HOUSE OF LORDS
European Union Committee

House of Lords
London
SW1A 0PW
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The primary purpose of the House of Lords European Union Select Committee is to scrutinise EU law in draft before the Government take a position on it in the EU Council of Ministers. This scrutiny is frequently carried out through correspondence with Ministers. Such correspondence, including Ministerial replies and other materials, is published where appropriate.

This edition includes correspondence from 31 March 2015 – 10 July 2015

INTERNAL MARKET, INFRASTRUCTURE AND EMPLOYMENT

(EU INTERNAL MARKET SUB-COMMITTEE)

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CARRIAGE OF GOODS BY INLAND WATERWAYS (CMNI) (17025/14)

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

In my role as the new Shipping Minister I note that your Committee had asked the Government to be kept informed of the progress of negotiations for above Proposal, in particular relating to the EU's assertion that the UK did not have the right to engage its opt-in in cases that have a Justice and Home Affairs legal base and where the EU institutions assert external competence.

I would, therefore, like to take this opportunity to not only update on that issue, but to inform you of the outcome of negotiations in Council on the Proposal itself.

Council negotiations are now concluded and I can inform your Committee that this Proposal was adopted at the Justice and Home Affairs Council meeting of 15-16 June.

As you will recall, the EU institutions do not accept that the UK Government has the right to engage its opt-in in cases when the Commission states it has exclusive competence, even when a Title V Justice and Home Affairs legal base is being used. Throughout negotiations we tried to secure an amendment to the language of the recitals in order to reaffirm the UK's opt-in, but this has not been forthcoming.

At the JHA Council meeting the UK abstained from the vote because it made no sense to override Parliamentary scrutiny reserve on a matter that has little importance to the UK. However, on the issue of our right to engage the opt-in under Protocol 21 of the Treaty, we tabled – as you had suggested in your letter of 24 February – a Minute Statement reaffirming this Government's position the UK has the right to exercise the opt-in whenever a Title V legal base is used. This ensures a consistent UK approach when negotiating such proposals that engage the UK opt-in, even though on this occasion we were unable to secure the desired outcome.

8 July 2015

DIGITAL SINGLE MARKET STRATEGY FOR EUROPE (8672/15)

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

Thank you for your EM dated 15 June 2015 on the above Communication and your account of the policy implications of the Digital Single Market Strategy. These were considered by the EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 6 July 2015.

Our discussions raised a number of questions and we would be grateful if the Government could provide us with further information on the following points.

On the subject of online platforms, we note that the Government welcomes the "cautious approach" that the Commission has taken, choosing to analyse the situation in the market before deciding how to proceed. This accords well with the Government's preference, stated elsewhere in your letter, for "evidence based policy". **With this in mind, we would be grateful to know if the Government intends to submit evidence to the Commission's comprehensive assessment of the role of online platforms and, if so, whether this can be made available to the Committee?**

The Digital Single Market Strategy reintroduces a number of familiar issues that have been debated under the Telecommunications Package, in particular the harmonisation of the allocation of spectrum. There has been strong resistance to the Commission playing a stronger role in the allocation of spectrum in the past, for a variety of reasons; however, Andrus Ansip, Vice President of the

Commission for the Digital Single Market, has recently stated that the Commission did not desire to take revenue away from the Member States, and that the initiative was about better coordination. In the absence of the detail of the initiative, **does the Government agree in principle with the Commission's view that better coordination of spectrum allocation would be more efficient, increase competition and help to develop the single market in Telecommunications?**

Your letter expressed particular support for "initiatives [that] reduce the burden of regulations on businesses, in order to make it easier for new businesses to start and scale up". We share this view. However, we also note that at a recent Committee meeting the outgoing Director General of DG Connect Robert Madelin stated that whenever the Commission had attempted in the past to create a "regulatory carve-out" for SMEs the proposals had been rejected in the Council. **How confident is the Government that the political will exists among the Member States to reduce the regulatory, tax and administrative burden on SMEs? What action is the Government taking to build political support among those Member States that have previously resisted similar proposals?**

Turning to the harmonisation of contract and consumer law, the Commission plans to introduce "simple and effective cross-border contract rules for consumers and businesses". This would enable "sellers to rely on their national laws" to a greater extent, but would also introduce a set of mandatory EU contractual rights for domestic and cross-border online sales of tangible goods. This was felt to be one of the most important initiatives, and **the Committee would like to hear your assessment of what the key points of contention are likely to be in this area.**

