



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 2008.

AGRICULTURE, FISHERIES AND ENVIRONMENT (SUB-COMMITTEE D)

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AARHUS CONVENTION (8252/08)

Letter from the Chairman to Phil Woolas MP, Minister for 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 21 May 2008.

It is not clear from your Memorandum whether you support the interpretation of Article 14 (4) proposed by the Commission. We would be grateful if you could clarify your position in this regard.

We would also ask you to explain why you consider it inappropriate to grant a mandate to the Commission to represent the Community position on this issue. It would also be helpful to know whether other Member States share your reservations in this respect.

Pending further information on the above points, we will hold the proposal under scrutiny.

21 May 2008

Letter from Phil Woolas to the Chairman

Thank you for your letter of 21 May about the above Explanatory Memorandum. I am writing in response to clarify the UK Government's position on the proposal and provide you with an explanation as to why we consider it inappropriate to grant a mandate to the Commission.

The Commission's stated aim is that the European Community should support an interpretation of Article 14(4) of the Convention which is favourable to the early entry into force of amendments. We, like others, support the need to clarify the conditions for entry into force of amendments, but we are of the view that it is not appropriate to grant a mandate to the Commission to represent the European Community and its Member States in respect of this issue and we will contest this proposal.

The process for entry into force of amendments will apply to all amendments to the Convention, regardless of their subject matter. This is a procedural matter. The Community does not have exclusive external competence on procedural issues given the absence of internal rules concerning procedural aspects under multilateral environmental agreements, and therefore we do not consider it is appropriate to grant a mandate on this issue. It is also arguable that a decision on the interpretation of the Convention would fall within the exemption to Article 300(2) of the EC Treaty relating to "decisions supplementing or amending the institutional framework of the agreement". As such, the position of the European Community and its Member States should therefore be expressed by the Presidency at the Meeting of the Parties.

12 June 2008

Letter from the Chairman to Phil Woolas MP

Your letter of 12 June 2008 on the above proposal was considered by Sub-Committee at its meeting of 18 June 2008.

We are grateful for the clarifications contained in your letter and, in support of your position, we shall maintain the proposal under scrutiny.

18 June 2008

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 18 June about the above Explanatory Memorandum. I am writing to inform the Committee of the outcome concerning the interpretation to be given to Article 14(4).

The third Meeting of the Parties (MOP3) held in June considered a decision on the interpretation to be given to Article 14(4). The European Union supported an interpretation which is favourable to the early entry into force of amendments. The UK, like others, supported the need to clarify the conditions for entry into force by way of a MOP decision, but were of the view that it was not appropriate to grant a mandate to the Commission to negotiate on behalf of the Member States on this issue, given that it is a procedural matter, and therefore outside the exclusive competence of the Community.

Due to the short time available before the MOP3, the Commission was not in a position to secure a mandate. As such, the EU position was communicated by the Presidency and endorsed by the MOP.

13 July 2008

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 letter (13 July) regarding the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We are now content to clear the Proposal from scrutiny.

10 October 2008

AGRICULTURAL MARKETS: MARKETING STANDARDS FOR POULTRYMEAT
(10351/08)

**Letter from Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and
Minister for the South East, Department for Environment, Food and Rural Affairs to the
Chairman**

In light of the Parliamentary recess, I am writing to you in place of the usual written statement to summarise what took place at the Agriculture and Fisheries Council meeting in Brussels on 15 July 2008. I represented the United Kingdom at the meeting. Richard Lochhead also attended.

The Presidency briefly introduced its Work Programme highlighting the CAP Health Check as its priority, followed by the School Fruit and the Food for the Needy schemes. Trade in Illegally Harvested Timber, a Green Paper on Quality Policy and the planned re-designation of Less Favoured Areas were important dossiers, though much of this work would pass to the Czech Republic Presidency in 2009.

The Council held a policy debate on the CAP Health Check, based on a Presidency Questionnaire, around the four central issues of modulation, intervention, dairy reform, and cross compliance. With regard to these issues, the UK supported modulation increases but remained unconvinced by progressive modulation; felt the intervention proposals were a step in the right direction but that the entire regime should be phased out; stated that a 2% increase per annum in the optimal rate more appropriate to phasing out the dairy regime; and on cross compliance felt that more simplification was required. Member States expressed a wide range of views.

The Commission then presented its proposal for a school fruit and vegetable scheme which it considered necessary to deal with the growing problem of obesity among the young. The proposal would make additional funds available under the CAP for Member States to complement existing schemes or implement new ones. The Presidency agreed the importance of such a scheme.

The Council failed to reach a Qualified Majority either for or against the authorisation of two GM crop varieties, one cotton and one Soya bean. The Commission will now take a decision under its own authority.

On fisheries, the Council discussed the planned measures for coping with the economic consequences of high fuel prices. The Council reached agreement by qualified majority on the proposals. The Council also adopted the EU-Mauritania fisheries agreement.

Under any other business, the Agriculture Commissioner updated the Council on the state of play on the WTO negotiations. The Presidency expressed its desire to achieve an outcome across the board. The UK highlighted the need for a balanced package across the negotiating areas.

Hungary, with considerable support, called for the Commission to consider the discrepancy between the provisions of the ERDF and EAFRD in relation to non-recoverable VAT.

Romania presented a paper calling for a more co-ordinated approach to forestry policy.

26 August 2008

**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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 15 October 2008.

We note that you intend to consult on the implications, costs and benefits of this proposal, and to prepare an impact assessment. We will await receipt of that assessment and information on the outcome of your discussions with stakeholders. In the meantime, we will hold this Proposal under scrutiny.

16 October 2008

AGRICULTURE AND FISHERIES COUNCIL MEETING, BRUSSELS, JULY 2008

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

In light of the Parliamentary recess, I am writing to you in place of the usual written statement to summarise what took place at the Agriculture and Fisheries Council meeting in Brussels on 29 and 30 September 2008. I and Jonathan Shaw represented the United Kingdom at the meeting. Richard Lochhead also attended.

On fisheries, the Presidency made progress in agreeing a revision to the regulation establishing a multi-annual plan aimed at allowing stocks of cod to recover. There was a structured exchange of views, via questionnaire, on some of the key issues that remain to be resolved. The Commission stated that the plan needed to deliver recovery within a realistic timeframe, and a strong emphasis on discards was important. The Commission also noted the relationship to the EU-Norway agreement, and said that Member States' concerns would be taken into account.

The UK had some significant concerns, in particular around automatic effort and reductions and the speed of them, and about the extension to the Celtic Sea. A number of other Member States all spoke, with overlapping, but slightly different concerns in many cases, reflecting their local fishing practices and priorities. In summing up, the Presidency noted Member States' concerns and will now work towards an agreement at November Council.

Finally on fisheries, the Commission reported that they would be making the first payment under the recent agreement with Mauritania before 15 October. The payment had been delayed whilst the Commission investigated the implications of the coup in Mauritania; however a letter had been received from the Mauritanian authorities giving assurances that they would meet their obligations.

Turning to agriculture, the Agriculture Commissioner introduced its proposal to revise the current food distribution programme for the most deprived persons in the EU. The Commissioner remarked that the proposal, which extended the scope of the existing programme and offered increased finance, was an important element of the EU's response to those who suffered from food poverty. The Presidency concluded that Ministers would have an opportunity to discuss the proposal at the October Council.

Cyprus then requested the Council's agreement to a state aid package worth €67.5 million to address the impact of drought on their agricultural producers. The aid was agreed unanimously without discussion; the UK abstained.

The CAP Health Check was the next item and the Presidency confirmed its intention to seek political agreement at the November Council. The European Parliament would adopt its report at its plenary session on 18 November. Agriculture Council would continue Health Check negotiations on 19 November. In order to pave the way for political agreement in November, a general orientation would be sought at October Council.

Further Health Check business was undertaken in 20 minute trilateral sessions – Member State, Presidency and Commission – where Member States identified their three priority issues. The UK priorities were (a) full decoupling in all sectors and strict controls, including an end-date, for national envelope (article 68) spending; (b) a high base rate of new compulsory modulation whilst ensuring no disruption of current UK Rural Development Programmes; and (c) further dismantling of market management instruments, including the phase-out of milk quotas. The UK also stressed the importance of achieving further simplification of the management of the Single Payment Scheme.

Turning to the school fruit scheme, the Presidency organised discussion around three elements of the proposed scheme: (a) the budget; (b) additionality (i.e. co-financing requirements); and (c) the origin of eligible produce. The majority of Member States (apart from UK, Sweden and Czech Republic) reiterated their support for the proposal, and many called for an increase in the proposed budget of €90 million per annum) and thought that a preference should be stipulated for EU produce (although the UK and some others called for WTO compatibility of measures concerning origin). There were strong calls for existing national schemes to form part of the co-financing requirement, as well as widespread support for flexibility in the way countries could implement schemes. The aim remained to reach political agreement at November Council.

Under any other business, the Council noted the paper put forward by Belgium, the Netherlands, Luxembourg and Spain (supported by a number of Member States) urging the Commission to continue 100% funding for mass bluetongue vaccination beyond 2009. The Commission confirmed funding would be available, but only at a rate of 50% co-financing, as they would no longer be able to use the legal base providing for emergency measures (as is currently the case).

Ireland presented its paper drawing attention to the challenging effort-sharing targets negotiated in the Environment Council to combat climate change, and expressed concerns related to a perceived negative impact on EU food production at a time of rising global demand and rising prices.

In light of falling domestic prices, Poland called on the Commission to reintroduce suspended tariffs on cereals imports. A number of Member States supported. The UK encouraged the Commission to undertake a thorough analysis of trends and to be wary of the impact of reintroducing tariffs on food prices and the livestock sector.

Poland also asked the Commission to consider utilising CAP under spend for part-financing of national envelopes in new Member States under article 68 of the Health Check proposal; and for increased spending on the promotion of agricultural commodities under the EU's promotion regulation.

Finally, the Netherlands, with the UK's support called for the Commission to adopt its much delayed proposal on banning the placing of illegally logged timber on the European market.

6 October 2008

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 (26 August) regarding the Agriculture and Fisheries Council meeting of 15 July was considered by Sub-Committee D at its meeting of 8 October 2008.

We note the information you provide with respect to the Presidency's work programme, and would be grateful if you could keep us informed of how that programme develops, and what dossiers are likely to be taken up by the Czech Presidency next year. We would particularly welcome information on the planned redesignation of Less Favoured Areas, and the devolved administrations' approach to such a review.

10 October 2008

AGRICULTURAL PRODUCT QUALITY (14358/08)

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 Explanatory Memorandum on the above document was considered by Sub-Committee D at its meeting of 26 November 2008.

The Green Paper taps into some of the issues that our recent CAP inquiry and report (HL Paper 54-I) touched upon, and we will therefore take a close interest in the outcome of this consultation and any subsequent legislative or non-legislative action. We would ask you to send us a copy of your response to the Commission's Green Paper once it has been prepared.

In the meantime, however, we are content to lift scrutiny on this document.

26 November 2008

AGRICULTURE PRODUCTS: INFORMATION PROVISION AND PROMOTION MEASURES FOR AGRICULTURAL PRODUCTS ON THE INTERNAL MARKET AND IN THIRD COUNTRIES. (11604/08)

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We note that the proposed amending Regulation would have very little impact on current practice in the UK, and are therefore content to clear the Proposal from scrutiny.

10 October 2008

ANIMAL BY-PRODUCTS: HEALTH RULES REGARDING ANIMAL BY-PRODUCTS NOT
INTENDED FOR HUMAN CONSUMPTION (10637/08)

**Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming
and Food, Department for Environment, Food and Rural Affairs**

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 16 July 2008.

Like you, we support the main changes that the Commission proposes to introduce in this recast Regulation. We also welcome the Commission's general approach to this Regulation, specifically, the attempt to rectify omissions and unintended consequences as they emerge.

We support your intention to negotiate continued derogations for pet horses and hunters that supply game establishments.

We would also be grateful for clarification of what you would consider to be an appropriate definition of a small establishment for the purposes of derogation from the regime.

Pending the progress of negotiations and clarification from you on the above points, we will hold this item under scrutiny.

17 July 2008

CLIMATE CHANGE: 20 20 BY 2020: EUROPE'S CLIMATE CHANGE OPPORTUNITY,
GREEN GAS EMISSIONS TRADING SYSTEM, BIOFUELS PROGRESS REPORT (5866/08,
5862/08, 5389/08)

**Letter from the Chairman to Phil Woolas MP, Minister for Environment, Department
for Environment, Food and Rural Affairs and Jim Fitzpatrick MP Parliamentary Under
Secretary of State for Transport**

Your letters (April 3, April 3, and April 8, respectively)¹ on the above documents were considered by Sub-Committee D at its meeting of 30 April 2008.

We are responding with a single letter, because we consider that the issues raised in these proposals must be examined in the broader context of the Government's overarching strategy for achieving greenhouse gas emission reductions.

While we have warmly welcomed the decision to adopt binding EU targets for emission reductions, we have expressed concern that the adoption of legally-binding renewable energy targets for each EU Member State, as outlined in the Commission's Climate Change Communication, may not be the most efficient and effective way of achieving those emission reductions.

We fully accept the case you make (letter from Mr Woolas, April 3) for the need to build up public and private investment in low carbon technology development, which a carbon market alone might not be able to achieve, but we do not see the need for binding EU-level targets prescribing the particular technologies that should be developed.

You recognize (letter from Mr Woolas, April 3) that many renewable energy technologies do not at present represent the most cost effective way of reducing emissions. While the UK Government might therefore choose to promote renewable energy technologies in anticipation of a decline in unit costs over time, we do not consider it desirable that it should be locked into that strategy by EU targets, not least in light of the risk that the anticipated scale and learning economies may fail to materialize.

In this respect, we note an apparent discrepancy with the Government's approach to EU legislation on biofuels (letter from Mr Fitzpatrick, April 8). In that case you emphasise that Member States should be free to decide whether to give support to biofuels – a stance which we support – and point out that the draft Renewable Energy Directive refers to obligations as a way for Member States to promote the use of biofuels, but does not require them. You also refer to the Government's review of the wider impacts of biofuels, which are only now becoming clear. We share the Government's concerns about the environmental impact of biofuels – which hinges on robust sustainability criteria. Indeed, we believe that the experience with biofuels demonstrates the importance of being able to modify policy in light of changing circumstances and new information.

¹ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 147

For these reasons, we remain concerned about your decision to support a binding EU measure that affects the UK's energy mix. We consider that it should be up to each Member State to decide how best to achieve its emission reduction targets. You do not comment (letter from Mr Woolas, April 3) on why the UK chose not to exercise its veto with respect to this measure, although we had invited you to do so. We would be grateful if you could address this point.

With regard to the next phase of the EU Emissions Trading Scheme, we note that you would "not rule out" the inclusion of agriculture in the ETS or another trading mechanism in the future, if the current practical concerns can be overcome (letter from Mr Woolas, April 3). While we welcome the pilot studies that you are carrying out to address these practical concerns, we are concerned at the apparent lack of urgency with which this issue is being examined. Agriculture and forestry account for around 7 per cent of UK greenhouse gas emissions (higher in Scotland) and 9 per cent of EU greenhouse gas emissions. We therefore consider that the inclusion of these sectors in the ETS should be treated as a priority, rather than as a long-term possibility, and we shall be looking at this issue closely in the context of our forthcoming inquiry into the ETS.

We will await your response to the points raised above, and in the meantime retain the 2020 Communication and the draft Directive under scrutiny.

21 May 2008

Letter from Jim Fitzpatrick MP and Phil Woolas MP to the Chairman

Thank you for your letter of 21 May, which raises some questions about the approach being taken in the EU at the moment regarding renewable energy and biofuels along with queries relating to the renewable energy targets of the package. We will try and address your questions in order.

You express concern that binding renewable energy targets might not be the most efficient way of achieving emission reduction targets. As you acknowledge in your letter, there is a need for public and private investment in low carbon technology development, which a carbon market alone might not be able to provide. This is one very important reason why binding renewable energy targets are necessary.

Along with the importance of developing technologies which will help the EU achieve its long-term emission-reduction goals, it is important to look at the other benefits which increased renewables deployment will bring to the EU and the UK. By increasing the share of renewable energy in the UK, the UK's reliance on fossil fuels as a source of energy will decrease. Therefore increasing renewables deployment is a valuable method of improving security of supply. Also, increasing renewables deployment at the rate envisaged in the renewables directive will cause economic and employment opportunities to arise.

The security of supply and employment benefits are additional to the important impact that renewables have in terms of reducing carbon emissions. Therefore, the impact of the renewables directive cannot just be assessed in terms of the UK's climate change objectives.

You express concern at the binding nature of the renewables targets. It is very important that the targets are binding, because this is the only way to properly encourage the whole of the EU to make a concerted effort on renewables. If the 2020 targets were non-binding then this would deliver a negative investment signal to the market. This, in turn, would mean that the 2020 targets in the Directive would be significantly less likely to be achieved. Therefore the UK supports binding 2020 targets. It is worth noting however, that the UK has supported the non-binding nature of the interim targets, recognising that flexibility should be left to Member States to decide upon the most cost-effective trajectory to the binding 2020 targets.

You say that there is a discrepancy between the UK's approach to biofuels and renewables generally. For biofuels, as Jim Fitzpatrick pointed out in his letter of April 8, the UK supports Member State autonomy in choosing support schemes. The UK takes exactly the same approach to renewables overall, where the UK's negotiating position has always been that Member States should have as much flexibility as possible in deciding how to meet their targets. This includes the flexibility to choose how to support renewables. We believe these approaches are consistent with each other. On biofuels, the UK's negotiating position will reflect the Government's acceptance of the key recommendations in the Gallagher review.

You say that you believe that it should be up to each Member State to decide how best to achieve its emission reduction targets, and ask why the UK did not use its veto with respect to the renewables directive. While the Government maintains that the 2020 renewable energy target must not be an end in itself, and must be considered as an important contributor to the EU 2020 GHG targets and as a stepping stone to meeting 2050 carbon and energy goals, in light of the increasing urgency in tackling climate change the Government agreed to a binding renewables target and did not exercise its veto.

The Government is committed to the EU renewable energy target as part of the wider climate and energy package and the move towards a low carbon economy, The Stern Review recommended that broad, long term policies be put in place to be sure we can meet emission reductions at least cost by 2050. It recommended a three legged approach to reduce carbon emissions in the long term through carbon pricing, raising the level of support for R&D and demonstration projects; and action to remove barriers to energy efficiency and behavioural change. The report concluded that we can not rely on carbon price alone to pull through the technology we need for long term carbon reductions. Policy on technology development needs to complement it as there are many uncertainties and risks associated with technology development that cannot be incentivised by carbon price alone.

By 2050 we will need to have largely, if not completely, decarbonised the electricity generation sector if we are to meet our 60% carbon reduction target. We will also need to have made significant progress in other sectors, including transport, where currently abatement options are relatively expensive. The renewables target will facilitate the step change required in shifting towards a low carbon energy future.

There has been rapid decline in global spending on energy technology overall in the last few decades which has hampered development of new technologies this decade, including renewables. It is critical that we build up public and private investment in low carbon technology development if we are to have a chance of meeting a 2050 target of around 60~80% reductions in global emissions at least cost.

Supporting renewables through a targeted policy on technology development and supplemental support such as the Renewables Obligation to meet a 2020 target is therefore in line with the recommendations Stern has made for a long term efficient approach to reducing emissions. While we accept that many renewable energy technologies do not at present represent the most cost effective way of reducing emissions, as we develop the technologies, their unit costs should decline as a result of scale and learning economies. Renewable energy can also improve geo-political security of supply and deliver business, employment and innovation benefits.

We welcome your inquiry into the EU Commission's proposals to amend the Emissions Trading Scheme and look forward to hearing your findings.

21 July 2008

Letter from the Chairman to Jane Kennedy MP, Minister for Farming and the Environment, Department for Environment, Food and Rural Affairs and Jim Fitzpatrick MP, Parliamentary Under Secretary of State for Transport

Your letter (21 July) on the above documents were considered by Sub-Committee D at its meeting of 8 October 2008.

We note your views on the issues we raised in our letter of 21 May, but will refrain from entering into further correspondence on those issues until the completion of our inquiry into the revision of the EU Emissions Trading Scheme and the publication of EU Sub-Committee B's report on Renewable Energy, due later this month. In the meantime, we are content to lift scrutiny on document 5389/07 (Biofuels Progress Report), but will retain the other two proposals under scrutiny.

10 October 2008

**CLIMATE CHANGE: GREENHOUSE GAS EMISSION ALLOWANCE TRADING SYSTEM
(5862/08)**

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

Your Supplementary Explanatory Memorandum, attaching your partial Impact Assessment has been considered by Sub-Committee D in the context of its inquiry into the Commission's proposal for a revised EU Emissions Trading System.

In this letter, we wish to set out our emerging conclusions and raise a number of issues with you.

On the overall level of emissions reductions, we support the proposed change from a 20% reduction to a 30% reduction should an international agreement be reached, but believe that it should be conditional on a credible and robust international agreement. We share some witnesses' concern that a weak international agreement could put EU businesses at a competitive disadvantage. We believe that a decision on the emission reduction target should be reached as early as possible in order to provide the certainty that would enable industry to make the appropriate investment.

We are broadly supportive of the proposed scope of the directive, and would eventually like to see as many sectors as possible included. We recognise that there are a number of problems associated with the inclusion of sectors such as agriculture, forestry and road transport but we would appreciate information from you on the work that is being done to overcome these problems (for example drawing lessons from other countries' schemes, e.g. New Zealand), and what other mechanisms you intend to use to promote emissions reductions in sectors not deemed suitable for inclusion in the ETS.

While we accept that the de minimis emissions threshold proposed in the draft Directive may be too low, we are concerned that unintended consequences may flow from the establishment of a threshold at whatever level – for example incentives to build smaller, possibly less efficient installations. We would welcome further information from you on the work that is being carried out to consider, and where possible pre-empt such effects.

We consider the practical application and enforceability of the scheme to be crucial but are alarmed that we have received little evidence in that regard given that the success of the scheme hinges on this. We would welcome your view on the practical application and enforceability of the scheme in the UK and throughout the EU, both as the scheme is currently proposed and in the event of an international agreement. We would also welcome more specific information on your position with regard to the Commission's proposal that the current Monitoring and Report Guidance standards should be implemented through a Regulation rather than through a Commission Decision.

We believe that the regulatory certainty that the Directive can provide will be critical to the ETS' ability to stimulate innovation. We consider that the draft Directive ought to provide adequate incentives for innovation at the sectoral level, but we are less confident that it will promote the larger-scale infrastructure investments that will need to underpin the transition towards a low-carbon economy. Such infrastructure would, we believe, require investment by public authorities (in carbon capture and storage technologies for example). We consider that the interpretation of innovation need not be restricted to technological innovation but should extend to management approaches that reflect the need to produce carbon efficiencies at all levels. We note that some companies have already developed such approaches as a result of the current ETS, and consider that this trend is to be welcomed and encouraged.

We are yet to be convinced that the revised scheme as currently proposed will send the appropriate price signal. We were concerned to learn, for example, that the proposed scheme is unlikely to stimulate the development of carbon capture and storage. The issue of the price signal should, therefore, be borne in mind when considering the level of the cap and when reaching decisions on access to both external and domestic credits.

We support the 100% auctioning of allowances from 2013 in all sectors other than those that are deemed to be subject to carbon leakage. Experience indicates that free allocation of allowances can lead to windfall profits and should be treated with care. Should, however, the Commission's proposal to move to a 100% level over the period 2013-20 be adopted, we consider that levels of auctioning should be set at the EU level, with no flexibility to either raise or lower the level set. We believe this is crucial in order to ensure a level playing field across the European Union. In any transitional period towards 100% auctioning, we consider that free allocation should be based on benchmarking.

With regard to how auctioning revenues are spent, we do not believe that this should be determined at the EU level, and we therefore do not support the re-distributive element of the Commission's proposal that would reallocate a proportion of auctionable permits from "richer" to "poorer" Member States. It is our firm view, however, that Member States should be encouraged to invest such revenues in climate change-related measures – including R&D and demonstration projects, as well as adaptation measures – and to help ease social problems that may arise as a result of the ETS, such as increases in electricity prices. Wherever possible, social problems should be addressed by investing in viable, low-carbon alternatives so as to promote the necessary transition. We would welcome your view on these suggestions.

We consider that, while the EU ETS remains a regional scheme, the risk of carbon leakage poses a difficult issue and ought to be taken into account. Decisions on the sectors or sub-sectors at risk should be evidence-based, factoring in issues such as price sensitivity. These decisions should be taken as soon as possible: the timetable proposed by the Commission strikes us as too leisurely. We would emphasise that decisions on the sectors deemed susceptible to carbon leakage should rest on evidence that distinguishes between potential competitiveness lost as a direct result of the ETS and other influences on competitiveness (e.g. regulatory standards more generally) that arise from trading in a global context. When assessing carbon leakage risks, we would also like to see sub-sectors, rather than whole sectors, pinpointed wherever possible. We would wish to be kept informed as the Government develops its approach to the issue of carbon leakage, including its preferred criteria, the

sectors it deems to be at risk and how it proposes that those sectors should be treated, including in the event of an international agreement.

