HOUSE OF LORDS
European Union Committee

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

This edition includes correspondence from 1 January 2018 – 30 July 2018

EU INTERNAL MARKET SUB-COMMITTEE

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Letter from Baroness Sugg, Minister for Aviation, International and Security, Department for Transport

Thank you for your letter of 20 July concerning the Explanatory Memorandum on the above proposal and communication. I am writing to respond to the points that the Committee has raised, and I apologise for the delay in sending this response. You asked a number of detailed questions and I wanted to be in a position to answer them as fully as possible, particularly with regards to your questions on our concerns about the text of the proposal on a new regulation on safeguarding competition in air transport.

At the time of writing it is unclear whether the proposal will be included in the agenda for the 7 June Transport Council for a progress report, or whether the Presidency will be in a position to seek a General Approach. As set out below, while there has been progress made on some important issues, a number of key issues remain open with Member States evenly divided. For a long time negotiations have made very slow progress and a General Approach has seemed unachievable; however the Presidency is working extremely hard to try to find a compromise before the Council.

Your Committee asked whether the Government has developed its thinking further on the review and reform of EU ownership and control rules, particularly in relation to the maximum ownership threshold. A timeframe has not yet been established for the Commission to conduct a review of these rules in particular. While the ownership and control of airlines in the UK is likely to be a topic that is considered as part of the wider negotiations on the UK's future relationship with EU, during the implementation period the EU rules and regulations will continue to apply.

Foreign investment in airlines is also currently being discussed at the international level within the International Civil Aviation Organisation's (ICAO) Air Transport Regulation Panel, of which the UK is a member.

In relation to your Committee's question on Public Service Obligation rules, as part of its Call for Evidence for a new Aviation Strategy published on 21 July 2017, the Government set out its wish to consider the level of connectivity our nations and regions require to support economic growth, and whether the market is able to provide this or intervention from the Government is required. This will include looking at the PSO regulation and whether current regulations create any barriers.

This work stream will be taken forward in a consultation paper which will look at, among other topics, encouraging competitive markets', currently scheduled to be published in the second half of 2018.

The Committee also asked several questions related to EUROCONTROL. Although EUROCONTROL is an Inter-governmental Organisation some of the services it provides to EU Member States are under EU competence. It has been designated as the Air Traffic Management Network Manager under EU Single European Sky legislation, which also regulates how it provides these services. The relevant regulation is currently under review and it is possible the Commission could use this to propose further action in this area. However, agreement on this would be subject to Member State approval and we understand other Member States do not support such action.

In terms of the proposed Regulation, the Estonian Presidency gave a progress report on negotiations on the proposed Regulation at the 5 December Transport Council, which gave a fair reflection of the negotiations to date. I represented the UK at the Council, and stated in discussions that the UK did not dispute the need for fair competition but urged caution on proposals of regulatory measures in

order to avoid potential negative impacts on the liberalised aviation market, connectivity, consumers, and Member States' bilateral aviation agreements with third countries.

The Government has not had any specific feedback from trade unions or consumer groups on the proposed Regulation. However, other UK aviation industry stakeholders share similar concerns to the Government (and the UK Civil Aviation Authority) as set out in the EM, particularly with regard to the potential impact on services provided by third country carriers to regional airports.

There has been much further discussion in the Aviation Working Group considering this matter, including the acknowledgement that harm to consumers should be specifically considered in investigations and in the the imposition of redressive measures. There have also been positive indications that the traffic rights associated with Member State's bilateral air services arrangements will not be within the scope for redressive measures.

While we remain hopeful that further discussion will address the remaining concerns we have with the text, Member States are fairly evenly divided on the remaining key issues and there has been little movement from either side during discussions so far. These key issues include the scope of the regulation, whether it should include the concept of a "threat of injury" or be confined to an actual injury that has occurred, how decisions to open investigations and impose redressive measures should be taken and how dispute mechanisms within Member state's bilateral arrangements should interact with action by the Commission under this regulation.

There continues to be much discussion regarding interaction between Member States' roles and the proposed Regulation. Many other Member States shared our concerns regarding the potential impact on international air services covered by Member States' bilateral air services agreements with third countries. Discussion continues within working groups regarding this issue. The UK, along with other likeminded states, continues to push for a clear distinction between air services covered by bilateral agreements and those covered by EU-level agreements when it comes to the Commission's decision to open an investigation or adopting redressive measures.

With regard to consumer organisations being able to make a complaint in their own right, the current text of the proposal allows an investigation to be initiated following a complaint submitted by a Member State, one or more Union air carrier or an association of Union air carriers, or on the Commission's own initiative. The Government sees no reason why a consumer organisation could not ask a Member State to submit a complaint on its behalf, or lobby the Commission to open an investigation on its own initiative.

The Commission's impact assessment judged that there would be no/minimal extra burden on Member State authorities. While negotiations regarding the role of Member States in aspects of the regulation take place it is difficult to judge whether this assessment is accurate, however it is hoped that the resourcing implications will be made clearer when a more definitive text is in place.

The Bulgarian Presidency is continuing to take the negotiations forward in Working Group, most recently on Monday 16 April. A couple of days ahead of this meeting the Presidency circulated three draft options to provide a basis for taking the negotiations forward. This was unexpected, but is helpful in giving the discussions a new direction. The Working Group has narrowed this down by eliminating two of these possible approaches, but one option is still under consideration and the Presidency is now engaged in fleshing it out for further discussion at the next Working Group meeting on 30 April. If the Presidency is able to complete this work, it is still possible that they will be able to achieve a General Approach at the 7 June Transport Council, however I should stress that this remains a challenging ambition. In either event, I will, of course, write to you again ahead of the Whitsun recess to let you know what we expect to happen at the Transport Council.

The European Parliament is also considering the proposal and is broadly supportive of the need to revise the Regulation. The TRAN Committee adopted its report on the proposal on 20 March.

18 April 2018

Letter from Baroness Sugg, Minister for Aviation, International and Security

I am writing to update you on further negotiations on the above proposal, which forms a central part of the Commission's Aviation: Open and Connected package, including the Presidency's plans to seek a General Approach on the proposed regulation at the Transport Council on 7 June 2018.

In my letter of 18 April 2018, I indicated that it was unclear whether the Presidency would be in a position to seek a General Approach at the 7 June Transport Council. While there had been progress made on some important topics, a number of key issues remained open, with Member States evenly divided. However the Presidency, along with Member States, have worked extremely hard over the last few weeks to try and find a compromise before the Council, and I'm pleased to be able to indicate that this approach has been largely successful.

I consider that the text of the proposal is now more aligned with UK objectives than was the case with the Commission's original proposal. The UK has sought to be a constructive negotiating partner, especially since the proposal has the potential to be relevant to UK carriers and other aviation industry stakeholders once we leave the EU. For example we provided the working group with a flow chart setting out how the Regulation would work in practice, which I know was appreciated by the Presidency and other Member States.

I wanted to provide you with an update on the progress that has been made on a number of key issues I understand from previous letters you are particularly interested in and take the opportunity to highlight where the proposal is now more aligned with UK objectives.

Official-level working groups acknowledged the importance of understanding the interaction between the proposed Regulation across other means of ensuring fair competition, in particular with regards to EU-Third Country Air Transport Agreements and Member States' bilateral air services agreements with third countries. As well as recognising that fair competition between air carriers should preferably be addressed in the context of air transport or air services agreements with third countries, the latest suggested compromise text contains provisions enabling an investigation to be suspended if the Member States involved intend to address the practice being investigated under an applicable agreement they have concluded with the third country concerned.

We view the inclusion of these provisions to be a clear acknowledgement of the fact that, where possible and appropriate, disputes should be settled under relevant air transport agreements, which was a UK objective.

Another key UK concern, shared by other Member States, was how provisions dealing with the imposition of redressive measures would impact on areas that fall to Member State competence, such as traffic rights with third countries. Following negotiations, the relevant provisions now specifically exclude the suspension or limitation of traffic rights granted by a Member State to a third country from being imposed as redressive measures. As well as ensuring Member States' competence regarding traffic rights is maintained, this exclusion should provide a certain level of protection against measures that might impact connectivity, particularly to outside the European Union.

There is now a recognition in the text about the importance of consumers and that harm to them should be specifically considered in investigations and in any imposition of redressive measures.

As outlined below, two issues are yet to be resolved. Neither of these are significant concerns for the UK and we expect that an outcome will be achieved that we can accept.

In my previous letter I indicated that Member States were divided on how decisions about the imposition of redressive measures should take place. While the UK had a preferred approach to this (through comitology), we have been pragmatic and willing to work with other Member States and the Presidency to find a compromise, which has resulted in the latest text including a hybrid system of decision-making. A few Member States remain unconvinced that this is a realistic solution, although some have indicated they are willing to live with the solution if provisions regarding "Threat of Injury" are reinserted. It is unclear at this stage whether this position holds.

Provisions regarding the concept of a "Threat of Injury" have now been deleted from the text. We think this provides a greater level of certainty regarding the application of the proposed regulation. The concept of a "Threat of Injury" is one borrowed from the trade sphere, however this is not trade policy and we need to ensure such concepts are fit for purpose when considering aviation and wider

transport policy. However, we are willing to look at improving the text to ensure it is fit for purpose if the concept is inserted at a later date.

This issue is important to a number of Member States who would like to see the provisions regarding "Threat of Injury" reinserted. There could be more discussion on this and the provisions on who the decision maker should be before the proposal reaches the Transport Council, however our position is to be as pragmatic as possible on these issues.

Overall, I consider that the proposed General Approach is satisfactory provided that the proposal remains broadly as outlined above and a balanced outcome is achieved on a decision maker for the imposition of redressive measures and the issue regarding "Threat of Injury". I do, of course, appreciate that the Committee will wish to retain the proposal under scrutiny given the further developments that will take place between now and the Transport Council on 7 June. However, as the timing of Whitsun recess means that the Committee will not have another opportunity to consider a further update ahead of the Transport Council, I would be grateful if the Committee would consider granting a scrutiny waiver to enable the UK to support a balanced General Approach. Given that some of the issues mentioned above are finely balanced, we are unlikely to wish to abstain as this could send as strong a signal as supporting or opposing and might also lead to changes contrary to our interest if another Member State's vote had to be secured in place of the UK's.

Once a General Approach is agreed, we expect that negotiations will be opened with the European Parliament to try to reach a final deal. I will, of course, continue to keep you informed of developments on this proposal.

8 May 2018

Letter from the Chairman to Baroness Sugg, Minister for Aviation, International and Security

Thank you for your letters dated 18 April and 8 May 2018. The EU Internal Market Sub- Committee considered these letters at its meeting on 17 May 2018.

We note your apology for the time taken to respond to the Committee's letter of 20 July 2017, however we are dissatisfied at this delay in correspondence. It is unclear why no updates could be provided, particularly as the Presidency made a progress report on this file at the December Transport Council. As it stands, the Committee has only had the opportunity to consider your initial response alongside a scrutiny waiver request sent in anticipation of a possible General Approach.

Nonetheless, as you have now provided a useful update on the latest draft text, the Government's position and voting intentions, we have decided to grant a scrutiny waiver for the June Transport Council.

We look forward to a comprehensive update on the outcome of the June Transport Council. We would also like an update on two concerns flagged in the Government's EM which were not addressed in your recent letters:

- How third country carriers may be impacted by this proposal.
- The likelihood of redressive measures leading to retaliation by third countries (with implications for UK airlines and consumers).

18 May 2018

Letter from Baroness Sugg, Minister for Aviation, International and Security

Thank you for your letter of 18 May granting a scrutiny waiver ahead of the Transport Council, held in Luxembourg on 7 June 2018. I am writing as requested to provide you with an update on the outcome of the Council.

You will recall that the Presidency was seeking a General Approach on the proposed Regulation at the Transport Council. During the Council, the General Approach was supported by all Member States except one, who raised multiple concerns about addressing fair competition within the EU as well as with third countries.

The Secretary of State for Transport attended the Council and supported the General Approach, noting that the UK's main concern was delivering choice for consumers and that the challenge will be to ensure that this intervention does not distort good functioning of the market. Others echoed these views.

However, although the General Approach was agreed as outlined in my letter of 8 May, there remain differences of opinion between Member States, particularly on the respective roles of the Council and the Commission in making a decision to adopt Redressive Measures and whether or not the concept of "threat of injury" should be reinserted into the Regulation. In my previous letters, I explained that neither of these are significant concerns to the UK and that we would be pragmatic and work with others on a compromise. That remains our position.

Unsurprisingly, the Commission argued that it should have powers to implement Redressive Measures. Commissioner Bulc also supported re-inclusion of "threat of injury" so that the Commission could begin an investigation before material injury materialises. Some Member States supported this view of the concept as a deterrent, while others felt it could create a degree of legal uncertainty and preferred its continued omission.

The next stage will be to move to trilogue discussions with the European Parliament.

In your recent letter, you asked about the impact of the proposals on Third Country carriers, which will include UK carriers in the future. While they will be subject to this Regulation, the compromises made so far suggest that we are heading to a more proportionate outcome, and one more aligned with UK objectives. Given our open, liberal and competitive aviation sector and commitment to fair competition, the UK should have little reason to be concerned in this respect. There is also a clear expectation that attempts should be made to resolve issues through Air Service Agreements before resorting to the measures proposed under the Regulation.

You also asked about the likelihood of Redressive Measures leading to retaliation by third countries. This is harder to predict but it is a possibility. However, provided the Regulation remains proportionate, this would reduce the risk of such retaliation.

I will update you again in due course following trilogue negotiations.

23 July 2018

REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT SUMMARY OF THE ANNUAL IMPLEMENTATION REPORTS FOR THE OPERATIONAL PROGRAMMES CO-FINANCED BY THE FUND FOR EUROPEAN AID TO THE MOST DEPRIVED IN 2015 (11585/17)

Letter from the Chairman to Alok Sharma MP, Minister for Employment, Department for Work and Pensions

Thank you for the letter from your predecessor, dated 30 November 2017, on this report on the Fund for European Aid to the Most Deprived (FEAD). The EU Internal Market Sub- Committee considered this at its meeting on 25 January 2018.

We are grateful for the additional detail the letter provided on the reasons the Government's selected breakfast club programme was deemed ineligible for FEAD funds. However, we remain surprised and concerned that the Government has not been able to identify an alternative use for the UK's FEAD allocation.

We note that other Member States have been able to deliver a range of FEAD projects including: food donations, distribution, and transport costs; information and referral to social services; psychological support; literacy activities; language classes; support for women with children in shelters; and, activities to reduce social exclusion among elderly and homeless people. We also note that, according to the report, Member States are free to determine the target groups, types of support provided, and geographic coverage of their FEAD programmes, and that there is flexibility to use the funding to create links between existing services. In light of this, it is difficult to believe that there are no viable options to make use of FEAD funding in the UK.

With regard to audit and reporting requirements, we note the example given in the FEAD report of Poland's national managing authority being able to simplify these requirements when partner organisations found these too complex, and urge the Government to bear this flexibility in mind when considering future potential projects.

The letter also notes that only public bodies and not-for-profits are allowed to participate as partner organisations in FEAD programmes. We would be interested to know whether, and how, the Government has consulted with public bodies and charities on how FEAD funds might best be used to support disadvantaged people in the UK; and, if so, what their views were.

We would also like to know if the Devolved Administrations have been given a further opportunity to consider how they might use the funds, since the time of the original allocation.

Please also clarify whether the €3.96m would be lost to the UK if no eligible FEAD programme is identified, or if the funding would then be added back into the UK's Structural Funds allocation.

We have decide to retain this file under scrutiny. We look forward to your response within 20 working days.

25 January 2018

Letter from Alok Sharma MP, Minister for Employment

Thank you for your letter of 25 January 2018 concerning the Fund for European Aid to the Most Deprived (FEAD). I'm writing to inform you that efforts are ongoing to source answers across government on the various issues raised in your recent letter. A response will be forthcoming after consultations are concluded with other departments.

21 February 2018

Letter from Alok Sharma MP, Minister for Employment

Thank you again for your letter of 25 January 2018 concerning the Fund for European Aid to the Most Deprived (FEAD).

I note your concerns that the Government, as of yet, has not identified a use for the UK's FEAD allocation. I do however seek to assure you that despite what we believe to be the restrictive nature of the regulations governing the fund, officials are continuing to explore all possibilities for its allocation across UK Government departments and the Devolved Administrations. We have until 31 December 2020 to allocate this money to a suitable project and are keen to do so.

In addition to ongoing official level engagement, I will be consulting with my Ministerial colleagues and the Devolved Administrations to try to seek suitable projects for these funds.

I am aware that my predecessor presented in-depth reasons outlining why FEAD has not been allocated to date and I do not wish to repeat the information provided previously. I do however have a few points to offer with regard to the questions posed in your letter.

Whilst some other EU member states have, as you outline, used FEAD funds for a range of projects, the projects which the UK could design are currently constrained to those which provide basic material assistance such as food and blankets. This is a consequence of the UK agreeing a Type 1 Operational Programme with the European Commission when the Government expected to use FEAD on Breakfast Club expansion.

Other states, such as Germany, Netherlands, Denmark, and Sweden have the more complicated Type 2 Operational Programme in place. This resembles the administration required to oversee the European Social Fund and enables them to fund the non-material projects, for example the language classes that you list. UK officials are therefore exploring the feasibility of also putting this form of programme in place to widen the UK's options within the remaining FEAD period.

I also note the point that Poland was able, in a particular instance, to simplify requirements. In the case of the UK Breakfast Clubs proposal however, when this Government engaged the Commission to achieve similar simplification, the Commission was unable to adjust the regulations in this case for our specific project proposal.

Regarding consultations with public bodies and charities, I can assure you that the Department for Education consulted a charitable organisation and a local authority representative network in relation to the Breakfast Club project proposal. These talks informed the Department's decision to not proceed with the project as intended, for the reasons given in the letter from my predecessor. The Department for Education were also part of the FEAD network – a wider grouping of NGO and charity stakeholders - and were still unable to find an alternative use of the funds within individual school settings.

More broadly, due to the nature of FEAD regulations whereby 15% match funding needs to be provided, and administration costs are capped at 5%, the focus thus far has been on consulting government departments and teams such as the Office for Civil Society (OCS) to identify potential projects and a new Managing Authority. This is due to government departments being most likely to have access to the required match funding, and internal resources required to comply with various FEAD requirements such as audit, monitoring and evaluation.

Finally, I can confirm HM Treasury advice that if a suitable project is not found, the unallocated funds would not transfer to the UK's Structural Funds allocation but that a proportion of returned funds would be used to reduce our gross contribution to the EU budget.

I would like to stress that this process is ongoing and that my officials continue to cast the net far and wide across Government to explore all viable options for allocating these FEAD funds. If a suitable project is found, I will ensure your committee is advised.

4 April 2018

Letter from the Chairman to Alok Sharma MP, Minister for Employment

Thank you for your letter dated 4 April 2018 on the above report, which the EU Internal Market Sub-Committee considered at its meeting on 3 May 2018.

While we remain concerned at how difficult it has been for the Government to make use of FEAD funding to support deprived people in the UK, we are reassured by the commitment you have made to explore all possibilities for its allocation. We have therefore decided to clear this file from scrutiny, but expect further updates on the Government's progress in identifying a suitable project.

4 May 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A UNION CERTIFICATION SYSTEM FOR AVIATION SECURITY SCREENING EQUIPMENT (12090/16)

Letter from Baroness Sugg, Minister for Aviation, International and Security, Department for Transport

I am writing to update the Committee on progress regarding the above Commission proposal.

You may recall that the proposal was intended to introduce an EU-wide system of certification for airport security equipment (including, but not limited to: baggage, X-ray machines, walk-through metal detectors and security scanners). Although requirements for the methods of screening and the associated detection capabilities are contained in existing EU legislation, the technical standards for the equipment used are controlled by Member States, normally based on technical requirements established at pan-European level by the 44-state European Civil Aviation Conference (ECAC). This already provides a high degree of harmonisation across EU Member States.

However, partly based on some earlier difficulties with the system, the Commission believed that this was insufficient and proposed that a more formal, and legally binding, certification procedure should apply within the EU, based on the ECAC standards. This proposal was entirely separate from existing EU Aviation security legislation and was intended as an internal market measure to harmonise the approval and sale of such equipment rather than to introduce any additional benefits to security.

The Government's Explanatory Memorandum (EM) on the proposal outlined a number of concerns about the proposal, including its potential impact on Member States' ability to apply any necessary

More Stringent Measures (MSMs), the risk of exposure of confidential information, the addition of unnecessary layers of regulation and complexity to the existing ECAC system, and whether the proposal was consistent with the principle of subsidiarity.

In considering the EM, your Committee expressed a number of concerns, particularly regarding subsidiarity and the ability of Member States to impose More Stringent Measures.

In subsequent Council Working Group discussions in late 2016 and early 2017 it was clear that other Member States shared many of the concerns of the UK, particularly that the proposal might have unintended consequences for the ability of Member States to apply More Stringent Measures, and the increased bureaucracy associated with the proposed measures. There was also a concern that internal market issues appeared to be taking a priority over security. Working Group discussion was therefore suspended, and the Commission has since been considering how best to meet Member States' concerns.