The Committee also considers it is of paramount importance that any legislation introduced as part of the Digital Single Market project can be efficiently implemented and enforced, in order to provide consumers and businesses with confidence, and have recently heard from a number of witnesses about this aspect of the single market. **What approach do you believe would best enable efficient implementation and enforcement of the changes to contract rules affecting businesses and consumers?**

One of the most discussed initiatives in the Digital Single Market Strategy has been the Commission's plan to "restrict unjustified geo-blocking", and Committee members have expressed concerns about the way in which this tool can restrict consumer's access to information. Before this proposal was announced various high-profile media organisations expressed concerns that the Commission planned to abolish territorial copyright and mandate pan-European sharing of content. However, the Commission has subsequently clarified that that it does not consider the territorial dimension of copyright to be 'unjustified', and that its proposed restrictions on geo-blocking will be predominantly concerned with price discrimination and ensuring the portability of content purchased online. **Does the Government support proposals to restrict geo-blocking when it is used for these purposes?**

The Committee also notes that two analyses have been produced by the European Parliament and the European Commission that attempt to estimate the economic benefits that a digital single market could bring.[1] **To what extent does the Government believe that these analyses are reliable and accurate? Has the Government commissioned or produced any analysis regarding the probable economic impact of a digital single market?**

The Government is already aware of the European Commission's flagship investment initiative, the European Fund for Strategic Investments (EFSI), and has corresponded with the EU Financial Affairs Sub Committee at the House of Lords on this point. EFSI is anticipated to generate €315 billion of private sector investment over the next three years, much of which it is hoped will be used to fund enhanced digital infrastructure. **Do you believe that the European Fund for Strategic Investments will result in significant investment in Digital Infrastructure, and how is the Government engaging with EFSI on this point?**

On the question of ministerial responsibility, members were struck by the fact that the Secretary of State for Education was not included. The Committee also wished to reiterate the recommendation of the House of Lords Digital Skills Committee that the Digital Agenda should be the responsibility of a Cabinet Minister in the Cabinet Office, who would assume ultimate responsibility for driving the

[1] Cost of Non-Europe in the Single Market – III: the Digital Single Market, EPRS, September 2014
The Economic Impact of Digital Structural Reforms – Summary for non-specialists European Commission, September 2014

Digital Agenda across all Government departments. **Might you address these points, and provide the Committee with an account of how the Government is internally co-ordinating work on this proposal?**

The Committee would like to commend the Government's preference for an "evidence based" approach to the Digital Single Market Strategy, and to ask **whether the Government believes any of the Commission's proposals in their current form are not justified by the evidence and analysis provided by the Commission, or, indeed, whether any key initiatives have been omitted from the Strategy?**

Finally, in order to inform the Committee's deliberations on this legislative package, **can the Government, drawing on its engagement with (i) SMEs and start-ups and (ii) consumers indicate what both groups want from the Digital Single Market Strategy, and outline what engagement has taken place?**

We retain the document under scrutiny and look forward to receiving a response within 10 days.

9 July 2015

EU APPROVALS BILL 2015 (UNNUMBERED)

Letter from Priti Patel MP, Minister for Employment, Department for Work and Pensions, to the Chairman

I am writing to inform you about the above mentioned Bill that was introduced in the House of Lords and that I think will be of interest to you and your committee. Below is a short synopsis of the EU Approvals Bill, which had its First Reading in the House of Lords on Thursday 25 June and has a Second Reading scheduled for Monday 6 July.

The purpose of the Bill is to approve two draft decisions of the Council of the European Union. This is to fulfil a requirement in section 8 of the European Union Act 2011 ("2011 Act") which will enable the United Kingdom to vote in favour of the draft decisions.

The first draft decision is on the participation of the former Yugoslav Republic of Macedonia as an observer in the work of the European Union Agency for Fundamental Rights ("the FRA"). The FRA's function is to provide assistance and advice on fundamental rights to the EU institutions and Member States. It collects and analyses data across the EU and provides advice by way of reports and opinions, thereby raising awareness of fundamental rights. The FRA is open to the participation of candidate countries as observers.

The second draft decision is to update the instrument that formalises the Tripartite Social Summit, the long-established forum for high-level consultation between the EU institutions and the EU social partners. The need for a new decision arose because the Treaty of Lisbon repealed the part of the EU Treaty that the original decision had used (Article 202).

