



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 May to November 2009.

AGRICULTURE, FISHERIES AND ENVIRONMENT (SUB-COMMITTEE D)

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ACCESS TO MODERN ICT IN RURAL AREAS (7201/09)

Letter from Dan Norris MP, Minister for Rural Affairs and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

You wrote to Huw Irranca-Davies on 23 April about the Explanatory Memorandum relating to rural broadband and funding under the European Economic Recovery Plan (EERP). You asked that we let you know the outcome of the decisions on EERP funding.

Under the EERP, €1.02bn of European funding is being made available to Member States and allocated through rural development programmes, for investment in rural broadband and the ‘new challenges’ arising from the CAP Health-Check (climate change, renewable energy, water management, biodiversity and dairy sector restructuring). The UK share of the available EERP funds amounts to €12.5 million and is divided between England, Scotland, Northern Ireland and Wales in proportion to each country’s share of the total UK Rural Development budget. National co-financing at a rate of 25% is added to the EU funding.

In England, the funding will be split between supporting the dairy industry and rural broadband infrastructure and will be delivered through the Regional Development Agencies under the Rural Development Programme for England (RDPE). In addition, we are proposing that rural broadband is recognised as an enhanced priority within the RDPE. This will provide greater flexibility to the Regional Development Agencies in supporting rural broadband infrastructure needs using other measures and axes in the Programme.

Scotland will be using its share of the EERP funding to address the CAP Health-Check ‘new challenges’ (climate change, renewable energy, water management, biodiversity and dairy sector restructuring). Wales and Northern Ireland will use their shares on rural broadband projects. The proposals require approval from the Commission, which is likely to take several months.

13 August 2009

AGRICULTURE AND FISHERIES COUNCIL: 13 JULY 2009

Letter from Jim Fitzpatrick MP, Minister of State for Food, Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

In light of the advice to government departments on the tabling of written statements before the parliamentary recess, I am writing to you to summarise what took place at the meeting of the Agriculture and Fisheries Council in Brussels on 13 July, at which I represented the United Kingdom. Richard Lochhead also attended.

There were four substantive agenda items, under agriculture only, and items under 'Any Other Business'.

Sweden introduced its work programme highlighting sustainable fisheries, food and climate change, and animal welfare as its three priorities.

The Commission then presented its proposal to amend the Single Common Market Organisation, extending dairy intervention (butter and skimmed milk products) from 31 August 2009 until 28 February 2010. Additionally, the proposal would grant them powers to extend intervention a further year should the market situation determine that a further prolongation was necessary. The Commission had announced that it would adopt the proposal from the May Council in response to German-led calls for action to stabilise dairy markets, but clarified that the proposal could not come into force without an Opinion from the European Parliament, which would not arrive before September. Since dairy intervention would expire under the existing provisions of the Single Common Market Organisation on 31 August, the Commission announced its intention to 'anticipate' the measures, using emergency powers in the Management Committee. The Commission also confirmed that its dairy market report, called for by the European Council in June, would be adopted.

With the exception of Greece, Denmark, the UK and Italy all Member States were content with the Commission's proposal, though many believed the Commission could do more.

Next, the Commission presented the Communication 'Towards a coherent strategy for a European Agricultural Research Agenda'. The Communication identified the significant global challenges faced in delivering a sustainable and secure supply of food in the face of climate change and an increasing world population. They emphasised that an EU-wide approach was essential as no Member State had the capacity to work alone, and the Standing Committee on Agricultural Research (SCAR) had both a role in facilitating greater joint programming, and identifying key research priorities.

Member States repeatedly emphasised the key challenges that European Agriculture faced, notably: mitigating and adapting to climate change; coping with disease and water shortages; and achieving food security. Delegations endorsed the work of SCAR and agreed with the Commission's call for better co-ordination and knowledge-sharing among research centres. The Presidency concluded that it would return to this issue, within the wider Research agenda, at Competitiveness Council in the autumn.

Responding to the Commission's working document on 'Adapting to Climate Change: the Challenge for European Agriculture', the Presidency circulated a questionnaire asking Ministers to respond to two questions: which aspect of adaptation was the most important; and what area of research relating to adaptation of European agriculture was to be considered strategically important.

In relation to the first question, Member States highlighted respective national challenges in respect of Climate Change - everything from water shortages to increased exposure to pests and diseases. The UK stressed that Climate Change increased the need for farmers to be effective stewards of the natural environment. In relation to the second question, all Member States recognised the importance of research and in particular highlighted the need to look further at different plant varieties (which might be more pest and drought resistant), and animal breeding (which would produce more meat with fewer resources). Agriculture's role in reducing Greenhouse Gas emissions and in mitigating Climate Change was also highlighted as an important area in which research could play a role.

The Commission reported that a paper was being prepared on the issue of Climate Change Mitigation and the challenges for Agriculture. The Presidency confirmed that it would return to the issue of Climate Change and Agriculture at its Informal Council in Vaxjo in September.

Under any other business, Lithuania repeated calls for an increase in the rate of export refunds for cheese products. The Commission urged prudence as there were steady trade flows in cheese products, which the Commission would continue to monitor. If it became necessary to act, the Commission would be ready to do so.

Slovenia called for action to stem the decrease of bee populations; specifically for bees to be considered an endangered species. The UK, together with a number of Member States all expressed

national concerns relating to bee mortality, though very few could support the Slovene call for considering bees an endangered species. The Commission recognised the importance of Member States' concerns. An inter-service group had been established and an EFSA report commissioned. Measures were also available under the Single CMO and the second pillar of the CAP to provide finance for relevant measures.

21 July 2009

AGRICULTURE: MARKETING STANDARDS FOR POULTRYMEAT (10351/08)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and the Environment, Department for Environment, Food and Rural Affairs, to the Chairman

This letter provides an update on the negotiations regarding this proposal that have been ongoing since the Explanatory Memorandum was submitted on 16 July 2008. I have attached the latest draft of the proposal published on 8 April at annex A to this letter.

Until the December 2008 EU Agriculture and Fisheries Council the main focus of the negotiations was the proposal to amend the definition of poultry meat to include the use of certain substances (AMTs – anti microbial treatments) to treat poultry carcasses. However these amendments were deleted following an almost unanimous vote (when the UK abstained) at the December Council, against the related Commission proposal (under Regulation (EC) No 853/2004), to authorise use of anti microbial treatments.

On 2 March 2009, negotiations recommenced at a Commission Working Group, when the Commission sought Member States comments on the proposal. The UK has raised concerns about the clarity, content and intention of the proposal. The UK argued strongly in favour of the quality, safety and legality of previously frozen poultry meat sold chilled in preparations, seeking to maintain the current trade. As there was limited support from other Member States, the UK concerns were largely overlooked in the Presidency compromise published on 10 March.

At the 16 March Special Committee on Agriculture (SCA) the UK proposed alternative ways of achieving the Commission's stated objectives through strengthened labelling requirements: making the point that quality is a matter of consumer perception and expressing deep concerns about the lack of an impact assessment – given the impact this may have on the UK industry in particular, but also more widely. After that meeting Hilary Benn spoke and wrote to the Commissioner to get this more suitable and proportionate labelling adopted. This would have seen the clearest labelling yet on poultry meat preparations – protecting consumers as well as the interests of all those throughout the UK industry, allowing the current trade to continue.

Despite all these efforts, at the 6 April SCA, the Commission stuck resolutely to its line for preparations to be sold 'fresh' (never frozen) or frozen, but never to be thawed and sold 'chilled' effectively ignoring our efforts to date. The Commission concluded there was a substantial Qualified Majority for the amended compromise text (at annex A), since only the UK was against. It is likely that the proposal will go to the June Agriculture and Fisheries Council after the clearance of Technical Barrier to Trade procedures at the WTO and adoption of the European Parliament Opinion.

Despite the Commission's lack of sympathy for UK requests to date and the probable result of the June Agriculture and Fisheries Council, we continue working to achieve a more suitable and proportionate outcome for the UK. We are currently discussing with UK stakeholders, prior to approaching the Commission for a 'limited derogation' to meet highly seasonal demand such as pre-Christmas, which would enable Member States to permit frozen EU-produced poultry meat to be defrosted and used in preparations and marketed chilled within that Member State.

21 May 2009

AGRICULTURE: PLACING ON MARKET OF FOOD AND FEED PRODUCTS CONTAINING GENETICALLY MODIFIED MAIZE (15375/09)

Letter from Gillian Merron MP, Minister of State, Department of Health, to the Chairman

I refer to the Explanatory Memorandum being submitted to the European Union Committee for its consideration. I look forward to hearing the Committee's reaction to this proposal, but I regret that this cannot be before the issues have been presented to the Council of Ministers.

The EU procedures for this type of decision require the Council to act on each proposal within three months of it being referred by the Commission. On this occasion the Agriculture Council is being asked to express a view on the authorisation of this genetically modified maize well within the 3 month deadline, on 20 November. This is because of current difficulties experienced by importers of commodity crops, mainly in the animal feed sector, due to the discovery of low levels of the GM maize in some imported consignments. Although the maize has been assessed as safe for use in the EU, it cannot legally be present in food or feed, even at low levels, until an authorisation decision has been finalised.

It is very regrettable that, given the extremely short period between the documents being transmitted and the vote being taken, it has not been possible to complete the scrutiny of these proposals before the Council meeting but I wish to inform the Committee of the Government's decision to proceed.

The vote on the authorisation of this GM maize was initially taken at the Standing Committee on the Food Chain and Animal Health in July. The UK voted in favour of the authorisation in line with the Government's agreed policy on supporting safety and consumer choice in relation to genetically modified organisms. The Government will therefore proceed on this basis when the proposal is considered at the Agriculture Council meeting.

I note that this is the latest in a series of similar decisions that have been referred to the Council of Ministers and that your Committee cleared proposals for three types of GM maize on 14 October, explicitly supporting the risk assessments of the European Food Safety Authority (EFSA). The Government's line on the latest proposal is also founded on a positive risk assessment from EFSA.

I hope that you will understand the rationale for proceeding in this exceptional case. I would like to stress that the decision to proceed with the vote was not taken lightly and the Government remains committed to the principles of national scrutiny of proposals that go before the Council of Ministers.

19 November 2009

AGRICULTURAL PRODUCT QUALITY POLICY (10359/09)

Letter from the Chairman, to Jim Fitzpatrick MP, Minister for Food, Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) of 22 June 2009 on the above Communication was considered by Sub-Committee D at its meeting of 8 July 2009.

Given our concerns about the CAP and about wine policy, we are closely interested in the Commission's ideas for a coherent framework for the development of agricultural product quality policy, which are set out in the Communication.

Your EM makes passing reference to your own contribution to the debate on these ideas. We have now been sent a copy of your response to the Commission's Green Paper, although our request that we should receive this at the time of its submission appears to have been overlooked. In the light of our interest in these issues, we would have expected to see a fuller exposition of your contribution to the debate, since this would undoubtedly facilitate a better assessment of the Commission's ideas, and of any legislative proposals that may come forward.

I confirm, however, that we are content to release the Communication from scrutiny.

8 July 2009

AGRICULTURE: RECIPROCAL LIBERALISATION MEASURES BETWEEN THE EC AND THE STATE OF ISRAEL (7162/09)

Letter from the Rt Hon Jane Kennedy MP, Minister of State for Farming and the Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 23 April 2009¹ about the above proposal. As you mention in your letter, it is the European Commission's responsibility to approve third countries for export to the EU. The report on Israel's controls on poultry and poultry products from the European Commission's Food and Veterinary Office (FVO) noted that their system is generally adequate and well organised but did identify some deficiencies and made several recommendations to the veterinary authorities.

¹ [Correspondence with Ministers, December 2008 to April 2009](#)

It is not unusual for the FVO to find a few problems during their missions. The Israeli authorities have responded to the Commission and have agreed to take action on the recommendations. The Commission do follow-up with third countries to ensure that the recommendations are addressed.

Member States do have the opportunity to discuss FVO reports at the Standing Committee on the Food Chain and Animal Health. Where the Commission are concerned about the controls in a third country they will introduce safeguard measures or suspend imports. We are content with the Commission's approach on Israel's report.

The detail of the concerns raised by other Member States has not been shared at this stage, following the Commission's request for Members to submit technical concerns in writing. The concerns we are aware of relate only to particularly sensitive products for certain countries, such as apple juice and sardines (which do not present an issue to the UK).

The Commission will respond to the concerns raised at the forthcoming working-group, scheduled for 25 May.

18 May 2009

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter of 18 May 2009 on the above proposal was considered by Sub-Committee D at its meeting of 3 June 2009.

You responded to the points which I raised in my letter to you of 23 April, following Sub-Committee D's consideration of your Explanatory Memorandum at its meeting of 22 April.

In the light of the information that you have provided, we are content to clear the proposal from scrutiny

4 June 2009

AGRICULTURE: SINGLE CMO REGULATION (14270/09)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal, as well as your letter of 6 November 2009 to Michael Connarty, were considered by Sub-Committee D at its meeting of 11 November 2009.

We share the concerns that you have expressed about the proposed extension in the scope of Article 186 of the single CMO Regulation, so as to enable the Commission to take relevant measures in the dairy sector. You say that the Proposal is expected to be before the Agriculture Council on 19/20 November, and that you plan to abstain because you see no good reason to put the extension in place now.

We are content to release the Proposal from scrutiny. However, we would ask you to explain why you do not intend to vote against the Proposal given the concerns that you voice.

11 November 2009

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 11 November 2009. You ask why I have decided to abstain in the vote for the Superlevy amendments and inclusion of Dairy into article 186 (emergency measures) of the Single CMO rather than simply vote against.

Although the direction that we wish to travel is for further reform of the CAP, the Commission have indicated that the Superlevy element of the proposal will be optional and very few Member States, if any, have indicated they will use this measure.

As for inclusion of dairy into article 186 measures (emergency measures when price is disturbed) while we have concerns over how the Commission intend to use it in the dairy field and have made those concerns very clear during the negotiation, it is also true that several other commodities are already included under this measure without causing us concern.

The two issues are being voted on as one and taking it all into account, including that our vote will not make a material difference overall due to weight of MS support, I have decided to abstain rather than vote against so as not to waste negotiating capital and risk alienating the Commission and other Member States unnecessarily.

26 November 2009

AID TO FARMERS IN AREAS WITH NATURAL HANDICAPS (8858/09)

Letter from the Chairman to Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 10 June 2009.

As you will be aware, our Committee published its Report *The Review of the Less Favoured Areas Scheme* (HL 98, 13th Report of Session 2008-09) on 4 June 2009. We await the Government's response to that Report and will not repeat our Conclusions here.

The Communication is to be the subject of Council Conclusions or of a Resolution at the June 22-23 Agriculture and Fisheries Council. We would be grateful if you could inform us if it transpires that substantive Conclusions are likely to be adopted.

Meanwhile, however, we are content to release the Communication from scrutiny.

11 June 2009

Letter from Huw Irranca-Davies MP to the Chairman

Further to the Government's Explanatory Memorandum (EM) regarding the European Commission's Communication, 'Towards a better targeting of the aid to farmers in areas with natural handicaps', I am writing, as requested in your letter of 11 June, to inform you that Member States have adopted council conclusions in relation to the Communication.

The Commission's communication was the subject of three Working Groups held in May, and was discussed further at two sessions of the Special Committee on Agriculture on June 8 and 15. Further to these discussions, council conclusions were adopted at the Agriculture and Fisheries Council held on the 22 and 23 of June. A copy of these conclusions is enclosed with this letter. To summarise:

- Member States agreed to carry out mapping based on the Commission's proposals, so according to the relevant biophysical criteria, and subject to the relevant fine-tuning, as set out in the Communication;
- Member States will submit these maps to the Commission by 31 January 2010;
- Along with the maps based on the Commission's proposals, Member States may also submit additional maps showing the application of additional criteria and/or thresholds, and/or additional fine-tuning indicators;
- Member States willingness to carry out the mapping does not constitute a judgement of the Commission's proposals, nor does it pre-empt the future LFA delimitation. Rather, these maps will serve to inform the Commission as to the full implications of the proposals it has put forward. The final discussion about the future of the LFA delimitation system will follow the mapping exercise.

At the Agriculture Council the Commission confirmed that because the cost of carrying out the necessary mapping would be relatively high for Member States, the European Agricultural Fund for Rural Development (EAFRD) could support part of the mapping under the technical assistance provision of Regulation (EC) No 1698/2005. Please find the relevant statement enclosed.

You will shortly receive a formal response from us regarding your Committee's Report, *The Review of the Less Favoured Area Scheme* (HL 98, 13th Report of Session 2008-09). This response will set out in full our views on the Less Favoured Area measure and aid to farmers in areas with natural handicaps.

20 July 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 20 July 2009, about the Council conclusions adopted by Member States in relation to the above Communication, was considered by Sub-Committee D at its meeting of 14 October 2009.

We note what has now been agreed about the proposed mapping exercise, to be completed with the submission of maps to the Commission by 31 January 2010.

You refer in your letter to our Report “*The Review of the Less Favoured Areas Scheme*” (HL 98, 13th Report of Session 2008-09) which was published in June. We have now received your response to that Report. In paragraph 15 of your response, you confirm that the UK has agreed to carry out the mapping exercise, and you endorse the view expressed in our Report that the eventual designation rules must account for the maritime climate of the UK. You say that you are working closely with the Commission to establish the best means of doing this.

We welcome this statement. I would ask that you keep us informed of progress with the mapping exercise and, in particular, of the outcome of your discussions with the Commission on ensuring proper recognition of the UK’s maritime climate.

14 October 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 14 October concerning the Less Favoured Areas review, in which you said that you welcomed the UK’s commitment to carrying out the mapping exercise inline with the Council Conclusions agreed in June this year. You also asked me to keep you informed of the outcome of my discussions with the commission on ensuring proper recognition of the UK’s maritime climate.

I am grateful for you committee’s support for this work: at present the UK and Devolved Administrations are still undertaking the mapping work and discussing the ways in which the UK’s climate can be acknowledged. However, I will be pleased to share with you the outcome of this work when I can and hope to write to you again in the early part of 2010.

12 November 2009

ANIMAL HEALTH: NON-COMMERCIAL MOVEMENTS OF PET ANIMALS (11216/09)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Proposal and your letter of 10 August to Michael Connarty MP, Chairman of the House of Commons European Scrutiny Committee, were considered by Sub-Committee D at its meeting of 14 October 2009.

We note that the key aspect of this amending Regulation lies in the space that it allows to ensure that future policy protects the UK and other Member States from certain animal diseases. We welcome the approach that you intend to take when progressing with those discussions and would be interested to know what conclusion you aspire to reach.

In the meantime, we are content to release the Proposal from scrutiny.

14 October 2009

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for releasing this Proposal from Scrutiny and for passing on the conclusions of the Committee on the document, which would amend Regulation (EC) No 998/2003 on the animal health requirements applicable to the non-commercial movement of pet animals.

The Committee noted that this amending Regulation would give Member States time to ensure that future policy protects the UK from animal diseases associated with pet travel. You welcomed the Government’s planned approach, and asked about the conclusion we aspired to reach.

We will be aiming for a modernised, proportionate regime which continues to address the risks to human and animal health in the United Kingdom. The objectives we have set for future policy are that it should:

- Protect human health
- Protect animal health
- Be based on the evidence of risk
- Be implemented proportionately

- Be deliverable, and where appropriate, enforceable
- Be publicly acceptable

One significant and changing factor will be the incidence of rabies in EU Member States and listed third countries. An important reason for the proposed extension to the end of 2011 is that date coincides with the completion of the Commission's rabies vaccination programmes – we anticipate that they will continue to prove effective in reducing rabies incidence to negligible levels. The Government will continue to develop evidence in this area and to hold discussions with the European Commission and other Member States.

The amended Regulation does give scope for the European Commission to propose additional control measures when warranted by the disease situation. If the evidence justifies it, this could allow the retention of certain specific pre-entry controls, for example on tapeworm and tick-borne diseases, which would of course have implications for any revised pet movement regime.

29 October 2009

ANTARCTIC LIVING MARINE RESOURCES

Letter from Baroness Kinnock of Holyhead, Minister for Europe, Foreign and Commonwealth Office, to the Chairman

The enclosed explanatory memorandum details European Commission proposals for a Council Decision to agree a Community position ahead of the annual meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The proposal sets out the issues that the Commission will expect to tackle during this year's discussions. The issues set out in the proposal mirror our long term priorities and objectives for management of the wider Southern Ocean. The UK is therefore supportive of both the approach and the substance of the proposal.

The key issues within the European Community mandate are to support the adoption of conservation and management measures for fisheries resources in the Convention Area based on the best scientific advice, the reinforcement of monitoring, control and surveillance measures to strengthen compliance with CCAMLR conservation measures, the reinforcement of action against illegal, unreported and unregulated fishing activities in the Convention Area and the implementation of protective measures for vulnerable marine ecosystems in the Convention Area.

My officials are intending to seek a minor clarification to the mandate to ensure that it only refers to fisheries management issues, and not to environmental aspects of CCAMLR. The UK position is that CCAMLR is not a conventional Regional Fisheries Management Organisation, but it is an intrinsic part of the Antarctic Treaty System, and it therefore has wider conservation responsibilities for the Southern Ocean and the Antarctic ecosystem. Some of these wider responsibilities relate to the UK's obligations as an Antarctic Treaty Consultative Party and go beyond EC competence.

In order to agree the mandate, the Parliamentary Scrutiny reserves will need to be lifted at the Justice and Home Affairs Council on 23 October 2009 ahead of the start of the annual CCAMLR meeting on 26 October 2009.

7 October 2009

AQUACULTURE: STRATEGY FOR SUSTAINABLE DEVELOPMENT (8677/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 3 June 2009.

Like you, we welcome the overall tone of the Communication, but emphasise the need to be vigilant to ensure that the principle of subsidiarity is respected at all times in the context of the Commission's work in this area.

There are a number of specific suggestions and areas on which we would appreciate your views and further information.

First, the Commission places a strong emphasis on Research and Development (R&D) in aquaculture. This is twofold, involving both EU and national investment. We would be interested to know what the current levels of UK Government R&D spending on aquaculture are.

Second, the Commission indicates that it may adapt the Guidelines for the Examination of State Aid to Fisheries and Aquaculture in order to improve the availability of insurance to the sector. Your view on this indication would be welcome.

Third, another important strand of the Commission's Strategy is the availability of space to allow the development of aquaculture. We would be grateful for your explanation of the UK's own maritime and marine spatial planning systems that fully recognise the strategic importance of aquaculture.

Fourth, you place a strong emphasis on the central role of the Member State, rather than the EU, in legislation relating to aquaculture. The Commission does, though, suggest that legislation on fish welfare may be appropriate in the future. We would be interested in your view on that suggestion and on the apparently more concrete indication that the animal transport Regulation ought to be amended to take into account the specific requirements of aquatic animals.

Fifth, the Commission criticises implementation of existing legislation by Member States. We would appreciate an indication of whether implementation of legislation has been a problem in the UK.

Finally, the Commission is of the opinion that there may be a problem with the public's perception of the aquaculture industry. We consider that this applies to the UK and would therefore be keen to learn what public authorities in the UK are already doing, or are planning to do, to address the issue.

We note that the Council is expected to adopt Conclusions in June. We would be grateful if you could send us a copy of those Conclusions and if you could inform us in advance of the Council meeting if there are aspects of the Conclusions that cause you particular concern.

We are content to release the Communication from scrutiny and look forward to your comments on the above points.

4 June 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 4 June in which you have confirmed that you are content to release the above Communication from scrutiny.

The UK has welcomed the Commission Communication and the Council's overall endorsement of the Communication, which is positive and supportive of the development of the aquaculture sector. However, I can assure you that during negotiations we have emphasised that aquaculture is, and should remain to a large extent within the remit of national competence and helped ensure that the principle of subsidiarity is respected.

Turning to the specific issues raised in your letter, I will respond to them in the order in which you raised them.

First, I can confirm that the total spend by Government funded bodies on aquaculture research and development (R&D) in 2007 was £6 million. Expenditure on salmonids and principally Atlantic salmon accounts for more than a third of all R&D expenditure, with marine finfish such as halibut, cod and more recently haddock accounting for 16 per cent of expenditure. R&D expenditure is dominated by fish-health related R&D. The majority of this expenditure is committed through the Government Agency laboratories of the Centre for Environment, Fisheries and Aquaculture Science (Cefas) in Weymouth and Fisheries Research Services in Aberdeen. In Scotland the focus remains on aquaculture related diseases. In England and Wales there has been a change in emphasis over the last five years towards a broader view of disease reflecting the wider range of freshwater coarse fish species together with a much smaller aquaculture sector by value and volume, the emphasis being on protection of wild stocks.

Second, you sought our views on the Commission's indication that it may adapt the current Guidelines for the Examination of State Aid to Fisheries and Aquaculture. Without clarification of the Commission's intentions in this regard, it is impossible for us to make definitive comments. However, we are somewhat cautious of amending the State Aid Guidelines to Fisheries and Aquaculture in order to improve the availability of insurance to the sector, not least because of the implications it might have for other sectors and the fact that we have opposed proposals for similar measures as part of the Common Agricultural Policy (CAP) reform. In general, we do not want to see a highly subsidised regime introduced for aquaculture and, at the Agriculture and Fisheries Council of 22 and 23 April, the Commission warned that there was no additional funding available.

Third, the Marine and Coastal Access Bill, currently before the UK Parliament, establishes a new system of marine planning based on a strategic Marine Policy Statement (MPS) applying to all UK waters, and then a series of marine plans which apply the provisions of the MPS in greater detail to particular areas. The MPS will set out policies and priorities for the whole of the UK marine area, taking into consideration the priorities of all the different UK administrations. It will also address the UK's, EU and international obligations and commitments, and will explain how we are addressing these and taking them forward through our domestic policies within each UK administration.

The MPS will enable the strategic potential of aquaculture to be recognised at a national level, and placed in context with the UK's other marine policies and objectives (including those arising from European and international obligations and commitments). Marine plans will apply the MPS in greater spatial detail, enabling sites suitable for aquaculture development to be identified, and protected from interference or sterilisation by other uses where necessary and appropriate.

Fourth, I can confirm that the Council of Europe, of which the European Union is a member, passed a recommendation on the welfare of farmed fish in 2007. More recently, the World Organisation for Animal Health (OIE) agreed a chapter in the Aquatic Code on the transport of fish. As regards the animal transport Regulation, we are not aware of any proposed amendments to take account of aquatic animals. The Commission's draft proposal which has been put through the intra-service consultation process does not refer to aquatic animals.