We believe that access to external credits should not be so attractive as to prevent innovation and investment in the regional market but we recognise that, in the event of a future international agreement, conditions on access to external credits could be relaxed. We consider that the use of external credits must be properly audited, but this process should not lead to the development of standards separate to those stipulated by the UNFCCC if the aim is to promote a liquid, truly global market.

It is absolutely essential that the ETS is able to link with similar schemes around the world. We believe emissions trading will become increasingly effective as it becomes more widespread and that while the ETS remains primarily regional this will be a real weakness.

We understand that negotiations on the draft directive are likely to intensify in the month of September and we would therefore appreciate an update on the state of discussions by the beginning of October, including any progress on the issue of the base year against which emissions reductions are to be assessed.

Finally, we note that the informal Environment Council of 3-4 July decided to set up a high level expert group on funding the overall package of energy/climate change measures. We would be grateful if you could inform us whether the Government supports the establishment of the group, and what position it intends to take on the funding issue.

In the meantime, we will continue to hold the proposal under scrutiny.

21 July 2008

Letter from Phil Woolas MP to the Chairman

Thank you for your letter of 21 July 2008 concerning the Supplementary Explanatory Memorandum and partial Impact Assessment on the revised EU Emissions Trading System (EU ETS). I would like to take this opportunity to comment on your conclusions and to provide the additional information that you have requested.

Firstly, I would like to address the Committee's concerns around increasing the greenhouse gas emissions reduction target from 20 to 30 per cent, in the event that an international agreement is reached and the subsequent effect on EU competitiveness.

By 2020, the EU has agreed to reduce its emissions by up to 30% on 1990 levels (instead of 20%) should an international agreement be reached. As agreed in Bali, all countries must be part of the future framework, recognising different national circumstances and the UNFCCC principle of 'common but differentiated responsibilities and respective capabilities'.

Government considers that reaching an international agreement in Copenhagen 2009 is the most effective way of ensuring that EU businesses are not placed at a competitive disadvantage, as this would provide a more level playing field for relevant competitive sectors in the major economies. An assessment of which sectors are most at risk of will be carried out based on a series of criteria. The UK have been working with colleagues in the Netherlands and Germany to further develop the criteria suggested by the Commission and we support the early identification of those sectors most at risk, as a means of providing greater certainty for industry.

In terms of expanding the scope of the EU ETS directive, the Government believes that decisions on expansion to new activities and gases should also be based on transparent and consistent criteria. This can mitigate the risk of expanding to sectors whose inclusion could damage credibility or the long term sustainability of the EU ETS. The Government has developed criteria, set out in the recent Defra Consultation, on proposed amendments to the EU ETS System from 2013.

With reference to specific sectors, such as road transport and other surface transport, the Government agrees with the Commission that further analysis would be needed in order to gain a better understanding of the likely implications of including these sectors in the EU ETS. This work would need to consider the impacts of this measure on the cost of EU ETS allowances and other economic sectors, fuel and electricity prices in the EU for consumers and businesses and on the EU's wider industrial competitiveness. We would therefore welcome a comprehensive cost benefit analysis of this measure at EU level and will seek to explore options for doing so with the Commission.

Regarding sectors such as agriculture and forestry, the Government agrees with the Commission that it is not possible to include them in the EU ETS at this stage. As set out in the recent Defra consultation, we have committed to explore the potential scope and feasibility of a market mechanism to enable the trading of greenhouse gas reductions from agriculture, forestry and land management (a

commitment made in the UK Climate Change Programme 2006). In 2007 Defra commissioned a study which looked at two possible models for such a mechanism. The study's main conclusions indicated that the sector is not yet ready to be brought into the EU ETS at this stage. We are considering the conclusions of this work and what further analysis might be needed to build a clearer picture of possible options for the potential development of a cost-effective emissions trading system for the sector.

To comment on your concerns around the de minimis emissions threshold. In Phase II the UK implemented a de minimis emissions threshold of 3MW for combustion installations. The Government therefore supports the Commission's proposed clarification of the 3MW de minimis rule, as this should exclude those installations for which inclusion in the EU ETS is a disproportionate burden compared with their environmental impact. However, the Government supports an emissions threshold as a means of excluding the smallest emitters from the system, provided such installations are covered by an equivalent measure. In the UK it is expected that any installation eligible for the opt-out would be covered by the Climate Change Agreement or the Carbon Reduction Commitment.

The Government also believes that the emissions threshold should apply to all installations and not only to combustion installations. The Government will continue to examine the appropriate level for an emissions threshold, the level of which needs to be applied carefully in order to avoid intra-sector competitive distortions.

Government understands the importance of the practical application and enforceability of the scheme and supports the review of compliance and enforcement measures in the amended Directive which seeks to increase harmonisation, improve the accuracy and reputation of the EU ETS' monitoring reporting and verification (MRV), whilst ensuring that this does not place a disproportionate regulatory burden on system participants,

The Government's view is that there is a need to put the verification of emissions and accreditation of verifiers on a firmer footing and we believe that the Commission's proposal of a Regulation for the verification of emission reports and the accreditation of verifiers, offers the potential for ensuring a level playing field in these areas, which are an important precondition for guaranteeing the overall environmental effectiveness of the EU ETS. However, there are certain issues which we are keen to understand, for example, what systems will be proposed for verification and accreditation under this regulation and how EA 6/03, which sets out formal standards for the verification process for those Member States which are members of the ECA (European Co-operation for Accreditation), will be used.

As set out in the recent Defra consultation, the Monitoring and Reporting Guidelines (MRG) are currently implemented via a Commission Decision. The Commission has proposed the introduction of a Regulation to implement the MRG. The Government believes that the existing arrangements provide sufficient direction for Member States to work within the boundaries of the MRG and that a Regulation would merely be restating the already legally binding MRG but in a different legal format. Government is also of the view that retaining the MRG as a Commission Decision, agreed by the Commission-chaired committee of Member State representatives will also mean that it remains easier to update in the future. We are however open to arguments in favour of implementing the MRG via a Regulation.

I agree that the EU ETS Directive has the potential to stimulate innovation and that the regulatory certainty which the revised Directive can provide will be an important part of this. Carbon capture and storage (CCS) is one such technological innovation which offers a potential reduction in emissions, from fossil fuel power generation, of up to 90%. Because of its abatement potential, we welcome the Commission's proposal that CCS be included in Phase III of the EU ETS. Currently, any installation fitted with CCS has to surrender EU ETS allowances corresponding to all the CO₂ produced, whether it is emitted into the atmosphere or not. The proposed revisions to the Directive would result in allowances not being required to be surrendered for emissions that were stored and this would further incentivise the use of this technology across the EU.

However, as you state in your letter, innovation need not be confined to technology and we would welcome other changes, such as changes in management practices, to achieve further carbon reductions.

With regard to your concerns about the price signal, Government agrees with the Commission that there should be a linear emission reduction trajectory, setting the cap to 2020 and beyond and we agree that it should be set at least 1.74% reduction per year, as proposed by the Commission. We consider that this will provide greater certainty for business and the public on emissions caps up to 2025. It will also implement an EU centralised cap over a period of 15 years, which is the timeframe that the Government considers is necessary for businesses to factor the carbon price into their investment decisions.

Regarding levels of auctioning, the Committee supports the 100% auctioning of allowances from 2013, in sectors which are not at risk of carbon leakage, and suggests that auctioning levels should be set at the EU level, with no flexibility to either raise or lower the level set. The Government agrees that auctioning, post 2012, is the optimal method of allocating allowances, where there is no risk of carbon leakage, and considers that increased levels of auctioning will also help to address concerns of windfall profits as a result of free allocation. But we also recognise that different sectors across the EU face varying market conditions and have differing levels of environmental ambition. The Government believes that it is important that the future framework for auctioning has sufficient flexibility to accommodate these differences, whilst allowing Member States to go further environmentally and further reduce levels of free allocation. We therefore do not agree with the Commission's proposed approach of setting single harmonised levels of auctioning and instead favour harmonised EU minimum levels of auctioning.

The Committee also suggests that any free allocation in the transition towards 100% auctioning should be based on benchmarking. As set out in the recent Defra consultation, Government accepts that EU-wide benchmarks are an appropriate way of dividing up levels of free allocation. However we are still considering options for free allocation and in particular want to understand better the possible risks that bottom-up benchmarking may create in unfairly distorting the level of free allocation across sectors. Government is still considering these risks.

The Government is opposed to the Commission's proposal to address economic differences between the Member States by redistributing auctioning rights and considers that the EU budget and associated policies such as structural funds are the appropriate means of tackling issues of sustainable development across the EU. We also agree with the Committee's view that the use of auction revenue would be best decided at a national level as this is in line with the principle of EU subsidiarity. As set out in the recent consultation document, we consider earmarking funds to be an inefficient means of determining public expenditure priorities as it prevents judgements being reached in the round on the relative prioritisation of competing public expenditure programmes. It also introduces a direct link between the level of funding for a particular programme and the buoyancy of the revenue stream used to finance it, removing the flexibility to allocate resource according to need and exposing the programme to greater risks if the revenue stream proves less predictable than expected.

I agree that the potential for carbon leakage as a result of changes to the EU ETS is an issue which needs to be addressed and that an assessment of which sectors are at risk should be based on evidence and a set of transparent criteria. As stated above, Government favours the early identification of sectors considered to be at risk of carbon leakage to provide greater certainty for industry and I agree that any assessment needs to distinguish between competitiveness which is lost as a result of participation in the EU ETS and that lost through business as usual i.e. from trading in a global market.

With regard to external credits, we agree that access to external credits should be limited so that there is an appropriate balance between domestic emissions reductions within the EU and off-sets against business as usual, achieved through crediting mechanisms elsewhere in the world. Although in principle it does not matter where a reduction in emissions occurs, we consider abatement within the EU to be important as it shows leadership and responsibility and also encourages early investment in low carbon technologies, avoiding locking in less carbon efficient technology. The Commission have proposed that, in the event of an international agreement, 50% of the difference in absolute emission reductions between the EU central cap before and after the international agreement, can be met by JI/CDM or other projects or mechanisms (to be agreed through comitology) from countries that have concluded the international agreement. The Government considers that an increase in the provision for the use of credits on reaching an international climate change agreement will be helpful to those negotiations. Commission proposals on the use of project credits within the EU ETS are complex and the Government are still considering them in detail. We have yet to take a view on the proposed approach and in particular whether the limits are appropriate.

Building a global carbon market is a crucial element in tackling climate change and Government recognises the importance of the ability of the ETS to link to other schemes in reducing both the cost of abatement and the risk of carbon leakage. We have therefore welcomed Commission proposals that the EU ETS should be able to link with regional, national or sub-federal systems. Whilst our strong preference is to link with other systems that are covered by an international climate agreement for post-2012, the Commission's proposal is sufficiently open to allow linking in the absence of such an agreement or even with parties that have not ratified an agreement. The Government believes this flexibility is the right approach in encouraging mandatory cap-and-trade systems around the world without undermining our position in the international negotiations.

Finally, you noted that the Informal Environment Council on 3-4 July decided to set up a high level group on funding. The issue of funding was not discussed in detail at the Informal Council, however, we look forward to any future proposals from the French Presidency.

As the Committee notes, negotiations on the draft Directive are expected to gather pace in September and I would be happy to provide the Committee with a further update at the beginning of October. Should you require any further information in the meantime, I would be happy to assist.

8 September 2008

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

Your letter (8 September) regarding the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We note your views on our emerging conclusions and recommendations, and thank you for the additional information provided. We will await the conclusion of our inquiry into this proposal before entering into further correspondence on these issues.

We would welcome the update you promise in your letter on the progress of negotiations in the Council and with the European Parliament. In the meantime, we will continue holding this proposal under scrutiny.

10 October 2008

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

Thank you for your letter of 10 October 2008 to Jane Kennedy, in response to the letter from Phil Woolas which provided further information on the Government's response to the Directive of the European Parliament and of the Council amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading system of the Community. I am replying as the matter falls within my portfolio.

As requested in your letter I am writing now to provide an update on the progress of negotiations with other EU Member States and with the European Parliament.

The European Parliament (EP) has voted on the revised Directive at Committee stage. They have maintained the architecture proposed by the European Commission and, in the main, voted against proposals to water down the legislation. Of particular interest is that the EP voted for using 500 million allowances from the ETS New Entrant Reserve to fund, in part, up to 12 CCS demonstration projects. We strongly support this approach.

The French Presidency has now embarked on the "trilogue process" with the EP and the European Commission, with the intention of reaching a first reading agreement on the ETS. The ETS will next be discussed at the Environment Council on 4-5 December and European Council on 11-12 December. Assuming that the Council finds a consensus, the EP will vote in plenary around the 16 December. This will either confirm the first reading agreement or set us on a course for two readings. At this stage, negotiations are delicately poised, but we are working hard so that a first reading agreement can be reached.

In the course of the negotiations, some have sought to argue that the global economic downturn justifies postponing action on climate change. We have strongly resisted this on the basis that the case for strong and early action remains robust under the current economic situation. In our view there is no case for either delaying or watering down the package.

Indeed, the IPCC's Fourth Assessment Report concluded that delaying action to reduce emissions will only increase costs - by locking in high carbon infrastructure making it more difficult and expensive to reduce emissions in the future, and significantly increasing the risks of severe climate change impacts.

On a more positive note, there is some good news to report from the negotiations to date. There has been no challenge to the ETS cap itself under the 20% GHG target or to the carbon market delivering significant emission reductions.

The UK's overarching objective is to retain the overall level of ambition set out in the Commission's original proposal. This provides a good balance between environmental integrity and operational flexibility. This will be important if we are to agree a Council position that will be acceptable to the European Parliament.

The key issues in the negotiations are as follows:

CARBON LEAKAGE

We agree leakage is an issue, and support up to 100% free allocation for those sectors identified as being at highest risk. We have been working hard to ensure that robust criteria are set for assessing which sectors are at significant risk of carbon leakage and that the timetable for taking these decisions is brought forward. Both of these are important for ensuring that an evidence-based approach is taken to identifying sectors. This approach will also provide greater certainty for business, which is necessary in order for them to make the appropriate investment decisions as we move to a low carbon economy. We continue to believe that the best solution to carbon leakage is giving free allowances, rather than any new or more complicated solutions.

AUCTIONING LEVELS, INCLUDING IN THE POWER SECTOR

We continue to strongly argue for the ability to auction 100% allowances to our electricity generators from 2013. By contrast, a phase-in of auctioning in the power sector is a key demand of the new Member States. The Presidency is therefore considering derogations that are limited in time and scope for some Member States.

For other sectors, the Commission has proposed 20% auctioning in 2013, rising to 100% auctioning in 2020, except for those at significant risk of carbon leakage. We have supported this approach, with these rates representing minimum levels of auctioning for each Member State. However, some are now arguing for much lower rates of auctioning overall.

EARMARKING OF AUCTIONING REVENUES

We agree that scaling up international financing will be an essential part of an international agreement in Copenhagen. It is also the case, that individual Member States are free to make voluntary commitments of finance – as the UK has done through the Environmental Transformation Fund. A number of Member States have argued in favour of such a voluntary approach. However, we continue to adopt a firm line in opposing mandatory earmarking of the revenues from auctioning, which would run counter to the UK's budgetary principles.

FINANCING CARBON CAPTURE & STORAGE

We believe that it is important to agree, as part of the EU Climate & Energy Package, a financing mechanism for the up to 12 CCS demonstration projects. Specifically, we welcome the European Parliament's proposal to use free allowances from the New Entrants Reserve of the EU ETS. Whilst opinions in the negotiations are divided on this issue, we are working hard to overcome objections from some Member States.

TRIGGER TO THE 30% GHG TARGET

We believe that the trigger for the EU moving to a 30% GHG target should be ratification of the international climate change agreement and that the process should be via comitology (i.e. as per the Commission's original proposal). Many others have argued that the trigger should require a new co-decision process and this is a likely outcome to the negotiations. However, some have argued that the trigger should be entry into force of the international agreement, which we disagree with strongly.

ACCESS TO PROJECT CREDITS

We have argued for that at least 50% of absolute emissions reductions from 2005 must take place within the EU. This is necessary to ensure that, in the EU, we are decarbonising our economies. This position is close to that adopted by the French Presidency, and fairly similar to the approach being taken by the European Commission and European Parliament.

SOLIDARITY MECHANISMS

We have maintained our opposition to the reassignment of auctioning rights on the basis that environmental legislation is not the right place for "solidarity" mechanisms that transfer wealth between Member States. We continue to believe that these discussions should take place in the context of the overall EU budget.

NEXT STEPS

As noted above, we are hoping to achieve a first reading agreement on the EU ETS in December. Of course, with regard to the timing of your final report and your decision on scrutiny clearance, I am in your hands. Nevertheless, it would be extremely helpful to study your final report and to have your decision on scrutiny clearance before the Council meetings in December.

25 November 2008

Letter from the Chairman to Mike O'Brien MP

As you will be aware, we have been conducting an inquiry into this Proposal, and intend to publish a report on December 10.

We understand that this Proposal will be considered at the Council of Environment Ministers on December 5, and at the European Council on 11-12 December.

We wish to indicate that you need not withhold agreement on the Proposal pending completion of the scrutiny process, but we would request that you supply us with an update on the progress of the negotiations prior to the European Council.

26 November 2008

COMMON AGRICULTURAL POLICY: FOOD DISTRIBUTION TO THE MOST DEPRIVED PERSONS IN THE COMMUNITY (13195/08)

Letter from the Chairman to Rt Hon Jane Kennedy MP, Minister for State – 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 5 November 2008.

Like you, we are strongly sceptical of the merits of operating a scheme along the lines proposed by the Commission at EU level. We also share your reservations about the appropriateness of the legal base on which the proposal has been presented.

We would be grateful if you could confirm that you would not be seeking to participate in the revised scheme, even if the Commission's proposal is adopted.

We firmly support your intention to oppose an expansion of the scheme, and would welcome an update on your progress in negotiations in due course.

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

5 November 2008

COMMON AGRICULTURAL POLICY: SUPPORT SCHEMES FOR FARMERS UNDER THE CAP, SUPPORT FOR RURAL DEVELOPMENT BY THE EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT (EAFRD), COMMUNITY STRATEGIC GUIDELINES FOR RURAL DEVELOPMENT (9656/08)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above proposals was considered by Sub-Committee D at its meeting of 2 July 2008.

We were very interested to look at the proposals in the light of our recent Report and debate in the House on the subject.

Generally, we welcome the overall thrust of the proposals but consider them to be timid in a number of respects. We would have wished to see, in particular, an indication from the Commission that Pillar I must be abolished at some point in the future.

We very much welcome the de-coupling of most aid but we do regret that the Commission has not taken this opportunity to extend it to all sectors. Indeed, we had hoped that the revised system of national envelopes might be used to meet some of the challenges raised by the move to de-coupling.

On the subject of the national envelope, we do support the increased flexibility of the new system but we would wish to be assured that the measures for which it could be used were reasonably clear. We would therefore appreciate further information from you on how you intend to approach negotiations concerning the rules regarding the availability of funds for restructuring/development programmes, crop insurance, mutual funds for animal diseases, marketing and quality.

The Commission's proposals to improve the market orientation of the CAP seem to us to move in the right direction, although they do still appear complex and offer a lot of flexibility for the Commission to intervene should that be deemed necessary in market circumstances. We would appreciate your view on the level of flexibility that should be granted to the Commission in these circumstances.

With regard to milk quotas, we support your position that a review in 2011 does not provide the market with the necessary certainty.

As far as set-aside is concerned, its abolition is welcome but we would prefer that its environmental benefits be delivered through rural development programmes rather than through additions to cross-compliance as proposed by the Commission.

The increased level of compulsory modulation is welcome but we do not support the proposed "progressive modulation" scheme. We would appreciate your views as to how feasible you consider the proposed scheme to be.

More broadly, the new challenges identified by the Commission do seem appropriate, as do the specific suggestions for the types of projects that might be funded under Pillar II to meet these challenges. We would prefer, however, that water management improvements be delivered solely through Pillar II rather than also by way of cross-compliance.

Finally, we note that the Devolved Administrations were consulted in the preparation of the EM. Could you, please, elaborate on that process and indicate any particular areas of difference.

We will hold the proposals under scrutiny and look forward both to your comments on the points raised above and to information from you on the progress of negotiations in Council.

2 July 2008

Letter from Lord Rooker to Chairman

Thank you for your letter of 2 July regarding the Explanatory Memorandum on the CAP Health Check proposals. You raised a number of points.

You welcomed the decoupling of most aid, but expressed regret that the Commission had not taken the opportunity to extend it to all sectors. We share your disappointment in this regard. Indeed, in the UK's response to the European Commission's November Communication on the Health Check, which is attached for your information, we called for full decoupling of all the production-linked payments that remained after the 2003 reforms. It is clear in the negotiations that many other Member States are pushing for the retention of coupled payments that the Commission proposes to end, but we continue to make the case for full decoupling.

You asked for information on our approach to negotiations on national envelopes. The Government is very concerned about the potential for the revised Article 69 (now Article 68 in the proposals) to create new market and trade distortions, and have called for criteria to constrain such distortions - as set out in the UK's response to the European Commission's November Communication on the Health Check. We continue to press hard in negotiations for constraining criteria in order to limit expansion of the current Article 69. However many other Member States take a very different view and seek to expand the scope of national envelopes beyond that proposed by the Commission.

On risk and crisis management, we do not believe the case has been made for new publicly-funded crop insurance or mutual funds to provide disease compensation at EU level. The guiding principle must be for public authorities to help farmers to manage risk effectively themselves, not to manage it for them. Scotland is interested in exploring any flexibilities within the Health Check which would facilitate the handling of future animal disease outbreaks.

With regard to market management in the CAP, you asked about the level of flexibility that should be granted to the Commission. We are in agreement with you that the Commission's proposals on phasing out intervention are a step in the right direction, but we are disappointed that the Commission has not seized the opportunity to make more far reaching changes that will simplify the CAP, particularly as this reform coincides with a period of high prices which demonstrate that measures such as support prices and quotas are outdated and stifle innovation. We are making the case for the Commission to go further, but where mechanisms remain we will press for these to

operate in a way that minimises market distortion. In some cases that may mean allowing the Commission to have greater discretion over when to intervene; but we believe that is generally preferable to an automatic trigger since it can be used more appropriately. Northern Ireland is more comfortable with this safety net approach rather than the complete abolition of intervention.

With regard to set-aside, it is our understanding that the Commission are proposing that the environmental benefits should in fact be delivered through a mix of cross compliance requirements and – through Pillar 2 – the rural development programme. In this context, various policy options are currently under consideration by Sir Don Curry's High Level Set Aside Group (and within Defra) and Hilary Benn plans to make a statement about the way forward once the final report from the Group is published. Northern Ireland and Wales have expressed support for the suitability of Pillar 2 measures, because of the limited area of farm land currently subject to set aside requirements in those countries. Scotland is waiting for the outcome of their consultation before finalising their approach.

You asked about the feasibility of the proposed progressive modulation. Whilst the Government is keen to maximise transfers from Pillar 1 of the CAP to Pillar 2, we do have concerns about progressive modulation because the banding limits would send perverse signals about the appropriate size of a farm. The proposals could also be administratively costly and complex to implement. Although it is true that progressive modulation would involve slightly less incentive to restructure than would have been the case under a straightforward cap on farm payments – which the Commission had previously considered – we still believe it will lead to some deadweight cost to some farm businesses, and would place additional unnecessary administrative burdens on paying agencies. We continue to draw attention to this in negotiations.

I note your preference for delivering water management improvements through Pillar 2 rather than through cross-compliance. Officials are exploring with the Commission what degree of flexibility and discretion they envisage Member States will have by including the words "where appropriate" in the context of the new water management cross-compliance requirements.

With regard to your query about the process of consulting the Devolved Administrations, I can confirm that officials in each of the Devolved Administrations cleared the EM before it was submitted - as well as the UK response to the Commission's November Communication - and there were no major areas of difference.

We continue to work closely with the Devolved Administrations, to ensure that as negotiations develop we adopt a common approach, that will be further developed as we near the end game in negotiations. Defra Ministers and their counterparts in the Devolved Administrations meet regularly, and Ministers from the Devolved Administrations often attend Agriculture Council as part of the UK team. There are also detailed discussions between officials in the four administrations at senior and technical levels as the negotiations unfold.

I will inform you of significant progress on negotiations on the Health Check in due course.

16 July 2008

ANNEX A

COMMON AGRICULTURAL POLICY "HEALTH CHECK"
UK RESPONSE TO THE COMMUNICATION FROM THE EUROPEAN COMMISSION
APRIL 2008

This paper responds to the European Commission's consultative publication of 20 November 2007, entitled "Preparing for the Health Check of the CAP reform". It constitutes the collective views of the Government of the United Kingdom and the devolved Governments of Scotland, Wales and Northern Ireland.

Summary

The 2003 reform of the Common Agricultural Policy (CAP) established some important principles, including the decoupling of farm subsidy from production and a stronger focus on delivering environmental benefits.

We welcome the opportunity which the Health Check provides to take stock of those reforms, to take further the important principles which were established then and to update the CAP in the face of changing global challenges. The Health Check must be as ambitious as possible in giving farmers greater control over their business decisions so that they are able to profit fully from the globalising economy, reducing regulatory burdens and market distortion and directing a greater share of CAP funding towards delivering environmental benefits.