At the same time as renewing this decision under a new legal base (Article 352), the Commission has sought to take account of a number of high level changes within the EU in the intervening decade, such as: the role of the TSS in relation to the Europe 2020 agenda for jobs and growth, launched in 2010, which replaced the Lisbon agenda; recognising the TSS as part of EU social dialogue arrangements; a joint chair role for the President of the European Council and name changes of some of the employer federations.

This is a short Bill with 2 clauses in total. The first clause approves the decisions which are based on Article 352 of the TFEU. Pursuant to section 8 of the 2011 Act, approval by an Act of Parliament is required before the United Kingdom may vote in favour of the draft decisions. The second sets out the extent, commencement and short title of the Bill.

I confirm the scrutiny history for both draft decisions below.

THE DRAFT DECISION ON THE PARTICIPATION OF THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA AS AN OBSERVER IN THE WORK OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

The draft decision was originally deposited in Parliament on 24 January 2011 and cleared the scrutiny requirements then in place. The House of Commons European Scrutiny Committee cleared it without a report to the House (decision reported in the Seventeenth Report of the ESC, Session 2010-12, HC 428-xv). The House of Lords European Union Committee cleared it at the sift on 1 February 2011, and it was sent for information to the Sub-Committees on Foreign Affairs, Defence & Development Policy, and on Justice & Institutions (decision reported in the Progress of Scrutiny Eleventh Edition, EUC-11). However the draft decision was not pursued within Council at that time. This was due to a block by Greece, which has since been lifted. The 2011 Act came into force in the interim and when the proposal re-emerged in April 2014 the UK placed a scrutiny reserve on the decision pending approval by an Act of Parliament.

THE DRAFT DECISION IN RELATION TO THE TRIPARTITE SOCIAL SUMMIT FOR GROWTH AND EMPLOYMENT[2]

The proposal cleared UK Parliamentary Scrutiny in both Houses in 2014. The House of Commons European Scrutiny Committee cleared it in March 2014 with a short Report which noted that a Bill would be necessary because of the use of Article 352 TFEU. The House of Lords European Union Committee cleared it at the sift on 7 January 2014 and it was sent for information to the Sub-Committee on the Internal Market, Infrastructure and Employment.

2 July 2015

EU INFORMAL COMPETITIVENESS COUNCIL, 26 – 27 MARCH 2015 (UNNUMBERED)

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

I represented the UK at the Informal Competitiveness Council that took place in Riga on 26 – 27 March, discussing the Digital Single Market.

The Council opened with remarks from the Presidency, Commission and Vicky Ford, the Chair of the European Parliament Internal Market and Consumer Protection Committee. In his opening address Vice President Ansip emphasised his determination to bring forward an ambitious Digital Single Market package in May, which would be the start of a process to make the single market fit for the digital age – including by promoting cross-border e-commerce, price transparency in parcel delivery, ending unjustified geoblocking, simplifying VAT processes and ensuring cross-border access to content. Vicky Ford spoke about the potential of e-commerce, highlighting that only 6% of businesses currently engaged in cross-border e-commerce.

The opening working session focused on the 'the role of EU single market in the digital economy,' and had a mix of political and business speakers leading the discussion. I gave a keynote speech, calling for all Member States to respond to the technological revolution, pointing to the need for better regulation, the right incentives and widespread engagement as the main ways of achieving this. Many of the other businesses and Member States speakers echoed these themes and spoke of the dangers of over-regulation in restricting innovation. One Member State highlighted the importance for digital policy to be industry led, as well of developing standards and cybersecurity, whilst another emphasised the importance of access to finance, better support for start-ups and platform regulation.

Day two focused on digital transformation of industry and digital entrepreneurship. In the industry and digital session I delivered a keynote speech, highlighting the approach the UK has taken to supporting industry through the industrial strategy.

I called for the EU to focus on areas where it could add most value, such as ensuring flexible data regulation to support the free flow of information and to maintain consumer confidence. I also stressed the need for early action to establish EU standards for new technologies and to try and make these the global standards; and smart regulation to ensure new rules did not unduly hamper industry's

[2] Section relating to the work of the EU Internal Market Sub-Committee

efforts to digitalise. In other key interventions, one business group called for better data regulation, improved ICT infrastructure and early action on skills and standards. One Member State stressed their concern about 'technological independence' whilst other Member States called for a 'Magna Carta' for data.