Fifth, in its Communication, the Commission has reaffirmed its role in ensuring that Member States carry out their obligations to implement EU law in terms of animal health and consumer protection. In the UK, the aquatic animal health Directive, Directive 2006/88/EC, has been fully implemented through national legislation which came into force on the 27 March 2009. In general, we are content that all EU legislation regarding aquaculture has been implemented and is adhered to in the UK.

Lastly, we agree that the image of the industry is of concern, and despite its best efforts, remains a problem for the industry. There is some public distrust of the industry and some of the concerns relate to its not being perceived as a good neighbour: notably, salmon escapes remain a risk factor for wild populations and sea lice continue to be a problem. In Scotland, where almost all UK salmon production takes place, these two issues are being progressively addressed through the industry's code of practice and underpinning legislation and the UK intends that there should continue to be improvements in these key areas of industry performance. An industry led Marketing and Image working group is in the process of being established as part of the recently published renewed Strategic Framework for Scottish Aquaculture, "A Fresh Start: The Renewed Strategic Framework for Scottish Aquaculture". Certified high welfare and organic aquaculture, on the other hand, enjoys an improved reputation.

On the plus side many of the species that the public enjoy are already sourced from aquaculture, though they may not be aware of it, and demand is growing. There is growing confidence within the industry that they have an increasingly high quality product and that their practices can stand up to close scrutiny.

In conclusion, I can confirm that we are content with the draft text of the Council Conclusions (not printed)² which we consider to be balanced and measured, reflecting the sometimes conflicting views of all the Member States. I enclose a copy of the draft conclusions. These may, of course, be amended prior to their adoption, and I therefore undertake to send you a copy of the Conclusions as eventually adopted by the Council.

16 June 2009

BIODIVERSITY ACTION PLAN (17473/08)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your letter of 19 April 2009³ on the above subject was considered by Sub-Committee D at its meeting of 13 May.

We are grateful for your informative response and we look forward to seeing the results of the National Ecosystem Assessment.

²http://register.consilium.europa.eu/servlet/driver?lang=EN&ssf=DATE_DOCUMENT+DESC&fc=REGAISEN&srm=25&md=400&typ=Simple&cmsid=638&f_TITRE=aquaculture&f_FT_TEXT=&f_SOUS_COTE_MATIERE=PECHE&dd_DATE_REUNION=&rc=4&nr=125&page=Detail

³ [Correspondence with Ministers, December 2008 to April 2009](#)

18 May 2009

BUTTER AND SKIMMED MILK POWDER: 2009 AND 2010 INTERVENTION PERIODS
(11905/09)

**Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and the
Environment, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 14 October 2009.

We strongly welcome the approach that you have taken and the position that you propose and are content to release the Proposal from scrutiny.

14 October 2009

CLIMATE CHANGE: COPENHAGEN DEAL (13183/09)

**Letter from the Chairman to Ed Miliband MP, Secretary of State, Department for
Energy and Climate Change**

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 21 October 2009.

We note that the situation, particularly as regards the level of finance from the EU, ought to be clearer after the 29-30 October European Council meeting. We will therefore hold the Communication under scrutiny and look forward to information from you after that meeting, including on the line taken by the UK Government.

In addition, we would appreciate information from you on two specific issues. The first relates to the Commission's suggestion that Member States might usefully rely on auction revenues as a source of finance for their contributions to the EU total contribution towards international public finance. Your position on this suggestion was not clear from your EM.

Second, the Commission assert that "creative solutions" may be required to identify the additional "fast track" funding in the EU budget for the entirety of the period 2010-12. It is not clear what these may be and we would be grateful for any views that you may have on that matter.

23 October 2009

CLIMATE CHANGE: DEFORESTATION AND FOREST DEGRADATION (14473/08)

**Letter from David Kidney MP, Parliamentary Under Secretary of State, Department of
Energy and Climate Change, to the Chairman**

Thank you for your letter (18 March 2009)⁴ relating to the above Commission Communication in which you raised a number of questions. Much has happened in the intervening period and I hope the updates reassure you of the progress being made.

With regards to raising funds for climate finance you will be aware that the Prime Minister outlined in his speech on 26 June that \$100 billion per annum is needed for climate finance by 2020 and that the UK is committed to paying its fair share of this based on ability to pay and responsibility for emissions. The recent June Council endorsed the Conclusions of the Spring Council and the most recent ECOFIN. The latter included agreement on the principles of international burden sharing being the ability to pay and the responsibility for emissions, and the EU has pledged to determine the issue of internal burden sharing in good time before Copenhagen. All three confirmed the EU's continued commitment to put forward its fair share of finance at Copenhagen in the event of an ambitious global deal and the EU will continue to consider a range of ways to help raise the necessary levels of finance. The Spring Council suggested negotiations should focus particularly on mechanisms which draw from proposals made by Mexico and Norway. The "Mexican proposal" to use criteria for global contributions was incorporated in the agreement on the principles of international burden sharing.

⁴ [Correspondence with Ministers, December 2008 to April 2009](#)

We know that rainforest country needs will vary according to national circumstances and over time. Different financial instruments will be required to correspond with these needs. Finance will therefore be required to match different activities to prevent deforestation which could include capacity building, investment in alternative livelihoods and ongoing incentive payments for emissions reductions. There are a range of possible instruments that we have been considering which include a fund capitalised by national pledges, a bond issuance programme, guarantees and risk reduction instruments, and limited access to the market for emission reductions achieved by early demonstration activities. Leveraging private finance was examined through a study co-ordinated by Forum for the Future and commissioned by DECC and DFID. The full report can be downloaded from www.forumforthefuture.org/forest-investment-review

On April 1 world leaders, attending a meeting in London hosted by His Royal Highness the Prince of Wales, established the Informal Working Group on Interim Forest Finance. The aim of Working Group is to further examine interim financing needs for the prevention of deforestation and to build consensus on the mechanisms and architecture to help address them. The Working Group met for the first time in Oslo on May 14 and will meet again in August, with the aim of delivering a final report to inform the Copenhagen Climate negotiations in December.

Carbon market finance is part of this consideration. We agree with the Commission Communication's suggestion that deforestation credits should initially be used for government compliance. In our view the Commission is correct that recognition of forestry credits in the EU emissions trading scheme (EU ETS) would not be realistic at the present time as it would cause an imbalance between supply and demand and therefore could cause the carbon price to be unfeasibly low. However we have welcomed the provision contained in the draft EU Emissions Trading Scheme Directive for new crediting mechanisms under a new international climate change agreement. This is because a new climate change agreement provides the opportunity to agree more stringent emissions targets which, along with decisions on supplementary limits (the amount of credits that can be purchased from activities outside Annex I countries) would help supply and demand to be better balanced with the inclusion of credits for forestry.

Modelling commissioned by the independent Eliasch Review shows that with new targets, allowing forestry credits into the EU ETS during Phase III, would have little impact on the carbon market price at supplementary limits of 35% or 50%. This could represent approximately 22% of available forestry abatement. The UK expects that countries will take time to produce substantial volumes of credits that meet international Monitoring, Reporting and Verification standards but that limited access from 2012 to 2020 could offer an important way of working towards full market access in the longer term. It also indicates that emissions from forestry should be treated in line with emissions from other sectors and sends a strong signal to potential investors.

Many of the methodological difficulties with forest credits are perceived because the inclusion of credits for afforestation and reforestation in the Clean Development Mechanism (CDM) has been problematic. However an approach using national baselines as advocated in the Bali Action Plan addresses historical issues of leakage and additionality. Reference to the temporal nature of credits is also only an issue for projects with a limited crediting period but not where long-term responsibility is agreed. We will continue to monitor our position in light of developments.

2 July 2009

Letter from David Kidney MP to the Chairman

Your letter of 2 July 2009 about this Communication was considered by Sub-Committee D at its meeting of 8 July 2009.

You replied to a letter which I sent to Joan Ruddock, MP, on 18 March 2009. You say that much has happened in the intervening period. In fact, the Communication itself was published in October 2008, and my earlier letter pointed out that your Department had provided an Explanatory Memorandum only in February of this year. Some nine months have now elapsed since the Communication was published, and it is unfortunate that your Department's tardy submission of information for the scrutiny process means that the context in which the Communication falls to be considered has changed significantly.

Moreover, while your letter chronicles a number of meetings and statements that have occurred in the interim, it offers little hard information on some of the issues that I flagged up in March, notably how much money the EU is likely to make available for climate finance, and how that burden will be shared among EU countries.

We do not wish to keep the Communication under scrutiny, but I would impress upon you our wish to see a more timely flow of information from your Department to Parliament. I would ask you to write again promptly when there is greater clarity about the issues covered in the Communication.

8 July 2009

Letter from David Kidney MP to the Chairman

Thank you for your letter dated 8 July 2009 following our 2 July correspondence on the above Commission Communication. You are seeking greater clarity and more timely information on some of the issues the Communication raises.

With regards to use of the Emissions Trading Scheme auction revenues to finance activities aimed at reducing deforestation, we anticipate a significant increase in auctioning levels from 2013 under the revised EU ETS. Overall at least 60% of allowances will be auctioned by 2020, compared to around 3% in Phase II. EU Member States have made non-legally binding commitments to spend at least half of the revenues from auctioning to tackle climate change both in the EU and in developing countries. This will include reducing emissions, adapting to climate change, and reducing deforestation.

In my letter of 2 July I noted that His Royal Highness the Prince of Wales' meeting on 1 April kicked off an informal Working Group on Interim Finance for Reducing Deforestation (IWG-IFR). We are working with Norway as Secretariat of the Group, and other international partners, to build consensus around financing for forests in the period before market access. We are seeking agreement to recommendations on an interim financing arrangement that will provide rainforest nations with capacity building assistance, increased inward investment into the sustainable management of forests and activities which take pressure away from natural forests, such as targeting palm oil plantations on previously degraded land or intensive beef production that doesn't require the felling of natural forests, and incentive payments for emissions reductions. The IWG-IFR is due to report at a UN meeting on reducing deforestation on 23 September.

Developing a detailed EU position on new climate finance and the way it will be governed has been a challenge in the current economic crisis. Some Member States are facing new spending constraints which have increased their concern about the proportion they would have to bear of an EU financial offer. There are Member States with Parliamentary constraints which make internal agreement to new financing and governance models a slow process. There are also Member States who feel the EU should withhold details as negotiating capital until the final deal in Copenhagen. However, the UK has argued that climate finance is such an important and complex issue that we cannot afford to leave the details until the end-game. The PM's finance initiative has enabled the UK to show leadership on climate finance and provided an opportunity to push for strong progress according to the clear components he listed.

We know that collectively the EU needs to provide an equally concrete proposition quickly between now and December. We are working closely with our EU colleagues to use the October Council to build on what has been agreed so far, in order to reach a global agreement on finance at the Copenhagen summit. This includes sharing some of our internal analysis to convince colleagues of the rationale of our position. As you know, the EU has said that it will contribute its 'fair share' of climate finance, and has agreed to look at a range of mechanisms for raising for finance, and recently agreed that finance should be raised on the principle of ability to pay and emissions. We are also using all other available international negotiations (UNFCCC) and near-negotiations fora for maximum influencing, such as the G20 and UNGA.

We hope to achieve greater clarity on funding for forestry and climate change in general, in the next couple of months and will provide further information to you as it emerges.

25 August 2009

CLIMATE CHANGE: COPENHAGEN DEAL (13183/09)

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

Many thanks for your response to the Government's Explanatory Memorandum on the European Commission Communication: 'Stepping up international climate finance: A blueprint for the Copenhagen deal'.

As you are aware, European Council was held on the 29 October. At this meeting EU Heads of State made considerable progress on climate finance including:

- Endorsement of the Commission's estimate of €100 billion per annum by 2020 for mitigation and adaptation in developing countries and committed to providing its fair share of public support for this.

- Estimation that public finance in the region of €22-50 billion per annum would be needed by 2020. All countries, except the least developed, should contribute to international public financing through a global distribution key based on emissions levels and on GDP.
- Support for the establishment of a high level forum/body, under the guidance of the UNFCCC to provide an overview of international sources for climate finance in developing countries.
- Affirmation that a figure for fast-start international public support would be determined in the light of the outcome from Copenhagen, taking note of the Commission estimate of a fast-start financing need of €5-7 billion per annum for the first three years following a Copenhagen agreement. Also, confirmation that the EU and its Member States are ready to contribute their fair share of these costs conditional upon comparable efforts from other key players.

You raised two key questions in your letter which I would like to take the opportunity to address.

You refer to the Commission's suggestion that Member States might rely on auction revenues as a source of their contribution to international public finance. The EU ETS Directive does not provide for legally binding hypothecation of auction revenues. However, in recognition of the considerable efforts necessary to combat climate change and to adapt to its inevitable effects, EU leaders adopted a political declaration indicating Member States' willingness to spend money equivalent to at least half of the revenues raised to tackle climate change both in the EU and in developing countries. This will include reducing emissions; adapting to climate change; reducing deforestation; and developing renewable technologies. This commitment has been incorporated into the revised EU ETS directive at Article 10 (3) which sets out the type of activities the auction revenues should be used for.

The Commission's reference to "creative solutions" to identify the additional fast-start funding in the EU budget could include the potential reallocation of unused funds. The details are not specified in the Communication as they will be considered as part of budget discussions. The UK is continuing to develop its thinking on sources for fast-start financing and has also been considering ways of incentivising private investment to increase financing from institutional investors such as pension funds and sovereign wealth funds for low carbon development.

I thank you once again for your response, and I will continue to update you on the progress of negotiations.

10 November 2009

Letter from the Chairman to the Rt Hon Ed Miliband MP

Your letter of 10 November 2009, replying to mine of 23 October, was considered by Sub-Committee D at its meeting on 25 November 2009.

In the light of the information that you have provided, we are content to release the Communication from scrutiny.

25 November 2009

CLIMATE CHANGE: INTERNATIONAL CLIMATE CHANGE AGREEMENT IN COPENHAGEN (5892/09)

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

Many thanks for your letter of 2 April⁵ asking for further clarification on the position the UK has been taking at Council meetings within the EU. As you will be aware, Spring European Council was held on 19/20 March, which continued the progress made at March Environment Council and ECOFIN. Through Spring Council Conclusions, Heads of State furthered the EU position on climate financing, where they outlined the EU's commitment to financing its fair share of actions on climate change in developing countries, in addition to suggesting a shortlist of credible yet innovative financing mechanisms. The EU will now discuss this with its international partners and further develop its position at European Council in June.

⁵ [Correspondence with Ministers, December 2008 to April 2009](#)

As you are aware we are in the middle of complex and sensitive international negotiations. My response to you therefore balances the need for transparency of the UK Government's view with the need to protect our negotiating position.

In response to the specific questions you raised regarding enforcement, the range of sanctions available to the Compliance Committee has served to deter non-compliance and to remedy non-compliance when it has occurred. For example, banning Greece from engaging in emissions trading resulted in considerable efforts on the part of that country to address its non-compliance.

There is a risk that a strong compliance regime could provide a disincentive for some Parties to sign up to new agreements. Any country considering not signing up to a new agreement for fear of potential non-compliance sanctions would have to weigh that potential risk against the benefits that would flow from signing up to the agreement (such as access to the carbon markets).

As set out in my previous letter, we believe that the adoption of a sufficiently robust international climate agreement would provide the optimal solution to carbon leakage, as it would create a level playing field for industry. We will therefore seek to maximise the commitment of other countries to reduce emissions, in order to create such an agreement.

In this context, the EU has supported the allocation of free allowances as an interim measure to tackle carbon leakage, rather than the use of border adjustment mechanisms which could be viewed as protectionist, would push countries away from the negotiating table and could therefore be detrimental to reaching an agreement. We consider that this demonstrates a commitment to achieving a global agreement and addressing carbon leakage. Levels of free allocation will be reviewed following the achievement of an international climate agreement to assess whether they are still justified.

I thank you once again for your response, and I will continue to update you on the progress of negotiations.

2 May 2009

Letter from the Chairman to the Rt Hon Ed Miliband MP

Your letter (2 May) on the above Communication was considered by Sub-Committee D at its meeting of 13 May 2009.

We regret that you have been unable to share more information about the UK's approach to these negotiations. However, we recognise that you wish to protect the UK's negotiating position, and will therefore now lift scrutiny on this Communication.

18 May 2009

CLIMATE CHANGE: TOWARDS A EUROPEAN FRAMEWORK FOR ACTION (8526/09)

Letter from the Chairman to the Hilary Benn MP, Secretary of State, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above White Paper was considered by Sub-Committee D at its meeting of 3 June 2009.

We welcome the overall thrust of the Commission's White Paper, and agree that the proposed strategic framework approach by the Commission is a sensible one to take. It is clear that there is an EU interest in the matter of adaptation to climate change as many key EU policy areas are affected. On the other hand, the impact of climate change is diverse and it is therefore crucial that responses to it are applied at as local a level as possible. The challenge is therefore to ensure that any action by the EU institutions respects the principle of subsidiarity and delivers action at the appropriate level. We note that this is an approach that you intend to take.

We strongly agree with you that the scant coverage in the White Paper of the health effects of climate change is regrettable, as is the failure to recognise the link between human health and animal health.

We may well examine in some detail the specific issue of the EU's role in adaptation of agriculture and land management to climate change in the near future. We were particularly interested to note both your comments and those of the Commission in relation to the link between the adaptation debate and the review of the CAP within the context of the overall EU budget review.

We are content to release the White Paper from scrutiny.

4 June 2009

COMMON AGRICULTURAL POLICY SIMPLIFICATION (7771/09)

Letter from Rt Hon Jane Kennedy MP, Minister for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 30 April⁶ about the above proposal. I am pleased to note that you have released the EM from scrutiny and I am happy to provide below answers to your additional questions.

The UK and other Member States have been fully engaged with discussions in the Agriculture Council in order to emphasise to the Commission the need for further simplification measures and the importance of applying better regulation practices at key stages of the regulatory process. These principles, along with some specific areas for further action, are reflected in the Council conclusions on the subject, a copy of which I enclose with this letter.

These have since been agreed at the Agriculture Council on 25 May and highlight the following:

SPECIFIC AREAS

- The single Common Market Organisation (CMO) Regulation;
- Cross compliance rules;
- Legislation around exchange of information using IT systems.

GENERAL PRINCIPLES

- Integrating simplification measures across the Commission;
- The use of Impact Assessments;
- Sharing best practice;
- Involving national paying agencies more;
- Ensuring legislation is clearly written and that guidance is produced for farmers.

In addition, Denmark has prepared a consolidated list of simplification suggestions made by a number of Member States. It was presented to Council in April, signed by 13 Member States, including the UK, and details a total of 39 suggestions, in the following main areas:

- Cross compliance
- Single payment scheme
- Single area payment scheme
- Pillar 2 (rural development) measures

The Commission's response to the Council conclusions has been positive. They have committed to convening the Simplification Experts Group (made up of delegations from all Member States) to examine the suggestions and come forward with proposals where they consider that simplification measures are feasible and likely to bring benefits.

You asked for examples of where the Government has questioned the quality of the Commission's Impact Assessments.

Recent examples of the Commission producing poor Impact Assessments include the proposals to restrict the use of certain pesticides and the introduction of electronic identification for sheep.

The Commission's Impact Assessment for the pesticides Regulation failed to address the effects of these restrictions on business or to demonstrate the benefits expected to accrue from them. The UK stressed the need for such an assessment during the negotiations and will vote against the proposal in Council because no Impact Assessment was prepared.

⁶ [Correspondence with Ministers, December 2008 to April 2009](#)

In the case of sheep identification, a poor initial Impact Assessment has required Defra Ministers and officials to argue strongly for a more flexible approach to implementation based on our own examination of the impacts. I am pleased to report that the Commission has been willing to listen to concerns expressed by the UK and some other Member States and to propose measures that will reduce the burdens imposed upon sheep keepers by implementation.

This is a good outcome, but one which could have been arrived at more easily had a better Impact Assessment been prepared in the first place.

In light of issues such as these, we continue to reinforce the message that Impact Assessments are a vital element of effective policy making. Our aim is to encourage the Commission to set itself high standards for Impact Assessments.

3 June 2009

Letter from the Chairman to Jim Fitzpatrick MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs,

Jane Kennedy's letter of 3 June 2009, replying to mine of 30 April, was considered by Sub-Committee D at its meeting of 17 June 2009.

It was helpful to see the information that Jane Kennedy provided about specific examples of the impact of the simplification process.

We noted in particular her mention of the Commission's willingness to listen to concerns, expressed by the UK and others, about implementation of the requirements for sheep identification. This continues to be an issue of concern, and we would welcome more information about the measures that Jane Kennedy said had been proposed to reduce the resulting burdens on sheep-keepers.

17 June 2009

Letter from the Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 17 June, in response to Jane Kennedy's letter of 3 June, seeking more information regarding the measures proposed to reduce the burdens on sheep keepers of implementing electronic identification (EID).

Since the Regulation was adopted in 2003 we have successfully secured a two year delay on implementation until 31 December 2009, and have secured phase in arrangements for individual recording which will considerably reduce the movement recording burdens for sheep keepers during the start up period. In particular we have delayed the introduction of individual recording for older non-electronically identified animals until 31 December 2011 and secured provisions that mean that these older non-electronically identified animals, when moving to slaughter, will not have to be individually recorded at all. We estimate these changes to the recording requirements will result in industry savings of around £4.5 million.

We are continuing to press for further changes to the Regulations and have proposed measures which would allow individual animal information to be read on behalf of keepers at critical control points i.e. markets and abattoirs. If secured, we estimate this change would reduce costs to keepers by between 35% and 40%. This could result in annual UK savings of between £7.5m and £20.5m. This proposal is likely to be discussed and possibly voted on at the Standing Committee on the Food Chain and Animal Health (SCoFAH) meeting to be held on 30 June/1 July.

7 July 2009

COMMON AGRICULTURE POLICY: SCHOOL FRUIT SCHEME (11380/08)

Letter from the Chairman to Jim Fitzpatrick MP, Minister of State for Food, Farming and Environment, Department for Environment, Food and Rural Affairs

Your letter of 28 July 2009 on the above Proposal was considered by Sub-Committee D at its meeting of 21 October.

Your letter replies to one of 10 October 2008 from my predecessor, which retained the Proposal under scrutiny while an impact assessment was awaited. You explain that the Proposal was in fact agreed at a Council in December 2008, although the impact assessment was finalised only in June 2009.

You apologise for the significant delay in your reply. What is of particular concern is not only that the delay was indeed significant (over nine months), but also that this was not an isolated case. On 14 October, for example, among several letters which I wrote to your ministerial colleague Huw Irranca-Davies, one (dealing with 10476/08) pointed out that the Minister's letter of 10 August 2009 was a reply to my letter of 14 January 2009; and another (dealing with 15694/08) noted that the Minister's letter of 8 July responded to my letter of 11 March 2009.

As I wrote to Mr Irranca-Davies, we know that your Department's Permanent Secretary has set out actions intended to improve Defra's scrutiny performance. In the light of Dame Helen's letter of 23 July, I am copying this letter to her.

21 October 2009

CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (15130/08)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 1 April.

I regret the delay that arose in relation to the late submission of the above Explanatory Memorandum (EM). This occurred because of administrative errors here, about which I wrote to Michael Connarty on 12 February following my oral explanation to the European Scrutiny Committee on 11 February 2009.

<http://www.publications.parliament.uk/pa/cm200809/cmselect/cmeuleg/246/09021101.htm>

As I explained, we have since reviewed the procedures for dealing with Parliamentary scrutiny of EU documents within Defra and will be seeking to ensure that Explanatory Memoranda and Correspondence are not delayed in future.

Our Parliamentary Scrutiny team has issued new commissioning instructions to the policy officials responsible for drafting EMs, placing particular emphasis on the importance of preparing them within the set deadlines, along with the need to answer the Committee's follow-up questions promptly. A new tracking system had been put in place allowing better monitoring of how each EM is progressing, keeping Ministers and the Committee informed if there are any problems, and chasing up overdue cases at an appropriate level. Following this overhaul of procedures, Defra's record in February and March has improved considerably: 90% of EMs on newly received EU documents were submitted by the 10 day Cabinet Office deadline; 100% were submitted within 2 days of the deadline.

Defra takes the issue of Parliamentary scrutiny very seriously, and will endeavour to ensure that this situation does not arise again by maintaining our record of improved Performance.

5 May 2009

DAIRY MARKET SITUATION 2009 (12289/09)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 14 October 2009.

We note that, since you wrote to us with your EM, the Council has met to discuss the Communication. The Council took note of documents submitted by other Member States, most notably one document which was supported by sixteen Member States. We would be interested to know your views on the opinions expressed by those documents.

Second, you note that the Commission's document contains a strong focus on the transparency of the supply chain. Could you, please, indicate your view on this matter and how you think the European Union might contribute to improving the situation?

We look forward to your responses on the above points and we are now content to release the Communication from scrutiny.

14 October 2009

EARTH OBSERVATION PROGRAMME (GMES) AND INITIAL OPERATIONS (2011–2013)
(10285/09)

**Letter from the Chairman to Dan Norris MP, Minister for Rural Affairs and
Environment, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 1 July 2009.

We note that you support the proposed Regulation, in particular because of your view that it will set the further development of GMES in a better framework of governance – not least, through the proposed GMES Committee, by allowing Member States a formal opportunity to influence that development.

However, we also note that there are several issues which bear upon the UK's support for the initiative and which need to be kept under review in the evolution of GMES. We would endorse the caveats which you raise, and which include, for example, the need to ensure equal treatment of the atmosphere and marine services provided by GMES.

You have explained that the proposal is likely to be examined by the European Parliament's Industry and Research Committee in autumn of this year. We would ask that you let us know whether that examination leads to any significant changes. We shall keep the proposal under scrutiny until we have received such further information.

1 July 2009

**FISHERIES: COMMUNITY CONTROL SYSTEM FOR ENSURING COMPLIANCE WITH
THE RULES OF THE COMMON FISHERIES POLICY (15694/08, 15869/08)**

**Letter from Huw Irranca-Davies MP, Minister of State, Department for Environment,
Food and Rural Affairs, to the Chairman**

Thank you for your letter dated 11 March 2009⁷ setting out the Select Committee's views on the content of the above two documents. May I first begin by apologising for the length of time it has taken to respond. It would appear that your original letter was misplaced and not forward to my office for reply.

