



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 December 2008 to April 2009.

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

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AVIATION: AIRPORT CHARGES (5887/07)

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

Further to my letters of 20 February 2008 and 10 December 2007¹, I am writing to update you about the draft Airport Charges Directive, which has now had its 2nd reading in the European Parliament.

Since my letter of 20 February, a political agreement was reached at the Council in April. A further 31 amendments were proposed by the European Parliament during their 2nd reading of the proposal. These had been considered and agreed informally with the Council and Commission beforehand and were fully supported by the UK Government. All the amendments were approved by the Parliament at their 2nd reading plenary.

I believe that the Directive as it currently stands represents a satisfactory outcome to the negotiations, consistent with the Government's objectives of reducing the burden of the Directive on airports as far as possible, whilst helping airlines to operate in a competitive, yet fair, environment. The scope of the Directive covers all airports with more than 5 million passengers (and the largest airport in Member States where no airport is of this size). There are currently 13 such airports in the UK. While the Directive will mean new obligations for a number of these airports in areas such as consultation on and provision of information about airport charges, these obligations are much reduced from those in the initial draft of the Directive. We were also successful in negotiating a derogation from one of its potentially most onerous requirements - the right of appeal to a independent supervisory authority in the event of a disagreement between airlines and airports over airport charges. Member States can choose not to apply this element of the Directive where national arrangements for airport economic regulation meet certain criteria. The working assumption is that in implementing the Directive, we will make use of this derogation.

Satisfactory outcomes on the other points mentioned in my letter of 20 February were also achieved. Appropriate details of the procedure to raise complaints with the independent supervisory body were included, although in view of the derogation mentioned above, they may not be relevant to UK airports. Compromise text was agreed on both pre-financing of investment, and the choice of a 'single' or 'dual' till approach to setting airport charges which preserves Member States' flexibility in these issues. The provisions about service level agreements are permissive and voluntary rather than mandatory. Finally, the Directive now contains no reference to airport security charges, so avoiding the potential for confusion with regulation EC 300/2008 on common rules in the field of civil aviation security.

The draft Directive is now expected to be adopted by Council shortly.

2 December 2008

¹ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 36

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

I am writing to update the Committee on the progress of the legislative proposal to extend the remit of the European Aviation Safety Agency (EASA) to the safety of aerodromes, air traffic management (ATM) and air navigation services (ANS).

I wrote to the Committee on the 20 November to provide an update ahead of the Transport Council, which meets on 9 December. At that time, the exact intentions of the French Presidency regarding the EASA proposal were unclear and the final agenda for the Council has still not been set. We understand that the French Presidency hope that it will be possible for the Council to reach what is known as a 'Partial' General Approach. This means that the discussion on certain articles of the Regulation, in this case the articles concerning ATM and ANS, will be frozen. The negotiations in the technical working group regarding aerodrome safety are expected to continue under the Czech Presidency.

Since my letter of 20 November, there have been further negotiations at working group level and the UK Government would be content to support a 'Partial' General Approach at the Transport Council on 9 December for two main reasons. First, we have achieved the main UK objectives regarding the articles in the Regulation on ATM and ANS. The provisions governing EASA's role in relation to airspace design and management issues have been deleted and will be addressed under the Single Sky Framework Regulation. The provisions guaranteeing the continuity of the existing regulatory framework for ATM have been strengthened, in particular regarding the important role of the Single Sky Committee and the continuation of approvals granted under the existing Air Traffic Controller Licensing Directive. The role of EASA in certifying air navigation service providers has been limited to fully pan-European services, which are available to airspace users in all Member States, rather than services available in more than three Member States. In addition, the role of the national aviation authorities in certifying ATM / ANS systems and constituents has been restricted to safety-critical systems to reflect our concerns that the Regulation should not impose unnecessary regulatory burdens on industry.

Second, at official level Member States have agreed text which would keep all aerodromes and air navigation service providers, which are operated and controlled by the military, but which provide some services to civil air traffic, out of scope of the Regulation. This was a point of political importance for the UK. In the UK, the Ministry of Defence regulates military-run aerodromes, rather than the Civil Aviation Authority, and we support the continuation of this arrangement. The original Commission proposal said that the Regulation would apply to military aerodromes, unless they exclusively served military aircraft.

The technical working group has made less progress in discussing the provisions on aerodromes. Therefore, the articles in the Regulation concerning aerodrome safety would not form part of the 'Partial' General Approach, except for issue of military-run aerodromes outlined above. Most important, the issue of the licensing threshold for aerodromes has not been agreed. The Council will be presented with a progress report reflecting the discussions to date, which are expected to continue under the Czech Presidency. The progress report will also include some high level principles reflecting the progress made by the European Aviation Safety Agency since it was established five years ago. These principles include a statement that the Agency should review its consultation procedures and reaffirm the Council's commitment to give EASA the necessary resources to fulfil its extended responsibilities.

I recognise, of course, that the Committee will wish to keep its scrutiny reserve on this dossier until negotiations on the proposal as a whole have reached a more mature stage. However, I would be grateful if your Committee could signal that it is content for the UK to acquiesce in a 'Partial' General Approach (if necessary) on the aspects of the proposal I have outlined, ahead of scrutiny clearance at a later date. I will, of course, continue to keep your Committee informed of further progress in the negotiations for this proposal.

5 December 2008

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letters dated 20 November and 5 December. Sub-Committee B considered them during their meeting on 8 December. It was agreed to continue to hold the proposal under scrutiny. However, we are content for the Government to agree to the Partial General Approach outlined in the letter in accordance with section 3(b) of the Scrutiny Reserve.

Regarding the proposal to removed military-owned aerodromes from the scope of the Regulation, to what extent would civilian-owned aerodromes used extensively by the military be affected by this?

The Committee would, of course, be grateful for an update on the outcome of the Council meeting and on the continuing negotiations.

10 December 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of the 10 December 2008 concerning the proposal to extend the competence of the European Aviation Safety Agency (EASA). In that letter you confirmed that you were content for the Government to agree to a Partial General Approach on this dossier at the December Transport Council but that it would continue to be held under scrutiny.

I am pleased to report that the Partial General Approach was adopted unanimously at the Council in December meaning that articles concerning the extension of EASA's competence to the safety of air navigation services and air traffic management have been agreed as well as the proposal's application to the military.

With regard to the military, it has been agreed that aerodromes and air navigation service providers operated and controlled by the military but open to civil air traffic are not subject to the requirements of the EASA system. However, Member States will be obliged to ensure, as far as is practicable, that public services provided by the military offer a level of safety that is as effective as that required under the EASA system. Any civilian aerodromes used by the military, if within scope of the Regulation, will have to meet European standards.

Technical level discussions in the Council's Aviation working group on the remaining elements of the text, principally aerodrome safety, have continued under the Czech Presidency. The Presidency has indicated that it would like to work towards a possible first reading agreement with the European Parliament in the Spring. The European Parliament's plenary first reading of the proposal is currently scheduled for 26 March.

The UK is broadly content with progress on the remaining aspects of the text. The most important and difficult issue being discussed is how many aerodromes to include within the scope of the Regulation. The UK is supportive of the current compromise text which would include all aerodromes serving commercial traffic using Instrument Flight Procedures with a runway length of over 800m. We consider that this is a clear and proportionate threshold. However certain Member States are concerned about the additional burden that this may impose upon aerodromes with long runways that serve a small numbers of passengers.

In terms of reaching agreement with the European Parliament, the major issue to be resolved is that of 'accredited bodies'. These are bodies that would be accredited by EASA and could issue certificates in place of the National Aviation Authorities. The Commission's original proposal suggested that 'accredited bodies' could play a role in certifying certain ATM systems. These Articles did not have the support of most Member States, including the UK, and were deleted as part of the Council's Partial General Approach. The Parliament's amendments would expand the role of accredited bodies to the certification of aerodromes and air navigation service providers.

Formal negotiations with the Parliament will begin once agreement is reached at official level on the final Council text. This is expected within the next few weeks. I will, of course, continue to keep your Committee informed of further progress on this dossier.

9 March 2009

Letter from the Chairman to Jim Fitzpatrick MP

Thank you for your letter dated 9 March. Sub-Committee B considered it on 16 March and agreed to hold the dossier under scrutiny.

We note that the Partial General Approach on the role of EASA was agreed unanimously. Is it likely that the European Parliament will also be happy with this position?

Further to the recent question in the House about the damage caused by Canada geese at some airports (HL Deb Col 9), would the proposed provisions on aerodrome safety have any impact on this problem? Similarly, would the proposals help to ensure that incidents such as the climate change protest at Aberdeen airport are prevented?

We look forward to receiving updates on the negotiations concerning aerodrome safety.

17 March 2009

AVIATION: PERFORMANCE AND SUSTAINABILITY, AERODROMES, AIR TRAFFIC
MANAGEMENT AND AIR NAVIGATION (11285/08, 11323/08)

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

I am writing to update the Committee ahead of the Transport Council on the 30 March on the progress of the above two proposals which form the legislative part of the European Commission's Single European Sky Second Package, and also to reply to your letter of 17 March on the second of the two documents.

The first draft regulation (11323/08) amends the four Single European Sky foundation regulations from April 2004, to introduce a more performance driven approach whereby EU-wide and National targets on 4 key areas (Safety, Environment, Cost-Efficiency and Delay) will be agreed and Member States will be monitored for their efforts to achieve them. The second draft regulation (11285/08) extends the remit of the European Aviation Safety Agency (EASA) to include the safety of aerodromes, air traffic services and air navigation service provision.

The European Parliament will vote on both proposals at their plenary session in Strasbourg on 25 March. Following intensive negotiations between the Presidency, on behalf of the Member States and the European Parliament's Rapporteur, it is expected that a first reading agreement can be reached on both proposals.

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

Sub-Committee B first considered this proposal on the 21 July, where it cleared scrutiny. I wrote to you on the 1 October in response to questions raised in your letter of 22nd July (which cleared the document from scrutiny) and subsequently wrote again on the 20 November updating you on progress ahead of the Transport Council in December. You will recall that following the Transport Council I also attended an evidence session concerning this proposal during Sub-Committee B's meeting on the 2 February.

Following the broad consensus reached on the proposal at the Transport Council in December, the Czech Presidency has worked to secure agreement with the European Parliament on a first reading deal. Overall the UK is very content with the final outcome of this; negotiations have resulted in relatively few significant changes to the Council position and its key areas have been preserved.

The most notable addition has been the creation of the post of a Functional Airspace Block (FAB) coordinator to facilitate the establishment of Functional Airspace Blocks (FABs) across Europe, at the request of the Member States concerned. We consider this to be positive initiative which will aid the development of FABs and the implementation of the Single European Sky.

The compromise also allows the Commission, with Member States agreement, to set up "common projects", in the field of air traffic management where they would be of particular importance for the improvement of the overall performance of air traffic management and air navigation services subject to an independent cost-benefits analysis and appropriate consultation. Reference to potential sources of funding and finance has been clarified and outlined in a recital at the request of a majority of Member States, including the UK.

I am also pleased to report that the issue over applicability to Gibraltar, which I mentioned during the evidence session on 2 February, has now been resolved; the UK and Spanish Foreign Ministers have agreed to insert language in the Regulation which confirms that Gibraltar will be covered by the revised Regulation.

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

You first considered this dossier on the 21 July 2008. Following my letter of the 5 December, you confirmed that you were content for the Government to agree to a Partial General Approach at the December Transport Council but that it would continue to be held under scrutiny. I subsequently wrote to you on the 9 March updating you on further progress and responded to specific questions raised in your letter of the 10 December. You replied with some further questions and confirmed that you would continue to hold the dossier under scrutiny.

On the issue of aerodrome scope, it has been agreed between Member States that the Regulation should cover aerodromes with a runway length of over 800m serving commercial air traffic that use Instrument Flight Procedures. However, provision has been made for Member States to derogate for those aerodromes covered by the Regulation that serve a small number of flights per day (the

aerodrome must handle no more than 10,000 passengers or 850 cargo movements per year to qualify). The Parliament has indicated its consent to this.

In terms of negotiations with the Parliament, the UK is happy with the outcome; the European Parliament generally accepted the Council's proposed position and very few changes have been made to it.

You may recall from my letter of the 9 March that the UK had some concerns over the reintroduction of the concept of 'accredited bodies'. We are pleased that the Parliament has accepted that further work is needed before they are introduced for EASA. The text now includes a recital stating that the Commission will examine the feasibility and necessity of introducing 'accredited bodies' to assist in the certification of Air Traffic Management (ATM) and Air Navigation Services (ANS) systems.

You raised two specific issues in relation to EASA in your letter of the 17 March. The first concerned the issue of Canada Geese, and whether the proposed provisions would have any impact on this problem. As you will recall from Lord Andrew Adonis' response to the recent question in the House, all UK airports are required to have appropriate bird control measures in place. This requirement would continue under the EASA regulation as Member States have agreed to include text which states that aerodrome operators should monitor activities and developments which may cause unacceptable safety risks to aviation in the vicinity of aerodromes and take, within their competence, mitigating measures as appropriate; this would include threats from bird strikes.

The second issue related to the climate change protest at Aberdeen airport, where protesters broke through the perimeter fence of the airport. We consider this to be a security issue, and as such it would not be affected by any extension to EASA.

NEXT STEPS

The Czech Presidency will report back to Transport Council on the 30 March on the result of the vote to be held in the European Parliament on March 25. It is then expected that the two proposals will be adopted at a subsequent Council shortly.

25 March 2009

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

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

I refer to Lord Grenfell's letter of 19 November 2008². I am sorry for the delay in replying.

As set out in my written statement on 8 December to both Houses, I represented the UK on 1 December 2008 at the European Competitiveness Council in Brussels where this was due to be discussed. The Conclusions, which were satisfactory to the UK, were agreed by the Council without discussion.

The Commission is clear that Member States preference is for responsibility for Cluster policy to remain at the national or regional level. I am satisfied that the agreed Communication on Clusters, attached for convenience, is in the interest of the UK and will enable Member States' own policies to be more effective. There were no proposals from the Commission for legislation to be introduced.

12 January 2009

Letter from the Chairman to Ian Pearson MP

Thank you for your letter dated 12 January. Sub-Committee B considered it on 19 January and agreed to clear the Communication from scrutiny.

As you know this Communication was held under scrutiny when the Council Conclusions were agreed. Although this does not formally constitute a scrutiny override, the Committee would appreciate an explanation of why it was not possible for a response to our letter of the 19 November to be sent before the Council met.

20 January 2009

² [Correspondence with Ministers, May to November 2008](#)

Letter from Ian Pearson MP to the Chairman

Thank you for your letter of 20 January 2009. Please accept my apologies for the delay in responding to Lord Grenfell's letter of 19 November. I hope that the subsequent information provided in my letter of 8 January proved to be comprehensive and useful to your discussions.