Specifically, that means the Health Check should:

- fully decouple all the production linked payments which remained after the 2003 reforms;
- simplify the CAP by rationalising the system of farm payments, entitlements and eligibility, simplifying the cross-compliance system to reduce unnecessary administrative burdens while focusing on key environmental objectives, and raising minimum payment levels where appropriate;
- avoid new distortions, such as maximum payment limits, and ensure any extension of the use of national envelopes (Article 69) is done in a non' distorting way;
- set a clear timetable for phasing out market controls including the use of intervention, production controls, export refunds and subsidies for usage;
- ensure that the milk quota system is phased out in a smooth and predictable manner, giving the dairy sector the clarity it needs to adjust successfully;
- put measures in place which will enable Member States to capture the key environmental benefits provided by set-aside; and
- adopt a more targeted approach that transfers a greater proportion of subsidy to Pillar 2 of the CAP to deliver public benefits.

We also agree with the Commission that the Health Check should not pre-empt the subsequent EU Budget Review.

The health-check proposals

The Commission's communication identifies three broad elements for reform: direct farm payments, market price support and the need for the CAP to respond to new environmental challenges. Their suggestions include:

- further simplification of the Single Payment System and cross compliance obligations;
- further decoupling of subsidies from production;
- the possibility of upper and lower limits in support levels;
- reduction of intervention and other price support measures;
- reform of production control measures (in particular the abolition of milk quotas and set-aside); and
- further transfers of money from direct payments to rural development {modulation}.

Direct Payments

Decoupling

It is very important that the legacy of production linked payments which remained from the 2003 reforms are all now fully decoupled from production. Coupled payments currently still apply for energy crops, protein crops, rice, dried fodder, flax and hemp and durum wheat. Many Member States have also retained significant amounts of coupled payments for cereal and livestock production. Retaining that legacy of partially coupled support prolongs trade and market distortion and can undermine the competitiveness of farmers in the UK, where most payments have been fully decoupled. Instead, fully decoupled payments free farmers to determine their business activities on the basis of market and consumer demand.

National Envelopes

The Health Check must also avoid introducing new distortions via the use of so called "national envelopes" under Article 69 of the 2003 legislation. Article 69 allowed direct farm payments to be reduced by up to 10% and the money redistributed to specific types of farming which are considered important for the protection or enhancement of the environment or for improving the quality and marketing of agricultural products. While we are interested in examining ways in which the use of Article 69 could bring greater public benefits from the CAP, it is important that criteria are put in

place which prevent it leading to new market distortions or an uneven playing field for farmers across the EU. If national envelopes are to be used, therefore, the following criteria should apply:

- they should be non-distorting of markets, trade and competition - i.e. be WTO Green Box compliant;
- they should produce clear public benefits and represent value for EU taxpayers' money;
- they should be subject to an equivalent amount of scrutiny, audit, control, monitoring and evaluation as other EU funds spent through the CAP;
- they should be allowed to apply on a regional basis within Member States so that they can address regional priorities;
- they should be time-limited to 2013 so that they do not pre-empt the EU Budget Review and subsequent future financing negotiations which will examine all EU spending;
- they should be clearly demarcated from other CAP measures in order to avoid the risk of dual-funding.

Simplification of the Single Payment Scheme

The Health Check provides a key opportunity to simplify the system of direct payments for both farmers and public administrations, thus reducing costs and inefficiency. In particular, we would like to see the following simplifications:

- The system of entitlements under the Single Payment Scheme (SPS) should be gradually rationalised leading to just one type of entitlement to payment. The process for transferring entitlements between farmers should also be simplified.
- Member States and regions within them should be given the option to increase minimum farm payment levels up to a threshold of 5 hectares or 5 SPS entitlements. That could remove a large number of very small payments from the system, leading to much greater efficiency in making payments to farmers.
- Member States should be free to make farm payments in instalments if necessary, so that a query over one element of a payment does not hold up payment of the full amount.
- The restriction which prevents payments being made if land is used for non-agricultural purposes should be re-defined to ensure it does not prevent farmers using their land for occasional recreational or other activities, as long as it is used primarily for agricultural purposes.
- The Commission has also signalled that it may take steps to restrict payments to 'genuine' farmers. As long as any proposals remain consistent with the principle of decoupling and do not add to administrative burdens attached to the SPS, we will consider them sympathetically.

Cross-compliance

As part of the 2003 reforms, we supported the introduction of cross compliance which linked a farmer's CAP payments to compliance with a range of environmental, public, plant and animal health and welfare standards. Cross-compliance has led to environmental improvements but we believe there is scope for simplification and rationalisation of measures, for example by removing those statutory management requirements which appear to have had little beneficial effect. In particular, we believe that:

- there should be policy coherence rather than a miscellaneous assortment of requirements;
- standards should add value by focusing on issues where there is a need to improve farmer performance;
- measures should be under the direct control of farmers.

We are continuing to assess, with our stakeholders, what specific changes we would like to see to improve the scope of cross-compliance in those respects.

Payment limits

Every effort must be made to avoid the Health Check introducing new complexities and distortions. The introduction of limits on higher levels of farm payment, or other variations which lead to differential payment rates based on farm size, could be particularly complex and distorting. We would like to see all farms becoming less and less dependent on public subsidy, but while subsidies do exist, it could be counter productive to limit higher payments. In order to compete successfully in a globalising market, farmers need to make their own decisions about the size and structure of their business. Imposing limits on payments to particular farms might discourage them from expanding to become more competitive and encourage larger farms to break up their businesses. That would be costly and of no commercial benefit to the farms themselves, while bringing no financial savings for the taxpayer.

Market Management Measures

As part of the move towards competitive global markets, we do not see a role for routine market intervention and supply controls. A timetable should be set for their phase out across all agricultural sectors.

Milk quotas

We are pleased, therefore, that milk quotas will not be renewed when they expire in 2015. In order to ensure the dairy sector faces a smooth transition it is important to have a simple phase out mechanism which gives as much planning and price certainty as possible. We believe, therefore, that quotas should be increased uniformly at a modest rate each year for all Member States. In parallel with the removal of quotas, it is essential as well to phase out the use of other elements of the dairy price support system such as intervention and export refunds, otherwise the increase in production as quotas disappear could lead to a costly increase in intervention purchasing and subsidised exports. There are also a number of obsolete schemes subsidising the usage of dairy products, which should be abolished. The dairy sector needs to have clarity well in advance about the timetable for ending the use of intervention and export refunds, rather than facing the uncertainty of reactive changes.

Set-aside

We support the Commission's proposal to end the system of compulsory set-aside in the arable sector, leaving farmers free to take their own production decisions based on market circumstances. However, there is clear evidence that set-aside has brought a range of environmental benefits and we support the Commission's intention to take steps to enable the retention of those.

Risk Management

As the old system of price support is removed, it will become increasingly important for farmers to manage the price risks which they face, as other sectors of the economy do. However, it is important that farmers take responsibility for putting in place measures most appropriate to their circumstances and that we secure collective industry contributions to help address animal health disease risk. Farmers can already choose from the many non-distorting, market based measures available. Those include diversification of income, private insurance, mutual funds, credit, derivatives, futures and options markets. Unless there is a market failure in the provision of private sector risk management, then we do not see a justification for using public money to provide risk management for farmers. The guiding principle must be for public authorities to help farmers to manage risk effectively themselves, not to manage it for them.

New Challenges

The Commission communication correctly identifies a number of growing environmental challenges facing European agriculture, including mitigating and adapting to the effects of climate change, meeting targets on bioenergy, sustainable water management and halting the decline in biodiversity. We support in principle an increasing emphasis on action at both national and community level to address them.

Member States have already designed their rural development programmes for the 2007-13 Financial Perspective and those programmes will play a role in addressing the challenges. It is important, therefore, that the Health Check does not jeopardise Member States' current rural development plans.

Whilst the CAP should remain an agriculture policy, any proposed changes to EU rural development legislation should capture the valuable contribution which forests and forestry can play in addressing climate change, biodiversity, water and energy issues.

Modulation

We believe that increased funding through Pillar 2 of the CAP will be needed in order to step up activity over the next few years. We support, therefore, a more targeted approach that would allow further transfers (modulation) of funding from Pillar 1 of the CAP to Pillar 2. It is important that the mechanism for that modulation is designed to ensure the UK receives a fair increase in its Pillar 2 budget in order to respond to the new challenges.

The modulation mechanism should also respect the principle of subsidiarity, giving Member States and regions with widely differing circumstances the discretion they need within the overall framework of Pillar 2. For example, the current franchise exempts the first €5,000 of direct payments from compulsory modulation, reducing significantly the funding available for rural development schemes; it should be made optional at Member State and regional level, Member States should also retain 100% of modulated money, and Member States and regions should have the option of channelling all additional rural development funding into environmental measures in support of the new challenges.

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

Your letter (16 July) regarding the above proposals was considered by Sub-Committee D at its meeting of 8 October 2008.

We note your responses to the views we had set out in our letter of 2 July, and look forward to receiving an update on the progress of negotiations on these proposals later this month. In the meantime, we will continue holding the proposals under scrutiny.

10 October 2008

Letter from the Rt Hon Jane Kennedy MP to the Chairman

Thank you for your letter of 10 October 2008 requesting an update on progress in negotiations on the European Commission's CAP Health Check proposals.

Lord Rooker wrote to you with an update on 16 July 2008. Since then, technical work has continued and the French Presidency established a 'high level' working group in early October to discuss the scope for eventual compromises. There has been no further substantive plenary discussion at Agriculture Council, but the French Presidency and the Commission held a series of trilateral meetings with each Member State at both the September and October Councils. So far, there have been only technical revisions to the Commission's proposal, and no compromise text on the big ticket items.

We are now into the final stages of the negotiations. The Presidency is now looking for political agreement in Council on 18-20 November 2008. This could prove a challenging timetable as the European Parliament is not scheduled to adopt its opinion in plenary until 18 November. The Health Check is not subject to the co-decision procedure with the European Parliament, but the Presidency has indicated that it intends to give due informal weight to the views of MEPs. This is the ostensible reason why a Presidency compromise text will only be tabled after the EP plenary session on 19 November 2008, when the Council is already underway.

As you know, the Government's goals in the Health Check are driven by our longer-term vision of a profitable, internationally competitive farming sector that earns its rewards from the market for food that is produced to high standards and that is affordable for consumers. We also want to move towards a CAP that focuses on rewarding farmers for delivering public benefits, including environmental services such as landscape management, protection of biodiversity and action to tackle climate change.

In the final stages of the Health Check negotiations, the Government continues to press for full decoupling of the remaining coupled payments. However, in relation to those sectors covered in the proposal, there is resistance in Council to decoupling in a number of sectors including rice, protein crops and dried fodder. In relation to suckler cow premium and ewe/goat premium, which are not currently in the proposal, the Commission has given no indication that it is likely to change its approach.

We are also concerned about the risk of introducing new distortions, including coupled payments, through the proposed increase in flexibility for Member States to use national envelopes in Article 68 of the proposals. These are intended to address disadvantages in certain regions for dairy, beef, sheep, goat and (in environmentally sensitive areas) rice and also to avoid land abandonment or address disadvantages in areas subject to restructuring. There is considerable support in Council for these proposals and we are pressing to ensure measures are in place to ensure that any distortions are strictly minimised. The Government takes the view that where the market alone will not support

certain types of farming which deliver wider public benefits, then targeted, decoupled public support through Pillar 2 type measures is appropriate.

The proposals would also allow national envelopes to be used to co-fund contributions towards the cost of weather related crop insurance and for mutual funds to compensate for losses caused by animal disease outbreaks. These proposals have aroused the interest of a small number of Member States that already have state-assisted risk management schemes and seek assistance in continuing to finance them. The Government has argued that there is no strong case for EU public funds for any of these measures and that private sector solutions or nationally funded measures are sufficient. We are therefore focusing on ensuring that the schemes retain a substantial element of private sector funding, and also that they do not pre-empt and cut across the Commission's wider work on responsibility and cost sharing, including a forthcoming Community Animal Health Action Plan.

The Government supports the proposals to simplify the Single Payment Scheme in order to reduce burdens on farmers and administrations and has, with support from a number other Member States, pushed for further simplification measures – including on cross-compliance – aimed particularly at helping to ensure smooth implementation. Latest information from the Presidency is that Member States are likely to be able to set minimum payments levels within certain ranges depending on local conditions. The UK would be allowed to set the minimum either in the range of 100 to 200 Euros or in the range of 1 to 5 ha.

There is a wide divergence of views in Council on dairy quotas, with some Member States concerned about the impact on their own industry. The UK is stressing the importance of a manageable transition for the dairy sector and certainty for the industry through regular 2% percent increases in quotas, until the scheduled phase-out in 2015. The Commission proposal of 1% annual increases appears to lie at the median of Member States' positions, and so is likely to form part of the final package. However, we are concerned about pressure from a small group of Member States to allow them to 'front-load' those increases, allowing them to move to the final phase-out at a faster rate and which could create competitive distortions. In addition, the Commission faces pressure to allow flexibility in the use of some areas of national CAP budgets in order to help the dairy sector in some Member States to restructure, which has often been referred to as a 'Milk Fund'.

The Commission proposed to scale back market intervention in a number of areas, including mechanisms for dairy disposal and private storage aid and introducing a tendering for cereals intervention. The Government wants to see the end of all such price support mechanisms as they distort the market and raise consumer prices. The Commission is currently holding firm, but there is strong resistance in Council to many of these proposals.

There is agreement among Member States to abolish set-aside and the Commission has proposed that measures should be taken to mitigate the loss of environmental benefits by broadening aspects of cross compliance - relating to 'good agricultural and environmental condition' - to allow this. We are pressing for a common but flexible framework across the EU so that all Member States could take appropriate measures, relevant to their particular circumstances.

The Government is continuing to press for the highest possible increase in compulsory modulation, so increasing the amounts available for Pillar 2 spending across the EU, and hence the delivery of public benefits through the CAP. However, several Member States oppose the Commission's proposed annual increases in compulsory modulation, which would reach 13% in 2012, and some oppose any increase at all.

Along with many other Member States, we remain opposed to the introduction of progressive modulation, which would mean larger farm payments being subject to additional rates of modulation, in three higher payment bands. Our concern stems from the incentive this would provide for larger farms to break up into smaller units - to avoid higher modulation rates - instead of seeking to become more competitive, as well as the increased complexity it would involve for farmers and administrations. We are aware of the importance of progressive modulation to key MEPs in the European Parliament, but will seek to avoid its inclusion in a final deal.

Given the absence of a compromise text, and the nature of French Presidency handling, we do not have a formal indication of the main areas for compromise expected to reach political agreement. Areas in which we would expect the Presidency to seek compromises include national envelopes, modulation, dairy quotas and market intervention measures. The Government will continue to work to achieve the negotiating aims set out above.

10 November 2008

Letter from the Chairman to the Rt Hon Jane Kennedy MP

Your letter (10 November) regarding the above proposals was considered by Sub-Committee D at its meeting of 12 November 2008.

We are content with the negotiating stance you propose to adopt in the forthcoming negotiations on a compromise text. You need not therefore withhold agreement in Council pending completion of scrutiny.

We do wish to communicate, however, that we attach particular importance to the outcome of negotiations on three items: dairy quotas, market intervention and compulsory modulation, and would therefore urge you to prioritise these issues.

Finally, we wish to emphasise that the Presidency's practice of tabling a compromise text at the same Council at which political agreement is to be sought makes effective scrutiny by national parliaments impossible. We would be grateful for your assurance that you will discourage the adoption of this approach in future.

14 November 2008

CROP STATISTICS (8823/08)

Letter from the Chairman to Lord Rooker, Minister for Sustainable Farming and Food, and Animal Welfare, 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 18 June 2008.

We support in principle this proposal to simplify the applicable legislation in the area of crop statistics and we are content at this stage to release the proposal from scrutiny.

In so doing, however, we would appreciate your assurance that the legislation will not lead to any duplication of work and that it does not imply any additional financial burden upon the industry. We would also appreciate information from you on the role, if any, of the Home Grown Cereals Authority in relation to the work involved under the proposal.

Finally, we would ask that you report back to the committee on progress made as regards the details both in Council and in the European Parliament.

18 June 2008

Letter from Lord Rooker to the Chairman

Thank you for your letter dated 18 June where you asked for further assurances and information relating to the Explanatory Memorandum on the above Proposal.

We appreciate your concern regarding the possible duplication of work or additional burdens on the industry but can provide the assurance that this will not be the case with this Proposal. The data can be sourced through existing arrangements and the Proposal provides greater flexibility in sourcing data with no requirement to provide data for crops with a low or zero prevalence. We regularly review data sourcing and collection arrangements to ensure that duplication of work does not occur and to minimise burdens on respondents.

Also there was the question as to the possible role of the Home Grown Cereals Authority in relation to work associated with this Proposal. I can confirm that the HGCA has no involvement with the provision of information required under this Proposal.

4 July 2008

DANGEROUS SUBSTANCES: RESTRICTIONS ON THE MARKETING AND USE OF CERTAIN DANGEROUS SUBSTANCES AND PREPARATIONS.

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

I am writing to update you on a change in the UK position on a Commission proposal that received clearance from the Lords Select Committee on the EU on 30 October 2007.

The proposal suggested an amendment to Directive 76/769/EEC which would restrict the marketing and use of 5 dangerous substances. The position has changed on one of the substances – Ammonium Nitrate (AN).

The Commission proposal aimed to prevent the non-legitimate use of AN fertiliser by banning sales to the general public of fertiliser containing more than 20 % nitrogen derived from AN. This could prevent would-be-terrorists from buying sufficient high concentration AN fertiliser - e.g. in garden centres – for potential use in homemade explosive devices.

Recent tests by Danish scientists show that AN fertiliser with a nitrogen concentration of 16% can be made to detonate with relative ease (with the simple addition of aluminium powder and the use of a commercial detonator), compared with the comparative difficulty of detonating AN fertiliser with concentrations below the 16% level.

UK officials originally supported the Commission's suggestion of 20% but have now updated their position and are seeking to negotiate a reduced maximum of 16% AN in fertilisers, based on the new evidence from Denmark.

23 June 2008

FEED: PLACING ON THE MARKET AND USE OF FEED (7296/08)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 30 April 2008.

Like you, we support the Commission's intention to simplify and modernise the legislative framework governing the marketing and use of animal feed.

We note that the proposed changes are not purely technical, and that you have reservations about some of the provisions of the draft Regulation, which you plan to raise with the Commission. We would therefore be grateful if you could keep us informed of the outcome of those discussions.

We also note that you intend to launch a formal public consultation on the draft Regulation, as part of which you plan to seek information on the potential financial impact of the measure on the feed industry and on enforcement authorities. We would ask you to inform us of the results of that consultation process.

In the meantime, we will retain this Proposal under scrutiny, and would be grateful if you could keep us updated on the progress of negotiations.

2 May 2008

FISHERIES: COMMISSION'S ANNUAL POLICY STATEMENT ON FISHING OPPORTUNITIES IN 2009 (10264/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 16 July 2008.

We too welcome the Commission's decision to present a policy statement that sets out the likely direction of its proposals on fishing opportunities for the coming year. We are particularly pleased to see that the timetable for consultation and negotiations is likely to be extended somewhat this year, and considerably so next year. We would nevertheless welcome your views on whether there might be a benefit from starting the quota year in April, following the spawning season for many species and the winter weather, rather than in January.

We strongly support the decision to devolve effort allocation to Member States in the revised cod recovery plan, and therefore warmly welcome the Commission's intention to extend this approach to all other effort controls for 2009.

We also support the Commission's proposal to allow TACs to vary more from year to year. We recognise that the number of categories into which particular stocks will fall may need to be

increased, to take into account the additional considerations that you raise. However, we understand that the Commission's proposals would not oblige the Council to set a particular TAC, but would simply indicate the scale of adjustment that would be possible. We would be grateful if you could confirm that this is the case.

We support your efforts to pursue the principle that less than full uptake of a quota in one year should not automatically lead to cuts in that quota the following year, and would be grateful if you could inform us of the outcome of your discussion with the Commission on this point.

We will await clarification on the points raised above, but are in the meantime content to release the Communication from scrutiny.

17 July 2008

FISHERIES: COMMUNITY SYSTEM TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING (14236/07, 14237/07, 10104/08)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to update you on progress in response to your letter of 2 April 2008² and to seek your Committee's scrutiny agreement ahead of the expected agreement of this Regulation at the Agriculture and Fisheries Council on 23 June.

I attach a copy of the latest draft of the Regulation. Negotiations are still continuing but I am pleased with the progress that has been made since I wrote to you on 18 March. The key improvements that have been secured in negotiations cover:

- **THE SCOPE OF THE REGULATION:** it is important that IUU fishing is tackled wherever it occurs, whether it is in EU or non-EU waters or is undertaken by EU or non-EU vessels. At the same time, I am keen to seek to avoid unnecessary duplication between this Regulation and the Control Regulation covering Community fishing vessels in Community waters. Article 1 on scope has now been amended to make it clear that all IUU activity is covered. The inclusion of new text at Article 26(7) reduces overlap between this Regulation and the Control Regulation. I shall continue to seek to avoid duplication and potential confusion between these two Regulations.
- **APPROVED ECONOMIC OPERATORS:** Article 16 now provides for Member States to grant the status of "approved economic operator". This market-led approach will enable importers of fish who can demonstrate independently audited food chain security and tracing the option of following a much simpler approach to establishing that their products are certified. This was a key concern of industry and the additional text will substantially reduce the administrative burden for trustworthy importers of fish products whilst, at the same time, reduce the costs for inspection and enforcement agencies.
- **A TARGETED, RISK-BASED APPROACH:** the text now reflects a risk-based approach. In addition to the provisions made for approved economic operators, Article 9(1) on third country inspections of fishing vessels in EU ports and in Article 17(3) on the verification of catch certificates etc explicitly makes the link to following a risk-based approach. These are welcome provisions that will ensure that resources are targeted towards tackling IUU fishing whilst reducing the administrative burden of the Regulation.
- **TRANSHIPMENT:** Article 4(4) now enables transshipments to take place from third country fishing vessels where these are regulated by Regional Fisheries Management Organisations. This also resolves a key oversight of the Commission's original proposal.
- **WORDING ON NATIONALS:** this has now been tightened up to better target those who actively engage in IUU fishing.

² Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 160

- SANCTIONS: negotiations are still continuing and I am keen to see an effective deterrent for operators that engage in IUU activities. However, we have reservations about the Commission's current text - preferring its original wording. I propose to resist any attempt to curtail our freedom to decide on criminal or administrative sanctions as this is clearly an issue of national competence and our judiciaries independence.

The Commission has also reiterated its support for capacity-building with third countries to assist them in helping to play their part in implementing this Regulation. My officials are also developing an impact assessment ahead of progressing the details for implementation of the Regulation. This will be elaborated further following consultation with the industry and other stakeholders.

The Presidency is aiming to agree the Regulation at the Agriculture and Fisheries Council on 23 June.

1 June 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter (1 June) on the above documents was considered by Sub-Committee D at its meeting of 11 June 2008.

As regards the scope of the Proposal, we agree that all IUU activity should be covered whether it takes place in Community waters or externally but it is equally important to avoid duplication between this regulation and the revised Control Regulation. We therefore welcome the inclusion of new text at Article 26(7) and we trust that, when negotiating the revised Control Regulation, you will ensure consistency between the two pieces of legislation.

We were pleased to note the amended Article 14(2), which no longer requires the provision of documented evidence that imported products have been exclusively processed from the catches referred to on the catch certificate. We hope that this, in tandem with the amended Article 16, will help to address the concerns about excessive administrative burdens expressed to us by industry in the course of our inquiry into the Common Fisheries Policy. We nevertheless remain extremely cautious about the regulatory impact of the draft regulation and we would wish that this be monitored very closely in order that any problems can be rectified as soon as possible.

As we noted in our letter of 2 April, we strongly support the adoption of a more targeted, risk-based approach and we are therefore pleased to note the developments in this regard to which you refer in your letter.

We welcome the fact that the European Commission has reiterated its support for capacity-building with third countries to assist them in helping to play their part in implementing the regulation. This is particularly important if the legislation is to be effective.

Finally, we note that the issue of sanctions remains unresolved. We support the application of administrative sanctions, but we are concerned about both the current wording and the Commission's initial wording. The potential co-ordination of administrative sanctions at the EU level is an issue that we hope to address in our ongoing Review of the Common Fisheries Policy. However, we support your proposal to resist any attempt to curtail Member States' flexibility to decide on criminal sanctions.

On the basis of the comments above, we are now content to release the Proposal and the Communication from scrutiny, and we would ask that you inform us of the outcome of the Council meeting.

11 June 2008

Letter from the Chairman to Jonathan Shaw MP

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 18 June 2008.

We agree that this proposal can be supported on the basis that competence is derived from the CFP and that an end date of 31 December 2009 is included for the mandate.

In light of the above, we are content to release the proposal from scrutiny.

18 June 2008

FISHERIES: CONSERVATION OF FISHERIES RESOURCES THROUGH TECHNICAL MEASURES.