I shall begin by explaining briefly the current state of play in the negotiations. Detailed discussions with Member States' officials at Council Working Group began on 29 January and continued until the end of April. The Commission then produced a compromise text (not printed) which was the subject of an initial discussion at Ministerial level during the June Agriculture and Fisheries Council. During that discussion Member States reaffirmed their commitment to the need to improve controls but expressed varying degrees of concern over the proportionality and the cost effectiveness of some aspects of the proposal. In his response Commissioner Borg assured everyone that the Commission is listening to Member States and that a new text will be produced shortly which will address some of the concerns put forward by Member States. This will be taken forward during the Swedish Presidency with a view to final agreement at October Council.

Turning to the specific points you made in your letter, I fully agree with you on the complexity and importance of this proposal and on the close link between it and the proposed legislation on technical conservation measures. During the first round of discussions at Working Group, my officials have commented that the inclusion of technical conservation provisions in the Control Regulation could in fact be confusing and there should be a clear distinction between the two regulations.

You asked for my views on the efficacy of the provisions on the monitoring of capacity in the draft Regulation. I believe the measures contained here are a step in the right direction. There is a real problem over the misdeclaration of engine power throughout the Community and it is my belief that there need to be clear rules at Community level to resolve this. I therefore look forward to seeing detailed rules to address this as provided for by the proposal. You may also wish to know that the Marine and Fisheries Agency are about to undertake a pilot project looking at methods of measuring engine power on UK vessels. This is expected to be a 6 month project which will assist officials in assessing the efficacy of the proposed detailed rules when received.

I would echo your support for the thrust of the Commission's proposal on administrative penalties and a penalty point system. However as you know, a Community system of harmonised administrative

⁷ [Correspondence with Ministers, December 2008 to April 2009](#)

sanctions has already been agreed in the context of the Illegal, Unreported and Unregulated Fishing Regulation (Council Regulation 1005/2008 of 29 September 2008) which includes a link to the value of the fish. Levels of fines are not however stipulated in that Regulation and it is the Government's view that we should not go beyond the measures already set out in that Regulation. The idea of a penalty point system is an interesting one which we would like to consider further but until the Commission can provide more detail on how they see this system working across Member States we can take no firm view.

Turning to my reservations on the proposed expansion of the remit of the Community Control Agency, I should explain that I am not against any expansion at all of its role. But we must not lose sight of the fact that the Agency was set up with a specific role in mind. This was to act as a facilitator to enable Member States to improve their enforcement performance through coordinating joint operations and the adoption of best practice, as well as by performing administrative functions such as the training of EU inspectors and the management of the Community's obligations in international waters. I am more than happy to consider an expansion of the Agency's remit in these areas, but not to go beyond that by giving it a role in policing the performance of Member States. That in my view is something that should remain the responsibility of the Commission as the enforcing Authority. Giving the Agency this dual role could in fact undermine the very good levels of cooperation that currently exist between Member States and the Agency and because of this could paradoxically lead to a reduction in the overall effectiveness of controls throughout the Community.

The system of compulsory registration of buyers and sellers of first sale fish implemented in the UK in 2005 has undoubtedly been a great success but it is important to put this into context. This was done to meet obligations relating to the first sale or marketing of fish under Article 9 of the current Control Regulation that had in fact been in place for a number of years. Far from being amongst the first Member States to implement these requirements, we were in fact one of the last.

Our understanding that the Commission proposal would require all TAC stocks to be sold through an auction market was confirmed by the Commission during the discussion at Working Group. You will be pleased to note that under pressure from the UK and other Member States the Commission has since agreed to scale back this measure which should allow current practice in the UK of operating a system of direct sales alongside the auction markets to continue.

You asked me to explain how the activities of recreational fishing are currently monitored by Government. The simple answer is that they are not and that there has until now been no requirement for us to do so. This lack of reliable data on uptake by this sector has been recognised as a potentially serious flaw in the CFP controls by us and other Member States' Governments. To deal with this, our preference is to provide a light touch approach which gathers relevant data from recreational fishers and permits the imposition of relevant controls only where recreational fishing is shown to have an impact on stocks that are depleted. You asked about the rationale behind the inclusion of recreational fisheries in the provisions of this Regulation. The Commission impact assessment is silent on this but we believe the draft provision came from the monitoring of recreational activities in the Baltic which demonstrated that a significant quantity of Baltic cod was being caught by recreational fishermen over and above the catches of commercial fishermen and that this was not being counted against quota. We do not believe that such a situation is likely to arise around the UK coast but we will only know for sure when we come up with a scheme for monitoring their activity.

You asked which parts of the proposal the Governments support and which parts we think are burdensome. On the former, the new ideas which we would support include:

- a reduced margin of tolerance for recording quantities in the logbook (although we do not favour a separate tolerance for recovery stocks) (Art 14)
- the extension of electronic logbooks to vessels below 15 metres (Art 15)
- the compulsory recording of discards (Art 41)
- the real time closure provisions (Art 43)
- penalty points (subject to clarification of the detail) (Art 84)
- provisions to tackle engine power (Arts 31 – 32)
- a single set of additional controls for all multiannual plans rather than the current rather confusing situation where the rules are different for every plan

Some of the provisions where we have asked the Commission for further evidence to support the proposal and justify the additional costs include:

- extension of vessel monitoring systems (VMS) to vessels below 15 metres (Art 9)
- the use of automatic identification systems (AIS) in addition to, rather than instead of, VMS (Art 10)
- the compulsory requirement for Member States to use Vessel Detection Systems (VDS) (Art 11- 13)
- the requirement for all vessels (including under 10 meter vessels) to give 4 hours prior notification of arrival in port (Art 17)
- the provisions on recreational fishing (Art 47)
- the new weighing requirements for all fish (Art 53)

Full details of our assessment of the costs and benefits of these proposals are set out in the Impact Assessment which will follow shortly under cover of a Supplementary Explanatory Memorandum. The Commission has indicated that it will address a number of these concerns in a revised proposal which we expect to be published shortly. In particular, it has said that it will limit the extension of VMS and the requirement to give prior notification of arrival in port to vessels over 12 metres, make the use of VDS discretionary and rewrite the provisions on recreational fishing to make the requirements less burdensome.

You asked a particular question about how the various technologies may interact. VMS and AIS perform broadly similar functions in providing information on the position of vessels, and it may be that in some circumstances, particularly in inshore areas, AIS may provide a better and cheaper alternative to VMS. However we do not think that the Commission has made a convincing case for saying that vessel must have both systems fitted. VDS is a slightly different system, offering remote detection of vessels at sea through satellite imagery. It is a comparatively expensive tool and we do not therefore think that it should be used on a day to day basis, but it may in certain circumstances be a useful tool used either in conjunction with VMS or in remote areas where it is difficult for aerial surveillance aircraft to operate.

The provisions on real time closures in Article 43 are deliberately general, allowing for detailed rules to be adopted at a later point. The concept is broadly based on pilot projects carried out in the UK under stock recovery measures. The indications from those projects are that positive effects in terms of a reduction in the numbers of juvenile fish caught have been seen. We have nevertheless raised some issues over the proposal with the Commission. These include:

- the means by which the closure is to be established i.e. by verification of information received from fishing vessels by patrol vessels;
- the length of the closures – too short a period would not have any effect and too long a period would prevent legitimate fishing practice;
- the size of the closed area; and
- the mechanisms for opening of the closed areas as these should be automatic once the closed period has expired.

We expect these issues to be addressed in the detailed rules which will be established under the procedures referred to in Article 111.

Finally, you asked for my view on how the proposal affects the powers of the Commission. This is naturally a sensitive area. However the Commission is ultimately responsible for the oversight of the implementation of the controls of the CFP by Member States. The European Court of Auditors was highly critical of the Commission's lack of power to carrying out this role effectively and recommended that "the Community legislator should reinforce the Commission's ability to put pressure on defaulting Member States". I believe their findings were correct and support the proposals in the draft Regulation which will allow the Commission to take more effective and timely action against those Member States who are not carrying out their obligations properly and are resisting calls to make improvements to their implementation of the Common Fisheries Policy controls.

I hope the information provided in this letter is useful to you in assessing your position and look forward to hearing from the Committee in the near future in regard to the Parliamentary Scrutiny on the Regulation.

8 July 2009

Letter from the Chairman to Huw Irranca-Davies

Thank you for your letter of 8 July 2009 on the above draft Regulation, which Sub-Committee D is unable to discuss before the Summer Recess. It is regrettable that my original letter of 11 March was misplaced within Defra and not forwarded to your office for reply.

The next meeting of Sub-Committee D is on 14 October, which is only three working days before the Council meeting at which you expect this extremely important Regulation to be adopted. In order to allow the Committee to take a decision on the scrutiny reserve on the basis of the most relevant information, we would appreciate a comprehensive update from you by the end of September.

We will hold the Proposal under scrutiny.

17 July 2009

Letter from Huw Irranca-Davies MP to the Chairman

In your letter of 17 July 2009 you asked for an update on the state of play on this proposed Regulation.

The latest version of the proposal produced by the Commission, ref DS 329/2/09 Rev 2, dated 4 September, 2009 has been circulated to the Committee. This text represents a significant improvement on previous texts. Changes we have been able to secure include:

- increasing the threshold for the use of VMS from 10 to 12 metres;
- significant changes to Article 47, dealing with recreational fishing. As a result there is no longer to be a full blown licensing and management regime, instead Member States must monitor recreational activity on recovery stocks and only where scientists (STECF) confirm that this is having an adverse impact will further measures be considered.
- no extension of the powers of the Community Fisheries Control Agency to include monitoring of Member States' compliance, something we have always believed to be the responsibility of the Commission;
- prior notification of arrival in port is only to be required for vessels over 12 metres and for recovery stocks only
- removal of the requirement for all sales to be conducted through auctions which would have had serious repercussions for the UK infrastructure.

As a result of these and other changes we believe that the text now strikes broadly the right balance between ensuring that the new measures are proportionate, effective, transparent and lead to a level playing field across the EU. We do have a small number of important outstanding concerns which we will be pursuing in the run up to and at Council on 20 October. These are highlighted in bold in the detailed Article by Article summary annexed to this letter.

I hope the information provided in this letter is useful to the Committee you in assessing its position.

29 September 2009

EU COMMISSION PROPOSAL FOR A REVISED COMMUNITY CONTROL SYSTEM FOR ENSURING COMPLIANCE WITH THE RULES OF THE COMMON FISHERIES POLICY

<i>Article</i>	<i>Description</i>	<i>UK Position</i>
2 and 3	Scope	Content.
4	Definitions	Content
5	Require Member States to provide adequate resources for control and to act on a non discriminatory basis	Content
6 and 7	Provides for licensing scheme and fisheries authorisation regime where recovery plans, marine protected areas, reduction of discard plans and effort control schemes are in place.	Support. No change to current provisions
8	Provides for detailed rules on the marking of gear to be agreed by management committee procedure	Support. No change to current provisions
9	Vessel monitoring systems (VMS) obligations for vessels 12m and above.	Support. The current threshold for VMS is 15 metres. We had previously opposed the original proposal to extend VMS to all over 10 metre vessels as not providing any enforcement benefit due to the less mobile nature of smaller vessels. However, extension to vessels over 12 metres is in our view justifiable.
10	Requirement for Member States to monitor provided by Automatic Identification Systems.	Still an issue for the UK. Fishing vessels will be required to have AIS under the Vessel Traffic Directive. However it is intended as a navigational aid and vessel safety tool. In our opinion it serves no use as a fisheries management tool and provides no useful additional information that is not already supplied by VMS. We therefore oppose the mandatory nature of this provision and wish to see the decision on whether or not to use AIS data left to Member States.
11	Requires Member States to use a vessel detection system (VDS).	As with AIS, we oppose the mandatory nature of this provision. In certain circumstances VDS can provide a useful tool to assist enforcement authorities in the deployment of their resources, but this should be at Member States discretion.

13	Requires Member States to carry out pilot projects on new technologies.	Support.
14	<p>Logbook rules</p> <p>Minimum quantity to be recorded in the logbook 50 kilograms for all species except species subject to multi-annual plans which must be recorded above 15kg. (Current threshold 50kg for all stocks).</p> <p>General margin of tolerance in logbooks reduced from 20% to 10% and separate lower tolerance of 8% retained for recovery stocks.</p> <p>Discards to be recorded (currently optional).</p> <p>Deadline for submitting logbooks reduced from 48hrs to 24 hrs after landing.</p>	<p>We have a number of concerns about this Article. First, in Article 14.1 we think that the proposed 15kg threshold for recording quantities of recovery stocks in the logbook is too low, particularly when read with the 8% margin of tolerance. This would be almost impossible to comply with. Next, we see no need for separate margin of tolerance for different stocks as proposed in paragraph 3.</p> <p>We could support a 10% margin of tolerance for all stocks, provided that this was accompanied by an increase in the recording threshold to 100kg. This is because evidence shows that fishermen have trouble complying with a 10% margin for small quantities below this weight. Reduction in the time limit for submitting paper logbooks is in our view unjustified and we would like to see this left at 48hrs.</p> <p>We support the requirement to record discards in the logbook. This will provide useful information in the drive to reduce discards.</p>
15	Electronic logbooks – extension to all vessels above 12 metres (15 metres at present)	Content.
17	Requires all vessels using electronic logbooks to give 4 hours prior notification of arrival in port.	Support. Original proposal would have required all vessels to give 4 hours notice of entry into port. Limiting this to vessels with e-logbooks reduced the burden on industry considerably without any significant loss of control.
17A	Requires Member States to provide prior authorisation of entry into port for vessels 24m and above and allows Member States to deny access if all required information from those vessels reporting electronically is not provided and complete.	Support.
18 & 19	Prohibition on transshipment at sea.	Support. Transshipments at sea are a potential way of laundering blackfish and a weakness in existing control arrangements. Such transshipments are rarely carried out in UK waters.

21 & 21A	Landing declarations Time for submission reduced to 24 hours (currently 48 hours).	Support but we wish to see the time for submission of paper landing declarations remain at 48 hours.
21A	Electronic landing declarations extended to vessels over 12 metres (currently over 15 metres). Time for submission 12 hours Exemptions for vessels at sea for less than 24 hours or which never leave territorial waters.	Support but we would like to see the time limit for submitting electronic landing declarations increased to 24 hours.
23	Art 23 – obligation on Member States to record, report and exchange landings, transshipment and sale data.	Largely content but have an issue with provision 23 which would require is to count scientific catches that are sold against quotas. This could impact upon existing research projects carried out under the Environmentally Responsible Fishing project could be in jeopardy. We have asked the Commission to consider dis-applying this restriction to existing research projects.
26, 27 and 28	Closure of fisheries after quota exhausted by Member States and Commission. Also rules on payback where quotas are exceeded.	Support. These repeat existing rules.
29 – 32	Obligations on Member States to carry out checks on fishing capacity, including engine power checks.	Support. Mis-declaration of engine power is a serious issue which threatens to undermine conservation measures. We therefore welcome the measures foreseen in these Articles. The detailed rules on how this will apply will be important in ensuring a level playing field in application of this measure.
33	Requirement to weigh fish stocks subject to multiannual plans before transshipment.	Support. This is a new requirement. Very little vessel-to-vessel transshipment takes place in UK ports.
34	Conditions for designation of a landing port when adopting a multiannual plan.	Support.
35	Separate stowage of species subject to a multi-annual plan.	Support. This replicates existing provisions.
35a	Real time monitoring of quota uptake. This increases the	Support.

	frequency of reporting quota uptake once a Member State reaches a certain threshold.	
36	Obligation on Member States to define a national control action programme applicable to each multiannual plan and set specific inspection benchmarks.	Support, this replicates existing provisions.
37, 37a and 38	Provisions on use of gear. These largely replicate existing measures but provisions in Article 37a on retrieval of lost gear are new.	Support. Lost gear leads to ghost fishing, where nets can drift and continue to kill fish for many years.
39	VMS reports required every 30 minutes when transiting a MPA and a minimum speed of 6 knots.	We support the concept of additional monitoring of vessels operating in and around restricted areas but question the need to have an alarm fitted on board fishing vessels. This is in any event physically not possible with the sealed VMS terminals fitted on board UK vessels.
43 – 45	Provisions for real time closures to protect juveniles. Trigger based on sampling which may be subject to detailed rules.	Support the inclusion of these provisions which enshrine in Community legislation measures already undertaken in the UK. We would however, prefer not to have a “move on” provision as set out in Article 43a as there is a danger that this will undermine the measures taken in accordance with Article 43. If too many juveniles are being caught an areas should simply be closed.
47	Recreational fisheries to be monitored and where they are deemed to be having a significant impact on the recovery stock management measures may be introduced.	The current text is a considerable improvement on the original text, allowing measures to be targeted where they are most needed rather than the blanket approach originally envisaged which would have imposed unnecessary bureaucracy on many anglers. However we remain concerned at the idea that any recreational catches are not taken in to account in the scientific advice upon which quotas are based but the catches may count against Member States quota allocations.
48 – 51	Control of Marketing Chapter included first sale and retail of fisheries products.	Support. These measures complement the traceability measures in the Regulation of Illegal, Unreported and Unregulated (IUU) fishing. We believe the provisions are now compatible with the concept of risk based enforcement.
52	Requires all fish products to be sold to registered buyers or registered sellers at an auction centre.	Support. This replicates current practice in the UK for registered buyers and sellers of first sale fish.
53 & 53a	Introduces requirement for all fish products to be weighed on approved scales before sale, storage or transport. There is a	Support.

	derogation for products transported within the Member State of landing.	
54 & 54A	<p>Sales notes provisions. The time limit for submission is reduced from 48 hours to 24 hours for paper sales notes and 12 hours when submitting electronically.</p> <p>Threshold for requiring recording and submission of sales note data electronically reduced from current annual turnover in first sale fish of €400,000 to €200,000.</p>	Support but wish to see the deadlines for submission of paper sales notes remain at 48 hours, with 24 hours for those submitting electronically.
55	Details to be recorded on sales notes.	Support. Largely transposes existing requirements.
56	Provisions allowing Member States to apply for an exemption from obligation to submit sales notes for purchases from under 10 metre vessels or small quantities.	We can accept this Article but would not want to make use of this provision as we rely upon sales notes to provide us with information on activity of under 10 metre vessels, which do not have to complete logbooks or landing declarations.
57	Takeover declaration provisions. Time for submission reduced to 24 hours for electronic submission and 48 for paper.	Content subject to retention of 48 hour deadline for submission.
58	<p>Transport document provisions.</p> <p>Requires a transport document to be carried by the transporter and to be submitted within 48 hours but where the transport declaration is submitted before the lorry moves from place of landing, the document does not have to be carried by the transporter.</p>	Support.
59 – 60	Monitoring of Producer Organisations and price and intervention arrangements.	Support. These repeat existing provisions.
61 – 64	Provisions on surveillance.	Support. These largely replicate current provisions although the concept of control observers in Article 63 is new.
65 – 79	Provisions on the conduct of inspections and the follow up of infringements detected. Includes in Article 70 provisions on Community inspectors. Most is taken from existing regulations.	Support.
80	Where a Member States does not take action to investigate and/or prosecute an infringement of a foreign vessel discovered	Support. This will encourage Member States to transfer the case back to the flag state or pursue an infringement themselves to avoid the possibility that quota may be deducted from

	in its waters, the quantities illegally landed or transhipped may be set against the coastal Member States quota.	the coastal Member States allocation.
83	Obligation to take immediate action to stop vessels and/or natural persons from re-offending when found committing a serious infringement.	Support. This is the normal UK approach to enforcement.
84	Obligation to put in place a penalty points system for licence holders committing serious infringements of EU rules. Licences would be suspended if a licence holder exceeds a specified number of penalty points.	We support the principle of penalty points as an effective way of discouraging repeat offending but will want to look very carefully at the detailed rules that will be required. This is a new concept in fisheries but could mirror the penalty point system operated for driving licence offences.
88 to 94	Provisions concerning Commission responsibility to assess Member State application of the rules of the CFP. This is done by various means including EU inspections of Member States, audits and follow up action on reports.	Support. These Articles set out the responsibility of the Commission in terms of 'policing' Member State application of the rules and also Member State responsibility in terms of co-operating with the inspection mission and providing information requested by the Commission.
95	The Commission may suspend or cancel community financial assistance (in part or whole) when it believes there is evidence that the Member State is not compliant with the CFP objectives.	Support. This is quite a draconian provision which has been opposed by many Member States. However there are strict procedures and steps that the Commission must take in order to take any action under this Article. It is unlikely that the UK could be caught by these provisions but care still needs to be taken to ensure measures are not missed.
96	Powers for the Commission to close fisheries, when a Member State fails to meet its obligations under a multiannual plan.	Support.
97 – 100	These Articles set out the rules and procedures where overfishing occurs and no remedial action is taken by the Member State. The Commission may deduct quota and effort allocations. It may also deny the transfer of quotas to following years if overfishing has occurred in the previous 2 years or for a recovery stock in the previous 5 years or may refuse a quota exchange between Member States.	Support. This will require good effort and quota uptake management but we are supportive of the measure in the context of conservation of stocks and good management.
101	Powers for the Commission to impose emergency measures when the marine ecosystem is threatened.	Support. These powers have been available to the Commission in the previous Regulation and have been exercised when scientific evidence on stock levels show dangerous levels due to over exploitation.
102 – 105	Provisions on the analysis, handling and protection of data.	Support. The delay in implementing this measure (31 December 2012) should allow sufficient time for the UK to put a database in place that will meet the requirements.

106 – 108	Establishment of and access to official websites.	Support.
Art 109	Administrative co-operation of Member States and 3 rd Countries.	Support. Mirrors existing arrangements with the EU and 3 rd Countries that share fishing interests.
Art 110	Member States and Commission reporting obligations.	Support. In practice the change of Committee procedure is not expected to have any significant impact.
Art 112	Amendment of Commission Fisheries Control Agency Regulation.	Support. The original proposal extended the ambit of the CFCA to include monitoring of Member State' compliance, which the UK opposed. This has now been deleted.
Art 116	Entry into force.	Support general implementation date of 1 January 2010, with the suggested exceptions. Many of the individual provision will however not be able to enter into force until the required detailed rules have been agreed.

Letter from the Chairman to Huw Irranca-Davies MP

Your Supplementary Explanatory Memorandum (SEM) of 17 July and letters of 8 July and 29 September on the above document were considered by Sub-Committee D at its meeting of 14 October 2009.

We note the apology in your letter of 8 July for the delayed response to my letter of 11 March, which was misplaced in your Department. While we accept that mistakes can be made, it is highly regrettable that the Department has failed to engage comprehensively with the Committee throughout the whole course of the scrutiny of this extremely important proposal. You will be aware that fisheries control is an area to which the Committee has devoted considerable time and effort, as demonstrated by the content of its report on the *Progress of the CFP*.

Turning to the substance of the proposal, we would like to re-iterate our support for the principles underlying the draft Regulation. An overhaul of the control system along the lines proposed by the Commission is highly desirable. We note that you have succeeded in negotiating many very useful changes. The outstanding matters strike us as being primarily technical in nature.

We would draw your particular attention to the various articles which allow the Commission to take action against a Member State if the State is not fulfilling its control responsibilities under the Common Fisheries Policy. You note that Article 95, allowing the suspension or cancellation of Community financial assistance, has been opposed by many Member States. We are pleased to observe that the provision remains in the text and we urge you to stand firm on this issue at the Council meeting.

As you are aware, we are supportive of the proposals relating to sanctions and the penalty points system. Like you, we are concerned at precisely how the penalty points system will be designed and we urge you to exercise vigilance over this matter once the Regulation has been adopted.

On the matter of the Community Fisheries Control Agency, you informed us on 8 July that you reject any expansion of the role of the Agency to include policing of Member States' enforcement activities because that should remain the responsibility of the Commission. We accept your reasoning, but would observe that the Commission has not always met its responsibilities in the past. It is to be hoped that, armed with new powers, it will be in a better position to do so.

We are now content to release the proposal from scrutiny and look forward to information from you on the outcome of the Council.

14 October 2009

FISHERIES: CONSERVATION OF FISHERIES RESOURCES THROUGH TECHNICAL MEASURES (10476/08)

Letter from Huw Irranca-Davies MP, Minister of State, Department for Environment, Food and Rural Affairs, to the Chairman

You wrote to me on 14 January following consideration by Sub-Committee D of our earlier correspondence on the above proposal. A check of our records has indicated, however, that after my officials responded at that time to a follow up request for information related to the impact assessment, you had not been sent a reply to the specific points raised in your letter, for which I sincerely apologise.

You asked for clarification on how the proposed real time closure mechanisms would work together, and the necessity for them.

An illustrative working example is provided under the North Sea cod recovery plan, where real time closures feature as part of the effort management regime. Operating real time closures under that plan is part of the agreement with industry to warrant extra days at sea. This plan is agreed at EU level – where Member States also undertake in principle to observe each nationally applied RTC measure in exchange for *quid pro quo* observance under their own arrangements. There also needs to be equivalence with related third country agreements, where the aim is for real time closures under specific EU management plans, and the trigger mechanisms for them, to keep in step with those negotiated, for example, under EU-Norway agreements. Ideally this will ensure everyone exploiting the relevant fish stock will be applying an equivalent set of operating principles. The trigger mechanisms and duration criteria to operate such area closures need to be tailored to reflect the characteristics of the species concerned, so the arrangements will properly reflect the live situation (i.e. tracking movements of groups of juvenile fish) to ensure their effectiveness.

The real time moving-on requirements under the Technical Conservation Regulation proposal, on the other hand, are new, and will need to operate in relevant areas at trigger levels lower than those specified for area closure arrangements discussed above. These moving-on requirements will relate in a more general sense to the day to day behaviour of fishermen in the operation of individual vessels, with the important aim of avoiding the catching of fish that will be discarded.

The requirement (set out at Article 10 of the proposal) is two tier – firstly a move of at least 5 nautical miles is required where a 10% trigger level of undersized fish is exceeded, and secondly where maximum/minimum percentages of fish are outside of the tolerances specified under the catch composition requirements, a 10 nautical mile move will be required. In addition to a reduction of the number of species with a minimum landing size, you will be aware under this proposal that there has been considerable simplification of the current catch composition requirements. These are featured in the proposed regional Regulations, and include a degree of flexibility on the percentage tolerance. It will be particularly important, therefore, to get those arrangements right in the finalised Regulations, in order to serve as an appropriate and proportionate trigger for these proposed moving-on requirements.

To some extent, vessels moving on in this way would reflect normal fishing practice, where staying in an area yielding undesirably high catch levels of unmarketable fish would be a waste of fishing effort and future yield potential. These measures are welcomed therefore as a natural corollary to the simplified under-size fish and catch composition requirements, to prevent perpetuating a situation which will generate discards.