I would like to reassure the Committee that the Department acknowledges the importance of a timely response to fulfilling parliamentary obligations, and is continually assessing and improving its processes to ensure a rigorous monitoring system is in place to achieve this in the future.

8 February 2009

CROSS-BORDER PUBLIC SERVICES: E-SIGNATURES AND E-IDENTIFICATION (16836/08)

Letter from Tom Watson MP, Parliamentary Secretary, Cabinet Office, to the Chairman

I apologise for the delay in the Committee's receipt of the Explanatory Memorandum in regards to this Community document.

The issues raised in the Communication spreads across the interests of several departments. Since the document was deposited, the Cabinet Office Transformational Government and the European Secretariat have been in negotiation with other departments as to who should lead and I regret this has taken longer than I would have hoped.

Responsibility of this Explanatory Memorandum will for the moment lie with the Cabinet Office until further agreement can be made with appropriate cross-government groups.

26 February 2009

Letter from the Chairman to Tom Watson MP

Thank you for your Explanatory Memorandum dated 10 March. Sub-Committee B considered it on 30 March and agreed to clear it from scrutiny.

We believe that a user-friendly and interoperable system of e-signatures could have significant benefits for the EU and the internal market in services in particular. What is your assessment of when the Commission will be in a position to propose actions that will make e-signatures a viable tool of businesses and citizens?

31 March 2009

Letter from Tom Watson MP to the Chairman

Thank you for your letter on 31 March confirming the clearance of the above Explanatory Memorandum from Scrutiny by Sub-Committee B after consideration on the 30 March.

In regard to your question, it is my belief the Commission is likely to propose further actions intended to make e-signatures a viable tool of businesses and citizens once the results of the Action Plan's actions have been concluded.

The Commission intend the majority of the actions to be delivered by the end of 2009, one of which will have assessed the state-of-play of the use of e-signatures in Member States. It is therefore expected the Commission will propose further actions based on the findings of this and other studies regarding e-signature readiness and therefore viability during 2010.

Until then the Government will continue in its development of the Government Gateway and the actions under the National Identity Strategy which cover a number of aspects regarding the implementation of e-signatures.

25 April 2009

ENERGY: CRUDE OIL AND PETROLEUM PRODUCTS STOCKS (15910/09)

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

Thank you for your Explanatory Memorandum dated 9 December. Sub-Committee B considered it on 9 February following evidence given by DECC officials. The Committee agreed to hold the proposal under scrutiny.

During the evidence session with officials, the issue of the Commission outlining how Member States should meet their oil stock holding obligations was raised. We were informed that the Government position is that how these obligations are met should be a Member State decision. We also understand that this is a position held by other Council members.

We look forward, therefore, to receiving updates on the progress of negotiations on this issue.

11 February 2009

ENERGY: FINANCIAL ASSISTANCE TO PROJECTS (5972/09)

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

Thank you for your Explanatory Memorandum dated 12 February. Sub-Committee B considered it on 2 March and agreed to hold it under scrutiny.

We would be interested to know how the Commission plans to ensure and measure the effectiveness of the proposal in terms of the projects' contribution to combating the economic crisis. In relation to that, we would be grateful for some information on what the Government's assessment of the UK projects would be without the proposed additional funding.

On the issue of funding, we echo the concern of Sub-Committee A about revising the 2007–13 Financial Framework. We also question the timetable of agreeing the European Energy Programme for Recovery before having agreed the method of funding it.

3 March 2009

Letter from the Chairman to Mike O'Brien MP

Thank you for your letter dated 13 March. Sub-Committee B considered it on 23 March and agreed to clear the proposal from scrutiny. We regret that agreement was reached in Council before the Committee was able to complete its scrutiny but understand that the timetable for this proposal was short.

In our last letter, we asked how the Commission intends to ensure that this proposal will contribute to combating the economic downturn. Your letter makes it clear that the extra funding will help the EU continue towards its energy goals despite the downturn. We would appreciate more information on how it will combat the downturn itself, how Article 1 of the Regulation will be met and measured.

25 March 2009

Letter from Mike O'Brien MP to the Chairman

Thank you for your letter of 25 March, agreeing to clear the proposal for a regulation to establish a 'European Energy Programme for Recovery' (EEPR). I apologise again that the timetable did not allow your Committee to complete its scrutiny of the document before the Spring European Council but I am grateful for your understanding of the time pressures surrounding the proposal.

It may be worth noting that there has been an unusual and not entirely transparent process for agreeing the EEPR. As you are aware, the Spring European Council reached agreement on key elements of the EEPR, most notably the list of energy projects which will be eligible to apply for funding. From now on, we understand that the normal co-decision procedure will apply to the draft proposal: agreement will be sought with the European Parliament and a general compromise on the text will then be agreed at a later date by the Council of Ministers. However, the timetable remains tight as the Commission is keen to start inviting bids for funding.

You ask how the Commission intends to ensure that this proposal will contribute to combating the economic downturn and how Article 1 of the draft Regulation will be met and measured.

The European Economic Recovery Plan (of which the EEPR is part) has two overall objectives: short-term to boost demand and save jobs, and longer-term to ensure that the EU emerges from the current downturn greener and more competitive. The recent gas dispute between Russia and Ukraine further served to highlight specific weaknesses in the EU's energy infrastructure, which needed to be tackled. The EEPR focus on investment in energy infrastructure, is intended to contribute in all these areas; stimulating employment, improving resilience, reinforcing the EU's internal energy market, and putting Europe in a better position for a 'green' recovery.

As I noted in my letter of 13 March, the UK regrets that there has not been enough time to discuss the proposals in more detail and that the timescale has prevented an impact assessment of the proposals in the EEPR being carried out by the Commission. Nevertheless, and in response to your specific question about tackling the economic downturn, we consider that rapid action to fund infrastructure, starting during this calendar year, should help to stimulate the economy. As a result of the Programme, almost €4bn (£3.66bn) will be available to a range of energy projects. Guaranteed access to this funding across the EU should leverage additional investment and create jobs directly and in the associated industries and supply chains. It could indeed make the vital difference between projects going ahead or not.

Amendments made by Heads at the Spring Council further emphasised the importance of project maturity and added value in the selection criteria, and so help to ensure a short term economic stimulus, focused where it is most needed. As referred to above, the umbrella €5bn (£4.5bn) Economic Recovery Package is also part of a wider EU fiscal stimulus which the Government supports in line with policies that we are pursuing nationally and internationally to help the global economy recover.

Of course, it will be important to ensure that the EEPR does meet its objectives, as your letter notes. The Commission will be in the lead in selecting projects for funding among those put forward, using the detailed selection criteria set out in the EEPR. These are designed to measure the degree to which applicants will contribute to the Programme's three core objectives (economic stimulus, energy security and tackling climate change). Member States will have a limited formal role via comitology. Under Article 27 of the amended Regulation, the Commission is further required to evaluate the EEPR (by 31 December 2011) "in order to assess its contribution to the effective use made of appropriations". The Commission may require further information from Member States in this regard. The report will then be presented to the Council and European Parliament for their consideration.

Overall, the Government feels that agreement on the Economic Recovery Package represents a good outcome for the UK. Energy projects in the UK will be eligible to apply for additional investment of at least €220m (£198m), and approximately €12.4m (£11.16m) will be allocated to the UK broadband infrastructure in rural areas and the 'new challenges' of the CAP.

I am attaching a copy of the amended proposal (not printed), issued by the Council General Secretariat on 25 March.

7 April 2009

Letter from Mike O'Brien MP to the Chairman

Further to sub-Committee B's consideration of the above Explanatory Memorandum, I am writing to provide the additional information requested in your letter of 3 March and to update you on progress of negotiations on the proposal.

You ask how the Commission plans to ensure and measure the effectiveness of the proposal in terms of the projects' contribution to combating the economic crisis. Article 1 of the draft Regulation makes clear that this is one of the primary objectives of the Programme. As you will be aware, the draft Regulation also sets out a selection process. Although the criteria vary according to the type of project, there is a requirement in all categories for projects to be mature enough to start spending and/or committing funds soon.

In addition, Article 29 of the draft Regulation requires the Commission to carry out an evaluation of the European Energy Programme for Recovery (EEPR) in order to assess its contribution to the objectives of Community energy policy and the effective use made of the appropriations. This evaluation will need to take place by 31 December 2011 and will be presented to the European Parliament and the Council.

You also asked for information on the Government's assessment of the position of the UK projects without the proposed European funding. In relation to the UK offshore wind projects, our general opinion is that access to European funding would allow development to take place more quickly than would otherwise be the case.

The prospect of such funding is particularly welcome during the current economic climate and the difficulties in raising finance.

In the case of the Aberdeen wind farm project, more rapid deployment of new turbine technology would bring welcome competition in technology development and help to reduce costs. On the "North Sea Grid" element of the package, there are potentially a number of offshore wind projects in the UK sector of the North Sea that will need to connect to the Great Britain onshore grid in the near future.

The UK Government has not undertaken any detailed assessments of the UK carbon capture and storage (CCS) projects listed by the European Commission (Kingsnorth; Longannet; Tilbury; and Hatfield).

The first three (Kingsnorth, Longannet and Tilbury) are among the potential sites for CCS demonstrations being considered by the pre-qualified bidders to the UK's post-combustion competition. DECC is aware of a number of proposals for pre-combustion projects in the UK, including one that could be sited in Hatfield. In all cases, investment decisions have yet to be taken by the developers concerned due to the fact that CCS is not yet commercially viable so projects are seeking public funding before taking forward projects and access to EU funds in this context would therefore be welcomed.

Finally, there are two projects in the Commission's list of gas and electricity interconnectors in which the UK is mentioned.

The Republic of Ireland-Wales link (the Eiregrid project) will facilitate integration of the Great Britain and Republic of Ireland markets, therefore contributing to improved functioning of the internal EU market. As the Commission list makes clear, the Germany-Belgium-UK gas pipeline project is the responsibility of the Belgian government.

More generally, negotiations are continuing on both the financial framework and the draft Regulation to establish the "European Energy programme for Recovery".

There have been discussions of the draft Regulation at Energy Working Group, where the UK raised concerns about the lack of clarification and proper assessment of energy projects. The Secretary of State also emphasised the need for thorough assessment of the projects during the informal discussion of the draft Regulation at the Energy Council on 19 February.

Since my officials last wrote to the Clerks, informal amendments have been suggested to the draft Regulation by the Presidency, and the Commission has issued a revised list of energy projects, which I am attaching. As you will see, the list retains a balance of projects.

In the light of this, the UK still broadly welcomes the proposals, which include some projects (particularly involving Carbon Capture and Storage and offshore wind) based in the UK, as well as money for the Nabucco pipeline and vital interconnections in Central and Eastern Europe.

Negotiations on the European Economic Recovery Package as a whole, including the draft Regulation, are likely to be concluded at either the 16 March General Affairs and External Relations Council (GAERC) or the Spring European Council on 19/20 March.

The UK will continue to press the Czech Presidency for greater clarity on timing.

The UK would, of course, have preferred to have had more time to discuss the proposals and to have seen a thorough impact assessment of the proposals in the Economic Recovery Package carried out by the Commission but, given the urgency of the economic context, we understand the need for early agreement to a package to help stimulate the economy and contribute to improving security of supply before next winter.

Nevertheless, we will continue to work with the Commission to ensure that there is a thorough financial assessment of individual projects before they are selected for support.

In these circumstances, I would be very grateful if you could consider waiving scrutiny of the document. I apologise that the timescale has not allowed time for clearance of the document.

13 March 2009

ENERGY: LABELLING OF ENERGY RELATED PRODUCTS (15906/1/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development and Energy Innovation, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum. Sub-Committee B considered it on 26 January and agreed to hold it under scrutiny.

The Committee share your concern about the proposal to limit what incentives a Member State can offer. We look forward to updates on how this issue is dealt with in negotiations.

We would be grateful if, once this proposal has been agreed, you could submit to the Committee details of any Impact Assessments drawn up as a consequence of proposed implementing measures.

27 January 2009

ENERGY PERFORMANCE OF BUILDINGS (15929/08)

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

Thank you for your Explanatory Memorandum dated 9 January. Sub-Committee B considered it on 26 January and agreed to hold it under scrutiny.

Unfortunately, the Explanatory Memorandum does not make it clear how the recast of the Directive would differ from the existing provisions. Nor does it explain what the Government's position on the proposal is. We understand from your officials that the Department is in the process of agreeing a view on the proposals. This process will be aided by the Commission's publication of an impact assessment and consultation results. We would be grateful if, once a Government position has been agreed, you could submit a supplementary Explanatory Memorandum summarising the proposal and its differences from existing legislation, outlining its implications and stating the Government's position. Once we have received this we will be able to begin the scrutiny process.

One aspect of your Explanatory Memorandum caused the Committee some concern. You state that the Government will only produce an impact assessment after the proposal has been agreed. The Committee object to this. The Government's impact assessment is a valuable tool in the scrutiny process but of little value to the Committee once a proposal has been agreed to.

Given that the scrutiny process has been delayed, we would be grateful if you could provide a clearer picture of what you expect the negotiating timetable for this proposal to be.

We look forward to receiving further information on this proposal.

27 January 2009

Letter from Iain Wright MP to the Chairman

Thank you for your letter of 27 January about the Explanatory Memorandum on the Recast of the Energy Performance of Buildings Directive that was recently submitted to Sub-Committee B of the Select Committee on the European Union.

I accept that the Explanatory Memorandum did not fully provide the necessary level of detail to explain the differences between the proposed recast of the Directive and the current Directive. I also accept that it did not explain the Government's position on the proposal. It was not possible to do this because we are still in the process of formulating our position on the recast of the Directive. We also need to complete the work we have in hand preparing an Impact Assessment of the recast Directive to inform our position.

I can confirm that a supplementary Explanatory Memorandum will be submitted with our Impact Assessment to the Committee as soon as it has been completed. I expect to be in a position to submit these documents in March. The supplementary memorandum will summarise the proposals and how they differ from the existing provisions. It will also outline their implications.