Letter from Chairman to Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, 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 16 July 2008.

We strongly welcome the overall change in approach reflected in the Commission's proposal. It became clear during the course of our recent inquiry into the progress of the CFP since 2002 that there is a need to "regionalise" the CFP and to simplify the rules on technical measures. In that context, we are pleased to note the Government's commitment to ensuring that the detailed regional rules to be adopted at a later stage are simple and clear.

You point out that changes to gear regulations that are not supported by the fishing industry can be difficult to enforce. We consider that gear regulations can, and must, make a contribution to the sustainability of the CFP and recognise the importance of obtaining the support of stakeholders. We would therefore be grateful if you could inform us of the views of stakeholders once they have been received.

Real time closures, the piloting of which in Scotland we have commended, are included in technical measures legislation for the first time. We observe, however, that there appear to be a number of different potential models in the draft legislation. The first, one of the common permanent measures for all areas, puts the onus on the individual vessels to move away from an area in particular circumstances. The second, under national and regional measures, would allow a Member State to close an area for up to 10 days. The third, also under national and regional measures, would allow Member States to apply a closure solely to fishing vessels flying their flag. We would be grateful for your view on the clarity, necessity and enforceability of this potentially confusing array of measures. We are particularly interested in your comments on the enforceability of the specific provisions requiring that vessels move either 5 or 10 nautical miles from the point of catch in particular circumstances, including when the quantity of undersized fish caught exceeds 10% of the total quantity of catches in any one haul.

You do not comment in your EM on the specific suggestion that Member States and/or RACs may submit their own plans to the Commission to reduce or eliminate discards. It seems to us that, should this innovation be supported by the Member States and the RACs, it is potentially very significant. We would be grateful for your position on this suggestion, including your view on the 3 month deadline for views from the Commission and on whether there should be provision in the legislation for action that would normally follow the submission of a plan and the response by the Commission.

You assert that the potential benefits of the regionalisation approach outweigh any risks in ceding greater discretion to the Commission. We note that the proposed approach whereby detailed rules at the regional level be adopted by the Commission through the comitology procedure does not make any provision for consultation of regional stakeholders (other than the Member States themselves of course). It seems to us crucial that, if the decentralised approach is to be effective, regional stakeholders must be closely involved in the development of the relevant technical measures. We would welcome your view on this point.

In the meantime, we shall hold the proposal under scrutiny and we look forward to your comments on the above points.

18 July 2008

FISHERIES: FISHING ACTIVITIES OF COMMUNITY FISHING VESSELS OUTSIDE COMMUNITY WATERS AND THE ACCESS OF THIRD COUNTRY VESSELS TO COMMUNITY WATERS (11182/07)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs, Department for Environment Food and Rural Affairs to the Chairman

In the Explanatory Memorandum I sent to your Committee in July 2007 I explained that the UK had concerns regarding several Articles in the above proposal. Since that time there has been two Presidency compromise documents discussed and I thought I would update you with the progress.

Under the latest compromise document there are two Articles which the UK can not accept, in their current wording. These are the Article 12 and 13 of the original document.

Article 12 deals with the provisional application of initialled protocols before Council has made a decision. We can not support this Article as it takes power away from Council and is in our view unlawful. The Commission has shown a willingness to look at this and have stated that something is needed to allow fishing activities to continue without interruption and they are willing to consider details as to how this can be incorporated. Article 13 deals with the reallocation of underutilised quotas. Whilst supporting the aim of full utilisation in 3rd country Partnership Agreements which involve financial payment in exchange for opportunities (In fact most include an article regarding utilisation) this proposal also covers Norwegian waters where that is not the case. The UK does not consider that this regulation is the place to look at utilisation particularly if, as with Norwegian waters, relative stability is involved. In a Council Statement following the Agreement of the latest Greenland Protocol it stated:

"The Council and Commission note that the redistribution mechanism is designed to deliver the optimal utilisation of fishing opportunities under the Fisheries Partnership Agreement with Greenland. The Council and the Commission recognise the need to have a clear and consistent mechanism for all Fisheries Partnership Agreements. As such, the Council invites the Commission to present in 2007/2008 a proposal containing such a mechanism to be applied to all Fisheries Partnership Agreements. The Commission will respond in accordance with the rules of the Treaty, with due regard in particular to its right of initiative",

This is still the case and we are prepared to have a discussion on utilisation once the Commission comes forward with a paper/proposal. This regulation is not the place to have this discussion though.

It is the Slovenian Presidencies intention to put this proposal before the June Council. It is my intention, if the two remaining issues remain unresolved to UK satisfaction, to vote against this Regulation.

6 May 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter of 6 May 2008 on the above proposal was considered by Sub-Committee D at its meeting of 14 May 2008.

We note that you have two remaining concerns. As regards Article 12 on the provisional application of initialled protocols, you state that the Commission has shown a willingness to re-consider this. We would be grateful if you could inform us of your progress in discussions with the Commission and with other Member States.

Concerning Article 13, it is not clear to us whether your position is shared by other Member States. We would therefore be grateful for clarification of that point and for your view on whether you consider any form of compromise to be likely on Article 13.

You initially expressed concerns about the proposals to fine fishermen more than once for the same offence. We would appreciate an update on discussions in that regard.

We would also be grateful if you could give us an indication of the likelihood that the proposal will be adopted in its present form in spite of the UK's objections.

We shall continue to maintain the Proposal under scrutiny pending the receipt of further information on the above points.

15 May 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 15 May regarding the above draft proposal. I attach a Supplementary Explanatory Memorandum and the most recent Presidency Compromise text. This most recent Presidency compromise was discussed at Working Group on 15 May 2008 and the enclosed Supplementary Explanatory Memorandum is attached following these negotiations. This most recent Presidency Compromise makes some significant progress towards allaying the UK's concerns.

In the previous compromise document there were two Articles which the UK could not accept. These were Articles 12 and 13 of the original document, Articles 10 and 11 of the most recent compromise.

Article 10 of the enclosed text deals with the provisional application of initialled protocols before Council has made a decision. We could not support this Article as it takes power away from Council

and is in our view unlawful. The Commission have looked at this and proposed an amendment. As it stands, Article 10 remains unacceptable to the UK. The UK has made suggestions to the European Commission which they are considering currently. The UK had little time between receiving the proposed amendments and last week's negotiations to prepare comments. Legal opinion is being sought as to whether the UK's original objection can be removed, if the UK's suggestion were to be accepted.

Article 11 of the enclosed text deals with the reallocation of underutilised quotas. As this proposal covered Norwegian waters, the UK could not accept such a proposal where relative stability is involved. In effect this revised Article responds accordingly to the joint Council and Commission Statement made in relation to the Fisheries Partnership agreement with Greenland and excludes the third country agreement with Norway from the scope of this Article. The UK has requested that this situation as we understand it is made clear in the proposed Regulation, supported by other Member States, but not all, and the Commission have committed to respond this request.

It is the Slovenian Presidencies intention to put this proposal before the June Council. It remains my intention, if the two remaining issues remain unresolved to the UK's satisfaction, to vote against this Regulation. I am hopeful that there may be an acceptable compromise on Article 11, but the UK is likely to have at least one outstanding issue. Other Member States have indicated that some of their issues need to be dealt with at a higher level than Working Group.

Article 6 of the enclosed text concerns circumstances under which authorisations may be submitted in relation to infringements of the vessel concerned. The Commission have effectively addressed UK concerns about double jeopardy but there are some minor points of detail to be straightened out before the Article is acceptable.

The Commission is aware that there is further work required before a proposal is ready to be considered by Council. It is not clear how the Presidency intends to handle this, and it will depend in part on the Commission's capacity to produce a further set of proposed amendments and their willingness to compromise further. Clearly they will reflect on Member States' comments before deciding how they intend to handle further work. I will keep you informed of progress bearing in mind we do not know the timetable of process for further consideration of the proposed regulation.

19 May 2008

Letter from the Chairman to Jonathan Shaw MP

Your Supplementary Explanatory Memorandum (SEM) on the above Presidency Compromise was considered by Sub-Committee D at its meeting of 11 June 2008.

We note that you continue to have serious concerns about aspects of the proposals, and we would support you in ensuring that any final regulation does not extend the powers of the European Commission and does not jeopardise the application of the principle of relative stability to the EU/Norway Agreement.

We shall maintain the proposal under scrutiny and we would request that you inform the Committee at the earliest opportunity should it appear that adoption of the regulation is likely to be sought at the 23 June Fisheries Council.

11 June 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 21 May regarding the above draft proposal. I am writing to update you on developments with this dossier.

Following discussion of this dossier at Working Group on 6 June the UK's main concern centred on Article 10 of the text. This deals with the provisional application of initialled protocols before Council has made a decision. We could not accept the article as originally drafted as it would take power away from Council and was in our view unlawful. At COREPER today the Commission undertook to provide revised wording which would impose a 6 month time limit on authorisation of continuance of fishery activities whilst negotiations for a new agreement are ongoing or there is agreement in principle but it has not been formally adopted. We are content with this solution as it will prevent unnecessary disruption to the EU fishing fleet without giving the Commission unlimited powers to act on behalf of the Community whilst negotiations with third countries are still ongoing. Whilst we will wish to see the Commission's written text, we consider that what has been suggested represents a satisfactory compromise.

The proposal is due to go to the Agriculture and Fisheries Council on 23-24 June for a vote. Following the compromise reached at COREPER I intend to vote in favour of this proposal.

16 June 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter of 16 June 2008 on the above proposal was considered by Sub-Committee D at its meeting of 18 June 2008.

We welcome the progress that has been made on Article 10 and, on that basis, we are now content to release the proposal from scrutiny.

18 June 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 21 May regarding the above proposal. I attach the most recent Presidency compromises which were tabled and subsequently discussed on the day of the Council of Fisheries Ministers in Luxembourg on Tuesday 24 June. These late compromises address the outstanding concerns of the UK and I was able to support the proposed regulation at Council.

When I wrote to you on 19 May I referred to two Articles which the UK could not accept. These were Articles 10 and 11 of the most recent compromise. I wrote to you on 16 June also to explain developments on the process and with further compromise on Article 10.

Article 10 of the proposed regulation deals with the provisional application of initialled protocols before Council has made a decision. We could not support this Article as it takes power away from Council and was in our view unlawful. The Commission looked at this again and came forward with an amendment that makes clear that the Commission is not pre-empting a Council decision or its ability to make one. With this latest amendment Article 10 is acceptable now to the UK.

Article 11 of the proposed regulation deals with the reallocation of underutilised quotas. As this proposal covered Norwegian waters of the North Sea, the UK could not accept such a proposal where relative stability in Community waters is involved. Previous amendments made clear that the reallocation of fishing opportunities applied only to Fisheries Partnership Agreements (FPA). The UK sought clarification that the EU/Norway Agreement is not considered to be an FPA. This latest amendment makes clear that FPAs involve financial compensation from the Community (as detailed in Council statement 11485/1/04 REV 1 on 15 July 2004) and as such cannot apply to the EU/Norway Agreement which is based on joint management of shared stocks and a balanced exchange of fishing opportunities between the EU and Norway.

You may recall the UK had some concerns over the over-bureaucratic approach to the transmission of fishing vessel information related to each agreement to the Commission for consideration before authorisations are approved (Article 4 of original proposal). The inclusion of this provision would not have prevented the UK from supporting the overall proposal, but in the event this entire provision was withdrawn.

The European Scrutiny Committee's Report of 18 June 2008 also asked for a cost benefit analysis of the regulation. I would like to take this opportunity to explain why it was stated in the Explanatory Memorandum of 16 July 2007 and supplementary EM of 19 May 2008 that a cost/benefit analysis was not appropriate under these particular circumstances. Previous provisions concerning the activities of EU vessels in third water countries were laid down in Council Regulation (EC) 3317/94 of 22 December 1994. The provisions of this Regulation were limiting and did not reflect UK policy on IUU fishing or the objectives of sustainable fisheries and control as laid down in the CFP as revised in 2002. Furthermore the requirements laid out in the various Agreements between the EU and third countries themselves are more detailed now than the 1994 Regulation.

The purpose of the Regulation discussed at Council on 24 June is to modernise the overarching regulation concerning the activities of EU vessels in third country waters to reflect the responsibilities and obligations of today. The Regulation simplifies procedures for authorisations by introducing a common Community system for fishing activities of all Community vessels outside EU waters. This system replaces the individual systems applicable under the terms of each Agreement, which, whilst similar, have discrete variations. In addition, the provisions for access of third country vessels to Community waters will be brought together in one place for the first time.

It is important to make clear that this Regulation applies now to all fishing vessels flying the flag of an EU Member State outside Community waters. This is an important adjunct to IUU objectives, which reinforces the Council Regulation (EC) 2371/2002 Article 23, which places a responsibility on Member States to control the activities of vessels flying their flag outside Community waters.

Specifically, this Regulation will not lead to any significant increase, if any, of burdens applicable to UK vessels. It will be important that data reporting requirements are met to ensure the consistent and effective control of fisheries measures to EU vessels outside Community waters. Defra officials will produce guidance for fishing vessels flying the UK flag outside Community waters to make clear the standard requirements of the new system applicable to all agreements.

3 July 2008

FISHERIES: FIXING FOR 2009 AND 2010 THE FISHING OPPORTUNITIES FOR COMMUNITY FISHING VESSELS FOR CERTAIN DEEP-SEA FISH STOCKS (13533/08)

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 22 October 2008.

We regard it as regrettable that this proposal has been fast-tracked – with less than a month elapsing between publication of the proposal and its likely adoption in Council. This not only curtails parliamentary scrutiny, but also appears to have resulted in an unsatisfactory consultation process. We note, for example, that it is unclear whether RACs have been given time to respond to the proposal, and that you are not yet in a position to explain what the impact of the proposed closed area off the west coast of Scotland would be.

We share your disappointment at the prospect that measures to reduce TACs and measures to reduce effort in deep-sea fisheries will not be considered in tandem, and are concerned that disjointed management measures could result in unnecessary discards. We also share your concern that a zero TAC for deep-sea sharks in 2010 might lead to discards, and therefore support your intention to press for a small bycatch quota instead.

We firmly agree with the principle that TACs should be set on the basis of scientific advice and not on the basis of recent average landings, for the reasons you set out. However, we are not clear on whether there is scientific evidence available to support your view that TACs should be maintained at recent levels. We would be grateful if you could supply us with further information in this regard.

We note that you do not expect the proposal to impact significantly on UK fisheries because quota uptake for the species covered by this Regulation is in most cases very low. However, it is not clear to us whether the UK industry's ability to obtain additional quota through quota swaps might be adversely affected by this Regulation. We would be grateful for clarification on this point, and for further information on the amount and type of quota that the UK obtained in exchange for the 851 tonnes of deep-sea stock quotas that it had swapped by mid-October 2008.

We will hold this proposal under scrutiny pending receipt of your response to the queries raised above.

23 October 2008

Letter from Huw Irranca-Davies MP to the Chairman

Thank you for your letter of 23 October concerning the above Commission proposal.

Firstly, it is regrettable that you were unable to clear the Explanatory Memorandum at this juncture and that I must therefore inform you of our intention to vote for the proposal should agreement be sought at the Agriculture and Fisheries Council of Ministers on Monday 28 October. I can assure you that we do not take overriding Parliamentary Scrutiny lightly, however we feel it is important for the UK that discussions on cod recovery measures and EU-Norway take precedence at November Council and is not distracted by the need to conclude other outstanding dossiers; early agreement on this dossier is therefore of considerable benefit to the UK. I hope however that this letter goes some way to addressing the concerns you have raised.

I agree it would have been beneficial to have more time to consider this dossier. However, we feel that the Commission's proposal goes a long way to offer improved protection for vulnerable deep-sea species and we do not therefore wish to stand in the way of agreeing these measures. The Commission has given a commitment to come forward with effort management measures and details of the West of Scotland closure for consideration before the end of 2009, and we are in a position to support the TACs and Quotas proposed on the grounds that these other elements will be agreed at a later date.

Leading on from that I can confirm that the proposed closed area will not be agreed at October Council but will be included in an Annex of the December Council agreement. Whilst we consider it is unfortunate that all measures aimed at managing deep-sea species are not contained in one document this will provide an opportunity to give fuller scrutiny to this element. The Commission have just released a non-paper on the issue which sets out details of two "protection zones"; these will not consist of full closures but will require special conditions to be met when fishing in these zones during the spawning season of March to May. We are currently considering the impact of this proposal with Industry and will take a full part in discussions with the Commission prior to their formal legislative proposal being tabled.

You ask whether scientific evidence is available to support our view that TACs should be maintained at recent levels rather than reduced to recent average catches. In most cases the knowledge of deep-sea species is highly uncertain; however due to their low productivity it is considered that they can only sustain low levels of exploitation. For the stocks concerned the scientific advice from the International Council for the Exploration of the Sea (ICES) is that "the fisheries should not be allowed to expand unless [they] can be shown to be sustainable". This advice is based on the precautionary principle rather than evidence of abundance levels. In our view here, and in the wider context of fisheries negotiations, when the scientific advice is for no increase in effort, to reduce TACs because of lack of uptake sends a perverse signal to Industry that a TAC is a target not a limit. Therefore we believe that a rollover of TAC on these species is consistent with the precautionary scientific advice that "the fisheries should not be allowed to expand".

Finally, you ask for details of what type of quota the UK has obtained in swaps for deep-sea species in 2008. In some cases deep sea stocks have been swapped as a composite element within swaps which also include other quota stocks, so it is not possible to say exactly what tonnage was received for a specific quantity of an outgoing deep sea fish quota. Nonetheless it is likely that some of these swap packages would not have proceeded had the deep sea quotas not been included. The table below sets out the quotas which has been received in 2008 to date by UK groups in swaps which involved the UK giving up deep sea stocks:

Stock	tonnes received by UK
Faroese Vb cod & haddock	40
North Sea anglerfish	25
North Sea cod	10
North Sea haddock	250
North Sea saithe	880
North Sea whiting	200
VII anglerfish	5
VIIb-k haddock	20
VIIde plaice	25
West Coast anglerfish	10
West Coast megrim	160
WoS cod (incl. Via)	4
<hr/>	
tonnes (liveweight)	

At present it is not possible to fully analyse what future quota swap requirements will be. However, this will be taken into full consideration in negotiations for fishing opportunities in 2009.

26 October 2008

Letter from the Chairman to Huw Irranca-Davies MP

Your letter (26 October) on the above proposal was considered by Sub-Committee D at its meeting of 5 November 2008.

We take note of the additional information provided in your letter at our request, and are now content to lift scrutiny on this proposal.

5 November 2008

FISHERIES: IMPLEMENTING AN ECOSYSTEM APPROACH TO MARINE MANAGEMENT (8450/08)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, Department from Environment, Food and Rural Affairs to the Chairman

Thank you for your letter dated 21 May 2008 about my Explanatory Memorandum (EM) on the above mentioned Communication.

I am sorry that the EM did not provide sufficient explanation of how the devolved administrations are approaching this issue. In response, I have asked colleagues in Wales, Scotland and Northern Ireland for further details to expand on the information contained in my EM. The Welsh Assembly Government have confirmed that they fully support the line we have adopted and that this reflects how they plan to proceed, but detailed below is some additional information from Northern Ireland and Scotland.

In Northern Ireland fisheries are the responsibility of the Department of Agriculture and Rural Development (DARD) and the environment is the responsibility of the Department for the Environment (DOE). DARD supports the progressive implementation of the ecosystem approach to fisheries management through the CFP as outlined in my Explanatory Memorandum. DARD is also reviewing the fisheries issues contained in the draft UK Marine Bill to identify those areas where it may be appropriate to bring forward proposals for a Northern Ireland Fisheries Bill. Northern Ireland also intends to bring forward new marine legislation to put in place a framework, similar to that which will be delivered by the draft UK Marine Bill, to inform and deliver sustainable marine management through, in particular, the introduction of marine spatial planning. The new legislation will be delivered using a combination of the draft UK Marine Bill and a Northern Ireland Assembly Bill. DOE, working in partnership with the other relevant Northern Ireland departments, is taking this work forward.

Despite their views on the CFP, the Scottish Executive generally supports the Commission Communication, in particular the Commission's move towards adaptive management and policies tailored to specific fisheries. (You may know that Scottish Ministers have declared their wish to withdraw from the CFP, although constitutional arrangements do not allow this at present). Given the large size of the Scottish fleet and marine area the position as stated in my EM on reducing the overall fishing pressure, discard reduction, protection for sensitive marine habitats and ecosystem structures, and support for underpinning research is broadly reflective of Scottish views.

Two areas that Scottish colleagues would like greater emphasis on is the need to engage with stakeholders at the earliest opportunity and the use of incentives to promote greater stewardship of the marine environment by fishermen. This is reflected in their development of a system of Real Time Closures under the Scottish Conservation Credits scheme, which is part of the EU's cod recovery plan. In addition, Scottish colleagues have also recently established a fishing industry stakeholder group, the Scottish Fisheries Council, which will take forward strategic fisheries policies. The Council is supported by sector-specific sub-groups which will be expected to deliver a program of measures to achieve profitable industries, vibrant fishing communities and sustainable seas. The Scottish Government is also proposing a Scottish Marine Bill to provide for improved, integrated management of our territorial waters. They are seeking to extend the scope of that Bill to cover all Scottish waters. A consultation on suitable proposals will be published this summer.

Thus you will see that the approach taken in the devolved administrations is similar to that in England, and we will continue to work closely with each other to ensure that an ecosystem-based approach is at the heart of our drive to achieve more sustainable fisheries at UK and EU level. This will also be reflected in our approach to the reform of the CFP. Although we are only at an early stage in our consideration, the sort of principles we would want to see govern future management of EU fisheries are-

- A more stable regulatory framework with more regulation by long term management plans and fewer annual changes;
- A more regional approach to decision making with less micro-management from Brussels and more discretion to manage at regional level within an overall EU framework; and

— Better stakeholder involvement

A more regional management model Gould and should be appropriate and feasible, but it is essential that this remains within an overall EU framework to ensure things like consistency of control and enforcement standards and consistency of monitoring and data gathering.

I hope you have found this additional information helpful.

23 June 2008

FISHERIES: MULTI-ANNUAL PLAN FOR THE STOCK OF HERRING DISTRIBUTED TO THE WEST OF SCOTLAND AND THE FISHERIES EXPLOITING THAT STOCK (9342/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape 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 18 June 2008.

We support in principle the establishment of a multi-annual plan for the stock of herring distributed to the West of Scotland. We note, however, that you and others have significant concerns. Could you, please, elaborate on your concerns and could you explain how you intend to address them during the negotiations. We would appreciate in particular your views on the spawning stock levels set out in the draft Regulation.

We will hold the proposal under scrutiny and look forward to further information from you along the above lines and as negotiations progress.

18 June 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 18 June.

The UK will be working closely with the Commission to see the management of this stock put on a sustainable footing in the long term, given its importance for the UK pelagic industry. In particular, the UK welcomes the approach taken by the Commission with respect to setting the TAC in line with mortality targets (rather than focusing on stock size).

The UK also supports the comments which the pelagic RAC has previously submitted to the Commission with respect to previous versions of this management plan. The UK has therefore urged the Commission to take those comments on board and reflect them in the same way that they did in setting the Total Allowable Catch for 2008 at last year's December Agriculture and Fisheries Council.

However, the UK has three main concerns with respect to the detail of the management plan as it is currently formulated.

Firstly, we believe that there will be significant problems when there is an abrupt change of mortality rate from 0.25 to 0.2 where the stock's Spawning Stock Biomass falls below the 75,000 tonnes precautionary level. The UK believes that a linear relationship should be established between the target mortality rate and the stock size. This is also the view of the Commission's Scientific Technical and Economic Committee for Fisheries which said in its 2007 stock review report that a linear relationship between the target mortality rate and the stock size would be more effective in creating stable management of the stock. In addition, a linear relationship would not necessarily alter the precautionary nature of the management plan.

Secondly, the UK is keen to see the introduction of a provision allowing inter-annual quota flexibility of up to 10%. This provision was included in earlier versions of the management plan and the UK would like to see that provision being reinstated.

Finally, the UK would like to see the 15% TAC variation limit clause maintained throughout the management plan and not solely when the SSB remains above 75,000 tonnes.

9 July 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter (9 July) on the above proposal was considered by Sub-Committee D at its meeting of 18 July 2008.

We note that you intend to press for a linear relationship between the target mortality rate and the stock size. We would be grateful for clarification of whether scientific evidence supports the notion that the relationship between mortality rate and stock size is linear.

We support your intention to seek the introduction of a provision allowing inter-annual quota flexibility of up to 10 per cent. However, we do not support your objective of maintaining a 15 per cent TAC variation limit. We would like TACs to be allowed to vary more widely, along the lines proposed in the Commission's statement on fishing opportunities for 2009.

We will hold the proposal under scrutiny and look forward to further information from you along the above lines and as negotiations progress.

18 July 2008

FISHERIES PARTNERSHIP AGREEMENT: EUROPEAN COMMUNITY AND THE ISLAMIC REPUBLIC OF MAURITANIA (9295/08, 9298/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs Department for Environment, Food and Rural Affairs

Your Explanatory Memorandum (EM) on the above proposals was considered by Sub-Committee D at its meeting of 18 June 2008.