The Commission summed up both sessions by reminding the delegates of the importance of services in advanced manufacturing, as well the need to tackle the barriers to services that support manufacturing. Ensuring free flow of data, smart procurement and more investment would help support the necessary industrial transformation.

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

2 April 2015

EU MERGER CONTROL (11976/14)

Letter from the Chairman to Nick Boles MP, Minister for State for Skils, Department for Business, Innovation and Skills

We were grateful to receive a letter from Jo Swinson on 26 March 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 6 July 2015.

Whilst we agree with you that "competition rules necessary for the establishment of the internal market " fall under the EU's exclusive competence, and that subsidiary would not therefore apply (for the reasons you state), we note that you add that this only applies "strictly speaking".

We also note your helpful references to paragraphs 99 to 102 of the Commission's impact assessment for the White Paper, and to the recitals of the Merger Regulation, all of which consider subsidiarity a relevant issue. You conclude from this that the EU merger regime is "explicitly designed to be consistent with the principle of subsidiarity". From reading the references we recognise why you might draw this conclusion.

In our view, however, the principle of subsidiarity either applies, or it does not. National parliaments have a specific role under Article 12 TEU to ensure that the principle of subsidiarity is respected, so it is important for us that this question is resolved in relation to a proposal arising out of the White Paper.

It seems plain that where competition rules are "necessary for the establishment of the single market", the EU has exclusive competence, as stated in Article 3(1)(b) TFEU. In such circumstances, Article 5(3) TFEU provides that subsidiarity does not apply, whether strictly speaking or not. So if in the negotiations on a proposal arising out of the White Paper it is agreed that rules are necessary for the establishment of the single market, then the question of subsidiarity does not arise, and recitals mentioning compliance with subsidiarity would be misplaced.

What is less clear is whether subsidiarity applies where an argument is made, say by a group of Member States, that the proposed competition rules are not necessary for the establishment of the single market. Is it your view that subsidiarity becomes a relevant principle in these circumstances? For that to be correct the EU would still have to have competence to act, and the competence would have to be shared with the Member States—the issue being at which level the shared competence is most appropriately exercised. We would be grateful for your views on this.

We note that you have raised concerns about the proportionality of the proposal. Is this, rather than competence, or in your view subsidiarity, a stronger avenue for the Government to pursue in its opposition to the proposal?

We would be grateful to know what you think the likely legal base of a future proposal on the acquisition of minority shareholdings will be.

In the light of the concerns raised above, we have decided to not to clear the document from scrutiny.

We look forward to hearing from you in 10 days.

8 July 2015

EUROPE 2020 STRATEGY FOR SMART, SUSTAINABLE AND INCLUSIVE GROWTH (7273/15)

Letter from the Chairman to David Gauke MP, Financial Secretary to the Treasury, HM Treasury

Thank you for your explanatory memorandum (EM) of 3 June 2015, which was considered by the EU Internal Market Sub-Committee at its meeting on 6 July.

We were grateful to receive your EM outlining the Commission's view on the responses to its consultation on the Europe 2020 strategy. It is staggering to note that 40 per cent of respondents felt that the Europe 2020 strategy had not made a difference. While respondents said that the Europe 2020 targets themselves remained relevant, the challenge arose in its implementation through the use of seven flanking initiatives and the reliance on Member States setting and reaching national targets. What is your view regarding the effectiveness of the seven flagship initiatives, one of which was the Digital Agenda?

We understand that the results of this consultation will be used to inform a forthcoming proposal from the Commission reviewing the Europe 2020 strategy. What assessment have you made about the possible direction and content of such a proposal? Is it safe to assume that the proposal will consider reforming the implementation of the strategy through the use of initiatives and strengthening the position of the Commission in relation to Member States in enforcing targets?

At present, the Government refuses to adopt national targets under Europe 2020. It argues that this is in line with the Government's overall commitment to remove targets for the public sector under the Public Services Transparency Framework. Instead, we understand that the Government reports to the Commission through its National Reform Programme report. Nonetheless, as your Explanatory Memorandum makes clear, the Government places some value on the Europe 2020 Strategy.

As this document has no legislative implications, we have decided to clear the document from scrutiny.

We look forward to a reply to this letter within 10 working days.