The Commission, while recognising the concerns of Member States, stressed the value of a EU Certification, or 'stamp' to confirm that equipment used throughout EU airports (and possibly beyond) met scientifically established and harmonised EU standards. Many Member States accepted this principle but believed that it could be achieved in a simpler manner, using existing legislation. Over recent months, discussions have been taking place between the Commission and Member States to explore whether it would be possible to introduce the 'EU Stamp' concept under the umbrella of the existing (EC) 300/2008 Regulation covering aviation security.

The Commission now appears to be prepared to withdraw its original proposal and instead has written to Member States suggesting the following way forward:

- Establishment of a certification process which would materialise in the form of an "EU Stamp" for approved equipment that would allow access to all EU markets;
- This would be achieved by amending the implementing legislation under the existing Regulation(EC) No 300/2008 on aviation security, rather than a stand-alone 'internal market' Regulation as previously proposed;
- The amendment would foresee that the existing ECAC Common Evaluation Process and Common Testing Methodology would be a mandatory pre-condition for all aviation security screening equipment made available and put into service within the EU;
- However, Member States would be able to derogate from the principle of mutual recognition using existing MSM 'More Stringent Measures' provisions and require that equipment being used within their territory met higher detection standards than those of the EU certified equipment;
- Member States would still be able to use their own certification process, but the equipment under this process would not benefit from the EU 'stamp' and thus would not have full EU market access;
- The validation of the results published by ECAC and the issuing of the EU certification would be processed through the Comitology procedure of the existing Regulatory Committee.

I believe that this proposed approach addresses the concerns expressed by the UK and other Member States, in particular by:

- Specifically stating that Member States will be able to apply MSMs if they need to employ equipment offering better detection standards than the EU baseline;
- Allowing Member States to retain their own certification processes, and
- Avoiding the need to set up a complex and bureaucratic certification process and instead use existing mechanisms

Clearly, any UK response to a formal proposal for implementing legislation along the above lines would need to take into account the likely effect on the UK, including its airport and manufacturing industries, once the UK leaves the EU. As in many other areas, the UK will seek a close and collaborative relationship with the EU in the field of aviation security. The precise form and nature of that relationship is a matter for the ongoing negotiations between the UK and EU. However, it is in

our interest that the EU's technical requirements for screening equipment continue to be robust. The Commission's proposed approach reaffirms the fact that EU screening requirements will be based on the existing ECAC Common Evaluation Process and Common Testing Methodology. This is significant because even after the UK leaves the EU we will still play a major role in ECAC and will use established UK technical expertise to influence ECAC technical standards, and hence the EU legislation that applies them (even though we will not have a vote on the EU legislation itself)

The UK currently has its own equipment certification process based mostly on ECAC technical standards. The proposed implementing legislation should allow us to continue to do this, whether or not we are still in the EU when it comes into effect (which is almost certain to be after March 2019). Nevertheless it may still be in the interests of UK manufacturers of aviation screening equipment to obtain EU certifications in order to guarantee access to the wider EU market.

Regarding the Certification proposal itself, the Commission has agreed in principle at working level to withdraw the original proposal and replace it with provisions along the lines outlined above. This will have to be approved at Commission Cabinet level and then by the Council following consultation with the European Parliament. The timetable for this is uncertain, but we do expect the Council to support withdrawal of the proposal, given its hostility towards the proposal when it was originally discussed.

As explained above, any replacement provisions will be introduced in the form of amendments to the Aviation Security Regulation (EC) 300/2008. Substantive discussions on the detail of these new provisions are not expected before the end of the year; and they are expected to take place within the forum of the Commission's Aviation Security Regulatory Committee. Obviously, if these discussions are delayed it becomes less likely that we will be able to influence them if we are no longer members of the EU. However, we will still have influence over the ECAC specifications that form the technical basis of the proposed Regulation and have the greatest influence over the actual standards of airport security applied in the field.

We will continue to work collaboratively with the Commission and other Member States as matters progress, and would, of course, be happy to provide a new Explanatory Memorandum on any new measures which are proposed.

11 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A FRAMEWORK FOR THE FREE FLOW OF NON-PERSONAL DATA IN THE EUROPEAN UNION (12244/17)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Culture, Media and Sport

I am writing to you to provide an update on the progress of the proposed regulation for the Free Flow of non-personal Data in the European Union (FFoD), further to Matt Hancock's letter of 18 December and in response to your letter of 16 November.

As outlined in my predecessor's letter, there was agreement to an informal mandate for trilogue discussions at the 20 December meeting of COREPER. The decision to accelerate the adoption of an informal mandate was made by the Presidency on the basis of support expressed by the majority of ministers during a debate at a meeting of the Telecommunications Council on 5 December. The UK has been a consistent supporter of action on the free flow of non-personal data and to tackle data localisation in the EU and considers this file to be of significant importance to driving future trade and the development of the digital economy. Whilst we recognise that it would have been preferable to have more time to work through the file, the Government supported its speedy adoption so as not to obstruct the business of the Council on what is an important regulation. The file has been allocated to the European Parliament's Internal Market Committee (IMCO) and is scheduled for an initial discussion on 23 January. A more detailed timeline is yet to be confirmed.

I note your request that the Government provide the committee with additional information on areas detailed in the October Explanatory Memorandum. A comprehensive response to the points you

have raised and an update on the areas were we sought clarification is set out at Annex A[1]. I hope your committee finds this helpful in its deliberations noting that my officials are happy to provide further information where needed. It was not possible to provide this information earlier due to the rapid negotiation that took place in December. Indeed the draft text to which you referred in your last letter was altered during the course of negotiations as Member States, including the UK and likeminded member states, sought changes to meet our objective of retaining the scope and ambition of the original Commission proposal, as well as other clarifications. In line with the advice we provided to the committee in December, the UK supported the informal mandate for trilogue as we believed the final tabled document did not include any text that went substantially against the UK's position on this file.

There was a compromise in some areas - such as public sector insourcing being defined as out of scope - the final text broadly retained the scope and ambition of the Commission text and resolved many of the points of clarification set out in the explanatory memorandum of 12 October. Crucially for the Government, there were no further exemptions (i.e. beyond public security) added to the data localisation prohibition. This was the main concern for the Government as it could have considerably reduced the impact of the regulation. I enclose a copy of the mandate text that is now publically available.

I can assure the Committee that the Government has made every effort to meet its scrutiny obligations. I can also assure the Committee that we will continue to keep you up-to-date on progress as the trilogue progresses to allow for further scrutiny of this important file. We will also ensure the Scrutiny Reserve is maintained and respected on this file as proceedings unfold and ahead of the point at which the proposal returns to the Council of Ministers.

18 January 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries

Thank you for the letters dated 13 December 2017 and 18 January 2018 on the above proposal. The EU Internal Market Sub-Committee considered these at its meeting on 1 February 2018.

The most recent letter gives a helpful update on exemptions to the prohibition on data localisation. Please explain the kinds of data that 'public sector insourcing' would include, and why this has been made exempt from the prohibition.

We look forward to an update on how Member States might challenge negative decisions on data localisation notifications, and how the Commission would enforce such decisions.

We would be grateful for some examples of mixed datasets and your view of how difficult it would be to separate personal and non-personal data in order to apply the rules under this proposal and the GDPR.

We would also welcome further clarity on the impact of the Regulation on commercially sensitive data. Under the existing arrangements for competent authority access, which would be strengthened by this proposal, could an authority decline a request on the basis of commercial sensitivity? Does the Government consider that this proposal would increase requests for data access by competent authorities?

The annexe to your letter notes that a code of conduct on data porting is now under development. Please provide a summary of its key provisions as they become clear and clarify whether they do indeed reflect standards set out in the GDPR. How will this code of conduct impact businesses, particularly SMEs?

We welcome your consultation with business stakeholders. Please provide us with a summary of their views. We would also like to know the views of the Devolved Administrations, including Northern Ireland, and how the UK Government will take this into account in its approach to negotiations.

We have decided to retain the file under scrutiny. We look forward to a response to this letter in 30 working days.

[1] Not published here.

2 February 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries

I am writing to provide an update on the proposed Regulation for the Free Flow of Non-personal Data in the European Union in response to your letter of 2 February.

Your letter posed a number of questions on the Council's negotiating mandate and these are addressed in the table at Annex A to this letter[2]. I am not able to provide an update at this time on the treatment of sensitive data and the role of the Transparency Directive in implementing the Regulation. My officials are engaging the Commission on these issues, and I will provide further information once we have its response.

As outlined in my previous letter, the proposed Regulation is now under consideration in the European Parliament. The file has been allocated to the Internal Market Committee (IMCO) and the rapporteur, Anna Maria Corazza Bidlt, a Swedish MEP, has recently issued her report on the Commission's original proposal (attached at Annex B)[3].

IMCO will discuss the report on 23 March, and this will direct discussion in the lead up to the European Parliament vote in June. My officials are analysing the report and are working to provide briefing amendments to like-minded MEPs and to UKRep, in order to try to ensure the European Parliament text is aligned with our policy objectives.

The European Parliament is expected to vote on its text for the trilogue process on 4 June. The Bulgarian Presidency is yet to provide draft agendas for the Telecommunications Council. I will provide a further update on the timetable for this file as soon as possible.

I will ensure the scrutiny reserve is maintained and respected on this file as proceedings unfold.

I hope your committee finds this helpful in its deliberations and my officials are happy to provide further clarification, where needed.

26 March 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries

Thank you for your letter dated 26 March 2018 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 24 May 2018.

Thank you for your responses to our questions and general update on negotiations. We look forward to a further update after the European Parliament's expected vote on 4 June. Please include details of any progress on the following:

- How Member States might challenge negative decisions on data localisation notifications, and how the Commission would enforce such decisions.
- Whether a competent authority could decline a request for data access on the basis of commercial sensitivity.

Please would you also confirm if and how this file would interact with the proposed ePrivacy Regulation?

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days.

24 May 2018

[2] Not published here.
[3] Not published here.

Letter from Margot James MP, Minister for Digital and the Creative Industries

I am writing to you to provide an update on the progress of the proposed Regulation for the Free Flow of non-personal Data in the European Union (FFoD), and to seek scrutiny clearance for this file.

In response to my letter of 24 March, you asked three questions about the proposal which are addressed at Annex A[4].

Since I last updated you, the timeline for adoption of this Regulation has become clearer. The second informal trilogue occurred on 19 June and has concluded with an informal political agreement on the text. The draft final text (attached) was presented to by COREPER on 29th June, where Member States indicated there was sufficient support in principle for the Regulation to proceed to formal adoption. The text will now proceed for translation and a lawyer linguist check, with final adoption through a vote at a European Parliament Plenary sitting, before a Ministerial vote at Council. The vote at Council is expected to take place in October or November of this year.

As you know, the UK is a strong supporter of action in this area and has lobbied heavily - with a group of like-minded member states - for a regulatory intervention to prevent unjustified data localisation. During the debates the UK has successfully argued for limited exemptions to the prohibition on data localisation in Article 4 of the Regulation which has been a point of contention, but is crucial to ensuring the free flow of non-personal data.

The Parliament's position was close to the Council's text and therefore the UK supported the Presidency's decision to maintain the informal negotiating mandate that was granted under the Estonian Presidency in December. We considered this the best course of action. By sticking firmly to the original Council mandate the Presidency was ultimately able to resist the most concerning elements of Parliament's text as part of the final deal. This included a proposal to ensure that data localisation restrictions could only be imposed on "imperative grounds" of public security, which my officials advised would have introduced considerable risks. The Presidency was also able to resist proposed measures under Article 4 to enable the Commission to take decisions requiring Member States to amend or withdraw localisation measures. In the final text the Commission can only issue non-binding opinions on draft measures proposed by Member States, in line with existing procedures under the Transparency Directive (2015/1535). The key points from the final FFoD text are detailed at Annex B[5].

Based on the text provisionally agreed at trilogue, we expect that the UK would vote to support the final Regulation as it meets our policy objectives of removing barriers to the free flow of non-personal data. During the course of the negotiations the key ambiguities in the Commission's proposal – in particular about the treatment of mixed datasets, and the relationship between the procedures for cross-border access to data, have also been resolved. I am therefore seeking clearance to do so.

I hope your Committee finds this update helpful in its deliberations, and my officials are happy to provide further clarifications to the Clerk of the Committee where needed.

9 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE EUROPEAN ELECTRONIC COMMUNICATIONS CODE (RECAST) (12252/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING THE BODY OF EUROPEAN REGULATORS FOR ELECTRONIC COMMUNICATIONS (12257/16)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Culture, Media and Sport

General update:

[4] Not published here.
[5] Not published here.

Thank you to the House of Lords European Union Committee (EUC) for its letter of 1 December 2017 clearing the BEREC Regulation from scrutiny and the conditional waiver granted by the House of Commons European Scrutiny Committee (ESC), both of which allowed the UK to support the General Approach taken on the BEREC Regulation at the Telecoms Council on 4 December 2017. BEREC negotiations will now continue once negotiations on the EECC are either finalised or close to conclusion. This will likely be April - June 2018. I am writing to you now to with further updates, as both committees requested, and to answer the specific questions you posed. As with my predecessor's update letters, I am writing in identical terms to both Committees to ensure both are in receipt of the same level of information.

On the EECC, Council Working Groups (CWGs) continue and trilogue meetings are planned on 1 and 27 February where we expect access and spectrum to be discussed along with some new European Parliament (EP) proposals. An Informal Telecoms Council is scheduled for 19 April, but there will be no vote on files at that gathering. I will continue to keep your Committees updated on the Code's progress.

Most significant differences between the Council and European Parliament texts:

There are some major differences between the Council text and the EP's proposed version. Of particular note, on **Institutional governance**, the EP has proposed a different approach to Article 12 (General Authorisation), where the EP text proposes an extension of scope to include Number Independent Interpersonal Communications Services (NI-ICS, e.g WhatsApp).

In the **Services** part of the text, the EP proposes changes to Articles 95-100 which would include different services in scope of end-user rights provisions. On Article 40 (Security and integrity), the EP favours a greater level of end-to-end encryption than the Council, which sees this as a matter for Member State security competence. The EP also proposes to reduce the price of intra-EU calls (Article 92a), capping the cost for end-users beyond a potential difference on termination rates, and a 'Reverse 112' system (Article 102a) which would require introduction of a public mobile emergency alerting service.

On **Spectrum**, the main differences relate to the EP and Council's approaches to Article 35 (Peer review), where the Council proposes a non-mandatory approach overseen by the Radio-Spectrum Policy Group (RSPG) and the EP proposes a mandatory approach resulting in a BEREC opinion; on licence duration and renewal (Articles 49 and 50), where the Presidency text has an open-ended duration period and leaves renewal much more to national competence, while the EP is prescriptive about a 25 year licence period and more restrictive about conditions for renewal.

Different approaches are also evident in the **Access** part of the EECC towards Article 74 (Co-investment & regulatory treatment of new network elements), where the Council text proposes tighter controls on when this can be imposed, e.g. there must be more certainty around the co-investment, and proposes a maximum period of 7 year forbearance; and towards symmetric access obligations (Article 59) and joint dominance (Article 61), where the EP chooses to explicitly address joint dominance while the Council does not. Additionally, the EP text also contains no mention of the provisions in Article 86b (Regulatory controls on retail services). This was an addition to the Council text specifically sought by the UK that protects vulnerable users of more traditional telecoms services.

Over-the-top services (OTTs)

One of the UK's negotiating objectives is to secure a proportionate, evidence-based approach to any regulation of OTT services. Consequently, the EECC text adopted by the Council incorporates a "service-blind" approach. This means regulation will only apply where the OTT service displays relevant characteristics. BEREC will undertake regular reviews of these characteristics, and there is also an instrument allowing for regulatory intervention for any emerging problems with OTTs. The UK Government considers this to be a proportionate approach which extends regulation to OTTs only in cases where consumers may experience harm if left outside the scope of the relevant regulation, and does not consider that the approach will hamper innovation in this sector.

Spectrum Proposals

As my predecessor has reported to the Scrutiny Committees, our primary objective has been to maintain national competence in this area. The Commission's original proposals would have

encroached on Member States' ability to exercise flexibility in spectrum management and allocation. However, the Council's mandate would still involve substantial changes to the way that spectrum is managed across the EU. In particular, the role of the Radio-Spectrum Policy Group (RSPG) has been strengthened. Within the Council mandate, there are clear processes for resolving cross-border disputes for harmonised radio spectrum. The Council have also agreed that a peer review process can only be a positive step in sharing best practice. Finally, the Council have agreed that promoting network sharing will help provide connectivity to the hardest to reach places.

Intra-EU calls

The EP has proposed surcharge-free intra-EU phone calls - i.e. calls would be the same price domestically as between countries in the EU (and EEA). We are aware that the EP places some significance on this proposal, so we will actively consider its merits. However, we will also need to factor in the fact that there are alternatives to accessing low-cost intra-EU calls without introducing regulation, such as OTTs like WhatsApp, and calling cards. These alternatives are well understood, well-used and easy to access in a customer's home market.

I will keep the Committees informed of further developments in negotiations as they unfold.

Update on: Brexit and Telecommunications

Consultation with UK industry

DCMS officials have been engaging with telecoms operators collectively and individually to hear their views on the implications of EU Exit. There are both concerns and opportunities in the telecoms sector arising from leaving the EU.

Market Access and WTO rules

The Commons' Committee has asked specifically about access to the EU telecoms market in relation to the World Trade Organisation's (WTO's) General Agreement on Trade in Services (GATS). GATS includes sections setting out international rules for telecoms markets, including for cross-border trade in telecoms services, which the UK currently adheres to as a member of the EU.

Paragraph 5(a) of the GATS telecoms annex states that each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecoms networks and services, on reasonable and non-discriminatory terms. The current EU Framework (EU Access Directive) is based on the same principles as GATS, which does not require regulatory harmonisation but seeks to ensure liberalised access by any company that offers telecommunications services within any member (for example providing access to an incumbent's infrastructure). The rules provided by the WTO should afford a similar level of EU market access for UK telecoms operators, but without requiring full alignment with EU telecoms law.

Market Access and Public procurement

The Commons' Committee also asked to what extent retaining current levels of access to the EU public-sector procurement market is important to BT and other telecoms companies. Public procurement contracts are important for global telecoms companies, and EU contracts generate annual revenue for UK telecoms companies. It is therefore important for UK telecoms companies to retain the ability to compete and win future bids on a non-discriminatory basis.

Market Access and Roaming

There are other aspects of market access that we also need to consider as we prepare for withdrawal, and the Commons' Committee has raised a question about roaming in a post-withdrawal context. The Government is committed to securing the best deal for British consumers on UK exit from the EU. Two operators (Vodafone and Three) have committed publicly to continue surcharge-free roaming in the EU on UK exit. All mobile operators are in a competitive market and consumers being used to EU and EEA surcharge-free roaming for over two years will drive consumer expectation and behaviour.

It is worth adding that roaming arrangements are inherently cross-border in nature, and are therefore subject to the sensitivities of the UK's negotiating position. We are doing our utmost to ensure consumers get the best possible outcomes from negotiations. That is why we are working with businesses across the economy to provide the certainty they need to understand the challenges and

opportunities they may face in the coming months and years. The Government will consider all options that are available to us, including those on mobile roaming.

Turning to the Committee's question about roaming in a post-withdrawal context, the Government is not yet in a position to provide further clarity on the future of mobile roaming post-exit and will make our position known in due course.

Operability of the current Regulatory Framework, post-exit

The Commons' Committee has also asked about EU telecoms regulations that may not function in the same way if retained or transposed post-Brexit. The EU regulatory framework for telecommunications is administered at national level and primarily consists of EU directives which are already implemented into UK law (principally in the Communications Act 2003 and the Wireless Telegraphy Act 2006). It also includes certain directly-applicable EU Regulations and Commission Decisions, which the EU (Withdrawal) Bill would convert into UK law. Furthermore, there are no functions which are directly carried out in the UK by an EU agency and few reciprocal arrangements between the UK and other EU member states (with the exception of roaming rules).

UK telecommunications law will therefore largely continue to function after EU-exit. However, there are nevertheless deficiencies in the law that might arise from EU exit. These include, for example, EU consultation procedures pursuant to which Ofcom must notify certain draft measures to the Commission for comment and (in some limited cases) approval, as well as minor and technical deficiencies. The Government proposes to correct these deficiencies using secondary legislation made under the power included for this purpose in the EU (Withdrawal) Bill.

I hope that you will find this to be a satisfactory update and response to your questions. I will continue to update you as the negotiations on these files progress.

29 January 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries

Thank you for your letter dated 29 January 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 1 March 2018.

Thank you for the update on the differences between the Council and EP proposed texts on the European Electronic Communications Code (EECC). What impact would the EP's proposed extension of the scope of Article 12 have on number independent interpersonal communications services? If adopted, would this approach alter your assessment of the proportionality of the regulation of OTT services?

