
- The ‘European bioeconomy challenges: Food security, sustainable agriculture and forestry, marine and maritime and inland water research’ was expanded from its original remit to cover forestry and broader aquatic environments. Here the UK successfully secured references to sustainable consumption.
- In ‘Secure, clean and efficient energy’ the UK sought very few changes, being largely content with the proposed text. The only real changes adopted were to identify gas as having a role in the short to medium term in achieving 2050 low-carbon economy objectives and to distinctly identify smart technologies within the broad line of activities, neither of which causes concern for the UK.
- In ‘Smart, green and integrated transport’ the focus was on achieving a sufficient balance between modal and cross-modal research, so that a challenge approach was maintained but there was also good provision for key UK sectors, including aeronautics. It should also be noted that certain sector-specific partnerships, such as the Joint Technology Initiative, ‘Clean Skies’ will continue to be supported under Horizon 2020.
- In ‘Climate action, resource efficiency and raw materials’ the UK pressed for and achieved the incorporation of research into seismic and volcanic activity, as well as the environmental impacts on cultural heritage.

In all, the Government considers that the revisions made to the original Commission proposal in the Partial General Approach will provide greater clarity to prospective participants in Horizon 2020 and reflects well the input that we have received from UK stakeholders.

9 August 2012

Letter from the Rt. Hon David Willetts MP to the Chairman

I am writing in response to Lord Roper’s letter dated 24 January 2012 in which he asked for more information on likely impacts for UK participation from the proposed Horizon 2020 funding model. My apologies for the delay in replying but the issue is complex and stakeholder views have evolved as variations on the proposed model have emerged during the course of negotiations.

I am also writing to ask the Committee to consider providing a waiver on scrutiny for the above EM should it be necessary to consider agreement to a partial general approach on the Horizon 2020 Rules for Participation proposals at the Competitiveness Council on Wednesday 10 October to secure changes to the text that we wish to preserve. Any partial general approach, that is to say a freeze to negotiations where the Presidency considers textual changes to the negotiation are mature enough to warrant this, would be explicitly on the basis that ‘nothing is agreed until everything is agreed’, including cross-cutting issues with other regulations, such as the overarching Multiannual Financial Framework. This means we have the opportunity to reopen discussion should the need arise.

The Horizon 2020 proposals introduced a number of simplification initiatives. The Committee wanted to specifically understand the impact on UK participation from the Horizon 2020 funding model. One of these was to reduce the multi-option funding model available in the current Framework Programme (FP7) to a single funding rate per action in Horizon 2020 (i.e. the same rate for all organisation types) and to restrict indirect cost reimbursement to a single flat rate. The funding rate was to be a maximum of 100% of total eligible costs plus a flat rate of 20% of total direct eligible costs to cover indirect costs. By derogation, the rate was to be a maximum of 70% plus 20% (of 70%) for ‘near to market actions’. Not in the proposals but also relevant was the Commission’s intention to make VAT a reimbursable cost for organisations unable to claim this back under national legislation, which would benefit UK organisations. This was dependent on revisions to the EU Financial Regulation which, including the VAT provision, are due to be adopted by the end of October.

The absence of an actual cost option for indirect costs, as available in FP7, was unexpected and we were at the time unclear what impact this would have on cost recovery for UK participants and on their willingness to participate in Horizon 2020. The omission of such an option was a step back from

previous Commission policy initiatives to encourage institutions across Europe to adopt full cost accounting to support sustainable financing, which the UK has long strongly supported.

To assess the likely impact of the funding changes we have taken views from the stakeholder group set up to advise BIS on the negotiation of the 'Rules for Participation proposal', which includes representation from the private sector (including an SME), non-profit research and technology organisations, academia, the Research Councils and the TSB. We have noted the formal position statements released by representative bodies such as the Russell Group, Research Councils UK, Universities UK, BUSINESSEUROPE (representing employers) and EARTO (European Association of Research and Technology Organisations). We have also invited SME input via some of the FP7 national contact points and have contacted a number of individual universities and Research and Technology Organisations (RTOs) for more detailed information.

The general picture to emerge is that large private sector players welcome the simplification gains from the single funding rate/flat rate and have expressed no strong concerns regarding cost recovery. SME feedback has been sparse but from the few comments received and taking account of the BUSINESSEUROPE paper it would appear that only a very few with high overheads would lose out significantly from the absence of an actual indirect cost option. The sense is that for the majority an indirect cost flat rate of between 20%-30% would be sufficient.

University views are reasonably consistent. There is a policy push for indirect costs to be reimbursed on the basis of actual costs from the representative organisations but individual universities mostly prefer the flat rate approach with its simplification benefits, though most want a higher rate of around 25%. There is however greater concern over the lower funding rate for 'near to market actions' where universities would not even be recovering their direct costs.

The absence of an actual indirect cost option would impact most on the non-profit RTOs. These organisations typically have high overheads and many would face a reduction in cost recovery of up to 30%. Feedback suggests that for some the flat rate would have to rise to at least 30% for regular participation to begin to be sustainable. The impact on cost recovery would be worse in 'near to market actions'.

Most of these findings are consistent with the Commission's own modelling. Based on 100/20 funding, this indicates average increases of 47% for industrial participants, around 8% for SMEs and a drop of about 1% for universities. The most difficult figure to reconcile with our findings is that RTOs would see a drop of only 0.5%.

The Government has to date called for the reintroduction of an option for all participants to reclaim on the basis of full economic costs, and to allow non-profit participants in close-to-market actions to reclaim their costs at up to 100%. There is broad support amongst Member States for the latter proposal, but positions on Full Economic Costs are more divergent. Some Member States, along with the Commission, argue that reintroducing this option will undermine the simplification agenda by complicating the repayment process. The Presidency has proposed increasing the flat rate for indirect costs to 23% in an effort to address the pressures some participants will face. My priority will be to ensure that any proposal fairly reimburses participants for their activities within a project. I will keep the committee informed as to the resolution of this issue.

Another issue has arisen which concerns the rates at which wage costs are reimbursed. During negotiations the 'EU12' have sought to introduce language aimed at reducing salary differentials with the richer Member States. The Government will continue to carefully study options tabled by the Presidency and others, although we have made clear our reservations about the lack of detail about the practical implementation and associated value for money of these proposals. Moreover, we have stressed that the Structural Funds are more appropriate to addressing capacity building than Horizon 2020 which is based on excellence.

On the basis of this information, I hope that the Committee will grant a waiver to enable the UK to agree to a partial general approach on the Rules for Participation proposals at the Competitiveness Council on 10 October if this is called for and if the deal is acceptable to the UK. I will write to the Committee again following the Competitiveness Council.

1 October 2012

Letter from the Chairman to the Rt. Hon David Willetts MP

Thank you for your letter of 1 October 2012, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 8 October 2012. The Committee decided to grant a waiver under the Scrutiny Reserve Resolution.

The issue of cost reimbursements is a complex one. We support your aims to ensure that UK actors are able to be properly reimbursed for participation, but recognise too that the Commission's simplification agenda has strong support from some stakeholders and could help to improve participation levels. In balancing these aims, we are glad to see your pragmatic negotiating stance.

Like you, we would be particularly concerned to ensure that non-profit actors are not penalised for work near-to-market, and so we support your drive to enshrine this in the agreement. Similarly, we see merit in your position of aiming for a full economic cost model, whilst being open to accommodations to the Commission's model where negative impacts can be minimised. We are confident that an agreement within those negotiating confines – which you have expressed in detail, for which we are grateful – would protect UK interests and support the development of a strong Horizon 2020 programme, so we are content to grant a waiver for the 10 October Competitiveness Council meeting. In doing so, we request that you provide a detailed update on any agreement that is reached at that meeting.

Additionally, we would note our strong opposition to the use of Horizon 2020 funding to address EU wage differentials. As you note, capacity building is better seen as a matter for structural funding, and so we would urge you to maintain your robust stance against any proposed amendments to this end.

Though we are content to waive the usual 10 day deadline for responses to allow for a proper analysis of the 10 October meeting, we urge that the response is sent as soon as possible thereafter.

11 October 2012

Letter from the Rt. Hon David Willetts MP to the Chairman

I am writing to you to thank the Committee for granting a scrutiny waiver concerning the Partial General Approach on the Horizon 2020 rules for participation (the "Rules") at the Competitiveness Council on 10 October, and also to report back on the outcome of the Council.

I am pleased to report that a Partial General Approach was agreed on the Horizon 2020 Rules.

The text secured broad agreement from the majority of Member States. The agreement reached on reimbursement was to increase the flat rate for indirect costs to 25% for all participants (up from 20% in the Commission's proposal and 23% in the latest Presidency text). The higher funding rate of 100% of total eligible costs plus the 25% flat rate would also be made available to non-profit organisations (e.g. universities, Research Council institutes and Catapult Centres) in 'close to market actions', where other participants would be funded at 70% plus 25%. In addition, the Commission has committed to producing guidance on what high value infrastructure costs can be included within direct costs. There will be no full economic cost option for indirect costs.

A full economic cost option was something the UK had been asking for, especially in view of organisations with high indirect costs such as many of the research and technology organisations, but after very difficult negotiations I judged overall that this was a reasonable compromise.

The higher flat rate will go some way to addressing the shortfall in cost recovery for the high indirect cost organisations. These organisations should also benefit from clearer guidance on what infrastructure costs can be included in direct costs which should lead to more costs previously claimed as indirect costs now attracting 100% reimbursement.

Having secured flat rate improvements, a resolution was then sought on flat rate and full economic cost. I and other Member States felt able to drop the request for the latter option. This allowed the Presidency to conclude that a working agreement had been reached.

Notably the Commission also included a new Article 24a, which subjects the funding levels laid down in articles 22a, 23 and 24 to an evaluation as part of Horizon 2020's interim evaluation to assess after three years whether they have had any negative impact on the attractiveness of Horizon 2020. The UK felt this was an important addition to allow ongoing improvement to the programme.

The other major area of debate before the Council concerned the rate at which the researcher salary element of EU funded projects would be reimbursed. A group of Member States drawn from the newer EU members were seeking a system which would have reimbursed salaries not on the basis of actual national pay rates (as has been the case in all EU Framework Programmes to date) but rather using a complex formula based on notional average EU rates similar to that currently used for the Marie Curie mobility schemes in FP7. This would have resulted in very much higher rates across the EU (not just in the newer Member States), which in turn would have meant that far less research could be funded from a given Horizon 2020 budget. This approach would not have been easy for the UK to accept and we were able to ensure its rejection at the Competitiveness Council.

The substance which was finally agreed is based on existing provisions in FP7. It will allow bonus payments as an allowable expense under certain clearly defined conditions (they are allowed only if they are part of the usual remuneration practices of the participant and paid in a consistent manner whenever the same kind of work or expertise is required and if the criteria used to calculate them are objective and of general application by the participant, independently from the source of funding used) and subject to an overall maximum cap of €8,000 per researcher per year. We were able to resist demands for a much higher cap, or no cap at all, which would have risked greatly increased salary costs and a reduction in the number of projects funded. I believe the text meets our objectives of ensuring that Horizon 2020 remains based on excellence, that it retains the benefits of simplification and that it represents value for money.

A Partial General Approach was also agreed on the amending regulation for the European Institute of Innovation and Technology (EIT). No further changes were made to the document.

Needless to say both these partial general approaches, that is to say a freeze to negotiations where the Presidency considers textual changes to the negotiation are mature enough to warrant this, have been agreed explicitly on the basis of that 'nothing is agreed until everything is agreed', including cross-cutting issues with other regulations, such as the overarching Multiannual Financial Framework. This means we have the opportunity to reopen discussion should the need arise.

Once again I want to thank the Committee for granting me a waiver so I could secure important changes for the UK in the proposal.

22 October 2012

INDUSTRIAL POLICY: REINFORCING COMPETITIVENESS (15587/11)

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

Your Committee previously cleared the above document from scrutiny but asked for an update on whether the Communication and staff working documents contained any lessons that could be applied to UK industrial policy. In particular your Committee wanted to know more about the problems identified by the Commission in relation to e-government usage by business and the possible solutions. I am sorry for the delay in responding.

The Communication and the European Competitiveness Report 2011 provide a range of data and analysis primarily explaining the Commission's rationale for its recent focus on a number of policy areas (e.g. space, raw materials and sustainable industry). In the European Competitiveness Report 2011 the most striking data concerns the high and growing importance of knowledge intensive sectors, especially in the UK. The Government agrees with the growing importance of these sectors and is advised by a Professional and Business Services Group, comprising senior executives from a wide range of knowledge intensive services. The Group is highly supportive of Government policies to promote the UK as a key global hub of tradable services, particularly through reduced regulation, improving incentives for enterprise and maintaining the openness of the UK to international business and global talent.

The Government routinely keeps abreast of key policy developments introduced by our major competitors and these help influence UK industrial policy. For example the Technology Strategy Board's development of a network of seven elite technology and innovation centres (Catapults) was influenced by systems in other countries, particularly the Fraunhofer model in Germany. In general the Commission's report contains insufficient information to aid our understanding. For example, it highlights where countries have introduced new innovation or enterprise strategies and summarises their aims, but provides limited detail of any new measures arising. However the report did note a few interesting policy developments, for example:

- In Belgium there has been a focus on special measures to help female entrepreneurs on maternity leave. This included creating a register to help find replacements for entrepreneurs who want to suspend their activities temporarily while enabling their business to continue;
- The Danish Parliament has decided to complement the government's efforts of reducing administrative burdens by setting a target of 10% reduction of the perceived business burdens to be reached by 2015;

- Estonia has recently eliminated license renewal. Some licences were deemed unnecessary and some other licenses will be replaced by simple notifications by 2014.

DG Enterprise and Industry recognises only limited information can be included in the report and has now started to facilitate the exchange of good practices in specific policy areas (e.g. key enabling technologies) through the creation of time-limited expert working groups. In order to help improve the usefulness of future reports we have suggested to the Commission they provide more information on any particularly innovative policy developments worthy of consideration by other member states.