The current negotiating timetable as advised by UKREP for this proposal is set out below. This is indicative and subject to change. I will advise the Committee if there are any significant changes to the timetable

February 2009: First reading in European Parliament;

March 2009: Detailed consideration by Energy Working Group;
September 2009: Energy Working Group concludes its consideration;
October 2009: Directive completes passage through European Parliament;
November 2009: Directive considered by Council of Ministers
27 February 2009

ENERGY: RENEWABLE SOURCES (5421/08)

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

I am writing to inform you that political agreement to the above Directive was reached at the 2008 December European Council. This agreement implements the decision of the 2007 Spring European Council that 20% of EU energy consumption should come from renewable energy sources by 2020. Our contribution to the target is 15% of the UK's final energy consumption as defined in the Directive. It is expected that the agreed directive will be published in the Official Journal in early May. As the committee knows, increasing the use of renewable energy is a key part of our strategy to tackle climate change and ensure a secure supply of affordable energy. The UK target is very challenging, but achievable. We launched a consultation last year on measures which have the potential to meet the target and will publish our Renewable Energy Strategy in spring 2009.

The main elements of the agreed directive are as follows:

TARGETS

Member States have accepted legally binding targets that they must achieve regarding the minimum level of renewable energy in their overall energy mix.

The Directive provides for minimum intermediate targets which are indicative in nature, and requires Member States to submit National Action Plans on how they intend to achieve their targets.

TRANSFERS BETWEEN MEMBER STATES

The directive contains a flexibility mechanism, which potentially allows for cost-effective attainment of targets, where Member States can swap renewable credits between one another, based on statistical transfers, joint projects or joint support schemes. Therefore, one Member State may commit to financing investments in another in return for an agreement that the energy produced would count towards the investing country's renewable target.

A similar mechanism applies with respect to non-EU countries providing that: a) the renewable energy produced comes from plants commencing operation after the entry into force of the Directive and b) the electricity produced is physically imported into the EU.

10% TARGET FOR RENEWABLE TRANSPORT FUELS

Member States have agreed to a requirement that renewable energy must represent at least 10% of transport fuel consumed in the Member State by 2020.

In order to ensure that biofuels come from sustainable production methods, the Directive requires that they must result in a reduction of greenhouse gases compared to petrol/diesel of at least 35%, rising to 50% in 2017, with a 60% figure for production facilities that start operation from 2017 onwards. In addition, biofuels produced from certain types of land are excluded, because they result in "direct land-use change", i.e. rainforest destruction.

SUPPORTING MEASURES

Subject to reliability and safety requirements of the grid, Member States must provide either "priority access" or "guaranteed access" to the grid.

The Directive also requires Member States to set minimum requirements for renewables on new and refurbished buildings where appropriate.

REVIEWS AND EXCEPTIONS

The Directive requires a number of Reports and follow-up measures on behalf of both the Commission and Member States, including the National Action Plans mentioned above, further biofuel and biomass sustainability criteria to be adopted under the comitology procedure, and the indirect land-use proposal mentioned above. There are a number of points the Committee should note:

The Directive will contain a *force majeure* clause, whereby if a Member State fails to meet its target due to the action of third parties, and despite reasonable efforts, it shall still be deemed to have fulfilled its requirements under the Directive.

Member States that have a particularly high percentage of aviation fuel in their energy mix (over 150% of the EU average), have their contribution of aviation capped in the calculation of their targets, on the grounds that it is not possible to use renewable energy for aviation purposes. The UK is one of the Member States affected by this provision.

In 2018 the Commission has to present a "Renewable Energy Road-Map for the post-2020 period accompanied, where appropriate, with proposals.

By 2014 the Commission must present a report addressing a wide range of issues such as the minimum greenhouse gas emission saving thresholds for biofuels, the availability of electric and hydrogen vehicles, the impact of biofuels on food prices and the effectiveness of the co-operation and flexibility mechanisms mentioned above in allowing Member States to meet their ambitious targets in a cost effective way.

I expect this directive to be formally adopted in early May 2009. I would also like to take this opportunity to express my gratitude to the Committee for its robust contribution to the policy development process on this significant piece of legislation.

23 February 2009

ENERGY: SECOND STRATEGIC ENERGY REVIEW (15944/08)

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

I am writing to seek the approval of your Committee to the UK agreeing Council Conclusions at the Energy Council on 19 February in respect of the Commission Communication 'Second Strategic Energy Review' and related documents in advance of clearance by the Scrutiny Committee. I understand that the European Union Sub Committee B will be scrutinising the documents on 9 February and will be examining my officials.

The Commission Communication 'Second Strategic Energy Review - An EU Energy Scrutiny and Solidarity Plan' was published on 13 November 2008, outlining a wide range of policies to promote energy security within the EU. The Communication focuses on security of supply and recommends a series of policy responses that could be made by Member States and the Commission in the short term, and some structural recommendations for consideration in the longer term. Though accompanied by various proposals for future legislation and other communications, the Communication itself is not a proposal for legislation.

There was an initial debate on energy security in the context of the Second Strategic Energy Review at the Energy Council on 8 December, at which the UK was represented by Lord Hunt of Kings Heath. There was general support for the measures in the Communication. The debate focused on infrastructure, external relations and energy efficiency; the UK broadly welcomed the conclusions of the Second Strategic Energy Review.

Since that Council, the Committee will know that a dispute between Russia and Ukraine threatened EU gas supplies, particularly in Central and Eastern Europe. This has increased the political focus on energy security and solidarity and, in particular, on the Commission proposals. In its Conclusions, the Extraordinary Energy Council on 12 January 2009 agreed on a number of measures building on the Second Strategic Energy Review, including speeding up the revision of the Security of Gas Supply Directive and early implementation of measures and commitments related to the internal market, energy efficiency and renewable energy.

I expect the Energy Council on 19 February to agree Conclusions which welcome the Communication and invite the Commission to come up with more detailed proposals on the issues covered by it; to build on the results of their consultation on the Green Paper on the future of the TEN-E Programme and to propose an initiative to promote more funding for sustainable energy projects. These Conclusions will be submitted to the Spring European Council of 19-20 March when

Heads of State and Government are expected to endorse the Second Strategic Energy Review and give impetus to work turning its aspiration into reality.

This is likely to be the start of an extended period - over the next year or so – in which the detail of these issues will be discussed in Council and other EU fora. I hope that I have reassured you that the agreement of Conclusions at the Energy Council on 19 February will not preclude the Committee from being able to play its part in the policy development in this area.

6 February 2009

Letter from the Chairman to Mike O'Brien MP

Thank you for your letter dated 6 February. It was circulated to Sub-Committee B at their meeting on 9 February. The Committee agreed that agreement to Council Conclusions need not be withheld pending completion of scrutiny.

11 February 2009

Letter from the Chairman to Mike O'Brien MP

As you know, Sub-Committee B took evidence from officials from your Department on this dossier on Monday, 2 February. The session was very useful and your officials gave clear and helpful information. We are grateful for their contribution to our scrutiny of this important package of documents. As a result of the session, Sub-Committee B agreed to clear all of the package's documents apart from the above and the emergency oil stock holding Directive (15910/08). The Committee welcomes the Review and looks forward to scrutinising the legislative proposals that will result from it.

During the session, the Committee discussed the six key infrastructure project areas outlined in the Communication. These projects are large, ambitious and heavily dependent on third country and private investor cooperation. Given the evidence we received in our recent report on renewable energy³ that the UK's renewable energy obligations would be difficult to reach partly because the industrial supply chain is lacking, we believe that these projects are more aspirational than achievable. We expect the economic downturn will exacerbate this situation. We would be grateful to know the Government's position on the achievability of these projects and to know which they consider to be a priority.

We would be interested to receive further information on the Government's position on the proposal to replace the Trans-European Energy Networks Programme (TEN-E) with an EU Energy Security and Infrastructure Instrument. How does the Government envisage such an instrument differing from TEN-E? To what extent would the Government consider an increase to the budget available to TEN-E or its successor?

We also discussed with your officials the coordination of the various Community energy and environment policies. These policies range from emissions and renewable generation targets to transport infrastructure charging and consumer goods labelling. We agreed with their evidence that the various policies have been conceived in as joined-up a way as possible. However, we are concerned that there needs to be an effective mechanism to ensure that they are implemented in such a way that they complement one another and that unintended consequences are minimised.

During the evidence session we discussed the adoption of the Third Energy Package. We believe the effective liberalisation of energy markets to be essential to improving the market's competitiveness, sustainability and security. We are encouraged by the Government's efforts to push for early implementation of some parts of the package.

24 February 2009

Letter from Mike O'Brien MP to the Chairman

Thank you for your letter of 24 February.

You asked about the Government's position on the achievability and prioritisation of the six groups of projects outlined in the Communication, given that these projects depend to a large extent on factors outside governmental control.

The six project groups are:

- (i) Baltic Interconnection Plan

³ The EU's Target For Renewable Energy: 20% by 2020, 27th Report of Session 2007–08, HL Paper 175

- (ii) Southern gas supply corridor;
- (iii) Mediterranean Energy Ring;
- (iv) LNG Action Plan;
- (v) North-south gas & electricity links in central & SE Europe;
- (vi) Blueprint for North Sea and Baltic Sea offshore grid.

We expect the Commission to develop these proposals in more detail over the coming months and the UK will play an active part in this.

The Committee suggests that the projects identified in the six groups may be aspirational.

I would agree that they all face considerable barriers, including lack of information over resources in potential new supplier countries, political risks, planning procedures and, in the current economic climate, challenges in raising finance.

However, although all the project areas have risks, and may not all be achieved, we do consider that at this stage they are all credible in the medium term.

Whilst we see all the six project areas as important in improving EU security of supply, each is very different and with its own characteristics, not least the degree to which successful completion of the projects depends on non-EU players.

Completion of projects in the Baltic Interconnection Plan (BIP) will reduce the energy dependence of the three Baltic States on Russia by connecting them more effectively to the EU market. The European Commission can play a useful role in facilitating political level discussion between these and neighbouring states and others such as Poland, Sweden and Finland with whom they are seeking to build links.

However, some of the elements in the BIP will be long-term, since, for example, improved gas and electricity links between Lithuania and Poland will depend on enhancing links between Poland and Germany.

A southern corridor to enable gas to be imported into the EU from new sources is possibly the most important of the six. However, this is a long-term goal involving major political risk for the private sector and requiring considerable high-level political engagement with a number of energy producers in central Asia and the Middle East.

Progress on this is something that we can influence, but not control. These factors explain why the Commission has put forward, but not yet fleshed out, the novel suggestion for a Caspian Development Corporation to coordinate the EU approach including the possibility of acting as a purchasing agency for Caspian gas.

The Mediterranean Energy Ring (MER) is possibly of less significance to the UK than to southern Member States, particularly since there are already a number of existing electricity and gas links between North Africa and southern Europe with others planned or in progress. But more links provide the opportunity for a more integrated market in the future. Algeria, for example, is not only a major source of the EU's gas but could, in the very long-term, be a transit state for gas into the EU from sub-Saharan Africa. States in the eastern part of the Mediterranean could, in time, form part of the supply and transit chain for the southern corridor.

The Member States of central and south-east Europe were those most affected by the recent Russia/Ukraine gas dispute. Improving electricity and gas links between them and the rest of the EU will help both their energy and economic security and, in consequence, should increase their capacity to develop policies to diversify their forms of energy and on energy efficiency.

For gas, improved connections within the region will help towards the goal of a southern corridor, since the region is the energy point into the EU for such southern corridor pipelines.

The Commission's Action Plan for Liquefied Natural Gas (LNG) remains at a very early stage. Though LNG will remain an important part of Member States' ability to diversify their gas sources, action lies primarily at Member State level; and several Member States have already developed major LNG facilities. The added value of EU involvement is probably less in this area than in the other project groups.

The Blueprint for a North Sea offshore grid is perhaps the most ambitious of these proposals. We believe that work on this Blueprint for a North Sea Grid should involve a cost/benefit analysis to demonstrate that such an approach can deliver economic benefits. The UK has an ambitious programme to deliver up to 33 GW of offshore wind.

We have undertaken a significant amount of work covering the offshore grid connections for those projects and upgrades to the onshore grid network needed to achieve our 2020 renewable energy target. We are putting in place a new offshore transmission regime to connect offshore wind farms in UK waters to our onshore grid in the most economic and cost effective manner. All our analysis indicates that the most cost effective way to connect offshore wind farms is to the nearest onshore point - with no extra redundancy or capacity in the cables.

Whilst there may be specific projects - such as Kriegers Flak which lies in the Baltic Sea between Germany, Sweden and Denmark - where it makes economic sense to combine offshore wind farms with more interconnection, we believe that this is a decision for project developers, in order to get the most economic use out of these assets. Such projects will raise difficult regulatory issues, which will require cooperation between Member States to address and, perhaps, a facilitation role for the European Commission.

The Committee asked about the Government's position on the proposal to replace the Trans-European Energy Networks Programme (TEN-E) with an EU Energy security and Infrastructure Instrument.

We do not now expect the Commission to come forward with proposals until next year.

Whilst it is widely agreed that the programme needs to be made clearer and more flexible – and many Member States, including the UK, support its extension to oil pipelines and Carbon Capture & Storage (CCS) networks, the Commission will need to consider the case for a major increase in the programme's budget. The UK will judge any proposals on their merits at the time against value for money criteria.

I would be grateful if the Committee could note that the Spring European Council is expected to agree conclusions on EU energy security when it meets on Thursday 19 March.

Although the text is yet to be finalised, we understand on the basis of a draft received on Wednesday 11 March that these conclusions will be based on those agreed at the Energy Council in February, and will make reference to 15944/08 COM (08) 781, the Strategic Energy Review.

The purpose of the conclusions is to set out a plan of action for future EU energy security policy, broadly endorsing the initiatives laid out in the Strategic Energy Review and inviting the Commission to present detailed proposals to implement them. These proposals will, of course, be subject to further debate over coming months, possibly including at the June Energy and European Councils.

I appreciate that the Committee may not have time to give full consideration to the document prior to the Spring European Council, but I would be most grateful if the Committee could consider extending its scrutiny waiver to cover agreement of Spring European Council Conclusions.

I would also be most grateful for confirmation of scrutiny clearance of this document, if it can be given, prior to the June Energy and European Councils. I am pleased to answer any further questions on the Government's position that the Committee may wish to raise in the meantime.

13 March 2009

Letter from the Chairman to Mike O'Brien MP

Thank you for your letter dated 13 March. Sub-Committee B considered it on 23 March and agreed to clear the proposal from scrutiny. We regret that agreement was reached in Council before the Committee was able to complete its scrutiny but understand that the timetable for this proposal was short.

In our last letter, we asked how the Commission intends to ensure that this proposal will contribute to combating the economic downturn. Your letter makes it clear that the extra funding will help the EU continue towards its energy goals despite the downturn. We would appreciate more information on how it will combat the downturn itself, how Article 1 of the Regulation will be met and measured.

25 March 2009

Letter from Mike O'Brien MP to the Chairman

Thank you for your letter of 25 March, agreeing to clear the Commission's Communication on the Second Strategic European Energy Review (SEER2).