We have decided to retain the EECC file under scrutiny. We look forward to a further update on the progress of the EECC text in due course, and well in advance of any vote at Council.

1 March 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries

General Update:

I am writing to you with further updates, as both committees requested, and to answer the specific question you posed with regards to Article 12. As with my previous letter, I am writing in identical terms to both Committees to ensure both are in receipt of the same level of information.

On the EECC, Council Working Groups (CWGs) continue and informal trilogue meetings have taken place. So far all the articles provisionally agreed at trilogues meet UK objectives. I will continue to keep your Committees updated on the Code's progress. We expect further trilogues in May and June, followed by the adoption and entry into the Official Journal by Autumn. In advance of this adoption stage, I will write with a request for the committee to lift their scrutiny reserves.

Access

In our long-standing position at Council, we have continued to oppose proposals to grant the Commission further oversight powers, in particular through a "double lock" veto over national access remedies (under Article 33). Our position is supported by several delegations. In recent trilogues the Parliament has requested that Member States consider introducing such powers in specific limited provisions, in particular the articles dealing with symmetric access obligations (Article 59, paragraph 2) and co-investment (Article 74). Member States have so far generally been reluctant to accept this.

Spectrum

We are satisfied that the spectrum articles which were provisionally agreed in March met our primary objective to maintain national competence in this area. The Commission's original proposals would have encroached on Member States' ability to exercise flexibility in spectrum management and allocation. The agreed text deletes unnecessary new Commission powers (implementing acts) that we opposed. It also removes proposals to give the Commission powers to instigate a mandatory "peer review" (Article 35) of Member State spectrum auctions. In addition the agreed text on a minimum 15 year duration of spectrum licences for mobile broadband services (Article 49) does not interfere with the UK's system of indefinite licence duration.

Services

For end-user rights provisions, we are broadly content with the provisions at Articles 95-100. During trilogues, we have been supportive of European Parliament (EP) amendments to Articles 95-100 which seek to include transmission of services for broadcasting within the scope of end-user rights, and amendments which will provide greater flexibility for Member States in implementing specific provisions subject to full harmonisation.

Additionally, we have continued to highlight the potential overlap between the EECC and the draft Digital Content Directive (DCD) in terms of termination rights for bundles consisting of public electronic communication services and digital content/services. The Presidency is also looking at possible overlaps in consumer protection provisions for so-called "over the top" services (OTTs) such as WhatsApp in the EECC and DCD. The Presidency is reviewing the overlaps, and will shortly be providing a proposed way forward for discussion.

Article 12 and Over the Top (OTT) Services

The EP has proposed to extend the general authorisation regime to include OTT services. Extending the general authorisation regime to OTT services would mean that any such service operating within the Union would be subject to the relevant national general authorisation regime on some Member States. This may require that the OTT service submits a notification to a National Regulatory Authority (NRA) in some Member States. The current UK regime for general authorisation of communications providers does not require a formal notification and as such, the extension of scope would not immediately impact on the provision or availability of Number Independent Interpersonal Communication Services (NIICS) in the UK market. Although, the UK still does not consider the extension of the regime to be necessary as there has been no evidence of consumer harm or market failure resulting from their exclusion from the regime, we envisage no significant harm to the UK consumer market as a result of their inclusion. The mechanisms governing their inclusion have yet to be discussed in detail in Council.

Universal Service Obligation

We have continued to resist proposals to remove existing flexibility to finance the USO from an industry fund, meaning that the USO could only be publicly funded. The text is still to be agreed at trilogue, but there is wide support for our position in Council.

Intra-EU Calls

At the EP's insistence, the Council is considering the EP's proposal for the introduction of surcharge-free intra-EU calls being part of the EECC - i.e. calls would be the same price domestically as between countries in the EU (and EEA). We continue to make the point that there are well-used and well-understood alternatives to accessing low-cost intra-EU calls, such as OTTs like WhatsApp, and calling cards. However, we also recognise that intra-EU calls can currently be expensive and do not accurately reflect the price of their provision, so consumers in the EEA, including the UK, might benefit from such a proposal.

BEREC Regulation

Discussions on the BEREC Regulation have largely been in line with the UK's negotiating objectives. The final point of negotiation remains BEREC's legal personality. The UK remains of the view that BEREC must not become an EU agency and as such cannot be granted a legal personality. This view is generally shared by Member States in the Council. We expect the BEREC Regulation to be adopted by the EU at the same time as the EECC.

23 May 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries

General Update:
I am writing to you with a further update and a request for the committees to lift their scrutiny reserves on both the EECC and the BEREC Regulation, as the institutions have reached a provisional political agreement. As with my previous letter, I am writing in identical terms to both Committees. The provisional political agreement meets all of the government's key negotiating lines. The legal text is currently being finalised. We expect the Code to be adopted and enter the Official Journal by Autumn 2018.

Intra-EU Calls
International consumer calls to telephone numbers registered in other Member States will be regulated and this will effectively cap calls at 16p/min and texts at 5p/text. The European Parliament sought surcharge-free calls and texts, but the Council secured a more balanced version with low call and text charges in return for significant concessions by the European Parliament.

End User Rights
The UK will be in a position to maintain a high level of sector specific end-user rights, despite the transition to fully harmonised rules. We can keep our national protections that are higher than those agreed in the Code. Number-independent interpersonal communications service (NIICS) such as WhatsApp and Facebook messenger will not be regulated unnecessarily. We also secured an amendment to ensure that consumers will not be locked into bundles consisting of electronic communications and digital content services.

Universal Service Obligation (USO)
Despite European Commission and European Parliament proposals to require Member States to fund USOs through the public purse only, the agreement preserves the existing provisions. These are consistent with the UK's domestic USO policy, which will be funded through an industry levy.

Retail price regulation
The UK successfully secured the reintroduction of regulatory controls on retail services allowing Ofcom to retain their existing power to directly intervene in retail markets, to set prices when all other remedies have failed. This ensures that consumers will be protected in mature and declining markets, such as the market for landline-only services. The European Commission had originally proposed to repeal this power, which we felt was premature and inappropriate.

Access Regulation
With regards to Access Regulation, agreement was reached on the following specific points:

- Symmetric Obligations: In line with our objectives, this agreement does not limit Ofcom's existing broad power to impose network access obligations on all operators in a market. .
- Treatment of new fibre networks: The Commission proposed to relax regulatory remedies on operators with market dominance that offered co-investment in networks to competitors. Under the final agreement, the regulator will maintain oversight and be able to intervene in cases of significant competition problems, thus encouraging investment incentives for operators to co-invest in new fibre networks.

Reverse-112

The text requires Member States to introduce a public warning system, with a flexibility via the regular public communications network or via an app. There is a total of three and a half years for Member States to introduce this system. The UK is already looking to develop a national public alert system consistent with the provisions of the EECC.

Body of European Regulators of Electronic Communications (BEREC):
We have successfully negotiated to ensure BEREC does not become an agency of the European Union or be able to make legally binding decisions. Although BEREC can continue to bring together European regulators in an informal grouping and issue a variety of regulatory outputs, they will not be legally binding. This preserves the independence of BEREC along with its value as a body rooted in the expertise of its members.

Timing & Other Issues

- We estimate the official adoption of the EECC and publication in the Official Journal of the European Union to be in Autumn 2018. The implementation deadline for transposition into national law will be two years after this.

Intra-EU calls is subject to earlier transposition dates versus the rest of the Code: 15 May 2019.

16 July 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS TACKLING ILLEGAL CONTENT ONLINE TOWARDS AN ENHANCED RESPONSIBILITY OF ONLINE PLATFORMS (12879/17)

Letter from the Chairman to the Rt Hon Matthew Hancock MP, Minister of State for Digital, Department for Digital, Culture, Media & Sport

Thank you for your Explanatory Memorandum (EM) dated 2 November 2017 on the above Communication. The EU Internal Market Sub-Committee considered this at its meeting on 14 December 2017.

We consider tackling illegal content online to be an important and pressing issue, and we welcome actions taken by online platforms and other providers to identify and remove illegal content.

We note that the Communication does not go into detail on measures to protect against over-removal, and has been criticised by European Digital Rights (EDRi) for lacking in protections for free speech. Does the Government believe that the Communication contains adequate safeguards to protect free speech and avoid the removal, or even censorship, of legal content?

We are also interested to know whether the Government thinks that non-legislative EU action could give rise to inconsistencies in providers' approaches to tackling illegal content. Would the Government be supportive of legislative action in this area?

We have decided to clear the file from scrutiny and would be grateful for a response to our questions within 30 working days.

5 February 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries

Thank you for your letter of 5th February to my predecessor regarding the EM on the above EU Communication. I am writing to address the two questions that you raised in this report. I have endeavoured to provide as full an update as possible in light of ongoing Brexit negotiations.

You asked whether the government believes that the Communication contains adequate safeguards to protect free speech and avoid the removal, or even censorship, of legal content. It should be noted that the guidance contained in this Communication is voluntary and online services can choose not to adhere to it, if they wish. For those online businesses that adhere to this guidance, it does offer advice aimed at preventing the over-removal of legal material.

The section entitled 'safeguards against the over removal and abuse of the system' offers guidance as to how platforms can avoid the removal of legal material. It recommends that those who provided the content should be given the opportunity, through a counter-notice, to contest any decision by the platform to remove this content. This guidance also states that if on investigation, the removed material is found not to be illegal, the online provider should restore this content without delay or allow it to be re-uploaded by the user. Note that the counter-notice system is only generally used to contest notices for copyrighted material and not for high threshold illegal material such as indecent images of children. Adhering to this type of system should prevent over-removal of legal content.

As my predecessor set out in the explanatory memorandum, the government welcomes this Commission guidance to help online businesses better understand their responsibilities as to how they can more effectively tackle the proliferation of both illegal and harmful online material. However, as set out above, this guidance is voluntary. We therefore agree that this could lead to inconsistencies in how providers tackle the takedown of illegal content.

You asked whether the government would support legislative action in this area. As the Prime Minister set out in her recent speech in Davos, my officials are looking at the legal liability of social media companies for the content shared on their sites. We are committed to working with our European and international partners as well as businesses themselves to understand how we can make the existing frameworks and definitions work better, including through legislative means if necessary.

However, this is a complex issue, particularly in the context of the UK's withdrawal from the EU, and we will be carefully considering the options and consequences of a change. We need to achieve the right balance, between addressing issues with content online and allowing the digital economy to flourish. Before taking any decisions we will be working closely with the full range of stakeholders who have an interest in this area.

Finally, I should note that the European Commission has now published a Recommendation entitled 'on measures to effectively tackle illegal content online, as a follow up to this Communication. I will submit an explanatory memorandum detailing this Recommendation in due course.

I trust that this helps to provide your committee with further clarity and that you will now clear it from further scrutiny.

29 March 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2009/33/EU ON THE PROMOTION OF CLEAN AND ENERGY-EFFICIENT ROAD TRANSPORT VEHICLES (14183/17)

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

Thank you for your Explanatory Memorandum (EM) dated 20 December 2017 on the above proposal. The Internal Market Sub-Committee considered this at its meeting on 22 March 2018.

Aside from welcoming its broad approach, your EM does not set out the Government's policy position on this proposed revision to the Clean Vehicles Directive. Please provide a more detailed assessment of the Government's view (including any specific concerns) in relation to:

- the 'workability' of the proposed amendments;
- the proportionality and appropriateness of the proposed methodology for defining clean vehicles, and setting procurement targets in this way;
- potential impacts on public sector bodies, bus operators and private businesses affected.

We would like to know whether the Government has undertaken a targeted stakeholder consultation on this proposal; if so, please provide us with a summary of the views expressed by stakeholders and the Devolved Administrations. We would also be grateful for an update on the Government's decision on whether to produce an impact checklist on the likely risks, costs and benefits of the proposal for the UK.

Can you clarify whether the proposed minimum procurement targets relate to the proportion of the total road transport fleet that must be 'clean' by 2025 and 2030, or just to new vehicles procured? We would also be interested to know what the UK HDV procurement criteria are, which the EM notes exceed the requirements of the Alternative Fuels Infrastructure Directive.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days, including a general update on negotiations and the likely timetable for consideration and agreement of this proposal by the EU institutions.

22 March 2018

Letter from Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letter of 22 March, following the EU Internal Market Sub-Committee's consideration of my Explanatory Memorandum on the above proposal. You decided to retain the file under scrutiny and asked for more information on the Government's view of the proposals. I am writing to provide this, and also to answer the questions that the Committee raised.

There has been some working group discussion of the proposal, but there has been little substantive progress to date and most Member States, including the UK, are still considering their position on the proposals. Discussions to date have focussed on the lack of harmonisation with other EU regulations on the definition of a 'clean' vehicle, and proposals for the European Commission to set Member States binding targets for the uptake of clean vehicles.

We currently engaged in discussions with other interested departments in order to reach a UK position on the overall proposal, though, as noted in the EM, the Government already shares the view that the public sector has an important role to play in the transition to electric vehicles, as part of a long-term solution to emissions from road transport.

In principle, we support the proposals to introduce a definition of a clean vehicle for cars and light goods vehicles, but we would be keen to see the definition aligned with the thresholds set out in existing EU regulations. We share the view that public sector procurement targets and accurate monitoring and reporting of delivery against those targets could prove to be effective here.

However, Member States should retain the flexibility to set their own targets for public sector procurement, appropriate to need and ambition. As mentioned in the EM, the UK's Government Fleet Commitment (GFC) proposes 25% of the government car fleet to be 25% by 2022 and the revised Government Buying Standards (GBS) mandates that all new government vehicle purchases should be zero or ultra-low emission by default, with alternatives considered only in exceptional circumstances.

The GFC will also include a monitoring and reporting requirement, so the UK will be in a good place to report against any central government uptake requirements by 2023, as proposed by the Commission.

In terms of the scope of the Directive, as a general point, we do not think it is appropriate to impose the proposals on the wider public sector, given the costs involved in investing in clean vehicles and the associated infrastructure. It should be for Member States to decide the scope of any targets.

The Committee asked whether the Government has undertaken a targeted stakeholder consultation on this proposal; and for a summary of the views expressed by stakeholders and the Devolved Administrations. We have not yet undertaken targeted stakeholder consultation on the proposals, though we will be seeking input from the Devolved Administrations as we develop our position. We will, of course, be happy to provide a summary of any views expressed in due course.

A final decision has not yet been taken on whether to produce an impact checklist on the risks, costs and benefits of the proposals for the UK.

The Committee also asked whether the proposed minimum procurement targets relate to the proportion of the total road transport fleet that must be 'clean' by 2025 and 2030, or just to new vehicles procured. The Commission recently clarified that the CVD targets apply to the proportion of new vehicles procured. The GFC targets apply to the whole fleet so it will be go further than the proposals under the CVD.

With regard to HDV procurement criteria, our public procurement policy for vehicles is to award contracts on the basis of best value for money, achieved through fair and open competition in line with our current international obligations. As stated above, our revised Government Buying Standards for Transport requires fleet managers to procure zero-emission or ultra-low emission vehicles by default, with alternatives considered only in exceptional circumstances.

The Presidency gave a progress report on the negotiations at the 7 June Transport Council. The European Parliament is also considering the proposal and is likely to complete its Committee stage during the summer, with a possible Plenary vote in October.

24 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1073/2009 ON COMMON RULES FOR ACCESS TO THE INTERNATIONAL MARKET FOR COACH AND BUS SERVICES (14184/17)

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

Thank you for your Explanatory Memorandum (EM) dated 20 December 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 22 March 2018.

Please would you explain clearly what UK permissions would currently be required for an overseas operator to operate a service where passengers cannot travel less than 15 miles? What would the proposal to have such services authorised mean in practice for operators?

We note that the UK already has a high degree of market liberalisation for inter-urban coach and bus services. Has the Government made an assessment of the potential impact of the proposal on bus and coach cabotage penetration rates in the UK, and if the proposal would have any implications for urban services?

Given the potentially wide-ranging implications highlighted in your EM, does the Government intend to consult on this proposal at any stage? Please could you also provide further details on the views of the administration in Northern Ireland and if you are aware of any specific implications for Scotland and Wales?

Your indication that the proposal is likely to be significantly amended is helpful. Please keep us updated of any material changes.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days.

22 March 2018

Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State

Thank you for your letter of 22 March, I am writing to provide the further information requested by the EU Internal Market Sub-Committee and note the decision that it is not cleared from scrutiny as further information has been requested.

In response to the issues raised within the Committee's decision I would comment as follows;

You asked for an explanation of what UK permissions would currently be required for an overseas operator to operate a service where passengers cannot travel less than 15 miles, and what would the proposal to have such services authorised mean in practice for operators.

Currently, there is no provision for an overseas operator to provide a regular service to passengers within the UK other than as part of a regular international service as allowed by Regulation (EC) 1073/2009. The proposal as drafted, would allow operators to provide national services in another member state on a permanent basis. Such services would need to be registered with a regulatory body in that member state. Permission to operate services under this proposal could be refused if; a)

the distance between stops is less than 100km, and b) the provision of the service would disturb the economic equilibrium of an existing public service obligation.

You asked whether the Government has made an assessment of the potential impact of the proposal on bus and coach cabotage penetration rates in the UK, and if the proposal would have any implications for urban services. I will be happy to share this information with the Committee when it is available. As anticipated in the Explanatory Memorandum there has been very little working group discussion of this proposal so far. The Estonian Presidency held one working group meeting, which showed that Member States had a number of concerns with the proposal and the accompanying Impact Assessment. The proposal is therefore likely to be significantly amended before it could become EU law. The Bulgarian Presidency are not taking the proposal forward during their term of office, and the European Parliament timetable is also slower than that of other proposals in the second phase of the Mobility Package.

It is the view of officials that the proposal is likely to be significantly amended through the comitology process before it becomes EU law. My Department would assess the impact on the UK bus industry and urban services, as and when, more details are known.

Similarly, we do not intend to consult on this proposal until we have greater confidence about the timing and development of any legislative proposals.

Finally, you requested further details on the views of the administration in Northern Ireland and if we are aware of any specific implications for Scotland and Wales. The regulation of local bus and longer distance services is a reserved matter in Great Britain so there are no specific implications for Scotland or Wales. Regulation of bus services is devolved in Northern Ireland and the Department for Infrastructure (DfI) do have a number of concerns related to the proposed changes.

Translink is the brand name of the Northern Ireland Transport Holding Company (NITHCo), a public corporation in Northern Ireland which provides the public transport in the region. Translink is required to operate a network of public transport services across both urban and rural areas. It does this by cross-subsidizing the significant numbers of socially necessary (often rural) services. This requirement to operate the public transport network in Northern Ireland is reflected as public service obligations (PSO) in the Public Service Contract (PSC). If services carrying passengers for 100 kilometers or more were to be automatically authorized without consideration of the impact on the PSC, this would in effect enable new entrants to select the more profitable routes without any assessment of the knock-on consequences for the socially necessary services run under the PSC.

The proposal to abolish journey documents would also make any enforcement action more difficult to pursue. Northern Ireland has previous experience of an adverse impact on a domestic operator from unregulated cabotage operations.

I will, of course, continue to keep the Committee informed of any developments on this proposal.

14 May 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 92/106/EEC ON THE ESTABLISHMENT OF COMMON RULES FOR CERTAIN TYPES OF COMBINED TRANSPORT OF GOODS BETWEEN MEMBER STATES (14213/17)

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

Thank you for your Explanatory Memorandum (EM) dated 20 December 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 1 March 2018.

We note your observation that combined transport operations in the UK are limited and so this proposal is unlikely to have a significant impact. Are there any economic or regulatory benefits for combined transport operations in the UK, and is the Government actively seeking to increase the number of combined transport operations? What kinds of mandatory economic support measures would apply in the UK, if the proposal were to come into force? We also look forward to further detail on your assessment of the potential costs of this proposal for the UK.

We would be grateful if you could clarify the proposed conditions that would apply to the non-road leg of combined transport operations under this proposal and the rationale for the removal from scope of sea journeys longer than 100km.

With regard to subsidiarity concerns, does the Government share the Swedish Riksdag's Reasoned Opinion that the proposal should not specify the maximum distance between transhipment terminals?

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days, including a general update on the progress of negotiations and specific updates on the areas where the Government is undertaking further analysis. Please also summarise the views you have received through consultations with stakeholders.

1 March 2018

Letter from Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letter of 1 March about my Explanatory Memorandum (EM) on the above proposal, which forms part Commission's Mobility Package. I am writing in response to the Committee's queries as set out in your letter, and also to provide an update on developments in negotiations and the prospects for the 7 June Transport Council.

Benefits of Combined Transport

You asked for information about any economic or regulatory benefits for combined transport operations in the UK, and whether the Government is actively seeking to increase the number of combined transport operations.

There are some economic benefits for combined transport operations in the UK. The Department for Transport, Transport Scotland and the Welsh Government all provide freight revenue grants to encourage modal shift from road to rail or inland waterway, where the costs are higher than road and where there are environmental benefits to be gained. Operators of combined transport would be eligible to apply for these schemes (titled Mode Shift Revenue Support for rail or inland waterway and Waterborne Freight Grant for coastal or short sea shipping). Further economic incentives are likely to have a positive benefit on the sector, according to industry contacts.