8 July 2015

FINANCIAL SERVICES: PAYMENT SERVICES (12990/13)

Letter from the Chairman to Harriet Baldwin MP, Economic Secretary to the Treasury, HM Treasury

Thank you for your letter of 23 March 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 6 July2015.

We were grateful to receive your update on trilogue negotiations on this proposal just prior to the dissolution of Parliament. We are reassured that the Government has the Digital Market Strategy in mind whilst negotiating the Payment Services Directive II and that it is keen to ensure the two proposals complement each other.

The Committee wished to know if any significant progress had been made in trilogues over the dissolution period. David Gauke MP's previous letter to the Committee, dated 10 March 2015, noted that the European Parliament opposed an exemption for independent ATMs. Has a satisfactory compromise been reached? We understand that the Government supports such a measure. Have you consulted with wide range of stakeholders on this issue, including consumer and ATM provider organisations? If an exemption were not to be included, what would be the scale of the impact on the UK?

We look forward to receiving a response in 10 working days.

8 July 2015

Letter from Priti Patel MP, Minister for Employment, Department for Work and Pensions, to the Chairman

I am writing to provide an update on the progress of the negotiations on the above and subsequent amendments to the proposal.

In the Explanatory Memorandum of 17 March it was explained that the proposed language of the new Employment Guidelines was in keeping with the current Employment Guidelines and it is broadly acceptable to the Government. However, there were some concerns about the use of inappropriately prescriptive language on labour taxation and Member States' social policies.

The actual Guidelines' text (ADD 1) was considered by the Employment Committee, Social Protection Committee, Education Committee, Social Partners and the Public Employment Services Network during March. During these rounds of negotiations, we managed to relax the language on labour taxation and Member States' social policies. Other minor changes were also agreed, for example, including a reference to Public Employment Services, removing redundancies or changing the order of the text to make it flow better. All of these changes were in keeping with UK policies and were agreeable to us. The final text was agreed by the Employment Committee on 31 March.

The Employment Guidelines were then discussed at Council working group in April and May, where some amendments were made to the recitals, including more references to gender equality, a reference to the role of the Social Policy Committee and Employment Committee with regards to the Guidelines, and wording changes to provide clarity as to the purpose of the recitals. All these are broadly acceptable to the UK.

On 10 June, the Employment Guidelines were discussed at COREPER, where there was consensus to include a broad recital that describes that labour market reforms should consider Member States' practices and circumstances, which is agreeable to the UK.

Finally, the Employment Guidelines were scheduled for general approach at the Employment and Social Policies Council (EPSCO) on the 18 June. Due to the electoral period, your Committee has not had an opportunity to discuss this proposal yet. It was clear that, as we did not have scrutiny clearance, the UK would abstain on this proposal. No formal vote was called. As no Member States raised any objections to the proposal, the Presidency concluded that there was a de facto general approach.

The European Parliament will publish an opinion on the Employment Guidelines in early July and it is expected that, following this, the Guidelines will be formally adopted at a future Council. We will continue to hold a parliamentary scrutiny reserve and abstain within Council until your committee has had had the opportunity to consider the Guidelines.

2 July 2015

Letter from the Chairman to Priti Patel MP

Thank you for the Explanatory Memorandum (EM) of 17 March 2015 on the above proposal, which was considered by the EU Internal Market Sub-Committee at its meeting on 6 July.

We were grateful to receive Ester McVey's EM outlining the Government's view on the Commission's guidelines for employment policies in Member States. We note that the Government was able to negotiate the text of the guidelines to ensure that "inappropriately prescriptive language on labour taxation and Member States' social policies" was removed. We understand that agreement to these guidelines was secured at the EPSCO Council meeting on 18 June 2015, but that the Government abstained.

As this document has no legislative implications, we have decided to clear it from scrutiny.

A response to this letter is not necessary.

8 July 2015

PACKAGE TRAVEL AND ASSISTED TRAVEL ARRANGEMENTS (12257/13)

Letter from Nick Boles MP, Minister for State for Skils, Department for Business, Innovation and Skills, to the Chairman

I refer to the Explanatory Memorandum on the above, to subsequent correspondence and in particular to your letter of 2 December informing the Government of the Committee's decision to clear this proposal from scrutiny.

I can now inform you that negotiations have now ended and that political agreement on a final compromise text was agreed at the Competitiveness Council on 28 May.