Your enquiry on the enforceability of these real time requirements is particularly relevant – as the proposed approach represents a shift in emphasis from monitoring at the point of landing to the live situation at the catch-at-sea stage, which naturally is more challenging. In time the daily electronic submission of log book data under the proposed Control Regulation requirements will provide crucial information to keep track of day to day fishing activities at sea to be able to correlate with VMS data – providing a sound basis for real time monitoring.

You asked about progress of this dossier in Brussels. I am afraid that there have been few developments in recent months to report. A reading of the proposal chapter by chapter was completed in Council Working Group back in February. Member States also submitted written comments with suggested amendments to minimum landing size requirements. A read-through of the proposed regional regulations was conducted in Fisheries Control Experts group in Management Committee (ManCom) in March. Unfortunately a compromise text reflecting these discussions has yet to be received by Member States.

The key issue has been to agree appropriate governance arrangements. The UK's position throughout has been that purely technical issues should normally be addressed through comitology – but where socio-economic factors are sufficiently significant, for these to be sifted out for agreement in Council (some Member States would prefer everything to be addressed in Council). We still believe in this operating principle, and that there are sufficient mechanisms available to be able to agree appropriate governance arrangements. The broad theme underlying most of the other discussion on detail has been the imperative to get the balance right between the commendable simplification approach which has been applied by the Commission in bringing this proposal forward, and not losing key conservation benefits, which after all are the main aim of the regulation, in the process.

On timing, we know the Swedish Presidency is very keen to get this dossier moving. A presentation on the state of play is expected at the first Working Group after the summer recess, in September. The Control Regulation proposal has been progressing and may be ready for agreement by November. It would be ideal if the Technical Conservation Regulation proposal could be agreed in the same time-frame – this is possible, but will require focused attention in the Autumn.

The impact assessment we have provided will be updated to include necessary adjustments in response to the next compromise text, and will be re-submitted to the scrutiny committees. But we believe the major themes and impacts have been captured – at least in broad scope – in the original IA's frame of reference. We do not expect the details from subsequent Working Group discussions to significantly increase or alter the impacts outside of those original reference parameters.

10 August 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 10 August 2009 on the above Proposal was considered by Sub-Committee D at its meeting of 14 October 2009. It was unfortunate that my letter of 14 January did not receive an earlier reply. I hope that the actions to improve Defra's scrutiny process, outlined in Dame Helen Ghosh's letter of 23 July to Lord Freeman, will prevent a recurrence of similar delays in future.

You say that progress on this Proposal, which has been slow in recent months, may well pick up, and that an updated impact assessment will be re-submitted to the scrutiny committees. We will continue to hold the Proposal under scrutiny while we await the updated assessment.

14 October 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 14 October on the above Proposal.

As anticipated in my previous reply of 10 August, the dossier on this Proposal has indeed become active again, and Member States have now received new Proposal documents for consideration (attached in Annex 6). These have had initial discussions in Council Working Group in Brussels, leading to an invitation for written comments on the Council Regulation Proposal from Member States, which were provided on 12 October. There is a parallel process underway in comitology to agree the related detailed rules – which feature in the proposed regional regulations.

This intensified activity reflects the aim to have this Proposal ready as a candidate for agreement at the November Council (on 19 -20 November). My officials, and those of Devolved Administrations, continue to analyse the new drafts, and re-focus the UK negotiating priorities to appropriately respond to these proposal documents, having also shared these latest versions with industry and incorporated their immediate views. Subject to the framework Regulation being agreed at the November Council, the detailed rules are proposed to be agreed in fisheries working group on 2 December to go forward for formal adoption.

I should highlight the political pressures which have been in play throughout the progress of this dossier, where many Member States wanted all technical measures to be included under the Council Regulation – which requires agreement in Council, and under the Lisbon Treaty, co-decision. The UK has taken a pragmatic view throughout – that detailed technical issues, where some may be minor but needing quick amendment, are most suited to being agreed in expert working group under comitology, ideally with suitable arrangements to identify significant socio-economic factors that do justify escalation for full political agreement. Much of the recent restructuring of the drafts reflect the Commission's response to these pressures (explained in Annex I to this letter), although continuing dissatisfaction from some Member States with the proposal's governance structure, even as currently drafted, still has the potential to delay agreement.

In our UK written response of 12 October, however, we highlighted our concerns to the Commission that this accelerated timetable, if insufficient time is allowed to develop the dossier in a considered way, increases the scope for unintended consequences – particularly with the kind of detailed technical issues which feature in this legislation. In determining our intended stance to take on this dossier, if scheduled for agreement at the November Council, therefore, we will need to be satisfied that all the factors have been thought through sufficiently, and whether our negotiating priorities have been addressed to a degree which, overall, makes this an acceptable package to sign up to.

Primarily, however, the latest drafts are in principle a re-structuring of previous versions of the proposals, now including a consolidation of other pieces of legislation featuring existing technical conservation measures, rather than introducing new regulatory principles or requirements. As the impacts of these measures are fundamentally unchanged from the original proposals, in the time available my officials propose not to revisit the existing assessment provided to the Committees, but to explain the latest structural changes, and the consolidation of existing technical measures into these new drafts, and identify and highlight in impact terms those few elements that are genuinely new.

To this end, I attach the following Annexes:

- A description of how the latest proposal documents have been re-structured and the drafting rationale applied.
- Further analysis of the impacts associated with new and latest regulatory elements included in the proposal.
- A set of UK negotiating priorities for these proposals.
- A correlation table showing the derivation of the proposals from current legislation, Article by Article, and highlighting the new elements.
- The case for regional variations on Minimum Landing Size standards.
- The latest proposal documents (not printed).

The aim is, if possible, to have these proposal documents cleared from scrutiny in advance of the November Council on 19/20 November. In view of the nature of these proposals and the intended timetable, my officials stand ready to meet with the committees and provide further explanation, if this is considered helpful to complete the scrutiny process.

24 October 2009

ANNEX I

LATEST DRAFT PROPOSAL DOCUMENTS: RATIONALE OF RESTRUCTURING

Overview of original proposal structure

The Commission's intent when bringing forward the original proposal was that the framework document should set out overarching principles, and the detailed rules would be divided into regulations relevant to each Regional Advisory Committees' area of responsibility. The regional regulations would enable fishermen and enforcement authorities to more readily identify controls specific to their relevant area of operation.

The original proposal documents consisted of the framework Council Regulation proposal, and four regional regulations: North Sea, North Western, South Western and Pelagic.

Latest draft proposals: structural changes

- The first three of the regional regulations described above have now absorbed the separate Pelagic regulation. The Commission's intent is to prepare another regional regulation with existing technical conservation requirements in EU legislation relevant to recommendations of the North Eastern Atlantic Fisheries Commission (NEAFC). This will be ready for discussion at the end of October – representing a consolidation of current requirements.
- The catch composition tables formerly in each of the regional regulations have now been gathered into an Annex of the framework Regulation. This was intended to go at least some way to addressing the concerns of those Member States wishing to see everything established under the Council Regulation. Amendments to Annexes will be subject to Regulatory Committee procedures, rather than Management Committee. Under Regulatory Committee procedure a blocking minority vote by Member States provides an easier path to escalate amendment proposals to Council/co-decision.
- Moving on and real time closure requirements (triggered by exceeding catch composition rules and stipulated percentages of undersized (juvenile) fish) have now been agreed under the EU Control Regulation – so have been removed from the Technical Conservation proposal to avoid duplication. In time detailed rules will be agreed under the Control Regulation to identify appropriate trigger levels for moving on or temporarily closing an area.
- As well as replacing the existing Tech Con Regulation 850/98, the proposal documents are intended to enable repeal of: 1434/98 (landing herring for industrial purposes); 2549/2000 (tech con for cod recovery in Irish Sea); 2056/2001 (tech con for cod recovery in NS/West of Scotland); 2602/2001 (tech con for hake recovery in specific areas); 254/2002 (tech con for cod recovery Irish Sea); 494/2002 (tech con for hake recovery in specific areas); 2166/2005 (tech con for Southern hake & Norway lobster, Cantabrian Sea/ Western Iberian peninsula); Art 7 of 1359/2008 (closed area, orange roughy).
- The various Tech Con elements presently in Annex III of TACQ Reg 43/2009, are also intended to be covered in these proposal documents.

IMPACT SUMMARY OF THE NEW AND LATEST ELEMENTS OF THE PROPOSAL

Please refer to the Annex 4 correlation table which identifies the following new and simplified elements in the proposal.

Simplified/reduced controls

Minimum Landing Sizes (Article 4 & Annex III of the proposal)

The original proposal featured a significantly reduced list of species with MLS standards, which reflected the aims of a wider simplification agenda. But in many cases, removal of the standard did not reflect conservation aims, particularly if there could be scope for a market in juvenile fish, and/or where there are good survival rates when undersized fish/crustaceans are returned to the sea following capture. Following representations from Member States, the list is re-established in the proposal, therefore, with few exceptions.

The Commission's approach, however, has been to continue to apply harmonised EU standards and to remove regional variations where they are currently provided for in the existing Regulation. This has a particular impact for the UK in relation to Irish Sea nephrops, edible crab and scallops – these are set out at Annex 5, and is one of our negotiating priorities listed in Annex 3.

Catch Composition (Article 4a & Annex I of the proposal)

The current legislation provisions in Regulation 850/98 feature exhaustive catch composition requirements specifying maximum allowable percentages when using specific gears against each target species in each region. This is a prescriptive and detailed approach, however, and the many footnotes for exceptions and conditions in the relevant Annexes which have developed over the years make identifying and applying the correct requirements detailed and complex, both for industry and enforcement agencies.

There is a simplified approach in the proposal, therefore, where gears and mesh size ranges and catch composition percentages are not specified in relation to each target species. Simplification is achieved by only identifying the key species which will benefit from having acceptable catch composition requirements specified when a particular mesh size range is in use, whatever the target species happens to be.

This approach maintains the aim of having catch composition requirements – to encourage fishermen to maximise the selectivity of their fishing methods for the species they are targeting – but with a far less prescriptive and complex set of rules to follow. As a guide to the degree of simplification this approach entails, the reduction of species specifications under the North Sea and North West regional controls are shown below.

Region	No. of species with % specification for towed gears			No. of species with % specification for passive gears		
	Reg. 850/98	Proposal	% reduction	Reg 850/98	Proposal	% reduction
North Sea	51	15	71%	27	12	55%
North West	51	12	76%	27	10	63%

New controls

One mesh size rule (Article 5 of the proposal)

Formerly described as the 'one net rule' – the description now clarifies that the rule applies to nets within a single mesh size range, rather than only being allowed to carry one sized net. The impact assessment discussed the relative impacts of this measure, based upon UK experience with this rule already applied in the context of the 'days at sea' regime under cod recovery measures. The assessment referred, however, to a need for a provision for exceptions within specific fisheries where there would be limited scope for conservation aims or compliance being compromised. There is now a specific provision for such derogations provided in the Article.

Note, however, that many Member States have declared their opposition to this Article, on the basis that it would compromise mixed fisheries and inter-zonal fishing – it remains to be seen if this

requirement persists in its current form in the proposal, or whether a compromise solution can be agreed.

High grading prohibition (Article 9a of the proposal)

This places a prohibition on the practice of discarding marketable fish, for any species subject to quota, where fishermen may discard species of fish of a lesser value to land more lucrative fish. The scope of this measure is limited, in that it does not extend to discarding for regulatory reasons where fish may be caught where the fishermen have no quota, or the catch is outside of catch composition or minimum landing size parameters. The moving on and real time closure requirements now agreed in the Control Regulation, however, and the catch composition requirements, are intended to combine to encourage the maximising of selectivity and orientation of fishing practices to larger fish.

Measures to reduce unwanted catches (Article 18 of the proposal)

Referred to as 'national or regional plans to reduce discards' in former versions of the proposal. This Article makes provision for Member States/ Regional Advisory Councils to submit proposals for plans to suit regional/local situations, which after assessment, if approved, would be adopted in detailed rules for the relevant region.

Natura 2000 (Article 18b of the proposal)

Sets out a provision for Member States to submit for approval measures regulating fishing activities in Special Areas of Conservation or Special Protection Areas (ref. Birds & Habitats Directives).

ANNEX III

UK NEGOTIATING PRIORITIES

We have a number of points of detail which are important, but the following have emerged as priorities in relation to the current draft proposal:

- Minimum Landing Sizes: securing the existing regional variations for nephrops, edible crab, and scallops in the new Regulation. These are described in more detail at Annex 5.
- Finalising the Catch Composition tables in Annex III: we believe that focused attention needs to be given to these tables, where due to the radical simplification, the potential for unintended consequences in the detail of the tables is high. We have relayed important suggestions from industry and enforcement agencies identifying some practical difficulties with some of the proposed catch composition groupings to the Commission and await updated versions, and further discussion. Some of the points related to Annex III are set out below:
- It is very important that in Appendices 3 and 4 of Annex III, the specification should be that positioning of the square mesh window should terminate no more than 12 metres from the codline rather than the 6 metres as currently drafted.
- We also wish to retain the current provision in 850/98, Article 7 (2) (c) which allows vessels with engine power of less than 112 KW to use a square mesh window 2 metre in length.
- We believe there is just cause to seek a derogation from the catch composition rules for the method seine net. This is in direct response to a unique method that is both by its very design already more selective and environmentally friendly.

CORRELATION TABLE SHOWING NEW AND EXISTING MEASURES IN THE PROPOSAL

<i>Framework Proposal: Council Regulation concerning the conservation of fisheries resources through technical measures</i>		
Art	Description in proposal Regulation	Origin/ nearest correlation in current legislation
1	Scope	
2	Geographical application	
3	Definitions	Art 3, Reg 850/98 (Nb. different terms defined for the purposes of the proposal)
4	Minimum Landing Sizes	Art 17, Annex XII of Reg 850/98
4a	Catch composition: % of species/mesh size	Art 5, Annexes I-V, VI & VII, X, XI of Reg 850/98 (with simplified arrangements in proposal)
5	One mesh size rule	New
6	Towed gear	Arts 4 – 9 of Reg 850/98
7	Beam trawls	As above
7a	Dredges	Art 10, Reg 850/98
8	Gillnets & trammel nets	Arts 11, 12, Reg 850/98
9a	Prohibition on high-grading	New
11	Restrictions on auto grading equipment	Art 32, Reg 850/98
12	Destructive fishing practices	Art 31, Reg 850/98
12a	Conditions to protect elasmobranchs	TACQ Reg 43/2009, Art 6 & Annex III, Part A.19
13	Processing operations (on board)	Art 42, Reg 850/98
15	Salmon & sea trout fishing restrictions	Art 26, Reg 850/98
18	Measures to reduce unwanted catches	New
18a	Measures restricting fishing activities in certain areas and/or periods	Art 45 (1), Reg 850/98
18b	Natura 2000	New
19	Scientific research	Art 43, Reg 850/98
20	Artificial restocking & transplantation	Art 44, Reg 850/98
21	Evaluation of efficiency of tech measures	Art 47
22	Detailed rules – procedure for adopting	
23	Procedure for amending Annexes	
24	List of Regulations being repealed	
25	Entry into force	
I	Annex I: Minimum Landing Sizes	Art 17, Annex XII of Reg 850/98
II	Annex II: Measurement of marine organisms	Annex VIII of Reg 850/98
III	Annex III: Catch composition – towed/ passive	Art 5, Annexes I-V, VI & VII, X, XI of Reg 850/98 (with simplified arrangements in proposal)
“	Part I – North Sea	As above
“	Part II – North West	As above
“	Part III – South Western	As above
“	Appendix I: Sorting grid for Pandalus trawl	Art 25 (2), Reg 850/98 (provision for detailed rules)

“	Appendix 2: Sorting grid for 70mm trawls	TACQ Reg 43/2009, An. III, Appendix 2
“	Appendix 3: Square Mesh window specs	TACQ Reg 43/2009, An. III, Appendix 6
“	Appendix 4: Square Mesh window specs	TACQ Reg 43/2009, An. III, Appendix 5

<i>Detailed Rules Proposal: Commission Regulation on Specific Technical Measures for the North Sea</i>		
Art	Description	Origin in existing legislation
1	Scope/geographical application	
2	Closed areas	
3	Specific conditions for certain passive gears	TACQ Reg 43/2009, Annex III, Part A.9
4	Restrictions on fishing in 12m zone around the UK	Art 34, Reg 850/98
5	(1) Restrictions on use of beam trawls	Art 39, Reg 850/98
5	(2) Restrictions on use of beam trawls	Art 32 (2) a, Reg 850/98
6	Beam trawls using electrical pulse	TACQ Reg 43/2009, Annex III, Part A.3
7	Restrictions on >32mm mesh in Skag / Kat	Art 37(1), Reg 850/98
[]	Real time closures	
9	Entry into force	
Annex		
A	Conditions applicable in a major plaice nursery area	Art 29, Reg 850/98
B	Closure of an area for sandeel fisheries in zone IV	Art 29 (a),850/98 + TACQ Reg 43/2009 An.III, Part A.4
C	Closure of an area for Norway pout fisheries	Art 27, Reg 850/98
D	(1) a – Restrictions on fishing for herring	Art 21 (1) (b), Reg 850/98
D	(1) b – Restrictions on fishing for herring	Art 20 (1) (c), Reg 850/98
D	(1) c – Restrictions on fishing for herring	Art 20 (1) (e), Reg 850/98
D	(2) – Restrictions on fishing for herring	Art 20 (2), Reg 850/98
E	Restrictions on fishing for sprat to protect herring	Art 21, Reg 850/98

<i>Detailed Rules Proposal: Commission Regulation on Specific Technical Measures for North Western Waters</i>		
Art	Description	Origin in existing legislation
1	Scope/geographical application	
2	Closed areas	
3	Specific conditions for certain gillnets	TACQ Reg 43/2009, An.III, Part A.9
4	Restrictions on fishing in 12m zone for UK & Eire	Art 34, Reg 850/98
5	Restrictions on use of beam trawls	Art 6 (1), Reg 2056/2001
[]	Real time closures	
7	Entry into force	
Annex		
A	Closed area for conservation of cod: VIa, VII f & g	TACQ Reg 43/2009, An.III, Part A.6
B	Closed area for cod in Irish Sea	TACQ Reg 43]2009, An.III, Part A.8
C	Closed area for the conservation of hake	Art 5 (1) (a), Reg 494/2002
D	Closed area for the conservation of orange roughy	Art 7, Reg 1359/2008
E	Closed area for the conservation of blue ling, VIa	TACQ Reg 43/2009, An.III, Part A.7

F	(1) a – Restrictions on fishing for herring	Art 20 (1) (a), Reg 850/98
F	(1) b, c – Restrictions on fishing for herring	Art 20 (1) (f), Reg 850/98
F	(1) d – Restrictions on fishing for herring	Art 20 (1) (g), Reg 850/98
F	(1) e – Restrictions on fishing for herring	Art 20 (1) (h), Reg 850/98
F	(1) f – Restrictions on fishing for herring	Art 20 (1) (i), Reg 850/98
F	(1) g – Restrictions on fishing for herring	Art 20 (1) (j), Reg 850/98
F	(1) h – Restrictions on fishing for herring	Art 20 (1) (k), Reg 850/98
F	(1) i – Restrictions on fishing for herring	Art 20 (1) (d), Reg 850/98 + TACQ, Annex III, Part A.4
F	(2) – Restrictions on fishing for herring	Art 20 (2), Reg 850/98
F	(3) – Restrictions on fishing for herring	Art 20 (3), Reg 850/98
G	Restrictions on fishing for mackerel	Art 22, Reg 850/98
Appendices		
1	Square mesh window	TACQ Reg 43/2009, An. III, Appendix 5
2	Square mesh window of less than 15m	TACQ Reg 43/2009, An. III, Appendix 6
3	Technical details of separator trawl	Annex, Reg 254/2002
4	Specifications for the sorting grid for 80mm trawl	TACQ 43/2009, Annex III, Appendix 2

Detailed Rules Proposal: Commission Regulation on Specific Technical Measures for South Western waters

Art	Description	Origin in existing legislation
1	Scope/geographical application	
2	Closed areas	
3	Specific conditions for certain passive gears	TACQ 43/2009, An.III, Part A.9 &12 + ext. 48°N
4	Restrictions on fishing for anchovy	Art 23, Reg 850/98
[]	Real time closures	
5	Entry into force	
Annex		
A	Closed area for protection of vulnerable deep sea habitats	TACQ 43/2009, An.III, Part A.15 + Art 30, Reg 850/98
B	(1) Closed area for the conservation of hake	Art 28, Reg 850/98
B	(2) Closed area for the conservation of hake	Art 5, Reg 494/2002
B	(3) Closed area for the conservation of hake	TACQ Reg 43/2009, An.III, Part A.12
C	Closed area for the conservation of Norway lobster	Art 29(b), Reg 850/98 + TACQ 43/2009, An.III, Part A.17
Appendix		
	Square mesh window	TACQ 43/2009, Annex III, Appendix 3

REGIONALLY VARIABLE MLS CONTROLS

We believe there is strong justification for regionally variant MLS controls.

There are three species, which the Commission has proposed to harmonise, for which we would like to see regionally variant rules continue. These are for:

1. scallops: 110mm in areas VIId and VIIa (north of 52 30' N)
2. edible crab: East Anglian crab fishery (IVc): 115mm. Central North Sea (IVb) and Irish Sea (VIIa): 130mm
3. nephrops: retention of 20mm value (20mm carapace length, 70mm total length) for VIIa (Irish Sea).

We believe there is a need for variation for the following reasons:

Nephrops

- a. In relation to harmonisation of the MLS for nephrops at 25mm we believe this will cause difficulty in the Irish Sea, for which the MLS is currently 20mm, because estimates of growth rate and maturity are different for the North and Irish seas with nephrops in the Irish Sea tending to be smaller. This fact was recognised in 850/98 hence the difference in MLS in that Regulation. The mean size of Nephrops in the Irish Sea has historically (30 years) been 24-25 mm compared to 30mm for the North Sea (North Sea and Celtic Seas WG reports). In this time fishing effort has fluctuated with no perceptible change in mean size. Therefore there is no evidence to support increased MLS in the Irish Sea for conservation reasons.
- b. The catching and processing sectors in Northern Ireland which account for the vast majority of nephrops taken from the Irish Sea have developed their businesses to adapt to smaller nephrops. Most small nephrops are tailed and used as the basis of valuable scampi products. Raising the MLS in the Irish Sea will have a significant impact on this sector. Recent AFBI analysis of nephrops landings from the Northern Ireland fleet in 2007 shows that nephrops in the size range 20 to 25 mm carapace length formed 34% of landings by number and 20% by weight. A change in the MLS would translate into an 11% reduction in tailed scampi available for processing and would impact on a fishery which is worth £8m⁸.
- c. Raising the MLS would simply result in higher discards for which the mortality rate is estimated at 70-95%, and a MLS of 25mm in the Irish Sea would therefore produce no benefits in terms of nephrops conservation.
- d. It might be argued that moving up to a minimum 80mm cod end mesh would address this concern but it will not. Evidence (ICES Workshop on Nephrops Selection 2007 (WKNEPHSEL)) shows that moving from 70-80mm mesh cod end will have very little effect on selecting Nephrops by size due to the shape of the animal. Therefore raising minimum mesh size will still result in the smaller Irish Sea animals being caught.
- e. Latest estimates are that the proposed EU harmonisation of the MLS for nephrops will lead to an 18% reduction in landings in the Irish Sea fishery. This will have a dramatic impact on the viability of both the catching and processing sector in Northern Ireland. There are approx 500 people employed in nephrops processing – most taking place in areas of little alternative economic activity. Separately under proposed fishing opportunities for 2010, a 30% cut in the TAC in nephrops for Area VII is proposed by the Commission, which in combination with the proposed harmonisation of the MLS, will have a significant negative impact.

Edible Crab

- a. The proposals to harmonise MLS for edible crab at 140mm would cause major problems for some regional UK fisheries. The existing EU legislation includes a dispensation for the East Anglian fishery (IVc) with an MLS of 115mm for both sexes. The inshore fishery off Norfolk would be most severely hit as length distributions for this fishery suggest that in the region 75%-90% of crab landings by number are below 140mm. The offshore Norfolk fishery would also be heavily impacted as around 40%-65% of crab landings by number are below 140mm. This is a long established fishery with significant local infrastructure.

⁸ Derived from estimated UK landings (from 2007 averages) of the Irish Sea nephrops quota in 2009

- b. Other areas where the EU MLS is currently less than 140mm include the Central North Sea (IVb) and Irish Sea (VIIa). In these areas where MLS of 130mm currently apply, the proportions by number of total crab landings less than 140mm are smaller (Table 1), but not insignificant.
- c. Harmonisation of MLS for edible crab will therefore have a significant economic impact on our regional crab fisheries.

Table 1. Approximate proportions of crabs by number below 140mm in landings length distributions by ICES divisions

ICES zone	IVb	IVc	VIIa	VIIId, e, f,g
% crabs below 140mm	8-15	45-70	5-25	0-2

Scallops

There is a risk that in harmonising the MLS to 100mm for this species that protection is weakened. The EU MLS for scallops is currently 110 mm in the Irish Sea and VIIId and 100 mm elsewhere. Harmonising at 100 mm would weaken this measure in areas where high growth rates support the larger size limit and mean that scallops enter the fisheries here before they are mature.

Although national legislation could be used to apply another MLS, this will cause problems outside the 6 mile limit where other Member States may be fishing, applying these regionally variant standards to apply to all Community vessels is therefore preferable.

Some French work in the 1990s (Lubet, P. 1992. Comparative study of the populations of scallops in the Channel. University of Caen) showed that growth rates of scallops in the Bay of Seine were very high and that a minimum size of 100mm would permit the capture of approximately 40% of the Class I scallops which are defined as those aged 14-18 months during the winter fishing season. These scallops display only one growth ring, and are therefore assumed to be immature based on the work of Mason (1983 – Scallop and Queen fisheries of the British Isles, Fishing News Books). Unpublished Cefas data show similar growth rates for scallop beds off the Sussex coast. These data suggest therefore that scallop recruitment would be adversely affected if the MLS was reduced from 110 mm to 100m in this area.

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 24 October was considered by Sub-Committee D at its meeting of 4 November 2009.