Finally, you asked to hear more about the problems identified by the Commission in relation to e-government usage by business and the possible solutions. I should note the Government is unsure how the Commission drew some of its conclusions around eProcurement and eGovernment usage by business. However we recognise these issues are important for growth and government needs to do things differently, particularly around making it easier for businesses to access information and services and work with public authorities. The Government has made commitments to move to digital by default, as well as to increase the range of suppliers to government and levelling the playing field for small and medium sized enterprises (SMEs). Action being taken includes:

- **Business Link:** Continuing to develop the government's online resource for businesses. As of November 2011, Businesslink became the primary place for businesses of all sizes to access government-funded business information and support making it easier for businesses to find information and engage with government. It has launched two new services to help anyone looking to start up, improve and grow their business. The 'Do it online' section enables business to find and submit a wide range of forms for use when dealing with public authorities, such as tax returns and applying for licences. The portal is complemented by a Business Link Helpline for those unable to access or use the internet.
- **Government Procurement Service (GPS):** Delivering centralised procurement for Central Government Departments and procurement savings for the UK public sector as a whole. A key component of this is the centralisation, standardisation and aggregation of spend on common goods and services. This is opening the marketplace to a wider variety of service providers. GPS services are delivered by more than 2,000 suppliers (more than half are SMEs).
- **Contracts Finder:** more than 1 million registered users (buyer groups) with over 1,100 'live' opportunities on a given day and holds details of around 8,900 contracts.
- **G-Cloud:** the Government programme to adopt cloud-based services and seen as a leader in Europe and worldwide. G-Cloud covers the processes of buying, managing and using cloud services. G-Cloud represents a change in the way that government works with suppliers and works internally. The first version of the CloudStore (the online store for G-Cloud) was launched in February 2012 with 257 suppliers (half are SMEs) offering around 1,700 cloud computing services.

The Government is also looking to learn from experiences in other countries. For example, a UK delegation led by the Rt Hon Francis Maude MP (Minister for the Cabinet Office and lead on e-government) recently visited Estonia. Estonian citizens have a legal right to have their government services online and most use them. The visit presented an opportunity to learn from Estonia's services in getting government services online and getting them used very widely, and to draw appropriate lessons for the UK government. The UK is also sharing experiences with other countries, such as France, Portugal, Norway, Brazil and Korea.

12 July 2012

INFORMAL MEETING OF EMPLOYMENT AND SOCIAL POLICY MINISTERS: 12-13 JULY 2012

Letter from the Rt. Hon Chris Grayling MP, Minister for Employment, Department of Work and Pensions, to the Chairman

Departments are required to provide a factual written Ministerial Statement after each Council, setting out how each agenda item was handled. However, as this falls during the recess period, I am writing to you now to advise you of these details, in line with the Cabinet Office agreement.

The Informal Meeting of Employment and Social Policy Ministers took place on 12-13 July 2012 in Nicosia, Cyprus. I represented the United Kingdom.

On the first day, there were three simultaneous workshops covering: the role of social partners in boosting employment rates; the role of social partners and social stakeholders in combating poverty and social exclusion; and their role in the European Semester. I participated in the first workshop which discussed boosting employment rates. In this, the Commission argued for more and better involvement of social partners. I intervened to agree that social partners had a key role to play but it was important that proposals were realistic. I stressed that given the imperative to retain global competitiveness, EPSCO Ministers had to focus on promoting growth and this meant the EU should refrain from adopting proposals that did not make Europe a great place to invest.

On the second day of the meeting there was a discussion on the EU Employment Package & EU2020. The Presidency argued that greater efforts were needed to adopt a new agenda and create new jobs whilst undertaking necessary fiscal consolidation. I intervened to state that the Employment Package identified the challenges well and that the Employment Committee's (EMCO) forthcoming Principles of Well-functioning Labour Markets should help EPSCO identify a few clear goals to focus on. On Europe 2020, I highlighted that the process for adopting Council Recommendations could be further improved in that they needed to focus on issues of common concerns, and not interfere with national arrangements. Most Member States agreed with the need for more growth-promoting measures.

At the end of the meeting, I reported back on the Future Sustainability of Social Security for Migrants conference, which I had hosted on 6 July in London. This was attended by Ministers and delegates from most Member States. The conference agreed on the importance of free movement of workers but that reforms were needed to protect the integrity of the system. The next step was to start work on a common set of principles to inform discussions on revising existing EU social security rules.

18 July 2012

INTEGRATED EUROPEAN MARKET FOR CARD, INTERNET AND MOBILE PAYMENTS (5491/12)

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

I am writing in response to Lord Roper's letter of 1 May 2012 about the Government's response to the Commission's Green on card, internet and mobile payments. I am sorry for the delay in responding.

Lord Roper asked for more information on the evidence base that underpinned the Government's response.

The principal evidence base in relation to payments across Europe is provided by the European Commission, the European Central Bank, the Single Euro Payments Area (SEPA) Council (an advisory body), and the European Payments Council (an industry body). The Bank for International Settlements also publishes assessments of the operation of the payments market in each country.

- The European Commission has published its assessment of the costs and benefits of the Single Euro Payments Area and further material which is accessible on its website at:
http://ec.europa.eu/internal_market/payments/index_en.htm
- The European Central bank publishes a 'book' on the payment system. As well as detailed statistics on the European payments market, which are accessible on its website at:
http://ec.europa.eu/internal_market/payments/index_en.htm

- The SEPA Council deliberates on strategic issues. The agendas and meeting summaries are published on the Commission's and ECB's websites. The Treasury has access to the papers prepared for meetings of the SEPA Council.
- The European Payments Council (EPC) is the decision-making and coordination body of the European banking industry in relation to payments. The EPC develops the payment schemes and frameworks which help to realise SEPA. The EPC publishes detailed material on the schemes and rule books that it has developed, as well as news, white papers and technical documents. These are accessible on the EPC's website at: <http://www.europeanpaymentscouncil.eu/index.cfm>
- The Bank for International Settlements serves central banks. It produces publications, research and statistics on payment systems among other issues relevant to its work on financial stability.

Domestically, Treasury officials have consulted other departments with an interest, including the Office of Fair Trading. Taking the Green Paper alongside a review of the Payment Services Directive (2007/64/EC), officials have discussed the issues raised with three card schemes (American Express, MasterCard and Visa), the Payments Council, UK Cards Association, Electronic Money Association, Prepaid Card Forum and the Money Transmitters Association, as well as a broader stakeholder group. Officials have also had access to the written responses submitted by some associations and firms. It is expected that the Commission will make these responses publicly available soon.

27 June 2012

ITER NUCLEAR FUSION PROJECT (2014-2028) (5058/12)

Letter from David Willetts MP, Minister for Universities and Science, Department for Business, Innovation and Skills, to the Chairman

Thank you for your letter of 1 May, and I am sorry for the delay in the response.

I was pleased to hear that you thought the Sub-Committee evidence session I attended on 23 April was very informative. I was also glad that you share my view about the value of the ITER project, but I note your caveats.

Taking your points in order, as you know I said with respect to the legal basis for the proposed programme, that officials had now examined Article 3 of the draft ITER Decision more closely, with colleagues in other Government Departments, and concluded that it could be argued the funding mechanism envisaged was unlawful. As I pointed out in my last letter, this is largely academic because the UK, with the support of a number of other major Member States, strongly opposes the funding of ITER outside the EU budget which has led to the proposed ITER programme funding mechanism.

Nevertheless, it is our intention to raise our legal concerns with the Commission and I will update you on the outcome.

Turning to the costs of the European contribution to the ITER project, I totally agree that we must continue to maintain a tight control. We shall also seek to build on the improvements made to the governance of the European procurement agency Fusion for Energy.

With respect to the funding for ITER in the next Financial Framework, you will be aware that the European Council has already capped the European contribution to ITER at €6.6 billion (in 2008 value) over the construction phase which will extend to 2020. The European contribution is funded by Euratom at 80% and France at 20%.

In the current negotiations on the Multiannual Financial Framework (MFF), the UK's top priority is budgetary restraint, thereby ensuring that the EU budget contributes to domestic fiscal consolidation. The Government's firm position is that spending on individual programmes, including ITER, will not be agreed until the overall MFF deal is done which will probably not be until near the end of the year.

Finally on your third point, I restate that the Government opposes the movement of significant spending, including ITER, outside the MFF, and I agree that this is in the interests of sound financial management.

I will keep you informed of progress on the points you have raised.

25 June 2012

MARITIME LABOUR CONVENTION: FLAG STATE RESPONSIBILITIES (8241/12)

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

Thank you for your explanatory memorandum of 19 April, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meetings on 21 May.

We supported the incorporation of elements of the MLC into EU law by way of Directive 2009/13/EC and we see the Commission's latest proposal as a logical step towards implementation of the 2009 Directive. While we therefore consider it unobjectionable, we support your stance of negotiating to ensure that the final text reflects the division of competence between the EU and Member States.

We are content to release the proposal from scrutiny and do not require a response to this letter.

22 May 2012

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

I am writing to let your Committee know about progress in negotiations on the proposed directive on Flag State responsibilities in respect of the implementation of the Maritime Labour Convention, 2006 (MLC).

The Presidency is expected to seek a General Approach on the proposal at the Transport Council on 29 October.

FLAG STATE RESPONSIBILITIES

As you may recall from the Explanatory Memorandum on this proposal, the Government was concerned to ensure that the Flag State Directive should not extend into areas beyond EU competence, by seeking to force Member States to ratify the whole MLC, which includes matters of EU competence, matters of shared competence and matters of Member State competence.

The initial draft Directive did not present competence concerns because it did not refer directly to the MLC (which includes matters outside EU competence) but referred instead to the enforcement of Directive 2009/13/EC. A subsequent draft did refer to the MLC directly, principally because of the argument that it would not be possible for a new Directive under Article 100 (Transport) to contain enforcement measures in respect of Directive 2009/13/EC, which was made under (what is now) Article 155 (Social Policy). However, the competence concerns referred to in the previous EM have been dealt with by amending the Directive so as to make clear that the requirement to enforce MLC provisions would relate only to those provisions of the MLC covered by Directive 2009/13/EC (ie those within competence). The treaty base issue identified above was addressed by making explicit that the purpose of the Directive was to enforce those (within competence) provisions of the MLC, not the provisions of the social partners' agreement annexed to Directive 2009/13/EC, even though in substance there is a close relationship between them.

The UK is satisfied that this continues to support our position that the Directive must not extend into areas beyond EU competence.

Another key point for the UK was to ensure that the proposed Directive would not impose any additional requirements over and above the MLC itself (gold-plating). The UK, with like-minded States, successfully resisted an attempt to prevent Member States using the flexibility provided by Article II.6 of the MLC to treat small vessels (under 200 gross tonnes) operating on domestic voyages differently as regards the mandatory standards in the MLC Code. This issue arose because this flexibility is not referred to in the social partners' agreement or Directive 2009/13/EC, and the Commission and a very small number of Member States argued that it had therefore been superseded. However, we have been advised by UK social partners that the provision was not included because their understanding was that it fell outside the scope of the social partners' agreement. While the argument about the proper interpretation of the social partners agreement may

go on, as regards this Directive we are pleased to have secured a clear statement in Article 3 that the power to derogate remains available to us.

In conclusion, I believe that the proposed General Approach represents a satisfactory outcome for the UK, and will not require us to make any substantive changes to its proposed implementation of the provisions of the MLC on flag State responsibilities.

The European Parliament has begun its consideration of the proposal at Committee level, but no date has yet been set for its first reading plenary.

19 October 2012

MARITIME LABOUR CONVENTION: PORT STATE CONTROL (8239/12)

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

Thank you for your explanatory memorandum of 19 April 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on Monday 21 May 2012. The Committee decided to hold the document under scrutiny.

We note your concern with the methodology proposed by the Commission for aligning EU law with the requirements of Title 5 of the Maritime Labour Convention. However, the Commission's explanatory memorandum appears to consider port state inspections to be a routine matter. If that were the case, the requirement would appear to achieve that aim satisfactorily. If not, we would share your concerns as to the approach pursued. We would appreciate your interpretation of the requirements in more detail so as to inform our deliberation on that point.

As to the harmonised reporting proposal, we are at first sight persuaded by your position. However, we would like to be sure that this position is reflected by stakeholders. Your memorandum references a stakeholder consultation exercise undertaken in 2006. Between that point and the Committee on Safe Seas discussions in October 2011, where the reporting proposal was deleted from the list of comitology measures, what consultations did you undertake to ensure that the position you advanced was still shared by those affected? Have any alternative measures been put before the Committee for consideration in the meantime?

I look forward to receiving your reply within the usual 10 working day deadline.

22 May 2012

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 22 May regarding the consideration by your Sub-Committee of the Explanatory Memorandum on the above proposal.

You refer to the Commission's explanatory memorandum regarding the amendment to the existing port State control (PSC) Directive and that they refer to port state inspections as being a routine matter. This is indeed the case and the intention of the amendment was simply to include the forthcoming Maritime Labour Convention, 2006 (MLC). The Commission's explanatory memorandum clearly states:

"The proposal amends the port State control directive in order to:

- include the maritime labour certificate and the declaration of maritime labour compliance among the documents to be checked by inspectors;
- extend the scope of inspections to new items (for ex, the existence of an adequate labour contract signed by both parties for each seafarer with the required clauses in the contract);
- extend the scope of investigation in case of complaints and foresee the adequate procedure."

The UK supports the above intention: however, the amending Directive goes much further and includes targeting of ships for inspection whose flag States have not ratified all maritime conventions, including the MLC and the intention to introduce harmonised forms for the reporting of anomalies by pilots.

At various Working Groups regarding these proposals the Commission have stated their intention to take the opportunity to update the PSC Directive in general.

Regarding the pilot reporting, following the last Working Group the text was amended to remove reference to “electronic” and other minor changes which the UK can now accept

However, the UK still has serious concerns with the intention to designate a ship as Priority II for inspection by recording an “unexpected factor” if the ship is flying a flag of a State that has not ratified certain maritime conventions (including the MLC). A ship designated as Priority II is available for inspection, irrespective of the “Ship Risk Profile”, which governs the frequency of inspection. This would distort the targeting policy of the existing Directive, because the situation would not be within the gift of the shipowner to change following inspection. If the UK is not able to ratify the MLC before it comes into force, this would lay UK registered ships open to inspection at every port call, with severe cost implications for those shipowners. If the Commission wishes to amend the targeting of ships for inspection, which is fundamental to the concept of the PSC Directive and the Paris Memorandum of Understanding on PSC, consultation would be required with Member States on how best this could be achieved.

The UK will continue to argue against the proposal by the Commission to designate a ship as Priority II for inspection if the flag State has not ratified certain conventions.

I will of course continue to keep your Committee informed of developments.

13 June 2012

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 13 June, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its 25 June meeting. It was decided to clear the document from scrutiny.