From a regulatory perspective, Combined Transport operations and certain other intermodal operations benefit from some higher standard maximum dimensions and weights across the EU than for standard heavy goods vehicle operations. The existing provisions remain unchanged as part of this proposal.

The Government does not have a specific objective to increase the number of combined transport operations. In September 2016, however, the Government published a Rail Freight Strategy, setting out a vision for how rail freight can grow. This Strategy recognises the positive benefits of rail freight for the UK around the environmental and air quality relative to road freight and its impact on reducing road congestion.

Mandatory economic support measures and assessment of costs

You asked what kinds of mandatory economic support measures would apply in the UK, if the proposal were to come into force. You also asked about our assessment of the potential costs of this proposal for the UK. At this stage the cost impact is uncertain because the proposal is still at an early stage in negotiation and there is some lack of clarity about how it would operate.

The Commission's proposal states that Member States should take necessary measures to support investment in transhipment terminals, to ensure that any location in the EU is not further than 150km from one. This is a potential area for costs for the UK, but there may be none.

Certain parts of the UK, for example areas of South West England and Scotland, are not within the 150km limit. Officials are trying to establish what would constitute necessary Government measures, and the informal feedback we have received from the Commission indicates that these could be some form of policy guidance. An example of this could be (in respect of England) a revised version of my Department's "National Policy Statement for National Networks", which sets out the Government policies for nationally significant infrastructure rail and road projects for England.

If investment in infrastructure is then made, current policy and practice is that this would be made on a commercial basis and its level would depend on the work being undertaken. Details of these costs can be market sensitive and therefore difficult to obtain. For example, the establishment of a rail connection to the main network would be likely to cost anything upwards from £3-£4m, depending on the complexity involved.

There can be public sector involvement in investment in facilities. For example the Scottish Government provides grant support for the development of rail freight facilities. Since 2007, £9.7 million has been invested in 11 freight facilities across Scotland. The grant is usually 50% of the eligible capital costs of a project and has funded infrastructure such as hard standing, loading areas, covered storage, fencing, lighting, handling equipment, floating piers and intermodal containers.

A new rail freight terminal near East Midlands Airport has recently been announced and will include extensive handling facilities. A partnership between Highways England and other highway authorities will see £35m of road improvements as part of this.

Separately, the European Commission has carried out its own analysis of infrastructure investment needs and concluded that about 9.7 billion EUR is needed for the period 2015-2030. Of this, 46% is estimated for intermodal terminals, with the Commission estimating that on average 20-25 million EUR will be needed per Member State per year.

There may also additional costs arising from the data collection requirements, both to Government and the industry. While difficult to quantify, there would be costs arising from starting data collection operations of this type in the UK and costs to businesses in terms of responding to Government requests for information.

Conditions of the non-road leg

You asked for clarification on the proposed conditions that would apply to the non-road leg of combined transport operations under this proposal. For the non-road leg, there will be some conditions related to documentation, specifically requiring the signature of the carrier or carriers in the case of two or more non-road operations. Separately, and of particular relevance to the UK, will be the condition that maritime transport for which there is no equivalent road transport alternative would not be taken into consideration for the purposes of the combined transport operations. This is because such an operation cannot lead to modal shift.

You asked about the rationale for the removal from scope of sea journeys longer than 100km. Without this limitation, a number of inland waterways operations around ports and in and around agglomerations, which contribute to decongesting road networks, would be included for the purposes of combined transport operations.

Distance between transhipment terminals

You asked if we share the view that the proposal should not specify the maximum distance between transhipment terminals. We recognise that the location of these terminals is market driven and that the specification of a maximum distance between them could lead to disproportionate costs. We will continue to put our views on this to the Commission in order to make this clearer in the proposal.

However, we do recognise the potential benefit of coordination between Member States, as set out in the Commission's proposal, in ensuring a balanced geographical distribution of terminals and how this could benefit combined transport operations.

Summary of views

You asked for a summary of the views we have received through consultations with stakeholders. My officials have spoken with stakeholders including the Road Haulage Association and Freight Transport Association. Principally, they are concerned that the proposed Directive would open the door to possible circumvention of cabotage rules because of the difficulty in proving the 'international Combined Transport' aspect of the operation.

It is unclear to stakeholders whether the additional support measures in the proposal would incentivise their members to use combined transport more frequently over road operations, which can be quicker for deliveries.

In separate conversations with DVSA, Great Britain's enforcement arm in this area, reservations have been expressed around the prescriptive documentation measures, as well as the seemingly over complex definitions used to calculate the road leg when it is calculated as a percentage of the operation.

Update on negotiations

In negotiations to date, there have been concerns around the prescriptiveness of the documentation requirements, with a number of Member States fearing that this could lead to lengthy checks by enforcement bodies.

Concerns have also been voiced on the data collection provisions, which many Member States feel would be difficult to obtain for various reasons including market sensitivity. Some would like to see the European Commission's statistical arm, Eurostat, play a greater role in the collection and harmonisation across the union.

In my Explanatory Memorandum, I said that the Bulgarian Presidency intended to take the negotiations forward and to include the proposal on the agenda for the June 2018 Transport Council, for a general approach or a progress report. This is still the Presidency's objective, but negotiations currently appear to moving slower than expected. There are a number of topics that will require further discussion, including around investment in transhipment terminals. I therefore believe that a progress report is the most that can be realistically expected at the June Transport Council.

I will, of course, continue to keep the Committee informed during further negotiations.

20 April 2018

Letter from Jesse Norman MP, Parliamentary Under Secretary of State

I am writing to update you on the negotiations on the above proposals, in advance of the Transport Council on 7 June 2018.

My letter of 20 April noted that the Presidency was continuing to take this proposal forward in Working Group, with a view to reaching a General Approach in June. I went on to say that there were a number of topics that would require further discussion, including investment in transhipment terminals, and that a progress report appeared to be the likeliest outcome at the Transport Council. Since then, however, the Presidency has produced further suggested compromises and there have been further working group discussions at which the Presidency has indicated that they still intend to seek a General Approach in June. This letter provides a summary of the progress we have made in negotiations so far.

You will recall that the Commission's proposal aims to encourage and facilitate modal shift away from the roads and onto alternative means of transport and reduce congestion, by improving the operation of the Combined Transport Directive. It aims to do this through an extension of the definitions used, and by further incentivising this mode of transport of goods. In the initial Explanatory Memorandum on the proposal we noted that combined transport operations in the UK are relatively limited, so we did not expect the proposal to have a significant impact and felt that its effect would depend on the outcome of negotiations.

The compromises suggested in official-level discussions in Council Working Group represent a significant change from the Commission's original proposal. As stated in my letter of 20 April, the Commission's proposal stated that Member States should take measures to support investment in transhipment terminals. Importantly, the latest compromise text has been amended so that it will be optional for Member States to take such measures. In addition, the compromise text now specifically defines (in a recital) what would constitute such measures. It states that they could take the form of national transport policy planning. As mentioned in my letter of 20 April, we believe that an example of this could be (in respect of England) a revised version of my Department's "National Policy Statement for National Networks", which sets out the Government policies for nationally significant infrastructure rail and road projects for England.

In your most recent letter, you asked if we shared the view that the proposal should not specify the maximum distance between transhipment terminals. In response, I stated that we recognise that the location of these terminals is market driven and that the specification of a maximum distance between

them could lead to disproportionate costs. We continued to put our views on this to the Commission and EU counterparts, and this requirement has now been removed from the main text and specified as an aim in a recital.

You will recall our initial concerns that the proposal might cover articulated lorries carried in the Channel Tunnel shuttle as part of journeys which both originate and end within 150km of each Channel Tunnel terminal. This could have resulted in operational complications (such as related to the proposed documentation for and reporting of Combined Transport journeys). However, the Commission assured us that it was not their intention to include these journeys, and the current text usefully clarifies that journeys on the Eurotunnel shuttle cannot be considered as Combined Transport.

Finally, concerns previously voiced on the data collection provisions, which many Member States felt would be difficult to obtain for various reasons (including market sensitivity), have been mitigated. In my letter of 20 April I stated that some would like to see the European Commission's statistical arm, Eurostat, play a greater role in the collection and harmonisation across the union. I am pleased that Eurostat is now mentioned in a recital, however, of greater importance is the softening of requirements in relation to data collection.

The Presidency has scheduled two further working group meetings ahead of the Transport Council, and it is possible that further improvements will be achieved in these discussions. However, the most significant matters have already been resolved and, overall, I consider that the proposed General Approach is satisfactory provided that the proposal remains broadly as outlined above. As the timing of Whitsun recess means that the Committee will not have another opportunity to consider a further update ahead of the Transport Council, I would be grateful if the Committee would consider giving scrutiny clearance or granting a scrutiny waiver to enable the UK to support a balanced General Approach.

The current text includes a two year deadline for transposition into national law after the proposed Directive comes into force and this would almost certainly be after the UK's proposed Implementation Period.

I will, of course, inform the Committee of the outcome of the Transport Council and will continue to keep the Committee informed of progress on these proposals. The European Parliament's TRAN Committee is also continuing its consideration of proposals and is still expected to complete its report on it at the end of May 2018, with a possible plenary vote in July.

8 May 2018

Letter from the Chairman to Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letters dated 20 April and 8 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letters at its meeting on 17 May 2018 and decided to retain the file under scrutiny.

We would welcome a specific update on any changes to the proposed aim of a 150km maximum distance between transhipment terminals and on the treatment of journeys through the channel tunnel.

We look forward to this as well as a general update on the progress of negotiations within 30 working days.

18 May 2018

Letter from Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letter of 18 May on the above proposal. I am writing in response to the Committee's queries as set out in your letter, and also to provide an update on developments in negotiations.

You ask for an update on any changes to the proposed aim of a 150km

maximum distance between transhipment terminals. We recognise that the location of these terminals is market driven and that the specification of a maximum distance between them could lead to disproportionate costs. We continued to put our views on this to the Commission and EU counterparts, and in consequence this is no longer included in the main text (of the draft being considered by Member States) as a requirement, and is instead specified as an aim in a recital.

You also ask for an update on the treatment of journeys through the Channel Tunnel. You will recall our concerns that this could have resulted in operational complications (such as related to the proposed documentation for and reporting of Combined Transport journeys). However, the Commission assured us that it was not their intention to include these journeys, and the current text usefully clarifies that journeys on the Eurotunnel shuttle cannot be considered as Combined Transport.

In my last letter, I said that the Presidency had intended to seek a General Approach at the Transport Council. However, in further working group meetings ahead of the Council, it became clear that it would not be possible to achieve this and the Presidency subsequently decided to table a progress report instead. It will now fall to the forthcoming Austrian Presidency to take the proposal forward, and we await details of the plans. I will, of course, continue to keep you informed of further developments.

2 July 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS DELIVERING ON LOW-EMISSION MOBILITY A EUROPEAN UNION THAT PROTECTS THE PLANET, EMPOWERS ITS CONSUMERS AND DEFENDS ITS INDUSTRY AND WORKERS (14215/17)

Letter from the Chairman to Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your Explanatory Memorandum (EM) dated 20 December 2018 on the above Communication. The EU Internal Market Sub-Committee considered this at its meeting on 1 February 2018 and decided to clear the file from scrutiny

2 February 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL SETTING EMISSION PERFORMANCE STANDARDS FOR NEW PASSENGER CARS AND FOR NEW LIGHT COMMERCIAL VEHICLES AS PART OF THE UNION'S INTEGRATED APPROACH TO REDUCE CO2 EMISSIONS FROM LIGHT-DUTY VEHICLES AND AMENDING REGULATION (EC) NO 715/2007 (RECAST) (14217/17)

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

Thank you for your Explanatory Memorandum (EM) dated 20 December 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 1 March 2018.

We share your ambition for a transport system that is cleaner, more affordable, and easier to use. However, we note that the International Council on Clean Transportation estimates that the emissions limits set out in this proposal are not sufficient to meet the EU's 2050 climate goal. What is the Government's view of the proposal's overall level of ambition?

The Commission's assessment is that there has been insufficient take up of low and zero emissions vehicles across the EU to meet the Paris Agreement commitments hitherto. Is the incentive mechanism proposed in this file sufficient to boost market penetration of low and zero emissions vehicles? Would the Government be supportive of stronger action in this area?

Please provide further details on the proposal for an in-service conformity procedure, and whether manufacturers will be penalised for vehicles found to have significant deviations between in-service CO2 emissions and those reported during type approval.

Please could you provide further information on the number of UK manufacturers that currently make use of the 'niche' derogation for manufacturers that register 10,000-300,000 vehicles per year?

Does the Government intend to consult with consumer groups regarding the estimated increase in vehicle costs arising from this proposal? We look forward to a summary of the views shared in your stakeholder consultations. Please also notify us once the Government publishes its strategy on the pathway to zero emissions transport.

We have decided to retain the file under scrutiny. We look forward to a response to our questions, and a general updated on negotiations within 30 working days.

1 March 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE APPROXIMATION OF THE LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES AS REGARDS THE ACCESSIBILITY REQUIREMENTS FOR PRODUCTS AND SERVICES (14799/15)

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your letter dated 19 December 2017 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 1 February 2018.

Thank you for the comprehensive update you provided on developments to the draft text in advance of the EPSCO meeting on 7 December, and for confirming that a General Approach was agreed at this meeting. We note that the compromise text did not sufficiently address the Government's outstanding concerns and the UK therefore abstained.

We have decided to retain the file under scrutiny and look forward to further updates on the progress of trilogue negotiations.

2 February 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

I am writing to you to provide an update on the interinstitutional negotiations (trilogues) on the above proposal (referred to as the European Accessibility Act or EAA).

Council, European Parliament and UK positions

Following the General Approach achieved in December 2017 at EPSCO, the Bulgarian Presidency has held four trilogues with the European Parliament, and a number of technical discussions. There are significant points of difference between the European Parliament and Council texts, in particular regarding the inclusion of certain sectors within the scope of the proposal. The European Parliament not only maintained the Commission's original scope but have also sought to expand it, for example to include tourism services and to require taxi fleets and hire cars fleets to include accessible vehicles. In contrast, the Council has looked to limit the original scope, in particular excluding public procurement and requirements on the built environment.

Throughout trilogues, the UK has continued to participate actively in negotiations although you will recall that we abstained on the General Approach. I continue to believe that the emerging text is likely to contain many of the issues we have outlined in previous letters to the Committee. In particular, I continue to be concerned at the lack of clarity and the prescriptive nature of the requirements as set out in Annex I, albeit that we managed to negotiate some improvements in this regard in the General Approach.

I am concerned that certain of the European Parliament's proposed additions to the scope could further exacerbate the problems that the UK has identified and lead to increased costs for businesses.

Therefore, in general the UK has prioritised working with other likeminded Member States in defending the scope of the General Approach as far as possible. Ultimately, however, some compromise here is likely to be necessary in order to secure agreement with the European Parliament, and my priority will be to seek to shape the final scope so as to minimise costs.

Progress during Trilogues

The Bulgarian Presidency looked to bridge the significant points of difference between the European Parliament and Council texts. A number of technical compromises were tentatively agreed, with the Parliament broadly accepting the Council's approach in a number of areas. A more detailed summary of these is annexed below[6].

On the more difficult question of the scope, the Presidency identified very little room for manoeuvre within the Council as the General Approach was already an uneasy compromise. Despite a lack of detailed preparatory discussion in working groups, in early June the Presidency indicated their aim to finalise the text by the end of the month. A number of Member States including the UK indicated their concerns over the number of political, as well as technical and practical, issues still remaining, and the Presidency ultimately decided against seeking a new mandate from COREPER and cancelled the final planned trilogue.

Next steps

The Austrian Presidency has said it will aim to conclude negotiations on the file. The Austrians will likely face the same issues, namely that there are still large areas of contention, particularly on scope. The Presidency will need to break the deadlock between a number of Member States who do not wish to move significantly beyond the General Approach and the European Parliament's push for a more wide-reaching text. Public procurement remains a key issue where the Council has strongly defended its exclusion, whereas the Parliament have insisted that it be included in the scope.

Update on stakeholder consultation

We have continued to consult with stakeholders during progress in negotiations. We have reflected the concerns of stakeholders when formulating our views on European Parliament amendments which may cause technical and/or practical issues or create undue burdens on business.

17 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PREVENTIVE RESTRUCTURING FRAMEWORKS, SECOND CHANCE AND MEASURES TO INCREASE THE EFFICIENCY OF RESTRUCTURING, INSOLVENCY AND DISCHARGE PROCEDURES AND AMENDING DIRECTIVE 2012/30/EU (14875/16)

Letter from Andrew Griffiths MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Following my copy letter in January to the House of Commons Scrutiny Committee, I thought it would be helpful to update both the Commons and Lords Committees on the Council negotiations on the draft EU proposal for preventive restructuring and insolvency.

The Bulgarian Presidency has indicated that it intends to seek a partial general approach for certain provisions of the proposed Directive, namely Title III (Discharge of debt disqualifications), Title IV (Measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge) and Title V (Monitoring of procedures concerning restructuring, insolvency and discharge of debt) at the Justice and Home Affairs Council on 4 and 5 June.

Since January, the Presidency has largely concentrated its efforts on the three Titles mentioned above. Title III proposes an overall three year discharge period for insolvency with derogations for longer discharge periods in certain circumstances. We are content with the principles of Title III, which broadly fits with our own approach to personal insolvency.

[6] Not published here.

With regards to Titles IV and V, Member States have generally argued that these are over prescriptive and burdensome. Since the Directive was originally published in 2016, we have worked with other Member States to simplify the two Titles and provide for greater flexibility. We are now broadly content with Title IV, which covers matters such as training and regulation of the insolvency profession, where we think the UK system is already robust. We have expressed reservations about requirements for electronic communication, but a five year implementation period is now proposed for these provisions, which we can support. We have also worked with Member States to ensure that the monitoring and data collection provisions in Title V are more proportionate. Ahead of the June Council meeting there will be further discussions and we will continue to work with other Member States to improve the text on all three Titles.

Given the improvement of the text of Titles III, IV and V since the initial publication of the draft Directive, I propose we support the partial general approach proposal at the June Council meeting and therefore seek a scrutiny reservation waiver from your Committee for this purpose.

There has so far been limited discussion under the Bulgarian Presidency of Title II of the Directive, which covers the most substantive part of the proposal on restructuring procedures, but these provisions are now starting to be considered by Member States in Council working groups. Work under the Estonian Presidency in 2017 has gone some way to meeting our concerns regarding the need for greater flexibility and ensuring an appropriate debtor/creditor balance, but we will continue to press for less prescription and to ensure that the proposals deliver on their objectives of encouraging business rescue, while at the same time providing fair treatment to creditors.

I indicated in my letter of January 2018, that it seemed unlikely that the UK would be required to implement the draft Directive. This remains the case and is reinforced by a proposed three year overall implementation period in the revised text presented by the Estonians. This means that even if the Directive were adopted at the end of this year, implementation would not be required until 2021. This will be after the end of the implementation period following withdrawal from the EU in December 2020.

I will continue to update you on further progress on the Directive proposals as negotiations move forward.

9 May 2018

Letter from the Chairman to Andrew Griffiths MP, Minister for Small Business, Consumers & Corporate Responsibility

Thank you for your letter dated 9 May 2018 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 24 May 2018.

We are disappointed you did not write to us directly following the December 2017 Council to provide an update on the policy debate in relation to some of the substantial elements of this file. Nonetheless, we are content to grant a scrutiny waiver for the elements being taken to Council for a partial General Approach on 4 and 5 June.

We look forward to a response to our letter, including an update on the outcome of the June Council meeting and on the general progress of the file, within 20 working days.

24 May 2018

Letter from Andrew Griffiths MP, Minister for Small Business, Consumers & Corporate Responsibility

Thank you for your letter of 24 May agreeing to grant a scrutiny reservation waiver on Titles III, IV and V of the draft EU Directive covering provisions on discharge from insolvency, efficiency of procedures and data collections requirements. A partial general approach (PGA) on the three Titles was agreed at the Justice and Home Affairs Council meeting on 4 June. There was broad support for the PGA, although some Member States noted that they would have preferred a longer discharge period than the three years provided in the draft Directive. The Commission expressed disappointment that the data collection requirements had been watered down from the original

proposal, but this is something that the majority of Member States, including the UK, had argued for strongly.

The key elements agreed by the PGA are:

- Member States shall ensure that entrepreneurs have access to at least one procedure which will enable them to be discharged from debt within a three year period. The text provides flexibility as to when the three year period commences to take account of Member States' national systems; the UK was instrumental in ensuring this flexibility. Member States are able to provide for longer discharge periods where it is duly justified and the text provides some examples of the type of instance where this might apply, such as where the entrepreneur has acted dishonestly and for other abuses of the system. While the list of examples is non-exhaustive, we were successful in ensuring that it included failure to co-operate with the insolvency proceedings, which is an important factor for the UK in enforcing compliance with a bankrupt individual's legal obligations. The text also provides that Member States may exclude certain types of debt from discharge, again the list is non-exhaustive, but the examples given are broadly in line with debts already excluded under the UK system.