We note your explanation of the way in which the Proposal has been re-structured, through the incorporation into the framework Regulation of provisions (including catch composition tables) which were originally intended to form part of the separate regional Regulations. This development strikes us as less than wholly positive, if it reflects a drift away from the regionalisation agenda which we have in the past supported – as indeed have the Government and the Commission.

However, given what you say about the possible imminence of consideration by Council, we are content to release the Proposal from scrutiny. We note your offer that your Department might come in to brief the Committee; we may return to this possibility in the new Parliamentary session.

4 November 2009

FISHERIES: EXCLUSION OF CERTAIN GROUPS OF FISHING VESSELS FROM THE FISHING EFFORT REGIME (13632/09, 13633/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memoranda of 13 October 2009, dealing with these Proposals, were considered by Sub-Committee D at its meeting of 28 October 2009.

As the EMs fail to paint a full picture of the exemptions which the UK sought from the Commission, and of their evaluation, it would seem right to question the consistency of a process which has agreed to exemption requests from some Member States but not to those from the UK.

We would ask you to explain more clearly what were the exemptions which the UK sought, and what information you have received to justify the decision not to agree them. In the meantime, we shall retain the Proposals under scrutiny.

29 October 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 29 October, you asked for further detail on exemptions that the UK sought for vessels catching less than 1.5% cod, and for the reasons given by the Commission for their rejection.

The UK submitted comprehensive data to exempt a number of *Nephrops* vessels in the West of Scotland and Irish Sea, and beam trawls in the English Channel, on the basis that they met the criteria of less than 1.5% cod catches. STECF rejected these applications because they asserted that, unlike the Swedish and Spanish submissions (which had been successful), it could not be proved that should the cod stocks in question recover, the vessels' cod catches would not increase above the threshold level. (The Swedish submission was based on technical decoupling (i.e. the use of specific gear to avoid cod) and the Spanish proposal on the basis that the fishing activity was taking place outside of the normal depth profile for cod). We have made clear to the Commission that we believe this is a disproportionate approach, given the application's relate to only a potential one year exemption and that a more risk-based approach was therefore appropriate when considering the low impact these vessels have proven to have had on cod. The Commission have yet to respond formally (although in the interim, at their request, we have re-submitted our applications to them).

18 November 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 18 November 2009, replying to mine of 29 October, was considered by Sub-Committee D at its meeting of 25 November 2009.

In the light of your provision of further information, we are content that the Proposals should now be released from scrutiny.

You explain that the Commission has not yet formally responded to the points which you have made in re-submitting applications for UK exemptions from the fishing effort regime. We would ask that you let us know the outcome of this process in due course.

25 November 2009

FISHERIES: EXPLOITATION OF NORTHERN STOCK OF HAKE (7764/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 30 April⁹ following consideration by Sub-Committee D of the above proposal.

Overall the UK position will be supportive of the aim to ensure the conservation of the stock at a maximum sustainable yield. As achieving this aim should also ensure the long-term viability of the industry, this proposal is to be welcomed.

The Committee asked about the arrangements relating to the fixing of catch limits in data-poor conditions. The threshold for determining whether there is sufficient and accurate information to advise on the matter will be decided upon on a case by case basis by the Scientific, Technical and Economic Committee for Fisheries (STECF).

The Committee will have noted that in data poor conditions, STECF can recommend a reduction to the lowest possible level, equivalent to a cut of at least 25%. The provision for 'all other cases' sets the required reduction to 'at least' 15% – so in normal circumstances, this should occupy the range below the more precautionary level of 25%.

The detailed arrangements are otherwise consistent with those in other long-term management plans (notably that for cod). There is a wider discussion in train on whether this is always an appropriate model – i.e. to automatically adopt a precautionary stance, when the determining factors may only be due, perhaps, to poor assessments during the preceding year. However, it is generally accepted that a prudent precautionary approach reduces the risk of significant unforeseen adjustments threatening economic stability for the fleets in question.

⁹ [Correspondence with Ministers, December 2008 to April 2009](#)

That having been said, I would add that in all the years of the hake recovery plan to date, decisions in data-poor conditions have not been necessary. So although the long-term control model under consideration incorporates these standard provisions, based on experience thus far, it would be an unusual set of circumstances where they would come into play.

On the issue of decommissioning raised by the Committee, I would emphasise that the Member States most affected by any proposed initial adjustment to reduce fishing opportunity will be fishing vessels from Spain (largest interest at 59% of the total landings for 2006), and France (26%). Our own UK share of this fishery (based on the 2006 case analysis) is 6%, and we have far fewer vessels specifically targeting hake. For our vessels, generally speaking hake will be a component of mixed fishing activity, where decommissioning would not be an appropriate or desirable option.

There are provisions, however, within the European Fisheries Fund (EFF) conditions to provide support for decommissioning where moving to more stringent measures – and this would certainly be consistent with supporting the industry through the envisaged reduction in fishing mortality to reach the target level at 0.17 of biomass – especially if the speed of that move necessitates short-term restructuring. As mentioned above, however, while the two identified Member States will have a greater stake in ensuring such funding, we would certainly support the principle on our own behalf where necessary in related negotiations. There is reference to such a package of support measures to be provided with funding from the EFF, proposed by the European Commission in their impact assessment for the proposal, in section 4.3, on page 15 of that document (ref 7764/09 ADD 1).

Finally, the Committee commented on the NW & SW Waters Regional Advisory Councils' responses to the Commission's initial consultation, as reported in the resulting Impact Assessment document. My Department, in addition to being fully aware of that discussion, has also engaged in our own direct consultation with interested stakeholders, as have Devolved Administrations; and we will continue to do so as the negotiations on the dossier develop.

The related impact assessment covering the consultation stage is undergoing its final preparatory stages for signature, and will follow this reply shortly under a supplementary Explanatory Memorandum.

24 May 2009

Letter from the Chairman to Huw Irranca-Davies MP

Thank you for your letter of 24 May 2009, responding to mine of 30 April. Your letter was considered by Sub-Committee D at its meeting of 10 June 2009.

We are grateful for the information which you have provided on issues raised earlier. We note, however, that an impact assessment following a consultation process is being finalised, and is to be submitted under a Supplementary Explanatory Memorandum.

We will continue to hold the Proposal under scrutiny until this further information has been received.

11 June 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Supplementary Explanatory Memorandum (SEM) on the above Proposal and accompanying Impact Assessment were considered by Sub-Committee D at its meeting of 21 October 2009.

We consider your Impact Assessment to be robust. Your preferred policy option, however, does not derive directly from the Commission's proposal. For that reason, we would be interested to know what position the Commission takes on the 5% TAC reduction policy option. We remain unconvinced that the case has yet been made to move from the 10% TAC reduction proposed by the Commission, and would urge you to re-consider your stance on this issue

We would also be grateful for an indication as to how close the Member States are to an agreement in Council, when this might be expected and what sort of shape it is likely to take.

In the meantime, we will hold the Proposal under scrutiny.

21 October 2009

FISHERIES: FISHING OPPORTUNITIES FOR 2010 (9838/09, 14738/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Communication was considered by Sub-Committee D at its meeting of 17 June 2009.

We read with interest the Commission's statement that, over the last few years, the TACs adopted by Council based on a Commission proposal have been on average about 48% higher than those which, according to scientific agencies, would be sustainable in accordance with the precautionary approach. This suggests that there is an urgent challenge to make the outcome of the decision-making process more sustainable and, in the long term, it may be appropriate to move away from the annual haggling exercise.

We broadly agree with the Commission's suggested "underlying principles" for fishing opportunities in 2010 although we note that they include respect for the principles of the CFP. In its recent Green Paper on CFP Reform, the Commission itself identified the imprecision of the current policy objectives as a reason for the failure of the CFP. There is clearly an urgent need for these to be more specific in order that decisions on fishing opportunities contribute to delivering a sustainable EU fishery.

On the specifics of the Commission's intended approach, we supported the principle of long-term plans in our Report on "The Progress of the Common Fisheries Policy". Indeed, we urged the Commission and Member States to prioritise the adoption of plans for more stocks. To cover the stocks where plans are absent and stock status is unknown, the Commission's request that an alternative solution be examined by ICES this year is welcome. Like you, we have criticised the current "use it or lose it" principle in the past. But we agree with you that further judgment must await the outcome of the ICES examination.

In paragraph 13 of your EM, you noted that large effort reductions relating to cod recovery are proving extremely challenging this year and that the Government will need to learn from that experience when negotiating next year's effort reduction. Could you, please, expand on the problems encountered this year and how you consider such problems might best be avoided next year?

We note that the Commission is moving towards a discard ban, which is an idea that we supported in our Report on The Progress of the Common Fisheries Policy (EU Committee, 21st Report of Session 2007-08, HL 146).

You will recall when we took evidence from you on 10 December last year that you supported the idea of involving Parliamentary committees in this process at an earlier stage this year. We therefore welcome your intention to write back to the Committee once ICES has issued its scientific advice over the summer.

We are content to release the Communication from scrutiny but we would welcome your views on the issues raised above and we look forward to hearing from you in due course in order that we can enjoy an effective dialogue before the December Fisheries Council.

17 June 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 17 June, in response to Jane Kennedy's letter of 3 June, seeking more information regarding the measures proposed to reduce the burdens on sheep keepers of implementing electronic identification (EID).

Since the Regulation was adopted in 2003 we have successfully secured a two year delay on implementation until 31 December 2009, and have secured phase in arrangements for individual recording which will considerably reduce the movement recording burdens for sheep keepers during the start up period. In particular we have delayed the introduction of individual recording for older non-electronically identified animals until 31 December 2011 and secured provisions that mean that these older non-electronically identified animals, when moving to slaughter, will not have to be individually recorded at all. We estimate these changes to the recording requirements will result in industry savings of around £4.5 million.

We are continuing to press for further changes to the Regulations and have proposed measures which would allow individual animal information to be read on behalf of keepers at critical control points i.e. markets and abattoirs. If secured, we estimate this change would reduce costs to keepers

by between 35% and 40%. This could result in annual UK savings of between £7.5m and £20.5m. This proposal is likely to be discussed and possibly voted on at the Standing Committee on the Food Chain and Animal Health (SCoFCAH) meeting to be held on 30 June/1 July.

29 June 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 29 June 2009, replying to mine of 17 June, was considered by Sub-Committee D at its meeting on 21 October 2009.

We were pleased to see your support for moving towards long-term management plans. We were also interested in your comments on effort reductions.

However, there was a point in my earlier letter to which I would like to return. I referred in it to the support which you voiced, in an evidence session last December, for the idea of involving Parliamentary committees at an earlier stage. You indicated an intention to write back to the Committee once ICES had issued its scientific advice over the summer.

We have so far seen nothing from you to follow this up, and yet we know that the Commission's proposals for fishing opportunities in 2010, based on the ICES advice, were published on 16 October. We regret the fact that the intention which you indicated last December has not been carried through. We shall be all the more interested to see your analysis of the ICES advice in the Explanatory Memorandum on the 2010 fishing possibilities, which we would expect to receive very shortly.

21 October 2009

Letter from Huw Irranca-Davies MP to the Chairman

As you highlight, the Commission proposals for TACs and Quotas in 2010 have now been issued and you should receive an Explanatory Memorandum along with this letter.

I apologise for not having written sooner, however, am pleased that the Commission has issued its proposals one month earlier than last year, and a few days after the International Council for the Exploration of the Sea (ICES) issued its final advice on pelagic stocks, on 9 October. This gives us a greater opportunity to consider the proposals and UK priorities for December Council. I would be happy to discuss the Government approach to these difficult negotiations further with the Committee in the coming weeks.

4 November 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Explanatory Memorandum (EM) on the above Proposal and letter of 4 November were considered by Sub-Committee D at its meeting of 25 November 2009.

We note that you have promised to send us: your impact assessment; information on consultation with the Devolved Administrations and with stakeholders; information on the developing UK negotiating line; and a progress report on progress in limiting the Irish Sea nethrops reduction to a maximum of 15%. We urge you to submit this information to us in time to permit its consideration by the Committee before the 14 December Council meeting, thus allowing us to take advantage of the additional time available this year, to which you alluded in your letter of 4 November.

Your comments focused on the proposed TAC levels but did not cover effort restrictions. We would be grateful if you would include this information in your comments on the UK negotiating line.

On the "use it or lose it" principle, we considered when scrutinising the Communication on Fishing Opportunities for 2010 that further judgment of how to deal with stocks whose status is unknown should await the ICES examination requested by the Commission. It is unclear to us what became of this examination and we would therefore be grateful for any information or view that you may have on that matter.

Finally, we welcome and strongly support the joint UK/Danish/German initiative to reduce discards. We look forward to an update from the Government on the progress of this initiative in the course of 2010, should it prove acceptable to the Commission.

We will continue to hold the proposal under scrutiny.

25 November 2009

FISHERIES: FIXING FISHING OPPORTUNITIES IN THE BALTIC SEA (12882/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your letter of 16 October 2009 (referring to EM 12882/09) was considered by Sub-Committee D (Environment and Agriculture) at its meeting on 28 October 2009.

You explain that the Proposal was to be adopted at Council on 19/20 October, and that the UK would support its adoption even though the scrutiny process had not been completed.

We are content to release the Proposal from scrutiny, but we would once again voice our support for UKRep's representations to the Commission, pressing for adequate time to be allowed for Parliamentary scrutiny. We would ask you to keep us informed about the response which UKRep receives.

29 October 2009

FISHERIES: FIXING OF 2010 GUIDE PRICES FOR CERTAIN FISHERY PRODUCTS
(15086/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal will be put to the General Affairs and External Relations Council on 30 November 2009. An Explanatory Memorandum has been prepared and is attached.

The purpose of this regulation is to introduce allied Commission regulations for fisheries market support mechanisms, providing compensation to fishermen in the absence of a buyer. Aid rates are calculated on the basis of agreed guide price levels, for 2010. The prices are set deliberately low so that this option is very much a last resort.

The absence of these measures may threaten the stability of the EU market for fish and fish products. In view of this, the UK will vote in favour of this proposal by written procedure prior to it being cleared by the Scrutiny Committees. I do, however, acknowledge that voting on these issues without scrutiny clearance is not usually acceptable.

26 November 2009

FISHERIES: IMPLEMENTATION OF THE ACTION PLAN FOR SIMPLIFYING AND
IMPROVING THE COMMON FISHERIES POLICY (10838/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 8 July.

Like you, we are strongly supportive of the Commission's CFP simplification agenda, and we are taking a close interest in the proposed new Control Regulation, which is a central plank of the agenda.

We are content to release the Communication from scrutiny but would make one further observation. The Commission notes that it submitted 16 of its CFP Proposals to an Impact Assessment over the period 2006-8. Given the volume of legislation, this seems a miniscule amount. We would welcome your view on the number of Impact Assessments, as also on the quality of those produced.

8 July 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter dated 8 July 2009 setting out the Select Committee's views on the content of the Explanatory Memorandum. Your strong support of the simplification agenda is most welcome along with your interest in the proposed Control Regulation.

You asked for my views on the number and quality of impact assessments drafted by the European Commission. In the course of our work on the Marine Fisheries Programme, my officials have seen only six impact assessments in the last two years. These impact assessments were useful in terms of general background information on the measures to be introduced, but lacked any detailed information to enable recipients to fully assess the measures, in terms of specific costs and benefits for those affected.

Like every other UK Government Department, we recognise the importance of impact assessments as they ensure Regulations are fully assessed and proportionate to the issue it is designed to tackle. You can be assured that I will continue to urge the Commission to improve the quality of the data their impact assessments contain.

On a more positive note, you may be interested to know that the Commission recently revised its guidelines for producing impact assessments, which should hopefully improve the quality of impact assessments produced in future. Detailed information on Commission's impact assessments guidelines can be found at:

http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm

20 July 2009

FISHERIES: PARTNERSHIP AGREEMENT WITH THE SOLOMON ISLANDS (I2933/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs

Your letter of 21 September was considered by Sub-Committee D at its meeting on 21 October 2009.

You explained that the Proposal had been adopted by Written Procedure on 21/22 September.

We have no comment to make on the substantive content of the Proposal, but we do wish to voice our support for the representations which you say are being made by UKREP to the Commission, pressing for adequate time to be allowed for the Parliamentary scrutiny process to run its course.

26 October 2009

FISHERIES: PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING (IUU) (I4729/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal is due for adoption by Written Procedure on or after 18 November. A copy of the EM which the Department is submitting is attached.

The purpose of the proposal is to authorise the EU to sign an agreement negotiated by the FAO in August on Port State measures to combat Illegal, Unreported and Unregulated (IUU) fishing. As the EM explains, the proposal will have no direct impact in the United Kingdom because the principles set out in the Agreement are ones which we already have, or have arranged to, put into practice in the UK. Nevertheless the UK has been instrumental in supporting the adoption in various international fora of measures to tackle IUU fishing and I therefore consider it very important that the UK is seen to be supporting the adoption of the FAO Agreement by the EU. In view of this, the UK may need to vote in favour of this proposal by written procedure prior to it being cleared by the Scrutiny Committees.

11 November 2009

FISHERIES: REFORM OF THE COMMON FISHERIES POLICY (8977/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Green Paper was considered by Sub-Committee D at its meeting of 3 June 2009.

We were delighted to note that the broad thrust of the Green Paper is very much aligned with the Committee's 2008 Report on the Progress of the CFP (HL 146, EU Committee, 21st Report of Session 2007-8).

You noted in your EM that the UK Government might consider proposals for re-consideration of the principle of relative stability. We would be grateful if you could shed any light on the circumstances in which the Government might do so.

In our report, we concluded that further moves towards rights-based management at a national level would be highly desirable. It seems to us that the Commission is leaving the door open to cross-border transfers of fishing rights. We would appreciate your view on whether this might be a correct interpretation of the Commission's thoughts.

A further complexity to discussions on the reform of the CFP may be an EU membership application by Iceland in the near future. We would be interested in your comment on whether those accession negotiations may impact upon the CFP reform discussions.

We look forward to receiving a copy of your response to the Green Paper and we will be considering whether to submit our own response on the basis of our Report.

We are content to release the Green Paper from scrutiny but look forward to your comments on the matters raised above. We also look forward to discussing the Green Paper with the Government when the Committee's Report is debated in the House of Lords.

4 June 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 4 June on the above Explanatory Memorandum.

I am pleased that you recognise the similarities between the Committee's valuable 2008 Report on the Progress of the CFP and the Commission's Green Paper. I welcomed the paper at the recent May Fisheries Council and agreed that we must be ready to make fundamental change as part of a comprehensive package of reform. I am prepared to consider all options.

You pick up on the intention to consider proposals for reconsideration of the principle of relative stability. Our primary objective is that ecological sustainability is a basic premise for a stable economic and social future for European fisheries. Only through healthy fish stocks and a healthy marine environment can we hope to achieve economic and social sustainability. At the heart of future reform must be an overriding objective to achieve the sustainable exploitation of fish stocks. To achieve ecological sustainability we must consider carefully the rights and responsibilities of fishers which constitute the incentives to invest in the long term stability of the stocks. I believe it is sensible and prudent to consider how best to revise access arrangements across the EU for the attainment of ecologically sustainability.

All our proposals for reform will be assessed against this fundamental objective. In terms of relative stability, there are strong arguments for maintaining a mechanism that divides fishing opportunities among Member States. However making real improvements to the state of the fish stocks, the prosperity of the catching sector and local communities that depend on fishing will mean looking at the most fundamental pillars of the current regulatory framework.

Given the problems of the CFP, it is right that we look closely at the current quota management system and the Green Paper certainly proposes a number of options in this area for Member States to assess. For example, annual setting of quota limits means that profitability of vessels is unpredictable, ownership of the quota and duration is uncertain. This lack of clarity and certainty affects behaviour in the industry such as investment decisions and efficiency and is a barrier for us to achieve ecological sustainability.

The existing Fixed Quota Allocation system has many of the features of an ITQ system – with the flexibility for fishermen to trade quota within the UK. At this stage the UK, in line with the Commission's request for Member States to explore all options, is keen to understand whether

existing mechanisms that address this question of property rights can be improved or new ones put in place. As part of our deliberations we will explore the appropriate distribution of rights between fishermen and the nation; how to set quota over longer time periods and how to improve scientific advice to enable this. This work will assess the options, including whether cross-border transfers of fishing rights is essential for attaining our ultimate goal.

You raise the prospect of the impact on CFP Reform if Iceland joined the EU. Although fishing is an important sector within Iceland it does not share a significant number of stocks with the EU. However fishing and fisheries management is a prominent part of the Icelandic activities, culture and economy. As an important fishing nation we would welcome their contribution to discussion as part of their access arrangements, should Iceland join the EU.

7 September 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 7 September 2009 on this Green Paper, responding to my letter of 4 June, was considered by Sub-Committee D at its meeting on 21 October 2009. It was helpful to receive your indications of the approach that you may take on some of the key aspects of CFP reform.

We would ask that you keep us regularly informed as reform proposals are developed, and this includes sending us a copy of your response to the Green Paper.

For your information, we do have in mind to submit our own response to the Green Paper, drawing upon our 2008 Report on the "Progress of the CFP".

21 October 2009

FISHERIES: SOUTH EAST ATLANTIC FISHERIES ORGANISATION (13325/09, 13452/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal has been adopted by Written Procedure on 21/22 September. An EM is attached.

The purpose of the proposal is to provide the EU Commission with a mandate to negotiate, on behalf of the European Community, at the annual meeting of the South East Atlantic Fisheries Organisation in October 2009.

It is essential that the Commission has a mandate to negotiate on behalf of the EU at this meeting. The role of Regional fisheries management organisations in managing fisheries and oceans is vital and the European Community, as a major Contracting Party must be able to fully participate in all RFMO meetings. In view of this, the UK voted in favour of this proposal by written procedure prior to it being cleared by the Scrutiny Committees.

I do, however, acknowledge that voting on these issues without scrutiny clearance is not usually acceptable. As a result the United Kingdom permanent representative to the European communities (UKREP) will be writing to the Commission to make it clear that whilst we do not wish to stand in the way of important negotiating mandates being agreed, we do believe that every effort should be made to bring these proposals to our attention at the earliest opportunity so that Member States can respect their Parliamentary scrutiny processes.

29 September 2009

Letter from the Chairman to Huw Irranca-Davies

Your letter of 29 September 2009 was considered by Sub-Committee D at its meeting on 21 October 2009.

You explained that the Proposal had been adopted by Written Procedure on 21/22 September.

We have no comment to make on the substantive content of the Proposal, but we do wish to voice our support for the representations which you say are being made by UKREP to the Commission, pressing for adequate time to be allowed for the Parliamentary scrutiny process to run its course.

26 October 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Explanatory Memorandum (EM) and your letter of 24 October 2009 on the above proposal were considered by Sub-Committee D at its meeting of 25 November 2009.

We have no difficulty with the Government's line on the proposal and confirm that we are content to release it from scrutiny.

We are not content, however, with your Department's performance in assisting Parliamentary scrutiny of the proposal. Despite the dates which appear on the material sent to us, both the EM and your letter were submitted to us only in the first week of November, a week after the override had taken place.

We understand that one of your Department's Directors is currently reviewing Defra's scrutiny performance with a view to securing early improvements, and that a meeting is to be held with members of our committee secretariat. We are clear that improvements are urgently needed.

25 November 2009

FISHERIES: SOUTHERN BLUEFIN TUNA (13262/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs

Your letter of 21 September was considered by Sub-Committee D at its meeting on 21 October 2009.

You explained that the Proposal had been adopted by Written Procedure on 21/22 September.

We have no comment to make on the substantive content of the Proposal, but we do wish to voice our support for the representations which you say are being made by UKREP to the Commission, pressing for adequate time to be allowed for the Parliamentary scrutiny process to run its course.

26 October 2009

FISHERIES: TARIFF QUOTAS FOR CERTAIN FISHERY PRODUCTS (13266/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal has been adopted by Written Procedure on 26/27 October. A copy of the EM, as submitted to you earlier this month, is attached.

The purpose of the proposal is to introduce a system of autonomous tariff quotas (ATQs) in respect of certain types of fish product, for the period 2010 -2012. It replaces the existing ATQ regime which expires on 31st December 2009.

ATQs aim to ensure a steady supply of raw fish material, at favourable duty rates, from third countries for Community processors. The quotas are specifically designed to cover species where there is a shortage of supply in the Community. It is important that a new regime is implemented in good time to avoid disruption to supply, and so that processors have certainty as to the duty rates for the raw materials they will be importing. In view of this, the UK voted in favour of this proposal by written procedure prior to it being cleared by the Scrutiny Committees.

I do, however, acknowledge that voting on these issues without scrutiny clearance is not usually acceptable. As a result the United Kingdom permanent representative to the European Communities (UKREP) will be writing to the Commission to make it clear that whilst we do not wish to stand in the way of important negotiating mandates being agreed, we do believe that every effort should be made to bring these proposals to our attention at the earliest opportunity so that Member States can respect their Parliamentary scrutiny processes.

24 October 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Explanatory Memorandum (EM) on the above Proposal dated 12 October, and your letter of 24 October, were considered by Sub-Committee D at its meeting of 28 October 2009.

When we examined the proposal for the existing Regulation, 824/2007, we informed your predecessor (in a letter of 20 June 2007) that we were less than wholly convinced of the need for quotas. He shared that view (in a letter of 6 July 2007) and noted that the Government were in favour of ending a number of barriers to trade, including Autonomous Tariff Quotas (ATQs).

On the issue of principle, therefore, we would be interested to know how negotiations have been proceeding with a view to ending ATQs.

Your EM foresaw that the Proposal would go to Council in early November. Your letter of 24 October explains that it was in fact adopted by written procedure on 26/27 October. We consider your stance on the Regulation to be acceptable and, while we regret that we could not consider the Proposal before an override happened, we now release it from scrutiny.

We look forward to your response on the issue raised above.

29 October 2009

Letter Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 29 October, in which you requested further information on how negotiations have been proceeding with a view to ending Autonomous Tariff Quotas (ATQs).

As indicated in our last letter, such negotiations are taking place at the World Trade Organisation (WTO), aimed at establishing a multilateral agreement on "Trade Facilitation" as part of the Doha Development Round. This seeks to remove the risk of protectionist or trade restrictive action being taken by one country against another's goods. Progress has been positive and negotiations are moving towards producing a draft text by the end of the year.

The UK remains in favour of eliminating barriers to trade, including ATQs, and continues to feed our views into the WTO negotiations via the EC. In the interim, we maintain our view that while the ATQ system exists, it is important to secure the best possible deal for our fish processing industry.