We were supportive in our first letter of your stance with respect to pilot reporting. We are glad to see that you have managed to secure changes during negotiations which have ameliorated the concerns regarding a “spy in the cab”.

We are grateful too for the update on your stance regarding the use of the “unexpected factor” criterion as part of this proposal. Having considered your explanation, we agree that the Commission should limit itself to amendments in line with the MLC, and to pursue more widespread reform only with proper Member State input. However, we would be grateful for your views in brief as to whether more widespread reform, if pursued with that input, would be a useful exercise.

We would also be grateful for information from you on whether trade unions representing seafarers have been consulted on this proposal and the Government’s position. If so, what views have been expressed by them?

In light of our support for your position, we are content to clear the document from scrutiny. I look forward to hearing from you within the usual 10 days.

28 June 2012

Letter from Mike Penning MP to the Chairman

Thank you for your letter of 28 June 2012 on the above proposal.

You requested my views as to whether a more widespread reform of the port State control Directive would be a useful exercise. At present we see no pressing need for this, because we consider that the Directive is working well, and we do not see a need to introduce an unexpected factor for non ratification of conventions as proposed by the European Commission.

However, Article 35 of the Directive requires the European Commission to undertake a review of the implementation of the Directive no later than 30 June 2012, which is eighteen months since the Directive was implemented by the Member States. That review has been undertaken by EMSA and will be submitted to the Commission shortly. Following this, the Commission will issue a report to the Council and the European Parliament, which will set out its views on whether it is necessary to propose an amending Directive or further legislation in this area. The Government will of course consider its position, in the light of the evidence, on the need for any proposed amendments.

You also asked whether trade unions representing seafarers have been consulted on this proposal and the Government’s position. Seafarers’ trade unions have not been consulted on the proposal for an

amending directive on port State control as we took the view that the proposal was simply introducing the requirements of the Maritime Labour Convention (MLC), 2006. The unions were consulted by the European Commission during the public consultation on the enforcement of Directive 2009/13/EC on the Social Partners Agreement on the MLC, 2006 carried out between April and June 2011.

12 July 2012

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

Further to the Explanatory Memorandum and Mike Penning's letters of 13 June and 12 July, I am writing to let you know about progress in negotiations on the proposed directive on Port State responsibilities in respect of the implementation of the Maritime Labour Convention, 2006 (MLC)

The Presidency is expected to seek a General Approach on the proposal at the Transport Council on 29 October

PORT STATE RESPONSIBILITIES

This proposal would amend Directive 2009/16/EC on port state control to include the MLC as one of the relevant Conventions for port state control. The Commission subsequently took the opportunity during negotiations to include two further Conventions, already incorporated in the Port State Control Regime by the Paris MOU, the International Convention on the Control of Harmful Anti-fouling Systems on Ships 2001 (AFS 2001) and International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001). Member States were content with this change.

As your Committee may recall, Mike Penning identified two issues of concern in his Explanatory Memorandum. The first of these was the proposal to include non-ratification of a Convention as an "unexpected factor", which would automatically give a ship a Priority II status, requiring its inspection by a port State. The UK objected to this because it would undermine the prioritisation of inspections to target sub-standard ships, by bringing to bear the flag State's ratification status.

Following significant opposition from a number of Member States, this provision has been dropped, and will not be included in the general approach. However, the Commission has signalled its continuing support for the measure, and the UK will remain alert to ensure that it is not re-introduced at a later stage.

You also asked for information on the stance of the trade unions on this proposal. When the issue was recently discussed at the MCA's Tripartite Working Group on implementation of the MLC, Nautilus in particular strongly supported the Commission's proposal for an amending directive on Port State Control introducing the requirements of the MLC. Nautilus cited the underlying intention of the Maritime Labour Conference which adopted the Convention to promote near-universal ratification. This is inherent in the MLC itself which provides, through the "no more favourable treatment" clause, a strong incentive to flag states to ratify the Convention. However, we believe that port States retain the right to inspect ships under the "no more favourable treatment" clause, and that this is sufficient disincentive to shipowners to flag with non-ratifying countries, without distorting the priority setting criteria of the EC Port State Control regime.

The second issue raised in the EM was the introduction of a requirement for pilot reporting. As you may recall from Mike Penning's letter of 28 June, following negotiations the text was amended to remove reference to "electronic" and other minor changes which the UK can now accept.

During recent negotiations in Brussels, a Member State made a proposal for an additional paragraph in the Directive to prevent a Member State carrying out Port State Control against a Convention that they have not themselves ratified, and by implication, implemented as a Flag State. The UK supported the principle, which is well established in international practice and in the Guidelines of the Paris MOU on Port State Control. There was strong opposition from a few Member States, and from the Commission, on the grounds that this could introduce unfair competition between the ports of ratifying and non-ratifying member states, and even provide an incentive to Member States to delay ratification of major Conventions.

The arguments highlighted the lack of clarity, unfortunately implicit in the existing Port State Control Directive, between the powers of a Member State to enforce EU law on ships visiting their ports, and wider issues of ratification of international Conventions, some of which extend into areas where the

EU has no competence. This has only become obvious now because it is proposed to add a further Convention to the scope of the Directive which is not yet in force and which not all Member States have yet ratified.

The UK and another Member State collaborated on a compromise text, which was successful in securing agreement from all Member States and the Commission. This recognises the principle that a Member State should only carry out Port State Control in respect of international requirements that they have implemented, and therefore exhorts Member States to implement international Conventions before they come into force internationally.

Following intense discussion in Brussels, I am satisfied with the terms of the general approach and am satisfied that the proposed directive will not require the UK to make any substantive changes to its proposed implementation of the provisions of the MLC on port state responsibilities.

The European Parliament has begun its consideration of the proposal at Committee level, and is currently scheduled to have its first reading in plenary in early 2013.

19 October 2012

MICRO-ENTITIES (7229/09)

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

I am writing to inform the Committee that, following extensive negotiations, the European Parliament and the Council agreed the compromise text on 13 December 2011 and 21 February 2012 respectively. The Directive was adopted through ordinary legislative procedure at 2nd Reading on 14 March 2012. The Directive, known as the "Micros Directive", has been published as Council Directive 2012/6/EU. The Micros Directive relieves the very smallest companies of certain obligations imposed by the 4th Company Law Directive, which establishes minimum requirements for the annual accounts of companies and certain partnerships.

This is an excellent, deregulatory outcome. Not only does this agreement remove red-tape for the smallest companies but it has introduced a new definition of small business to Europe - the micro-entity. This is significant: Europe has explicitly acknowledged that regulation should be proportionate to the size of the company and should provide further opportunities for deregulation.

An explanatory Memorandum (EM) on this subject was submitted on 17 March 2009, and was cleared by your committee. Updates on amendments to the original proposal were provided by my predecessor, Edward Davey, in August 2010 and June 2011.

The June 2011 update informed the Committee that a change in the definition had been proposed which substantially lowered the thresholds originally proposed so that a company was defined as a "micro-entity" if it did not exceed the limits of two out of three criteria:

- a balance sheet of €250,000;
- a net turnover of €500,000; and
- an average number of 10 employees.

In negotiations the UK continued to press for higher thresholds for defining a micro entity. I am pleased to report a significant shift in the levels was finally agreed. The Directive now defines a micro entity as one which on its balance sheet date does not exceed the limits of two of three criteria which are:

- a balance sheet total of €350,000;
- a net turnover of €700,000; and
- an average number of employees during the financial year of 10.

These higher thresholds mean up to 1.4m UK companies are classed as micro entities.

The Directive as agreed is otherwise substantially unchanged in that it permits Member States to exempt micro entities, subject to certain disclosures, from the obligation to:

- i. present "prepayments and accrued income" and "accruals and deferred income" for certain types of income and expenditure

- ii. draw up notes to the accounts
- iii. prepare an annual report or
- iv. publish annual accounts provided the balance sheet is filed with a designated competent authority.

Member States may also permit micro entities to draw up a greatly abridged balance sheet and profit and loss account. (Accounts drawn up under these exemptions are deemed to be true and fair.)

The Recitals to the Directive note that Member States should take account of *the differing impact of the criteria when implementing the Directive at national level and the specific conditions and needs of their own markets when making decisions about how or whether to implement a micro-entity regime within the context of the 4th Company Law Directive*. The Government will now consult with the business sector and key stakeholders on how to take forward the flexibilities offered by the Micros Directive and so maximise the benefits for the UK's micro-entities of reduced obligations to publish financial statements.

6 August 2012

MODALITIES FOR PASSENGER VEHICLES (12733/12, 12747/12)

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

Thank you for your explanatory memorandums of 20 August 2012. They were considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 8 October 2012. The Committee decided to retain both documents under scrutiny.

We welcome the revised focus on the importance of meeting emissions targets for road vehicles, and are positive about the tenor of the proposals made by the Commission. The continuation of special measures and derogations for independent, niche and de minimis manufacturers seem very sensible at first sight. We are, though, as cautious as you in wanting to see convincing evidence for the feasibility of the targets proposed and the progress towards achieving them before supporting the trajectory suggested. We would therefore be grateful for an update on your scrutiny of the impact assessment and the results of your stakeholder consultations as soon as possible.

We note that, with respect to passenger cars, the memorandum suggests that the use of vehicle mass could provide a perverse incentive to produce heavier vehicles, but that the Commission nevertheless proposes to continue with that metric. Are you satisfied with such a course?

We would also seek to clarify whether you are satisfied with the Commission's emphasis on the positive aspects of diesel fuel in terms of CO₂ reductions. Are you satisfied that the Commission has considered the impact of diesel fuel particulate emissions beyond CO₂ in its review?

I look forward to hearing from you.

11 October 2012

MOTOR VEHICLE REGISTRATION (8794/12)

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

Thank you for your explanatory memorandum of 1 May 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 28 May 2012. The Committee decided to retain the document under scrutiny.

We note your concerns regarding the possible practical difficulties arising from the "normal residence" idea and on whom the burden of notification would rest. At first sight, though, it seems that the DVLA would be well-placed to maintain a register, so we would appreciate more detail on your preferred course with respect to this provision.

You query the way in which data sharing will work. Given the importance of this data sharing to the workings of this proposal, we would like to hear more on how sharing can work effectively if use of the EUCARIS system is not mandated.

As to the complaint about MOT tourism, we would be grateful for your assessment as to how likely such activities would be, and whether you are seeking the removal of the provision for mutual recognition of roadworthiness certificates in the light of that assessment.

Otherwise, we note that it is early in the process, with calculations on the likely cost implications being undertaken and issues being investigated. We therefore wish to retain the document under scrutiny until these matters are further illuminated. We would appreciate an update as soon as possible, and regular updates on the latest developments thereafter. However, given the early stage of negotiations, we do not require an initial response within the usual 10 days.

29 May 2012

PROCUREMENT PACKAGE (18960/11, 18964/11, 18966/11)

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

May I first of all congratulate you on your appointment as chair of the European Scrutiny Committee; I enjoyed a fruitful working relationship with Lord Roper and I look forward to our continuing work together.

I am writing to follow-up Lord Roper's letter of 1 May, which continued an exchange of information and views on the modernisation of the EU rules governing procurement by the public sector and "utilities". I attach considerable importance to improving procurement in government and the wider public sector; this includes achieving real improvements in the EU rules during the current negotiations on the proposed modernised directives. I am therefore pleased that the European Union Committee has also recognised the importance of the issue, and has maintained a detailed interest.

Lord Roper said that in the Committee's view public procurement could be an effective tool to deliver social and innovative goals. I agree that whilst social and innovative goals should not be an end in themselves, public procurement can take social and innovative matters into account where these help to deliver value for money. Effective innovation in technology, innovative approaches to an overall solution, and innovation in the production, supply and delivery of goods, works and services, can lead to better value for money and lower costs in public procurement.

Social issues can effectively be considered at the pre-procurement stage. Perhaps I could mention the Public Services (Social Value) Act 2012 which came into law in March, and a Statutory Instrument giving it full effect will be laid in due course. This will require public bodies (in England) to consider how their requirements, and the procurement process for those requirements might improve the economic, social and environmental well-being of the areas in which they operate. As I mentioned in my previous letter to Lord Roper, it is also helpful that the Commission proposal makes clear that social and environmental criteria can cover the whole life cycle of goods and services.

Lord Roper has also raised the subsidiarity implications in the Commission's proposals. The area identified as raising concerns about subsidiarity was the proposal under the "governance" provisions for a single national oversight body per Member State, which would be required to fulfil certain obligations and possess specific powers.

I am pleased to report that the UK negotiating position has borne fruit, and the governance provisions in the final directive are now not expected to include a requirement for a single national oversight body, nor is it expected that any bodies will be required to combine administrative and quasi-judicial powers. Therefore the specific subsidiarity concerns are no longer live. However, my officials will of course be willing to explore any general issues of subsidiarity around the proposals during the proposed evidence session, if your Committee would find it useful.

I hope this is helpful. Of course, I will be very happy to address any further queries or provide further information.

17 May 2012

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter of 17 May, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 28 May. It was decided to clear the document from scrutiny.

As you have noted, we have maintained a detailed interest in this dossier. We have been in broad agreement with your position on the proposal throughout. We too want to see an earlier review of the thresholds; we too want to maintain the Part A/Part B distinction; we agree that the extension of competence into the area of concessions is largely uncontentious; and we have been persuaded that the e-procurement timetable is too ambitious.

Our concerns centred on two main points. First, we believed that procurement could serve as an important driver to maintain focus on the achievement of social and innovation goals. You agree that there is a place for such pursuits where value for money is not compromised, but - as expressed in your last letter - thought that the provisions to this end in the proposal could add “unhelpful complexity”. Whilst we think that careful application is the key, we would agree with the more prominent use of such devices that the proposal calls for. Despite this slight divergence, we are grateful for your explanation of your position, and your engagement with ours.

Second, we were in full agreement that the proposed governance arrangements were unsatisfactory, but thought that a merits argument was more compelling than one based upon subsidiarity. The clear breakthrough in negotiations has removed those provisions from the proposal entirely, thus taking away its most unsatisfactory element. We are glad to see this development.

Given the detailed correspondence thus far, combined with the removal of the most significant provision of issue, we are therefore content to clear the document from scrutiny. We would, though, be grateful for detailed updates on negotiations as they continue.

I look forward to your reply within the usual 10 days.