- Member States shall ensure that members of the judicial and administrative authorities dealing with insolvency and those acting as insolvency practitioners are suitably trained and have the necessary expertise. The text also provides that Member States should have appropriate mechanisms for supervising insolvency practitioners and for sanctioning those practitioners who have failed in their duties. The original proposals were heavily prescriptive, but we and other Members States were successful in ensuring a more principle based approach. We are satisfied that the UK framework would meet the requirements. Provision is also made in the text for the use of electronic means of communications for filing of claims, submitting restructuring or repayment plans, notifying creditors and lodging appeals. The text allows Member States flexibility on how this should be achieved, that is, whether by a purpose built system or the use of e-mail. As a result of pressure from Member States there is now a five year implementation period for the provisions, other than for lodging appeals for which there is a seven year implementation period.

- Member States shall collect certain specific data (for example, the number of procedures opened, pending or closed, the average length of procedures) on an annual basis broken down into certain categories (for example, the size of debtor where it relates to a business) and provide it to the Commission by 31 December of the calendar year following the year for which it has been collected. The original deadline had been proposed as 31 March of the calendar year following the year of collection, but the UK was one of the Member States instrumental in securing a longer deadline. The text also includes an optional measure to allow Member States to collect data about costs of insolvency procedures. As the opening paragraph indicates, following pressure from Member States, the requirements for collection of data have been made considerably less prescriptive than those in the original proposals.

I apologize that the Committee was not updated directly following the previous Council meeting in December 2017. The meeting agreed a policy approach on three basic principles:

- Flexibility for Member States to set viability tests or eligibility criteria for debtors to access restructuring plans and stays of enforcement action.

- Cross-class cram down (a mechanism for confirmation of restructuring plans where not all classes of creditors vote in favour of the proposals).

- A maximum discharge period from insolvency of three years, subject to limitations where longer periods are appropriate.

The UK was overall supportive of the policy approach, in particular the possibility for Member States to provide for viability tests as a condition for access to a restructuring plan and a stay of enforcement action, which we consider is important to prevent abuse and protect creditors.

Following the December Council meeting, these principles were reflected in the revised text circulated by the outgoing Estonian Presidency at the end of 2017 and the ongoing work on the proposals. While the Bulgarian Presidency has focused its attention on the three Titles for which the PGA has been granted, attention is now turning to Title II, which covers the provisions on preventive restructuring. As I said in my letter of 9 May, the revised text has gone some way to meeting our concerns, but we believe there is still further work to be done to achieve the right balance between creditors and debtors and to deliver fit for purpose restructuring procedures which meet the Directive's objectives of encouraging investment within the EU and ensuring rescue options are available to financially distressed but viable businesses.

There will be further discussion on Title II during the remainder of the Bulgarian Presidency. The incoming Austrian Presidency has already signalled that this file will be a priority for them and a number of meetings are planned for July. We also understand that the European Parliament should publish its report on the Directive proposals towards the end of June or beginning of July. We anticipate that the Austrians will wish to seek a general approach on the Directive as a whole either at the Council meeting in October or otherwise December. We will, however, continue to keep the Committee updated on progress; in particular, I will advise further when we have more definite information regarding the timing of the general approach.

25 June 2018

RECOMMENDATION FOR A COUNCIL DECISION AUTHORISING THE COMMISSION TO OPEN NEGOTIATIONS WITH THE SWISS CONFEDERATION ON AN AGREEMENT LAYING DOWN THE TERMS AND CONDITIONS FOR THE PARTICIPATION OF THE SWISS CONFEDERATION IN THE EUROPEAN GNSS AGENCY (14927/17)

Letter from Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy & Industrial

Thank you for your letter dated 28 March 2018 in which you asked a number of questions relating to participation in the GSA and third country participation in the EU GNSS Programmes.

1) **Whether HMG seeks to continue to participate in the GSA after it has withdrawn from the EU and any transition period comes to an end, and to provide the reasoning behind its position;**

   The European Global Navigation Satellite Systems Agency (GSA) is responsible for the day-to-day management and operations of the European Global Navigation Satellite Systems (GNSS) programmes, Galileo and EGNOS.[7] This includes responsibility for system security. In addition, the GSA encourages the uptake of the European GNSS services globally through market development and communication activities.

   Given the GSA's singular focus on the delivery and exploitation of Galileo and EGNOS, any UK participation in the GSA after exit from the EU depends on whether the UK continues to participate in those programmes themselves. The Government has been clear that we want to continue to participate in Galileo and EGNOS post EU Exit.

2) **What the effects of leaving the GSA would be;**
   UK participation in the GSA is intrinsically linked to future UK participation in the Galileo and EGNOS programmes.

   Participation in the programmes as an EU Member State allows companies to compete for contracts to design, build and operate the Galileo and EGNOS systems, grant authorised users access to the encrypted Public Regulated Service (PRS), and participate in the evolution of the programmes and their capabilities. Member States constitute the Administrative Board of the GSA which oversees the Agency's delivery of its work on the programmes, and which holds the Executive Director to account.

[7] European Geostationary Navigation Overlay Service

3) **How the terms of Norway and Switzerland's participation in the GNSS Programmes and the GSA differs from that of EU Member States, including a summary of those areas in which participation (notably in procurement programmes) falls short of the levels granted to EU participants;**
Both Norway and Switzerland are participants and contributors in the Galileo and EGNOS programme. Norway does so through its membership of the EEA and Switzerland has a Cooperation Agreement.

As a result, both countries may bid for certain contracts. For example, Switzerland supplies on-board clock technology for the Galileo satellites. However, their industries are restricted from bidding for contracts that include sensitive elements, such as those relating to the Public Regulated Service (PRS), which are open only to EU Member States and third countries which have concluded a Security Agreement and also a PRS Agreement with the EU. Such agreements set out the rights for that 3rd country.

Norway is currently in negotiations with the European Union to be allowed access to PRS information. Switzerland have not yet started PRS access negotiations, but has expressed interest in doing so.

Only Norway's agreement grants the right to participate in GSA Administrative Board meetings (as a non-voting observer). Switzerland is seeking to participate in future. Norway and Switzerland also participate without voting rights in some Programme meetings at an official level, such as at the European GNSS Programmes Committee, and host sensor stations for the EGNOS system. Norway's agreement allows them to host the more sensitive ground-based infrastructure for Galileo (uplink and ground sensor stations).

4) **How arrangements with other third countries for participation in the GNSS Programmes compare to those of Switzerland and Norway; and**
Norway has the closest third party relationship with the European Union in this area to date.
The United States is negotiating with the European Union for access to the PRS signal but not to participate in the programme itself. Further detail about this arrangement will not be known until negotiations have concluded.

Other third countries such as Morocco and South Korea (amongst others) have signed cooperation agreements with the European Union on the European GNSS Programmes, which do not include participation in the programmes, but agree to cooperate in areas such as scientific research and standards development in the field of GNSS.

5) **In what respects an arrangement akin to that which is proposed for Switzerland (i.e. participation in the GSA supplementing its existing Cooperation Agreement) would meet UK objectives for its relationship with the EU post-withdrawal in this policy area, and in what respects it would not.**
The Government is seeking full participation in Galileo and EGNOS after EU exit. Switzerland's current arrangements do not achieve that and would not meet the Government's stated position.

As the Prime Minister made clear in her speech in Munich on 17 February, whilst there is no existing agreement between the EU and a third country that captures the full depth and breadth of our existing security relationship, including on Galileo and EGNOS, there is no legal or operational reason why such an agreement could not be reached.

The most significant gap is in relation to access to sensitive information which impacts the UK's understanding of the system and the ability of UK firms to bid for contracts in these areas.

27 April 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 883/2004 ON THE COORDINATION OF SOCIAL SECURITY SYSTEMS AND REGULATION (EC) NO 987/2009 LAYING

Letter from Damian Hinds MP, Minister of State for Employment, Department for Work & Pensions

I am writing to update your Committee on the progress of this file following the 7th December 2017 Employment, Social Policy, Health and Consumer Affairs Council (EPSCO). The Council agreed a partial General Approach on two elements of the proposed amendments to the regulation – long-term care and family benefits.

Following the Commons European Scrutiny Committee's decision to retain its scrutiny reserve when the Committee met on 6th December 2017, I abstained in the vote on these elements of the proposals. As I set out in my letter on 21st November 2017, it is my view that the proposed revisions to the Regulation in relation to European coordination of long-term care benefits and family benefits, are advantageous to the United Kingdom, and that the changes made to the text during negotiations meant the final text was in line with the UK's objectives to ensure clarity and not to extend scope, and therefore in the UK's interest. However I respect the Commons Committee's desire to scrutinise these important proposals in more depth.

I sent a letter to the chair of the Commons Committee on 15th December responding to the report published by the Commons European Scrutiny Committee on the 21st November regarding this dossier. I hope that my letter provided clarity on the issues the Committee raised. The Committee will appreciate that several of the questions posed by the Committee cannot yet be answered in full because they are subject to negotiation with the EU in relation to the UK's Withdrawal. The Prime Minister provided Parliament with an update of the recent agreement of a joint report on the UK's withdrawal negotiations with the EU, on 11th December 2017.

Bulgaria has now taken up the Presidency of the EU and they intend to consider the proposed new arrangements for the coordination of unemployment benefits and some miscellaneous amendments. These could come before the Council for approval at EPSCO during the Bulgarian Presidency. The Commission and successive Presidencies have also reiterated their aim that this whole file should be concluded during the current mandate of the European Parliament. I will write to you with an update on the negotiations as they progress.

If I can be of further assistance please do not hesitate to contact me.

8 January 2018

Letter from the Chairman to Alok Sharma MP, Minister of State for Employment, Department for Work & Pensions

Thank you for the letters dated 2 November and 22 November 2017, and 8 January 2018 from your predecessor on the above proposal. The EU Internal Market Sub-Committee considered these letters at its meeting on 18 January 2018.

We are disappointed that the most recent request for a partial scrutiny waiver was not sent in sufficient time for our consideration ahead of the 7 December EPSCO. This follows the previous late submission of another partial scrutiny waiver on this file, which was sent only after proactive follow-up by Committee staff. We expect to be notified of Council dates where decisions are likely to be taken, and scrutiny waivers required, at the earliest opportunity. This is essential to enable us to fulfil our scrutiny function effectively, and to avoid putting Ministers in a position where they have to decide whether to override the scrutiny reserve.

Regarding the content of the letters, we note that the UK currently does not administer family benefits intended to replace income during child-raising periods. Please explain if the UK is currently required to reimburse such family benefits paid to UK citizens by other Member States and, if so, how this will be impacted by the proposed changes to the Regulation.

The letter dated 8 January explains that the Bulgarian Presidency will consider the outstanding chapter in this file on unemployment benefits. Please set out the Government's position on this chapter and the proposed changes.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days.

18 January 2018

Letter from Alok Sharma MP, Minister of State for Employment

Thank you for your letter of 18 January following on from letters written by my predecessor. I am sorry that your Committee did not receive my predecessor's request for a waiver of scrutiny in sufficient time for it to be considered before the 7 December EPSCO. I will do my best to ensure the Committee has sufficient time to consider such requests before future EPSCOs.

You asked about the impact of the new family benefit provisions on the amount of reimbursement the UK would have to pay to other Member States (MS). The European Community (EC) Regulations contain detailed rules to decide which national social security scheme a worker should pay into and which MS has responsibility for the payment of benefits, including family benefits. The term "family benefit" is given very wide meaning in Regulation 883/2004 as "all benefits in kind or in cash intended to meet family expenses."

The Regulations generally provide that workers should pay contributions into the social security scheme of the MS where they work and, in turn, that State is responsible for the payment of family benefits. Consequently, nationals of other EEA MS who are working in the UK and paying compulsory UK national insurance contributions are entitled to claim UK family benefits in respect of children living in another MS. Similarly, UK nationals who are employed or self-employed and compulsorily insured in another MS are entitled to family benefits from that State in respect of any children living in the UK.

If entitlement to family benefits arises in more than one MS, for example because the parents are working in different MS, the Regulations contain priority rules to decide which state has primary responsibility for paying family benefits. If these priority rules put a lower rate of family benefit into payment, the state with the higher rate of benefit must pay a supplement (reimbursement) to make up the difference, to make sure that the family has the same overall level of family benefit entitlement as non-migrant workers.

The proposed changes provide for the separate coordination of family benefits intended to replace income during child-raising periods and designed to meet the individual needs of the parent subject to the legislation of the competent MS and which, in some MS, can be paid for a number of years. These are known as "parental benefits".

The UK does not administer any benefits of this type. Therefore the financial impact of this change should be small and limited to those cases where another MS has listed such a benefit in a new annex to the regulation and the UK pays a differential supplement. In these circumstances, the parental benefits payable by the MS with primary responsibility will be excluded from the calculation of the differential supplement thereby potentially increasing the amount of supplement (reimbursement) the UK has to pay.

You also asked for details of the Government's policy on unemployment benefits (UB) – contributory Jobseeker's Allowance in the UK. The European Commission has proposed changes in three areas:

<u>Export</u>

Broadly, the current rule is that a claimant may take their benefit to another MS for up to 3 months in order to look for work there. The Commission has proposed extending this period to a minimum 6 months, with an option for a MS to extend to the full duration of the normal period of entitlement. This extension could not apply in the UK as contributory Jobseeker's Allowance is paid for a maximum of 6 months.

The Government's main consideration is to ensure that the arrangements for coordinating UB are as straightforward as possible to administer and support individuals back into work. There seems little empirical evidence to suggest that this change, if agreed, would significantly improve the chances of finding a job for those who make use of it, or that it offers any improvement to current coordination provisions. On the other hand, few individuals make use of the provision in the UK and the impact of extending the export provisions would therefore be small.

The Government intends to work with similarly-minded MS to try and limit the Commission's proposals on extending the period export of UB, and reduce the administrative burden.

Aggregation

Currently, an EU migrant worker need only work for a day in a new MS before they can ask for national insurance contributions paid in another MS to be taken into account in order to qualify for UB. The Commission has proposed extending this waiting period from one day to 3 months. In the event that the worker loses their job before completing 3 months' continuous employment, the MS of previous employment would be responsible (or "competent") for paying their benefit and healthcare.

The Government supports the principle that individuals should establish a link with, and make a contribution to a new MS through work before receiving benefits there. As such, making individuals complete 3 months' employment before they can ask for contributions paid elsewhere to be taken into account in order to qualify for UB in the new MS is attractive. The Government has some concern that the Commission's proposal could entail increased bureaucracy in those cases where the individual has one or more short-term jobs before completing 3 months' continuous employment. In such cases competence could switch back and forth between MS, with the potential for delay and inconvenience for both claimant and administrations. However, the UK processes only a handful of claims annually involving the aggregation of contributions paid in another MS and so the impact of the proposals, if agreed, would be limited.

The Government intends to work with like-minded MS to support a longer waiting period than the current one day whilst refining the proposal to reduce the bureaucratic impact in those cases where the worker loses their job before completing 3 months' employment in the new MS.

Frontier Workers

Under the current Regulation there are two categories of such workers: frontier workers proper and so-called cross-border workers. Frontier workers live in one MS and work in another. Cross-border workers are people who come from one MS to work in another during which time they are living in the MS of work but continue to regard the MS where they previously lived as their home. When they lose their job they return to the "home" State and claim UB there but that State submits a claim for reimbursement to the MS of last employment and where the claimant paid national insurance. The Commission has proposed abolishing these reimbursement arrangements in favour of a single set of rules for both frontier and cross-border workers. It proposes that the MS where the person last worked should remain competent for these workers, unless they were employed for fewer than 12 months, in which case the MS of residence would be competent.

The Government is attracted to the proposal to abolish the UB reimbursement provisions surrounding cross-border workers, which have been a source of disagreement between the UK and some other MS because of a difference of interpretation as to how the rules should be applied. The Government has some questions as to the practical arrangements for making the MS where a frontier (or cross-border) worker last worked responsible for the payment of UB in the majority of cases rather than the State where they are living. It is not clear how the European Commission envisages this working in practice.

The Government intends to support the abolition of reimbursement but continue to explore with like-minded MS the scope for amendments to the Commission proposals that would ensure they are practical.

2 February 2018

Letter from the Chairman to Alok Sharma MP, Minister of State for Employment

Thank you for your letter dated 2 February 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 22 March 2018.

We welcome your clear explanation of the Government's policy position on the outstanding elements of this file. Please would you tell us when the remaining points are expected to be taken to Council for a General Approach? We note your commitment to ensure that any future requests for a scrutiny waiver or clearance are sent to the Committee in good time. We are also interested to know your

view of the broad timeframe for the adoption of this proposal into EU law and subsequent implementation by Member States.

Please provide further information on any specific refinements the Government is seeking and if these are supported by like-minded Member States.

We have decided to retain the file under scrutiny. We look forward to a response to our letter, as well as an update on the points you have raised in relation to unemployment benefits, within 30 working days.

22 March 2018

Letter from the Chairman to Alok Sharma MP, Minister of State for Employment

Thank you for your further letter dated 22 March in which you asked for your Committee to be updated on this file. I welcome the opportunity to provide the Committee with the latest position as Employment, Social Policy, Health and Consumer Affairs Council configuration (EPSCO Council) approaches. The Bulgarian Presidency have stated their intention to reach a partial General Approach on the remaining elements of the amendment package, paving the way for a full General Approach at the 21 June EPSCO. If the General Approach is agreed, this will clear the way for discussions between the Council, Commission and the European Parliament to begin. This file was declared a priority in a joint declaration of the Presidents of the Commission, Council and European Parliament on the EU's legislative priorities for 2017 to be agreed, where possible, by the end of 2017. We therefore expect the package to be agreed before the UK exits the European Union. Although the implementing provisions have yet to be finalised, the expectation in the draft Council text, based on previous amendments to these regulations, is that the changes will enter into force between 6 months and 1 year after they are adopted into EU law.

Since I last wrote to you negotiations on the remaining elements of the package, concerning unemployment benefits (UB) as well as a number of miscellaneous, technical and administrative processes and procedures, have progressed. The likely form of the package to be put before the June Council, though subject to possible change, is therefore taking shape.

On export of UB - contributory Jobseeker's Allowance in the UK - the Government's aim has been to work with others to try and limit the Commission's proposals on extending the period during which UB may be exported to another Member State (MS), and reduce the administrative burden surrounding the proposals. Broadly the current text aligns with the current provisions whereby a person may export their UB to another MS for up to 3 months in order to look for work there with an option for the MS to extend this if they wish.

Concerning the aggregation of contributions, the Government has supported a longer waiting period than the current one day before a claimant may use contributions paid in one MS to qualify for UB in another. The Government also wished to refine the proposal to reduce the bureaucratic impact of dealing with cases where the worker loses his job before completing 3 months' employment in the new MS. Under the original Commission proposal this could have entailed looking back through work histories spanning a number of MS in some cases. Following negotiations, the current text sets the wait at one month in the majority of cases and simplifies the process for looking back at work history elsewhere where the claimant has not completed one month in the most recent job. Only the MS of penultimate employment i.e. the one immediately before the UK would be considered rather than an unlimited number of MS. In addition, the Presidency has introduced an additional provision in circumstances where the worker is no longer resident in the MS paying their benefit, because it is the MS where they previously worked that is aggregating and paying benefit. In these cases there is an option for that individual to receive their benefit for up to 3 months (extensible at MS discretion) in the MS where they currently reside rather than making themselves available for work in the MS where they worked previously – which would likely entail a return to that State.

As regards to frontier workers, the Government has supported the abolition of the reimbursement provisions which were cumbersome to administer and a source of disagreement between the UK and other MS, but pressed for amendments to the Commission proposals to ensure they are practical. The current text substitutes the one year rule proposed by the Commission that would act as a threshold for deciding whether the MS of residence or MS of last employment is competent to pay

benefits with 6 months. In cases where a claimant is subject to the legislation of the MS where they previously worked and must make themselves available for work there in order to receive UB they can opt instead to seek work in the MS of residence and receive the benefit from where they last worked in the MS of residence. The reimbursement provisions remain abolished.

Overall, although the UB provisions are not finalised the current text is not expected to change substantially before the June EPSCO. The UK has thus far secured many of its objectives for the package of reforms on UB and the other parts of the text already agreed in the series of General Approaches in Council. Although the Government would have preferred not to see the introduction of new circumstances in which individuals may opt to receive benefit paid by one MS in another, the instances of this will be limited in circumstance and duration and be subject to the individual meeting the national entitlement conditions. Given the stringent contribution conditions attached to UK contributory Jobseeker's Allowance many potential applicants are likely to be ineligible to receive it. In addition, most MS see the UB provisions as a package and there is a strong risk that some of the gains made during the negotiations, particularly the restricted duration of export, would be lost if we were to reject these provisions.