25 November 2009

FISHERIES: USE OF ALIEN AND LOCALLY ABSENT SPECIES IN AQUACULTURE (14728/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) of 4 November 2009 on the above proposal was considered by Sub-Committee D at its meeting of 25 November 2009.

We share your view that the amendments proposed appear well-founded and should serve to reduce administrative burdens associated with the permit procedure in the case of closed aquaculture facilities deemed to be bio-secure. We are content to release the proposal from scrutiny.

25 November 2009

FISHERIES: WESTERN STOCK OF ATLANTIC HORSE MACKEREL (9003/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 3 June 2009.

The principle of establishing a multi-annual plan for the western stock of Atlantic horse mackerel seems consistent with the approach envisaged in the 2002 CFP Framework Regulation. However, there are clearly some differences of detail between this proposal and other multi-annual plans. We note that Government officials are still considering these details; that an Impact Assessment has yet to be submitted to Parliament; and that consultations with stakeholders are still underway.

We note with particular interest the proposal to include discards within the TAC calculation and would ask that, in your response, you include an indication of your position on that proposal.

We will hold the proposal under scrutiny while we await further information from you about these aspects.

4 June 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your Supplementary Explanatory Memorandum (SEM) on the above proposal and accompanying Impact Assessment were considered by Sub-Committee D at its meeting of 21 October 2009.

We read the Impact Assessment with interest and note the difficulties encountered in fully assessing the likely impact of the measure. In that light, it will be particularly important to monitor closely the implementation of this management plan.

We were greatly encouraged by the Commission's proposal to include discards within the TAC calculation. In my letter of 4 June, to which we have yet to receive a response, we asked that you indicate your position on that suggestion. We observed no reference to this in either the SEM or the Impact Assessment and we therefore look forward to an indication of your position.

We will retain the Proposal under scrutiny pending receipt of the information requested above and information on the progress of negotiations.

21 October 2009

FOOD AID FOR DEPRIVED PERSONS (I3721/09)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above Report was considered by Sub-Committee D at its meeting of 4 November 2009.

We note the findings of the European Court of Auditors' audit of the operation of the programme of food aid for the most deprived persons, and the response to it from the European Commission. We agree with you that a number of the ECA's findings add weight to concerns about whether the operation of the programme provides value for money.

No less importantly, we share your reservations about the justification for the scheme as a whole. Operating a programme at EU level which consists of assistance that would be better delivered through domestic social programmes raises concerns about subsidiarity. We trust that the Government will reflect such concerns in its position on this scheme and any reform proposals.

We are content to release the Report from scrutiny.

4 November 2009

GENETICALLY MODIFIED MAIZE (MON88017, 59122 X NK603, MON89034) (I2961/09, I2962/09, I3202/09)

Letter from the Chairman to Gillian Merron MP, Minister of State, Department of Health

Your Explanatory Memoranda (EM) on the above Proposals were considered by Sub-Committee D at its meeting of 14 October 2009.

We have consistently supported the risk assessment process in place and we agree with the Government that the EFSA opinions can be supported.

We are content to release the Proposals from scrutiny.

14 October 2009

GENETICALLY MODIFIED MAIZE (ZEA MAYS L. LINE 1507 AND Bt11) FOR RESISTANCE TO CERTAIN LEPIDOPTERAN PESTS

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandums (6 May) on the above proposals were considered by Sub-Committee D at its meeting of 3 June.

As you will be aware, we have consistently supported the risk assessment process carried out by EFSA and the ACRE, and have been content to lend our support to your position on GM authorisations.

We note that the Scottish Government and Welsh Assembly Government are now disassociating themselves from that position to varying degrees. Since you indicate (in paragraph 4 of each EM) that the Devolved Administrations originally accepted the ACRE's advice on these applications, we would be interested to learn what led to their change of stance. We would also be grateful if you could clarify to what extent their objections apply to GM applications in general, rather than these particular proposals.

Against this background, we would ask you to keep us informed on the way in which the UK line develops in advance of the June Environment Council.

We will clear the proposals from scrutiny, but would ask you to respond promptly to our queries above.

4 June 2009

Letter from Dan Norris MP, Rural Affairs and Environment Minister, Department for Environment Food and Rural Affairs, to the Chairman

Thank you for your letter of 4 June 2009 to Huw Irranca-Davies regarding the Explanatory Memoranda of 6 May and the views of the Scottish and Welsh Assembly Governments on the above proposals to cultivate GM maize line 1507 and Bt11.

The agreed UK Policy currently is to vote on GM applications on a case-by-case basis in line with the scientific evidence (as required by the EU legislation). Both Scotland and Wales are concerned about voting solely on scientific grounds when other Member States are adopting positions based on wider perspectives including public opinion. As stated in Paragraph 6 of the EMs a meeting of the respective Ministers should take place shortly to discuss how to reach an agreement on how the UK should vote on future applications.

In relation to the applications to cultivate Bt11 and 1507 maize both Wales and Northern Ireland supported the UK vote in favour of the proposals. In line with its general policy of opposing the cultivation of GM crops the Scottish Government wished to vote against approving these consents despite the clear scientific evidence. The UK line is therefore not expected to change before votes are taken at Council.

The Scottish Government changed its GM Policy following the elections in 2007 – i.e. after the original UK opinions were submitted. Its main concern is with the cultivation of GM crops. It is not preventing farmers from using GM feed. The UK livestock sector overall is dependent on imported soya and maize protein feed, and the main supplier countries (US, Brazil, Argentina) are now largely producers of these commodities. When asked for its opinion on food and feed import applications (on which the Food Standards Agency lead) it uses the following statement:

“The Scottish Government maintains its long standing opposition to the cultivation of GM crops and urges that any proposals for importing GM materials for their use in food and feed be considered only after the most rigorous analysis and ensuring a precautionary approach.”

We have interpreted this as meaning that they support the UK line because all applications are thoroughly assessed on a case-by-case basis, including by the independent Advisory Committee on Releases to the Environment (ACRE) which advises England, Wales and Scotland.

The Welsh Assembly Government has always had a policy of taking the most restrictive approach to GM cultivation that is consistent with UK and EU legislation.

27 June 2009

GEOLOGICAL STORAGE OF CARBON DIOXIDE: PROTECTION OF THE NORTH
EAST ATLANTIC (OSPAR CONVENTION) (10429/09)

**Letter from the Chairman to Huw Irranca-Davies, Minister for the Natural and Marine
Environment, Department for the Environment, Food and Rural Affairs**

Your Explanatory Memorandum on the above Proposal was considered by Sub-Committee D at its meeting of 14 October 2009.

We support the position that you propose and are content to release the Proposal from scrutiny.

14 October 2009

HIGH QUALITY BEEF: AUTONOMOUS TARIFF QUOTA FOR IMPORTS (11090/09)

**Letter from the Chairman to Jim Fitzpatrick MP, Minister for Food, Farming and the
Environment, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum of 1 July 2009 on the above Proposal was considered by Sub-Committee D at its meeting of 8 July 2009.

You explain that the Proposal is aimed at opening an additional phased import tariff quota between the EU and the US, beginning at 20,000 tonnes of high quality beef which has not been treated with growth-promoting hormones prohibited in the EU. We would welcome further information from you about the steps that will be taken to monitor the imports to determine that the beef is indeed free from the prohibited hormones.

In the meantime, we are content to release the Proposal from scrutiny.

8 July 2009

Letter from Jim Fitzpatrick MP to the Chairman

Thank you for your letter of 8 July 2009 regarding our Explanatory Memorandum of 1 July 2009 on the proposal for a Council Regulation opening an autonomous tariff quota for imports of high quality beef.

Under existing legislation, the use of growth-promoting hormones in live animals and their residues in meat products are prohibited within the Community. Council Directive 22/1996 sets out measures to control the use of these hormones in animal production and Directive 23/1996 covers the monitoring of their residues in animals and animal products for human consumption. Any third country wishing to export to the EU27 has to comply with these and other regulations on food safety and hygiene before trade is permitted.

The proposal for the autonomous tariff quota is the result of an agreement between the Commission and the US to end the long-running EU/US trade dispute on hormone treated beef, which has been running for over 20 years. In turn, the US agreed to withdraw the threat of 'carousel' sanctions, which were due to be introduced on 8 May and would have involved a revolving list of EU products. In return, the Commission offered increased access to the European market for hormone-free beef.

The European Commission's new Regulation provides the administrative rules on how the tariff quota will be managed and specifies in an Annex conditions of production for assuring that beef imported into the EU under the quota is of sufficiently high quality to be eligible. Whilst the prohibition on the use of growth promoting hormones is not specifically mentioned in the Annex this is assumed under normal trading rules.

At a meeting of the Animal Products Management Committee of 18 June 2009, the Commission assured Member States that all imports under the new quota will be assessed on an individual case by case basis and they will not hesitate to carry out control visits and checks in the case of any potential anomalies. They will as part of these checks ensure that the beef originates only from registered "hormone free herds" in the US and Canada or in any other third country under the WTO *erga omnes* trade rules.

12 August 2009

INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL)
(5088/08, 5223/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change, Adaptation and Air Quality, Department for Environment, Food and Rural Affairs

Your Supplementary Explanatory Memorandum (SEM) of 2 May 2009 on the above proposal was considered by Sub-Committee D at its meeting of 3 June.

When we wrote to you on 7 February 2008 after our consideration of the original Explanatory Memorandum (EM), we said that we looked forward to an update on the progress of discussions, particularly with regard to the provisions that still require clarification, and to receipt of your Impact Assessment. That update has been provided only now, through the SEM, and this states in particular that Impact Assessments were published on Defra's website in May 2008. They have not however been submitted formally to us. Indeed, we would be grateful for an indication as to whether an Impact Assessment has been undertaken more recently to reflect developments in the Council and the European Parliament.

The SEM refers to first reading amendments adopted by the European Parliament on 10 March 2009, but gives no further information. We would ask you to explain your view on the thrust of these amendments and how they are positioned in relation to the emerging position in the Council.

Pending a response to these queries, we will continue to hold the proposal under scrutiny.

4 June 2009

Letter from Lord Hunt of Kings Heath to the Chairman

I sent you a supplementary Explanatory Memorandum on the above on 2 May. It supplemented one sent in January 2008 and I am very sorry indeed that the Department had not kept your Committee informed of developments in the meantime and that we failed to apologise in the supplementary Explanatory Memorandum (SEM). This was an omission on the part of the lead official, who has been and remains heavily engaged in setting out the UK position to the Council and the European Parliament. However, I fully recognise the need to keep the UK Parliament informed about significant developments, and I regret the oversight.

As explained in the SEM, good progress has been made particularly in relation to our concerns about large combustion plant. Negotiations are heading quickly in the direction of a package which, subject to further consideration, it looks possible for the UK to accept in Council. I would therefore welcome your Committee's views, and would be happy to answer any further points they may have.

To aid the Committee, I attach a document summarising the published impact assessments and the developments since then.

5 June 2009

ANNEX

DRAFT INSTRUMENT 5088/08 OF 8 JANUARY 2008 CONCERNING A PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON INDUSTRIAL EMISSIONS (INTEGRATED POLLUTION PREVENTION AND CONTROL) (RECAST)
INFORMATION FURTHER TO THE SUPPLEMENTARY EXPLANATORY MEMORANDUM SUBMITTED IN APRIL 2009

This document summarises the impact assessments which were published on the Defra web site on 2008 and the current position (at 26 May 2009) with each of the elements of the Commission's proposal which they addressed. It concludes with a note on the European Parliament's consideration of the Commission's proposal.

Large combustion plants

Elements of the Commission's proposal would introduce more stringent minimum requirements in respect of emissions from large combustion plants (ie with a rated thermal input of more than 50 MW) from 2016. It would also remove provisions under which Member States can operate a national emissions reduction plan (NERP) so as to provide greater flexibility for individual participating plants whilst ensuring that overall emissions remain within what would result from the application of minimum requirements uniformly across all plants.

The published impact assessment¹⁰ estimates that the application of the large combustion plants elements of the proposal would result in total annualised costs for the UK of between £170 million and £331 million. Using methodology developed by the UK's Interdepartmental Group on Costs and Benefits (IGCB), annual benefits are assessed as in the range £119 million to £171 million¹¹.

The proposal is propelled largely by the view that best available techniques (BAT) for reducing emissions of sulphur dioxide, nitrogen oxides and dust have not been applied to combustion plants – particularly those in the electricity generating sector – in the way that they should have been. The Commission's Thematic Strategy on Air Pollution also calls for further significant reductions in the interests of protecting human health and vulnerable habitats. Outright opposition to the proposal has therefore not been seen as an option and indeed no other Member State has taken such a position. Rather, it was evident from the first that substantial flexibilities would have to be inserted to avert troubling consequences for development over the next decade of replacement low emissions electricity generating plants consistent with carbon reduction objectives whilst maintaining security of electricity supplies. The initial impact assessment therefore considered two other scenarios in which the proposal would be modified by the retention of a NERP provision. These indicated that a better ratio between costs and benefits would result.

The UK therefore introduced at an early stage in the negotiation a proposal for reinstatement of a NERP provision and the introduction of other flexibilities along the lines of those to be found in the current large combustion plants Directive¹² which would be repealed from 2016 under the Commission's proposal. Given that other Member States were broadly supportive of the UK approach, discussions in Council have continued to move in a satisfactory direction.

The latest situation in Council as of late May 2009 is that it is likely that a NERP¹³ provision would be restored, which would be available for the calendar years 2016 to 2019 inclusive to all plants in operation prior to November 2003. A draft¹⁴ assessment of this indicates total annualised costs for the UK of some £214 million, with annualised benefits in the range £127 million to £178 million (as estimated by the IGCB methodology).

It also looks likely that a provision will be included by Council under which plants would not have to meet the proposed minimum requirements if their operators undertake to operate them for no more than 20,000 hours from 2016 and in any event to close them by the end of 2023. This, taken with the NERP provision, represents a considerable improvement from the Commission's proposal, but the UK is continuing to press for further flexibility.

Smaller combustion plants

The Commission's proposal would lower the threshold for inclusion of combustion activities within integrated pollution prevention and control (IPPC) from the current 50 MW thermal input to 20 MW. With no firm indication of what emission limit values (ELVs) would be applied to installations newly covered in this way, three scenarios were assessed featuring ELVs of varying stringency. Annual costs ranged from £16.4 – 16.8 million for the least stringent to £66.8 – 67.2 million for the most, with benefits ranging from £7.8 – 11.2 million to £16.6 – 23.9 million. With such disparity between costs and benefits, the UK opposed this change from the first, along with many other Member States, and it looks likely that the Council will restore the *status quo*, albeit with a new provision requiring the Commission to review the issue and if necessary to make a separate legislative proposal by 2013. Further impact assessment is therefore unlikely to be necessary in relation to the current proposal.

Intensive livestock rearing

The Commission's proposal would change the current threshold for coverage by IPPC of intensive rearing of poultry from 40,000 places, irrespective of the poultry species, to a number of places dictated by the species, ranging from 11,500 for turkeys to 40,000 for broiler hens.

The impact assessment estimates that an additional 254 installations in the UK would become subject to IPPC, resulting in total annualised costs of between £3.0 million and £3.2 million. Using methodology developed by the IGCB, annual benefits are assessed as in the range £1.6 million to £2.3 million¹⁵. On that basis, the UK has opposed the proposal throughout the negotiation, as have several other Member States, and it looks likely that the Council will restore the *status quo* of the current IPPC Directive, albeit with a new provision requiring the Commission to review the application of IPPC to poultry installations and if necessary to make a separate legislative proposal by 2013.

¹⁰ At <http://www.defra.gov.uk/corporate/consult/emissions-combustion/impact-assessment.pdf>

¹¹ The methodology used by the Commission in its impact assessment indicates UK benefits in the range £402 – 1121 million.

¹² 2001/80/EC.

¹³ Referred to as a "Transitional National Plan" in the Presidency text.

¹⁴ Draft received in May 2009 and therefore neither finalised nor published as yet.

¹⁵ The methodology used by the Commission in its impact assessment indicates UK benefits in the range £21.0 – 29.4 million.

Also in relation to intensive rearing of pigs and poultry, the Commission's proposal would require best available techniques (BAT) to be applied to land-spreading of manure from such installations. The impact assessment estimates resulting total annualised costs of between £2.3 million and £7.6 million. Using methodology developed by the IGCB, annual benefits are assessed as in the range £5.5 million to £17.9 million¹⁶. On that basis, the UK has opposed the proposal throughout the negotiation, as have several other Member States, and the Council looks likely to remove it from the text, albeit with a new provision requiring the Commission to review the issue and if necessary to make a separate legislative proposal by 2013.

As a result, additional costs of up to some £10 million annually falling upon the UK intensive livestock sector would be averted. Further impact assessment is therefore unlikely to be necessary in relation to the current proposal.

Other activities

The impacts of the various other proposed changes to IPPC scope were assessed in the series reports placed on the Defra web site at:

<http://www.defra.gov.uk/corporate/consult/emissions-other/index.htm>

No significant costs would arise from the changes proposed in respect of the following activities because in UK practice they are already subject to IPPC:

- non-ferrous metal foundries;
- biological processing for chemical production;
- production of chemicals for use as fuels or lubricants¹⁷; and
- wood-based panel production.

Specified Treatments of Non-hazardous Waste

IPPC already applies to the disposal of non-hazardous waste by means of physico-chemical or biological treatment activities with a capacity of greater than 50 t/d. The Commission's proposal is to apply IPPC also to physico-chemical or biological recovery of non-hazardous waste, also with a threshold of 50 t/d. The proposal also specifically lists pre-treatment of waste for co-incineration, treatment of slags and ashes, and treatment of scrap metal, even though they would generally be regarded as physico-chemical treatment activities.

The UK impact assessment indicated that the Commission's proposal could affect between 3628 and 4433 installations, with administrative costs of between £1908 and £12,606 per installation per annum and compliance costs generally¹⁸ of between £4000 and £20,000 per installation per annum. These could combine to give annual total costs of between £14.6 million and £532 million across the assessed number of installations. The numbers of installations and associated costs potentially affected were dominated by (i) sludge treatment processes carried out by the water industry (some 1200 – 1900 installations), (ii) general physico-chemical treatment activities in the waste management sector (some 1100 installations), and (iii) treatment of scrap metal some 1100 installations).

The assessment found that the proposed inclusion of non-hazardous waste recovery activities could potentially lead to improvements in resource efficiency, reductions in fugitive emissions, including odour, reductions in leakages of materials to soil and water and other environmental benefits. But due to the highly variable detailed nature of the various activities covered by the proposals, the assessment found it was not possible to quantify or monetarise potential benefits.

Against this background, the UK has from the opening of the negotiation opposed the proposed extension of IPPC to recovery activities.

As a result of pressure from the UK and other Member States, it was established at an early stage of the negotiation that the Commission did not intend to cover scrap metal treatment in general, but only that carried out in mechanical shredders which are generally used for end of life vehicles. The Council therefore amended the proposal accordingly and, after similar pressure, also added an amendment which would remove activities at installations subject to the urban wastewater treatment Directive¹⁹, thereby removing nearly all²⁰ the large number of water sector activities from coverage

¹⁶ The methodology used by the Commission in its impact assessment indicates UK benefits in the range £70.7 – 231.6 million.

¹⁷ The assessment of non significant costs in this case is based upon the continuance of the regulators' current interpretation of what constitutes production on an industrial scale and therefore what is subject to IPPC.

¹⁸ For installations in the water sector, compliance costs of between £28,500 and £90,000 per annum were estimated.

¹⁹ 91/271/EC – the principal Directive relating to sewage treatment works.

²⁰ Some biological recovery activities for sewage sludge are carried out at locations other than sewage works

by the proposal. It also looks likely that the Council will amend the proposal so that physico-chemical recovery activities would not be covered.

Of the recovery activities remaining in the proposal as it currently stands amended:

- pre-treatment of waste for co-incineration and treatment of slags and ashes are, in UK practice, very often undertaken within installations which are already subject to IPPC. The number of installation which might be newly subject to IPPC is therefore likely to be very low, at around 20 in each case;
- subsequent assessment indicates that recovery of metal in shredders is carried on at some 45 installations;
- biological recovery could affect a small number (perhaps fewer than 50) of water sector installations in which sewage sludge recovery is carried out at locations remote from sewage works; and
- biological recovery could possibly affect up to 200 waste sector installations, although it is likely that a 50 t/d capacity threshold would not be exceeded at up to some 130 of these.

So, the proposal as it currently stands could bring up to 300 waste treatment installations into IPPC, with an annual cost of between £1.8 million and £9.8 million on the basis of the costs per installation quoted above. This is a huge decrease in the costs assessed for the Commission's original proposal. Nevertheless, the UK, with other Member States, is continuing to seek further amendments so as to reduce these numbers still further. The impact assessment will be revised accordingly.

Mixed Animal and Vegetable Food Production

IPPC currently applies to food production activities where the production capacity exceeds 75 t/d from animal raw materials or 300 t/d from vegetable raw materials. The question of how these thresholds should be applied in the not uncommon case of production of mixed animal and vegetable products²¹ has long been a source of uncertainty. Within the UK, the regulators have taken the pragmatic approach that, if the animal component exceeds 10% of the finished product, then the lower, animal, threshold applies and this is embodied in formulaic terms in the Commission's proposal.

The starting point is therefore that the proposals should not result in additional installations become subject to IPPC. Nevertheless, the impact assessment identified that perhaps 10 more might be found, on strict application of the formula, to be newly subject to IPPC, with total annual costs of between £0.8 million and £4.5 million. But even the lower figure is likely to be very much the "worst case". Moreover, since this element of the proposal is based upon current UK practice, it is acceptable.

Preservation of Wood and Wood Products

Based upon the Wood Protection Association's assertion that there could be 250 installations with a treatment capacity exceeding the proposed threshold of 75 m³/d, the assessment indicates total annual administrative costs of between £1.2 million and £2.4 million. However, the assessment also indicates that, since average actual production is in the range 20 – 30 m³/d, significantly fewer installations might be found to exceed the proposed capacity threshold²².

The assessment also indicates that a combination of other regulatory controls and use of an industry Code of Practice results in a high level of overall environmental protection that is comparable to that likely to be required under IPPC. It is therefore assumed that no additional operational costs would result if IPPC were applied. But that in turn implies that additional environmental benefits would be very limited. The UK therefore remains to be convinced of the need to extend IPPC to this sector.

Off-site Treatment of Waste Water

The Commission's proposal would include off-site treatment of waste water not covered by the urban waste water treatment Directive and discharged by an installation in which an IPPC activity is carried out. The impact assessment identified no more than ten installations which would thus become newly subject to IPPC. Due to the small scale of the off-site waste water treatment plants which are likely to be affected the environmental benefit is likely to be small. The total annual

²¹ Pea and ham soup is the oft-quoted example of a mixed animal and vegetable food product, but there are many others!

²² The assessment of capacity has to take into account not only the physical capacity of the apparatus associated with the activity but also other operational constraints.

administrative cost is assessed as between £2,000 and £27,000 per installation per year. Since this element of the proposal regularises UK practice, the UK has not opposed it.

Summary

Initial UK assessment of the Commission's proposal indicated annual costs of up to some £944 million²³. Amendments secured so far in negotiation have brought this down to some £224 million.

Of the £224 million, some £214 million relates to more stringent requirements in respect of large combustion plants which however would be offset by annual benefits of up to some £178 million²⁴. The improvements secured so far are also designed to ease the transition by the early 2020s to new, low emissions combustion plants in fulfilment of carbon reduction objectives whilst maintaining security of electricity supplies.

The European Parliament

The European Parliament considered the Commission's proposal on 10 March 2009 and adopted 80 amendments. Consideration in the Council Working Party soon afterwards indicated that some 25 of these are unlikely to be acceptable to the Council. The new European Parliament will consider the proposal further in a process which is unlikely to start until the autumn and which is envisaged to extend into 2010.

Letter from the Chairman to Lord Davies of Oldham, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

I wrote to Philip Hunt on 4 June, and received a letter of 5 June from him, dealing with the need to keep Parliament informed about developments on this proposal. The letter of 5 June was considered by Sub-Committee D at its meeting of 17 June 2009.

It is helpful that relevant information has now been provided about developments since early 2008. We are content to release the proposal from scrutiny, although we would ask that Parliament should be kept informed, in a timely way, of further significant developments.

17 June 2009

Letter from Jim Fitzpatrick MP, Minister of State for Food, Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your 17 June letter to Lord Hunt, releasing this proposal from scrutiny. On that basis, Hilary Benn was able to speak in support of the proposal at Environment Council on 25 June and political agreement was achieved.

The politically-agreed text maintains the thresholds for inclusion of combustion plants and intensive livestock rearing at those in the current integrated pollution prevention and control (IPPC) Directive. It provides the important flexibilities for existing large combustion plants which the UK and other Member States sought. And whilst it would newly include some non-hazardous waste recovery activities in IPPC, the politically-agreed text gives a threshold of 75 t/d rather than the 50 t/d proposed by the European Commission, which (as a result of UK urging) is increased to 100 t/d for anaerobic digestion.

Further details are included in the attached updated version of the document Lord Hunt sent you with his 5 June letter. I shall be happy to provide further information if you need it.

14 July 2009

KYOTO: PROGRESS TOWARDS ACHIEVING OBJECTIVES (14508/08)

Letter from David Kidney MP, Parliamentary Under Secretary of State, Department of Energy and Climate Change

Thank you for your letter of 10 December regarding the above mentioned Communication, in which you ask a number of questions. I apologise for the delay in replying.

²³ The total for large combustion plants (£331 million), smaller combustion plants (£67 million), intensive livestock rearing (£11 million), treatment of non-hazardous waste (£532 million), mixed animal and vegetable food production (£1 million) and preservation of wood and wood products (£2 million).

²⁴ From the draft assessment – cited in footnote 14 - of the Council-amended proposal as it stood in mid-May 2009.

The recently adopted Effort Sharing Decision applies an annual check on compliance and puts a price on non-compliance by individual Member States. If a Member State's emissions exceed their annual allocation, taking into account the flexibilities allowed under the Decision, they shall have their allocation for the following year reduced by the amount of excess emissions, multiplied by 1.08. As such Member States not only make up the difference, but pay a price of 8% of their excess emissions in any year. In addition they must submit a plan detailing the corrective action they will take to ensure compliance in the future, and will have the ability to transfer emission allocation or JI/CDM rights to other Member States suspended until they are back in compliance.