29 May 2012

Letter from the Rt. Hon Francis Maude MP to the Chairman

Thank you for your letter of 29 May, by which you informed me that your Committee has cleared this dossier from scrutiny. However, you asked for continuing detailed updates on the progress of the negotiations. My officials agreed with your Committee officials that the change of Council Presidency from Denmark to Cyprus at the beginning of July would be a suitable time to take stock.

You will recall the package covers three elements; a draft updated directive on public procurement (the “classic” directive); a draft updated directive on procurement by “utilities”; and a draft new directive on “concession” contracts awarded by public bodies and utilities.

Under the Danish Presidency there has been an intensive programme of examinations and negotiations in the Council Working Group (CWG); and this pace is likely to continue in the second half-year. To date these have concentrated on the main public procurement proposal, with limited discussion of concessions. The Danish Presidency has pointed out that “it has been an important objective for the Council to significantly simplify the public procurement rules and ensure legal certainty for contracting authorities as well as economic operators, whilst maximising flexibility and driving down transaction costs”. The Government supports those objectives.

18964/11: PUBLIC PROCUREMENT (CLASSIC DIRECTIVE)

The Danish Presidency has structured the negotiations into 10 thematic “clusters”; the European Parliament has followed suit in its own deliberations on the proposal, and the incoming Cypriot Presidency is expected to continue this approach. Below I briefly discuss progress on a number of these clusters, concentrating on some of the points which the Presidency has highlighted and those which are significant from the UK point of view.

“Flexibilisation” of procedures

The UK Government has pushed from the outset for flexible procedures which permit negotiation, in particular by relaxing the existing restrictions on use of the competitive negotiated and competitive dialogue procedures. The Commission’s proposal lifted some of these restrictions, and the Presidency suggests fewer restrictions still, which would enable negotiation for any requirements that go beyond “off the shelf” purchasing, and which if adopted should be a satisfactory outcome for the UK.

We also support further reductions in the minimum timescales for responding to advertised procurements and preparing tender documents suggested by the Presidency provided these are proportionate and give suppliers sufficient time to prepare their responses.

The CWG negotiations also support and clarified the idea of structured “innovation partnerships” between suppliers and authorities, to encourage the development of innovative solutions.

Strategic use of public procurement

We support CWG moves to explicitly promote “life-cycle” costing, taking full account of whole-life costs including for example energy and recycling costs. This helps public procurement to support a sustainable economy. We agree life-cycle costs must be based on a clear methodology, understandable to suppliers. We agree that innovation and value for money will be encouraged if specifications concentrate on needs and outcomes, using performance and functional requirements, rather than concentrating narrowly on technical standards and inputs.

We also agree with the CWG and Presidency that procurement rules should focus on “how to buy”, in order to support a transparent single market, and not on “what to buy”; the latter should be at the discretion of Member States and individual purchasing authorities.

As you know, the Government sees no need for the removal of the pre-existing “Part B services” provisions, which apply only minimal rules to procurement of many services, but as the Commission’s proposal is supported by a strong majority of other Member States, it is unlikely the status quo will prevail. The Presidency has suggested a compromise position which will maintain a light-touch regime for a wider range of services than was proposed by the Commission, and will avoid applying EU rules to services not of cross-border interest. This is in addition to health and social services, which are recognised by all interests as a special case to which full procurement rules need not apply. My officials will press to ensure that the light touch regime is genuinely “light,” and extends as widely as possible.

Reducing documentation requirements

The intention is to reduce the burdens on suppliers in submitting documents during a procurement process. The CWG agrees that only the winning bidder should have to submit various certificates and documents which prove his status. Up to that point in the process, authorities must accept self-declarations of compliance from suppliers. This will reduce cost for suppliers and authorities, and encourage SMEs and wider competition. I welcome this provision, which is consistent with the Government’s reduction of pre-qualification questionnaire (PQQ) burdens.

I am also pleased with the agreement that poor performance under previous contracts should be explicitly permitted as grounds for exclusion. This is in line with the Government’s view that ineffective or poorly-performing suppliers should not be awarded public contracts.

The original proposal for an electronic “European Procurement Passport” has been dropped; the CWG has accepted the position (of the UK and many others) that in practice the costs and complexities would outweigh the benefits.

Aggregation of demand

The UK Government agrees that significant savings can be made by aggregating demand; the use of central purchasing bodies such as the Government Procurement Service is of benefit. Framework agreements may play a role, provided they are used for appropriate goods and services, are re-competed at regular intervals, and encourage SME participation.

Following the CWG negotiations, the Presidency proposes to clarify the rules covering frameworks, and to remove a Commission proposal which would unnecessarily restrict procurers’ options when placing contracts under a framework.

SME access

All interests agree that improving SME access to public procurement opportunities can improve competition and help promote jobs, innovation and growth. As your Committee will be aware, encouraging and enabling SMEs to bid for public contracts is a key element of the public procurement reforms which I have introduced in the UK.

The CWG agrees that suppliers should not face disproportionate financial turnover requirements relative to contract size, to the detriment of SMEs in bidding for public contracts. I agree with this goal, but as far as the UK is concerned, good public procurement practice to encourage SMEs already goes beyond the specific proposal in the directive.

I also agree that authorities should encourage SMEs to bid by breaking requirements into lots where appropriate, but I am pleased the CWG supports the UK position that the decision whether to use lots should be left to the purchasing authority on a case-by-case basis.

E-procurement

The Government fully agrees that electronic procurement can increase transparency, reduce transaction costs and therefore increase competition and provide better value for money. We agree with the CWG that streamlining the “Dynamic Purchasing System” could greatly increase the usefulness of that procedure. There is also widespread support for the Commission’s proposed text which explicitly recognises electronic catalogues in the bidding process. You may recall that the UK Government has campaigned for both of these positive changes.

At the Competitiveness Council in late May, the Presidency asked EU Ministers whether they supported the Commission proposal to switch to 100% electronic communication within two years of the transposition deadline. My colleague the Minister for Employment Relations, Consumer and Postal Affairs explained that whilst the UK fully supports e-procurement, this deadline may be unrealistic; an “absolutist” requirement for 100% e-communication could cause unnecessary problems for public bodies and suppliers, and lead to infraction proceedings against Member States for minor shortfalls. The Government will encourage rapid take-up of e-procurement in the UK, to achieve the undoubted benefits, whilst seeking rules and deadlines which are also practicable and realistic.

I submitted an Explanatory Memorandum to your Committee on the Commission’s recent e-procurement strategy document on 19 June (ref 9299/12), which discussed the Commissions’ e-procurement proposals in more detail.

Governance

The original Commission proposal would have required each Member States to set up or designate a single national “oversight body” to oversee the application of the public procurement rules. As you know, the House of Commons European Scrutiny Committee was concerned that the oversight body proposals breached subsidiarity and the House of Commons sent a Reasoned Opinion to the Commission on the matter. Your committee agreed that these oversight body proposals were unsatisfactory on their merits, separately from subsidiarity concerns. Most governments and some parliaments in other Member States government have also opposed this oversight body proposal.

At the late May Competitiveness Council the Presidency also asked Ministers to consider oversight and governance arrangements. I am pleased to note EU Ministers confirmed the view that Member States should be free to make their own decisions on how to organise monitoring, reporting and guidance on the application of the procurement rules. My officials will be scrutinising the amended text of the proposal to ensure that it satisfactorily addresses UK concerns.

Other issues outside the “clusters”

As you know, I wish to see the Directive explicitly allow innovative public service delivery-agents such as employee-owned “mutuals” to become established before they are subject to full competition. I and my officials continue to press the case for a time limited exemption, and last month I wrote to my ministerial counterparts in other Member States explaining the arguments.

Of course, the finally-agreed directive will reflect the input of the European Parliament as well as the Council. I and my officials are continuing to engage constructively with the European Parliament. In particular, we are working closely with Malcolm Harbour MEP, chair of the Internal Markets and Consumer Protection Committee, who is pressing the case for a specific provision covering “mutuals”, amongst other things.

The European Council has called for an agreement on the public procurement directive during 2012, but this is ambitious and only appears feasible if there is a First Reading agreement with the European Parliament.

I now turn to discuss very briefly the other two elements of the package.

1896/11 UTILITIES PROCUREMENT

To date the Working Group has not examined the “Utilities” proposal in detail. I will update you again when there is more to report.

18960/11 - CONCESSION CONTRACTS

There has been limited discussion so far on the concessions proposal, and at this point we do not have a timetable for future negotiations. In late May the Presidency issued a questionnaire to Member States, inviting comments on a number of the Articles specific to the draft concessions directive. We understand that a large majority of respondents consider that further clarification of definitions is

needed, in particular around the concept of “risk” borne by the contractor as integral to the definition of a concession.

The Commission has just proposed amendments to some of the concession-specific Articles. As you know, I wish to see any directive on concessions as light-touch as possible, and at first sight this latest version includes some welcome simplification. However, we will need to examine the details during the negotiations, to see what further improvements may be needed, and to ensure the changes do not allow other Member States to restrict the single market in their award of concessions for water, electricity supply, or similar services.

I hope this is helpful to your Committee, and I will write to you again in due course as the negotiations progress on all three proposals.

24 July 2012

Letter from the Chairman to the Rt. Hon Francis Maude MP

Thank you for your letter of 24 July. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 8 October 2012. Regarding the public procurement proposal, your letter raised a number of questions across the thematic clusters that you identified.

On the question of strategic procurement, you will know that we have previously been supportive of a clear role for the stimulation of innovation. You note that there is support for focusing on “how to buy, not what to buy”. We would be grateful for a more detailed exposition of how this is reflected in the text, and what it means for innovation, so that we can determine the direction of travel ahead of future deliberations.

As to e-procurement, we have supported separately your wish for a more gradual approach to implementation, beginning with larger public authorities and working its way down. We do so again here to underline our support in this respect. We wish to also lend our support to the idea of extending the lighter touch regime beyond health and social services, as such an approach would protect some of the benefits from the Part A/Part B distinction that is unlikely to be brought back into the text.

You also note that the European Procurement Passport has now been removed from the proposal. In principle, the passport could have been a measure to make procuring in other Member States a simpler experience. How will the posited benefits of such a scheme be ensured without the passport, if that idea was indeed considered too burdensome?

We also ask for further clarification on the how the direct payments provisions would work, and your views as to their appropriateness. In particular, we are keen to know on what basis direct payment can be sought from a contracting authority, how far along the chain it could operate, and whether there is a risk that this provision could compel contracting authorities to issue duplicate payments to unremunerated sub-contractors?

We have already discussed with you the question of ensuring SME participation. You refer to suppliers “not facing disproportionate turnover requirements”, and that the decision to use lots on a “case-by-case basis”. We would appreciate if you could clarify what those remarks mean in terms of the text itself. As to the first, does such a sentiment translate into a specific provision; as to the second, does such a position differ from the “comply or explain” position that was previously negotiated? We would also be grateful for more information on how these measures fit into existing SME procurement arrangements. You note again the fact that the original governance arrangements have been modified, and that oversight will now be a matter for Member States. You are right to be vigilant to secure this in the text, and we urge you to take a strong stance in negotiations in order to do so.

On the question of allowing alternative public service delivery schemes such as “mutuals” to develop before competition applies, we would like to hear more about your case for doing so. In principle, we are supportive of such an approach, but given the potential logistical difficulties of promulgating it we would be grateful for more information to aid our deliberations.

A point emerged in your letter that requires clarification as soon as possible. You note that the utilities proposal has yet to be discussed, but our previous discussions were predicated on the basis that public and utilities procurement were being considered side-by-side, as was clear from correspondence on the dossier. Given this, and given the many similarities in elements of the public and utilities proposals, we wish to hear more as to what potential issues may emerge relating to utilities that have not already been discussed thus far. As the two dossiers have been linked in our

thinking, we would note in advance that it may be desirable for us to receive a supplementary explanatory memorandum if there are any major issues that were not identified at an earlier stage.

I look forward to hearing from you within 10 days.

11 October 2012

PROGRAMME FOR THE COMPETITIVENESS OF ENTERPRISES AND SMALL AND MEDIUM-SIZED ENTERPRISES (COSME) (17489/11)

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

I am writing to update you on progress of the above draft Regulation, which will be debated at the Competitiveness Council on Wednesday 30 May. Your Committee considered EM 17489/11 on 23 April and decided to clear it from scrutiny (POS 1st May 2012 Session 10/12).

At the Competitiveness Council the Presidency will aim to reach a partial general approach on the draft Regulation. This is explicitly on the basis that 'nothing is agreed until everything is agreed', including cross-cutting issues with other regulations (such as the overarching Financial Regulation). This means we will have the opportunity to reopen discussion should the need arise. I should also underline that the budgetary aspects do not form part of the partial general approach. Agreement on financial aspects will continue to take place through negotiations on the Multiannual Financial Framework and are led by HMT.

I enclose a copy of the latest version of the Presidency proposal [not printed]. Please note it is a *limité* document and therefore provided in confidence on the understanding it will be handled accordingly. In my opinion the text represents a good outcome for the UK. During negotiations the Government has sought to ensure measures eligible for support from the COSME budget have demonstrable EU added value and respect the subsidiarity principle. Key amendments secured during Council negotiations include:

- **Financial instruments:** Ensuring greater coherence with other EU programmes, including better integration with Horizon 2020 financial instruments. In addition, in response to UK concerns about deadweight, the draft Regulation now makes clear that the Loan Guarantee Facility aims to increase support for viable SMEs facing difficulties in accessing finance, either due to their high risk or lack of collateral (Articles 10 and 17);
- **Tourism:** A compromise has been reached, deleting tourism from the general objectives of COSME (Article 3), but with amended references to tourism in Articles 4 and Article 8(2)(d));
- **Better regulation and Think Small First:** The importance of these principles is now reflected in Articles 3(2) and 14 and Annex I (indicators);
- **Business support, including trade promotion:** The scope for Commission activities has been considerably narrowed, supplemented by explicit references on the need to avoid duplicating activities of Member States (Articles 11 and 12);
- **Delegated and implementing acts:** The draft Regulation now provides (Article 19(2)) that an annual work programme cannot be adopted if there is a "no opinion" situation (i.e. if there is a blocking minority opposed to a proposed annual work programme). In such circumstances the Commission will either need to amend its proposal or refer it to the appeal committee (comprised of Member State Ambassadors). In addition the urgency procedure for delegated acts has been deleted.