If the text presented to Council at EPSCO on 21 June is similar to that which is currently on the table the Government believes this is a balanced package which it can support as part of an overall compromise. It is also in the Government's interest that the changes to these regulations are agreed sooner rather than later while we continue to have a seat at the Council negotiating table given that they are likely to continue to apply to certain cohorts of individuals (both certain European Union citizens in the UK and UK citizens in the European Union) after the UK has exited the European Union. Given that the proposals are subject to qualified majority voting there is also a strong risk that holding out against the new provisions in which individuals may opt to receive benefit paid by one MS in another, in certain limited and defined circumstances, may lead to provisions which are a lot less satisfactory, such as continued reimbursement in relation to frontier workers and longer mandatory periods of export.

24 April 2018

Letter from the Chairman to Alok Sharma MP, Minister of State for Employment

Thank you for your letter dated 24 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We welcome your comprehensive update on negotiations on the remaining elements of this proposal and the Government's policy position and voting intentions ahead of the EPSCO Council on 21 June.

We are content to clear the file from scrutiny and look forward to an update on the outcome of the EPSCO meeting in due course.

18 May 2018

Letter from Alok Sharma MP, Minister of State for Employment

Thank you for your letter dated 18 May 2018 where you cleared the above file from the Lords Committee scrutiny ahead of the EPSCO Council on 21 June 2018. As promised, I am hereby writing to update you on the outcome of the Council meeting.

The Council agreed a General Approach on the Bulgarian Presidency's compromise text (9613/18), which the United Kingdom (UK) could support.

I refer you to my letter of 24 April 2018 in which I outlined the detail of the package under negotiation. The agreed text did not differ substantially from this summary. The minor changes were:

i. a shorter threshold period (3 rather than 6 months) for the switch of competency between Member State of residence and Member State of last employment;

ii. for the payment of unemployment benefit to frontier and cross-border workers;

iii. a 3- (and possible additional 2-) year extension to the standard 2-year implementation period for Luxembourg to take account of the exceptional impact on their public employment service.

These points were part of a compromise package between all Member States.

As previously outlined, the UK achieved most of our negotiating objectives on the Unemployment Benefit chapter, which aligns with the UK's interests overall. This included:

i. restricting the period during which Jobseekers Allowance may be exported;

ii. increasing from one day to one month the waiting period before a claimant may aggregate contributions paid in a Member State to be eligible to claim in another;

iii. abolishing cumbersome reimbursement provisions.

Re-opening this deal could jeopardise these provisions as well as putting at risk the ability to reach a final agreement before the UK leaves the EU. Therefore, it was in the UK's interest to agree to this package.

I attach the General Approach text (9613/18)[8] for your interest.

The European Parliament is expected to vote on its opinion and proposals for amendments in September, after which the Austrian Presidency will pursue with them a final compromise text, supported by the Commission.

The UK will seek to ensure as far as is possible that its views are taken into account in negotiation outcomes. I will gladly update the Committee on the progress of these discussions.

19 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES AND PROCEDURES FOR COMPLIANCE WITH AND ENFORCEMENT OF UNION HARMONISATION LEGISLATION ON PRODUCTS AND AMENDING REGULATIONS (EU) NO 305/2011, (EU) NO 528/2012, (EU) 2016/424, (EU) 2016/425, (EU) 2016/426 AND (EU) 2017/1369 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AND DIRECTIVES 2004/42/EC, 2009/48/EC, 2010/35/EU, 2013/29/EU, 2013/53/EU, 2014/28/EU, 2014/29/EU, 2014/30/EU, 2014/31/EU, 2014/32/EU, 2014/33/EU, 2014/34/EU, 2014/35/EU, 2014/53/EU, 2014/68/EU AND 2014/90/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL. (15950/17)

Letter from the Chairman to Andrew Griffiths MP, Minister of State for Consumers, Small Business, and Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Thank you for your Explanatory Memorandum dated 12 January 2018 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 1 March 2018.

The EM provided a useful overview of the Government's initial views on the extensive number of provisions set out in this proposal. We would be grateful for a fuller assessment of the proposal and the Government's policy position as negotiations progress, particularly in relation to those areas highlighted in the EM for further review:

- The necessity of measures to increase cooperation between market surveillance authorities and customs authorities, and to introduce single liaison offices;
- Potential unintended consequences of the common set of powers afforded to market surveillance authorities;
- The proportionality of the framework for the control of products entering the EU;
- The Union Product Compliance Network;

[8] Not published here.

- The implications of the framework for cooperation and information-sharing with third countries, and the pre-export control system, for the UK in the context of Brexit;
- The rationale for the Commission's powers to adopt various implementing acts.

In the light of the UK's forthcoming withdrawal from the EU, one of the most significant implications of the proposal for the UK is the requirement to have a contact responsible for compliance established in the EU before products can be made available on the Single Market.

The proposal sets out the reasons behind this provision but it remains unclear why this contact must be established in the EU, as opposed to simply requiring all businesses who wish to market products on the Single Market to have a person responsible for EU compliance. Could you provide further information on the Commission's reasoning in this regard, and clarify whether the contact person would have to be physically located in the EU or just to work for a business registered in the EU?

We note your potential subsidiarity concerns in relation to whether proposed measures to make market surveillance uniform across the EU intrude on Member States' competence for market surveillance. Are these concerns shared by other Member States, and have you reached a view on the necessity of this action by the Commission?

We would also like to know the timeframe for the public consultation on this proposal, and to receive a copy of the outcome of this consultation in due course.

We have decided to retain the file under scrutiny and would be grateful for a response to this letter within 20 working days.

1 March 2018

Letter from Andrew Griffiths MP, Minister of State for Consumers, Small Business, and Corporate Responsibility

Thank you for your letter of 1 March on the above document. You asked a number of questions. I have responded to these below.

Question: Could you provide further information on the Commission's reasoning in this regard, and clarify whether the contact person would have to be physically located in the EU or just to work for a business registered in the EU?

The Commission has set out its rationale in more detail in paragraph 14 of the recitals to the text. It argues that a person responsible for compliance information in the EU will provide '"market surveillance authorities with an interlocutor established in the Union…performing specific tasks in a timely manner to ensure that the products comply with the requirements of Union harmonisation legislation'. The Commission has explained to the Council Working Party that this measure is intended to ensure that EU Market Surveillance Authorities have fast and easy access to a named person who is responsible for compliance information. It has cited concerns that this information can be difficult to obtain and that in some cases it has been impossible to contact key actors in the supply chain and that it is difficult for market surveillance authorities to take appropriate enforcement action as a result.

The proposal states that the person responsible for compliance information can be the manufacturer, an importer or another natural or legal person with a written mandate from the manufacturer but that, whichever of these roles the person occupies, they must be established in the Union. The UK and other Member States are discussing the potential implications of this measure with the Commission.

Question: We note your potential subsidiarity concerns in relation to whether proposed measures to make market surveillance uniform across the EU intrude on Member States' competence for market surveillance. Are these concerns shared by other Member States, and have you reached a view on the necessity of this action by the Commission?

The Council Working Group discussions are yet to cover in full the proposal's implications for Member State competence for market surveillance. We are therefore uncertain whether Member States have concerns relating to subsidiarity. I will write to you again in due course when I have further information regarding the position of other Member States.

Question: We would also like to know the timeframe for the public consultation on this proposal, and to receive a copy of the outcome of this consultation in due course.

We are hoping to begin a public consultation in June. We will send you a copy of the outcome of the consultation in due course.

I will of course keep you updated on any further progress on this proposal as negotiations progress. In addition, as you request, I will provide you with a fuller assessment of the proposal's measures and the Government's position on them as this is clarified and decided.

28 March 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE MUTUAL RECOGNITION OF GOODS LAWFULLY MARKETED IN ANOTHER MEMBER STATE (15965/17)

COMMUNICATION – THE GOODS PACKAGE: REINFORCING TRUST IN THE SINGLE MARKET (16016/17)

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your Explanatory Memoranda (EM) dated 12 January and 15 January 2018 on the above files. These were considered by the EU Internal Market Sub-Committee at its meeting on 1 March 2018.

We welcome the Government's broad support for the proposed regulation and its potential to improve the functioning of the mutual recognition principle within the Single Market, to the benefit of non-EU businesses marketing products within the EU under this principle as well.

Your EM highlights the proposed problem-solving procedure as needing further consideration to ensure that it is sufficiently swift and transparent to offer certainty to economic operators and encourage them to pursue their rights under the mutual recognition principle, rather than take on the financial burden of re-designing their product or abandoning a market. Have discussions in Working Group and further analysis developed the Government's thinking in this regard?

With regard to Article 9, what rules and procedures do you think need to be in place for PCPs to provide an effective service to producers or authorities of another Member State?

Your EM also suggests that the mutual recognition principle will be of benefit to UK businesses after Brexit, as they will be able to move goods freely in the Single Market once they have legally marketed a product in one Member State. Can you clarify how UK businesses will be able to assert their rights under the mutual recognition principle after Brexit, e.g. if a UK product is lawfully marketed in one Member State but then prohibited in another Member State? Will producers from third countries be able to make use of the proposed voluntary mutual recognition declaration, problem-solving procedure, and administrative cooperation arrangements once they have lawfully marketed a product in an EU country?

We note that this proposal appears less contentious than the other 'Goods Package' proposal on compliance and enforcement. Do other Member States share the UK's broad support for this initiative and, if so, do you expect the file to progress to political agreement relatively quickly?

We would also like to know the views expressed during your engagement with UK stakeholders on this file.

We are content to clear the communication and have decided to retain the proposed regulation under scrutiny. We look forward to a response to this letter within 20 working days

1 March 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter of 1 March 2018 confirming that the Committee has cleared the Communication (16016/17). I am pleased to be able to respond to your questions on the Commission's proposal for a new regulation on the mutual recognition of goods lawfully marketed in another Member State (15965/17).

Question: The Explanatory Memorandum (EM) highlights the proposed problem-solving procedure as needing further consideration to ensure that it is sufficiently swift and transparent to offer certainty to economic operators and encourage them to pursue their rights under the mutual recognition principle, rather than take on the financial burden of re-designing their product or abandoning a market. Have discussions in Working Group and further analysis developed the Government's thinking in this regard?

We continue to consider that the value of the problem-solving procedure as an effective dispute resolution approach requires it to be both substantive and timely. Many Member States have supported the UK in calling for a clearer and more efficient timescale than that presented in the proposal. My officials continue to work with their counterparts in other Member States, and the Commission, to identify a timescale that would avoid undue delay for businesses whilst also balancing technical requirements like time required for translation. The main concern within the current proposal is the unspecified duration permitted for the Commission's own assessment of a dispute once it has been referred by a SOLVIT centre. We are currently considering whether there are other similar procedures legislated for at European level that would be a useful comparator in coming to a view as to a reasonable timescale for the Commission to make such an assessment.

Question: With regard to Article 9, what rules and procedures do you think need to be in place for PCPs to provide an effective service to producers or authorities of another Member State?

Product Contact Points (PCPs) are a key resource for businesses and national authorities to understand their rights and obligations under the mutual recognition principle. We support the establishment of common operational principles and quality standards to ensure this resource is delivered effectively and consistently across the Single Market. We consider the requirement in Article 9 for PCPs to deliver their services as part of the Single Digital Gateway as a positive step towards ensuring a common standard.

We also welcome the Commission's proposals to ensure efficient administrative cooperation among national authorities and PCPs (Article 10) and consider that this will lead to more coordinated and consistent information-sharing. The Commission's proposed supporting measures, such as the 'exchange of officials' programme, can help ensure that all relevant actors have the same level of understanding and avoid misconceptions of the mutual recognition principle.

Question: The EM also suggests that the mutual recognition principle will be of benefit to UK businesses after Brexit, as they will be able to move goods freely in the Single Market once they have legally marketed a product in one Member State. Can you clarify how UK businesses will be able to assert their rights under the mutual recognition principle after Brexit, e.g. if a UK product is lawfully marketed in one Member State but then prohibited in another Member State? Will producers from third countries be able to make use of the proposed voluntary mutual recognition declaration, problem-solving procedure, and administrative cooperation arrangements once they have lawfully marketed a product in an EU country?

Under the existing Regulation (EC 764/2008) businesses based outside the Single Market, in third countries, can benefit from the Mutual Recognition Principle. Any producer, regardless of location, who has lawfully marketed a good in one Member State can rely on the current Regulation when placing a good on the market of another Member State.

The proposed new regulation also applies to goods of any type lawfully marketed in one Member State, with no restriction based on the location of the producer. Consequently, producers based in third countries will be able to rely on the mechanisms - the voluntary mutual recognition declaration, the problem-solving procedure, and benefit from Product Contact Points (PCPs) - in the same way as any producer based within the European Union. For example, many businesses based in third countries currently use Member State's PCPs as a resource to understand the rules applicable in that market and will continue to be able to do so under the proposed new regulation.

Question: We note that this proposal appears less contentious than the other 'Goods Package' proposal on compliance and enforcement. Do other Member States share the UK's broad support for this initiative and, if so, do you expect the file to progress to political agreement relatively quickly?

Other Member States have expressed broad support for the proposed regulation, and largely see it as a positive improvement to the existing 2008 Regulation. However, similarly to the UK, most Member States are keen to ensure the proposed provisions are designed and implemented clearly and concisely. As such, some technical clarifications, such as on the timescale for the problem-solving procedure, are needed before this file can progress to political agreement. The Bulgarian Presidency is aiming to reach General Approach by May Competitiveness Council.

Question: We would also like to know the views expressed during your engagement with UK stakeholders on this file.

Our initial engagement with stakeholders has indicated a low level of awareness of the rights and obligations arising out of the mutual recognition principle and the existing 2008 Regulation. We are currently conducting a further, targeted and more detailed, round of engagement and would be very happy to update the Committee in due course.

I will, of course, keep your Committee updated on any further progress on this file.

26 March 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 26 March 2018 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 26 April 2018.

Thank you for your helpful responses to the questions included in our previous letter. We also welcome your commitment to provide us with a further update on the views of UK stakeholders, following your next round of engagement.

We note that, while Member States are seeking some technical clarifications to the proposal, the Bulgarian Presidency hopes to reach a General Approach at the May Competitiveness Council. We look forward to a comprehensive update on the final text, any significant amendments, and the Government's voting intentions before, or included alongside, any request for a waiver or clearance for the Council meeting. In the meantime, we retain this file under scrutiny.

30 April 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Following my letter of 26 March, I am writing to update the Committee on the progress of the Council negotiations on the Commission's proposal for a regulation on the mutual recognition of goods lawfully marketed in another Member State.

Negotiations on the proposed Regulation have continued at pace. The Bulgarian Presidency has indicated, as I set out in my previous letter, that they are likely to seek a General Approach at the Competitiveness Council on 28-29 May with consideration by COREPER in mid-May. I would therefore be grateful if the Committee could consider and, if content, clear this proposal from scrutiny or provide a waiver for the UK to support the Presidency if the proposal meets the objectives outlined in our correspondence.

The UK has engaged constructively in the negotiations. As the Prime Minister has made clear, a well-functioning Single Market remains in the UK national interest even as we build a new partnership with the EU. Businesses across, and outside of, the EU will benefit from a more effective Regulation, facilitating the implementation of the Mutual Recognition Principle (MRP). The MRP establishes that non-harmonised goods, which have been lawfully marketed in one Member State, can be lawfully marketed in any other Member State unless that Member State has specific concerns based on public safety or health. As I set out in my Explanatory Memorandum on 15 January and my letter of 2 March, businesses based outside the Single Market can currently benefit from the MRP once they have

lawfully marketed their good in one Member State and this will remain possible under the new regulation.

The Government's objectives in the negotiations have been to ensure that:

- the new regulation does not introduce disproportionate new administrative burdens for businesses and that the administrative provisions are implemented in a clear and business-friendly manner;
- that the new regulation does not alter the existing balance between facilitating trade in non-harmonised goods while preserving Member States' right to regulate nationally in certain circumstances.

I have enclosed a short summary of the proposed Regulation and its objectives at Annex A[9]. The text of the latest Presidency compromise proposal reflects the objectives set out in the preceding paragraph. By working with like-minded Member States the UK has also been able to:

- Ensure that the voluntary mutual recognition declaration is clear, easy to use and that the circumstances in which the Member States' market surveillance authorities can request additional information from businesses who are seeking to sell on their market under the Mutual Recognition Principle are limited and proportionate.
- Ensure that the latest text clarifies the Commission's role in the problem-solving procedure and includes a requirement for the Commission to respond to requests for its opinion within six weeks. Your letter of 1 March highlighted your concern about the provisions in the initial proposal, which would have allowed the Commission unlimited time to respond to requests for their involvement in the Problem Solving Procedure. I am pleased to inform the Committee that the UK has been able to secure the inclusion of a six week response deadline in the latest proposal (as set out above), which we consider reasonable.
- Ensure that businesses who have not submitted a voluntary mutual recognition declaration are provided with the opportunity to do so before a national authority begins its assessment of whether their products have been lawfully marketed in another Member State.

The next working group is expected to be the final substantive opportunity for amendments. As negotiations on the Council position draw to a close, my officials will focus on clarifying the process for assessing whether a good has been lawfully marketed to provide both businesses and national authorities with further certainty on their respective rights and responsibilities.

We will continue to work with other Member States to improve the text and will be monitoring progress very carefully. As our views on the proposal are shared by most other Member States, coupled with the Presidency's desire to make rapid progress, I envisage few circumstances in which the UK would not be able to support the text when it is put to a Council vote.

In my last letter I also committed to update you on my department's engagement with business on the proposed regulation. My officials have carried out engagement with a range of affected businesses. Those businesses expressed unanimous support for the proposal and their priorities were consistent with the UK's objectives set out above. More broadly, our continued engagement has confirmed our initial view that there is a low level of awareness among business of their rights under the Mutual Recognition Principle, and of the processes available to enforce them. The new provisions will be a significant step towards raising awareness and improving the options available to businesses.

I would be grateful if the Committee could consider and clear the proposed regulation from scrutiny or provide a waiver (as set out above) to permit the UK to participate actively at the Competitiveness Council on 28-29 May. I will, of course, continue to keep the Committee updated on any future developments on this file, including the timetable, when announced, for Trilogues with the European Parliament.

2 May 2018

[9] Not published here.

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 2 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We welcome your comprehensive overview of recent progress in negotiations, amendments secured by the Government and the UK policy position ahead of a likely General Approach. We are content to grant your request for scrutiny clearance and look forward to an update on the outcome of the Council meeting in due course.

18 May 2018

PROPOSAL FOR A DIRECTIVE OF THE E TO UROPEAN PARLIAMENT AND OF THE COUNCIL ON TRANSPARENT AND PREDICTABLE WORKING CONDITIONS IN THE EUROPEAN UNION (16018/17)

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 15 January 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 1 March 2018.

We welcome the proposal's aim to promote more secure and predictable employment and improve working conditions. We also note that the Government has now published its response to the Taylor Review.

Your EM highlights a number of areas of the proposal where the Government seeks further clarity. We look forward to an update on these areas (set out in paragraphs 20-41 of the EM), including relevant implications of the Government's response to the Taylor Review, as well as a more detailed subsidiarity assessment of this proposal.

With regard to domestic UK law, please explain if there are circumstances in which it is possible to apply exclusivity clauses to zero hours contracts and clarify the definition of a "qualified employee" in the context of the current UK right to make a statutory request for contract variation.

Please would you also explain clearly the measures under this proposal for protection from dismissal?

We would like to know whether your engagement with stakeholders on this file has included businesses that make use of a large proportion of "non-employee workers", and organisations that represent these workers. We would be grateful for a summary of stakeholder views in due course.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 20 working days.

1 March 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter dated 1 March, which sought further information on the above proposal. I would like to take the opportunity to respond to the questions you raised and to outline the UK approach to stakeholder engagement on this file.

In response to your first question, I can confirm that there are no circumstances in which it is possible to apply exclusivity clauses to zero hours contracts. In May 2015, the Exclusivity Terms in Zero Hours Contracts (Redress) Regulations 2015 came into force, rendering exclusivity clauses for zero hours contracts unenforceable. The legislation ensures that zero hours workers (who are employees) have protection against unfair dismissal and zero hours workers have a right to redress through employment tribunals where they have suffered detriment resulting from unlawful application of exclusivity clauses.

With regards to the definition of a 'qualified employee,' under domestic legislation a qualified employee is an employee who has been continuously employed for a period of at least 26 weeks. Further details as to exactly who qualifies are set out in the Employment Rights Act 1996 and the

Flexible Working Regulations 2014. In meeting these qualification criteria, the employee has the right to request a contract variation, which can include changes to the hours worked, to the times at which the employee is required to work and the primary place of work.

Turning to protection from dismissal, Article 17 of the proposal stipulates that Member States take the necessary measures to prohibit the dismissal of workers on the grounds that they have exercised the rights under the directive. However, as noted in the EM there is a further question we are considering with regards to the interaction between probationary periods, which would be limited to six months under the current directive, and protection from dismissal. We will continue to probe the Commission to understand their intentions on this point.