I can also confirm that the UK voted in favour of the compromise text. We are satisfied that the final negotiations on the compromise text during the informal trilogue reached a satisfactory conclusion.

The remaining significant issue, concerning scope, was resolved when the European Parliament agreed a position which essentially reflected the General Approach agreed in Council. The European Parliament had argued for a broadening of application to the extent that the UK and most other Member States considered could not be justified and was not proportionate. In effect, therefore, full coverage of the new Directive will apply to the traditional package and the new "dynamic packaging" models which were identified by the Commission in its research as being the chief source of consumer detriment in the sector. They are also the models in direct competition with the traditional package organisers. In agreeing to this, the European Parliament asked that this element of the Directive should be subject to early review by the Commission, within three years of publication, to assess whether in the light of that experience the definition should be broadened.

15 June 2015

Letter from the Chairman to Nick Boles MP

Thank you for your letter of 15 June 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 6 July 2015.

We are grateful for the update on negotiations and to know that the Government voted in the favour of the final compromise text. We also note that the European Parliament agreed to adopt the Council's views on the scope of the proposal.

A response to this letter is not required.

8 July 2015

SINGLE-MEMBER PRIVATE LIMITED LIABILITY COMPANIES (8842/14)

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

The EU Internal Market, Infrastructure and Employment Sub-Committee at its meeting on 16 March 2015 considered this proposal and decided to clear this document from scrutiny. The Committee asked for an update on negotiations, especially in relation to the inclusion of Delegated and Implementing Acts.

I am able to inform you that a General Approach was agreed at the Competitiveness Council on 28th May. The proposal will now move into Trilogues likely to begin later this year under the Luxembourg Presidency.

I am pleased to tell you that the proposal no longer includes Implementing Act powers. There is one Delegated Act power which enables the Commission to update Annex I to the Directive. Annex I lists types of companies in each Member State to which Part I of the Directive applies. (Part I replaces, and largely replicates, Directive 2009/102/EC which deals with single-member private limited liability companies.) Also, Annex I companies have to be allowed to convert into an SUP (subject to national law conditions and procedures). In the UK the Annex I companies are private companies

limited by shares or by guarantee. If a Member State informs the Commission of a change to the types of private limited companies provided for in its national law, then the Commission can update Annex1 to reflect that change.

The Delegated act power is limited to five years, but will be extended for further five year periods unless the European Parliament or Council opposes the extension.

We will continue to try to influence the process to ensure that electronic registration remains quick and easy in all Member States; that the low minimum capital provision is maintained, and that new requirements are not inserted in relation to the internal management of the company.

I will ensure the committee is updated as discussions move forward.

22 June 2015

Letter from the Chairman to Baroness Neville-Rolfe

Thank you for your letter dated 22 June 2015 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting of 6 July 2015.

We welcome the progress that has been on this proposal and the General Approach that was agreed on 28 May 2015 at the Competitiveness Council meeting. As you are aware, we share your support for this proposal in its intention to make it easier for SMEs and others to operate in other Member States.

We note that the Implementing Act has been removed from the agreed text, although the provision for a Delegated Act allowing the Commission to amend the list of companies which could register as a SUP, remains. Are you content for this Delegated Act to remain part of the proposal?

However, we understand that the strength of this proposal – simplifying the process through which individuals can register companies in other Member States – has also led to some concerns from MEPs that this process could be used to undertake money laundering or tax avoidance. Do you believe this to be likely and does the proposal include safeguards to protect against such abuse without being overly burdensome to businesses?

As the proposal enters key trilogue negotiations, the Government will have to work with MEPs to ensure that the proposal remains faithful to its initial aims – that of being deregulatory and simplifying in nature. We would like to know what steps the Government is taking to engage effectively with MEPs in the crucial final stages of negotiations on this proposal.

We look forward to response in 10 working days.

8 July 2015

TELECOMMUNICATIONS SINGLE MARKET (13562/13, 13555/13, 9175/14)

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

In my last letter, sent shortly before the dissolution of Parliament before the General Election, I covered the anticipated stages and timeline for this regulatory proposal moving forward, as well as indicating that it was anticipated that an overall agreement may be reached before your committee was formally convened as part of the new Parliament.