I apologise for the oversight that meant you did not receive the information you needed to complete your scrutiny of the document in advance of the Spring European Council. In order to give your Committee a fuller picture of the future EU energy policy relating to infrastructure, my letter of 13 March was not sent until we had received a copy of the draft European Council Conclusions.

I would like to reassure you that no decisions on legislative proposals were taken at the European Council and that agreement of the Conclusions will not prevent the Committee from playing its full part in the policy development of these issues. We now expect the Commission to put forward detailed proposals to take forward the initiatives set out in the SEER2, including proposed amendments to the Gas Security of Supply Directive in the early summer and a proposal for a new EU Energy Security and Infrastructure Instrument in 2010.

7 April 2009

Letter from Mike O'Brien MP to the Chairman

Thank you for your letter of 24 February.

You asked about the Government's position on the achievability and prioritisation of the six groups of projects outlined in the Communication, given that these projects depend to a large extent on factors outside governmental control.

The six project groups are:

- (i) Baltic Interconnection Plan
- (ii) Southern gas supply corridor;
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- (iv) LNG Action Plan;
- (v) North-south gas & electricity links in central & SE Europe;
- (vi) Blueprint for North Sea and Baltic Sea offshore grid.

We expect the Commission to develop these proposals in more detail over the coming months and the UK will play an active part in this.

The Committee suggests that the projects identified in the six groups may be aspirational.

I would agree that they all face considerable barriers, including lack of information over resources in potential new supplier countries, political risks, planning procedures and, in the current economic climate, challenges in raising finance.

However, although all the project areas have risks, and may not all be achieved, we do consider that at this stage they are all credible in the medium term.

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However, some of the elements in the BIP will be long-term, since, for example, improved gas and electricity links between Lithuania and Poland will depend on enhancing links between Poland and Germany.

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Whilst there may be specific projects – such as Kriegers Flak which lies in the Baltic Sea between Germany, Sweden and Denmark – where it makes economic sense to combine offshore wind farms with more interconnection, we believe that this is a decision for project developers, in order to get the most economic use out of these assets. Such projects will raise difficult regulatory issues, which will require cooperation between Member States to address and, perhaps, a facilitation role for the European Commission.

The Committee asked about the Government's position on the proposal to replace the Trans-European Energy Networks Programme (TEN-E) with an EU Energy security and Infrastructure Instrument.

We do not now expect the Commission to come forward with proposals until next year.

Whilst it is widely agreed that the programme needs to be made clearer and more flexible – and many Member States, including the UK, support its extension to oil pipelines and Carbon Capture & Storage (CCS) networks, the Commission will need to consider the case for a major increase in the programme's budget. The UK will judge any proposals on their merits at the time against value for money criteria.

I would be grateful if the Committee could note that the Spring European Council is expected to agree conclusions on EU energy security when it meets on Thursday 19 March.

Although the text is yet to be finalised, we understand on the basis of a draft received on Wednesday 11 March that these conclusions will be based on those agreed at the Energy Council in February, and will make reference to 15944/08 COM (08) 781, the Strategic Energy Review.

The purpose of the conclusions is to set out a plan of action for future EU energy security policy, broadly endorsing the initiatives laid out in the Strategic Energy Review and inviting the Commission to present detailed proposals to implement them. These proposals will, of course, be subject to further debate over coming months, possibly including at the June Energy and European Councils.

I appreciate that the Committee may not have time to give full consideration to the document prior to the Spring European Council, but I would be most grateful if the Committee could consider extending its scrutiny waiver to cover agreement of Spring European Council Conclusions.

I would also be most grateful for confirmation of scrutiny clearance of this document, if it can be given, prior to the June Energy and European Councils. I am pleased to answer any further questions on the Government's position that the Committee may wish to raise in the meantime.

13 March 2009

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

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

I am writing to update you on progress being made in the Council and European Parliament on the third package of EU legislation on the internal energy market.

Political agreement on the package was reached in the Energy Council when it met on 10 October, as Ed Miliband's letter to you of 16 October set out. Since then the Council has agreed Common Position texts for the legislation and I enclose copies of these documents.

The package is now entering the Second Reading process and the Presidency is discussing with the Council Working Group what positions it can take in negotiating texts with the Commission and European Parliament, taking account of the stance adopted by the Parliament in its First Reading.

We hope agreement can be reached with the Commission and European Parliament without upsetting the delicate compromises reached within the Council on the unbundling of transmission networks, the control of such networks by companies from third countries and the so-called "level-playing field" clause (on possible action by Member States which have opted for ownership unbundling to control takeovers by vertically integrated companies from other Member States). The European Parliament rapporteurs are aware that the Council is unlikely to accept any amendments affecting these politically sensitive areas.

In return, however, the rapporteurs will expect the Council to accept amendments on issues which are important to them. These are principally provisions on fuel poverty, consumer protection and smart meters. We consider such amendments to be broadly welcome, as they give a clear signal that consumers' interests are paramount.

I will keep you informed of progress.

16 March 2009

EURATOM: COMMUNITY FRAMEWORK FOR NUCLEAR SAFETY (16537/08)

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

Thank you for your Explanatory Memorandum dated 12 December. Sub-Committee B considered it during their meeting on 19 January and agreed to hold this item under scrutiny.

In your Explanatory Memorandum, you state that the UK is looking closely at the policy implications of the proposal. The Committee would appreciate details on what the Government expect those implications to be.

We would also be grateful if you could provide us with details of how the contents of this framework will differ from existing international agreements.

20 January 2009

Letter from Mike O'Brien MP to the Chairman

Thank you for your letter of 20 January 2009, requesting more information on the policy implications of the above proposal and details of how the contents of this framework will differ from existing international agreements.

The incoming Presidency has decided to consult Member States extensively on the structure and wording of the proposed Directive and it seems likely that the Presidency will suggest that the current proposal is substantially restructured and redrafted.

In the circumstances, I propose that I respond to the Committee's request once the outcome of the Presidency's consultation becomes clearer and a revised document is produced.

I trust the Committee will agree that this is an appropriate way to proceed.

4 February 2009

Letter from the Chairman to Mike O'Brien MP

Thank you for your letter dated 4 February. Sub-Committee B considered it during their meeting on 23 February and agreed to continue to hold this proposal under scrutiny.

The Committee agree with your proposal to respond to our concerns about the policy implications and contents of the framework once the Presidency's consultation is complete and look forward to receiving updates.

24 February 2009

INFORMATION SOCIETY: COMMUNITY STATISTICS (15186/08)

Letter from Chairman to Kevin Brennan MP, Parliamentary Secretary, Cabinet Office

Thank you for your Explanatory Memorandum dated 16 January. Sub-Committee B considered it on 2 February and agreed to hold it under scrutiny.

The original Regulation included a five year sunset clause. Why was this clause included in the original and why does the current proposal remove it rather than extending it?

3 February 2009

Letter from Kevin Brennan MP to the Chairman

Thank you for your letter of 3 February 2009, concerning Explanatory Memorandum 15186/08, in which you explain the considerations of Sub Committee B at its meeting of 2 February 2009 and raise two specific questions.

FIRST, THE ORIGINAL REGULATION INCLUDED A FIVE YEAR SUNSET CLAUSE. WHY WAS THIS CLAUSE INCLUDED IN THE ORIGINAL PROPOSAL?

The introduction of the Regulation came at a time of rapidly changing user needs, reflecting the pace of change in the sector. Concern was expressed that the creation of a Regulation at that time would restrict the ability of the collections to adapt to that changing demand. In addition, as the extent of future demand was unknown, there was a commitment to avoid unnecessary burden arising from an outdated, open-ended Regulation. However, there was a conflicting concern that, without some form of Regulation, the direction in which Member States' collections would take, and the systems adopted, would introduce a divergence that would be difficult to overcome at a later time. A Regulation that forced review after a relatively short period of time was seen as a pragmatic solution.

SECOND, WHY DOES THE CURRENT PROPOSAL REMOVE THE SUNSET CLAUSE RATHER THAN EXTEND IT?

With the acceptance that there is a continuing need at European level for the annual provision of coherent statistical information from the information society domain, a solution had to be sought.

The solution proposed was again considered to be the most pragmatic: to update the current Regulation in the knowledge that there is a well established, long-term demand for statistical information from the information society. Unlike the initial Regulation, it importantly avoids being overly prescriptive, with the indicators to be provided relying on an annual process of review. This ensures that data needs are fully challenged and relevant. The alternative of creating a new Regulation would require an extended period of preparation prior to entry in to force.

25 February 2009

MARKETING OF CONSTRUCTION PRODUCTS (10037/08)

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

Thank you for your letter of 12 November 2008⁴ regarding the Lords Committee on the European Union's scrutiny of the Commission's proposed Construction Products Regulation. Your letter notes

⁴ [Correspondence with Ministers. May to November 2008](#)

that the Committee is keeping the Regulation under scrutiny pending receipt of further information on the implications for small to medium enterprises.

The UK consultation on the proposals closed on 10 November 2008. My department held a well attended open meeting on the proposals on 21 October 2008, and officials have been meeting with core industry and Government contacts on a regular basis. Work is now underway to collate and analyse all this information and to draft the final impact assessment and revised Explanatory Memorandum for the Lords and Commons committees. I expect the impact assessment and Explanatory Memorandum to be ready for submission to you early in the New Year.

The Department received a good number and range of responses to the consultation, and the final impact assessment will contain a detailed analysis of the information on costs and impacts provided in these. I will ensure that the Committee receive a copy of the impact assessment as soon as it is completed, but in the meantime I have provided some initial views from the consultation on the impacts for small businesses in the attached annex.

I can also provide a more general update on the progress of the negotiations on the Regulation in Brussels. Since the Explanatory Memorandum was submitted in June 2008, there have been five Council Working Group meetings discussing the Regulation article by article. A large number of amendments have also been tabled by the European Parliament committees assigned to the Regulation - IMCO, the Committee on Internal Market and Consumer Protection (lead) and ITRE, the Committee on Industry, Research and Energy (shadow). Both the negotiations and the MEPs amendments have confirmed our initial view that this is a contentious piece of legislation with a complex relationship to other EU CE marking product legislation and to Member States' domestic building regulations. We continue to argue that the aims of the Regulation must be to clarify and simplify the current Construction Products Directive, and not create unnecessary burdens for industry by introducing change for change's sake.

IMCO is due to vote on amendments in early January and the incoming Czech Presidency has indicated a more intensive programme of Council Working Groups in January and February than we have had hitherto. The aim is to reach co-decision by March 2009, otherwise the entire process will be suspended for the European Parliament elections in June 2009. But this is a very ambitious timetable, especially given the number of comments already raised on the text.

3 December 2008

ANNEX A

INITIAL VIEWS FROM THE UK CONSULTATION ON THE CONSTRUCTION PRODUCTS REGULATION (COM 311 FINAL) - 18 AUGUST TO 10 NOVEMBER 2008

The following points are summarised from the consultation responses received from small manufacturers and their representative bodies.

- There is particular concern about the impact of mandatory CE marking on manufacturers of bespoke or one-off products, who are often small businesses. These businesses could be faced with disproportionately high costs to test their products, as there are no economies of scale. For individually manufactured products this could (in extreme cases) result in the need to destroy one product for every one made. Manufacturers said this could threaten the viability of some businesses, or result in a reduction in product choice, as more specialist ranges could be deemed unprofitable and withdrawn from the market. Communities and Local Government considers that there is a strong argument that individual products made for specific projects are not 'placed on the market' and are therefore outside the scope of the Regulation, and will continue to follow this up in negotiations.
- Many responses expressed concerns about the measures designed to simplify CE marking processes for micro-enterprises and manufacturers of individual products. Some suggested that these would simply create confusion, and some that a two-tier system of CE marking, whereby some manufacturers would have a CE marking based on 'Specific Technical Documentation' would undermine the credibility of the system and possibly count against businesses who chose this route. These concerns on the potential for confusion are shared by Communities and Local Government, as the practical meaning of the 'simplified procedures' remains unclear from the information provided by the Commission. We

continue to press for greater clarity to understand the impacts of these measures properly.

- Questions were also raised about whether these simplification measures are appropriately targeted. One response suggested that the restriction to micro-enterprises will encourage businesses to keep headcount low in order to meet the limit of 10 or fewer employees thus stunting growth and job creation. Others have suggested that the restriction of measures to products 'manufactured in a non-industrialised process' will not capture the majority of individual bespoke products, as very few products are made without any element of industrialised process.
- Quantitative information on costs varied considerably, often reflecting the fact that some tests (in particular fire safety tests) are much more expensive than others. Manufacturers whose products are covered by fire safety regulation therefore face much higher costs. We expected this to be the case, but would like to analyse the figures provided further before providing numbers, to ensure that these differences are taken account of.
- Responses that were in favour of CE marking, or those from manufacturers that were already CE marking, highlighted the importance of ensuring that the Regulation is properly enforced at Member State level. There is a feeling that the cost of CE marking is justified if it means the product can circulate freely and new markets open up. If Member States do not keep to the Regulation, and impose further testing or use local regulation as barriers to trade, then the cost becomes wasted as a product needs to be tested again before it can be exported.

Letter from the Chairman to Iain Wright MP

Thank you for your letter dated 3 December. Sub-Committee B considered it on 19 January and agreed to continue to hold the proposal under scrutiny. We look forward to receiving an Explanatory Memorandum outlining the results of the Government's consultation.

20 January 2009

Letter from the Chairman to Iain Wright MP

Thank you for your supplementary Explanatory Memorandum dated 4 February. Sub-Committee B considered it on 23 February and agreed to continue to hold the proposal under scrutiny.

Your supplementary Explanatory Memorandum makes it clear that the proposal is likely to be subject to intense and significant negotiations in the coming months. The Committee would appreciate receiving updates on the progress of negotiations.

We believe that this proposal must strike a balance between providing a useful guide to consumers through CE marking and avoiding overly prescriptive or complex legislation. We would be grateful if you could discuss this proposal with the Committee prior to the May Council.

3 March 2009

Letter from Iain Wright MP to the Chairman

Thank you for your letter of 3 March 2009 acknowledging my supplementary Explanatory Memorandum on the draft EU Construction Products Regulation and indicating that the Committee will continue to hold the proposals under scrutiny.

Since sending you the Explanatory Memorandum on 4 February, my officials have received further information about the timetable for the Regulation over the coming months. The European Parliament committee responsible (the Committee on the Internal Market and Consumer Protection – IMCO) voted through a package of 106 amendments on 11 February, and these will form the basis for the Regulation's First Reading in the European Parliament on 23 or 24 April 2009. However, it is now more or less certain that there will be no First Reading deal on the Regulation and, therefore, that it will not go to the meeting of the Council of Ministers at the end of May and will not be adopted before the European Parliament is dissolved for the June elections.