With regard to the compliance mechanism under the burden-sharing agreement currently in force, this is governed by the compliance mechanism under the Kyoto Protocol. If they determine that a Party is non-compliant, the Compliance Committee of the UNFCCC will cancel a quantity of units from the subsequent commitment period equal to the amount by which the Party's emissions exceed its assigned amount, multiplied by 1.3. In addition, the Party will no longer be eligible to take part in emissions trading with other Parties. The non-compliant Party must also produce a compliance action plan, setting out how it intends to meet its emission commitment in the subsequent period.

In light of the EU's collective responsibilities under the Kyoto Protocol and in order to prevent other EU Member States from taking advantage of the effort that the UK has made to exceed our Kyoto target, we intend to cancel our surplus AAUs that are not needed for compliance in the first Commitment Period. This will ensure that the effort taken by the UK to go beyond our Kyoto target will lead to a real reduction in global emissions and not be used to offset greenhouse gas emissions elsewhere.

I do not believe that the EU's approach to the negotiations at Copenhagen should be affected by this report. The EU's offer – of a unilateral 20% reduction and a possible 30% reduction contingent on others – is ambitious, yet credible, and is seen as such by international partners. In December last year, the EU agreed a package of measures to deliver the unilateral 20% reduction, and reaffirmed the commitment to increase this to 30% in the context of comparable commitments from other developed countries, and appropriate commitments from others. The main components of the package, the Emissions Trading System and the Effort Sharing Decision, contain significant flexibilities to deliver reductions beyond 20%. These flexibilities include access to international project credits; banking and borrowing provisions; and mechanisms for transferring abatement between Member States or operators so that the overall targets are met in the most cost effective way. Other policies agreed as part of the 2020 package will deliver substantial reductions across the EU. For example the challenging renewable target and the energy efficiency targets will deliver reductions equivalent to 16% by 2020.

In Phase I of the EU ETS, the UK set a cap that was more ambitious than the EU average. The UK cap was set well below the eventual level of emissions from UK installations, while across the EU there was considerable over-allocation. This led to it being more economic for UK operators to purchase allowances from operators elsewhere in the EU than to reduce emissions in the UK. The important point to note is that sufficient allowances were surrendered to cover the total level of emissions.

For Phase II the overall EU cap is more ambitious and will deliver reductions 6% below 2005 levels. In 2008 (the first year of Phase II) UK total allocation was 214MtCO₂e, while verified emissions were 265MtCO₂e. This again reflects the more ambitious cap set by the UK, and that it is cheaper to abate emissions elsewhere in the EU ETS or to use international credits for compliance (the use of international credits was not possible in Phase I).

In Phase III the disparity in Member States' allocations will be addressed as allocation methodologies will be harmonised across the EU. Auctioning is the preferred method of allocation for Phase III, and by 2020 at least 60% of allowances will be auctioned. Where feasible, any free allocation will be according to harmonised output based benchmarks, while any additional allowances that operators need for compliance will be purchased at auction or on the secondary market. It may still be the case that it is more expensive to reduce emissions in one country than in another, in which case we would expect the abatement to happen where it is cheapest. This is a sign that the Emissions Trading System is operating efficiently.

August 2009

NORTH ATLANTIC SALMON CONSERVATION ORGANISATION (NASCO) (9537/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 10 June 2009.

The proposal sought an approved negotiating mandate from the Council in order to formalise the lines that the Commission would take on behalf of the EU at the annual meeting of the North Atlantic Salmon Conservation Organisation (NASCO) from 2-5 June 2009.

Your EM explains that, while the Government recognised the benefits of a formal mandate for NASCO, you had concerns that the proposed mandate as set out in the Annex to the draft Council Decision should refer to matters in respect of which decisions taken in NASCO would not bind the Community or its Member States. However, the EM further explains that discussion at a Working Group meeting on 14 May resulted in changes to the draft which were acceptable to all Member States and the Commission, and which in particular addressed the UK's key concerns. This is to be welcomed.

It is unfortunate that, because the European Commission was late in bringing the relevant draft document forward, your Explanatory Memorandum was submitted less than a week before the date of the meeting for which a mandate was sought. However, I confirm that we are releasing the proposal from scrutiny.

11 June 2009

PETROL VAPOUR RECOVERY AT SERVICE STATIONS: STAGE II (17170/08)

Letter from the Chairman to Lord Hunt of Kings Heath, Minister for Sustainable Development, Climate Change, Adaptation and Air Quality, Department for Environment, Food and Agriculture

Your Supplementary Explanatory Memorandum (1 May) on the above proposal was considered by Sub-Committee D at its meeting of 13 May.

We note that since this SEM was drafted, a first reading agreement on the proposal has been reached. We would ask you to explain what amendments have been made to the Commission's original proposal to secure a first reading agreement.

We would also ask you to clarify whether you have now given agreement in Council to this proposal before receiving scrutiny clearance from this Committee. We would be grateful if in future you could keep us informed more promptly of the progress of negotiations when these are moving ahead quickly.

We will continue to hold the proposal under scrutiny pending your response.

18 May 2009

Letter from Lord Hunt of Kings Heath Chairman

Thank you for your letter of 18 May 2009 seeking clarification on what amendments have been made to the Commission's proposals to secure a first reading agreement on Stage II petrol vapour recovery.

The Czech Presidency has held five working group meetings, the European Parliament's Environment Committee has voted on 30 amendments and the first trilogue between EP Rapporteurs, the Presidency and the Commission was held 14 April 2009. The text was then submitted to Coreper for approval 22 April. The proposals were debated and voted at the EP Plenary session 5 May 2009. The text voted by the European Parliament has fully met the UK Government's negotiating objectives. The Council is expected to adopt the final text in late autumn.

The attached table shows the key changes to the Commission's proposals as well as new additional compromise text agreed at the first reading. I also attach the consolidated text of the outcome of the European Parliament's first reading. In summary, new and renovated service stations with an actual or intended throughput of over 500m³ will be required to install stage II vapour recovery technology (PVR II) to capture at least 85% of petrol vapours during vehicle refuelling. Petrol stations situated

below housing and workplaces will also require PVRII technology to be installed where they have an actual or intended throughput of over 100m³. Any existing service station with a throughput in excess of 3000m³ per annum shall be equipped with a Stage II petrol vapour recovery system by no later than 31 December 2018. Member States will be required to ensure that petrol stations with PVRII installed ensure that a sign, sticker or other notification, is displayed on or in the vicinity of the petrol dispenser. Periodic checks of the capture efficiency of the PVRII system will also be required.

It is expected that the Directive on Stage II petrol vapour recovery during refuelling of passenger cars at service stations will be formally adopted later this year, and Member States will need to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 1 January 2012.

Lastly, I am sorry for not having kept you as up to date as you would have wished. It would have been difficult to do so given fast-changing positions over a very short period of time. However, we will see what improvements can be made in future such cases.

5 June 2009

Letter from the Chairman to Lord Hunt of Kings Heath

Philip Hunt wrote to me on 5 June, replying to my letter of 18 May, in which I asked for clarification of aspects of this proposal. The letter of 5 June was considered by Sub-Committee D at its meeting of 17 June 2009.

We are content to release the proposal from scrutiny in the light of the information now provided.

I had asked that we should be kept informed more promptly of the progress of negotiations. We were pleased to read that your Department was looking at how to improve matters for future such cases. It would be helpful if you could let me know before the summer recess what specific improvements you intend to adopt.

17 June 2009

PLANT PROTECTION PRODUCTS: NON INCLUSION OF PARAFFIN OILS CAS 64742-46-7, CAS 72623-86-0, CAS 97862-82-3 AND CAS 8042-47-5

Letter from Dan Norris MP, Rural Affairs and Environment Minister, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to let you know of recent developments on two of the proposals which were considered in my Explanatory Memorandum of 18 June 2009.

The Presidency has negotiated compromise agreements on the two proposals concerning paraffin oils. The Commission's original proposals provided that these four substances were not approved for use in the EC, and should be withdrawn in those Member States where they are currently authorised for use. The compromises provide that they are approved for use in the EC and can be authorised, or remain authorised, for use in Member States, providing the companies' marketing them demonstrate that they satisfy certain purity criteria laid down in EC rules for pharmaceutical products. We consider that these criteria provide acceptable safeguards and hence we can support these compromise proposals.

Although there is no particular need for urgency, the Presidency was keen to reach political agreement and referred these dossiers to the Environment Council on 25 June for adoption as 'A' points. Although these proposals have been cleared by the European Scrutiny Committee, they have not been cleared by your Committee. I regret that the Presidency was not persuaded by our request for a delay, in order to allow time for proper parliamentary scrutiny, and I therefore concluded that I should override our scrutiny reservation on this occasion.

I attach great importance to the work of the Committee, and I regret that this proposal was pushed through by the Presidency without its prior scrutiny clearance. I hope the Committee will understand why we took this course on this occasion and will accept my apologies for any appearance of discourtesy to the Committee.

28 June 2009

Letter from the Chairman to Dan Norris MP

Your Explanatory Memorandum (EM) on the above proposals and your letter of 28 June were considered by Sub-Committee D at its meeting of 8 July 2009.

You have explained the circumstances in which you considered it appropriate to use a scrutiny override in relation to the proposals for four paraffin oils. It is unfortunate when a scrutiny override occurs, but in this instance the Presidency's decision to bring the proposals to an early Council meeting limited your options.

We are content to release the other proposals from scrutiny.

8 July 2009

PLANT PROTECTION PRODUCTS STATISTICS (16738/09)

Letter from Dan Norris MP, Minister for Rural Affairs and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Phil Woolas wrote to the Scrutiny Committees on 2 October 2007²⁵ to update them on the public consultation which took place on the above proposal. Since then the proposal has been undergoing readings under the co-decision procedure with the European Parliament so I am writing to explain the conclusions of this procedure.

The EP gave a second reading opinion on 24 April 2009 in which it adopted one amendment out of the 41 proposed by the EP Rapporteur following trilogue discussions on the Council Common Position. Although the other forty amendments received the support of a simple majority within the EP, they fell six votes short of the absolute majority required in second reading.

On 23 September the Commission confirmed its acceptance of the one agreed amendment, which aligns the scope of the statistics regulation with the definition of pesticides as covered by the related Directive on the sustainable use of pesticides. It also welcomed the invitation communicated to the Council by the Chairs of the political groups of the EP to reconfirm the entire compromise as negotiated during the second reading stage.

During the negotiations the Government particularly advocated the need to:

- limit the scope of legislation (to ensure that Member States need not collect data on either biocidal products nor on non-agricultural use of pesticides);
- develop a robust methodology (to ensure Member States collect data which is representative of both use and risk).

The outcome of the second reading meets these needs and is acceptable to the UK Government. We therefore intend to support the revised proposal when it comes to Council.

11 October 2009

Letter from the Chairman to Dan Norris MP

Your letter of 11 October 2009, dealing with this Proposal, was considered by Sub-Committee D at its meeting of 28 October 2009.

We note that the outcomes of the negotiations which have taken place since Phil Woolas's letter of 2 October 2007 meet concerns voiced by the UK over the scope of the legislation and the robustness of methodology for the collection of data.

We are content to release the Proposal from scrutiny.

29 October 2009

²⁵ Correspondence with Ministers May to October 2007, 11th Report of Session 2008-09, HL Paper 92, p 169

POLLUTION: REGIONAL ACTION PLANS (14291/09)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs, to the Chairman

I am writing to advise you that this proposal will be adopted by Written Procedure on 26 October. An Explanatory Memorandum has been submitted to the House on 20 October 2009.

The purpose of the proposal is to provide the EU Commission with a mandate to negotiate, on behalf of the European Community, at the next meeting of the Barcelona Convention in November 2009.

It is essential that the Commission has a mandate to negotiate on behalf of the EU at this meeting. The proposed Regional Action Plans to prevent pollution in the Barcelona Convention area are important for the Mediterranean and will have legal implications and the European Community, as a major Contracting Party, must be able to fully participate in the discussions on this issue. In view of this, the UK voted in favour of this proposal by written procedure prior to it being cleared by the Scrutiny Committees.

I do, however, acknowledge that voting on these issues without scrutiny clearance is not usually acceptable. As a result the United Kingdom permanent representative to the European Communities (UKREP) will be writing to the Commission to make it clear that whilst we do not wish to stand in the way of important negotiating mandates being agreed, we do believe that every effort should be made to bring these proposals to our attention at the earliest opportunity so that Member States can respect their Parliamentary scrutiny processes.

22 October 2009

PROTECTION OF ANIMALS AT TIME OF KILLING (13312/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your letter (30 April)²⁶ on the above proposal was considered by Sub-Committee D at its meeting of 13 May 2009.

We continue to be concerned about the potential impact of this Regulation on small and medium-sized slaughterhouses, and on EU exporters' competitive position in international markets.

However, we note that you are content to endorse the emerging compromise, and will therefore now lift scrutiny on this proposal. We would ask you to update us on the final outcome of negotiations in due course.

18 May 2009

Letter from Jim Fitzpatrick MP, Minister of State for Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 18 May which asked for an update on the final outcome of negotiations on the above proposal.

I can confirm that the Council agreed in principle to adopt the proposed regulation on 22 June 2009. This decision was confirmed on 24 September and the Regulation was published in the Official Journal on 18 November. It will come into effect on 1 January 2013. A copy of the final Regulation is attached. In its final form the Regulation sets common minimum welfare standards that will be directly applicable in all Member States. In addition the Regulation permits the use of national rules to maintain existing welfare standards where those are currently better than the minimum standards in the Regulation.

We have noted your concerns about the possible impact of the Regulation on small and medium sized slaughterhouses and competitiveness in export markets. Although the Regulation will be directly applicable in the UK, national implementing regulations will be required to establish enforcement procedures and penalties. We will also need to put in place administrative arrangements to meet the obligations placed on us as the Competent Authority. Finally we will need to consider carefully how we use national rules to maintain the higher welfare standards that currently apply in the UK. This work has already started and we are working closely with industry on this. Where there is scope for

²⁶ [Correspondence with Ministers, December 2008 to April 2009](#)

national discretion, we will seek to ensure good standards of welfare are retained without placing unnecessary burdens on business.

24 November 2009

PROTECTION OF ANIMALS USED FOR SCIENTIFIC PURPOSES (15546/08)

Letter from Lord West of Spithead, Parliamentary Under Secretary of State, Home Office, to the Chairman

Thank you for your letter of 17 December 2008²⁷ to Meg Hillier – who is currently on maternity leave – in which you sought further information on a number of issues relating to the European Commission's proposal for a new directive on the protection of animals used for scientific purposes.

I attach as an annex to this letter a detailed report on progress with this proposal, including information on the expected further timetable for consideration of the proposal in the Council of Ministers and European Parliament, a summary comparison of the proposed EU regulatory framework with current UK arrangements, our views on the legal base for the proposal and subsidiarity, and the attitudes of other Member States and the European Parliament.

I also attach our initial assessment of the impact of the draft directive. The impact assessment is, at this stage, partial and further work is needed to ensure that the full impact of the proposed Directive has been identified. Respondents to a public consultation, launched on 8 May 2009, have been invited to submit costs and other data to assist in refining it.

I would draw particular attention in the progress report to the plans of the Swedish Presidency to agree a compromise text by the November 2009 Agriculture Council. Should it do so it may be necessary to seek agreement to release the proposal from scrutiny at short notice. I will endeavour to provide as much advance warning as possible. I will also provide a further report in September by which time the likelihood of this timetable being met should be clearer.

25 June 2009

Letter from the Chairman, to Lord West of Spithead

Your letter of 25 June 2009 on the above proposal was considered by Sub-Committee D at its meeting of 1 July.

As you know, we are currently conducting an inquiry into this proposal, and have received a submission of written evidence from the Home Office in that context.

It was helpful to receive the progress report enclosed with your letter. We were aware of the possibility that the Swedish Presidency may seek to make rapid progress in negotiations on the proposal, and that this may include discussions in September. For that reason, it may be appropriate for us to indicate emerging conclusions from our inquiry before the summer recess.

To do so would make it easier for us to take a view if, as you suggest, the Government seek agreement to release the proposal from scrutiny at short notice, later this year.

1 July 2009

Letter from the Chairman to Lord West of Spithead

Over the past three months, we have been conducting an inquiry into the proposed revision of this Directive. We have taken evidence from a number of key interested parties, including the pharmaceutical industry, academic and research funding bodies, the National Centre for the 3Rs (NC3Rs), and organisations advocating animal welfare, the use of alternatives to animals in research, and an end to vivisection. Our intention is to conclude our inquiry and publish our report after the summer recess.

However, we know that the Swedish Presidency aims to make early progress with this dossier, and that there may well be important discussions related to the proposal during September. While we have not yet finalised our inquiry, we think that we should indicate our emerging conclusions at this stage, so that these are in the public domain before discussions under the Presidency move ahead significantly.

²⁷ [Correspondence with Ministers, December 2008 to April 2009](#)

Our first finding, which reflects a firm consensus among our witnesses, is that a revision of the Directive is clearly needed; and that, of the changes contained in the proposal, the introduction across all Member States of a requirement for prior authorisation of animal procedures, including an ethical review process, is particularly to be welcomed. Much of our evidence has borne out the importance of the operation of this process in the UK.

There was, however, a clear divergence of views among our witnesses about the possibility that the requirement for authorisation of “mild” procedures might be modified (as a result of amendments proposed by the European Parliament) to become one of notification. We note the argument that this would significantly lower current levels of animal protection in this country. We agree that a revised Directive should not lead to this outcome, and we therefore support the authorisation requirements set out in the Commission’s proposal and reject a move to require notification (rather than authorisation) for “mild” procedures. However, we would urge that those concerned should seek to ensure that the authorisation process is completed quickly.

We consider that the concerns about authorisation voiced by industry and academia may in some instances result from a lack of clarity in drafting. We therefore urge the Council to ensure that the Directive provides clearly for a smooth and timely authorisation procedure, while maintaining a high level of animal welfare. It will be important to ensure that the ethical review process is effectively dovetailed into the procedure, including specifying time-limits for that process which are consistent with the 30-day time-limit for authorisation.

We have looked at the issue of whether implementation of the proposal might drive animal-based research work out of the UK and EU to other parts of the world, but we have not found evidence that this is likely to be the case. As witnesses recognised, a good deal of activity linked to the pharmaceutical sector has been built up in recent years in China and other non-EU countries for commercial and economic reasons, and it is these factors that will continue to dominate key locational decisions. And in the case of academic research, transfer of activity abroad is also mostly driven by other reasons, notably the availability of research funding.

We accept, however, that the imposition of bureaucratic burdens that are not justified by any gain in animal welfare is undesirable in itself, and may influence the climate of opinion among those deciding on future investments. To that extent, we lend our support to calls for the procedures contained in the proposal to be fine-tuned to the scientifically demonstrated needs of animal welfare, without unnecessary elaboration. Authorisation processes must be efficient, so that scientists in both industry and academia can take on new lines of inquiry and amend current approaches without undue delay.

The proposal envisages that the maximum term of authorisation for projects should be four years; in the UK it is five years. We have not seen evidence that shortening the term in this way would be justified by significant animal welfare benefits. We are also not persuaded of the case for the provision in the proposal that all projects lasting 12 months or more should be subject to annual review (by the ethical review body). This also contrasts with the current position in the UK, where, while retrospective review is required, ethical review processes (ERPs) are allowed more flexibility in the degree of on-going scrutiny they give to projects, allowing efforts to be focused where and when the ERP feels that review is really needed.

Some of our witnesses raised the issue of the transparency of the authorisation process. The proposal requires (in Article 40) that non-technical summaries of authorised projects be made publicly available and that these be updated with the results of retrospective assessment. In addition, it also requires (in Article 49) the annual collection and publication of statistical information on the use of animals in procedures, including information on the actual severity of the procedures. Of these provisions, reporting data on actual severity and the results of retrospective assessments would increase the information on animal procedures made publicly available in the UK. We consider that such greater transparency may well be justified, although publication of additional information should not extend to the disclosure of the identities of individuals or establishments.

It seems clear to us that the care and accommodation standards in the proposal (which are the result of extensive and lengthy discussion among stakeholders) are not likely to impact unduly on the competitiveness of the pharmaceutical industry. We note that those standards have been anticipated for some time and are already being applied or worked towards in this country and elsewhere in the EU.

None the less, we understand that the standards proposed may prove more difficult for academic research establishments to meet on the timescale envisaged, and we think that there may be a need to re-consider the timescale for implementation in the light of experience. We welcome the fact that the proposal provides for this possibility, since Annex IV can be amended through Article 48 (adaptation of annexes to technical progress). Moreover, we draw particular attention to concerns that have been expressed over the practicalities of the stocking densities proposed for rodents and rabbits at breeding establishments.

Importantly, we also heard from several witnesses that key explanatory text which accompanied the standards as first elaborated by the Council of Europe guidelines has been lost in the proposal, and we agree that it should be restored.

We understand the importance of research work undertaken using non-human primates. While we acknowledge the arguments put to us about the special case of these animals, we consider it important that the Directive allows such work to continue as at present. We are mindful of concern voiced by some of our witnesses that the Directive as drafted is insufficiently clear in establishing the circumstances in which research work using non-human primates may be permitted. Some witnesses considered that the wording of Articles 5 and 8 would allow an increase in this type of research, while others considered that it would lead to an unacceptable decrease. We therefore stress the importance of ensuring that the text of the Directive is clear in setting out the circumstances in which research work using non-human primates may continue.

We fully endorse the aspiration that supply of non-human primates should be restricted to F2 non-human primates, the offspring of such animals bred in captivity. We have sympathy with the arguments by some of our witnesses that the Directive should include specified time-limits after which only F2 animal should be used. It may be that the time-limits suggested in Annex III are appropriate. However, given the degree of uncertainty related to the practicality of this suggestion, we consider it crucial that this aspect of the Directive be monitored closely, and that the feasibility of the time-limits should be investigated on a species-by-species basis. The Commission's review of the Directive must include information on progress in phasing out the use of F1 primates. On this issue as well, it is relevant that there is flexibility under Article 48 to amend the time limits.

The proposal extends the scope of the Directive to include several invertebrates. We would argue that the scope should be linked as closely as possible to broadly accepted evidence of sentience. It is apparent, however, that the scientific evidence on the sentience of certain species is unclear. Against this background, we are minded to agree that, while cyclostomes and cephalopods should be included, decapods should be excluded. We also take the view that independently feeding larval forms of invertebrates should be excluded.

At the same time, we are concerned that there is no provision in the Directive to amend the list of invertebrates in Annex I. We therefore consider that Article 48 should be amended to include Annex I. This would allow the Commission to take account of the new scientific evidence pertaining to sentience, either by expanding the list in Annex I or reducing it.

Independently feeding larval forms and embryonic or foetal forms (as from the last third of their normal development) of live non-human vertebrate animals would also be included. We are concerned that this may in some cases lead to a substantial increase in the administrative burden with no benefit. While the proposal would in fact mean a reduction in the extent to which controls applied to eggs used in vaccine production in the UK (from half-way through development to the last third), the impact on production procedures elsewhere in the EU may well be greater. This may again beg the question of whether a potentially very significant increase in administrative burden would be matched by a corresponding benefit to animal welfare.

More generally, we consider that the provisions of the Directive should be amended to ensure that the breeding and humane killing of animals for their tissues and organs should not be regarded as a "project" within the terms of the Directive. While it is of course necessary that the care and welfare of these animals should be ensured, work involving them should not be subject to the authorisation processes required of projects.

We fully endorse the near-unanimous view among our witnesses that the severity classifications need to be clearly defined in the text of the Directive. We welcome the efforts made by the Commission towards building a consensus among stakeholders on the content of the definitions. We note that clarity on the definition of severity classifications is particularly important for implementing the proposal's provisions on re-use of animals. We also consider that the re-use provisions must be amended in order to avoid unintended consequences for animal welfare. Left in their current form, the provisions would be likely, in certain specific circumstances, to increase the number of animals (and degree of suffering) that would need to be used.

There is widespread support for the principle (Article 44(1)) that there should be mutual acceptance between Member States of data from tests required under Community legislation, so that, for example, vaccine batch-testing done in one EU country should not have to be repeated in another. Key to this, we consider, is that Member States implement legislation to ensure that, at the least, the use of animals for ratification of such data will be sanctioned only in exceptional circumstances and for strictly scientific reasons.

The provisions in Article 44(2) give rise to some of the more substantive concerns relating to the proposal. We are aware of the strong concerns expressed by the research community about the loss

of intellectual property rights if researchers were obliged to share commercially sensitive data. We consider that obligations on data-sharing should apply only where there is evidence of duplication of procedures making use of animals, and we have seen little, if any, such evidence. We reject the European Parliament amendments on this issue.

We fully support the principle of the 3Rs, including the explicit reference to it in the proposal, but we consider that the specific proposal that national reference laboratories be set up must be re-considered. We are persuaded, on the other hand, that a system of national centres along the lines of the UK's NC3Rs might well be developed. Some witnesses have suggested that the role of the European Centre for the Validation of Alternative Methods (ECVAM) be expanded. We consider that ECVAM plays a valuable role and it may be able to assist in the important task of sharing best practice and information on the 3Rs between EU countries.

Finally, we have been struck by what we have heard from our witnesses about the inconsistency with which the 1986 Directive has been implemented; this is indeed one of the reasons why there is widespread agreement on the need for a revised Directive. We put particular stress on the need for due attention to be paid to the implementation of the revised Directive, once it has been adopted. Such are the uncertainties around the implementation of this Directive that Member States must send information on implementation of the Directive sooner than six years after the transposition date. The Commission should review the Directive no later than five years after it has come into force (and not ten, as proposed).

We support the European Parliament amendment which would oblige, rather than permit, the Commission to undertake controls of the infrastructure and operation of national inspections in Member States; we see this as of particular importance.

17 July 2009

Letter from Lord Brett, Parliamentary Under Secretary of State, Home Office, to the Chairman

I attach as an annex to this letter Council document 13784/09 (marked LIMITE) (not printed) comprising a Presidency compromise text of the proposed new directive for the protection of animals used in scientific procedures. The second annex provides commentary on key changes in the compromise text.

Document 13784/09 has been tabled for discussion at a meeting of the Council working party of veterinary experts (Animal Welfare) on 12 October 2009. The working party is attended by policy officials and veterinary and other experts representing Member States.

Further work will be required to finalise a text acceptable to the UK, but, in broad terms, we believe the regulatory framework provided in this text is workable and would allow current UK standards of welfare and animal protection to be maintained and improved. Our main concern is currently that potentially damaging restrictions on the use of non-human primates remain in the text. We are pressing for the adoption of EP amendment 57 which seeks to remove these restrictions.