If discussed, the UK will argue strongly during the Competitiveness Council for the retention of Article 19(2), in order to enhance Member State control and influence over the actual activities to be funded by the Commission through this element of the EU budget. This is the main outstanding contentious point. Subject to a satisfactory outcome on this point, the Government intends to support a partial general approach on the draft COSME Regulation but on the basis that 'nothing is agreed until everything is agreed'.

22 May 2012

POSTING OF WORKERS AND COLLECTIVE ACTION (8040/12, 8042/12)

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

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

I am writing in response to Lord Roper's letter dated 26 April 2012, which asked a number of questions in relation to the explanatory memoranda on the proposals for an Enforcement Directive and "Monti II" Regulation.

The purpose of the provision on joint and several liability (Article 12) in the Enforcement Directive proposal is to provide a further mechanism to help ensure that posted workers can receive outstanding remuneration. The Government agrees with the importance of protecting vulnerable workers and guarding against employers evading their responsibilities. However, prescribing the actual means in this Directive is too prescriptive. A better approach would be to agree upon the objective at European level and then allow Member States the flexibility to decide how best to achieve this. We think imposing such a system on all Member States breaches the spirit of the principle of subsidiarity. The approach taken by the Commission in Article 11 already establishes the objective – it places a responsibility on Member States to put in place the necessary mechanisms for posted workers to receive outstanding remuneration but does not make a particular mechanism mandatory. This approach is preferable and more appropriate. Those Member States that do wish to have joint and several liability should be free to do so but this would be a new requirement for 19 Member States.

The Commission's own Impact Assessment Board was highly critical of the case made for action in the Enforcement Directive. There is a lack of convincing evidence that this particular mechanism is an effective way to tackle the problems identified by the Commission. It is likely that companies will find ways around the new obligations through the creation of intermediary companies, or bogus self-employment. Furthermore, because it will apply only to posted workers, the introduction of this provision could also undermine the aim to facilitate the posting of workers, leading to different treatment when the main contractor uses a company with posted workers to when they contract with a company that does not use posted workers. This will create an uneven playing field, a distortion in the market and introduce legal uncertainties. It would create a clear disincentive to sub-contract with companies employing posted workers. The risk-based approach to enforcing workers' rights in UK aims to ensure that we target abuses but don't introduce unwanted and unnecessary red tape for the majority of responsible and genuine employers.

With regard to the Lindsey Oil Refinery disturbance, the inquiry by ACAS found no evidence that Total, Jacobs Engineering or IREM had broken the law in relation to the use of posted workers or entered into unlawful recruitment practices. All contractors on the site had agreed to be bound by the terms in the National Agreement for the Engineering Construction Industry (NAECI), however there were discrepancies in the way it was interpreted by the different employers. The Enforcement Directive is intended to bring improved clarity to the issue of posted workers and to ensure greater accountability for those employers who break the rules. In particular, the list of criteria to help clarify what is a posting situation (Article 3), the improved availability of information on employment conditions applicable to posted workers (Article 5) and the measures to allow fines and penalties to be enforced across borders (Chapter VI) will ensure greater protection for posted workers and should all make it less likely that similar disputes will occur in the future.

As outlined in the explanatory memorandum, the Government does not see value in attempting to clarify case law in the proposed "Monti II" Regulation, especially if it has the result of codifying the law which will make it more difficult for it to be updated in future. I note your comment about domestic codification but I do not believe the situation at EU level can be directly compared.

It is clear from the reactions from across EU Member States, trade unions and businesses that there is no agreement on whether the balance between economic freedoms and fundamental rights as set out in the proposed Regulation is right or whether it is desirable to codify the case law. Like all other EU Member States, we do not have control of the legislative agenda in Brussels, given that the right of initiative rests solely with the European Commission. There is hence no guarantee that once codified the relationship between economic freedoms and fundamental rights will come up for review in a manner or time favoured by the UK. There is also a risk that once a difficult issue such as this has

been codified, it may not be reopened for negotiation again if there are divergent views across the Member States or between the EU institutions.

The Government believes the ECJ case law in this area is clear, as it identifies the relevant principles and the test to be applied. It is up to national courts to apply the principles and test, or to go back to ECJ if something is unclear. The draft Regulation simply states that both the fundamental rights and economic freedoms must be respected and offers no further advice on how this should be applied in a specific case – national courts would have to return to the existing case law for direction. The ECJ is best placed to keep the case law under review and modify it in future if necessary. The cases of *Viking-Line* and *Laval* dealt with extreme circumstance and there is no reason to believe that the principles will create extra risk for collective action which has a legitimate purpose. The EU's priorities must be on ensuring EU growth and competitiveness and this Regulation would be a distraction from that agenda.

As requested, further information will be sent to the Committee once responses to the Call For Evidence on the two proposals have been received, and I will of course keep you informed as the negotiations progress.

14 May 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letter of 14 May 2012 on the above proposals. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 18 June 2012, where the Committee decided to hold both documents under scrutiny.

We were interested to read your further analysis of the Monti II Regulation and the disadvantages of the proposal in its current form. We look forward to further updates from you as negotiations progress in the Council.

On the Posting of Workers Directive, we note your belief that the provision on joint and several liability is likely to lead to a number of problems. Do you intend to oppose the proposal in its entirety if amendments are not made to improve this element?

We look forward to receiving the results of your Call for Evidence when these are available. We would also be grateful for further detail on the application of the existing Posting of Workers Directive in the UK and how the rights of posted workers are currently regulated.

19 June 2012

Letter from Norman Lamb MP to the Chairman

Thank you for your letter of 19 June on the above proposals. I note that the Committee is holding both documents under scrutiny.

You asked for updates on the Monti II Regulation. Following publication of the proposal, 12 national parliaments/chambers issued reasoned opinions on the proposal's non-compliance with the subsidiarity principle. This included the House of Commons as well as chambers from Belgium, Denmark, France, Finland, Latvia, Luxembourg, Malta, Poland, Portugal, Sweden and the Netherlands. On 30 May, the College of European Commissioners confirmed that these reasoned opinions amounted to 19 votes, i.e. one third of the votes allocated to national Parliaments (54) which is the threshold needed to trigger the "yellow card" procedure introduced from 2009 under Protocol 1 of the Treaty of the European Union. The European Commission must now decide whether to maintain, withdraw or amend its proposal, and justify its decision. No timing for such a decision has yet been given, although the Commission has indicated it will be taking some time to carefully consider it. This is the first time that the 'yellow card' has been triggered and it is clearly important that the Commission demonstrates that the message from national parliaments is being given due consideration.

I am pleased to confirm that we launched a call for evidence on the Enforcement Directive on 14 June. It will run until 26 July. The call for evidence document is available at <http://www.bis.gov.uk/Consultations/call-for-evidence-eu-proposals-posting-workers-enforcement-directive?cat=open>. I will provide information about the results once we have had an opportunity to analyse them.

You also asked for information about the way in which the rights of posted workers are currently regulated in the UK. UK employment legislation does not distinguish between the rights of posted

workers or others working in the UK. All UK employment rights therefore apply to posted workers, so long as they meet the relevant qualifying conditions (for example length of service criteria for some employment rights). Regarding the core terms set out in the Posting of Workers Directive (96/71/EC) – minimum rates of pay, maximum working hours, annual leave, health and safety protection, maternity rights, rules about hiring out agency workers – these apply without qualifying conditions. The rights of workers posted to work in the UK are enforced in the same way as for others working in the UK, e.g. through employment tribunals or enforcement by relevant statutory bodies such as the Health and Safety Executive.

Finally, you asked about our position on the proposal in view of our concerns about the provisions mandating a joint and several liability mechanism for posted workers. I confirm that the Government does have concerns about these provisions, and we will be seeking amendments. In developing our approach we will be considering the best way to achieve our objectives in the wider negotiation.

4 July 2012

Letter from the Chairman to Norman Lamb MP

Thank you for your letter of 4 July 2012 on the above proposals. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 18 June 2012, where the Committee decided to hold both documents under scrutiny.

We are grateful for the information you have provided to date and we look forward to receiving more details from you as negotiations progress. We are also particularly interested in the results of your Call for Evidence and how these will impact on your position in negotiations.

We do not expect a reply within the standard ten days.

17 July 2012

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

I refer to your letter of 17 July 2012 expressing an interest in the results of the Call for Evidence on the above proposal.

Please find a copy of the Summary of Responses to the call for evidence which will be published on 11 October on the BIS website:

<http://www.bis.gov.uk/Consultations/call-for-evidence-eu-proposals-posting-workers-enforcement-directive>.

The call for evidence document was published on the BIS website and was also shared with a number of stakeholders we considered to have an interest in the issue. In view of the specific proposals for joint and several liability within the construction sector, we held a roundtable with business organisations and trade unions from the construction sector. The results of that discussion are also included in the document. 16 responses were received to the call for evidence; this includes responses from business organisations, trade unions and legal groups. The construction sector was well represented within this.

11 October 2012

REGISTRATION OF CARRIERS OF RADIOACTIVE MATERIALS (13684/11, 14398/12)

Letter from Baroness Verma, Parliamentary Under Secretary of State, Department of Energy & Climate Change to the Chairman

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

In outline the proposal is for a Regulation requiring all carriers of radioactive material to register their intent to do so on a central Electronic System for Carrier Registration (ESCRReg). The proposed Regulation will apply to national and international road, rail and inland waterways transport only as the Commission recognises that different arrangements, for other reasons, already exist for air and sea transport modes.

The Government's view is that the Commission have yet to make a persuasive case to support their proposal and to date we do not consider that they have done so. The proposal if adopted would incur additional costs to both Industry and Government and would duplicate arrangements already existing in the UK. So far the proposal has only been considered at the EU Standing Working Group on the Transport of Radioactive Material (SWG). The SWG comprises national experts and its remit is to advise EU officials on matters related to the transport of radioactive material. Unfortunately we were not successful in our attempts to persuade the commission to withdraw the proposal at that stage.

The proposal has now been adopted by the Commission's Inter-service procedure and the Commission will formally present it at the Council's Atomic Question Group (AQG) on 10th October as 14398/12. As agreed with the Clerk to your Committee, I am writing to update you on the new version, rather than submitting a new EM on 14398/12 as there are no material changes to what the commission proposed last year. The majority of differences are simple editorial changes but there is an additional paragraph under article 3 which says "A registration shall not be required for carriers transporting exclusively excepted packages". This exception was included in the Justification and Objective section in the Explanatory Memorandum but was missing in the body of the text. This oversight has now been corrected.

As the proposal has so far only been considered at the SWG the main opportunity for negotiations by Member States has not yet started and we still have an opportunity to negotiate our case for withdrawal. Officials from DECC and ONR have been contemplating possible fall back positions involving existing registration processes, to minimise the overall impact in the UK, should we be unsuccessful in persuading the commission to withdraw.

Now that we know the content of the formal proposal we will prepare an Impact assessment for the Committee's consideration.

11 October 2012

RESEARCH AND INNOVATION: A STRATEGIC APPROACH (14000/12)

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

Thank you for your explanatory memorandum of 2 October on the above document. This was considered by EU Sub-Committee B on the Internal Market, Infrastructure and Employment at its meeting of 22 October 2012 and the Committee decided to clear it from scrutiny.

The Committee acknowledges the benefits of the Commission's proposed strategy for enhancing international and inter-EU cooperation in Research and Innovation (R&I). However like you, we consider that there are some aspects of the framework that need clarification before it can progress to legislation.

We note from the explanatory memorandum that the success of Joint Strategic Research and Innovation Agendas (SRIAs) is dependent on Member States' voluntarily engaging with the framework. The Committee wishes for guidance as to how the Commission will ensure a commitment to voluntary cooperation among all Member States and 'two-way' participation between the Commission and Member States. We see this as a particularly salient concern for the UK, given the strong relationships it already has with key players in the R&I field, such as the US.

Given this strong relationship, and that the success of the US in R&I is referred to in the Communication, we ask whether the Commission has considered including in the proposal a specific undertaking to consult directly with the US?

The Committee would also appreciate more information on how the Commission will balance its commitment to the protection of Intellectual Property rights, with the key aim of promoting the EU as an attractive location for carrying out research and innovation. This is a particularly significant issue, given that Intellectual Property rights are less of a concern in many of the emerging economies.

We would urge you to seek clarification from the Commission as to the concerns around funding, efficacy and the Commission's external credibility, that you have outlined in your explanatory memorandum.

The Committee would appreciate any further information on developments in this area and clarifications on the above questions in due course. We are aware that the proposal is due to be

discussed in further detail at the 10 -11 December Council and would ask you to update us on the outcome of this deliberation.

24 October 2012

RE-USE OF PUBLIC SECTOR INFORMATION (18555/11)

Letter from the Rt. Hon Lord McNally, Minister of State, Ministry of Justice, to the Chairman

I am writing to update you on the developments on this Proposal, including the Government's position and the discussion at the Transport, Telecommunications and Energy Council (TELECON) meeting of 7-8 June 2012.

The Government has agreed the position with the following conditions:

- The requirement for retained flexibility for charging levels is articulated clearly during negotiations. It is right that we think about the cost of data and retaining the flexibility to invest in and maintain high quality public sector information resources.
- An impact assessment is carried out setting out the costs and benefits of the Proposal.
- The concerns of cultural institutions being brought into scope of the Directive are taken into account and the negotiating position seeks to ensure that no further burdens are imposed on these bodies.

The UK is generally recognised by the Commission and others as being at the forefront of promoting the re-use of public sector information. In the UK we have already put in place many initiatives which support and encourage re-use, including:

- the UK Government Licensing Framework and Open Government Licence
- a statutory complaints process in the existing UK Regulations
- the Information Fair Trader Scheme regulatory framework
- an annual report on UK public sector information
- proactive release of datasets through data.gov.uk
- the existence of well-established charging policies for re-use.

The re-use agenda links closely with the Government's commitments on transparency and open data, including the Prime Minister's transparency commitments for health, education, criminal justice, transport and government financial information. In June 2012, the Cabinet Office published an Open Government White Paper which describes measures that will enhance access to public data, build trust in the use and re-use of public data, and allow smarter use of public data.

AUTOMATIC ASSUMPTION OF RE-USE

Under the Proposal most parts of the public sector would be required to make information that is generally accessible available for re-use. The UK supports this approach because it is consistent with the UK Government's existing and emerging policies on open data and transparency. The UK also supports the Commission's proposal that libraries, museums and archives should not be subject to the automatic assumption of re-use.