There are considerable differences of opinion both within the Council Working Group, and between the Council, Commission and European Parliament. These are not insurmountable, but the consensus view of the Council Working Group and the Commission is that these issues would benefit from

further detailed consideration, and that rushing through a deal before the elections in June would be unwise and result in bad legislation.

The Swedish representatives on the Council Working Group have indicated that this Regulation will be given priority when Sweden takes on the Council Presidency in July. Their aim is to reach a Common Position before the end of 2009. On this basis there would be a Second Reading in the European Parliament in 2010 with the Regulation coming into force in around 2012.

In the short term, we are hoping that there will be informal trialogue discussions in March and April to improve mutual understanding between the Council, European Parliament and Commission with a view to facilitating future negotiations.

I will keep both your Committee and the Commons European Scrutiny Committee informed of progress. If the timetable is not as envisaged above, and the Regulation is to be considered by the Council of Ministers meeting in May, then I would be glad to come and discuss the proposals with the Committee. In that event, my officials will make immediate contact with the Clerk to arrange a suitable time.

16 March 2009

METROLOGY (16896/08)

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

Thank you for your Explanatory Memorandum dated 6 January. Sub-Committee B considered it on 26 January and agreed to clear this proposal from scrutiny.

We would be grateful if you could keep us informed about further developments to the proposal, above all regarding a potential impasse in the negotiation.

27 January 2009

Letter from the Rt Hon Lord Drayson to the Chairman

Thank you for your letter dated 27 January on behalf of Sub-Committee B clearing the Explanatory Memorandum dated 6 January.

In your letter you asked to be kept informed about further developments in relation to the above proposal. I can now confirm that, in recognition of the comments Member States have made on the proposal which make it doubtful that a qualified majority will be found, the Presidency has decided not to proceed further with this file at this time.

30 April 2009

RESEARCH: ERI (12259/08)

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

Thank you for your letter dated 30 November 2008⁵. Sub-Committee B considered it during their meeting on 8 December. It was agreed to continue to hold this item under scrutiny.

Your letter warned the Committee that a scrutiny override was to have taken place on 2 December. We understand that the agreement expected in Council did not happen. The Committee would, therefore, appreciate further details on what took place in Council, what the current state of the negotiations is (particularly regarding VAT and excise duties) and when it is likely that this proposal will be discussed in Council next.

The Committee would also be interested to know what affect, if any, this proposal will have on the European Institute of Innovation and Technology.

10 December 2008

⁵ [Correspondence with Ministers, May to November 2008](#)

Letter from Lord Drayson to the Chairman

I wrote to you on 30 November to update your committee about developments in the negotiations concerning the above document in advance of the Competitiveness Council on 2 December, at which it was expected that a General Approach would be agreed. In particular I noted that wording on the tax status of ERIs (now to be known as European Research Infrastructure Consortia or ERICs) in the revised text to be presented to the Council was acceptable to the UK and that we intended to agree to the General Approach.

As noted in my Post Council Statement, I now have to report that it did not prove possible to agree a General Approach on 2 December. The European Commission continued to press its argument that wording conferring an automatic legally binding exemption from VAT and excise duties on ERICs was essential for the success of the proposed new legal framework for research infrastructure projects since it would ease the negotiation process and provide certainty for research funding agencies. Such wording would of course have been unacceptable to the UK, which was able to accept the wording in the draft Presidency text as the tax references were merely declaratory in nature and had no legal effect. Although the majority of Member States accepted the Presidency text, the Commission did receive some support. As a result, the Presidency did not push to agree a General Approach but instead concluded that the incoming Czech Presidency will have to consider how to carry this dossier forward with the aim of reaching agreement in the first half of 2009. The next steps are therefore now in the hands of the Czech Presidency.

I shall of course keep your Committee informed about future developments on this proposal.

11 December 2008

Letter from the Chairman to Lord Drayson

Thank you for your letter dated 11 December. Sub-Committee B considered it on 19 January and agreed to continue to hold the proposal under scrutiny.

The Committee continues to share the Government's concern that legally-binding references to the exemption from VAT and excise duty for ERIs are inappropriate. We would be grateful if you could keep the Committee up to date with the progress of negotiations on this point.

20 January 2009

TELECOMS COUNCIL MARCH 2009

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

Further to the written statement concerning the positions I intended to take at the Telecommunications Council, held on March 31 2009, I am pleased to be able to report back on the main conclusions on the topics of discussion.

The Telecommunications Council took place on the 31 March 2009 under the chair of the Czech Presidency. Andy Lebrecht (Deputy Permanent Representative) represented the United Kingdom. As expected, the continuing economic crisis was the focus of much of the discussion. Twenty five Member States made interventions under this agenda item. Most Ministers and Commissioner Reding strongly agreed that ICT-based services should be a central pillar in Europe's future economy and that, within such strategies, roll out of broadband networks to rural areas should be a priority. The UK highlighted the importance of ICT to the UK and wider European economies and the potential of ICT to contribute both to immediate economic recovery as well as to long-term future growth through improving productivity and competitiveness and supporting innovation. The UK, Mr Lebrecht noted, was taking this forward domestically through the Digital Britain work.

The other substantive item on the agenda was Council Conclusions on the Commission's Communication for an Accessible Information Society. The Council adopted conclusions on the accessibility of ICT services across Europe, calling for action on improving the accessibility of public websites and other ICT services, especially for people with disabilities. Commissioner Reding expressed disappointment at the lack of progress made since the Riga Declaration in 2005.

Of the five further items on the agenda, the first of these was an update from the Council Presidency on negotiations on a Decision of the European Parliament and of the Council on interoperability solutions for European public administrations (ISA Programme). The Presidency expects an agreement on the Decision will be reached before the June European Parliament elections.

The Presidency then provided information on the recent 112 Day which will be marked on 11 February each year to help raise awareness of the EU emergency number.

This was followed by a Commission presentation on their Communication on mobilising information and communication technologies to facilitate the transition to an energy-efficient, low-carbon economy. The Commissioner noted that a Recommendation on this will be adopted later this year.

The Presidency then provided an update on the Review of the EU regulatory framework for electronic communications networks and services. The Presidency believes that a deal on the package with the European Parliament and Commission is in reach (though with work still to be done) before the European Parliament elections in June.

The next agenda point was information provided by Portugal on the fourth World Telecommunication Policy Forum (WTPF-09) which will be held from 22 to 24 April 2009 in Lisbon. The Presidency urged high level representation from Member States.

Estonia provided information on their forthcoming conference on cyber security in Tallinn and the final agenda item was a presentation by Commissioner Reding on the recently published Commission Communication on Communication and Information Infrastructure Protection on which the Commission may, depending on the outcome on the Tallinn Conference, see Council Conclusions.

I would like to take this opportunity to thank you and the Committee for your assistance with preparing the UK policy on these important matters. If you would like me to give you an oral presentation on the outcome of this Council, and where we still hope for improvements on the Review, please do not hesitate to get in touch with my private office.

3 April 2009

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

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

Further to the Statement I deposited, following the Telecommunications Council on 27 November 2008, I thought it might be helpful to explain in more detail the position we have reached and how we might take forward the scrutiny process.

At the Council, Commissioner Reding gave a presentation in which she indicated that the Commission could not agree to the Council's text.

Following this, there was a full round-table exchange of views, during which the majority of Member States endorsed the text; although concerns on certain aspects were expressed by Sweden, the Netherlands, Italy and Poland.

Bearing in mind the Commons committee reserve still in place, tempered by their agreement that I was able to vote in order to reach agreement, and in order to best pursue UK's interests, I voted in agreement with the proposed text for the Citizens' Rights Directive and the proposed Regulation establishing the 'Authority'.

However, I opposed, along with Sweden, the text that was being put forward on the Better Regulation Directive, expressing particular concern with the proposals covering functional separation, Next Generation Network (NGN) access and the inclusion of references to ITU Radio Regulations within the proposals covering spectrum management.

Following this, there was a series of bilateral meetings with the Presidency during which several Member States, including UK, were asked to consider various further amendments to the text under consideration. These amendments had the aim of creating further text that would broker political agreement, and thus create unanimity within Council.

Bearing in mind this need for unanimity to ensure the continuation of negotiations, coupled with my firm belief that this package is important for the economies of both UK and Europe as a whole, I was able to use this as leverage to secure several improvements in the text - in line with UK policy - covering NGN access and functional separation. However, I was unable to gain any changes to the text associated with the ITU Radio Regulation. I attached copies of the documents agreed at Council (Annexes C to G of this letter).

In detail, the particular changes covered: Article 13a of the Access directive (functional separation); Article 12 of the Access directive (Next Generation Access); Article 8 of Framework directive

(investment issues); and a new recital on “ensuring technical quality of service” within Article 9 of the Framework directive.

During the second round of voting, the UK, Sweden and the Netherlands abstained on the Better Regulation Directive, with all the other Member States voting in agreement with the new text. The UK and Sweden subsequently released a declaration – Annex A to this letter – explaining the reasoning behind our abstention and outlining where we would be looking for further improvements to the package. It is worth noting that the Netherlands abstained for reasons largely unrelated to the concerns expressed by UK and Sweden.

As a result, the package has now gained political agreement by Council and I believe that this presents some excellent opportunities for me to be able to continue to pursue UK objectives. This is especially true given that, in general, the UK’s position is generally closer to the Commission’s and European Parliament’s (EP) than Council’s; particularly with regard to independent National Regulatory Authorities and the proposed Commission powers of intervention regarding market remedies (the ‘veto’).

Given this, and being keenly aware that the European Parliament (EP) now has a major role to play in securing these objectives, I have already written to key MEPs explaining why UK abstained and looking to highlight that the objectives of the UK closely marry with those of the EP. (A sample of this letter is attached as Annex B to this letter). I also plan to hold a meeting in the new year with MEPs to explore how we can best pursue our joint objectives.

I hope that the above is sufficient information but welcome an indication of the areas where the committee seeks further information or clarity. Additionally, I have also sought an indication from the Commons committee if they still wish for me to appear before them.

Finally, my officials are aware that there have been requests for Explanatory Memoranda covering the Commission’s text of the three directives that were issued on 7 November. These texts have now been superseded by the events at Council and the Commission have indicated, at the COCOM meeting that was held on 10 December, that it is their intention to issue an updated text on 2 February. Given this recent chain of events, I believe that the best course of action would be to regard the 7 November texts as ephemeral and I will provide Explanatory Memoranda for the anticipated 2 February texts and I seek your agreement with this proposal.

15 December 2008

TELECOMS: GSM DIRECTIVE (16155/08)

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

Thank you for your Explanatory Memorandum dated 12 December 2008. Sub-Committee B considered it on 19 January and agreed to hold this proposal under scrutiny.

We would be grateful if you could clarify why the European Commission is now proposing an amending Directive rather than the previous proposed Directive to repeal the GSM Directive. We would also welcome clarification on the differences between the two proposals.

20 January 2009

Letter from Lord Carter of Barnes to the Chairman

Thank you for your letter of 20 January seeking clarification as to why the Commission was proposing amending the GSM Directive, rather than to repeal it and the differences between the two proposals.

The European Parliament believes that repealing, rather than amending the directive, could undermine their legislative powers and wishes to be involved in the debate on the additional mobile technologies (e.g. the “Universal Mobile Telecommunications System”, UMTS) that could also occupy the 900 MHz band. The technologies would be listed in an Annex (starting with UMTS) that could be amended through a comitology process with the Radio Spectrum Committee to add technologies such as LTE (“Long Term Evolution”) at a later date.

However, the overall effect of amending, rather than repealing, will still be to open the band to other technologies, whilst keeping the agreed Commission Decision as a means to ensure the technical compatibility and effective updating in accordance with the procedures of the Radio Spectrum

Decision. I note that the Committee's conclusion was that the change from repeal to amendment did not change the appropriateness of the original directive.

With regard to the differences between the proposals, amending the existing GSM Directive is perhaps more efficient and fits with the UK's Better Regulation principles in avoiding the burden of new legislation. The impact in the UK of amending, rather than repealing, is that existing licence holders would have their licences amended rather than re-issued. By keeping the GSM Directive existing GSM services would retain their protection, those in adjacent bands also and any additional services would have to respect and co-exist with those systems.

In the UK Ofcom is already considering this approach to comply with the GSM Directive to also allow more efficient use of the 900 MHz band. The Commission proposal therefore aligns with the UK's flexible and market based spectrum management policies. Ofcom also believes that liberalization will allow benefits to the citizen and consumers by making more services available in this spectrum that enjoys better propagation characteristics than existing 3G bands.

I understand that the Committee wishes also to be informed of the outcome of the European Parliament's consideration of the proposal. We anticipate a first reading agreement on the directive, which – in view of the EP elections in June – would need to take place before the end of April. As soon as this happens I will of course write again.

23 March 2009

Letter from the Chairman to Lord Carter of Barnes

Thank you very much for your letter dated 23 March. Sub-Committee B considered it on Monday 20 April and agreed to continue to hold the proposal under scrutiny.

Given that your letter said that the Commission is now proposing to amend the GSM Directive rather than repealing it in order to give the European Parliament a greater role in the process, we would like to be kept informed of the details of the expected First Reading deal.

23 April 2009

TRANSPORT: EFFICIENCY LABELLING OF TYRES (15920/08)

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

Thank you for your Explanatory Memorandum dated 8 December. Sub-Committee B considered it on 19 January and agreed to hold this proposal under scrutiny.

We share your concern about Article 10 of the proposal and look forward to updates concerning the negotiations.

We also note from your Explanatory Memorandum that there are a number of areas where details of this labelling scheme will need to be clarified: the relationship between the ratings and type-approval process, the test specifications for C2 and C3 tyres and the administrative burden on manufacturers in making this information available. We expect that these will be discussed at length during the negotiations and would be grateful if you could keep us informed of the results of those discussions.

20 January 2009

TRANSPORT EXPECTATIONS FOR THE CZECH PRESIDENCY

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

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

The dates for the next two Transport Councils have been confirmed as 30 March 2009 and 11 June 2009. The Czech Presidency's main priority is on 'Europe without barriers' and within that they have three key transport priorities they are keen to pursue: first and foremost, the roads package, followed secondly by revision of the Single European Sky, and thirdly, Intelligent Transport Systems. They plan to focus the first half of their Presidency on working with the European Parliament to fit in with the remaining mandate of the EP ahead of the elections in June. The agenda is therefore largely focussed on making progress on existing business.

There will be an Informal Transport Council in Litoměřice on 29-30 April. Topics for discussion are expected to be Intelligent Traffic Systems and the Trans European-Transport Network programme (TEN-T), and possibly also a discussion on road transport safety.