We agree that the proposed new Protocol responds to recent information on the fleet and to scientific information and we welcome too the levels of funding that will be made available for measures targeted at the local fishing fleet.

We are content to release the proposals from scrutiny.

18 June 2008

FISHERIES: RECOVERY OF COD STOCKS (7676/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, 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 21 May 2008.

As you will be aware, Sub-Committee D is currently undertaking a Review of the Common Fisheries Policy. We agree that a revision of the cod recovery plan is needed, and that the proposed revision is along the right lines.

We welcome particularly the move to a target mortality rate and to a more flexible effort management regime. We share your concern, however, that there is no scientific basis for the target mortality rate beyond the North Sea. In terms of the restrictions on the movement of effort between recovery zones, we understand your concerns but would be interested in your views on the alternative approaches available.

As regards the setting of TACs, you are concerned that the proposed mechanisms will lead to heavy cuts over a number of years. We would appreciate your views on whether improved dialogue between stakeholders, managers and scientists could help to address this issue.

We will hold the proposal under scrutiny pending your Impact Assessment, information on developments in Council and the completion of our own Inquiry.

21 May 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 21 May concerning this proposed EU legislation. I will of course let you have a detailed impact assessment as soon as possible, but in the meantime, thought it would be helpful to address the specific questions you raise.

Firstly, you asked about controls on the movement of effort between areas. The UK has a number of vessels who fish in more than one area and to prohibit any movement would severely limit their flexibility to take advantage of changing economic circumstances. We do however, recognise that to

allow a significant increase in effort in one area, might undermine the recovery process there. We are still considering how best to avoid this, but our initial thoughts suggest a simple limit on the scale of any movement, based perhaps on recent historic activity. For those fishermen who do need effort allocations in more than one area, we could also continue the current control arrangements. This would provide them with an overall total number of days, but limit the proportion of which that could be used in the more vulnerable cod areas.

You also wondered whether improved dialogue would reduce the need for the more 'severe' cuts in effort and quota proposed. It is certainly true that any scientific assessment on which these decisions are based, should reflect the very latest scientific advice. You will recall that the time lag in the ICES advice for North Sea cod meant that it was not reflecting the increased abundance being experienced by our fishermen on their grounds. We therefore used data generated by our Fisheries Science Partnership projects, to support a successful call for an increase in the TAC. This work is continuing and will again be used to support the appropriate UK line in the forthcoming end-year negotiations.

18 June 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter (18 June) on the above proposal was considered by Sub-Committee D at its meeting of 25 June 2008.

You suggest that proposed cuts in effort and quota should reflect the very latest scientific advice. We would be grateful if you could clarify how you envisage that up-to-date scientific advice can be factored in without re-opening negotiations on effort levels and TACs every time new information becomes available.

In your original EM, you emphasized that any cuts in TACs, and the accompanying timeframe, would have to be considered very carefully. We would be grateful if you could clarify whether you have reservations about the automatic nature of the reductions that the revised recovery plan might trigger, or about their magnitude, or indeed both.

We will continue holding the proposal under scrutiny pending receipt of your Impact Assessment, your responses to the points raised above, and the completion of our own inquiry into the Common Fisheries Policy.

25 June 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 25 June in response to mine of 18 June.

It is important that the cod recovery mechanism operates within an established framework, to provide certainty both to administrators and those who are bound by its rules. However, we have made clear to the Commission, that while the UK fully supports the policy of setting TACs in line with mortality rates (rather than increasingly unrealistic stock targets as previously), we have serious concerns about the scale of cuts proposed, particularly where a stock is between minimum and precautionary levels or, as is the current situation in the North Sea, where the stock's mortality rate is above Fpa.

Moreover, because of the gap between the period of time on which the scientific advice is based and the point at which changes to the TAC or effort levels take effect, it would be possible to find ourselves in a situation where the stock is in fact improving on the ground in real time, but these proposals indicate that a further TAC cut is necessary on the basis of stock assessments which are several months out of date. Such a situation can only lead to further increases in discarding.

In general terms therefore, we believe the direction of travel with respect to the need to reduce mortality levels is more important than the speed at which they are reduced.

On the accuracy of the science itself, our concern is more that the ICES assessments accurately reflect the experience of fishermen on their fishing grounds. We have a number of projects under the Department's Fisheries Science Partnership which are generating this kind of data and we will ensure it continues to be fed into the assessment process. It was, after all, the results of such work undertaken in the North Sea that supported the increase in the cod Total Allowable Catch for 2008.

9 July 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter (9 July) on the above proposal was considered by Sub-Committee D at its meeting of 16 July 2008.

We are still not clear on how you envisage that up-to-date scientific advice can be factored in without re-opening negotiations on effort levels and TACs every time new information becomes available.

We would also be grateful if you could elaborate on your statement that the direction of travel with respect to the need to reduce mortality levels is more important than the speed at which they are reduced.

We will continue holding the proposal under scrutiny pending receipt of your Impact Assessment, and clarification from you on the above points.

18 July 2008

Letter from Jonathan Shaw MP to the Chairman

I regret that I have not yet been able to provide you with an Impact Assessment to assist your deliberations on this dossier. Unfortunately it is taking a little longer than I had hoped, but I thought that in the meantime, it would be helpful if I provided your Committee with a summary of progress to date.

As I have previously explained, there are a number of elements of the Commission's proposal which gives us cause for concern. Either because they would result in the UK being put at a competitive disadvantage or because they are too bureaucratic or extreme. These elements, which are detailed in this letter, are being closely examined for the purposes of the impact assessment and for the formulation of our negotiating position for the forthcoming discussions in Brussels.

2005-2007 REFERENCE PERIOD

The Commission's proposal envisages that the effort baseline in the cod recovery zone will be calculated using the 2005-7 reference period. We are in the process of understanding exactly what the implications of this are for the UK and whether other options would better ensure that due credit is given to the significant effort reduction our industry has already achieved.

80/20 GEAR SPLIT

The Commission's proposal deems that gear groups that have contributed most to cod mortality (ie which account collectively for at least 80% of cod catches) would experience effort reductions of the same order of magnitude as any proposed cuts in TACs. However, we believe that account should be taken of the varying levels of cod mortality generated by different fisheries within these groups. The Commission's Scientific, Technical and Economic Committee for Fisheries (STECF) have been asked to look at the potential for 'derogations' of this kind.

GT CEILING

The Commission intends to cap capacity in gross tonnage (GT) terms as well as effort in kW. We believe this will unnecessarily restrict the flexibility of the fleet to adapt to changing economic circumstances and are therefore opposing this restraint (along with a number of other Member States who share our concerns).

TACs: PACE OF CHANGE

The Commission's proposal envisages that the respective Total Allowable Catches (TACs) may be reduced by up to 25%, to achieve the necessary reductions in fishing mortality. I have explained previously that we believe that this rate of change is too great (particularly if the stock is showing signs of recovery). It is in our view crucial to get the pace of TAC changes right, so that the long-term viability of the UK fleet is not compromised. We are therefore looking at different scenarios - paying particular attention to ensuring broad consistency with other management plans like those for hake and North Sea flatfish.

INCLUSION OF THE CELTIC SEA

The Commission's proposal envisages that the measures to recover cod should be extended to the Celtic Sea. However, we believe that this would place undue restrictions on the vessels involved, for

whom cod is but a small part of their catch - most of which is not subject to quota. We are therefore exploring with the industry, alternative measures which will allow the stock to recover, whilst recognising the particular circumstances of the fishery.

NEXT STEPS

We hope to be able to share a fuller analysis of the Commission's proposals in an Impact Assessment in the autumn. However, whilst we will seek to calculate the impact of these proposals in definitive terms we should stress that this is particularly difficult where (as is often the case) cod comprises only a small proportion of a fisherman's catch and therefore represents only a small part of their income. For example while 72% of the UK's over 10 metre vessels were engaged in the cod fishery in 2007, cod accounted for only about 5% of their total landings. What is more, these landings contributed only some 6% of the value of all fish landed in the UK.

22 July 2008

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

Your letter (22 July) on the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

While we support your approach to the negotiations on this Regulation in most respects, we remain concerned about your position on the pace of change of TACs. We believe that the Council must have room for manoeuvre in emergency situations where a stock is in particularly poor condition.

We will continue holding the proposal under scrutiny pending receipt of your Impact Assessment, and an update on the progress of negotiations in the Council.

10 October 2008

Letter from Huw Irranca-Davies to the Chairman

Thank you for your letter of 18 July to my predecessor, Jonathan Shaw, and your letter to me dated 10 October in relation to our Explanatory Memorandum on the above proposal. I apologise for the delay in responding to you.

You say in your letter of 18 July that you are not clear how we envisage taking the most up-to-date scientific advice into account when agreeing cod recovery measures, without having to re-open negotiations on effort levels and TACs (Total Allowable Catches) every time new information becomes available. In his letter to you dated 9 July, my predecessor explained that the UK fully supports the policy of setting TACs in line with mortality rates (rather than possibly unrealistic stock biomass targets as previously) - and thus decoupling the rate of change in the TACs from the size of the spawning stock. This should ensure a more appropriate and effective response to the reality of the situation in each fishery.

You also ask that we elaborate why we believe the direction of travel, with respect to the need to reduce fishing mortality levels, is more important than the speed at which they are reduced. In your recent letter, you are concerned that our approach would not give us the necessary flexibility to react in emergency conditions if the cod stocks are in a particularly poor condition. The UK has consistently argued that our objective for North Sea cod recovery should be to bring about a significant reduction in mortality to a level of 0.4. This is consistent with the World Summit on Sustainable Development target on fishing at Maximum Sustainable Yield by 2015 and the advice of ICES (International Council for the Exploration of the Seas) and the Commission's STECF (Scientific, Technological and Economic Committee for Fisheries). For the other sea areas we will seek to agree measures that recognise the state of the stocks, including when they are at very low levels, but which also allow industry to adapt and change to more acceptable fishing practices, for example by allowing them to continue to fish by adopting cod avoidance plans. It is essential, therefore, that we approach this in a way that is both practicable and deliverable and does not jeopardise the long-term economic viability of the UK industry. There are encouraging signs in the North Sea that the cod stock is starting to improve its position and we would want to build on this success, rather than risk undermining it by expecting fishermen to meet unrealistic targets. Such an approach will threaten their buy-in, which is crucial to the success of any such initiative.

I attach our impact assessment on the Commission's proposals, for which I apologise for the delay in getting it to you. This assessment details, with the aid of simulations undertaken by the Centre for Environment, Fisheries and Aquatic Science (CEFAS), that alternative TAC setting mechanisms can

achieve stock recovery in the North Sea within a similar time frame even with a more moderate rate of change. You will see in our impact assessment that our preferred option seeks to address concerns which my predecessor had previously communicated to you i.e. the removal of the Celtic Sea from the remit of the plan and individual mortality targets for sea areas outside the North Sea. Our preferred option also takes account of the dynamics of EU-Norway talks during which the TAC for a number of North Sea stocks, including cod, are agreed. We are also committed to developing and agreeing with industry a robust set of measures to reduce by-catch and discards in the cod fishery, which will be vital in ensuring the cod stocks in the North Sea continue to improve.

As you know probably know, we are expected to agree the revised cod recovery plan at November Agriculture and Fisheries Council (18-20 November) and I hope that receipt of this impact assessment will enable the Lords Scrutiny Committee to release this item from scrutiny.

10 November 2008

Letter from the Chairman to Huw Irranca-Davies MP

Your letter (10 November) on the above proposal was considered by Sub-Committee D at its meeting of 12 November 2008.

We were extremely disappointed to receive your letter and Impact Assessment eight days before the Council and a month after our previous letter. The timescales involved have rendered effective parliamentary scrutiny extremely difficult and we trust that you will seek to avoid such delays in the future. In that light, we look forward to the opportunity of scrutinising effectively the proposals for 2009 fishing opportunities and we would appreciate information from you on how you plan to allow timely and effective consultation of Parliament in the light of the extreme time pressures placed on the Government by the Council timetable for those proposals.

In terms of the substance of your letter and the Impact Assessment, we note that you are maintaining your stance against the possibility of introducing 25% cuts in Total Allowable Catches. We acknowledge that this may be necessary to secure industry "buy-in" but we can only accept a lower limit (15%) on possible cuts if effective measures are taken by industry to reduce by-catch and discards in the cod fishery. In the absence of such measures, flexibility to reduce the TAC beyond 15% must be maintained.

We are now in a position to release the proposal from scrutiny but, once the Council has concluded, we look forward to your comments on the points raised above, including an outline of the proposed measures to reduce by-catch and discards in the cod fishery.

13 November 2008

Letter from Huw Irranca-Davies MP to the Chairman

I write to you further to my letter to you dated 10 November 2008 on the above proposal and in response to your letter to me dated 13 November.

I accept that the circumstances in which we sought scrutiny clearance for this dossier were far from ideal and important lessons have been noted. I apologise for the short time your Committee had to consider our cod recovery impact assessment before the November EU Agriculture and Fisheries Council, which was a delay caused by the difficulties we experienced in gaining the necessary information from the industry on the potential impacts of the new regime. But I am grateful for the speed in which you were able to clear the item. In your recent letter to me you asked particularly about proposals for 2009 fishing opportunities. Earlier receipt of the TACs and Quotas proposals this year will enable us to give Parliament more time to scrutinise the proposals and our approach to the negotiations.

I can confirm that a package of measures was agreed in Brussels, which we believe significantly enhances the prospects for cod stock recovery. The UK voted in favour of the package, as we were able to secure a number of significant changes to the Commission's original proposals to reflect our particular concerns. These included:

- The exclusion of the Celtic Sea from the remit of the plan – recognising the different circumstances of the fisheries in this particular sea area and the somewhat stronger position of the stock. However, the cod there does require a more focused management regime and we will be assisting the industry, the North Western Waters RAC, the Commission and other Member States in the development of such;

- The inclusion of an alternative reference period as the basis for the effort allocations. This will allow Member States to choose between 2004-2006 and 2005-2007. We are likely to use the former, as it provides us with greater credit for the significant effort reduction we have already achieved;
- Removal of the TAC constraint for the North Sea for 2009, which will provide the basis for more realistic catch limits next year; and
- The facility to exempt vessels that catch relatively small quantities of cod and to reward fishermen who undertake more sustainable fishing activities.

There was little support for a reduction in the scale of the annual fishing mortality targets to be achieved under the plan. We are faced therefore left with a significant challenge in delivering the 25% cut required for next year. We did however succeed in getting agreement to deliver such through the sort of measures we have trialled this year (real-time closures, more selective gears, etc) rather than through blunt cuts in days. This will make the process easier and we will therefore be working with the industry to develop a suitable package. It will certainly not be easy, but will give us the opportunity to underline to the Commission, how serious we and the industry are about an effective cod recovery mechanism.

Finally, on the scrutiny process, I accept that the circumstances in which we sought clearance for this dossier were far from ideal and important lessons have been noted. I apologise that your Committee had insufficient time to consider our cod recovery impact assessment before the November Council, which was a delay caused by the difficulties we experienced in gaining the necessary information from the industry on the potential impacts of the new regime. I regret that this required me to override the scrutiny process, although this was necessary so that the UK was not put at a negotiating disadvantage.

I welcomed the opportunity to debate the cod recovery plan and other issues about fisheries during the annual fisheries debate (on Thursday 20 November). The debate was constructive with a number of important issues raised by Members from all sides. I am keen to continue this dialogue.

22 November 2008

FISHERIES: REPEALING THE ANTI-DUMPING DUTIES IMPOSED BY COUNCIL REGULATION ON IMPORTS OF FARMED SALMON ORIGINATING IN NORWAY

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Business, Enterprise and Regulatory Reform

Your Explanatory Memorandum (EM) on the above proposal was considered by Sub-Committee D at its meeting of 16 July 2008.

We understand that the Regulation was adopted in Council as an 'A' point on 17 July and that it has now come into force.

In discussion of the issue and the Government's EM, we were disappointed that minimal information was provided on the interest of devolved administrations. It is our understanding that the Scottish Executive does in fact have a very strong interest in this issue and we would therefore appreciate clarification on the position taken by the Scottish Executive and on the extent to which the Government worked together with the Scottish Executive.

21 July 2008

FISHERIES: TEMPORARY ACTION TO PROMOTE RESTRUCTURING OF FISHING FLEETS AFFECTED BY ECONOMIC CRISIS AND ADAPTATION TO HIGH FUEL PRICES (11369/08, 11370/08)

Letter from Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to inform you of an issue which is to come before the Agriculture and Fisheries Council on 15 July. This concerns a proposal for a Council Regulation instituting temporary specific actions aimed to promote the restructuring of the European Union fishing fleets affected by the economic crisis.

The proposal would allow funds to be redistributed within the European Fisheries Fund (EFF) to help accelerate fishing capacity reduction; help contribute towards the financing of temporary cessation of fishing activities; and help contribute to early departure measures (e.g. retirement).

An Explanatory Memorandum has been prepared and submitted alongside this letter. I regret that it will not be possible for the Scrutiny Committee to consider this proposal in the time available before Council but I wish to inform your Committee of the Government's intention to proceed and to support the proposal in order to ensure that the UK fishing industry can benefit from the redistribution of finance within EFF allocations, and the acceleration of capacity reduction, which is in line with our long term strategic sustainability aims.

I very much regret that this proposal is being pushed through Council so quickly and without prior scrutiny clearance. This is not a step we take lightly but I hope the Committee understands the exceptional reasons leading to us taking this course. I will of course report back on the outcome of Council's deliberations.

10 July 2008

Letter from the Chairman to Jonathan Shaw MP

We understand, further to your letter of 10 July, that the above items will be discussed, with a view to adoption, at the Agriculture and Fisheries Council on 15 July. Clearly the timetable is such that formal parliamentary scrutiny cannot be undertaken but we nevertheless wish to convey some of the conclusions we have reached on this subject in the course of our recent inquiry into the progress of the Common Fisheries Policy.

We acknowledge the strain placed on the fisheries sector by rising fuel prices. However, we believe that it is imperative that Member States should resist the temptation to offer subsidies that keep uneconomical businesses afloat. The increase in the cost of diesel fuel is not a temporary phenomenon, indicating that aid will only offer temporary relief to the industry. We consider that fleet over-capacity is a major contributor to the current problems facing the industry, in that poor profitability resulting from over-capacity renders fishing businesses vulnerable to increases in operating costs.

For these reasons, we are concerned about plans to finance the temporary cessation of fishing activities, and would urge you to press for an explicit, binding commitment that vessels that receive such aid must be incorporated in a fleet adaptation programme that leads to significant capacity reductions (Article 4a of the draft Regulation).

We support efforts to increase the levels of funding available for decommissioning programmes, and to encourage Member States to seize the opportunity to re-programme EFF allocations towards such schemes. We also support plans to expand the range of eligible beneficiaries of EFF socio-economic measures to workers in fisheries-related industries. We believe that EFF funds should primarily be targeted towards decommissioning and the diversification of employment opportunities in coastal regions.

However, we do not support plans to increase aid intensity for gear and engine replacement and fuel-saving equipment. We see no role for taxpayer-funded modernisation of the fleet, even where it results in greater energy efficiency, as the economic advantages (reduced operating costs) of modernisation programmes should be sufficient to stimulate private investment in a profitable industry.

We fundamentally oppose any relaxation – whether temporary or permanent – of the *de minimis* state aid regime applicable to the fisheries sector.

We note that neither you nor the Commission have been able to consult on these proposals, or prepare a formal impact assessment, due to the speed with which the proposal is being pushed through the Council. We regard this as regrettable.

We would be grateful if you could report back on the outcome of the Council's deliberations.

11 July 2008

Letter from Jonathan Shaw MP to the Chairman

Thank you for your letter of 11 July with regards to the European Commission initiative to institute temporary specific actions aimed to promote the restructuring of the European Union fishing fleets affected by the economic crisis. Thank you also for your understanding of the imposed tight timetable to which we had to work.

As you know, European Union Fisheries Ministers met in Brussels on Tuesday 15th July to discuss this issue. The Regulation went through via a Qualified Majority of votes, and after getting key assurances from Commissioner Borg over where discussions over budget should be held and the criteria for how to define a "fleet" under the new Fleet Adaptation Schemes, I was able to support the resulting balance in the package of measures being put forward. It offers us (and all other Member States) increased flexibility to choose how to use our European Fisheries Fund (EFF) allocation.

The main focus of the Regulation is on reducing the capacity of the EU fishing fleet, with the aim of bringing it into line with fishing opportunities. To access most of the additional flexibilities on offer, Member States will have to submit a Fleet Adaptation Scheme to the European Commission. The Scheme can cover the whole fleet or segments of the fleet, which, importantly for us, can be defined how we choose (e.g. geographically or sectorally).

It will be a requirement that the Scheme must include proposals to reduce fleet capacity by 30% of those captured by a Fleet Adaptation Scheme. Access will also be limited to vessels where energy costs represent at least 30% of their production costs in 2008. The capacity reduction will be in addition to that already achieved prior to 2008, and to allow this to happen, EFF funds will be shifted into Axis I (adjustment of the Community fishing fleet).

Government policy is that any measures introduced should underpin the strategic long-term sustainability of the industry. This is linked to the issue you raise in your letter that fleet over-capacity is the underlying issue that needs addressing. I agree with your assessment and pressed home the point that the short-term measures proposed in this Regulation (designed to accelerate the restructuring of the industry) must be linked to the long-term strategic sustainability aims.

On funding, the Commission's proposal was limited to refocusing resources within the existing EFF budget. The Commission's Communication did put forward options to find additional funding (such as the use of CAP budget under-spend) and a proposal to increase the *de minimis* limit, however, there were no formal proposals put to this Council on any of this.

I made it clear to my colleagues that in any case, I would not be able to agree to an increase in the *de minimis* limit as this would be counter-productive and would introduce unacceptable market distortions. This was a position that gained support from many other Member States.

Similarly, I stated that if a proposal to use CAP under-spend were to come forward, then it should not be considered by the Agriculture and Fisheries Council, but by the appropriate budget authority (as HM Treasury have made clear).

It is indeed regrettable that the European Commission and French Presidency have seen fit to push this through Council so quickly. As you mention in your letter, this has left no time for proper consultation, although the Commission has prepared a short impact assessment. This can be found in the pretext of the proposal for the regulation. It concludes that structural interventions are "essential" to address overcapacity, which will reduce the fishing fleet's dependency on fuel by reducing fleet size; allowing fish stocks to recover; and thereby increasing the profitability per vessel.

My officials are already in discussions with fishing industry representatives about the most suitable means of making this Regulation a reality and will be exploring with them the possibilities it offers.

1 September 2008

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

Your letter (1 September) regarding the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We support the reallocation of EFF fund into Axis I, and hope that this will facilitate the right-sizing of EU fishing fleets as you suggest.

We welcome your assurance that you would resist any proposal to increase the *de minimis* state aid ceiling for the sector.

Finally, we would be interested to hear how DEFRA and the devolved administrations intend to avail themselves of the opportunities offered by the new Regulation.

We will now clear these two documents from scrutiny, and await further information from you on the points raised above.

10 October 2008

FOOD PRICES: TACKLING THE CHALLENGE OF RISING FOOD PRICES (9923/08)

Letter from the Chairman to Lord Rooker, Minister of State for Sustainable Farming and Food, 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 2 July 2008.

We too support the broad thrust of the Commission's Communication and the Conclusions that were subsequently adopted by the European Council at its meeting of 19-20 June. We do consider, however, that there are a number of outstanding issues.

First, both the Commission and the European Council acknowledge that the CAP Health Check will be useful in adapting the CAP to the challenge of high food prices. It is not clear, though, whether the Commission and the European Council would wish the Council to act more radically than proposed in the legislation that was published on 20 May 2008. We would appreciate the Government's view on the extent to which the Health Check this year might be used as an opportunity to improve further than planned the market orientation of the CAP.

Second, we support your position that the Commission is not doing enough to ensure the sustainability of the EU's biofuels policy. We believe that the benefits of second generation biofuels must be urgently considered.

Finally, we note that the Commission proposes to maintain "an open but vigilant GMO policy". What is your view on the role that the EU's GMO policy can play in tackling the impact of high food prices?

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

2 July 2008

Letter from Lord Rooker to the Chairman

Thank you for your letter of 2 July 2008 concerning the above Explanatory Memorandum. You raised a couple of issues to which I am responding.

The CAP Health Check provides a useful mechanism in adapting the CAP to better meet the challenge of high food prices by offering the opportunity to remove a number of production constraints. Permanent elimination of set-aside, for example, will lead by 2020 to a modest reduction in the EU price for cereals of around 3-5%. Eliminating dairy quotas would lead to a reduction in the EU price of up to 11% by 2020. However different elements of the current CAP impact on food prices in different ways resulting in complex relationships. The CAP isolates the EU market from global prices, therefore the impacts of the CAP on EU and international prices are distinct and differ across commodities.

Over the long-term further CAP reform also needs to continue to reduce the distortion of world markets. Dismantling trade barriers will help both consumers and producers in the longer term as farmers become better connected to the market and can respond to increased demand, leading to lower food prices. Agreeing a balanced WTO deal at the WTO Ministerial offers us a real opportunity to make the global trading system fairer.