EXTENDING SCOPE OF PSI DIRECTIVE TO CERTAIN CULTURAL INSTITUTIONS

The Proposal, if adopted, would extend the scope of the PSI Directive to cover information held by libraries (including university libraries), museums and archives. The Proposal advocates a more flexible approach for these cultural institutions in terms of charging, transitional arrangements for existing exclusive agreements and no automatic assumption of re-use.

Cultural organisations have stressed the importance of ensuring sufficient flexibility both to enter into exclusive agreements and, where appropriate, for transitional arrangements for existing arrangements.

This is particularly relevant in relation to digitisation projects. This point is being reflected in emerging Presidency text.

The UK believes that flexible solutions for cultural institutions are necessary for the following reasons:

- Digitisation of cultural resources, often with public private partnerships, would be hampered without flexibility on charging and exclusive licensing, where the level of investment, particularly on digitisation projects, is often substantial.
- These organisations are not faced with additional administrative burdens.

CHARGING

The Commission's Proposal would limit the charges that can be made for the re-use of PSI to the marginal cost of reproduction and dissemination apart from in exceptional cases. Those exceptional cases would need to be justified by reference to objective, transparent and verifiable criteria and approved by an independent authority. The Proposal also exempts libraries, museums and archives from this limit. It is clear from the Proposal that the exceptional cases may include where a public sector body generates a substantial part of their operating costs from licensing data. This would cover UK trading funds such as Ordnance Survey and the Met Office.

The UK supports the general principle of marginal cost charging. However, it is important to maintain the existing flexibility that allows relevant public sector bodies, in particular trading funds, to decide charging levels for re-use and to charge up to full cost together with a reasonable return on investment where appropriate. This is essential to ensure that the UK Government is able to meet its objectives on transparency and supports those public bodies which rely on income from information to finance their ability to produce data.

REDRESS

The Proposal introduces the possibility of complaints to an independent authority with the power to make binding decisions. The UK supports the possibility of redress by means of an independent authority in principle. The UK established a statutory regulator in 2005 which has proved very successful and it is important that the regulatory solution remains effective, proportionate and low cost. For this reason, the UK proposes changes to the terms 'binding decisions' and 'independent authority'.

EUROPEAN COUNCIL: PROGRESS REPORT AND EXCHANGE OF VIEWS

At the TELECON meeting of 7-8 June 2012, the Danish Presidency presented and held an exchange of views on the progress report for this proposal. The progress report outlines the progress of discussion on the Proposal between Member States and the Presidency in the Council's Working Party on Telecommunications and the Information Society.

In general, Member States welcomed the Commission's Proposal and its aims although several have indicated that the amending Directive is still being considered internally and have placed scrutiny reservations on the text. Several Member States expressed reservations on the broadening of the Directive's scope to some cultural institutions and the potential administrative burden that inclusion would bring. An outcome on this matter may depend on the flexibility of the rules on charging, possibility of exclusive agreements for cultural institutions and size of the covered institutions. Some Member States supported the Commission's proposal that marginal cost should be the general rule for charging, with appropriate exceptions, although others had concerns that some public sector bodies would not be able to provide information if they could not sufficiently cover their costs. Many Member States believe the Proposal should be amended to clarify the limits and rules for charging above marginal costs. Discussions on other areas of the text have been productive and progress made on clarifying the documents available for re-use, available formats, redress procedure, licences and interoperability.

During the exchange of views, Member States were broadly positive towards the Proposal, but several expressed concerns about the cost of making data available at a time when public budgets were under pressure. The UK supported the Proposal and highlighted the economic benefits of making PSI available, whilst registering the need to take account of the implications for public bodies with different funding models, especially those that derive income from the sale and licensing of data.

The Commission responded that most of the information in question had already been paid for by the taxpayer; there were opportunities to build a market whose value could rise from the current EUR 32 billion to four times that amount.

NEXT STEPS

The Cypriot Presidency will continue negotiations on this Proposal and it is expected that the European Parliament will begin its consideration in the autumn. My officials are also preparing an impact assessment and I will send this to you in due course.

10 July 2012

Letter from the Chairman to the Rt. Hon Lord McNally

Thank you for your letter of 10 July 2012. It was considered by the Sub-Committee on the Internal Market, Energy and Transport at its meeting on 23 July 2012. The Committee decided to retain the document under scrutiny.

Your concerns to ensure flexibility in the application of the provisions to cultural institutions and on the charging mechanisms laid out in the proposal, as well as the desire to protect the UK's existing redress mechanisms, are sensible and have been supported previously. However, though you have noted that the emerging text is likely to show positive movement as regards the first of those, the position concerning the latter two are not clear from your letter. What is your assessment as to the likelihood of success in terms of charging and redress mechanisms in the emerging text?

You also reference an impact assessment. We would be grateful for a copy of that as soon as it has been produced.

Given the importance of clarifying the first two points and of considering the impact assessment to our deliberations, we wish to retain the document under scrutiny in the meantime.

We look forward to hearing from you within 10 days.

24 July 2012

Letter from the Rt. Hon Lord McNally to the Chairman

Thank you for your letter of 24 July 2012, which asked for an assessment as to the likelihood of success in terms of the charging and redress mechanisms in the emerging text. Member States have begun to engage with these issues and there is movement towards a text more in line with the UK's policy aims.

Although several Member States are strong advocates for the default marginal cost approach, increasingly more Member States are raising concerns at Council level about the proposed changes to charging. A number favour a flexible approach to charging in line with the UK's policy position. This means that there is little likelihood of the UK finding itself isolated on the charging issue.

With regard to the redress mechanism, several Member States, as well as the Commission, have expressed the preference for existing authorities to assume the redress role. This aligns with the UK position. The Proposal, however, introduces a requirement to provide the possibility of review by an independent authority with the power to make binding decisions. There is a need to continue to challenge the Council and Commission on the nature of decisions made as part of the redress mechanism and that these should not introduce enhancements to the regulatory role which are disproportionate in cost and administrative burden to the UK.

My officials are monitoring these issues and the UK is engaging positively with other Member States to strengthen our negotiating position. The National Archives and the UK Permanent Representation are also briefing relevant MEPs on the UK position.

The Impact Assessment work is scheduled to be completed in October. I shall ensure that you are sent a copy once completed.

4 September 2012

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

I am writing to provide an update on the above proposals further to the Explanatory Memorandum and Impact Checklists provided by Mike Penning on 27th July.

Working Group discussions on the package opened on 7th September. At the first three meetings delegates discussed the Commission's Impact Assessment and Articles 1 to 8 of the Periodic Roadworthiness Tests. Due to the contentious nature of some of the elements of the proposal and widespread concern of many Member States about the regulatory burdens imposed by the package, progress to date has been slow.

In paragraph 10 of the Explanatory Memorandum Mike highlighted a potential Justice and Home Affairs (JHA) issue relating to Article 19 of the proposed Regulation on roadworthiness testing. The proposal contains a requirement for a new offence for 'Odometer Tampering'. As written, it was legally ambiguous whether this was intended to be a criminal or civil offence, and Mike undertook to notify your Committee once clarification had been received from the Commission.

Officials sought an early meeting with the Commission to discuss this issue. The Commission were very clear that there was no intention to create a criminal offence and that it would be at the discretion of the Member State to decide whether they wish to make the offence a civil or criminal offence. The UK asked for formal confirmation of this during the Working Group meeting on 28 September, and the Commission again stressed that they had no intention of mandating that odometer fraud becomes a criminal offence in Member States. The Commission agreed that this should be reflected in all language versions of the proposal and the required changes will be made.

I will of course keep your Committee informed as this package continues to develop during further negotiations.

4 October 2012

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

Thank you for your explanatory memorandum of 27 July 2012, and your subsequent letter of 4 October 2012. They were considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 15 October 2012.

In principle, we welcome the EU's strong commitment to road safety, and its clear signal that lax standards will not be tolerated, is vital; we believe that this proposal sets out to respect those aims. Your case as outlined is cool to the measures proposed, based mostly on possible cost implications. However, we do not believe that your memorandum has set out the case in sufficient detail on the cost-benefit case of the changes.

For example, you query the inclusion of trailer testing in the proposal based on cost grounds; we, on the other hand, have supported greater testing for towed vehicles in the past, as the consequences of an unsafe trailer can be just as grave as would be the case for the vehicle towing it. We accept, though, that this is an area of strong feeling, particularly after hearing support for your case from the Northern Ireland Assembly's Environment Committee, so we would appreciate more detail on the expected safety benefits in the UK. We include correspondence with the Chairperson of that Committee for your reference.

It also emerges from the proposal that the baseline for testing would be a 4:2:1 system. What is your view as to the case for utilising the opportunity to switch to such a system without a negative impact on road safety following improvements in vehicle standards over recent years. We would also be grateful for your view as to the appropriateness of the Commission's target for this agenda to halve road deaths by 2020, given that such deaths are not caused solely by unroadworthy cars.

On a particular policy point, you raise concerns with the possible cost implications of a European database for vehicle inspection data. We have consistently supported the creation of interoperable databases, as they facilitate data-sharing and the fostering of a truly effective Single Market. We would therefore be grateful for a more detailed case, extending beyond cost alone, for your apparent opposition in this case. In the meantime, we support the idea in principle.

We would, though, note that we agree that any strengthening should be done as flexibly as possible; we therefore support your desire to see changes achieved through the use of directives rather than regulations. Where UK safety standards are already suitable to ensure the high standards called for in the proposal, any proposal should be able to accommodate them. We support efforts to make this case to the Commission in negotiations, rather than through our issuing of a Reasoned Opinion to this end, and are glad to be joined in that support by the Assembly's Environment Committee. Were directives to be used instead, would you be supportive of the amended rules, or would you retain your present stance?

Finally, we note that the proposal sets out a number of powers to be delegated to the Commission. These appear sensible at first sight, granting the Commission the ability to keep legislation up to date with type-approval developments, but we are conscious that the Northern Ireland Assembly's Environment Committee has raised concerns regarding the ability of UK authorities to grant exemptions to testing. We would appreciate hearing your views on the appropriateness of the delegations.

As you are at present scrutinising the EU's cost calculations and carrying out a stakeholder consultation, we would be content to wait beyond our usual 10 day deadline for a response which took that work into account.

17 October 2012

SATELLITE NAVIGATION: EU-NORWAY COOPERATION AGREEMENT (6618/11)

Letter from David Willetts MP, Minister for Universities and Science, Department for Business, Innovation and Skills, to the Chairman

The EU has now concluded a Cooperation Agreement with Norway to facilitate Norwegian hosting of two important ground stations for the Galileo Programme.

Responsibility for EU Satellite Navigation Programmes transferred from the Department for Transport to the UK Space Agency after it came into being in April 2011. As such, I am now the Minister responsible for the EU-Norway Cooperation Agreement on Satellite Navigation and would like to take this opportunity to update you on progress made.

You considered two Explanatory Memoranda on this Cooperation Agreement from the Department for Transport. 13066/09 about the Council Decision on Signing was submitted on 19 October 2009, and you cleared it on 27 October 2009. 6618/11 on the draft Council Legislative Proposal on Conclusion was submitted 9 March 2011, and you cleared it on 21 March.

Since then, Norway completed procedures on 6 April 2011, initiating provisional application according to Article 12 (4) of the Cooperation Agreement.

A final legislative proposal (11114/2011) "Council Decision on the conclusion of the Cooperation Agreement on Satellite Navigation between the European Union and its Member States and the Kingdom of Norway" was tabled for the European Parliament on 28 September 2011, and adopted at first reading on 26 October 2011.

The final legislative proposal contained no substantive changes to the draft which you saw alongside explanatory memorandum 6618/11.

Member States, including the UK, are now required to ratify the Cooperation Agreement for it to enter into full force. Therefore, I am laying the text of the Agreement, together with an Explanatory Memorandum and Command Paper, before parliament for scrutiny purposes.

Similar cooperation agreements are currently being negotiated with Switzerland, Brazil and Chile, and I will endeavour to keep you informed on progress with these agreements as negotiations continue.

12 September 2012

SHARED USE OF RADIO SPECTRUM RESOURCES IN THE INTERNAL MARKET
(13377/12, COM (2012) 478)

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

Thank you for your explanatory memorandum of 20 September, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment on 15 October 2012. They decided to clear the documents from scrutiny.

We note that, in general, you welcome the Commission's Communication concerning the shared use of radio spectrum resources within the internal market. We further note your call for clarification on specific aspects of the direction proposed in the Communication.

We would also seek clarity on liability in the instance where the "acceptable interference level" was set at a level requiring the original user to change their use of the band. Likewise, the Committee echo your concern to receive confirmation that where existing users are subject to spectrum pricing, or need to employ improved technologies to enable sharing, liability for compensation would lie with the additional user.

Given the possibly significant regulatory impact of the proposals, we also wish to confirm whether Ofcom has been allocated a role in assessing them?

The Committee would appreciate any further information on developments in this area, and clarifications on the above questions in due course and ahead of any firm legislative proposals arising from the Commission's Communication.

17 October 2012

SINGLE EUROPEAN RAILWAY AREA (13789/10)

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

I refer to Lord Roper's letter of 24 November 2011 confirming that the Committee were content to close correspondence pending any further updates and any Impact Assessments that may be produced. I now attach the Department's Impact Assessment on this proposal, which is based on the General Approach text agreed by the Council in summer 2011.

I would also like to take the opportunity to update your Committee on recent developments. Since January 2012 the Danish Presidency has held a number of working groups and informal trilogue meetings with EP rapporteurs in an attempt to achieve a compromise with a view to reaching a second reading deal. The Presidency recently put forward a proposed compromise text which is acceptable to the EP rapporteur.

The Presidency will now formally write to the Parliament asking them to accept the text, and if so, the Council would then also be asked to adopt the text in the form proposed.

The compromise text addresses all of our concerns and red line issues. It is aligned with the UK's rail industry structure and funding models and will preserve the UK Government's opportunities to rationalise operations and align incentives to reduce the costs of running the railway and improve rail value for money.

Compromises were reached on the following key issues:

ARTICLE 6 – SEPARATION OF ACCOUNTS

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

The compromise text now refers to monitoring of accounts rather than prohibition of additional activities.

ARTICLE 7 – INDEPENDENCE OF ESSENTIAL FUNCTIONS OF THE INFRASTRUCTURE MANAGER

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

The EP also proposed additional text which would have obliged the Commission to publish proposals for mandatory separation of infrastructure management from transport operations as well as proposals for domestic rail passenger market opening by 31 December 2012.