LAND TRANSPORT

The Czech Presidency is keen to reach a second reading deal with the European Parliament on the Road transport package (EM 10092/07, 10125/07), currently scheduled for plenary second reading in April. However they have concerns over cabotage as the European Parliament, at the First Reading, voted narrowly in favour of a completely open market. The Government believes that further opening of the market should be balanced with a reassurance that proper safety information and enforcement arrangements are in place to enable Member States' authorities to identify high risk vehicles and take targeted action at the roadside with non-domestic hauliers in the same way as for domestic ones. The Government, along with key members of the European Parliament's Transport Committee, believes that the Council common position strikes the right balance in progressing market opening in an effective and safe way.

The Presidency is committed to making progress on the Eurovignette proposal (EM 11857/08). However, they recognise that there are wide differences of opinion in Council so that negotiations will need to be handled very carefully and that reaching a compromise with the EP, who will have their first reading in March, may be difficult.

The proposed Directive on Working time of persons performing mobile road transport activities (EM 14461/08) is on the agenda for the March Transport Council and the Presidency is aiming to secure political agreement. However, the Presidency recognises that there are clear differences in the views of Member States on this dossier so it may be that a policy debate is the outcome at this stage.

A new proposal has recently been issued for a Regulation on Bus passenger rights (EM 16933/08) which aims to make bus and coach transport more attractive, to achieve a level playing field, both between operators in different Member States and between different modes of transport; and to remove potential barriers to disabled people and people with reduced mobility using buses and coaches by addressing issues around accessibility and the provision of assistance. Negotiations at Working Group level have begun on this dossier and the Presidency has included it on the June Council agenda for a possible general approach.

Following on from the progress report at the December 2008 Council the Czech Presidency has indicated that it does not expect to make progress on the proposed Directive on cross border road safety enforcement (EM 7984/08) and they have not included it on either of the draft Council agendas.

There is a new proposal for a Regulation on a European rail network for competitive freight (EM 17324/08). Working Group discussion of the proposal will begin at the end of this month, but the Presidency does not expect that it will be considered at Council until June when a progress report is likely, or possibly a general approach. The Czechs are also considering whether to co-host (with UK) a conference on liberalisation of the European rail passenger market.

AVIATION

The Presidency aims to make as much progress as possible with the proposed revision to Single European Sky II regulation (EM 11323/08), which is one of their priorities and on which they hope to be able to reach a first reading deal with the European Parliament. It is hoped that a political agreement will be reached at the March Transport Council following the European Parliament's plenary first reading. The Presidency will also continue negotiations on the proposed Regulation to extend the remit of the European Aviation Safety Agency (EASA) legislation (EM 11285/08) following the partial general approach reached at the December Transport Council. It is expected that a general approach should be reached at the March Transport Council. The Presidency also hopes that it will be possible to reach conclusions on the SESAR: Air Traffic Control Masterplan (EM 15932/08) at the March Council.

The Czechs are aiming for Adoption of the EU/Canada Aviation Agreement (EM 13898/08) at the March Council so that the agreement can be signed at the EU-Canada summit in April / May. There are a number of further aviation proposals in the pipeline on NOx and noise, and a progress report on the financing of aviation security to be followed up with a legislative proposal, currently expected to be issued in March.

MARITIME

The Swedes will chair Maritime Transport Working Groups during the Czech Presidency. The Commission's recent Communication on a Maritime Transport Space without barriers (EM 5775/09), which is about removing unnecessary administrative barriers that potentially hamper the growth of short-sea shipping, is something the Czechs strongly support. The Czechs have agreed an approach with the Swedes on the recent Commission Communication on Strategic Goals and Recommendations for EU Maritime Transport Policy until 2018 (EM 5779/09). The Presidency will decide shortly which of these two documents will be included on the draft agenda for the March Council for possible conclusions.

The Swedes will also work closely with the Czechs on the recent proposal for a Regulation on rights of Maritime passengers (EM 11990/08), which is designed to establish rights across the European Union for domestic and international maritime and inland waterway passengers, including those persons with reduced mobility (PRMs). Working Group discussion of the proposal has begun, with the intention of having a progress report or a possible general approach at the June Council.

HORIZONTAL ISSUES

The Presidency is keen to ensure that we continue to move forward with the Galileo Programme. They await a series of documents from the Commission which they are keen to progress during their Presidency. The first of which is the revision of Regulation 1321/04, which deals with the Galileo management structures. The other documents, on which they hope to reach a general opinion, will address issues such as the current status of the Galileo programme; relations with non-EU countries, the access policy for the Public Regulated Services (the encrypted Galileo signal) and potential applications for the Galileo programme. Galileo is currently on the agenda for both the March and June Councils.

The recently published Action Plan for Intelligent Transport Systems (EM 17563/08) is a priority for the Czech Presidency and will be one of the topics discussed at the Informal Transport Council in April. It is also on the agenda for conclusions at the June Council.

The Trans European Network (TENs) is also a priority for the Czechs. It will be considered at the Informal Council, and the recent Green Paper on the future of TEN-T policy (EM 6135/09) is on the agenda for conclusions at the June Council.

The Commission has recently published a proposal for a Regulation to amend and simplify the Marco Polo II programme (EM 17294/08), and if possible the Presidency would like to be able to reach a general approach on it at the March Council.

There are also plans for the Commission to publish an action plan on Urban Mobility, which is expected to set out measures for greening urban transport, such as providing economic incentives to develop alternative fuels infrastructure and clean technologies. It is not yet clear, however, whether this document will emerge during the Czech Presidency.

ROAD TRANSPORT/VEHICLE EMISSIONS

The Czech Presidency is expected to pursue a First Reading Agreement with the European Parliament's Rapporteur on the proposed Regulation on type-approval requirements on the General Safety of Motor Vehicles (EM 10099/08). This will necessitate rapid negotiations, which the Presidency hopes to conclude around March 2009.

It is not yet clear whether negotiations will begin on the proposed Directive on labelling of tyres with respect to fuel efficiency and other essential parameters (EM 15920/08), however the Presidency have scheduled a possible progress report/policy debate on the dossier at the June Energy Council.

During the Czech Presidency the Commission (DG Enterprise Automotive Unit) expect to publish only two new Co-decision proposals on tractor type approval and type-approval of 2 & 3 wheeled vehicles.

With negotiations on the new car CO₂ Regulation (EM 5089/08) having been successfully concluded under the French Presidency, the Commission's attention will now turn to CO₂ emissions from new light commercial vehicles (vans). Once the proposal has been brought out, we expect this to be taken forward under the auspices of the Environment Council.

Finally, we expect the Commission's long awaited proposal for a revision of the EU car fuel efficiency labelling directive to come out in 2009, which will probably be again taken forward under the Environment Council.

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

25 February 2009

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

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

Thank you for your letter dated 19 November⁶. Sub-Committee B considered it during their meeting on 8 December. It was agreed to clear the Greening Transport Communication (11851/08) from scrutiny. It was also agreed, given the assurances in your predecessor's letter dated 1 October, to hold the remaining parts of the package (11842/08 and 11841/08) under scrutiny but agree to Council Conclusions being reached on these dossiers in the December Transport Council in accordance with section 3(b) of the Scrutiny Reserve.

10 December 2008

TRANSPORT: CHARGING OF HEAVY GOODS VEHICLES (11857/08)

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

I am writing to update you on further progress with discussions of the above Directive at official level in Brussels since my letter of 21 November 2008⁷ to Lord Grenfell. Geoff Hoon will be attending the Transport Council, and I hope it will be helpful if I set out in advance the circumstances in which the UK might wish to support a general approach.

My last letter brought your Committee up to date with the substance of the current draft text, which is largely acceptable to the Government in that it broadly maintains the flexibilities we have now and in some cases increases the scope we have to introduce tolls and charges for lorries should we choose to do so. It still remains unclear, however, whether the Presidency considers that an agreement is possible on a general approach.

As you know, the two main concerns for us remain the legal base and the requirement that revenues should be "earmarked" (hypothecated) for investment in transport. I will deal with the latter point first.

The indications are that the Presidency will wish to seek agreement to a text similar to that in Article 9.1 of Directive 2006/38 that is intended to stop short of a legally binding requirement to hypothecate any charging revenues to transport.

Subject to being satisfied that the text does not have legally binding effect, and subject to other points being resolved, I may wish to signal my agreement to such an approach as part of an overall deal on this issue with the European Parliament, who strongly favour legally binding hypothecation. As we have said before the Government does and will oppose mandatory (legally binding) "earmarking" of revenues.

The UK is one of seven Member States that have reserved their positions on the legal base. It is a moot point whether the sorts of lorry tolls or charges foreseen by this proposal would formally be classified as taxes. Those making decisions on classification would want to look closely at the detailed structure of any scheme. Although Directive 1999/38 was adopted under a dual (transport and tax) legal base, the 2006 amending Directive (2006/38) was adopted under a single legal base from the transport chapter of the Treaty (Article 71). The 1999 Directive contained provisions on minimum levels of vehicle taxes that were clearly fiscal in nature. The 2006 amendment did not touch these provisions and modified only the articles relating to tolls and user charges.

The requirement for unanimity that applies to EU tax measures ensures that the UK can veto any proposal that constrains our flexibility in the fiscal sphere. But it is important to note that the impact of the revisions to this Directive currently being considered would relax constraints on the levels of tolls we could charge for lorries, should we choose to implement a scheme.

⁶ [Correspondence with Ministers, May to November 2008](#)

⁷ [Correspondence with Ministers, May to November 2008](#)

Provided the rest of the text is satisfactory this proposal could represent a useful measure both in increasing flexibility and applying the "polluter pays" principle. It does not raise any new issues of principle compared to the 2006 Directive, where we ultimately voted in favour of the proposal accompanied by a Minutes Statement setting out our view on legal base and indicating our support for this Directive was without prejudice to our general stance on tax and legal base. I therefore wish, as my predecessor did in 2005/6, to keep open the option of accepting the legal base whilst clarifying our position via a Council Minutes Statement, particularly if other Member States that are currently objecting to the legal base withdraw their reservations on this point such that a blocking minority no longer exists.

There are also tactical considerations at play here which have influenced the approach that we intend to take at the Council. We know from the discussions that culminated in the 2006 Directive that there are tough negotiations ahead with the European Parliament. We need to position ourselves now so as to ensure maximum influence over that process. That requires a balance between engineering some room for manoeuvre into the text whilst not isolating ourselves.

Finally, it is worth reporting that the main debate on the substance of the text looks likely to focus on the degree to which Member States should be allowed to include a congestion element in any distance-based charges. As mentioned in my previous letter, some Member States have reservations about this and are trying to dilute these provisions. The external costs of congestion are significantly bigger than those of local air pollution and noise. Part of my consideration of the points above will be informed by an assessment of the degree to which the text adds value.

I would, of course, have preferred that your Committee could have the opportunity to consider the final outcome of discussions on legal base and earmarking before the Transport Council. However, the political nature of the issues has meant that they will not be resolved until the discussion at the Council itself, where the French Presidency will look for a direction from Ministers in order to reach a compromise.

I will, of course, keep your Committee informed of the outcome of the Council discussions.

4 December 2008

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

Thank you for your letters dated 21 November and 4 December⁸. Sub-Committee B considered them during their meeting on 8 December. It was agreed to clear the proposal from scrutiny.

The Committee share your concerns about the legal base for the proposal. Similarly, we note your concerns about mandatory earmarking of revenues.

10 December 2008

Letter from Paul Clark MP to the Chairman

I am writing to update you on further progress with discussions of the above Directive at official and Council level in Brussels since my letter of 4 December 2008. Geoff Hoon attended the Transport Council and I hope it will be helpful if I set out briefly the outcome of the meeting.

The Presidency began by summarising progress made on this proposal since its publication and wanted it to be studied without delay as it is an important part of the overall package to ensure growth in the transport sector. It reported the significant areas of progress from working group discussions, including the new definition of scope, a better system for implementation, an action plan covering environmental elements and specific measures on congestion.

There then followed interventions from most delegations which were largely restatements of known positions. Summarising, the Presidency said that Member States were trying to reach agreement and a sustainable transport policy was important. The Commission felt that the Council had made progress in enabling the incoming Czech Presidency to take this forward. They reminded Member States that the proposal was part of a wider strategy and not just applying to road freight transport.

As you can see from this brief synopsis, no agreement was reached at this stage on a general approach.

Discussions are continuing on the outstanding issues under the Czech Presidency, with the possibility that a general approach or political agreement will be sought at the Transport Council on 30-31

⁸ [Correspondence with Ministers, May to November 2008](#)

March. The European Parliament Plenary first reading of the proposal is currently scheduled for 10 March. I will, of course, continue to keep your Committee informed of progress on this dossier.

27 January 2009

Letter from Paul Clark MP to the Chairman

I am writing to update you on further progress with discussions of the above proposal since my letter of 27 January. I am also taking this opportunity to update the Committee on the Commission's wider strategy to internalise externalities which was published at the same time as this Directive and also formed part of the greening transport package.

The Czech Presidency has not, so far, spent much time at Working Group making progress with the proposed Directive. This reflects discussions in Council, which have been difficult and politically sensitive, with disparate views on how to take the key issues forward. In particular, a significant number of Member States are concerned about agreeing this amended Directive in the current economic climate. They have been wary about any proposals which might be perceived to impose additional financial burdens on the haulage industry.

The issue which has probably caused the most differences of opinion amongst Member States is whether or not to include congestion costs. The congestion element represents the most significant externality and there are broadly three positions amongst Member States: a large number of Member States do not want to include congestion costs at all, a small number want to include it from the outset and a small number would only accept the inclusion of a congestion element if it was applied also to passenger cars. As a result the Presidency proposed a compromise solution that the congestion element should be postponed by 48 months from entry into force of the Directive. At Transport Council on 30 March, the Presidency said they had tried to draft a compromise which would protect the environment without placing too much burden on industry. It then sought a political steer on the inclusion of congestion costs.

All delegations supported the 'polluter pays' principle but some preferred this to have a gradual introduction. For the UK, Geoff Hoon expressed support for the inclusion of congestion charging from the outset, as well as opposition to earmarking in any form. Most other Member States rehearsed already well-known lines with the same mix of Member States either supporting the postponement, arguing for the complete removal of congestion costs, or proposing a wider application to include cars.

On earmarking, at this stage in negotiations with no prospect of agreement on the Directive in the near future, we continue to limit our position to opposing the inclusion of any text on earmarking.

On the legal base we are still concerned that the amended Directive should be taken forward on the correct base. We, and a small number of other Member States, continue to believe that a tax legal base is appropriate for legislation governing revenue-raising of this sort, and are continuing to press for it to be reconsidered.