You also asked about the role that the EU's GMO policy can play in tackling the impact of high food prices. There is a specific concern at present that the operation of the EU regime could have a negative effect on the availability and cost of animal feed, and hence increase pressure on the price of livestock products. The combination of the EU's very slow GM approval system and a strict zero tolerance for unauthorised GMOs is threatening to seriously disrupt feed imports, in a context where the main supplier countries are planning to adopt new varieties of GM feed crop before they are cleared for use in the EU. In this situation traders are reluctant to import any commodity (GM or non-GM) that might have a trace of unauthorised GM material. This could have serious consequences for the UK livestock sector, which is dependent on imported soya and maize protein feed. The Government has been pressing the European Commission to find ways of improving the operation of the EU regime without compromising on safety, and it has undertaken to come forward with possible solutions within the next few months.

24 July 2008

FOREST BASED INDUSTRIES: INNOVATIVE AND SUSTAINABLE FOREST-BASED
INDUSTRIES IN THE EU: A CONTRIBUTION TO THE EU'S GROWTH AND JOBS
STRATEGY (7154/08)

**Letter from the Chairman to Phil Woolas MP, Minister for 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 30 April 2008.

We consider it desirable that in the areas where there is a clear legal basis for EU action (such as trade or emissions trading), the Commission should seek to coordinate the different EU policies that affect forest-based industries with a view to improving their competitiveness. In this regard we support the aim of the Communication.

In light of our forthcoming inquiry into the next phase of the EU Emissions Trading Scheme, we would invite you to set out your views on the issues raised by actions 9 and 10 proposed by the Commission in this Communication.

We will await clarification on the points raised above, but are in the meantime content to release the Communication from scrutiny.

2 May 2008

FRUIT PLANTS: MARKETING OF FRUIT PLANT PROPAGATING MATERIAL AND FRUIT
PLANTS INTENDED FOR FRUIT PRODUCTION (5877/07)

**Letter from Lord Rooker, Minister for Sustainable Farming and Food, and Animal
Welfare, Department for Environment, Food and Rural Affairs**

Further to my letter of 10 December 2007³, I am writing to update you on developments regarding the above Explanatory Memorandum (EM).

In that letter I described our key negotiating objectives for this proposal, which had been agreed following a public consultation exercise. The main conclusions from the consultation exercise were:

- Certification: it was agreed that some degree of harmonisation would be helpful, but not a prescriptive EU-wide scheme.
- *Conformitas Agraria Communitatis* (CAG) material: there was resistance to the prospect of compulsory official inspections of all stocks to be marketed at this category.
- Simplification measures: general support for revised measures on approval of suppliers and laboratories, but some support for record keeping in excess of the proposed 12 months, to reflect the lengthy period that fruit plants take to grow and during which potential problems may develop.
- Variety identification: general support to retain options for those varieties which do not have plant breeders' rights or are entered on a national list.

As anticipated, the Slovenian Presidency has made progress on this dossier a priority and, since my earlier letter, have held further Council Working Group meetings on 18 January, 22 February and 1-2 April. A further meeting is scheduled for 5/6 May, which the Presidency hope will be the final meeting to discuss technical matters and to agree a draft compromise text to submit to attaches and ultimately Agriculture Council. The purpose of this letter is therefore to provide feedback on the extent to which negotiating objectives are being achieved and to seek any views the Committee wishes to provide in advance of the next (possibly final) Council Working Group.

We have been making good progress against our objectives. In particular, the UK is represented on a sub-group established to consider future certification arrangements. The outcome is likely to be a common framework to facilitate movement of certified material between Member States. The detail of such a framework would need to be completed through comitology, but is most likely to be based on existing EPPO requirements, which most Member States (including the UK) comply with to a greater or lesser extent. This would avoid duplication and provide the opportunity to focus on the most significant aspects of the EPPO requirements. Mutual recognition of existing national schemes is

³ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 181

unlikely to be progressed as the Council has legal concerns in relation to operation of the single market.

There is now a recognition that certified and CAC material should be treated differently as regards the standards to be applied and the intensity of official inspections required. References to compulsory official inspections for CAC material have now been removed from most parts the text, in line with UK objectives, although further clarity is needed in relation to the section on official monitoring. We are hopeful of making progress at the final meeting, to ensure consistency throughout the text, and Commission measures are also expected in this area which will provide further opportunity to clarify arrangements.

On the simplification measures, supplier registration and revocation of laboratory accreditation have been retained and it is likely that the record keeping requirement will be set at 3 years. These are all in line with UK objectives.

Finally, the varietal identification requirements have proved to be a difficult area, with the need to find a balance between setting appropriate standards and avoiding unnecessary burdens on the industry. In line with UK objectives, the text has been amended to provide an amnesty for existing varieties which have an officially recognised description, but for varieties introduced in future the main options remain for such varieties to be entered for plant breeders' rights or to be officially registered. Some (but not all) fruit varieties introduced in the UK are entered for plant breeders' rights, but there is no national register in place. We will continue to press for additional flexibility in this area, for instance by recognising information from other sources, principally to avoid any unnecessary additional burdens on the industry, which has been our main objective.

I have updated the Annex to my earlier letter to reflect the conclusions referred to above. You will see that we have made substantial progress towards achieving all the UK objectives we agreed at the start of this process. If the Committee has outstanding concerns I would be happy to consider them in advance of the final working group meeting. Otherwise I suggest that I write again in May to confirm the outcome of that meeting, including the remaining areas of uncertainty referred to above.

8 May 2008

ANNEX

PROGRESS ON NEGOTIATING OBJECTIVES FOR THE RECAST OF DIRECTIVE 92/34:
MARKETING OF FRUIT PLANT MATERIAL

Issue	Ideal	Fallback	Current position
Certification: degree of harmonisation	Continued recognition of National schemes, with greater transparency between Member States.	Link to EPPO requirements.	Common framework preferred, with detail (most likely based on EPPO) to be completed through comitology.
Compulsory official inspections for CAC material	Random monitoring permitted, as at present.	Possibility of delegating checks to industry.	Most references to compulsory inspections removed.

<p>Simplification measures:</p> <ul style="list-style-type: none"> -replacement of supplier accreditation with registration -revocation of laboratory accreditation; -reduced record keeping requirement 	<p>Retention of proposals for supplier registration and revocation of laboratory accreditation.</p> <p>Increase of proposed record keeping requirement, from 12 to 24 months.</p>	<p>3 year record keeping requirement, as at present.</p>	<p>Supplier registration and revocation of laboratory accreditation retained.</p> <p>3 year requirement included.</p>
<p>Variety identification</p>	<p>Retention of supplier's list option.</p>	<p>Amnesty for existing varieties.</p>	<p>Existing varieties to be recognised as 'commonly known'. Additional options to be pursued for new varieties.</p>

SUPPLEMENT TO MINISTER'S LETTER OF 8 MAY 2008 (5877/07)

The Minister's letter of 8 May provided an update of developments and sought any views the Committee wished to provide in advance of, what was intended to be, the final Council Working Group meeting on 5/6 May. Unfortunately an administrative error meant that the Minister's letter was not despatched until after the meeting and this supplementary note provides additional information for the Committee's consideration.

The Committee will be aware from the Minister's letter that the majority of UK objectives regarding this Proposal had already been achieved, but it was hoped to make further progress at the 5/6 May meeting, particularly regarding the options on varietal identification. This particular aspect dominated much of the discussion on the second day and there was good support for a UK proposal to provide an alternative approach for those varieties intended for the local market, used mainly by amateurs. It was recognised that requiring such varieties to go through the plant variety rights process or a full registration system would be disproportionate. Therefore, a revision to the Proposal was accepted allowing such varieties to be marketed, providing they have an officially recognised description (such as a breeder's description, or information from trade literature). With this amendment, the list of available options is now more comprehensive, including:

- an amnesty for all existing varieties, allowing them to be marketed in future
- new varieties must have plant breeders rights, be officially registered (somewhere in the EU), or be going through an application process for either plant breeders rights or registration
- for varieties intended for marketing within the Member State concerned, with no intrinsic value for commercial crop production, officially recognised descriptions are acceptable
- varieties introduced from third countries must meet equivalent standards to those described for EU varieties.

This list now provides the flexibility sought to avoid a compulsory new registration system for all varieties, particularly those which have limited commercial value. If a UK registration system is

required at all under the new arrangements, its scope will be very limited, requiring only those varieties (assuming they do not meet one of the other options) with potential for the commercial market to be registered. Should registration be based on the system already in place for agricultural and vegetable species – which requires testing for distinctness, uniformity and stability (DUS) – costs might be in the order of £370 for the initial application fee plus £1,200 per variety per year (for between 3-6 years depending on species) i.e. between £3,970 and £7,570 per new variety. However, the costs could be substantially less if full DUS testing is not required and at this stage it is not clear that the Commission – who will introduce implementing rules in this area – intend to pursue full testing for fruit varieties.

The other main aspect pursued by the UK was the issue of official inspections, to clarify that different regimes will apply for certified material and the lower CAC category. While no changes were introduced to the text, the position was made clear and indeed the text requires any implementing rules in this area to “be proportionate to the category of material concerned”.

Although the meeting on 5/6 May was intended to be the final Council Working Group meeting on this Proposal, progress was slower than anticipated and a further meeting is now planned to resolve the few outstanding issues – none of significant relevance to the UK – and consider the draft recitals. The Slovenian Presidency remain hopeful of presenting this dossier for adoption at the June Agriculture Council.

Letter from the Chairman to Lord Rooker

Your letter of 8 May 2008 on the above proposal was considered by Sub-Committee D at its meeting of 14 May 2008. We also note the information supplied in the supplement to the Minister’s letter.

While we are content to clear the proposal from scrutiny, on the basis that you have achieved your negotiating objectives, we have reservations about some aspects of the proposal.

We are concerned to see that while the EU is committed to promoting biodiversity, initiatives such as this one may produce quite the opposite effect by creating regulatory obstacles to the pursuit of that goal.

We also note that those wishing to register new varieties with commercial potential will have pay quite significant fees. We would be grateful if you could outline what the purpose of the initial application fee and the subsequent yearly fees would be – i.e. specify what costs need to be recouped through fees.

We would be grateful for your response on the above points.

15 May 2008

Letter from Lord Rooker to the Chairman

Thank you for your letter of 15 May confirming the Committee's clearance of this proposal.

The final Council Working Group on this Proposal took place on 20 May and the Committee will be interested to know that the Presidency's compromise text was provisionally approved, the text includes the additional options on varietal identification referred to in my letter of 8 May. In view of the provisional support expressed by Member States, the Slovenian Presidency remain hopeful of achieving adoption at the June Agriculture Council.

In relation to the points raised in your letter, thanks to the amendments negotiated, there is now a more comprehensive list of options on varietal identification available than in the original proposal. In particular, provision is made for varieties that are subject to plant variety rights, are registered elsewhere, have already been marketed or are intended mainly for the amateur market. Only varieties which do not fall into one of these categories will need to go through a separate registration process. The last two options in particular will be helpful in the context of preserving genetic diversity.

As regards the registration fees for new, commercial, varieties I would reiterate that only very few varieties are likely to be subject to such requirements and that at this stage it is not clear that the Commission intends to pursue DUS testing, in line with the existing system for agriculture and vegetable species. However, in this worst case scenario, assuming that an equivalent system was introduced, I can tell you that the initial application fee would be set at a level to recover the full administrative cost of registering the variety. The subsequent yearly fees would cover the cost of testing the variety to determine its distinctness, uniformity and stability. If accepted for listing, an annual fee might also be appropriate to cover the cost of maintaining variety registration and reference collections.

More generally, you have asked about the regulatory burdens associated with the Proposal. While it is true that a limited number of new varieties may need to be registered as a result of the Proposal, there will be some benefits from improved transparency and consistency on variety identification. This should minimise the likelihood of misleading and inaccurate descriptions being used, therefore avoiding the possibility of trading disputes within the industry and with consumers.

Additionally, the varietal identification requirements represent just one aspect of the Proposal and in other respects the Proposal retains or introduces some helpful simplification measures. For instance Member States may authorise suppliers to market material intended for trials, scientific or selection work, or to help preserve genetic diversity even where full compliance with the Directive requirements is not possible.

Specific exemptions are included for small producers and those involved with local circulation and the accreditation process for suppliers has been replaced with a simplified registration process. The retention of the so-called CAC category will ensure that varieties not suitable for progression through certification schemes (such as niche varieties or those with less commercial value) may still be marketed.

Overall, we believe that the Proposal provides a good balance between setting appropriate minimum standards and facilitating the marketing of propagating material and fruit plants. This includes varieties intended mainly for the commercial market, but also those of less commercial value. In particular, we believe that biodiversity will be protected, not least through the derogations and exemptions described and through the options for existing varieties and amateur varieties, which will allow the continued marketing of such varieties, even though they do not necessarily comply fully with the requirements for modern, commercial varieties, on distinctness, uniformity and stability (DUS).

I hope that this additional information is helpful to the Committee.

31 May 2008

GENETICALLY MODIFIED COTTON: PLACING ON THE MARKET OF FOOD AND FEED PRODUCTS CONTAINING, CONSISTING OF, OR PRODUCED FROM GENETICALLY MODIFIED LLCOTTON25 (9070/08)

Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 11 June 2008.

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

We are therefore content to release the proposal from scrutiny.

11 June 2008

GENETICALLY MODIFIED MAIZE: PLACING ON THE MARKET OF FOOD AND FEED PRODUCTS CONTAINING, CONSISTING OF, OR PRODUCED FROM GENETICALLY MODIFIED MAIZE GA21

Letter from the Rt Hon Dawn Primarolo MP, Minister of State for Public Health, Department of Health to the Chairman

Thank you for your letter of 1 April 2008⁴, in which you asked why this proposal was deemed urgent. The explanation lies in the desire to minimize possible disruption in the trade in maize-based animal feed products that are imported into the EU (including into the UK) from regions where GA21 maize is already being grown, notably Argentina.

The application for EU authorisation of GA21 maize was submitted by the company Syngenta in July 2005. Applications for authorisation were also submitted in other countries, including maize-growing countries that export maize products to the EU. The commercial development and production of GA21 seed varieties proceeded in parallel with these applications and it was expected that the various

⁴ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 188

authorisation procedures would be completed by the time that the seed was ready to be marketed to farmers.

In the event, the safety assessment by the European Food Safety Authority was not completed until October 2007, by which time GA21 maize was already being legally grown in maize exporting countries, particularly Argentina. Since the new maize harvest from Argentina began to arrive in Europe towards the end of March and unauthorised presence would have prevented these imports, the Council did not wish to delay its response to the Commission proposal.

It is possible that a similar situation could arise with future proposals for authorisation of GM food and feed that are referred to Council. I can assure you that in such cases the Government will seek to ensure that the six-week period for parliamentary scrutiny stipulated in the Protocol on National Parliaments is respected, except on well-justified grounds of urgency. We would expect proposals to be fast-tracked in a minority of cases, rather than routinely for the majority of GM food and feed authorisations.

6 May 2008

GENETICALLY MODIFIED OILSEED RAPE: T45 (1829)

**Letter from the Chairman to Dawn Primarolo MP, Minister of State for Public Health,
Department of Health**

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 19 November 2008.

We have consistently supported the risk assessment process in place and we share your view that the EFSA opinion on this application should be accepted, and authorisation extended.

We are therefore content to release the Proposal from scrutiny.

19 November 2008

GENETICALLY MODIFIED SOYBEAN: PLACING ON THE MARKET OF FOOD AND FEED PRODUCTS CONTAINING, CONSISTING OF, OR PRODUCED FROM GENETICALLY MODIFIED SOYBEAN A2740-12 (8996/08)

**Letter from the Chairman to Dawn Primarolo MP, Minister of State for Public Health,
Department of Health**

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 11 June 2008.

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

We are therefore content to release the proposal from scrutiny.

11 June 2008

GENETICALLY MODIFIED SOYBEAN: PLACING ON THE MARKET OF FOOD AND FEED PRODUCTS CONTAINING, CONSISTING OF, OR PRODUCED FROM GENETICALLY MODIFIED SOYBEAN MON89788 (14683/08)

**Letter from the Chairman to the Rt Hon Dawn Primarolo MP, Minister of State for
Public Health, Department of Health**

Your Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 12 November 2008.

We have consistently supported the risk assessment process in place and we share your view that the EFSA opinion on this application should be accepted, and authorisation approved.

We are therefore content to release the Proposal from scrutiny.

13 November 2008

GEOLOGICAL STORAGE OF CARBON DIOXIDE (5835/08)

Letter from the Chairman to Malcolm Wicks MP, Minister of State for Energy, Department for Environment, Food and Rural Affairs

Your letter of 28 April 2008 on the above proposal was considered by Sub-Committee D at its meeting of 14 May 2008.

We note the progress of formal and informal discussions with respect to the role of the Commission in the regulatory process and to the transfer of ETS liabilities to the State, and request that you update us once further progress has been made on these issues.

We are pleased to hear that you will be consulting stakeholders on your negotiating position on the Commission's proposal as part of the forthcoming consultation on the UK domestic regime and we look forward to receiving the outcome of that consultation process.

We will await that outcome, an updated impact assessment, and further information on the progress of negotiations. In the meantime, we will continue to hold this proposal under scrutiny.

15 May 2008

Letter from Malcolm Wicks MP to the Chairman

I recently wrote to the Committee with more detail on three issues that arose during our debate on 13 May. I am writing again to provide the Committee with an update on negotiations and the timetable for agreement, and also to provide the Committee with a hard copy of the consultation 'Towards Carbon Capture and Storage', which was published on 29 May. The consultation is also available on the Department's website at: <http://www.berr.gov.uk/consultations/page46811.html>

The document outlines the proposed CCS Directive and invites views on the regulation of CO₂ storage and the principle of carbon capture readiness. On the latter, it seeks views on the definition of carbon capture readiness (CCR) proposed in the EU draft Directive, including:

- what CCR means and to which combustion plants it should apply;
- whether CCR should be addressed by developers when designing new combustion plant and be taken into account by the regulatory authorities when deciding whether or not to consent to such plant;
- how any such requirement would be incorporated into the consenting process under section 36 of the Electricity Act 1989 in England and

Negotiations on the draft Directive have progressed well. The key outstanding issues are the Commission's role in the issuing of draft storage permits, the transfer of responsibility and liability to the State, and the amendment of the Large Combustion Plant Directive to require "capture readiness". The UK is supported by a blocking minority of five other Member States in remaining opposed to the Commission's review of all draft permits to be issued by the Member State. The UK has been actively assisting the French Presidency and other Member States in reaching an appropriate way forward on the transfer of storage sites to the State and has been supporting in principle (subject to a reservation) the approach of Article 32 on capture readiness - these are likely to remain difficult issues in negotiations that will hopefully be resolved in the Autumn.

The French Presidency has announced their intention to seek a first reading deal on this Directive by the end of their Presidency (the end of 2008). The vote in the lead committee in the European Parliament (ENVI) will take place on 25 September, and will be followed by a series of negotiations between ENVI committee and the French Presidency, on behalf of the Council. I attach a copy of the EP Rapporteur's DRAFT REPORT for your information. It is the Government's view that the report is on the whole very positive and contains many sensible amendments. There are however, several areas for concern; notably the proposal to allow the Commission the power to suspend permits awarded at national level and also the proposal for mandatory carbon capture and storage in the future (see attached UK Government briefing for further details (Briefing not Printed)). The French Presidency hopes to have a compromise agreed before 21 October Environment Council, in order to be in a position to reach political agreement either then, which seems unlikely, or at the 4-5 December Environment Council: I would therefore appreciate it if you consider lifting your scrutiny on this Directive at earliest convenience following the summer break.

17 July 2008

Letter from the Chairman to Malcolm Wicks MP, Minister of Energy, Department of Energy and Climate Change

Your letter of 17 July on the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We note that the French Presidency hopes to reach political agreement on this proposal possibly as early as 21 October. We would therefore welcome an update from you on the progress of negotiations with the European Parliament following the recent Environment Committee vote on this Directive, and information on the outcome of your consultation on this proposal. We are also still awaiting receipt of an updated impact assessment.

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

10 October 2008

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

Thank you for your letter dated 10 October 2008 concerning the outcome of your meeting of 8 October 2008. When Malcolm Wicks last wrote to your committee on 17 July, there was a small possibility that the French Presidency would try to get early agreement on this draft Directive. This is no longer the case, and we are now informed that the earliest Ministerial discussion of this proposal will take place on 5 December, with political agreement either then, or at the next European Council on 15-16 December.

I would like to update you on progress in Council negotiations and the outcome of the vote in the European Parliament that took place on the 7 October. As things currently stand there remain a few outstanding issues, of importance to the UK, on which the views of other Member States differ significantly. Getting the detail right is understandably difficult, because the Directive aims to create an EU-wide framework for the storage of carbon dioxide, without there being any real experience of regulating CO₂ storage in practice.

The Commission and the Council have attempted to establish principles for an effective risk-management framework that will result in more detailed and specific requirements being set by Member State competent authorities in individual storage permits on a site by site basis, according to variations in geology. However, despite the clear geological rationale for this approach, many Member States still think the framework is too vague and have asked the Commission for guidelines in a number of areas. In addition, Council has agreed to insert a review clause around 2015 (the precise date is subject to further negotiations) that will look specifically at a number of areas in light of experience gained in the first phase of implementation. This review clause is an important safeguard to ensure that the arrangements will be amended as necessary according to experience as a result of the demonstration of CCS technology in Europe.

The main outstanding issues in Council negotiations are: the role of the Commission in permitting sites; the conditions for transfer of sites to the State; the financial provisions, in particular in relation to long-term liabilities; and the provisions on carbon capture readiness.

Regarding the role of the Commission, the majority of Member States supported the Commission's proposal that it should have up to six months to issue its opinion on each draft storage permit and each decision by a competent authority to accept responsibility for a site. Article 10, as currently drafted, requires Member States to make applications available to the Commission within one month of receipt. The Member State should then make its draft permit available to the Commission. If the Commission decides not to issue an opinion it shall inform the Member State within one month. If the Commission does issue a "non-binding" opinion on the draft permit it shall do so within four months.

This is similar to the parallel process proposed by the European Parliament, which would require applications to be sent to both the Commission and the Member State competent authority at the same time, and for the Commission to produce a "consultative opinion" within three months. Both of these proposals reduce uncertainty and time delay. However the Commission has indicated that it would probably wish to give an opinion on all projects in the first phase, unless they did not raise any new issues. This provision will be specifically examined under the review clause. Our concern is that it is not currently time-limited, and we are therefore seeking wording to ensure that this provision falls away at the review unless evidence shows it is still required.

On the transfer of responsibility in Article 18, the Council has made a number of changes to better define when the site is ready for transfer. The proposal now requires operators to demonstrate the following: the conformity of the actual behaviour of the injected CO₂ with the modelled behaviour; the absence of any detectable leakage; and the evolution towards long-term stability. As per the original proposal, the competent authority will not be able to accept responsibility for a site until all

available evidence suggests that the stored CO₂ will be completely and permanently contained. Council has added additional prerequisites, including a minimum period after closure of the site, the fulfilment of financial obligations, and the sealing of the site and removal of injection facilities.

Many Member States were concerned that some necessary actions on the part of the competent authority will remain following acceptance of the long-term responsibility for that site – in particular monitoring, albeit at a very reduced frequency, if at all necessary. This has led to the insertion of a new provision (Article 19a) requiring the operator to make a financial contribution to the competent authority before a site can be transferred to the State. Some Member States, including the UK, are keen to avoid specifying further details and would prefer the contribution to be determined at national level, whilst others are seeking a harmonised minimum level, such as requiring that the contribution covers at least 30 years of monitoring costs.

The European Parliament would like to go further and has proposed that storage site operators be required to contribute to a fund from commencement of injection (in addition to requiring the maintenance of the financial security in Article 19). The UK is not supportive of this approach, as in our view the period following the transfer of storage site to the State, by definition, is the lowest-risk period during which there should be no further costs and only contingent liabilities. It remains unclear how the European Parliament intends such contributions to be committed to from the outset of operations in a way that would avoid the likelihood of contributions to the fund becoming a tax on storage operations.

On Article 32 concerning “carbon capture readiness”, a small number of Member States, including the UK, have supported the Commission’s original proposal, which would have applied to new combustion plants of 300 MW electrical output or more. However, there is a small number of Member States totally opposed to this provision. There are also some who will only accept a space requirement for those combustion plants for which suitable storage is available, transport is feasible, and it is technically and economically feasible to retrofit for CO₂ capture.

This weakens the requirement. However, the Commission has confirmed that it does not prevent Member States applying more stringent requirements (Article 176 of the Treaty expressly preserves Member States’ rights to introduce more stringent environmental protection measures than the Directive). This justification would apply if the text remained as currently drafted and the Government decided to proceed on the basis of its proposals in the “Towards Carbon Capture and Storage” consultation.

Instead of capture readiness, the European Parliament has proposed for Article 32 an Emissions Performance Standard of 500g/kwh from 2015, to be reviewed in 2014 with the possibility of adjusting the scope of the provision as required. This would apply to electricity generating combustion plants over 300MW granted a construction licence after 1 January 2015. The majority of Member States are against this proposal with all Member States expressing a reservation. The Council has not yet agreed a basis for negotiations with the European Parliament.