The Government is engaging with a broad range of stakeholders on this file, which includes businesses that have large numbers of non-employee workers and will provide a summary of stakeholder views as engagement progresses.

I hope that the information above satisfies the questions raised.

29 March 2018

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter dated 29 March 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 26 April 2018.

Paragraphs 20-41 of your EM highlighted a number of aspects of the proposal where the Government sought further clarification. We reiterate our request for an update on all of these matters, including relevant implications of the Government's response to the Taylor Review. We also require a more detailed assessment of subsidiarity.

Please can you tell us the broad intended timeframe for the proposal's adoption and the length of the subsequent transposition period?

Lastly, we welcome your commitment to provide a summary of stakeholder views and look forward to receiving this.

We have decided to retain the file under scrutiny. In light of the indication in your EM that the Bulgarian Presidency seeks to agree a General Approach in June, we look forward to a comprehensive response to the information we have requested, and on the Government's voting intentions, within 10 working days.

26 April 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter dated 26 April, which sought further information on the above proposal. I would like to take the opportunity to respond to the questions you raised and to outline the intended timeframe for adoption.

As you rightly note, in the Explanatory Memorandum there were a number of outstanding questions we had sought clarification on during working groups and I will take each in turn.

1. Definition of a worker. The broad definition of a worker under the current proposal would extend rights such as the right to an enhanced written statement and the right to request a contract variation to those with 'worker' status in the UK, when in the UK certain rights are currently limited to those with 'employee' status only. However, the Taylor Review looked closely at employment status and recommended retaining the UK's three tier approach while extending certain rights to all workers, including the right to a written statement. The interplay with the Taylor Review and commonality with some of the provisions suggests that the impact of extending certain rights to all workers may be more limited than our initial assessments.
2. A right to an enhanced written statement of terms of employment by day one of the employment relationship. This builds on the existing rights in the Written Statement

Directive (91/533/EEC) and establishes that the employer must provide the essential information on the first working day. The UK government recognises that it is in the interest of both the employer and the worker to establish the key aspects of the employment relationship and that this information can often be most valuable to the more vulnerable non-employee workers. That is why the Government response to the Taylor Review accepted the recommendation to make the written statement a day one right for all workers.

3. Probationary periods. The Commission's intention behind this provision is to ensure that the transition to a new position does not subject a worker to a period of prolonged insecurity and reduced protections. In many Member States reduced protections are associated with probationary periods. However, in the UK most protections are not linked to probationary periods but are linked to the length of continuous service. The Commission recognises that probationary periods are only sometimes linked to reduced protection from dismissal but have also noted that prolonged probationary periods can have other limiting effects such as a worker's ability to access finance.

As set out in the EM, we raised the issue regarding the legal base and have been given assurances that this is not about limiting Member States ability to regulate the length of qualifying periods in respect of unfair dismissal and redundancy protection. On the possibility to extend the probationary period, the Commission have clarified in circumstances where the worker has not satisfied the conditions of the probationary period and where an employer wishes to offer an extension as a 'second chance', the worker could choose to accept this were it in their interest.

1. Employment in parallel. The Commission's intention for this provision is to address the risk of workers being trapped in underemployment, a key driver for Section 27A of the Employment Rights Act 1996 which in the UK already effectively prohibits exclusivity clauses in zero hours contracts. The proposal in the Directive applies to all employment relationships not just zero hours contracts. However, under the proposal Member States can establish legitimate reasons that would enable employers to limit a worker taking up parallel employment where it can be justified according to these criteria. Regarding our previous concern on the effect of the provision on the unqualified right for zero hours workers in the UK to seek other employment, we are now satisfied that Article 16 of the draft directive is sufficient to prevent existing rights in Member States being undermined or reduced. Where the individual's working pattern is entirely or mostly variable that individual will still be able to exercise this right provided the work undertaken is outside the reference hours established with their employer in the written statement.

2. Minimum predictability of work. This provision interacts with Article 3(l)(i) and 3(l)(ii) to produce a practical effect that prevents a worker from suffering detriment were they to choose not to undertake a work assignment outside the reference period and/or the minimum advance notice period established in the written statement. However, this does not preclude the worker from undertaking the task if they wish to do so. What a reasonable period of advance is will vary from sector to sector and the text allows the flexibility to accommodate this.

3. Transition to another form of employment. In the UK, Section 80F of the Employment Rights Act 1996 gives qualified employees the right to make a statutory request for a contract variation. The EU proposal applies to all workers as defined in the Directive. The Taylor Review recommended the introduction of a right to request a contract that better reflects hours worked for zero hours workers and the Government agreed with this principle and committed to going further by providing a right to request to a wider group of workers.. During Council negotiations we have been able to secure discretion for Member States to limit the number of requests in a given period and the Commission have clarified that this is a right to request only and does not place an obligation on the employer to accept the request.

4. Training. We expect that the impact of this provision will be limited as discussions with stakeholders suggest that where training is a legal requirement of EU or national law, such training is already provided cost-free to the worker.

5. Protection from dismissal. We have had clarification that the protections from dismissal outlined in Article 17 refer specifically to the rights provided for in this directive so do not raise concerns of extension beyond this scope.

With regards to subsidiarity, legislation regulating working conditions is a shared competence of Member States and the EU. Under Article 153 (1)(b) of the TFEU, the Commission can bring forward legislative proposals with the intention to establish minimum rights to promote security and predictability in employment relationships across the Union. It is important to note that these are minimum rights brought forward as directives and it is for Member States to transpose detailed provisions in their domestic legislation provided they achieve the minimum rights established in the directive. In our subsidiarity considerations we do not judge there to be any provisions beyond the competence of the EU.

Turning to the intended timeframe for adoption, if the Presidency achieves a General Approach at the June 2018 EPSCO we would expect that trilogue negotiations with the European Parliament would begin in September/October 2018. Adoption into EU law would follow shortly after completion of trilogue. My best estimate at present is that this will be in the first quarter of 2019. The original Commission proposal included a two-year transposition period, although this has subsequently been extended to three years in the Presidency's current text. However, this may be a point of contention during negotiations with the European Parliament and could be reduced to two years as a concession.

During our stakeholder engagement, representatives from Trade Union organisations have been clear that they see a need for legislation in this area and welcome the initiative. Business organisations have for the most part been supportive of the principle of modernising the written statement to improve clarity on the employment relationship but have been opposed to a number of provisions in the directive as well as the attempt to define a worker at the EU level. In discussions with representatives of small businesses, some have raised concerns about the effect of the provision on probationary periods but were re-assured by the possibility of extension where this is in the interest of the worker.

I hope that the information above satisfies the questions raised and I will of course write to the Committee again with the Governments voting position well in advance of 21 June when we have greater clarity on the text for which the Presidency will seek a General Approach.

11 May 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

I am writing to set out the progress of discussions in the Council on the above proposal and to seek scrutiny clearance for this file.

In my previous letter of 11 May, I outlined a number of points on which we have received further clarification and set out the possible timeframe for adoption as well as the positions of our stakeholders. Throughout negotiations in Council working groups, our objective has been to better understand the provisions in the Directive, and to influence the text such that it supports our domestic agenda and response to the Taylor review. Over recent months, we have made significant progress on the text and have achieved our objectives, particularly with regards to better alignment with our domestic agenda on written statements, employment in parallel and the right to request a more secure form of employment.

The combination of this progress during Council negotiations, and the close links to the domestic work we are doing in response to the Taylor Review suggests to me that if the current positive direction of the text continues we may be in a position to support the General Approach at EPSCO on 21 June 2018 were both Committees satisfied with this approach. I consider the Directive, in the round, to be positive and that we would therefore hope to be able to support it. The provisions are largely in line with our domestic agenda and as one of the countries that has moved first to tackle the issues of the gig economy and given our active role in improving the text, it is likely to be in the UK's interest to support this Directive. We anticipate that the Presidency will be able to reach a General Approach on the text on 21 June.

When the Committee has had the opportunity to consider this proposed approach, I would be grateful for a response ahead of the EPSCO meeting on 21 June 2018 to be able to vote in support of the proposal.

1 June 2018

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your Explanatory Memorandum (EM) dated 5 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 June 2018.

We wish to better understand the challenges cited by the Commission in enforcing fair labour mobility and the potential benefits of the European Labour Authority (ELA) in the context of UK cross-border labour enforcement. Could you please provide information on how EU labour mobility rules are currently enforced in the UK, including data on the number of joint inspections undertaken by the UK and cross-border disputes involving the UK in 2017/18? How would the wide range of different bodies responsible for labour market enforcement in the UK be co-ordinated in their cooperation with the ELA and their approach to enforcing labour mobility rules?

Since matters related to employment and social security are devolved (to differing extents), could you please provide more detail on the views of the devolved administrations?

You note in your EM that social security data provided to the ELA would need to be strictly regulated. Could you detail how you intend to progress this concern with the Commission?

The EM does not give a timetable for consideration at Council, but notes the Commission intend for the Authority to be established in 2019. Could you please provide further details on timing of consideration as soon as it is available?

We have decided to retain the file under scrutiny. We look forward to a response to this letter in due course.

9 June 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ENFORCEMENT OF THE DIRECTIVE 2006/123/EC ON SERVICES IN THE INTERNAL MARKET, LAYING DOWN A NOTIFICATION PROCEDURE FOR AUTHORISATION SCHEMES AND REQUIREMENTS RELATED TO SERVICES, AND AMENDING DIRECTIVE 2006/123/EC AND REGULATION (EU) NO 1024/2012 ON ADMINISTRATIVE COOPERATION THROUGH THE INTERNAL MARKET INFORMATION SYSTEM (5278/17)

Letter from the Lord Henley PC, Parliamentary Under-Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your previous letter dated 24th January. I am writing to provide a further update on the proposed Directive for amendments to the notifications procedure and to seek scrutiny clearance. I wanted to wait until the inter-institutional negotiations were underway before requesting clearance, in order to provide you with an assessment of the near final text.

I am pleased to report that progress has been made in trilogue discussions and that a compromise text is almost ready for final agreement at Council. I believe that the near final text represents much of the General Approach that was agreed at last May's Competitiveness Council and that the European Parliament's amendments are generally more ambitious and therefore in line with the UK's objectives.

The key discussions in trilogues are focussed on the scope of the notifications procedure, the consultation period, the alert and standstill provision, substantial procedural defects and a proportionality assessment that must accompany a notification.

The scope of notification procedure

The UK has favoured amendments to expand the current scope, to cover authorisation schemes, professional liability insurance requirements, restrictions on multi-disciplinary activities and professional rules on commercial communications. The compromise text has achieved agreement on

the majority of obligations, however Council agreed in its General Approach to exclude professional liability insurance requirements from the scope of the Directive, whereas the European Parliament has proposed maintaining the professional liability insurance and widening the scope further by covering professional rules on commercial communications.

The UK supports the European Parliament's amendments to the text, which will help achieve a more coherent and effective notifications regime and is working with like-minded member states to ensure the widest possible scope is reflected in the final text.

Consultation Period

The Directive proposes an obligation on Member States to notify draft measures to the Commission and defines the length of a consultation period to allow the Commission and other member states to make comments on the proposed measures at an earlier stage. After the most recent trilogue, the compromise text includes a three-month consultation period, and a two-month period for member states and the Commission to make comments following notification. The UK supports this compromise and is pleased with the outcome of the length of the consultation period.

Alert and Standstill Provision

The Directive proposes an "alert" mechanism which prevents member states from adopting legislation for a further three months following the consultation period, where the Commission has concerns that new measures may be incompatible with the Services Directive. This alert mechanism would allow the Commission time to fully assess the effect of the proposed measures.

A large number of member states strongly favour the Council's General Approach which requests member states respond to the Commission within two months, providing an explanation and where necessary taking appropriate action to amend the draft measure. Whilst the UK favours the European Parliament's more ambitious proposal, which seeks to increase the urgency by shortening the period member states have to provide an explanation to the Commission to one month, the position in the General Approach would still result in an efficient notifications procedure.

Substantial Procedural Defects

The European Parliament maintains that the adoption of measures that have not been notified or are currently being held under the 'alert' period, should constitute a 'substantial procedural defect of a serious nature', and this may result in a domestic court finding the measure to be inapplicable. The Council's General Approach has excluded this mechanism from the final text, however the UK is supportive of its inclusion. A final decision on the proposals inclusion in the final text will be made at future trilogues.

Proportionality

The Directive proposes that Member States need to demonstrate that draft measures introduced are justified by an overriding reason of public interest, proportionate, and non-discriminatory, by submitting sufficient information demonstrating compliance of the notified authorisation scheme or requirements with the Services Directive.

The Council's General Approach is more ambitious than the European Parliament's text. It specifies that all draft measures should be assessed to demonstrate why they are suitable, how they do not go beyond what is necessary to attain their objectives, and why they cannot be replaced with other, less restrictive measures. The UK's primary interest is to secure a robust and comprehensive assessment approach, and therefore welcomes the Council's General Approach, which seeks to outline the justification required for new measures.

Overall, it is my view that the majority of amendments suggested by the European Parliament are sufficiently aligned to the UK's negotiating objectives. Given that we anticipate the final outstanding political issues to be agreed in principle in one further trilogue as part of an overall compromise package, I ask that your committee grant scrutiny clearance for this proposal ahead of May Council.

12 April 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 1 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 21 June 2018 and looks forward to an update on the final agreed text in due course.

21 June 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A PROPORTIONALITY TEST BEFORE ADOPTION OF NEW REGULATION OF PROFESSIONS (5281/17)

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your latest communication of 15 September 2017, on behalf of the European Union Committee. I am writing to provide a further update on the proposed Directive for a proportionality test for new regulation of professions.

I am pleased to report that rapid progress was made in trilogues and that we now have a compromise text ready for final agreement at Council. I believe that the final text largely represents the General Approach that was agreed at last May's Competitiveness Council, which was broadly in line with the UK's objectives.

The key discussions in the trilogues focussed on European Parliament amendments on creating a special status for healthcare professions; expanding the list of overriding reasons of public interest; and applying the Directive to cross-border provision of services under Title II of the Mutual Recognition of Professional Qualifications (MRPQ) Directive.

Special status for healthcare professions

The European Parliament proposed creating a special status for healthcare professions; however, the UK along with other Member States could not support any carve out for specific sectors. I am pleased to report that the final text does not create a special status for healthcare professions, but in a spirit of compromise, there is now recognition in the text that Member States shall take account of the objective of ensuring a high level of human health protection.

Overriding reasons of public interest

The European Parliament also suggested expanding the list of overriding reasons to include fiscal supervision, craftwork and research and development in the operative part of the text. The UK, along with other Member States, could not support the inclusion of craftwork or research and development in the operative text as these are not overriding reasons in EU jurisprudence; but we could accept fiscal supervision. The final compromise text largely reflects the UK's position and fiscal supervision only features as an overriding reason in the operative text.

Cross-border provision of services

The European Parliament also wanted to apply the Directive to cross-border provision of services under Title II of the Mutual Recognition of Professional Qualifications (MRPQ) Directive. Some Member States had concerns that this provision could increase the scope of the Directive by covering existing provisions in addition to new provisions, and could also impact upon the Posting of Workers Enforcement Directive. Whilst the UK and other Member States did not share these concerns, I have no objections that the final text clarifies that this relates only to new or amended provisions, is limited to the MRPQ Directive, and does not affect other EU law.

Overall, it is my view that this is a good compromise text that has stayed true to the Directive's objectives, which the UK has supported from the inception of this proposal. Therefore, I welcome the final text on the proposed directive and ask that your committee grant scrutiny clearance for this proposal ahead of Council.

29 March 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your previous letter dated 24th January. I am writing to provide a further update on the proposed Directive for amendments to the notifications procedure and to seek scrutiny clearance. I wanted to wait until the inter-institutional negotiations were underway before requesting clearance, in order to provide you with an assessment of the near final text.

I am pleased to report that progress has been made in trilogue discussions and that a compromise text is almost ready for final agreement at Council. I believe that the near final text represents much of the General Approach that was agreed at last May's Competitiveness Council and that the European Parliament's amendments are generally more ambitious and therefore in line with the UK's objectives.

The key discussions in trilogues are focussed on the scope of the notifications procedure, the consultation period, the alert and standstill provision, substantial procedural defects and a proportionality assessment that must accompany a notification.

The scope of notification procedure

The UK has favoured amendments to expand the current scope, to cover authorisation schemes, professional liability insurance requirements, restrictions on multi-disciplinary activities and professional rules on commercial communications. The compromise text has achieved agreement on the majority of obligations, however Council agreed in its General Approach to exclude professional liability insurance requirements from the scope of the Directive, whereas the European Parliament has proposed maintaining the professional liability insurance and widening the scope further by covering professional rules on commercial communications.

The UK supports the European Parliament's amendments to the text, which will help achieve a more coherent and effective notifications regime and is working with like-minded member states to ensure the widest possible scope is reflected in the final text.

Consultation Period

The Directive proposes an obligation on Member States to notify draft measures to the Commission and defines the length of a consultation period to allow the Commission and other member states to make comments on the proposed measures at an earlier stage. After the most recent trilogue, the compromise text includes a three-month consultation period, and a two-month period for member states and the Commission to make comments following notification. The UK supports this compromise and is pleased with the outcome of the length of the consultation period.

Alert and Standstill Provision

The Directive proposes an "alert" mechanism which prevents member states from adopting legislation for a further three months following the consultation period, where the Commission has concerns that new measures may be incompatible with the Services Directive. This alert mechanism would allow the Commission time to fully assess the effect of the proposed measures.

A large number of member states strongly favour the Council's General Approach which requests member states respond to the Commission within two months, providing an explanation and where necessary taking appropriate action to amend the draft measure. Whilst the UK favours the European Parliament's more ambitious proposal, which seeks to increase the urgency by shortening the period member states have to provide an explanation to the Commission to one month, the position in the General Approach would still result in an efficient notifications procedure.

Substantial Procedural Defects

The European Parliament maintains that the adoption of measures that have not been notified or are currently being held under the 'alert' period, should constitute a 'substantial procedural defect of a serious nature', and this may result in a domestic court finding the measure to be inapplicable. The Council's General Approach has excluded this mechanism from the final text, however the UK is supportive of its inclusion. A final decision on the proposals inclusion in the final text will be made at future trilogues.

Proportionality

The Directive proposes that Member States need to demonstrate that draft measures introduced are justified by an overriding reason of public interest, proportionate, and non-discriminatory, by submitting sufficient information demonstrating compliance of the notified authorisation scheme or requirements with the Services Directive.

The Council's General Approach is more ambitious than the European Parliament's text. It specifies that all draft measures should be assessed to demonstrate why they are suitable, how they do not go beyond what is necessary to attain their objectives, and why they cannot be replaced with other, less restrictive measures. The UK's primary interest is to secure a robust and comprehensive assessment approach, and therefore welcomes the Council's General Approach, which seeks to outline the justification required for new measures.

Overall, it is my view that the majority of amendments suggested by the European Parliament are sufficiently aligned to the UK's negotiating objectives. Given that we anticipate the final outstanding political issues to be agreed in principle in one further trilogue as part of an overall compromise package, I ask that your committee grant scrutiny clearance for this proposal ahead of May Council.

1 May 2018

PROPOSAL FOR A COUNCIL REGULATION ON ESTABLISHING THE EUROPEAN HIGH PERFORMANCE COMPUTING JOINT UNDERTAKING (5282/18)

Letter from the Chairman to Samuel Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy & Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 29 January 2018 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 22 March 2018.

We note that the UK has not formally signed up to participate in the EuroHPC initiative but may choose to do so as more detailed plans become available (and in the light of UKRI's research and innovation infrastructure road-mapping exercise).

We were interested to learn that the UK is a world leader in the field of HPC. What HPC activities (both in scientific research and use by industry) are currently underway in the UK that underpin this leading status?

We have decided to retain the proposal under scrutiny until a decision is made regarding future UK participation in EuroHPC, and would be grateful for further updates as the initiative develops.

We look forward to an answer to this letter in due course.

22 March 2018

Letter from Samuel Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your comments on the above proposal submitted on March 22 2018.

The UK currently operates 15 of the world's top 100 supercomputers as recorded by Top 500 - an independent ranking of global high performance computing (HPC) capacity. 5 UK systems are in the top 50, specifically at the Met Office and European Centre for Medium-Range Weather Forecasts.

However, the list of fastest or most powerful computers is not necessarily the best reflection of the UK's capability. The UK has developed a very strong skills base in both HPC and the fundamental computer science skills needed to maximise the impact of supercomputers. Software, mathematics and algorithm development are all areas of strength in the UK and facilities like the Alan Turing Institute are continuing to develop those capabilities further. Further to this the UK has had significant success in the use of international HPC facilities on a competitive basis; this is evidenced by UK researchers leading a significant proportion of calls and awards in European HPC programmes including 16.6% of all projects in the Partnership for Advanced Computing in Europe (PRACE).