The Swedish Presidency hopes to agree a Council position by the end of 2009 to pave the way for a second reading deal early in 2010. Should this be the case, it may be necessary to seek agreement to release the proposal from scrutiny at short notice. We will, however, endeavour to provide as much advance warning as possible. We will also provide a further progress report when the timetable is clearer.

7 October 2009

Letter from Meg Hillier MP, Parliamentary Under Secretary of State, Home Office, to the Chairman

In his evidence to Sub-Committee D on 14 October 2009 in connection with its inquiry into the proposed new European Directive on the protection of animals used in scientific procedures, Lord Brett undertook to provide a further note summarising progress on the issues identified in your emerging conclusions letter of 17 July 2009 to Lord West. I attach that note as an annex to this letter.

Overall, the picture is a mixed one. Some issues have been successfully resolved, for example, the proposed maximum duration of project authorisations has been extended from four years to five, as suggested by the Committee. Many others have made good progress but need further work before the details can be finalised. A much smaller number have not yet made satisfactory progress. As Lord Brett explained to the Committee, the most notable of these relates to the use of primates in scientific procedures, where we do not yet have agreement on a text which is clear in setting out the

circumstances in which such work can continue. We agree with the Committee that clarity on this issue is absolutely essential.

With regard to the further negotiating process, after last week's Council working party meetings, consideration of outstanding issues will now pass to attachés, who are due to meet on 6 November 2009. It remains the Swedish Presidency's aim to agree a Council first reading position at the December Agriculture Council.

21 October 2009

SALMONELLA: CONTROL OF FOOD-BORNE SALMONELLA (10769/09)

Letter from the Chairman to Jim Fitzpatrick MP, Minister for Farming and Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Communication was considered by Sub-Committee D at its meeting of 21 October 2009.

We welcome the Commission's Communication and would agree that, on the whole, the proposed actions are acceptable. Action to tackle salmonella in broilers is of particular importance to us.

You express some concern at the necessity of harmonising through regulation the criteria for establishing levels of salmonella in animal feed. We would agree insofar as any legislation flowing from this Communication must be fully justified, but we would also appreciate your assessment of the level of animal health risk posed by contaminated vegetable feed.

We are content to release the Communication from scrutiny.

21 October 2009

SOIL PROTECTION (13388/06, 13401/06)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs to the Chairman

I have seen your letter to Jane Kennedy of 30 April 2009²⁸ regarding the Agriculture and Fisheries Council meeting of 23 March 2009. In it you asked for an update on the progress of negotiations on the above proposal, and how Defra Ministers' stance towards it has been developing.

Jonathan Shaw wrote to you in January 2008²⁹ to update you on discussions at the Environment Council meeting on 20 December 2007, at which the UK, with Ministers from Germany, France, Austria, and the Netherlands, formed a blocking minority, and voted against the proposal. This was because of serious concerns which remained unresolved, around both specific elements of the proposals, but also wider principles of proportionality and subsidiarity, and as a result of what were judged to be high financial and regulatory burdens.

The dossier was picked up again by the current Czech Presidency, who have tabled further compromise texts with the intention of progressing towards political agreement at Environment Council on 25 June.

Officials within my Department have been actively involved in negotiations on the technical detail of the Soil Framework Directive since the start of their Presidency in January. During these negotiations some important improvements have been secured to the compromise texts which the Czech Presidency has tabled, which would provide for more flexibility or implementation, and reduce the financial burden. However, following this round of negotiation, I still have major concerns about the content of the Directive.

These are broadly in line with my original concerns in 2007. In particular these relate to provisions on contaminated land, and feasibility of proposed approaches to tackling soil degradation threats through 'priority areas', and around the extent to which the proposal is in line with the principles of better regulation and subsidiarity, in order to avoid unnecessary additional administrative burdens and disproportionate costs.

²⁸ [Correspondence with Ministers, December 2008 to April 2009](#)

²⁹ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 194

I share these concerns with my counterparts within the blocking minority. As a result, I am confident both that the original blocking minority remains firm. Indeed, I also have reasonable confidence that it will continue to remain firm in the future, providing that our shared concerns remain unaddressed and providing we continue with our concerted lobbying efforts.

As such, the Government proposes to vote against the Directive in its current form, should it be placed on the agenda for political agreement at the 25 June meeting of the Environment Council.

5 June 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 5 June, replying to my letter of 30 April to Jane Kennedy about the Agriculture and Fisheries Council held on 23 March, was considered by Sub-Committee D at its meeting of 17 June 2009.

Your letter responds to our request for further information about the progress of negotiations on the above proposal. We note that you still have major concerns about the proposal, which you say are shared with your counterparts in the blocking minority.

We also share these concerns, and would support you in the line which you propose to take on the proposal in its current form.

17 June 2009

TIMBER AND TIMBER PRODUCTS (14482/08)

Letter from Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Wildlife and Rural Affairs, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter received 30 April 2009.³⁰

UK VIEWS ON EUROPEAN PARLIAMENT PROPOSED AMENDMENTS TO THE REGULATION

As you note, the European Parliament has now voted and adopted the amendments put forward by the Committee on Environment, Public Health and Food Safety, led by Rapporteur Caroline Lucas. These amendments strengthen the Regulation, including proposals to extend the reach, cost and applicability of the Regulation. The Parliament's amendments also include a requirement that operators place or make available only legally produced timber or timber products at all points in supply chains - an effective prohibition across the entire trade. The emerging views in Council on the key amendments are as follows:

- *Extending a duty of due care across the entire supply chain, in addition to the due diligence requirement at the point of first placing.* A number of other Member States, like the UK, continue to believe that the due diligence duty should only fall on those first placing timber on the Community market, as this is a proportionate and practical approach. A requirement for due care to be extended down the supply chain, in addition to the requirement for due diligence at the point of first placing, would impose additional costs on operators.
- *Extending the scope of applicable legislation.* Extending the scope of legislation within the definition of legality will, we believe, create an excessive burden of proof of compliance for both domestic producers, as well as operators which first place timber and timber products onto the Community market. The UK and other Member States remain committed to minimising the burden this Regulation will impose on domestic producers. We need to settle on a practicable definition, which operators can realistically meet; we are keen to use the approach used within the Forest Law Enforcement Governance and Trade (FLEGT) Action Plan for consistency.

³⁰ [Correspondence with Ministers, December 2008 to April 2009](#)

- *Detailed criteria for enforcement and penalties of the Regulation.* Finally, many other Member States agree with the UK that enforcement decisions must be made at the appropriate level. Decisions on justice matters are a Member State competence, and should not be agreed at EU level.

UK views on these particular amendments have therefore, on the whole, met with agreement in Council. Further, the UK's own amendment, the proposal to add a potential prohibition on first placing illegal timber and timber products on the market, was received with support, as well as some reservations of principle. Some like-minded Member States were supportive, and we are confident that the UK has strong evidence with which to respond to the issues raised by others. For example, Sweden has raised WTO concerns. We have sought advice from expert legal colleagues on trade matters, and do not believe that the inclusion of a prohibition would pose any additional risk of WTO challenge to the existing Regulation, as a possible prohibition would apply equally to imports and domestic timber and timber products.

UPDATE ON NEGOTIATIONS IN THE COUNCIL OF MINISTERS

We are confident that there are now areas upon which the European Parliament and Council of Ministers can come to an agreement. The UK continues to engage proactively in discussions; indeed, the inclusion of a prohibition at the point of first placing is a key area in which we hope to bring Council and Parliament together. Negotiations are progressing, and positive momentum has been building. However there remains a lot of work to be done. The break in opportunities for debate with the European Parliament due to the European elections means that there is now limited time for co-decision. Negotiations will now extend into the period of the Swedish Presidency. The UK is totally committed to delivering a swift agreement for effective legislation to tackle illegal logging without creating undue burdens for operators or the domestic industry.

COSTS / BENEFITS OF THE EUROPEAN PARLIAMENT PROPOSALS

Additional costs will be imposed by an extension down the supply chain and an unrealistic definition of applicable legislation, and broadening of the scope of the responsibilities incumbent upon operators. We believe these would be disproportionate, and do not believe that an extension of the duty would have a significant benefit on the global efforts to tackle illegal logging. We continue to work to identify the areas where costs will most likely impact on UK business, but this remains difficult given the stage of negotiations.

UK CONSULTATION AND IMPACT ASSESSMENT

The UK Public Consultation closed on 8 May 2009. Responses received demonstrate a great deal of support for the UK's intention to strengthen the Regulation through a prohibition on placing illegal timber on the Community market. Some stakeholders think that a prohibition on first placing illegal timber and timber products would not be sufficient, and believe that this should apply to operations down the supply chain. However, some industry stakeholders have said that a prohibition across the entire supply chain would be complex and costly to manage practically. Consultation responses have also demonstrated a great deal of support for maintaining an approach to the Regulation which does not impose a large additional administrative burden.

Following publication of the impact assessment, we have commissioned additional analysis of the administrative costs of third party audit on different timber product sub-sectors, and given these extra costs, we are not in favour of mandatory independent third party auditing. Our published impact assessment showed that in many sectors, the proportion of companies which would need to develop a due diligence system from scratch would be less than 100% of companies. The proportion is further reduced by the requirement that only first placers will need to put a system in place. It is worth noting that administration costs for all scenarios would be expected to reduce over time as efficiency and experience of due diligence systems increase within companies.

We trust this response answers many of your concerns, and will be happy to respond in more detail as required.

12 May 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 12 May 2009 on the above proposal was considered by Sub-Committee D at its meeting of 3 June 2009.

You responded helpfully to the points which I raised in my letter to you of 30 April, following Sub-Committee D's consideration of your Supplementary Explanatory Memorandum at its meeting of 29 April.

You explain that the UK considers that the European Parliament amendments, in particular extending a duty of care across the entire supply chain, go too far in imposing additional costs, and that the UK's views have received broad support in Council. However, we note that, while you refer to positive momentum towards agreement, you also stress that a lot of work remains to be done.

In the light of uncertainty about how far the UK's approach will ultimately be supported in Council, we will continue holding the proposal under scrutiny until you are able to confirm the shape of any agreement.

4 June 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter received 4 June 2009 in which you requested information on how far the UK's position on the Due Diligence Regulation will be supported in European Council, particularly with regard to the amendments proposed by the European Parliament.

The UK has been actively participating in Council Working Groups and we are now in a position to provide clarification on this. I would also like to update you on how the negotiations have been proceeding, with particular reference to our position on two further issues now under discussion: an exemption for small operators, and a prohibition on the first placing of illegal timber and timber products on the Community market. I also seek clearance of our intended negotiating position.

SUPPORT FOR UK VIEWS ON EUROPEAN PARLIAMENT PROPOSED AMENDMENTS TO THE REGULATION

In our previous correspondence, we noted three areas in which the UK believe the Parliament's amendments to be overly extending the reach, cost and applicability of the legislation, namely: extension of duty of care across the entire supply chain, extension of the scope of applicable legislation, and detailed criteria for enforcement and penalties of the Regulation. Support within Member States for the UK's views on these issues is as follows.

- *Extending a duty of due care across the entire supply chain, in addition to the due diligence requirement at the point of first placing.* The UK continue to believe that the due diligence duty should only fall on those first placing timber on the Community market, as this is a proportionate and practical approach. A requirement for due care to be extended down the supply chain would impose additional costs on operators. This position is supported by the vast majority of Member States, and the draft Regulation to be put forward to Agriculture Council focuses solely on the first placing of timber on the Community market.
- *Extending the scope of applicable legislation.* We remain convinced that a significant extension of the scope of legislation beyond that stipulated in the original proposal will create an excessive burden of proof of compliance, for both domestic producers and operators which first place timber and timber products onto the Community market. Views are split. Although over half of the Member States are in favour of a definition focused on legislation relating to the harvesting of timber, some are still calling for the definition to extend to labour and social legislation in the country of origin. Our assessment is that the definition will remain broadly consistent with the UK's desired approach.
- *Detailed criteria for enforcement and penalties of the Regulation.* The UK position is that decisions on justice matters are a Member State competence, and should not be agreed at EU level. This position has not been substantially challenged, and this is reflected in the current draft Regulation.

We also outlined our views on mandatory third party auditing, the administrative costs of which we believe to be disproportionate. Denmark are still pushing for its inclusion, but the majority of Member States support the UK position and requirements for auditing are not included in the main body of the text as it currently stands.

UPDATE ON NEGOTIATIONS IN THE COUNCIL OF MINISTERS

The UK is continuing to engage proactively in discussions, both in Working Groups and through bilateral engagement. The pace of negotiations has picked up, the Regulation is starting to take shape, and we are confident that a decision will be reached at December Agriculture Council. We believe that there are issues on which the Parliament and Council can come to an agreement, and are engaging with the incoming Spanish Presidency and the European Parliament to ensure that momentum continues into the New Year.

However, we would like to bring your attention to two major political issues that still have to be resolved in Council:

- *Prohibition on the first placing of illegal timber and timber products on the market.* In previous correspondence, we outlined our proposal to include a prohibition on the first placing of illegal timber and timber products on the market. This was tabled following broad support from the UK Public Consultation, and is one of the areas in which we think Council and Parliament can come to an agreement. Our proposal is supported within the Council by Denmark, Netherlands, Belgium and Spain. Other Member States such as France and Germany have expressed interest, but have yet to offer their full support. We are working hard to garner support from all Member States, and although a prohibition is far from universally accepted, we understand that it will be included as an option in the text of the draft Regulation. Despite our strong support for prohibition, we would be unlikely to block the Regulation at this stage in absence of agreement on this issue. This is because we anticipate that this will remain of primary importance for the European Parliament and thus an essential element of getting the Regulation agreed. We consider the Due Diligence Regulation to be essential as a demand side measure to tackle illegal logging and, although it would be significantly strengthened by a prohibition, the due diligence approach remains the basis of the Regulation.
- *Exemption for small operators.* We also noted in previous correspondence that some Member States had put forward the idea of an exemption for small operators. An exemption has now been added as an option for inclusion in the Regulation text, but is hotly debated. Although it is driven by concerns over domestic interests, the exemption would apply to both domestic producers and operators placing timber or timber products on the Community market from outside of the Community. The UK position is that such an exemption would weaken the Regulation, the primary purpose of which is to reduce illegal logging in third countries. We think that concerns are unwarranted because European producers will only be required to comply with existing national legislation. Our domestic industry is largely accepting of our position, as long as the applicable legislation remains realistic to implement. This view is shared by a number of Member States, and we are hopeful of removing text that explicitly exempts small operators from the requirements of the Regulation.

The UK is continuing to push for a Regulation that will be effective in the fight against illegal logging without imposing undue financial and administrative burdens on domestic industry. Our position has been developed following wide consultations with UK industry and stakeholders, and we remain committed to engaging with UK businesses on this issue. We have commissioned research on the requirements on UK domestic producers for compliance with the Regulation, which has indicated that existing systems are well placed to form the basis of requirements.

2 November 2009

Letter from the Chairman to Huw Irranca-Davies MP

Your letter of 2 November 2009 was considered by Sub-Committee D at its meeting of 11 November 2009.

Your letter provides an update on how negotiations on this Proposal have been proceeding. You anticipate that a decision will be reached at the December Agriculture Council.

You indicate that, while there are good levels of support for the UK's views on amendments to the Proposal put forward by the European Parliament, there are still two major political issues to be resolved: a prohibition on the first placing of illegal timber and timber products on the market; and an exemption for small operators. It is less clear that the UK line on these issues will be generally agreed,

but you indicate that, even so, you envisage that the Due Diligence Regulation which would emerge would still be effective in the fight against illegal logging, and that you would support it.

We are content to release the Proposal from scrutiny, while lending our support to the line which the Government expect to take on the outstanding issues.

11 November 2009

TRADE IN SEAL PRODUCTS (12604/08)

Letter from the Chairman to the Rt Hon Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs

Your letter (30 April)³¹ on the above proposal was considered by Sub-Committee D at its meeting of 13 May.

We note that you do not share our reservations about this proposal, but thank you for your detailed response to our queries. We would be grateful to receive any information you have on the impact that the proposed trade ban might have on the Inuit seal trade.

We will now lift scrutiny on this proposal, but would ask you to update us on the final outcome of negotiations.

18 May 2009

Letter from Jim Fitzpatrick MP, Minister of State for Food, Farming and Environment, Department for Environment, Food and Rural Affairs, to the Chairman

Thank you for your letter of 18 May which asked for an update on the final outcome of negotiations on the above proposal.

I can confirm that the Council decided to adopt the proposed regulation on 27 July 2009. The regulation was published in the Official Journal on 1 November and will come into effect on 20 August 2010. A copy of the final regulation is attached. In its final form the Regulation will prohibit the placing on the market of products from seals and other pinnipeds (i.e. sea-lions and walruses), which includes imports and intra-Community trade unless they:

- result from traditional hunts conducted by Inuit and other indigenous communities and contribute to their subsistence;
- are for personal use; or
- result from hunts regulated under national law with the sole purpose of the sustainable management of marine resources and where the products are marketed on a non-profit basis.

Following agreement on the Regulation, both the Canadian and Norwegian Governments have challenged the ban in the World Trade Organisation. This will be handled at a Community level.

You also asked if we have any information on the impact the proposed ban might have on the Inuit seal trade. Import statistics do not differentiate between Inuit and non-Inuit exports from Canada and as a result we have no specific information on this point. However few, if any, seal products have entered the UK under the Inuit exemption contained in the current seal skins regulations. We are awaiting Commission proposals on the operation of the Inuit exemption which will be discussed at a CITES management committee meeting on 8 January 2010. However as trade in seal products from Inuit hunts will be allowed to continue after the ban comes into effect, we would not expect the ban will have any significant impact on trade from genuine Inuit sources. Overall UK seal fur imports are low and have fallen consistently over the last few years as consumers have increasingly made conscious decisions not to buy seal fur.

17 November 2009

³¹ [Correspondence with Ministers, December 2008 to April 2009](#)

VOLUNTARY MODULATION OF DIRECT PAYMENTS (12798/09)

Letter from the Chairman to Huw Irranca-Davies MP, Minister for the Natural and Marine Environment, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above Report was considered by Sub-Committee D at its meeting of 21 October 2009.

We note that, on the basis of the Report, the Commission concludes that there is no need to amend voluntary modulation in the current programming period to 2013, and that the Government welcome this conclusion.

You will know that we have voiced concern about the impact that voluntary modulation may have on the competitiveness of UK farmers. While the Report states that it is too soon to draw firm conclusions about the effects in practice of voluntary modulation, we look to both the Government and the Commission to keep the issue of competitiveness under review in this context. In particular, we would ask that, as experience develops, you provide us with detailed information about the use to which resources transferred through voluntary modulation have been put.

We are content to release the Report from scrutiny.

21 October 2009

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 21 October 2009, and for Committee release of the Report from scrutiny. You asked for detailed information about the use to which resources transferred through voluntary modulation have been put under rural development programmes, and for the Government and the Commission to keep under review the impact that voluntary modulation may have on competitiveness of UK farmers.

I have set out below information on how voluntary modulation resources have been spent under the England programme in the current period since 2007, and in the previous period from 2000-2006. For the UK I enclosed the Financial Implementation report from the 2008 Annual Progress report to the Commission. UK voluntary modulation expenditure is the last table in section III.I Declared Expenditure.

Voluntary Modulation spend from the Rural Development Programme for England since October 2007 on agri-environment measures under the Environmental Stewardship Schemes amounts to £195m. A further £2.6m has been spent on socio-economic measures, including modernisation of agricultural holdings, and vocational training and information. Also in England £311m of voluntary modulation from the previous programme has been spent on agri-environment measures under the Environmentally Sensitive Areas Scheme, the Countryside Stewardship Scheme, and the Organic Farming Scheme.

On your second point we compile annual estimates of farm incomes to assess trends in the profitability and, through international comparisons, the competitiveness of UK and English farming. In addition we monitor the main drivers of competitiveness, including particular the productivity of the farming sector.

27 November 2009

WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE) (17367/08)

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

Thank you for your letter of 30 April³² regarding the Impact Assessment and the timetable for the above proposal. I am pleased to enclose the initial impact assessment (not printed)³³ for the recast of the Directive as promised in my letter dated 3 May to the Committee.

The main expected benefits to the UK from the Commission's recast proposal are in terms of reduction in CO2 emissions from increases in the separate collection, treatment, recycling and recovery of WEEE. The main expected costs of the Commission's proposal are in terms of the costs from needing to separately collect, treat, recycle and recover greater volumes of WEEE. The

³² [Correspondence with Ministers, December 2008 to April 2009](#)

³³ www.berr.gov.uk

estimates we produce suggest that the proposed separate collection target for WEEE may be ambitious. There are also issues regarding the proposals in relation to producer financing and how these compare, in terms of efficiency and effectiveness, to more effective monitoring and enforcement to achieve the greater separate collection and recycling of WEEE in the future.

I can confirm that the Commission Working Group has begun discussions on the proposals in the recast Directive. This is however unlikely to be progressed beyond a first examination of the text under the Czech Republic's Presidency. We do however envisage the Swedish Presidency to progress the portfolio in the second half of the year.

Initial discussions seem to indicate that while other Member States support the principles behind the recast but there are some general concerns on the interpretation and implementation practicalities.

These concerns include the extension of producer responsibility to finance all costs of collection; changes in the definition of "producer"; minimum targets for collection by Member States and the harmonisation of national registers of producers.

My department is currently analysing responses to a stakeholder consultation exercise which will inform the development of the UK negotiating position.

I will ensure that you are kept informed of developments.

3 June 2009

**Letter from the Chairman to Ian Lucas MP, Parliamentary Under Secretary of State,
Department for Business, Innovation and Skills**

Ian Pearson's letter of 3 June 2009 on the above proposal was considered by Sub-Committee D at its meeting of 10 June.

We have now received the initial impact assessment, under cover of that letter. However, Ian Pearson made it clear that other Member States had some general concerns; it would be helpful to receive more information about these. He also said that your Department was still analysing the outcome of a recent consultation process; we would wish to hear more about this analysis.

Pending receipt of this additional information, we will continue holding the proposal under scrutiny.

11 June 2009

Letter from Ian Lucas MP, to the Chairman

Thank you for your letter of the 11 June 2009 concerning the above proposal, the views of other Member States and the results of the UK consultation exercise.

From Council Working Group (CWG) meetings and informal discussions with other Member States it is clear that there are wide spread concerns over key issues contained in the proposed recast Directive. These issues are very much mirrored in the responses to the recent UK consultation exercise.

The concerns raised by Member States in the early Commission Working Group discussions have focused on:

Definition of producer – indications are that Member States do not support the proposed definition for a producer as one who places EEE on any market within the community. Responses to the consultation indicate that this should be clarified to refer to placing on the market in an individual Member State as is the current position with the UK Regulations;

Extension of Producer Responsibility – Member States have indicated that while they support the principle of ensuring producers of EEE are financially responsible for the treatment and reprocessing of such equipment when it reaches end of life, the use of "encourage" in the redraft text could cause inequalities in the extent of the financial obligation across Member States;

Collection Targets – There appears to be wide spread support for changing from a KG per head target to one which more reflects the market condition – i.e. a percentage of sales in a previous time period. Member States have however, almost unanimously, raised concerns over the level of the target (65% of sales in the previous two years) as being too ambitious in the current economic climate;

Inter-operational Registers – while supporting the need to harmonise elements of the WEEE systems across Member States to give some consistency to producers, there has been concerns raised over the full extent of the Commission's proposal. At present the Commission is proposing that producers can register in one Member State of their choice and the financing obligation can then be shared

across all Member States via financial transfers at the end of the compliance periods. It is considered by a number of Member States that this presents difficulties of both a practical and enforcement nature which renders the proposal unachievable.

Most Member States are still working under a scrutiny reserve so they are yet to reveal their final negotiating position.

The UK consultation was a joint exercise of both the WEEE and Restriction of Hazardous Substances in Electrical and Electronic Equipment (RoHS) Recast Directive. Over 70 responses to the consultation paper were received and these have been supported by direct discussions with stakeholders and their representative bodies. As this was an informal consultation exercise we are not required to publish a formal summary of responses and response. However, as the Directives have both raised key issues of concerned to UK industry we are aiming to publish a summary and formal response later in the summer. I will ensure the Committee receive a copy of the document following publication.

The UK negotiation position is currently being developed and will be discussed across Whitehall Departments before negotiations under the Swedish Presidency begin in earnest in the autumn.

I hope you find this information helpful.

26 June 2009

Letter from the Chairman to Ian Lucas MP

Your letter of 26 June 2009 about the above proposal was considered by Sub-Committee D at its meeting of 8 July.

It was helpful to receive the information that you provided about concerns expressed by other Member States, and about the UK's informal consultation process.

You say that the UK negotiating position is still being developed. We look forward to hearing more about this later in the year and, until that time, we will continue to hold the proposal under scrutiny.

8 July 2009

Letter from Ian Lucas MP to the Chairman

Thank you for your letter of the 8 July 2009.

The proposed UK negotiating position has now been cleared by NSID so I am able to give you more detail of the UK position. The UK negotiating position has been developed following the stakeholder consultation held earlier in the year and on going dialogue with interested parties who may be either directly or indirectly affected by the proposed recast Directive.

The basis of the UK negotiating position centres on the need to ensure the recast does not disproportionately increase burdens placed on business compared to the environmental benefits.

During negotiations the UK intends to focus on:

- Ensuring the calculation of a collection target is challenging but pragmatic and attainable without placing undue burdens on business;
- Maintaining the current understanding of the key definitions within the Directive so that it is clear they relates to domestic markets to ensure fully effective monitoring and enforcement in each Member State;
- Simplifying and harmonising registration and data reporting requirements for producers as far as is possible;
- Supporting the extension of producer responsibility only where the increased environmental benefit can be justified.

The Environment Council is due to begin its discussions on the proposed recast at the meeting scheduled for the 21 October. I feel it is important that the UK is able to take a full part in those discussions if we are to ensure the concerns of UK stakeholders are to be presented and fully considered as part of the co-decision making process. I would therefore be grateful if the Select Committee would consider lifting its scrutiny reserve on the proposed recast as soon as is possible to enable us to do so.

18 September 2009

Letter from the Chairman to Ian Lucas MP

Your letter of 18 September 2009 about the above Proposal was considered by Sub-Committee D at its meeting of 14 October.

In the light of the response that you have provided about the proposed UK negotiating position, we are content to release the Proposal from scrutiny. I would add only that we would hope to receive more detailed information about lines to be pursued by the UK in future negotiations.

14 October 2009