The partial impact assessment is continuously being updated to take account of possible compromise outcomes from the forthcoming “trialogue” between the Commission, the European Parliament and the French Presidency (on behalf of the Member States), which will enable a first reading agreement to be achieved.

However, finalising the impact assessment will not be possible until the text has settled. Negotiations continue to progress rapidly and in some areas it is uncertain where any compromise may lie, and it may not be found until late in the day.

The Committee also asked for an update on the public consultation “Towards Carbon Capture and Storage”, which closed on 22 September. DECC is currently assessing the 78 responses, many covering the majority of the 40 questions. Ministers hope to respond within the normal 3 month time frame. All the responses will be published alongside the Ministerial response as is normal practice.

Therefore, whilst I will continue to write to update your committee, if the committee is content with the principles of the Government’s approach to these negotiations, I would ask that it lift scrutiny at the earliest opportunity.

28 October 2008

Letter from the Chairman to the Rt Hon Ed Miliband MP

Your letter of 28 October on the above proposal was considered by Sub-Committee D at its meeting of 5 November 2008.

We note that you now expect to reach political agreement on this proposal on December 5 at the earliest.

We are broadly supportive of your approach to the negotiations on this proposal, but note that you still expect the text to evolve during the course of the forthcoming “trilogue” between the European Parliament, the Commission and the Council Presidency.

We would be grateful if you could provide us with an update on the progress of those negotiations, and supply us with an updated (if not finalised) impact assessment ahead of our meeting on November 19, at which we will consider lifting scrutiny on this proposal. In the meantime, however, we will continue to hold this item under scrutiny.

5 November 2008

Letter from the Chairman to the Rt Hon Ed Miliband MP

Your update of 18 November (telephone conversation) on the above proposal was considered by Sub-Committee D at its meeting of 19 November 2008.

Like you, we are cautious about the Commission’s role in the approval of storage sites as we fear that this will add an additional layer of bureaucracy to the application process. We therefore welcome the inclusion of a review clause.

We also support your stance on the conditions for the transfer of storage sites to the State, as we believe that the State must share some of the residual risk of leakage if commercial operators are to be encouraged to pilot this technology.

We note that the inclusion of Enhanced Oil Recovery projects in the scope of this Directive is critical for the UK, and support your intention to press for such projects to remain included.

We are now content to lift scrutiny on this proposal, but would welcome a further update from you in December, once the last “trilogue” between the European Parliament, the Commission and the Council Presidency has taken place.

19 November 2008

INTERNATIONAL ORGANISATION OF VINE AND WINE (OIV): TERMS AND CONDITIONS OF THE EUROPEAN COMMUNITY’S ACCESSION (13934/08)

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 26 November 2008.

The Committee was clear in its report, “European Wine: A Better Deal for All” that the OIV’s list of wine making practices should be the benchmark for the EU’s own methodology. We therefore consider it sensible that the Commission be authorised to open and conduct negotiations with the OIV on the terms and conditions for the European Community’s accession.

You note that the recommendation gives rise to no policy implications. We would be grateful if you could indicate whether you welcome the prospect of EC accession to the Organisation of Vine and Wine (OIV) in principle, and whether the UK itself would consider accession.

We would also welcome further information on whether those EU Member States that are already members of the OIV would in principle be content to cede voting and intervention rights to the Commission in areas where the Community has competence.

In the meantime, we are content to lift scrutiny on this Recommendation.

26 November 2008

MARINE MANAGEMENT: THE ROLE OF THE CFP IN IMPLEMENTING AN ECOSYSTEM APPROACH TO MARINE MANAGEMENT (8450/08)

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, 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 21 May 2008.

We welcome the content of the Communication although we consider that the Community is still at an early stage in understanding how the different strands of marine management, including fisheries, should fit together. We also anticipate that implementation problems may arise once the practical implications of an ecosystem-based approach to marine management start to become clear. In that context, we consider that issues such as the impact of particular types of fishing gear upon sensitive marine environments must be taken extremely seriously.

We regret that your EM did not refer to the positions adopted by the Devolved Administrations as regards the implementation of an ecosystem-based approach to marine management. We note that the Scottish Executive recently published its own document entitled, "Scotland's Seas: Towards Understanding their State". In that context, we would be grateful if you could outline how you envisage different tiers of government (Devolved, UK, EU) working together to deliver the ecosystem-based approach to marine management.

We are content to release the Communication from scrutiny, but would welcome your comments on the points raised above.

21 May 2008

MERCURY: BANNING OF EXPORTS AND SAFE STORAGE OF METALLIC MERCURY (14629/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

I am writing to update your Committee on the current position on this dossier, since it has recently been the subject of a Second Reading in the European Parliament.

The EU is a main global supplier of mercury and, in line with the Community Strategy on Mercury, the Commission presented proposals to prohibit the export of metallic mercury from the Community from 1st July 2011. After that date, metallic mercury considered as waste would need to be temporarily stored or disposed of in a way that is safe for human health and the environment.

The Environment Council in Luxembourg on 28 June 2007 reached Political Agreement by unanimity on the Commission's proposals, with a view to adopting a Common Position. The main outcomes were entirely acceptable to the UK. The Common Position was adopted on 20 December 2007 and transmitted to the European Parliament for its January II session (31 January 2008).

The Committee on the Environment, Public Health and Food Safety of the European Parliament (ENVI) voted 36 amendments to the common position at its meeting on 26 March 2008. The main proposals from the UK's point of view were:

- Extension of the scope to include cinnabar ore, mercury compounds and mercury-containing products banned in the EU, plus an import ban on mercury, cinnabar ore and mercury compounds;
- More extensive reporting obligations for industry;
- Obligations during storage;
- A single article 175(1) legal base;
- The export ban to be brought forward from 1 July 2011 to 1 December 2010.

In order to reach a second reading agreement with the EP, the Presidency (Slovenia) produced a compromise text, which moved somewhat towards the ENVI position.

The Presidency suggested accepting extension of the export ban to cinnabar ore and mercury mixtures, whilst rejecting the other ENVI amendments. Cinnabar ore is not produced or exported from the EU, so the impact of its inclusion would be zero. The addition of mercury mixtures would also not cause a problem as long as the percentage of mercury was set sufficiently high, and the Presidency proposed an appropriate minimum concentration of 95%. Although we had concerns about the extension of scope without proper impact assessment, these proposals were acceptable.

The Presidency also considered that agreeing to additional reporting requirements for companies could dissuade the EP from asking for additional reporting from the Commission and Member States. Whilst we questioned the basic need for this, we recognised the need to find a bridge with the EP and so were prepared to be flexible.

ENVI had proposed that responsibility should lie with the owners of mercury storage facilities and that Member States should set up a fund to ensure that financial resources would be in place for temporary storage and final disposal. The Presidency suggested these amendments be rejected, with which we agreed.

The Presidency made it clear that they considered that the Council should not propose any compromises on either the legal base or earlier introduction of the export ban. On the former, the UK had supported a single legal base but the Commission made it clear that they did not have much room for manoeuvre; however, they also stated that they would not want a deal to fall as a result of this and therefore might be more flexible at a later stage in the negotiations. We preferred to retain the current date for the introduction of the export ban but, after checking with the UK industry that this would not cause them undue difficulties, agreed that 15 March 2011 would be an acceptable compromise.

Overall, the Presidency's compromise text was acceptable to the UK's objectives and COREPER gave the Presidency a mandate for negotiating towards a second-reading agreement with the EP on the basis of these proposals.

A number of informal contacts took place between the Council, Commission and the EP and the Presidency returned to COREPER in early May with a slightly revised package, which included the earlier compromise text plus the following:

- i. inclusion of both mercury chloride and oxide, but with a derogation for exports for R&D, medical and analytical purposes;
- ii. in due course, the Commission to consider extension of the export ban to other mercury compounds, mixtures with a lower mercury content and products containing mercury particularly thermometers, barometers and sphygmomanometers; and
- iii. clarification that mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury would be prohibited from the same date as the ban.

COREPER agreed that these additional suggestions were acceptable.

On 21 May, the EP in Plenary adopted 22 compromise amendments to the Common Position which corresponded to what had been agreed during the informal contacts between the three institutions. These amendments will now be scrutinised by the legal linguists of the Council and Parliament. I do not yet know when they may then go to Council for approval as an A item, but I will keep you informed of developments. Overall, the outcome of the second reading is entirely satisfactory to the UK.

13 July 2008

MERCURY DEVICES: RESTRICTIONS (6459/08)

Letter from the Chairman to Phil Woolas MP, Minister for the Environment, Department for Environment, food and Rural Affairs

Your letter of 22 April 2008⁵ on the above proposal was considered by Sub-Committee D at its meeting of 30 April 2008.

We are grateful for your clarification of the nature of the shared competence areas in which the Commission is seeking to be involved. We welcome your preference for a "team EU" approach in such circumstances whereby the Commission and the Member States would act collectively, deploying their best available expertise.

We note that the UK Government is closely involved in the UNEP Open-Ended Working Group on Mercury and welcome this also.

Finally, we note your intended approach to an eventual vote on this Recommendation. In light of the continued uncertainty on the positions of other Member States, and on the consequent likelihood of the Recommendation being adopted, we will continue to hold this item under scrutiny and look forward to information from you as the discussions progress.

2 May 2008

⁵ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 183

Letter from Phil Woolas MP to the Chairman

Further to our recent exchange of letters on the above proposal, I'm writing to update you on how the discussions are progressing.

The Recommendation was considered at the Working Party on International Environmental Issues (WPIEI) on Friday, 16 May - attended mainly by technical experts from Capitals. Several Member States took a stance similar to that of the UK - i.e., that the Commission's request-for a mandate is premature.

The Recommendation will be discussed further at the Working Party on the Environment this Friday (23rd May), before going to COREPER (date to be confirmed). It is not yet certain, but the issue could be referred to the Environment Council on 5 June.

We do not know whether the majority will continue to take a similar line to ours and we cannot yet discount the possibility that maintaining our view might cause us to become isolated. (It has sometimes been the case that the Brussels based officials of other Member States are less opposed to Commission mandates than the experts from Capitals.)

So long as there is a blocking majority - and we will of course be seeking to encourage this - we will maintain our position. If however it is clear that we will not succeed in defeating the proposal in Council, we will withdraw our objection: we would wish to avoid an obvious and exposed defeat on this technical issue, as this would establish a stronger precedent for future cases.

I will continue to keep you informed of developments. Given that the proposal may go to Environment Council on 6 June, it would be very helpful if the proposal could now be cleared from scrutiny at the next opportunity

22 May 2008

Letter from the Chairman to Phil Woolas MP

Your letter of 22 May on the above proposal was considered by the Chairman of Sub-Committee D on 3 June 2008.

We note that while you still consider that the Commission's request for a mandate is premature, you do not know whether the majority of Member States will continue to take a line similar to that of the UK. You explain that the issue may be referred the 5 June Environment Council, and that you are concerned to avoid being isolated in opposition to this Proposal. If you do not succeed in forming a blocking minority, you therefore propose to withdraw your objection.

We take the view that the UK ought to maintain its opposition to the Recommendation if there is significant support for its view from other Member States – as you indicate there is at present – even if this support does not amount to a blocking minority. For this reason, we will continue to hold this item under scrutiny, and would ask you to keep us informed of developments relating to this Proposal.

3 June 2008

PESTICIDES: SUSTAINABLE USE OF PESTICIDES (11896/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

Your letter of 28 November 2007 requested a copy of the Council's Common Position on the above proposal.

This is attached [not printed], along with a copy of the Council's 'Statement of Reasons',

The Council adopted the Common Position last month. It represents a good deal: generally well balanced; proportionate; and clearly defining Member States responsibilities. It should help to raise standards relating to the use of pesticides across the Community closer to the levels adopted in the UK. We achieved key negotiating objectives relating to: training (need for schemes to be based on continuous professional development); sprayer testing (proportionate regime, including derogations for knapsacks and other hand-held equipment); protection of watercourses (no compulsory use of buffer zones); and integrated approaches (relatively light touch regime).

The position on the European Parliament has not changed since I wrote to you on 20 November 2007. The second reading is expected to commence this September,

29 June 2008

PLANT PROTECTION PRODUCTS (7538/08, 11755/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment, Food and Rural Affairs to the Chairman

Thank you for your letter of 28 November 2007⁶ asking about progress on developing transitional arrangements between the current regulatory framework for authorising pesticides and the revised one proposed in this Regulation. This was, in fact, one of the last issues to be addressed by the Council Working Party which considered this proposal, and I can now let you know how the matter has progressed.

The Commission's proposal recognised the need for transitional arrangements. We were concerned, however, that it did not fully reflect the complexity of the existing regime under Council Directive 91/414/EEC, or of national regimes for aspects which are not yet harmonised. We believe the Regulation should provide for the continued application of the Directive to active substances, and to products containing those substances, which are already being processed under the Directive when the new Regulation comes into force. Changing the rules during the course of that process would be unfair on companies, which will have prepared on the basis of rules which were current at the time. It would also be difficult for regulators to manage. We therefore consider that it would be better to complete the process under the Directive's provisions and apply the new Regulation when these substances are next due for review by the Community.

To this end, we proposed amendments which would provide for the Directive's rules to be followed in all cases where applications for approval of active substances have passed at least the first formal stage in that process. This is the point at which the dossier has been determined to be complete and thus acceptable to enter the evaluation procedure. These arrangements would apply in all cases, including applications for approval of new active substances, for renewal of approvals which are due for review, and for substances which have been withdrawn from review under the Directive but for which fresh applications for approval have been made. They would extend through all stages of the approval process up to and including the final stage, at which products which contain approved substances are re-registered in the Member States. I am pleased to say that our proposals have been accepted and included in the Slovenian Presidency's revised text.

We are also concerned to allow Member States to maintain national rules and procedures for matters which will be included in the harmonised Community regime for the first time when the Regulation comes into force. The Commission proposed, for example, to introduce provisions to exclude from plant protection products any coformulants which are found to be unacceptable. The Council has proposed introducing a requirement for the authorisation of adjuvants which are added to plant protection products. We have, therefore, supported the inclusion of derogations which will enable Member States to continue to regulate substances such as coformulants and adjuvants in accordance with national rules, until harmonised Community provisions take effect. Again, I am pleased to say that suitable provisions have been included in the revised text.

In our letter of 14 November 2006, we mentioned a number of other aspects touching on transitional measures. As regards supplementary regulations, the text specifies which measures are considered to amend non-essential elements, inter alia by amending the Regulation, and are thus to be adopted in accordance with the regulatory procedure with scrutiny by the European Parliament. Other aspects will be amended by regulatory procedure alone. The revised text provides for active substances already approved under the Directive to be included in a separate Regulation, the detailed content of which has been left to be determined through comitology. The text also provides for the direct transfer of data requirements as they stand under the Directive, without significant amendment, during the 18 months' period between the adoption of the Regulation and its coming into force. Lead-in times for introducing any changes to these requirements, and to other supplementary Regulations generally, will again be determined through the comitology process.

The Committee raised concerns on two other aspects of the proposal. As regards zonal authorisation, you will recall that the Commission proposed a system of compulsory 'mutual recognition' within zones, under which Member States would have very little scope to adjust use restrictions in order to meet particular national conditions. In contrast, the first reading report of the European Parliament eliminated the zonal authorisation concept entirely. This has proved a difficult issue in the Council Working Party negotiations, on which Member States remain divided. The Slovenian Presidency has developed a compromise which essentially relies on the Commission's

⁶ Correspondence with Ministers, 2nd Report of Session 2009-10, HL Paper 29, p 189

compulsory approach. It would, however, allow other Member States access to the technical dossier for each product, in order to determine whether additional restrictions on use are necessary for risk mitigation. In cases where serious risks remained, even after applying these adjustments, Member States would be able to refuse authorisation. We believe this compromise would provide a powerful impetus for harmonised approaches to risk assessment, in the way that the adoption of harmonised arrangements for maximum residue levels of pesticides in food under Regulation 396/2005 has done for dietary risk assessment. The Regulation includes implementing measures by which these could be introduced.

The toxicity and environmental 'hazard triggers' also proved a difficult area in the Working Party's negotiations, specifically as regards human health criteria, and Member States continue to hold differing views. The Commission's proposal would exclude substances which are classified as category 1 or 2 carcinogens, mutagens or reproductive toxins (so called 'CMR' substances), or which are considered to have endocrine disrupting properties, unless exposure to them in use is 'negligible'. It is clear that they intend 'negligible' to mean excluding all human contact with the substance or its residues. We estimate that around 5% of substances could be lost to the proposed CMR criteria, and another 10% to the proposed criteria for endocrine disrupters. The European Parliament's first reading report added to this list substances which are considered to have developmental neurotoxic or immunotoxic properties in humans, although we conclude that these two criteria would have no additional impact at present. The Parliament has, however, proposed far more stringent environmental hazard triggers, which we estimate could lead to the loss of around 40% of substances.

Member States have broadly endorsed the Commission's approach in the Working Party, but some have been concerned to exclude CMR category 1 and 2 substances entirely, whilst others have been keen to introduce a greater element of risk assessment into the consideration of a substance's acceptability. We have been concerned to ensure that human health is properly protected, but to keep the impact of these triggers on the availability of active substances within reasonable levels, given their continuing importance in plant protection products and the scope to mitigate the risks they present by setting appropriate conditions of use.

The Slovenian Presidency has now developed a compromise which would exclude category 1 carcinogens and reproductive toxins, and both category 1 and 2 mutagenic substances (because it is generally held that an acceptable threshold cannot be established for these genotoxic substances). It would, however, allow approval of category 2 carcinogens and reproductive toxins and endocrine disrupters where human exposures to these substances pass a risk assessment. We consider this a reasonable compromise, and one which we can support in the interests of reaching agreement on this difficult issue.

The Presidency is expected to seek political agreement on their revised text at the 19 May Agriculture and Fisheries Council. I therefore hope that the Committee is reassured by these transitional measures and can agree to release this item from scrutiny.

27 April 2008

Letter from the Chairman to Phil Woolas MP,

Your Explanatory Memorandum (EM) on the amended proposal and your letter of 27 April 2008 were considered by Sub-Committee D at its meeting of 14 May 2008.

We note that the amended proposal has not formed the basis of discussion in Council, nor does it have a formal role to play in the co-decision procedure, and we are therefore content to release it formally from scrutiny.

As regards the political agreement to be sought in Council on 19 May, we welcome the progress that has been made and take particular note of the improved transitional provisions that the Government has successfully negotiated. We are content to lend our support to the compromise and will therefore release the proposal from scrutiny.

We would nevertheless wish you to take into account two further observations on the draft Regulation. First, the revised compulsory mutual recognition clause allowing any one Member State to resist the authorisation of a product has some merit but we consider that it could potentially be used as a barrier and thereby impede the functioning of the internal market. In that light, we believe that its application must be monitored closely.

Second, we would hope that measures will be taken to ensure that the human health risk assessment applied to the toxic substances that can be authorised must be robust. Application of this provision should also be monitored closely.

14 May 2008

Letter from Phil Woolas MP to the Chairman

Further to my letter of 27 April, I am writing to let you know of developments on this proposal.

The key concern for the UK has been proposals to introduce new approval criteria based on hazard rather than risk, to prevent approval of active substances based on their intrinsic properties rather than their risks in use. In my previous letter, I explained that the Slovenian Presidency had developed a compromise which would have excluded category 1 carcinogens and reproductive toxins, and both category 1 and 2 mutagenic substances; but which would have allowed approval of category 2 carcinogens and reproductive toxins and substances with potential endocrine disrupting properties in humans, providing human exposures to these substances passed a risk assessment. We considered that a reasonable compromise and would have supported it.

However, it became clear at the May Agriculture and Fisheries Council that the Commission would not support this compromise, and a number of Member States would not accept it for that reason. Consequently, the Presidency put a revised compromise to the June Council. This would exclude without exception category 1 and 2 mutagens. It would also exclude category 1 and 2 carcinogens and reproductive toxins, and substances with potential endocrine disrupting properties in humans, unless human exposure to them were negligible. These provisions broadly follow the Commission's original proposals, and would have very similar overall impacts. The Pesticides Safety Directorate (PSD) has prepared an impact assessment for those proposals, a copy of which is enclosed. It concludes that up to 15% of active substances could be withdrawn, some of which are particularly important in the UK for protection of both minor crops, such as carrots, and major crops, such as cereals. One group of fungicides (the triazoles) is crucial for protection against Septaria, the major fungal disease of wheat in the UK. Withdrawing them (as potential endocrine disrupters) could result in 20-30% yield losses in cereals.

We concluded that these impacts were not justified by the actual risks these substances pose under realistic conditions of use, and we could not therefore support the compromise. Several other Member States also abstained, but most were content to support the revised proposal along with the Commission. It is unfortunate that other Member States do not appear to have examined these impacts as carefully as the UK. The compromise included a derogation allowing substances which breach some of the hazard criteria to be approved for a (renewable) period of up to five years where there were no alternative plant protection options available. This provided some comfort, but we did not consider it sufficient to alleviate our concerns or to justify our support.

The common position has now been communicated to the European Parliament for its second reading, which we expect to be completed by the end of this year. We recognise that this will be very challenging, as the Parliament is likely to seek amendments to make the pesticides regime even more restrictive. It adopted a highly precautionary first reading report in October 2007. PSD's assessment considered the impact of their proposed amendments, concluding that, if all were incorporated into the final Regulation, they would result in the withdrawal of up to 85% of active substances and ultimately render conventional agriculture as it is currently practised unachievable.

Departmental officials have therefore put in place a strategy to maximise our impact in the forthcoming negotiations which will involve contacts with the Presidency, other Member States, the Parliament and the Commission. We have already put on record our concerns, including the need for a full European impact assessment, and have sent a note to the Presidency before their negotiations with the Parliament begin. The Secretary of State is writing to Ministers in all the other Member States and talking personally to key members of the Agriculture Council. We are briefing UK MEPs and there will also be contacts with the Commission. Officials are also in touch with stakeholder groups to encourage them to lobby MEPs and to work with their European counterparts to promote similar action in other Member States.

I should add that the Regulation is not all bad news for pesticide availability. Of particular significance, it would divide the EC into three zones, within which applications for product authorisation could be submitted to just one Member State and then mutually recognised by all Member States in the zone. This should encourage companies to apply for authorisations here and help improve availability of pesticide products for our growers.

25 September 2008

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 (25 September) regarding the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We note that the Presidency compromise which you supported, and in view of which we lifted scrutiny in our letter of 14 May, failed to win support in Council, and that an alternative compromise, with which you were not content, was adopted as the Council's common position in June. We regret the delay in your informing us of this turn of events.

We share your strong reservations about the draft Regulation as it now stands, and are concerned at the prospect of European Parliament amendments producing an even stricter pesticides regime. We therefore support your intention to lobby all the parties involved in the negotiations. We believe that a full European impact assessment – which you intend to press for – is urgently needed.

We would be grateful if you could keep us informed of the progress of negotiations, and of your discussions with other participants in the legislative process.

10 October 2008

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

Letter from the Rt Hon Jane Kennedy 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 29 October 2008.

We note that the intention behind the proposed Regulation is to create a more level playing field within the EU. We would be grateful if you could comment on the Commission's contention that the legislation ought not to undermine EU operators' position within the Single Market, as third-country operators exporting into the EU would have to comply with the same standards. We are particularly interested in further information on the auditing that is done to ensure that slaughterhouses in third countries comply with EU requirements. We would also welcome your views on whether the Regulation might affect the competitive position of EU operators in export markets.

You mention that some of the animal welfare requirements currently applicable in the UK might no longer be enforceable under the new Regulation. We would be grateful if you could clarify what those requirements are, and explain why they are not included in the Commission's proposal. We would also ask you to indicate whether you support the change of legal instrument (replacing a Directive with a Regulation) proposed by the Commission.

We note that the Commission intends to present the Regulation to the relevant Council Working Party in November, and would be interested to hear what the reactions of other Council delegations to the proposal are.

We note that you intend to carry out a formal consultation and expect to submit an Impact Assessment next April. We will hold this proposal under scrutiny pending receipt of your Impact Assessment, information on the outcome of your consultation, and your response to the points raised above.

29 October 2008

REGIONAL ADVISORY COUNCIL: REVIEW OF THE FUNCTIONING OF THE REGIONAL ADVISORY COUNCILS

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape and Rural Affairs and Minister for South East, 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 16 July 2008.

We examined closely the development of the Regional Advisory Councils (RACs) in the course of our recent Inquiry into the Progress of the Common Fisheries Policy since 2002. On the basis of that examination, we consider that the establishment of the Regional Advisory Councils (RACs) has been a very positive development to flow from the 2002 reform of the CFP.

It is highly regrettable that the Commission has not comprehensively addressed the critical budgetary issues, notably the ability to commission research and to cover meeting costs, which we consider to be hampering severely the development of the RACs. In the short term, we would urge you to pursue with the Commission the necessity of equipping the RACs with a budget that allows them to

function independently and effectively. We agree with you that the performance of RACs should not be so dependent on the goodwill of third parties. Rather, they should be directly funded from the EU budget.

We would agree with the Commission that stakeholder engagement has improved as a result of the introduction of the RACs, and that the representation of different interests needs to be closely examined.