Looking forward, it was considered that the document would continue to be modified at a technical level, but no agreement was expected either under this Parliament or Presidency. It is therefore highly unlikely that a general approach or political agreement will be sought at Transport Council in June.

The European Parliament has also considered this proposal and recently had their first reading plenary vote on it. In a similar way to Council, the EP has been split on how to take Eurovignette forward. However, the outcome of the recent vote includes amendments to incorporate congestion costs from the outset. It gives Member States flexibility in applying congestion costs, and does not extend the scope of the proposal to include other vehicles. This is potentially helpful for the UK position in negotiations in Council. The EP rejected amendments from the Green party to include additional externalities such as CO₂ and once again re-iterated a desire to see the mandatory earmarking of revenues to the transport sector.

In the light of the slow progress with negotiations on this proposal in Council and the equally disparate views in the European Parliament there have been no developments with the Commission's wider strategy to internalise external costs. The strategy was published at the same time as the proposed Eurovignette Directive as part of the 'greening transport' package and is still under scrutiny by Sub-Committee B. The strategy highlights a small number of measures already adopted which have begun to internalise externalities, such as the inclusion of aviation in an EU emissions trading scheme. However, in terms of the future strategy, the proposed revision to the Eurovignette Directive is the only legislative proposal to attempt to internalise external costs. The Commission has described the proposal to revise Eurovignette as a first stage in a "stepwise" strategy to internalise external costs. However, given the sensitive discussions in both Council and Parliament and the relative lack of progress it seems unlikely that there will be many new proposals to internalise externalities in the

near future. In the current climate many Member States are looking instead to remove externalities rather than include them.

I will, of course, continue to keep your Committee informed of any further progress on this dossier.

28 April 2009

TRANSPORT: INTELLIGENT TRANSPORT SYSTEMS (17564/08)

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

Thank you for your Explanatory Memorandum dated 5 February. Sub-Committee B considered it on 23 February and agreed to hold the proposal under scrutiny.

The Committee welcomes the idea of promoting a coordinated approach to the deployment of ITS across the EU. However, there are concerns related to the establishment of a Directive and a Comitology procedure as the most appropriate instrument to promote the use of ITS applications across the EU.

We expect to receive a report on the progress of negotiations. In particular, the Committee would like to know whether other Member States have expressed preferences for Option B rather than a Directive; and, if so, whether the Minister feels that there might be a shift towards this direction in the negotiations. Finally, the Committee looks forward to receiving an impact assessment when it is available.

24 February 2009

Letter from Paul Clark MP to the Chairman

Thank you for your letter of 24 February. You informed me that Sub Committee B considered the above proposal on 23 February 2009 and responded that, whilst favouring the idea of a coordinated approach to the deployment of ITS applications across the EU, the Committee shared the Government's concern about the proposal for the use of a Directive and a Comitology procedure as the most appropriate instrument to promote the use of ITS applications across the EU. You asked for a report on the progress of negotiations, including an Impact Assessment, and invited me to discuss the proposal in more detail with the Committee.

My officials are continuing to attend Council Meetings, however negotiations at Working Group level have so far concentrated on the related Communication: *Action plan for the deployment of intelligent transport systems in Europe*, which was the subject of EM 17563/09 (30312), which cleared scrutiny at the 1348th sif of 11 February 2009. The 24 points in the Action Plan remain under discussion during the preparation of Council Conclusions for the Transport Council on 30 March 2009. Discussion of the Draft Directive has not yet begun.

As part of this discussion, the Presidency has circulated a questionnaire to gauge Member State views over the need for EU action, seeking to establish if and where a legislative approach is considered necessary and to indicate the priority attached to each action point. Once the results of this questionnaire have been collated, we will have a much clearer indication of the position of each Member State.

The Government's position is that we think the action plan (as currently set out) underplays the range of ITS initiatives that are already being taken forward in a number of EU forums. For example, the UK is engaged on projects including the INSPIRE Directive, the Easyway programme and CVIS project. The work that is being done in these groups is developing a clearer understanding of how ITS applications can help to provide traveller information, improve road safety, or reduce congestion and carbon emissions. It is also supporting the development of standards to ensure interoperability and (where appropriate) promoting the use of ITS applications as a way of delivering our objectives.

In the light of this work, the Government is not clear that additional action is needed at this stage. The action plan is wide ranging, and we do not feel the Commission has yet made a convincing case for taking all these work items forward through legislation, particularly through a framework directive with extensive use of comitology.

Rather, we support an approach using co-ordination and co-operation. This would allow Member States that have reached different stages in deployment of ITS technologies to work together with other stakeholders and develop a clearer understanding of the business cases for various types of ITS deployment, and the action needed to support them.

Early indications are that some other Member States share our concerns about moving to a regulatory framework, particularly without a clear understanding of the potential impacts on Member States. The Commission has yet to carry out a full Impact Assessment on its proposals. The current version contains details of their administration costs for the process, but when asked about the potential implications for Member States, the Commission were not able to provide any information.

I will, of course, keep the Committee informed concerning progress in the negotiations of this proposed Directive. In response to your invitation, I would be happy to attend a meeting of Sub-Committee B to discuss this proposal further. My officials will liaise with the Committee Clerks, as you suggest, to make the necessary arrangements ahead of any political commitment at the 11 June Transport Council.

9 March 2009

Letter from the Chairman to Paul Clark MP

Thank you very much for your letter dated on 9 March. The Committee considered the letter at its meeting on Monday 23 March and decided to keep the proposal under scrutiny.

While the Committee welcomes your update in relation to the proposal on Intelligent Transport Systems the Committee would appreciate further updates regarding developments of the discussions of the draft Directive once they commence. The Committee would also like to receive a copy of the impact assessment when available.

We look forward to meeting you in June to discuss the proposal further.

25 March 2009

TRANSPORT: MARITIME (4056/86; 16106/05)

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

Your predecessor as Chairman of the House of Lords' European Union Committee, The Lord Grenfell, asked to be kept informed of any developments in relation to European Commission Guidelines for the liner shipping and tramp industry. I apologise for the delay in writing to inform you of the publication of the European Commission's Guidelines on the application of Article 81 of the EC Treaty to maritime transport services. The Guidelines were published by the European Commission in July 2008 and can now be found at the following link:

http://ec.europa.eu/competition/antitrust/legislation/maritime/guidelines_en.pdf

I am also attaching a copy of the Guidelines to this letter for your information.

The Guidelines set out the principles that the European Commission will follow when defining markets and assessing cooperation agreements in those maritime transport services (liner shipping services, cabotage and international tramp services) directly affected by the changes brought about by Council Regulation (EC) No 1419/2006 of 26 September 2006, which repealed Council Regulation (EEC) No 4056/1986 of 22 December 1986. Council Regulation (EEC) No 4056/1986 provided a block exemption from the application of EC competition law under Article 81 of the EC Treaty in respect of liner conferences (arrangements which allow shipping lines meeting in conferences to fix rates, regulate capacity and agree other conditions of carriage).

The repeal of Regulation 4056/86 means that the block exemption is abolished and liner conferences are subject to EC competition law (with an entry into force date of 18 October 2008).

The Guidelines are intended to help companies operating maritime transport services, mainly to or from a port in the European Union, to assess whether their co-operation agreements are compatible with Article 81 of the European Treaty.

26 January 2009

TRANSPORT: PERFORMANCE STANDARDS (5089/08)

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

I am writing as requested in Lord Grenfell's letter of 18 November 2008⁹ to provide further information on the progress of negotiations.

There has been additional progress since my previous letter of 7 November and, as a result of this, initial in-principle agreement was reached between the European Commission, the European Parliament's lead negotiators and the French Presidency (on behalf of the Council at official level) on 1 December as part of the 'trialogue' discussions. This package is now scheduled to be voted on by the European Parliament on 16 December. The package is expected to be acceptable to Member States, and at the Environment Council on 4-5 December there is only likely to be an update from the Presidency on progress, with the formal vote on the package expected at the next available Council session next year (allowing time for legal checks and translation etc.).

Lord Grenfell particularly asked about the different positions being taken in the European Parliament and the Council. It is important to bear in mind that over 50 amendments were considered during the trialogue (although the same topic may be covered by more than one amendment). Therefore the issues listed below are those of most importance to the UK.

TARGET FOR 2020. The 'trialogue' agreement was for a target of 95g/km by 2020, with a review to be completed by the start of 2013. We are supportive of a challenging long term target for 2020 and would encourage the review to be completed as early as possible, to give industry sufficient notice and lead time.

'NICHE' MANUFACTURERS. The 'trialogue' agreement includes a provision that allows niche manufacturers to make a 25% reduction on their 2007 g/km emissions rather than being held to utility-based targets, in recognition of the difficulties 'niche' manufacturers would face under those targets. This was a key objective for the UK and we welcome this amendment to the regulation.

SMALL-VOLUME MANUFACTURERS. The UK strongly supports the derogation for small volume manufacturers that was proposed by the Commission and has been retained in the agreement. Earlier resistance to this provision from some other Member States abated with time. Indeed, the 'trialogue' agreement included an amendment that would slightly extend the scope of the derogation (to some small volume manufacturers that are also part of a wider group). We calculate that such a move will have very little impact on the environmental effectiveness of the regulation.

MODERATED PENALTIES. The 'trialogue' agreement' has proposed that the unit penalty for a manufacturer missing its target should depend on how much it misses it by--that is, a lower unit penalty if the target is missed only by a few g/km. The rationale for this is that failure by a small margin to meet a target may reflect circumstances outside a manufacturer's control, such as unexpected variations in sales of certain models. The main penalty level (for manufacturers that miss their target by more than 3g/km) is €95 per car per g/km over the target. According to our analysis this is a sufficiently robust penalty level to ensure compliance.

In earlier discussions, the UK called for the environmental effect of any 'moderated penalties' provision to be minimised. This can be done by taking into account the crucial factors of the width of the margin(s) to which differential unit penalties apply and the size of those penalties themselves. The width of the margins agreed in the trialogue discussions are small (each one only 1g/km) and therefore the impact on the overall target should be limited. Of course, these lower penalty levels are there as a fall-back and we would still expect manufacturers to meet their targets.

PHASE-IN OF TARGETS. The Commission's draft legislative text implicitly recognised the likelihood that manufacturers will not meet their sales-based average targets until 2015, by increasing unit penalties annually to this point. An alternative is to recognise this reality expressly, and this is what was agreed in the trialogue discussions, by proposing a phase-in of the sales volumes that manufacturers would have to count towards their targets. (As with moderated penalties, this is not something that the European Parliament had previously suggested.) We believe that this idea is sensible, although of course it cannot be looked at in isolation from the penalty regime when assessing the environmental effect. It is envisaged by most interested parties that compliance would have to start at at least half of a manufacturer's sales in a given year for the legislation to 'have teeth'. The trialogue agreement was for a phase-in that started at 65% in 2012, rising to full compliance (i.e. 100%) in 2015.

ECO-INNOVATIONS. The trialogue agreement includes provision for legislative recognition of eco-innovations. However, this would not be entirely open-ended (there would, for example, be a limit on the amount of 'credit' that emissions savings can be counted for); and the test-cycle would be

⁹ [Correspondence with Ministers, May to November 2008](#)

reviewed in future with regard to inclusion of features that would currently be considered as eco-innovations. Our view is that the principle of eco-innovations has merit, but that putting some stipulations on their operation, as was also agreed in the dialogue, is also prudent.

On a related matter, I mentioned in my previous letter the summary of responses from our recent consultation. This has now been published, with the Government response, and I enclose a copy of this document. We received 16 responses from a spectrum of perspectives, the balance of which did not contradict agreed UK positions on the issues in question.

2 December 2008

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

Thank you for your letter dated 2 December. Sub-Committee B considered it during their meeting on 15 December. The Sub-Committee decided to clear the dossier from scrutiny.

The Committee noted that a fair compromise has been reached between the need to ensure that the target is achievable for manufacturers and the need for challenging legislation. However, this legislation will apply to only new vehicles. What action is planned to address the emissions of older vehicles which continue to make up the majority of cars in use?

17 December 2008

Letter from Lord Adonis to the Chairman

I am writing in reply to your letter of 17 December, and to thank you for considering this dossier and clearing it from scrutiny. Further to my previous observations on its progress at the European level, you may be interested to know that the European Parliament voted on 16 December to accept the package as agreed in 'dialogue', the main details of which I outlined to you. We welcome this outcome.

Evidently, this regulation applies only to new cars. You also asked about provision for carbon dioxide emissions reduction for *existing* vehicles. Clearly, by definition it would be difficult to achieve lower g/km CO₂ as measured by the test-cycle for cars already in circulation: even if it was not physically impossible (given that producing for lower emissions starts right from design and materials selection), it would not be feasible to recall hundreds of millions of cars across the EU. It is also relevant to note that the distance per year—and therefore actual CO₂ emissions—that a car is expected to travel decreases significantly with age, for example in a given year a new car will tend to travel around 40% further than the average 10-year old car. Average lifetime emissions are thus concentrated in the first few years of a car's life and thus driving down the CO₂ emissions of new cars, as the new EU regulation will, is critically important in reducing the CO₂ emissions of the overall car fleet in the UK.

However, there is also much that can be done with existing vehicles: at the fuelling stage, in the driving of the vehicle, and in replacement parts. In each of these areas, the European Commission either has measures in place or proposes to do so. There are several areas in which the UK Government is also active. This is, of course, leaving aside the much broader question of reducing emissions from cars through encouraging them to be used less in the first place, as is being done through our work on smarter travel choices.

Firstly, there is the use of biofuels. As you may know, we are committed to increasing the use of renewable fuels via the Renewable Transport Fuel Obligation, which is phasing in the proportion of such fuels that must by law be sold by suppliers of fossil fuels. We do recognise concerns over the sustainability and real lifetime carbon dioxide savings offered by some biofuels, especially in the light of the findings of the Gallagher Review, and for this reason we are currently considering what the appropriate path for the phase-in should be. While it is envisaged that some of the Obligation may be met by sale of high-blend biofuels for use in vehicles designed for this purpose, most existing petrol or diesel cars can run safely on blends of 5% bioethanol or biodiesel. Two forthcoming EU Directives (the Renewable Energy Directive and revised Fuel Quality Directive) propose further increases in the proportion of renewable fuels in transport and reductions in lifecycle greenhouse gas emissions, both of which could be expected to encourage the sale of low-blend biofuels.