Although the formal negotiations suffered some slippage, a formal agreement was reached as part of the trialogue process at end-June. This letter provides: a brief summary of the negotiating processes that took place since my last letter; an analysis of the agreed text and any impacts; sets out a timetable for the final formal stages before the Regulation comes into force; and acts as a request that the existing scrutiny reserve be lifted.

OUTLINE OF NEGOTIATIONS (MARCH - JUNE 2015)

You may recall from my last letter, I set out a timetable that foresaw the continuation of the trialogue process after the Easter break and agreement at some point thereafter. Whilst this came to pass, it is fair to observe that the timetable suffered some severe slippage, as the Presidency struggled to consolidate a text that met the conflicting and substantive demands within Council, as well as between Council and the European Parliament. It was clear that there were some fundamental disagreements over the preferred outcomes covering both the roaming and net neutrality provisions in the Regulation.

This continued lack of agreement drove the Presidency to organise an informal ministerial breakfast on the morning of Telecoms Council that took place on 12th June. Whilst the discussion enabled ministers to set out their positions - my intervention called for an early agreement, as well as supporting an end to roaming charges as quickly as possible - it failed to break the deadlock within Council. As a result, it was beginning to look increasingly likely that no agreement would be reached and the package would formally pass to a Second Reading stage for agreement after the Summer.

Further technical meetings between the Presidency and EP took place, before the formulation of a text that was put forward in the second half of June. This text quickly gained traction in both Council and the EP and a point of political agreement was reached at the trialogue meeting that took place on 29th June.

I now turn to an analysis of that text, noting the major outcomes for each element and how they meet HMG's negotiating position.

MOBILE ROAMING

In my last letter, the then roaming element of the Regulation had the main actions of:

— The introduction of a roaming allowance with reduced roaming charges once the allowance was exceeded (as an interim measure whilst the wholesale review took place);

— A commitment to review, and take action as necessary, of the wholesale pricing regime;

— An extension of the existing consumer protection regime (SMS alerts) to cover the use of the allowance and charges thereafter; and

— An eventual cessation of mobile roaming charges in the EU through the introduction of a 'roam like at home' solution once the wholesale price review was completed and any actions implemented.

It very much remained the case that both the level of the roaming allowance and the dates associated with the wholesale review and, thus, eventual cessation of mobile roaming charges were the points around which reaching agreement proved difficult within Council (many Member States favouring a cautious approach of lower allowances and later dates), and between Council and the EP (the latter preferring larger allowances and an early end to roaming).

As negotiations commenced, it became clear that an early end to roaming charges began to garner majority support within Council and was seen as a tactical concession in order to manage the EP's expectations with regard to net neutrality.

As part of this discussion, some Member States began to cast doubt on the necessity and desirability of the roaming allowance ie it would be in place for around 18 months and would drive network operators to change billing regimes twice in this period (as well as bear costs associated with providing an allowance without addressing the wholesale pricing regime). The Presidency therefore proposed that the allowance be dropped and an early end-date of roaming be adopted. This approach quickly gained majority support within Council and, as such, was agreed with the EP during the last trialogue session.

Thus, the final outcome is text that sets out a clear timetable for the eventual cessation of mobile roaming charges, and confirms actions that required to be taken in order to achieve same.

In summary, the main points are:

— **Jan '16 to June '17:** Consumers will continue to pay mobile roaming charges in the EU at the following rates: 19c/minute for outgoing-voice calls; 6c/SMS; and 20c/MB for data. These rates are comparable with the existing caps as set out under the third Mobile Roaming Regulation and will remain in place until the eventual cessation of mobile roaming charges. It is entirely possible that UK consumers may be offered roaming charges below these rates;

— **Jan '16 to June '17:** the Commission and BEREC will conduct a review of the current pricing regime, and competition effects driven by same, including the existing level and divergence of wholesale prices. They will then propose and implement any necessary changes, in order to ensure that a 'roam like at home' solution is economically sustainable in the long-term;

— **June '17 onwards:** Consumers will no longer be charged mobile roaming charges as the 'roam like at home' regime comes into effect; and

— **Fair-Use Policies:** in order to manage the risks around arbitrage - SIMs from member states with low domestic rates being re-sold in states with high domestic rates and used to roam permanently - network operators will be able to implement fair-use policies.

Given that this outcome is one that HMG has championed from the beginning of negotiations (albeit via a slight detour through the introduction of the interim roaming allowance), I have no hesitation in supporting this result.