We concur with you that the Commission could usefully have used this opportunity to reflect on the potential of the RACs to grow and play a greater role in the CFP in the future. We take the view that their development will be a key factor if the future evolution of the CFP is to be successful and we very much hope that the relevant Recommendations in our Report on the Progress of the CFP (to be published on 22 July) will provide a useful contribution to EU-level reflections on the future of the RACs.

We are content to release the Communication from scrutiny.

17 July 2008

SCHOOL FRUIT SCHEME

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 8 October 2008.

We share your scepticism about the merits of funding and organising this initiative at EU level rather than national level, and are not convinced that the voluntary nature of the scheme and the flexibility in the way it is implemented fully address this concern. We therefore support your intention to resist calls for an increase in the proposed budget, and to ensure that participation remains voluntary. We would be interested to hear whether a majority of Member States support the establishment of such a Scheme in principle.

Like you, we question the appropriateness of funding the initiative from the CAP budget, particularly if savings from the end of the Energy Crops Scheme are being reallocated for this purpose. As a general principle, we believe that reductions in the CAP budget are to be welcomed, and the instinct to find another use for funds saved should be resisted.

We note that many Council delegations wish to give preference to products of Community origin, and would therefore be grateful if you could explain what steps will be taken to ensure that the Scheme will be compatible with WTO rules.

We would also be interested to hear whether you would be likely to seek participation in the Scheme, should it go ahead.

Pending your response to our queries above, and the receipt of a Regulatory Impact Assessment for this initiative, we will hold the Proposal under scrutiny.

10 October 2008

SUBSTANCES THAT DEplete THE OZONE LAYER (12832/08)

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 5 November 2008.

We are broadly supportive of the Commission's proposal, but share your views on the desirability of obliging the Commission to carry out comprehensive cost-benefit analyses before it proposes to introduce recovery and destruction obligations on the basis of this Regulation.

However, we are not yet convinced that it would be appropriate to request that such cost-benefit analyses are carried out at this stage: we understand that any obligations could only be proposed after the adoption of this Regulation, and that Member States would then have the opportunity to consider

and vote on those proposals on case-by-case basis. We would therefore be grateful if you could clarify why you take the view that detailed scrutiny at this later stage might not be sufficient.

We take note of your argument that making recovery and destruction of ozone-depleting substances from insulation foams mandatory might remove the ability to issue carbon credits in respect of such activities. However, we do not regard this as a conclusive argument against regulation.

We would also be grateful if you could clarify just how significant a risk 'banked' ozone-depleting substances pose, i.e. what assessment has been made of the likelihood that those banked substances will escape into the atmosphere in future, and what proportion of those banks might escape.

We will hold this document under scrutiny pending receipt of your supplementary explanatory memorandum and your response to the points raised above.

5 November 2008

TIMBER AND TIMBER PRODUCTS (14482/08)

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 Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 26 November 2008.

We agree with you that the problem of illegal logging must be tackled effectively and that the European Union should participate actively in that process by way of preventing the import of illegally harvested timber.

The risk-based approach proposed by the Commission appears logical to us and not excessively burdensome. We note that some Member States may nevertheless express concern about the potential burden on business resulting from the legislation. In that context, we would be interested in your view on how those Member States would like to tackle the problem of illegal logging, if indeed it is an objective that they share. We would also appreciate your view on whether a unilateral approach by the UK would be an option that the Government might pursue if the objective and the proposed methodology do not receive sufficient support among other Member States.

We will hold the proposal under scrutiny and look forward to receiving your Impact Assessment.

26 November 2008

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 22 October 2008.

We note that you had initially lobbied the Commission for a more limited ban, restricted to harp and hooded seals, and to trade in seal skin products. We would be grateful if you could explain why you deemed this more limited ban sufficient, and whether you are satisfied that the broader scope of the ban proposed by the Commission is appropriate and proportionate. We would also welcome further information on the types of practices that might qualify for the 'humane killing' exemption.

We note that the devolved administrations are being consulted on the impact of the draft Regulation. We would be particularly interested to hear about the Scottish Executive's response.

We are concerned about the practical difficulties that the implementation and enforcement of the ban might pose and would therefore be grateful if you could elaborate on the concerns raised by HMRC and LACORS.

We will hold this proposal under scrutiny pending receipt of your impact assessment and information on the outcome of your consultation.

23 October 2008

TRADE IN WINE: AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND AUSTRALIA (14560/08)

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 Explanatory Memorandum (EM) on the above Proposal was considered by Sub-Committee D at its meeting of 26 November 2008.

You will be aware that we took a strong interest in the marketing and labelling aspects of the wine industry within the context of our report, "European Wine: A Better Deal for All" (HL 184, Session 2006-7). We note that the Government considers the Agreement to represent a significant improvement over the 1994 Agreement but we would be grateful if you could outline in more detail the basis for this judgment.

We understand that the Proposal has been placed on the Council's agenda for adoption on Friday 28 November as an 'A' Point item, a schedule that has hindered our ability to undertake effective parliamentary scrutiny, as we only received an electronic copy of the EM late on Friday, November 14, and were given no indication that consideration was urgent until the afternoon of November 25.

We are prepared to release the Proposal from scrutiny, but would urge you to work with your officials to ensure that we are not put in this position again in future.

26 November 2008

WASTE: OUTCOME OF EUROPEAN PARLIAMENT'S SECOND READING (5050/06)

Letter from Joan Ruddock MP, Parliamentary Under Secretary-Climate Change, Biodiversity and Waste to the Chairman

I wrote on 14 July 2007⁷ to report on the political agreement on the revised Waste Framework Directive (WFD) that the Environment Council reached on 28 June 2007. The Council formally endorsed that agreement when it adopted its Common Position on 20 December 2007; and the Common Position was communicated to the European Parliament on 21 February 2008. I am now writing to inform you of the outcome of the European Parliament's Second Reading of the dossier.

The Rapporteur, Caroline Jackson MEP, submitted her draft report on the Common Position to the European Parliament's Environment Committee on 25 February 2008. The Rapporteur and MEPs tabled 248 amendments to the Common Position and on 8 April the Committee voted to adopt 80 amendments.

The Environment Committee's amendments were discussed by Member States in Council Working Groups and in the Committee of Permanent Representatives (Coreper). On the basis of mandates agreed in Coreper, the Slovenian Presidency held three "trilogue" discussions with the Rapporteur and the European Commission. The Presidency, representing the Council, reached a compromise agreement with the Rapporteur on 4 June 2008. On 17 June 2008 the European Parliament voted in plenary session to adopt amendments which give effect to the compromise agreement. I enclose a copy of the Common Position as amended by the Parliament. The amendments adopted by Parliament to give effect to the compromise agreement are highlighted.

The effect of the compromise agreement is to avoid the formal conciliation procedure. The compromise agreement is supported by the European Commission which means that the dossier is subject to a qualified majority vote at the Environment Council's Second Reading. Our understanding is that, subject to the Treaty's legal procedures, the revised WFD may be referred for formal adoption by the Environment Council on 20 October 2008.

I attach at Annex 1 to this letter a summary of the key features of the compromise agreement. Ministers have considered the terms of the compromise agreement and agreed that the UK should support it, subject to the tabling at the Environment Council of a Minutes Statement confirming how the UK Intends to implement two of the requirements arising from it. These requirements concern the following provisions of the Common Position, as amended by the European Parliament, and our proposed Minutes Statement is attached at Annex 2 to this letter:-

⁷ Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 171

(a) That part of Article 11(1) which provides that, "Subject to Article 10(2), by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass."; and

(b) Article 11 (2)(a) which provides that "by 2020 the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50% by weight;"

9 August 2008

ANNEX I

REVISED WASTE FRAMEWORK DIRECTIVE EUROPEAN PARLIAMENT'S SECOND READING KEY FEATURES OF THE COMPROMISE AGREEMENT

NOTE: The references that follow are to Articles of the enclosed copy of the Common Position as amended by the European Parliament on 17 June 2008.

Waste Prevention

1. The compromise agreement does not include waste prevention targets. However, Article 9 requires the European Commission to submit to the Environment Council and the European Parliament the following "reports" accompanied, if appropriate, by draft legislative measures:-
 - By the end of 2011, an interim report on the evolution of waste generation and the scope of waste prevention;
 - By the end of 2011, the formulation of a product eco-design policy addressing both the generation of waste and the presence of hazardous substances in waste, with a view to promoting technologies focusing on durable, re-usable recyclable products;
 - By the end of 2014, the setting of waste prevention and decoupling objectives for 2020; based on best available practices including, if necessary, a revision of the indicators referred to in Article 29(4); and
 - By the end of 2011, the formulation of an action plan for further support measures at European level seeking in particular to change the current consumption patterns.

Waste Re-use And Recycling (including recycling/recovery targets)

2. Household Waste: Article 11 (2)(a) of the compromise agreement requires Member States to take the necessary measures designed to achieve the following target:-

"By 2020 the preparing for re-use and the recycling of waste materials such as at least paper, metal, plastic and glass from households and possibly other origins as far as these waste streams are similar to waste from households, shall be increased to a minimum of overall 50% by weight."

3. As indicated in the covering letter, the Government intends at the Environment Council to table a Minutes Statement confirming how the UK intends to implement this target. The UK's proposed Minutes Statement is attached at Annex 2 and confirms the UK's Intention apply to the totality of household waste the requirement to increase, by 2020, to a minimum of overall 50% by weight the preparing for re-use and the recycling of waste materials from households. Implementing the target in this way is consistent with the Waste Strategy for England 2007 which sets a target of 50% by weight for household waste "re-use, recycling and composting" by 2020. Similar targets have been set or are under consideration in the Devolved Administrations.
4. Article 11 (1) contains an associated provision on separate collection which provides that, "Subject to Article 10(2), by 2015 separate collection shall be set up for at least the following: paper, metal, plastic and glass." The reference to "Subject to Article 10(2)" means that the obligation for separate collection arises only where it is "technically, environmentally and economically practicable". In addition, one of the Recitals recognises that:-

"(41)Member States maintain different approaches to the collection of household wastes and wastes of a similar nature and composition. It is therefore appropriate that such targets should take account of the different collection systems in different Member States....."

5. As indicated in the covering letter, the Government intends at the Environment Council to table a Minutes Statement confirming how the UK intends to implement Article 11 (1). The UK will confirm its intention to encourage the separate collection of wastes where this is technically, environmentally and economically practicable, while allowing the co-mingled collection of paper, metal, plastic, glass and other recyclable materials for subsequent separation in material recycling facilities to continue after 2015 where this is the most effective means of increasing recycling rates in the local circumstances.
6. Construction and demolition waste: Article 11 (2)(b) of the compromise agreement requires Member States to take the necessary measures designed to achieve the following target:-
"By 2020, the preparing for re-use recycling and other material recovery, including backfilling operations using waste to substitute other materials, of non-hazardous construction and demolition waste... shall be increased to a minimum of 70% by weight."

Waste Hierarchy

7. The Common position applied the waste hierarchy as a "guiding principle". The European Parliament's Environment Committee proposed that it should be a "general rule". Article 4(1) of the compromise agreement recognises that the waste hierarchy "generally lays down a priority order' of what constitutes the best overall environmental option, but that Member States need to retain the flexibility to depart from it when justified by reasons of technical feasibility, economic Viability and environmental protection.

ANNEX 2

PROPOSED UNILATERAL STATEMENT BY THE UNITED KINGDOM FOR ENVIRONMENT COUNCIL MINUTES

Collection and recycling of wastes

Recital [41] to the revised Waste Framework Directive recognises the diversity in collection and recycling systems for wastes in the different Member States, which reflect what is technically, environmentally and economically practicable in the local circumstances.

In implementing the requirements of Article [11] of the revised Directive on re-use and recycling, the United Kingdom intends to:-

- apply to the totality of household waste the requirement to increase, by 2020, to a minimum of overall 50% by weight, the preparing for re-use and the recycling of waste materials from households and, possibly, similar waste streams. The four waste streams specified in paragraph 2(a) of Article [11] (i.e. paper, metal, plastic and glass) would be included in that overall target where they originate from households but the 50% target would not apply individually to each of the specified wastes; and
- encourage the separate collection of wastes where this is technically, environmentally and economically practicable, while allowing the co-mingled collection of paper, metal, plastic, glass and other recyclable materials for subsequent separation in material recycling facilities to continue after 2015 where this is the most effective means of increasing recycling rates in the local circumstances.

WASTE: SIXTH SITUATION REPORT ON RADIOACTIVE WASTE AND SPENT FUEL MANAGEMENT IN THE EUROPEAN UNION (12939/08)

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 Explanatory Memorandum on the above proposal was considered by Sub-Committee D at its meeting of 15 October 2008.

We note that the devolved administrations take their own views on the management of radioactive waste, and would be grateful for further information on their positions, in particular that of the Northern Ireland Executive, which is not mentioned in your Memorandum.

We would also be grateful for an account of whether, and if so how, other Member States' positions have changed since 2004, when the 'nuclear package' of Directives was rejected by the Council. We

note that you regard the resumption of discussions on this issue in Council as unavoidable, but would you welcome such discussions?

Finally, we would welcome clarification from you regarding the types of measures that you would consider to infringe national sovereignty on nuclear safety.

We are content to lift scrutiny on this document, but would welcome your response on the points raised above.

16 October 2008

WATER POLICY: ENVIRONMENTAL QUALITY STANDARDS (11816/06, 11874/06)

Letter from Phil Woolas MP, Minister for the Environment, Department for Environment Food and Rural Affairs to the Chairman

I wrote to you on 6 July 2007⁸ to inform you that Environment Council of June 2007 had reached unanimous political agreement on a text for the above proposal. In your letter of 17 June to my predecessor you had released the proposal from scrutiny but also said that you would look forward to examining the legislation further at Second Reading in second Reading.

In my earlier letter I noted that the Council text left unresolved a number of issues raised by the EP's First Reading, and identified the key elements of the Council text. We now seek to protect those elements, briefly as follows:

- the application of Water Framework Directive (WFD) Article 4 provisions relating to disproportionate costs and technical infeasibility;
- the provisions for 'mixing zones', without which discharges would have to be made at EQS concentrations and result in tightening precautionary standards and higher costs;
- use of sediment and biota monitoring to establish trends rather than to demonstrate compliance, and, with only three exceptions, standards to be set by Member States;
- reporting requirements aligned with (rather than duplicating) existing WFD obligations;
- use of existing controls (rather than adding, for example, uniform emission standards or expanding the scope of IPPC) to achieve WFD objectives.

On the strength of the European Parliament's (EP) First Reading and Second Reading amendments tabled to date, the EP's concerns may be summarised as follows:

- a desire to add substances to the Priority List, and reclassify as 'priority hazardous' certain substances already on It, without reference to the scientific, risk-based prioritisation process required by the WFD;
- the function and regulation of mixing zones, expressed through amendments either to delete provision for mixing zones or for somewhat impracticable, prescriptive approaches to design and monitoring;
- burdensome reporting requirements aimed at somehow ensuring a reduction of mixing zones plus evidence of progress towards WFD objectives for Priority Substances (the progressive reduction - or cessation for Priority Hazardous Substance - of discharges);
- additional controls pointing to uniform emission standards, the extension of IPPC or the use of BAT for all discharges of Priority Substances regardless of scale or impact;
- additional monitoring requirements, and EU standards, for sediment and biota.

We consider that the EP's concerns should be addressed, within our existing negotiating remit, by clarification and explanation of the Council text, where necessary cross referencing to WFD

⁸ Correspondence with Ministers, 11th Report of Session 2008-09, HL Paper 92, p 144

obligations. However we would resist fundamental changes to the text and the introduction of objectives over and above WFD commitments. Our approach on specific issues is as follows:

- on additional Substances, to reiterate the WFD arrangements for review of the Priority List and therefore to insist that substances may only be added where they satisfy risk based, scientific criteria within the review process. As compromise there could be an annex of candidate substances which could be added to the list only if the appropriate criteria and WFD process were observed;
- to explain that mixing zones are an inevitable consequence of discharges and an essential component of regulatory controls: without them discharges would have to be made at EQS values (intended to apply to receiving waters rather than to function as discharge standards), standards would be unnecessarily tightened and costs raised. The understandable concern to secure consistency across the EU should be addressed by EU level guidance catering for a variety of circumstances;
- on additional reporting, to explain that regular review of data submitted under existing proposals would demonstrate progress on reductions in discharges of Priority Substances which in turn would produce automatic reductions in mixing zones. Detailed, annual reporting on individual mixing zones would be impracticable.
- on additional controls, to explain that the WFD makes Member States responsible for programmes of measures, and identifies appropriate controls, to achieve objectives. Whilst BAT may sometimes be necessary, its prescriptive use for all processes discharging Priority Substances, regardless of impact or cost, would be inappropriate;
- on sediment and biota, more frequent monitoring would serve no useful purpose since changes occur slowly and it is necessary to establish a trend prior to taking action. Additional EU standards would present problems of both data and methodology capable of addressing local circumstances.

The EP Environment Committee commenced its Second Reading late in March and voted 40 amendments on 6 May. The Presidency is currently exploring the possibility of a Second Reading deal with the EP. If this is successful the EP will vote in plenary on 17 June on these and any additional or compromise amendments agreed with Council through a series of 'trialogue' meetings now underway and due to conclude on 4 June.

In this context most Member States, and the Presidency, wish to resist fundamental changes to the Council text but would be content for clarification and explanation where appropriate. The Presidency plans to address only what are understood to be the EP's main concerns, namely the addition of substances to the Priority List, reclassification of substances currently on the list as 'hazardous', and the issue of mixing zones. The Presidency proposes:

- an annex of candidate substances which could be added to the PL only if appropriate scientific, risk-based criteria within the WFD review process were satisfied. We could accept this provided that such substances were not in play until the second river basin planning cycle (2015);
- for mixing zones, to accept an amendment consistent with the Council text but providing for harmonised EU guidance. This is acceptable except for a reference to the use of 'best available water treatment techniques' as a prerequisite for mixing zones which could have severe cost implications for sewage treatment works if BAT was applied to all.

Subject to the above, we consider that this is a sound approach although we would need to be ensure that other, unwelcome amendments would fail in the light of the Presidency package, and be alert to the fact that other amendments may yet be tabled. The outcome of discussions should be clear by mid-June but if no agreement is reached the likelihood is that the proposal will go to Conciliation in the autumn.

Following the preliminary assessment of the Council text reported in my letter of 6 July 2007, I now attach the fully updated Partial Impact Assessment which demonstrates the savings anticipated. This will be reviewed again in the light of the final package but meanwhile continues to inform our approach to discussions.

I will keep you informed of development as appropriate.

26 May 2008

Letter from Phil Woolas MP to the Chairman

My letter of 26 May set out our proposed approach to the European Parliament's Second Reading of this proposal, the key elements of the Council text which we sought to protect, and the prospects for agreement with the EP at Second Reading. On 17 June the European Parliament (EP) agreed in Second Reading to a compromise package of amendments to the Council text, brokered by the Slovenian Presidency on behalf of Council, which fully meets our objectives. Following legal verification this text should be formally adopted by Council in the Autumn.

The amendments comprising the Second Reading 'deal' are identified in bold italics in the attached text. They either clarify, or make explicit, obligations already contained or implied in the Council text and in other cases repeat existing WFD obligations. The main elements are as follows:

- at Article 4, Member States must include in River Basin Management Plans the methods used to determine mixing zones (already required by the Council text) and the measures taken to reduce their extent (equating to measures necessary in any event under the WFO to achieve the objectives for priority substances). EU guidance on mixing zones, where the UK is taking a lead, should promote consistent EU practice;
- at Article 5, Member States are required to use 'available data' (sources are already specified in the Council text) to compile inventories of discharges, to include maps where available and to include data on sediment and biota where appropriate. This obligation is limited by the tests of availability and appropriateness and the Council text requirement for Member States to monitor sediment and biota at their discretion for all but three substances. The Commission must now review progress by 2018 rather than 2025 but this should have no direct effect on Member States. EU guidance on inventories should again promote consistent practice;
- at Article 7 the Commission is required to report to the EP their reviews of legislation, progress on WFO objectives for Priority Substances, and measures on mixing zones and trans-boundary pollution. The Commission will need to use Member States' data already required under both the WFO and this directive;
- new Article 8 establishes an annex of 13 candidates to be considered as potential Priority Substances within the existing WFD review process. This compares with the EP's original proposal to add 28 substances to the Priority List, and to declare existing Priority Substances as Priority Hazardous Substances, without reference to the WFO's risk-based, scientific prioritisation process. Seven of the 13 substances for review are recognised by the EA as worthy candidates but substances which do not satisfy the WFO criteria will not be included on the List;
- a number of amendments to recitals reiterate or reinforce existing requirements. We have reservations on Recital 8 which reflects EP pressure for additional data but, since it is a recital, it adds no binding obligations beyond what the Council text requires. Recital 9 helpfully notes that for naturally occurring substances 'phase out' is impossible. Recital 16 reiterates WFO arrangements for exemptions with reference to dredging and shipping activities. Cross references to REACH (Recital 27) and the Treaty provision to take account of social and economic development, and costs and benefits, in developing environmental policy (Recital 33) are positive additions. Overall these amendments fall within our objective of restricting changes to clarification, explanation and justification in relation to the Council text, and avoiding additional objectives in relation to the WFO. The main issues targeted in amendments proposed by the EP have been addressed such that
- substances may be added to the Priority List only in strict accordance with the WFD arrangements for review;
- mixing zones, without which tighter standards and higher costs would result, may be used with the benefit of EU guidance. Additional reporting

required of the Commission should be serviced through information supplied by Member States under arrangements already agreed;

In the light of the EP Second Reading agreement, the Partial Impact Assessment is under review. However at this stage we do not expect significant variations by comparison with the assessment of the Council text. I will keep you informed of developments as appropriate.

14 July 2008

**WHALING: INTERNATIONAL CONVENTION ON THE REGULATION OF WHALING
(16832/07, 16833/07, 16833/07)**

Letter from the Chairman to Jonathan Shaw MP, Minister for Marine, Landscape & Rural Affairs and Minister for the South East, Department for Environment, Food and Rural Affairs

Your letter of 24 April 2008 on the above proposal was considered by Sub-Committee D at its meeting of 14 May 2008.

We support the Government's approach as outlined in your letter and we would be grateful if you could update us on your position in Council as negotiations continue.

In the light of the continued uncertainty as to the progress of Council discussions, we will continue to hold the draft Decision under scrutiny.

15 May 2008

Letter from Jonathan Shaw MP to the Chairman

I am writing to give you further details on the above proposal, which is scheduled for adoption as an A-point at the Environment Council on 5 June. The proposal establishes the position to be adopted, on behalf of the European Community, with regard to proposals for amendments to the Schedule of the International Convention on the Regulation of Whaling (ICRW) at the forthcoming annual meeting of the International Whaling Commission (IWC) in Chile (IWC60).

As noted in my Supplementary Explanatory Memorandum of 20 May 2008 only Denmark remains opposed to the proposal - Germany, Austria, France Italy, the Czech Republic and Hungary have broadly supported the UK's points.

When the proposal was discussed by the Committee of Permanent Representatives on 20 May, Denmark indicated that she would vote against and invoke Declaration 25 annexed to the Maastricht Treaty, because Denmark maintains that her support for limited resumption of commercial whaling is essential to protect the interests of Greenland and the Faroes. Malta, unexpectedly and inexplicably, indicates she would abstain. All other Member States were content with the text of the draft Decision.

I consider that we have broadly achieved our negotiating objectives in respect of this dossier. Although we would ideally have preferred to see the dossier shelved, we recognised that such an outcome was unlikely and have therefore worked with the Presidency to restrict its scope (it is valid only for IWC60 and only in respect of proposals which might have legal effect) and to bring the terms of the proposed negotiating mandate as close as possible to the stance which the UK would take acting on her own behalf. In general, the Presidency and the Commission have been very responsive to our requests for changes to the text, even accepting our contention that Article 37 (the Common Fisheries Policy) was an unacceptable legal base for the proposed Decision.

Given the Presidency's readiness to accommodate our position and the fact that there exists a qualified majority in favour of adoption, I can see no possible benefit to be gained by not supporting adoption of the proposal; indeed, were the UK to resist adoption, we could find our position seriously compromised in relation to the negotiation of future mandates for this area.

I attach great importance to the work of the Committee, and I very much regret that this proposal is being pushed through Council so quickly and without prior scrutiny clearance. This is not a step we take lightly but I hope the Committee understands that, in order to ensure that a strong anti-whaling stance is taken by the Community at the IWC's annual meeting in June, it is important that the UK supports adoption of this Decision at the Council meeting on 5 June.

2 June 2008

Letter from the Chairman to Jonathan Shaw MP

Your letter of 2 June 2008 on the above proposal was considered by the Chairman of Sub-Committee D on 3 June 2008.

The Sub-Committee has already indicated (letter of 15 May) its support for the Government's approach as outlined in your letter of 24 April. As the proposal is now scheduled for adoption as an A-point at the Environment Council on 5 June, we are content for you to give agreement to the Proposal pending completion of the scrutiny process (Article 3b of the Scrutiny Reserve Resolution).

We would be grateful if you could inform us of the final outcome of the Council negotiations.

3 June 2008