Secondly, there is a strong role for encouraging 'eco-driving', especially given that actions taken under this umbrella of behaviour generally cost little or nothing—while saving fuel—and are therefore attractive also from a financial perspective. The Commission intends to legislate for the inclusion of features in new cars that would prompt some of these behaviours in drivers, such as tyre pressure monitoring systems that inform drivers when best to change gear. However, we have already for some time now run (with DEFRA/DECC) the "Act on CO₂" advertising campaign, highlighting simple

measures for the driver such as ensuring that tyres are at correct pressure, changing gear with care so as to avoid racing the engine and avoiding unnecessary idling. While statistics based on improving real-world behaviour are by their nature hard to quote definitively, research has found that, for example, most cars are routinely run on tyres whose underinflation is sufficient to affect fuel consumption, and that fuel savings of 1-4% could be made if these were kept properly inflated. Similar achievability of savings was predicted if every driver was to always drive in the correct gear and avoid revving the engine. While these percentage reductions may not seem individually impressive, taken together they could make a worthwhile contribution, especially as they are of course equally applicable to other forms of road transport. Partly for this reason, we fund the Safe and Efficient Driving Programme, providing training and advice for drivers of commercial vehicles. Participating drivers have reported an average 16% decrease in fuel consumption.

Finally, there is the possibility of contributing to reduced real-world emissions through better replacement parts. The most promising avenue for this currently appears to be in lower rolling resistance tyres (LRRTs). There is, of course, a need to take into account possibly countervailing requirements such as wet grip and off-road use. However, research has also found a potential savings of around 3% for a given car if LRRTs were used instead of the tyres more typically fitted. The European Commission intends to reduce average rolling resistance through direct regulatory requirements, for both goods vehicles and cars, that will set out the upper permissible rolling resistance limits allowable over time and also by means of a labelling requirement on new tyres (similar to the one that already exists for domestic appliances) that will allow fitters/purchasers to make more informed tyre purchasing decisions. Estimates are that these measures would reduce CO₂ emissions by around 2%. Given that some brand new tyres are fitted to existing vehicles, these measures have the potential to offer useful emission savings.

I hope that this reassures you that there are considerable efforts being made, both in the UK and in Europe, to reduce the carbon emissions from existing vehicles.

14 January 2009

TRANSPORT: RAIL NETWORK FOR COMPETITIVE FREIGHT (17324/09)

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

Thank you for your Explanatory Memorandum on a European rail network for competitive freight dated 26 January 2009. Sub-Committee B considered it on 9 February 2009 and decided to hold the document under scrutiny.

The Committee shares with the Government concerns related to the competences of the proposed governance structure, the costs to invest in infrastructure and the general impact on passenger trains, especially in terms of journey times.

The Committee would appreciate clarification as to why a Regulation was preferred over a proposal for a Directive, which gives more flexibility to implement corridors according to Member States' needs.

The Committee looks forward to receiving the already planned supplementary Explanatory Memorandum which will provide a robust evaluation of costs, risks and benefits of the draft Regulation.

11 February 2009

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

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

Thank you for your Explanatory Memorandum dated 13 January. Sub-Committee B considered it on 26 January and agreed to hold it under scrutiny.

The Committee believes that this proposal would create unreasonable administrative and financial burdens for the SMEs that make up a significant proportion of coach and bus operators. We are due to take evidence from Jim Fitzpatrick on 2 February and look forward to discussing this proposal, as well as Single European Skies II, with him.

The Committee would be grateful if you could also provide further information on:

- how the level of detail in this proposal compares to other consumer rights legislation; and
- why a Regulation, as opposed to a Directive, was chosen to achieve the aims of this proposal.

27 January 2009

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

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

Thank you for your Explanatory Memorandum dated 20 January. Sub-Committee B considered it on 2 February and agreed to hold it under scrutiny.

We are very concerned that this proposal does not make sufficient distinction between large international services and smaller operators. Without the proposal recognising the differences between operators we believe that it will place unreasonable burdens on small operators. We hope that the Government will take a robust position in negotiations on this issue.

The Explanatory Memorandum mentions the Commission's estimate that 12,300–24,600 jobs could be created in the maritime industry. Please could you give the Committee an account of what kinds of jobs these would be and how the Commission arrived at these estimates?

We note that the proposal is not due for Council discussion until June. We would be grateful if you could keep us up to date with the progress of negotiations

3 February 2009

TRANSPORT: ROAD TRANSPORT FUELS (6145/07)

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

Thank you for your letter dated 19 November 2008¹⁰. Sub-Committee B considered it during their meeting on 8 December. It was decided to maintain scrutiny on the dossier until the contents of the text to be adopted in Council are agreed.

10 December 2008

Letter from Lord Adonis to the Chairman

Thank you for your letter of 10 December in response to my letter of 19 November. I am writing to inform you that the European Parliament voted to adopt the Fuel Quality Directive in their plenary session on 17 December 2008. The package adopted at the plenary is broadly as we anticipated when I last wrote to you, the key elements are set out below. We now anticipate the package being put to Council for vote very shortly. I believe the package on offer is a good one which meets the Government's objectives.

FUEL LIFECYCLE GREENHOUSE GAS REDUCTION TARGETS

The package includes an obligation on Member States to require fuel suppliers to reduce the lifecycle greenhouse gas emissions of their fuels by 6% by 2020 relative to the EU average in 2010. There are indicative, but no binding, interim targets of 2% by 2014 and 6% by 2017. The package also includes two 'additional indicative' 2% greenhouse gas reduction targets. These are non-binding and do not place any obligation on Member States. They are linked to a requirement for the Commission to review their feasibility, which may lead to the Commission making future proposals to Council and Parliament to amend the Directive to mandate some or all of this additional reduction.

The first of these additional non-binding 2% is envisaged to come from use of electricity for road vehicle propulsion, displacing petrol and diesel, plus use of Carbon Capture and Storage at refineries. Our assessment is that penetration of electric vehicles into the fleet will not, by 2020, be sufficient to deliver more than a small fraction of a percent greenhouse gas reduction and that Carbon Capture

¹⁰ [Correspondence with Ministers, May to November 2008](#)

and Storage is unlikely to be ready for refinery deployment by 2020. It therefore seems unlikely that a Commission review will conclude that this 2% is feasible and should be made mandatory.

The second non-binding 2% is envisaged to come from allowing fuel suppliers to use Kyoto Clean Development Mechanism (CDM) certified emissions reductions to contribute to their targets. This seems feasible, although such emissions reductions would not necessarily have any relation to emissions from the production of EU fuels. However, the Commission would need to consider the costs and benefits of this and its impact on the price and availability of CDM credits e.g. for use in the EU Emissions Trading Scheme.

In line with Government objectives the package contains a review in 2014 of the binding greenhouse gas target. This is linked to a similar review in the Renewable Energy Directive of the biofuel target contained therein. This review will allow the latest evidence on the wider impacts of biofuel use to be considered and the targets adjusted if necessary to avoid adverse consequences in terms of the environment, land-use, biodiversity and social impacts.

BIOFUEL SUSTAINABILITY CRITERIA

Sustainability criteria identical to those included in the Renewable Energy Directive are included in the package as detailed in my letter of 19 November. Any biofuels contributing towards the greenhouse gas reduction target will be obliged to comply with these sustainability criteria.

PETROL SUMMER VAPOUR PRESSURE LIMITS

The package maintains the current summer vapour pressure limits for petrol (60kPa or, in the case of regions such as the UK with cool summer conditions, 70kPa). It also includes a vapour pressure waiver allowing up to an additional 8kPa vapour pressure for petrol containing ethanol. However, the package requires that Member States seek approval from the Commission to apply the waiver or the cool summer vapour pressure limit and must demonstrate that no significant adverse impact on air quality will occur as a result of using these limits. Our emissions modelling suggests that application of either the cool summer limit or the ethanol waiver would have a negligible impact on UK air quality.

OTHER ISSUES

As expected the package contains a single petrol specification with a 10% maximum permissible ethanol content and no minimum ethanol content plus a requirement that fuel suppliers continue to make available, until 2013, petrol containing no more than 5% ethanol.

Diesel Polycyclic Aromatic Hydrocarbon content is set at 8%. The quantity of leaded petrol permitted to be sold is tightened to 0.03% of total petrol sales. A limit on the maximum permissible content of the manganese-based additive MMT in petrol of 6milligrams Manganese (Mn) per litre is included. This is tightened to 2mg Mn/l from 2014, subject to a Commission review.

Sulphur free gas oil for non-road mobile is introduced from 1 January 2011 with flexibility allowing the fuel to contain up to 20mg/kg sulphur at point of delivery to the user, to accommodate minor contamination in the distribution chain. The package also contains a permissive derogation which allows the continued supply of 1000mg/kg sulphur gas oil for rail vehicles and/or tractors until 31st December 2011.

5 January 2009

Letter from the Chairman to Lord Adonis

Thank you for your letter of 5 January. Sub-Committee B considered it during their meeting on 19 January and agreed to clear this dossier from scrutiny.

The importance of the Commission's review of these targets and limits in 2014 is clear from your letter. When that review is carried out the Committee would expect to be informed of its contents and the Government's response to it.

20 January 2009

TRANSPORT: TRANS-EUROPEAN NETWORK (6135/09)

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

Thank you for your Explanatory Memorandum dated 17 February. Sub-Committee B considered it on 3 March and agreed to hold the document under scrutiny.

The Committee welcomes the Green Paper approach that reviews the TEN-T policy on the basis of past achievements while being open for new approaches to respond to future political, economical, environmental and technological challenges. The Committee recognises the significance of the policy under review and its relevance to rail freight, which is the subject of the Committee's current inquiry. We look forward to receiving the Government's response to the Green Paper.

In addition, as the European added value of the TEN-T policy is a critical point of the Green Paper, the Committee would be glad to know the Minister's view on how national planning can be better combined with a European dimension to ensure that the TEN-T is more substantial than the sum of the single networks of the 27 Member States.

3 March 2009

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

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

I am writing in response to Lord Grenfell's letter dated 19 November 2008¹¹ informing me of the decision taken by Sub-Committee B at its meeting on 17 November.

I agree that effective enforcement is fundamental to achieving the, desired outcome from a regulation of this sort.

The self-policing regime introduced as part of the Euro V standard was designed to address the difficulty that exists in detecting, particularly during roadside checks, whether systems for the control of emissions of Oxides of Nitrogen (NOx) have been tampered with or permitted to become inoperative. The regime has the virtue of providing far more comprehensive coverage and better cost effectiveness than could realistically be achieved by roadside checks.

The Government is confident that the self-policing regime will prove an effective supplement to conventional enforcement activities, but it is, as the Committee observed, not yet possible to confirm that this is the case. Conformance with the Euro V standard has only very recently become obligatory for new type approvals, and will not become obligatory for all heavy vehicle registrations until October 2009, so that it will be some time before it is possible to assess the effectiveness of the self-policing element of the legislation. I will be happy to update the Committee on the perceived effectiveness of the self-policing regime when we are in a position to make an assessment, but do not expect that this will be possible until late 2009 at the earliest.

The Government shares your concern about the potential fuel consumption penalties associated with Euro VI. We are bearing this in mind in considering other EU policies affecting fuel consumption of heavy commercial vehicles such as the requirements to limit tyre rolling resistance in the European Commission's General Safety Regulation proposal¹². The potential fuel consumption penalty is of less concern from a greenhouse gas emission perspective than it might otherwise be, due to the substantial offsetting effect of the reductions in 'black carbon' emissions that will be brought about by the particulate matter limits in the Euro VI standard.

10 December 2008

¹¹ [Correspondence with Ministers, May to November 2008](#)

¹² COM (2008) 316 see EM 10099/08 of 18 June

TRANSPORT: VEHICLE TYPE APPROVAL (15707/08)

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

Thank you for the Explanatory Memorandum on this proposed Decision. Sub-Committee B considered it during their meeting on 15 December. It was agreed to hold the document under scrutiny.

Although the requirements of the UNECE Regulation and EU Directive are currently the same, the Committee would appreciate information on what the impact of either one of those being amended would be.

Furthermore, given that the requirements of the Regulation and Directive are the same it is not clear how this Decision will open up new markets to EU manufacturers or why it is necessary.

17 December 2008

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 17 December 2008 confirming that Sub-Committee B had considered the Explanatory Memorandum concerning this document. Your letter asked for information on the impact of either the UNECE Regulation or the corresponding EU Directive being amended, and how the Decision will open up new markets. I am writing to answer these points.

IMPACT OF AMENDMENTS

At the present time it is possible for the UNECE Regulation or the EU Directive to be amended in isolation from the other. However, in practice, discussions on technical subjects such as this will generally take place within the forum of the UNECE where, due to the voting arrangements, EU agreement is necessary before an amendment to a Regulation to which the Community has acceded can be adopted. Once an amendment has been agreed to the relevant UNECE Regulation, the Commission can propose an amendment to the corresponding EU Directive.

As part of its own simplification agenda the European Commission is developing a new General Safety Regulation (GSR), which your committee has been informed about in Explanatory Memorandum 10099/08. The GSR will repeal a number of technical Directives and replace them by reference to the equivalent UNECE Regulations. The Commission intend that EU Directive 92/114/EEC should be one of the Directives to be repealed; for this to be possible the EU must have previously acceded to the UNECE Regulation 61.

By acceding to Regulation 61 the EU is acknowledging its equivalence with Directive 92/114/EC and paving the way for its inclusion in the GSR as part of the simplification agenda. This will ensure the harmonisation of the technical standards within the EU and beyond

OPENING OF NEW MARKETS

The UNECE Revised 1958 Agreement requires the reciprocal recognition of approvals for motor vehicle equipment and parts by those Contracting Parties that have acceded to a particular regulation under the Agreement, thereby removing barriers to trade between countries applying those regulations. Forty-eight countries have acceded to the 1958 Agreement.

With respect to UNECE Regulation 61, of the 22 Contracting Parties that have acceded to creating a single market for external projections on commercial vehicles, 16 are EU Member States and 6 are non-EU countries (including the Russian Federation and Malaysia). Therefore, in order to market their product in these non EU territories and throughout the EU, manufacturers may need to obtain approvals to both the UNECE Regulation and the EU Directive. This is both costly and an administrative burden for compliance with technical standards that are identical.

The proposal for the EU accession to UNECE Regulation 61 will remove this additional burden and simplify the administrative process so that manufacturers who are in receipt of an approval to this Regulation will have access to the markets in all the 27 Member States of the EU plus 6 non-EU countries.

CONCLUSION

I am of the view that adopting the Council Decision is consistent with the Better Regulation Initiative, by simplifying the route to market by the use of a single type approval requirement. This is beneficial

to manufacturers in that the existing technical requirements of the UNECE and the EU will be formally aligned and it is unlikely that they will diverge in the future. In addition, manufacturers will be able to secure a single approval to UNECE Regulation 61 which, in the context of external projections on commercial vehicles, will give them access to markets outside of the European Union.

19 January 2009