In my view, it not only offers clear tangible benefits to consumers - through the eventual cessation of mobile roaming charges and removing the risk of future bill shock whilst roaming – it also provides a concrete example of the benefits that can be delivered through membership of the EU. Further, by conducting a review of the wholesale pricing regime and ensuing actions, it places the 'roam like at home' outcome on a sustainable basis for the longer-term and will help further integrate the telecoms single market. It is anticipated that consumers will further engage with digital goods and services whilst roaming, providing further momentum towards the creation of the digital single market; a real benefit to businesses providing same. Finally, this outcome is one that has drawn support from the Prime Minister and meets his ambition of seeing the end of mobile roaming charges in the EU.

I now turn to the element of the Regulation that covers net neutrality.

NET NEUTRALITY

Overall, the text agreed is principles-based and is service & technology neutral. It will ensure an open internet across Europe where all legal traffic is treated equally and bring to an end the unfair blocking of rival services we have seen in some instances in the past.

In terms of traffic management, it requires that any traffic management undertaken by operators is transparent. It also provides further clarification on what powers are conferred to national regulatory authorities - Ofcom in the UK's instance - and what action they can take when they believe the requirements of the Regulation are being breached. As such, the text fully meets the wider criteria that set down HMG's negotiating position.

However, you may recall from my previous correspondence that HMG was pursuing a specific exemption within the Regulation to avoid the UK having to place its current child online protection regime (both the voluntary parental control filters and the work of the Internet Watch Foundation to combat illegal child sex abuse imagery) on a legislative footing. Despite some opposition within Council to this UK-specific exemption, such a text formulation was retained in the text moving forward until the final trialogue meeting. It was leading up to this meeting whereby the EP indicated that they could not accept such an outcome and would seek its removal from the text during the upcoming plenary session.

As such, the Presidency were forced into a difficult position: to either drop the text or continue to support its inclusion on behalf of the UK and risk both alienating the EP and it being eventually removed at a later stage. In order to ensure an overall deal was reached, largely to protect the

position on roaming, and offer a concession to the EP to avoid them focussing on other, more sensitive, issues around the net neutrality text, the Presidency opted for the former.

Whilst it is fair to say that this impact on the UK domestic regime is not perfect in terms of outcomes, it certainly does not stop UK from continuing to operate its existing regime. We have ensured that the work of the Internet Watch Foundation can continue without further intervention, and have ensured the current voluntary parental control filters regime can also continue by implementing the necessary legislation in the UK, which my Department is now taking forward. HMG was successful in gaining an implementation period to ensure that UK is able to become compliant with the new requirements; that deadline is December 2016, giving us ample time to complete this process.

Therefore, on balance, and bearing in mind how the outcome on net neutrality evolved from the original Commission and EP proposals which were largely unpalatable for the UK, I judge this outcome to be largely positive overall and is well within a range of outcomes that would have been acceptable to HMG. As such, I can also support the outcome for this element.

In summary, I note that the text that was agreed at the final trialogue contains a positive outcome with regard to UK's ambition on an eventual cessation to mobile roaming charges in the EU and that UK has been largely successful in shaping the resulting regulatory requirements cover matters relating to net neutrality. It also manifests a much simplified Regulation; another key UK negotiating objective.

Thus, on balance, I am content to support the overall outcome.

NEXT STAGES AND ADOPTION

With agreement finally gained in the dying embers of the Latvian Presidency, the formal process of adoption will now fall to the incoming Presidency of Luxembourg. As such, the final text was approved at a meeting of Coreper on Wednesday 8th July and will now pass through the jurist-linguist process for legal review and translation into the official languages of the EU. The Regulation will then be put to an upcoming Council, and a full plenary of the EP for adoption; the specific Council and date of the EP Plenary have yet to be confirmed; this is expected to take place in the Autumn. The Regulation will come into force after publication on the Official Journal of the European Union. It is anticipated that the net neutrality provisions will come into force on April 2016; the stages for roaming are noted above.

Given the above analysis of the outcomes, that shows that the Regulation has largely meets HMG's negotiating position, it is my intention that UK votes to accept the Regulation. With this in mind, I should be grateful if you are content to lift your committee's existing scrutiny reserve on the Regulation.

I trust that this letter proves sufficient in explaining the outcome following conclusion of negotiations and why I believe HMG should support same. You are, however, welcome to write to me should you wish to raise any further points of detail.

9 July 2015