This amendment also pre-judged the case for the separation of infrastructure management and transport operations which has not yet been made in the EU's own studies.

The compromise text retains the Council position which details what are the essential functions for determining equitable and non-discriminatory access to infrastructure:

- (a) decision making on train path allocation, including both the definition and the assessment of availability and the allocation of individual train paths; and
- (b) decision making on infrastructure charging, including determination and collection of the charges, without prejudice to Article 29(1).

The compromise now requires the Commission to prepare a report by 31 December 2012 assessing the development of the market, including the state of preparation for further opening-up of the rail market. It also requires the Commission, if appropriate, to propose legislative measures in relation to the opening of the domestic rail passenger market.

ARTICLE 31.5 – NOISE RELATED TRACK ACCESS CHARGES

EP amendments would have made noise related track access charges mandatory.

The compromise makes charging optional rather than obligatory. We believe it would have been inequitable to treat road and rail differently in respect of environmental costs and to charge rail for noise effects if any environmental costs (regardless of their level or origin) are charged to road. Changes to the cost differentials between road and rail which impose additional costs on rail would result in modal shift and damage the competitiveness of the mode still further.

ARTICLE 32 – EUROPEAN TRAIN CONTROL SYSTEM (ETCS) TRACK ACCESS CHARGE DIFFERENTIATION

EP amendment would have made ETCS charging mandatory.

The compromise text still makes ETCS charging mandatory but links this to European Rail Traffic Management System (ERTMS) corridors which does not affect the UK in the short term because it is not on one of the ETCS corridors designated by EU legislation. We also reluctantly supported the concept that differentiation should not cause an overall change in revenue to infrastructure managers because it is not clear how any reductions in infrastructure manager's revenue should be balanced.

ARTICLE 55 – ROLE OF THE REGULATORY BODY

EP amendments proposed new conditions relating to the appointment of staff of regulatory bodies. This related to the cooling off period for an individual after their term in the regulatory body for a period of not less than one year.

The UK already has strict and transparent public appointment rules and has never had any suggestion of any appointment irregularities or conflicts of interest in respect of the appointment of senior staff to regulatory bodies. The compromise text still contains reference to the cooling off period of not less than one year; we reluctantly agreed solely for the purposes of reaching a compromise.

12 July 2012

SOCIAL CHANGE AND INNOVATION PROGRAMME (15451/11)

[FORMERLY SCRUTINISED BY SUB-COMMITTEE G]

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

I am writing to update you on the further progress with this proposal since my letter of 6 March to your predecessor, Lord Roper.

The final working group negotiations took place on 22 May, with the UK and fellow budget disciplinarians securing a cap on administrative spending of 2% (Article 5(3)), which carries forward the current PROGRESS limit.

This means that all bar one of the Government's priorities, set out in my earlier Explanatory Memorandum and letter, have now been secured. In summary, we have: removed the proposed contingency fund; capped administrative spending; improved the level of member state input to management and strategic direction of the programme; retained co-financing requirements; and secured greater flexibility in the support for public employment services (EURES).

The significant outstanding issue is the overall programme budget figure, which will only be taken forward once the separate negotiations on the next Financial Perspective are settled.

The Danish Presidency now intends to seek agreement on a partial general approach – on all bar the budget – at the 21 June Employment and Social Policy Council.

That will leave the budget figure (Article 5(3)) and linked areas of audit (Article 12), treatment of future revenues and repayments (Articles 11(3) and 25(3)), and repayments under the current Microfinance Facility (Article 28). These will be settled in subsequent negotiations, and I will write again as these get underway.

I regret that we do not yet have a revised formal text to submit to you but, as time is short after recess and we wish to lock-in the gains already made, I hope that you will agree to proceed on the basis of the latest working text which my officials have sent to yours. And, of course, on the understanding that we will not support the final text at Council should it not carry forward these gains.

Subject to securing scrutiny clearance, I am very keen to support agreement at Council. This will help a reliable ally to deliver one of the very few legislative objectives of their Presidency of the Employment and Social Policy Council. And it will be useful to signal strong support for the Council position, in anticipation of serious challenge from the European Parliament as co-legislator on this proposal.

The European Parliament is currently considering the Commission's original proposal, with their Employment Committee due to vote on proposed amendments – also on 21 June. We are already engaging with key MEPs, and I will report further once firm proposals are brought forward.

30 May 2012

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

Thank you for your letter of 30 May 2012 on the above proposal. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 11 June 2012. The Committee decided to clear the document from scrutiny.

We are very pleased with the amendments you have secured on this proposal and would like to thank you for your efforts to keep the Committee informed on negotiations in the Council to date. We would ask that you continue to keep us updated on the progress of discussions with the European Parliament and on the budget, an issue which we consider to be of particular importance.

12 June 2012

SOCIAL SECURITY SYSTEMS (8552/12, 8553/12, 8554/12, 8555/12, 8556/12)

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

Thank you for your explanatory memoranda of 24 April, regarding the above proposals, which were considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meetings on 21 May. They decided to clear these documents from scrutiny.

We note the Government's intention not to opt in to the proposed Council Decisions regarding Montenegro, San Marino and Albania, which are all subject to Protocol 21 of the Treaties.

As per the proposed Council Decisions on the EU social security agreements with the EEA and Switzerland (Document Numbers 7591/11 and 16231/11, respectively) we also note your concerns about the legal base that has been selected for the proposed Council Decision regarding Turkey (Document 8556/12). We would be grateful if you could provide us with further updates about how successful you are in substituting your preferred legal base into this measure during the negotiations in due course.

22 May 2012

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

Thank you for your letter of 22 May, in which you informed that the European Union Select Committee had cleared the above documents from scrutiny.

I am now in a position to inform you that the Government is in agreement with my recommended approach not to opt in to any of the four proposals. The European Affairs Committee noted the importance of demonstrating UK opposition to extending social security rights to third country nationals and in relation to the draft proposal on Turkey, the Committee supported the considered approach to ensuring the UK's position in relation to the Title V opt-in is protected by the position adopted on this proposal.

You referred in your letter to the ongoing legal challenge in the Court of Justice of the European Union on the correct legal base in the EEA and Switzerland cases. The Court's ruling is now expected towards the end of 2013.

The EU Presidency has confirmed that the Turkey proposal cannot be presented to the Association Council for implementation before the ruling over the use of Article 48 TFEU as the legal base in the EEA and Switzerland cases is handed down; however it is still aiming for political agreement on the draft Council Decisions at the October Employment and Social Affairs Council. The Government will therefore continue to press for the imposition of the correct Title V legal base in the Turkey proposal and to work with other the Member States who have expressed reservations over both the legal base and content of the proposal.

I am also informing you, in line with the Government's scrutiny commitments on the opt-in, that I shall be tabling a Written Ministerial Statement before Parliament on this subject. I shall keep you informed of further developments on the challenge.

1 August 2012

STRATEGY FOR E-PROCUREMENT (9299/12)

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

Thank you for your explanatory memorandum of 19 June 2012, which was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 9 July 2012. The Committee decided to clear the document from scrutiny.

As you are already aware, we have considered the crux of this issue – the timetable for the transition to a mandatory system of e-procurement – during the course of discussions on the procurement package itself. Nevertheless, we would like to state again our support for a more refined approach than the Commission proposes at present; indeed, the approach outlined in this memorandum – a progressive roll-out with evaluation throughout - seems to be an appropriate way forward. We urge

you to press the case for this strongly during negotiations, given the importance of ensuring that the system benefits SMEs as well as larger companies.

Otherwise, we think the Communication and your memorandum are useful indications of the way forward and of the measures taken as present, but note that it has no legislative impact. We are therefore content to take scrutiny forward on the procurement package itself and to clear this document from scrutiny.

We do not expect a reply to this letter within the usual 10 days.

11 July 2012

SULPHUR CONTENT OF MARINE FUELS (I2806/11, I3016/11)

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

I am writing to provide you with a copy of the Impact Assessment Checklist which the Government has produced for this EU proposal, and to inform you about the progress we have made in negotiations on the draft Directive.

The Committee may recall that our position is to support the new stricter sulphur content and equivalent sulphur oxide emission standards that are contained in the revised Annex VI of the MARPOL Convention. We also support those measures in the draft Directive which are aligned to the new international standard, but, unless there are significant benefits to industry or significant additional benefits to the environment and public health, we oppose any European measures which deviate from Annex VI. In my Explanatory Memorandum of 19 August 2011 and my previous letter of 23 November, I indicated that the Government would take a firm stance in negotiations in order to meet this objective.

PROGRESS IN THE EUROPEAN PARLIAMENT AND COUNCIL WORKING GROUP:

In February 2012, as part of the European Parliament's First Reading process, its Committee on the Environment, Public Health and Food Safety (ENVI) adopted a draft position which included 56 amendments to the Commission proposal. Ahead of this, the UK and several like-minded Member States delivered a coordinated brief for MEPs. This paper advocated minimising the burden on business and pressed for amendments that would align the proposal with MARPOL Annex VI. In the event however, the ENVI Committee decided that the proposal lacked environmental ambition. With a few exceptions, the direction of the agreed amendments was to impose stricter limits in EU Member States' waters outside the two emission control areas (ECAs), increase levels of enforcement and oblige Member States to provide state aid for shipowners to help them meet the higher standards.

The main amendments in the ENVI Committee report were to:

- Implement the 0.5% IMO global sulphur limit in all European waters by 2015. The IMO timescale is 2020 or 2025 (depending on the outcome of the fuel availability review).
- Extend the 0.1% sulphur limit that applies to ECAs in 2015, to non-ECA waters by 2020.
- Accelerate the Commission's proposal to implement a 0.1% sulphur limit for passenger vessels outside the ECAs, from 2020 to 2015.
- Oblige Member States to ensure compliant fuel is available and to provide financial assistance to ship-owners to help pay for abatement technology.
- Determine the charging regime that port authorities can use for receiving and disposing of waste from exhaust gas cleaning systems.

The proposal will now be considered by the European Parliament in Plenary.

The European Parliament's Plenary First Reading of the proposal is scheduled for September.

When Denmark took over the Presidency at the start of the year the pace of Council negotiations increased significantly. At the official-level working group meetings, it soon became clear that the

Member States were divided over the Commission's proposal, with around half of them supporting the UK's position of not wanting to go beyond Annex VI and the others who, in varying degrees, were sympathetic to the European Parliament ENVI Committee's amendments and wanted to include additional requirements.

The Presidency took the view that it would be easier to seek a draft 1st Reading Agreement with representatives of the European Parliament at this stage, than to seek a General Approach with Member States and try to achieve a second reading deal after the European Parliament's First Reading Plenary debate in September. Initially, we had our doubts about whether securing a draft 1st Reading Agreement was likely, given the significant gulf between the position that the Presidency took during these discussions - which strongly favoured the viewpoint of the UK and our alliance of like-minded Member States - and the ENVI Committee's position. However, following their discussions with MEPs, the Danish Presidency were able to put together a compromise which I consider would be a good outcome for the UK, and is likely to be acceptable to other Member States and the European Parliament.

PROPOSED COMPROMISE WITH THE EUROPEAN PARLIAMENT:

The main elements of the compromise are as follows:

Empowering the Commission with delegated acts: The proposed compromise severely curtails the Commission's use of delegated acts and in several instances replaces a delegated act with an implementing act.

We were concerned that granting the Commission powers to use delegated acts would limit the influence of Member States and might create internal rules which could then generate exclusive external competence for the EU. Generally, the Government prefers the use of implementing acts through the involvement of a committee within the terms of the Comitology Regulation. While an implementing act also has the potential to generate exclusive external competence, it does at least enable Member States the opportunity to scrutinise and make decisions about new proposals. Most Member States shared our concerns about this issue and the European Parliament representatives have also accepted the revisions as part of the overall compromise.

Fuel availability provision: The fuel availability provision under the revised Annex VI of MARPOL has been incorporated into the proposed compromise text for the new Directive. This was one of the Government's key objectives, as it allows a competent authority discretion about the measures (or absence of measures) taken against a ship which has not been able to get compliant fuel. This discretion would only apply where the ship can demonstrate that it made its best efforts to obtain compliant fuel oil (short of deviating from its voyage), and that no such fuel was available for purchase.

Passenger vessel provision: The proposed compromise would retain the existing 1.5% limit for passenger vessel operations outside the ECA (which was implemented under EU Directive 2005/33/EC), but would not impose the stricter 0.1% limit in 2020 for these vessels contained in the Commission's proposal. This is a notable success, because the ENVI Committee's proposed amendment sought to go further than the Commission's proposal and impose a 0.1% limit on passenger vessels outside the ECA from 2015.

Implementation of the 0.5% global limit: The 0.5% global sulphur limit will be implemented in European waters by 2020, without reference to the IMO's review on fuel availability. This represents a small deviation from the revised Annex VI, where the timescale for implementing this limit is 2020 or 2025 (depending on the outcome of the IMO's fuel availability review). The ENVI Committee's proposed amendment – supported in part by some Member States - was to implement the 0.5% in 2015, and the 0.1% limit for all waters across Europe by 2020. We would have preferred to keep the link to the IMO review, but can accept this compromise as part of the overall deal.

Compliance, sampling of fuel and reporting regime: In my letter of 23 November, I explained our concerns about empowering the Commission with delegated acts on these issues and the subsequent risk of being subject to a European sampling and enforcement regime which differs from the regime being developed at the IMO. The Commission did not provide any further evidence that would justify the need to use delegated acts for either of these two elements. We are however, satisfied with the proposed compromise which would use the comitology procedure under an implementing act to allow Member States more control over the sampling and reporting regime.

Additional European trials of abatement technology: The Commission has provided Member States with some reassurance on this point. It has confirmed that any new trials of abatement technologies which it conducts would not duplicate any previous trials, and furthermore, the trials would not apply

to systems which are covered under the existing IMO guidelines. I also acknowledge the point made in your letter of 7 December 2011 that a centralised role by the Committee on Safe Seas and the Prevention of Pollution from Ships (COSS) could reduce the administrative burden and support consistent interpretation. As a consequence, we have decided to support the Commission's proposal to use COSS to supervise future trials of abatement technology, where these prove necessary.

Ban the use and marketing of fuels with a sulphur content over 3.5%: The Commission's proposal to ban the use and placing on the market of marine fuel which has a sulphur content exceeding 3.5% has been revised, but not entirely removed from the text. The compromise now permits the marketing of this fuel and its use on vessels which have an exhaust gas cleaning system which operates in a closed-loop mode. The purchase and running cost of an open-loop system is normally less than for a closed-loop or hybrid system, so although they would not be able to use very high sulphur fuel, the restriction is unlikely to affect sales of open-loop systems.

Other issues: We are pleased that amendments from the ENVI Committee, concerning the mandatory provision of state aid by Member States and a change to the charging regime for handling waste from exhaust gas cleaning systems, have not been included in the proposed compromise. The amendment by the ENVI Committee that would oblige Member States to ensure compliant fuel was available has been revised to read "Member States should endeavour to ensure the availability of marine fuels which comply with this Directive". There is also a further amendment that would oblige the European Commission to produce a report by 31 December 2013 (and, if appropriate, accompany it with a legislative proposal) which considers the potential for reducing air pollution. The Commission have indicated their intention to do this as part of their ongoing programme to review the EU Thematic Strategy on Air Pollution.

My Explanatory Memorandum expressed concern that the original proposal specified a transposition period of 12 months. We considered that 18 months would be a more realistic transposition period, and I am pleased to say that the compromise would allow

Member States to have 18 months to transpose the Directive into domestic legislation.

IMPACT ASSESSMENT:

Our impact assessment checklist is attached, but at this stage we can only refer to the costs and benefits of this proposal in broad terms.

The main impact of these proposals would be on the public, the shipping industry, petroleum refineries, port authorities, bunker suppliers and abatement equipment suppliers. The main beneficiaries would be the UK public in gaining a long-term improvement in health, through a reduction in sulphur emissions and the associated particulate matter (PM). There would also be significant benefits to the environment in terms of reduced acidification (acid rain) on the oceans, crops and forestry. We expect that abatement equipment suppliers would also benefit from the regulation, as the demand for their products increases. Conversely, any delay in implementation or uncertainty would be costly for these suppliers.

The main cost would fall on the owners of ships operating predominantly or exclusively in the North European ECAs. They will be faced with the choice of purchasing compliant fuel oil which tends to be more expensive than heavy fuel oil, or incurring significant capital expenditure by installing emission abatement technology (commonly known as 'scrubbers'). Few of these shipowners are UK companies, but most have UK assets, employ some UK staff and provide other wider benefits to local economies in the UK.

The operators of ferries in the North European ECAs are particularly concerned about the cost of 0.1% sulphur fuel and whether effective and reliable scrubbers will be available in time as a viable alternative. The Department is working with the different industry sectors to establish the precise position on these issues, taking account of the scientific and technical evidence. We are also considering how any unintended impacts could be mitigated. For example in the first instance, we might ask the IMO to consider a time-limited exemption for vessels on the most affected routes. This would not, however, affect the outcome of the compromise agreement for the new draft Directive.

The Commission's proposal would have also had costs for the Maritime and Coastguard Agency (MCA), if there was a subsequent requirement to routinely sample and test fuel onboard the vessel itself. However, this risk could be managed if, as currently proposed in the draft compromise, the sampling regime in the new Directive is agreed using an implementing act rather than delegating this power to the Commission.

The ban on the use and marketing of fuel with more than 3.5% sulphur and an earlier implementation of the 0.5% global limit might have implications for UK petroleum refineries and fuel suppliers. Despite the high price of oil, UK refineries have not profited from the market conditions, although we would expect that most of the additional costs would be passed on to their customers. As mentioned above, the compromise text would permit the marketing and use of fuels with a sulphur content over 3.5% for vessels that have a closed-loop exhaust gas cleaning system.

The impact on ports will vary, depending on the routes and services that operate from each facility.

REPORT BY THE TRANSPORT COMMITTEE

Your Committee may like to be aware that on 9 March 2012, the House of Commons Transport Committee published a report about its inquiry on sulphur emissions by ships. The report endorsed the Government's support for the more stringent regulation of sulphur emissions contained within the revised Annex VI of the MARPOL Convention, but also supported the Government's efforts to resist any additional requirements that might be imposed under the new EU Directive. The report also made a number of recommendations, and the Government has submitted a formal response which has been published on the Committee's website.

CONCLUSION

I consider the proposed compromise is a good outcome for the UK, and is likely to be acceptable to most other Member States and the European Parliament. Unless there is significant opposition, we expect this agreement will be formally adopted before the end of the year as a new Directive, to be transposed 18 months later in 2014.

I hope that this information on progress is helpful, and will, of course, keep you informed of any further developments on this proposal.

12 July 2012

Letter from the Chairman to Mike Penning MP

Thank you for your letter of 12 July 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 23 July 2012. The Committee decided to clear the document from scrutiny.

We thank you for your considered response. After a long period without an update, we are grateful for such a comprehensive update on negotiations, not least because the content is so welcome. The compromise text negotiated by the Danish Presidency represents, in the light of the particularly ambitious approach of the ENVI Committee in the European Parliament, a pragmatic solution which properly takes account of the position of both sides. The inclusion of the MARPOL provision to allow the Maritime and Coastguard Agency to take account of best efforts to procure compliant fuel is particularly welcome in this respect, allowing as it does for a proportionate approach to compliance.

Looking at other areas of the text, it is welcome you have secured a stronger role for Member States through implementing legislation, and that you have recognised that COSS is indeed an appropriate avenue for channelling concerns. However, it is important to be careful about powers delegated to the Commission, so we are glad to see your vigilance and urge you to maintain this stance throughout.

Overall, we consider the compromise text to be a negotiating success and a fitting end to a successful Danish Presidency. Given this, and given your engagement with the Committee on this dossier, we are content to clear it from scrutiny ahead of the summer recess.

24 July 2012

SUSTAINABLE COMPETITIVENESS OF THE CONSTRUCTION SECTOR (13186/12)

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

Thank you for your very helpful explanatory memorandum of 18 September 2012. It was considered by Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 22 October.

Given the importance of the construction industry to our economy and the current macroeconomic difficulties facing the sector, we broadly welcome the Commission's initiative in proposing a strategy for the sustainable competitiveness of the construction sector and its enterprises.

We welcome in particular the Commission's proposal to identify and remove excessive administrative burdens in a series of legislation "fitness checks", and to involve the construction sector in taking this agenda forward. However, we also agree with the concerns highlighted in the explanatory memorandum, such the risk that extra requirements and standards could increase costs for UK businesses, and an attempt to extend Commission competence to include planning and buildings construction standards. We would be grateful for clarification on whether the UK's current licensed sector skills councils have been consulted on the proposed establishment of an EU Sector Skills Council for construction.

As this Communication is not a legislative document, we are clearing it from scrutiny. We look forward to examining any future legislative proposals that may arise.

23 October 2012

THIRD COUNTRY PROCUREMENT (8257/12)

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

Thank you for your explanatory memorandum of 23 April 2012. It was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 28 May 2012. The Committee decided to retain the document under scrutiny.

Like you, we disagree both in principle and practice to the measure proposed. In principle, it appears to be a misguided means of seeking leverage, which could exacerbate problems of market access rather than ease them. It would also act contrary to the free trade aims of the European Union. We also note that the proposal divided stakeholders and did not even receive a firm endorsement from those in the Commission reviewing its impact assessment. In practice, many of its provisions – including those related to the actual application of the market closure mechanism – would need to be fleshed out substantially in further negotiations.

As a result, we support your wish to establish a blocking minority to stop this proposal, and hope that your position bears fruit. How likely do you consider such a prospect to be? Regardless, we are of the view that the mischief identified – closed markets in third countries – is an issue that does need to be addressed and quickly. We would appreciate more detailed information on alternative approaches that can be pursued if this proposal was not to be advanced, both in the bilateral negotiating context and more generally.

Given the significance of the proposal, we wish to retain it under scrutiny in order to keep a keen eye on future developments. We would be grateful for any updates you make to your impact assessment in due course. We look forward to hearing from you on the other matters within the usual 10 day deadline.

29 May 2012

Letter from Norman Lamb MP to the Chairman

Thank you for your letter of 29 May 2012. I note that your scrutiny committee has considered the explanatory memorandum and has decided to retain this under scrutiny. I can confirm that a supplementary Explanatory Memorandum with an Impact Assessment was submitted to your Committee on 22 May 2012.

I welcome your support for the Government's position on the Commission's proposed regulation. I can report that my officials, working jointly with officials from the Cabinet Office, have established a comfortable blocking minority among Member States and that this is holding firm. Initial indications from the Cypriot Government are that they do not intend to prioritise this regulation under their presidency.

You asked for more information on alternative approaches that can be pursued to achieve access for EU businesses in third-country markets, if this proposal is not to be advanced. As you note, the Commission's own Impact Assessment Board (IAB) has twice concluded that the case for action had not been made. We agree with that conclusion. Our own analysis shows the amount of direct cross-border procurement within the EU is only 1.6% of the total number of awards. This means that nearly all awards are won by tenderers bidding from within a Member State. However, there is an imbalance in the sense that the EU market is open to potential suppliers from some third countries who do not offer reciprocal access to EU suppliers.

The Government believes that the best approach to address the imbalance in access to markets is to negotiate hard with third countries through international agreements such as the WTO Government Procurement Agreement or bilateral EU Free Trade agreements. But we are willing to consider a non-legislative approach, in the form of additional guidance and more use of existing tools such as dispute settlement mechanisms under the GPAs and FTAs, as an acceptable fall back.

You may be aware that the House of Commons European Scrutiny Committee has raised similar issues and I am responding to the Chair of that Committee in similar terms.

17 June 2012

TOWARDS A JOB-RICH RECOVERY (9309/12)

Letter from the Chairman to the Rt. Hon Chris Grayling MP, Minister of State for Employment, Department for Works and Pensions

Thank you for your explanatory memorandum of 21 May 2012 on the above document. This was considered by the Sub-Committee on the Internal Market, Infrastructure and Employment at its meeting on 25 June 2012. The Committee has decided to clear this information from scrutiny.

We are grateful for the helpful information you have provided on the Commission's policy proposals and the Government position on these. We note that a number of the proposals could have significant political implications, particularly those mentioned in the context of moving towards a European labour market. We are interested to see how these proposals develop.

In the mean time, we are content to clear this document from scrutiny. No response to this letter is expected.

28 June 2012

TYPE-APPROVAL OF TWO AND THREE-WHEELED VEHICLES AND QUADRICYCLES (14622/10)

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

I am writing to update your Committee on the subject of the approval and market surveillance of two- and three-wheeled vehicles and quadricycles which was considered and cleared by the sub-committee on the Internal market, Energy and Transport on the 21 November 2011.

Since I last wrote to you progress has been made on the Council Working Groups and the EU Parliament's IMCO committee have delivered their report on the proposal. The Danish Presidency has had two trialogue meetings with representatives of the European Parliament, and it looks likely that a compromise position is near.

There has been strong support from Member States for the UK view that anti-lock braking (ABS) should be mandatory only on larger capacity bikes. On lower priced entry level bikes, combined braking (CBS) will be permitted as a cost effective alternative to ABS. IMCO are no longer demanding

ABS on smaller bikes provided the Commission carries out a feasibility study and returns with proposals in the future if appropriate.

There is no evidence to support anti-tampering measures on higher capacity bikes and we have successfully limited anti-tampering measures to vehicles subject to power restrictions, such as motorcycles for learner and novice riders.

Individual approvals have now been removed from the scope of the regulation allowing the UK to continue with its own, successful, scheme. The limits for vehicles approved in small series have also been increased and we believe this will meet the needs of manufacturers using this approval route.

We have been successful in our efforts to minimise durability test cost and duration. Vehicle manufacturers remain concerned however and we will continue to seek measures to reduce test burdens in separate discussions on the relevant delegated act. The Commission have also taken on board our calls to align test procedures for evaporative emissions with those already used in the US which will minimise burdens by enabling manufacturers to conduct a single test to demonstrate compliance with both EU and US requirements.

There is strong support from other Member States and IMCO for both the first and second stage of on-board diagnostics despite our concern about the feasibility of the second stage however IMCO have dropped their proposal to bring the implementation dates forward.

I remain concerned that, despite our assessment of the poor cost-benefit case for the third stage emission limits and the complete lack of exceedences of EU air quality objectives on CO, there has been no support from other Member States to delete them.

The Commission must carry out a study of the latest scientific data before the introduction of this stage but are under no obligation to revise the requirements in the light of this report and we think it is unlikely they will do so.

In your previous letter of the 24 November you supported my concerns on delegated powers and as you suggested the UK has taken a strong stance on this issue. Limited progress has been made to restrict the powers delegated to the Commission. The scope is now clearly defined in the Regulation and the Council and European Parliament retain powers to object or revoke. Furthermore, despite strong resistance from the Commission, the Delegation will be limited to 5 years and there is no tacit agreement to extend this. This sends the Commission a clear message that working in a cooperative way with Member States is necessary.

Despite this progress I remain concerned at the extent of powers being given to the Commission to introduce technical requirements and measures, as they feel appropriate. Given the lack of progress on the 3rd emission stage and the extent of the delegation of powers to the Commission I am not currently minded to support the adoption of this dossier. However I will review this position if, in the limited time remaining, my officials can secure a concession to refer the 3rd emission stage back to Member States for final agreement following the Commission's Environmental report.

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

11 July 2012

WORKERS ON BOARD SEAGOING FISHING VESSELS (11960/11)

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

I am writing in response to Lord Roper's letter of 6 October 2011 regarding consideration of the above Explanatory Memorandum by your Social Policies and Consumer Protection Sub-Committee. I am sorry that it has taken so long to reply. There are a number of factors which will influence our decisions in this area, and I was hoping that we would be able to give you a settled way forward before I wrote again. However as that is not yet possible, I am writing now to answer the Committee's specific question, which was to clarify the Government's position as regards the application of working time rules to fishermen.

As I set out in the EM, our starting point is that the self employed are outside the competence of the EU and as share fishermen are self-employed in the UK, they are outside the scope of the Directive.

Of course it cannot be ignored, as the Sub-Committee notes, that fishing is a dangerous business. Accident levels in the UK remain at an unacceptably high level and, as highlighted by MAIB, fatigue is a considerable contributory cause. However, we recognise that there are practical difficulties with application and enforcement of a land based working time model in an industry dependent on weather, tide, season and the behaviour of fish species. Rigid application of a 9-5 approach would clearly make it impossible for the sector to function effectively.

In view of this we believe that it would be most appropriate for any action by the UK to be taken at the domestic level, and we are considering how and when to take this forward.

I will keep you informed of developments.

30 July 2012