We have tasked UK Research and Innovation (UKRI) to create a long-term (up to 2030) research and innovation infrastructure roadmap based on a picture of existing UK infrastructure, future requirements and resulting investment priorities. As part of this, UKRI will examine the long term e-infrastructure capabilities required by researchers in the UK across disciplines and across sectors including, if appropriate, exascale technology. It will aim to deliver a strategy maximising the UK's current position and existing international relationships to deliver the best value for money for the UK while meeting the needs of the scientific and industrial community. This will help us answer questions about what the UK can and should be delivering in terms of new HPC hardware.

To support this work, Sir Mark Walport has set up an e-infrastructure advisory board, consisting of experts from across industry, academia and the public sector. Dave Watson, formerly of IBM, will chair the new group. Future UK membership of Euro-HPC will be considered by this group and as part of this wider strategic look at research infrastructure priorities across the UK. Euro-HPC has not yet formed and the UK is actively involved in official-level discussions aimed at setting up the initiative. A decision on joining will be taken once the e-infrastructure board and UKRI has outlined its needs and priorities.

17 April 2018

Letter from the Chairman to Samuel Gyimah MP, Minister of State for Universities, Science, Research and Innovation

Thank you for your letters dated 17 April 2018 and 18 June 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letters at its meeting on 21 June 2018.

We have decided to grant your request for a scrutiny waiver. We look forward to an update on the progress of the Joint Undertaking and the Government's decision on whether the UK will participate, in due course.

21 June 2018

PROPOSALS FOR A REGULATION AND DIRECTIVE INTRODUCING A EUROPEAN SERVICES E-CARD AND RELATED ADMINISTRATIVE FACILITIES (5283/17)

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 29 November 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 25 January 2018.

We note that some of the important issues raised in our questions remain bound up in ongoing negotiations. We look forward to further updates as negotiations progress, particularly in relation to obligations on insurance providers and the specified timeframes for processing e-card applications by coordinating authorities.

We would also like to know when this file is expected to be taken to Council to agree a General Approach.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days.

25 January 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 25 January 2018 with questions on the proposed Regulation and Directive introducing a European services e-card (ESC) and related administrative facilities.

Throughout January and February, the European Parliament's Internal Market and Consumer Protection (IMCO) Committee are considering draft amendments to the ESC Directive and Regulation and are due to vote on the proposal on 21 and 22 March. Rapporteurs are seeking to make compromise amendments to the proposal's provisions around insurance, the sectors in scope

of the proposal and timelines for the review of ESC applications. Negotiations on the ESC proposal remain ongoing at Working Group where discussions are being led by the Bulgarian Presidency.

In answer to your specific questions:

Further updates on obligations on insurance providers and the specified timeframes for processing e-card applications by coordinating authorities?

The proposed timeframes for processing e-card applications by the Department for Business, Energy and Industrial Strategy remain part of discussions on the ESC proposal at technical level. We remain committed to ensuring that member state coordinating authorities are not tied to unrealistic timetables or disproportionate costs for processing and verifying ESC applications.

As you know, the ESC as currently drafted requires insurance providers to issue a certificate which provides proof of professional liability insurance and a statement of third party liability claims to an e-card applicant. We are working to undertake further consultation with the insurance sector to understand their concerns on the proposed measures. In negotiations, we continue to seek an outcome that minimises the risk of any potential burden on the insurance sector to implement the requirements of the proposal when agreed, whilst establishing effective measures within the proposal to support the needs of business to operate cross-border.

When is this file expected to be taken to Council to agree a General Approach?

At this time, the Bulgarian Presidency has not set a timeline for the proposal to reach General Approach. We continue to work with like-minded member states to push for progress in reaching General Approach as soon as is practically feasible.

I appreciate the Committee taking the time to review this proposal in detail and will keep you updated on the progress of the discussion.

7 March 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 7 March 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 3 May 2018.

We look forward to further updates on the obligations on insurance providers and the specified timeframes for processing e-card applications by coordinating authorities.

We are aware that the proposal was rejected by the European Parliament's Internal Market Committee and would be grateful for further information on when it might be taken to Council for agreement.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days.

4 May 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter of 4 May 2018 requesting an update on the European Commission's proposal for a Regulation and Directive introducing a European Services E-card and related administrative facilities.

Taking your questions in turn:

Further updates on obligations on insurance providers and the specified timeframes for processing e-card applications by coordinating authorities

Since I last wrote to your Committee in March 2018, the Bulgarian Presidency has not convened any further Working Group discussions between member states and the Commission at a technical level. There has therefore been no progress on negotiations on the proposed obligations on insurance providers and timeframes for processing e-card applications by coordinating authorities.

My officials continue to consult with industry to understand the operability of the requirements proposed in the Regulation; and the Government remains committed to minimising the requirements for insurance providers as far as possible.

We will continue to monitor any changes to the e-card proposal to ensure they do not tie member states' coordinating authorities to unrealistic timetables or disproportionate costs for processing and verifying e-card applications.

When is this file expected to be taken to Council to agree a General Approach?

The last negotiations working group for the e-card was held on the 13th February. The Bulgarian Presidency of the Council of the European Union have not yet set a date for further discussions. It remains unclear when the file will be taken to Council to formally agree a General Approach.

As you note in your letter, the European Parliament's Internal Market Committee rejected the ESC proposal in March 2018. This is a significant development and is undoubtedly material to the Presidency's considerations on how and when to resume pursuing a General Approach. The UK continues to be supportive of the proposal as a liberalising measure that facilitates cross-border service provision. We are grateful for the Bulgarian Presidency's efforts to date on this file and look forward to hearing from the incoming Austrian Presidency's plans for the ESC.

I appreciate the Committee taking the time to review this proposal in detail and I will keep you updated on progress.

12 June 2018

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING THE RESPECT FOR PRIVATE LIFE AND THE PROTECTION OF PERSONAL DATA IN ELECTRONIC COMMUNICATIONS AND REPEALING DIRECTIVE 2002/58/EC (REGULATION ON PRIVACY AND ELECTRONIC COMMUNICATIONS) (5358/17)

Letter from the Chairman to Margot James MP, Minister of State for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 6 March 2018 on the proposed ePrivacy Regulation. The EU Internal Market Sub-Committee considered this at its meeting on 19 April 2018.

We note the lack of progress in negotiations on this file due to considerable uncertainty surrounding its scope and relationship with the GDPR. Have recent Working Groups made any progress in resolving these issues? If so, please set out these developments.

As greater clarity is achieved, we would be grateful for a fuller assessment of the likely impact of the proposal on the UK, its consistency with the principle of subsidiarity, and an update on the Government's negotiating position going forward.

In terms of the Government's engagement with stakeholders, we would be interested to know which organisations were included in your consultation and what they consider to be the most important concerns.

It is now certain that the Commission's initial intention for the ePrivacy Regulation to apply from the same date as the GDPR will not be achieved. Please explain what risks there might be to the protection of data while the ePrivacy Regulation is not yet agreed. What impact would a delay on this proposal have on the effectiveness of the GDPR?

We have decided to retain this document under scrutiny and look forward to a response to this letter within 10 working days.

19 April 2018

Letter from Margot James MP, Minister of State for Digital and the Creative Industries

Thank you for your letter of the 19 April 2018.

Due to the complexities of the text, including the lack of clarity surrounding the proposed Regulation's scope and its relationship to the GDPR, little progress has been made since my previous letter.

My department has consulted with a wide range of stakeholders including civil society, professional bodies and trade associations from a diverse array of sectors, media, app development and other organisations in the communications sector. A number of recurring concerns and common themes have been raised, including:

- The scope of this proposed Regulation and its relationship to the GDPR;
- The limited processing conditions afforded to organisations under this proposal, and the impact this could potentially have on both their business models, as well as in areas such as cybersecurity;
- The issue of cookies and consent, and in particular the blanket requirement mandating consent for all types of cookies to be obtained from end users. Whilst acknowledging that the current rules surrounding cookies are not working, many have commented on the unworkability of the current proposals, namely the obligation for browsers or software providers to block all cookies or similar techniques. Stakeholders have also regretted that the text does little to differentiate between the varying risks to privacy posed by different types of cookies;
- The lack of legal certainty in relation to providers whose services allow communication to take place on an "ancillary" basis, e.g. a gaming app that allows chats between players. Uncertainty about to what extent these services are captured is compounding difficulties in assessing the impact of the proposal's provisions on these types of services. There has also been concern about the extent to which purely machine-to-machine (M2M) communications are caught in scope, and how consent can be provided when only machines are involved; and
- In addition to this, there are concerns over the inclusion of Over-The-Top (OTT) services. Although these function in much the same way as traditional telcos, the problem arises where some of the draft's obligations are not compatible with some of the OTT's functions, especially the need to scan content to deliver various added services such as spam filters and accessibility features.

Many of these are areas of concern that the Government had identified in its initial explanatory memorandum on this file, and as previously mentioned, we remain concerned that the proposal is overly burdensome towards businesses, and would like a more balanced approach to be taken.

The Commission's original intention was for this proposal to apply at the same time as the GDPR. Failure to have reached this goal should not however, pose operational risks, although it is important to clarify the changes around consent under the ePrivacy Directive. Stakeholders will need to be aware that the conditions for consent under the ePrivacy Directive are now governed by the GDPR. The full effectiveness of the GDPR will only be known some time after May 2018, when it became effective. This may clarify the extent to which further provisions under the proposed ePrivacy Regulation are required.

I will write to update you on the ePrivacy Regulation, and in particular on the expected impact of the proposal as greater clarity emerges on its scope.

18 June 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PORT RECEPTION FACILITIES FOR THE DELIVERY OF WASTE FROM SHIPS, REPEALING DIRECTIVE 2000/59/EC AND AMENDING DIRECTIVE (5454/18)

Letter from the Chairman to Nusrat Ghani MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 12 February 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 22 March 2018.

We share your overall support of the proposal's aim to better manage waste from ships. However, we note the four concerns listed in paragraph 32 of your EM and look forward to an update on these points as negotiations progress.

Please would you explain which measures under the current draft text extend beyond international standards? Would the UK's relatively high proportion of privately-owned ports have any implications on how this proposal would be applied?

Please provide a summary of any views on this proposal that you have received from stakeholders hitherto, including the fishing sector. We are also interested to know what work the Government has undertaken to assess the impact of this proposal for Gibraltar.

We have decided to retain the file under scrutiny. We look forward to a response to this letter, as well as a general update on the progress of negotiations within 20 working days.

22 March 2018

Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State

Thank you for your letter of 22 March 2018 on the proposed Directive on port reception facilities. I welcome the confirmation that your Committee shares our overall support of the proposal's aim to improve management of waste from ships. I am writing in response to the Committee's questions as set out in your letter, and to update the Committee on the progress of negotiations.

So far under the Bulgarian Presidency the Shipping Working Party has considered all elements of the proposal. The Presidency has put forward suggested compromises, which have generally helped to clarify the proposal.

As set out in the original EM, we broadly welcome the aims of the proposal but had concerns about four areas of it:

1. Introduction of an indirect fee for garbage
2. Issue of a Waste Delivery Receipt
3. Separate collection of waste from ships in port
4. Delivery of passively-fished waste

The latest developments in each of these areas are set out below.

1) Introduction of an indirect fee for garbage

In our EM we expressed concerns on the introduction of a one fee system. We felt that a fixed fee may have the unintended consequence of introducing additional burdens for more specialist waste streams i.e. hazardous waste and passively-fished waste. This concern was echoed by several other EU Member States. Following Shipping Working Party discussions, the Presidency's suggested compromise would allow the indirect fee to be differentiated or, in certain cases, subsidised using waste revenues from waste management schemes and funds. The Commission has indicated that some Member States currently operate such schemes, however, we consider that this compromise does not sufficiently address concerns raised.

As noted in the Explanatory Memorandum, the intention for the Bulgarian Presidency was to provide a progress report at the Transport Council on 7 June 2018, but given recent developments made in Shipping Working group deliberations, the Presidency are now seeking a General Approach. There will be at least two further Working Group meetings and further compromise texts produced in the course of this month to complete preparation of the General Approach, and we hope to be able to achieve further improvements in the course of these discussions. However, due to the timing of Whitsun recess it is unlikely that your Committee will be able to consider a further update before the Council takes place. I do, of course, appreciate that the Committee may wish to retain the proposal under scrutiny until these further discussions have taken place, but would be grateful if the Committee would consider granting a scrutiny waiver ahead of the Council to enable the UK to support a balanced General Approach.

I will, of course, continue to keep your Committee informed of developments. The European Parliament is also considering this proposal and is currently expected to reach its first reading position in October.

2) Issue of a Waste Delivery Receipt (WDR)

As explained in the EM, we support the overall principle to help improve enforcement of the delivery of waste to shore by more accurately capturing the quantity and type of waste generated and delivered by ships. However, we had concerns over the burden and practicalities of such a system e.g. the need for a licensed waste operator contractor to receive and verify waste from an individual ship before issuing a receipt, adding time and cost to the delivery process, and the difficulties of accurately identifying the quantity/volume of waste to be recorded for the issue of a receipt for waste delivered.

There was sympathy among some Member States for our position. However, due to the differences in set up and operation between UK and European ports (primarily due to the large percentage of privately owned ports in the UK), other Member States' views are different to ours; therefore they do not share our concerns about this element of the proposal and it is unlikely that the requirement will be wholly removed. Nonetheless, we have achieved some improvement and the Presidency's suggested compromise would remove the need for a waste operator to issue the waste receipt, which would reduce some of the burden.

3) Separate collection of waste from ships in port

The EM outlined concerns as to the practical effect of the proposal, particularly on smaller ports where it may be impractical to permit the separate collection of wastes due to the limited/restricted size or access of the port.

Again, the UK gained some support from Member States who shared our concerns, and negotiations have proved successful in that further clarification has been added that port reception facilities will not be required to have separate collections for each of the different waste streams defined in the International Convention for the Prevention of Pollution from Ships ("the MARPOL Convention"). We will continue to push for further clarification as to how many separate collections will be required under the EU waste legislation, to ensure that this is kept to the minimum.

4) Delivery of passively-fished waste

We welcome the principles of passively-fished waste being delivered ashore as it assists in removing marine litter from our oceans. Under the proposal, passively-fished waste is captured as part of the 'indirect fee'. The intended effect of the proposal is that no single shipping sector will bear the cost as it will be spread across the shipping sectors. However, due to the nature of the fishing sector, which has fishing-specific ports whose fees will reflect the quantities of passively-fished waste received, the fishing industry is likely to bear the greatest proportion of the cost burden for the passively-fished waste they deliver.

Some Member States shared the UK's concerns about this, but there remains a reluctance to remove passively-fished waste from the indirect fee. The Presidency has suggested including text to enable funding for such treatment and disposal of passively-fished waste to be subsidised through waste revenues from waste management schemes and funds; however, we consider that this compromise does not sufficiently address concerns raised and we are continuing to seek further amendments.

Negotiations have proved successful in that further clarification has been added to remove passively-fished waste from the definition of waste from ships, to a separate definition to differentiate it as a different waste stream to that of the MARPOL Convention.

Turning to the specific points raised in your letter, you asked which elements of the proposal go beyond MARPOL requirements. MARPOL only requires its member States to have adequate facilities. As MARPOL does not have jurisdiction beyond ships they do not set mandatory requirements as to what a Port Reception Facility is or how it is operated. The IMO only provide Guidelines. We only see one aspect of the proposal which goes beyond MARPOL and that is the introduction of a mandatory requirement for a Waste Delivery Receipt (WDR).

Article 7 of the proposal introduces a mandatory WDR to be issued by the port reception facility to ships delivering their wastes. The format is based on the IMO's voluntary Guidelines. The voluntary Guidelines are heavily influenced by Directive 2000/59 and so the UK would have already been

applying them apart from the WDR which the UK and other IMO members were not supportive of having in the document. The UK initially raised concerns about the additional burdens and potential impracticalities of this measure at the European Sustainable Shipping Forum (ESSF) supported by information provided by UK stakeholder engagement. The concerns we raised at ESSF have been addressed to some degree as the proposal allows for an exclusion for 'small unmanned ports and ports which are remotely located'.

During stakeholder engagement the Short Sea Shipping sector, whose ships frequently involve very short and/or tidal constrained ship turnarounds, expressed their concern over this, and the UK has continued to engage on this matter.

You asked if the UK's relatively high proportion of privately-owned ports would have any implications on how this proposal would be applied. The UK's relatively high proportion of privately-owned ports does pose different issues and concerns for the UK than for other European Countries. The main difference is that where our ports are privately owned we encourage competition to drive down the cost. In other EU ports many are run by the relevant government and so they are less worried about any administrative burden that the port may have to take on i.e. employing more staff to verify and issue WDR. We are ensuring that these differences are acknowledged in negotiations.

You asked for a summary of any views on this proposal that we have received from stakeholders. A stakeholder engagement exercise was undertaken, in the main to organisations representing key stakeholders across Ports, Harbour Masters, Fishing Vessels, Recreational Craft, Merchant ships (cruise, bulk tankers etc). These included UK Chamber of Shipping, British Ports Association, UK Major Ports, British Tug Association, RYA, UK Harbour Masters, Fishing Vessel Associations,

Responses were received from UK Chamber of Shipping, in particular the response from Cruise Line International Association's (Europe (CLIA).

The main feedback from the Chamber was from the Short Sea Sector, which expressed the view that generally port reception facilities in the UK and Europe do not serve the short sea sector well, as the sector's operations frequently involve very short and/or tidal constrained vessels turnarounds. In response to this, many operators have set up private arrangements at additional cost. They are concerned that the proposal of a waste delivery receipt will make things more difficult for short sea operators.

CLIA welcomed the proposal and was pleased to note the increased alignment with MARPOL requirements, however, they feel that a clearer link is needed to MARPOL discharge provisions and requirements, together with clear Port State Control.

With regard to work that has been undertaken to assess the impact of this proposal for Gibraltar, we are engaging with Government of Gibraltar and will provide more clarity as to the impacts of this proposal in our next update.

As noted in the Explanatory Memorandum, the intention for the Bulgarian Presidency was to provide a progress report at the Transport Council on 7 June 2018, but given recent developments made in Shipping Working group deliberations, the Presidency are now seeking a General Approach. There will be at least two further Working Group meetings and further compromise texts produced in the course of this month to complete preparation of the General Approach, and we hope to be able to achieve further improvements in the course of these discussions. However, due to the timing of Whitsun recess it is unlikely that your Committee will be able to consider a further update before the Council takes place. I do, of course, appreciate that the Committee may wish to retain the proposal under scrutiny until these further discussions have taken place, but would be grateful if the Committee would consider granting a scrutiny waiver ahead of the Council to enable the UK to support a balanced General Approach.

I will, of course, continue to keep your Committee informed of developments. The European Parliament is also considering this proposal and is currently expected to reach its first reading position in October.

4 May 2018

Letter from the Chairman to Nusrat Ghani MP, Parliamentary Under Secretary of State

Thank you for your letter dated 4 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We are content to provide a scrutiny waiver for this file for the 7 June Transport Council. Nonetheless, as a number of matters remain subject to negotiation, we request an update on the following:

- How the indirect fee would work, including any measures for subsidisation and arrangements for passively-fished waste.
- How many separate waste collections will be required.
- Any further developments on the provision for a mandatory Waste Delivery Receipt (WDR).
- The impact of the proposal on Gibraltar.

We note the concerns raised by the short sea sector in particular, has the Government sought to address these in negotiations? We are also interested to know the Government's view of whether the measures under the compromise text will indeed help to reduce the discharge of ship-generated waste at sea.

We look forward to a response to this letter within 30 working days.

18 May 2018

Letter from Nusrat Ghani MP, Parliamentary Under Secretary of State

Thank you for your letter of 18 May 2018 on the proposed Directive on port reception facilities. I appreciate the Committee granting a scrutiny waiver to allow the UK to support a balanced General Approach at the 7 June Transport Council and am writing as requested to provide an update on the areas set out in my letter of 4 May, and on the outcome of the Council.

The latest developments since my previous letter are set out below.

Introduction of an indirect fee for garbage and delivery of passively-fished waste

As you may recall, we considered that the Presidency's suggested compromise to allow the indirect fee to be differentiated or, in certain cases, subsidised using revenues from waste management schemes and funds did not sufficiently address concerns raised. We continued to lobby on the issue and were successful in negotiating a more flexible arrangement by allowing passively-fished waste to be delivered and paid for outside of the indirect fee system and so aligning to existing UK practices.

Additionally, the proposal now allows a cap on the 100% 'indirect fee'. This means only a maximum amount of waste (determined by the storage capacity of the ship concerned) can be delivered for a fixed fee, additional waste must be paid for directly, ensuring that ports or their users are not disproportionately burdened.

You asked how the indirect fee would work, including any measures for subsidisation and arrangements for passively-fished waste. We have successfully negotiated the proposal to be sufficiently broad to allow ports to largely continue their arrangements within the current indirect fee system. However, there may be some minor elements which will require further exploration through the Port Associations to identify how the Ports may structure their fees taking account of the possibility of using differentiated fees for hazardous waste, and the use of storage capacity to set a maximum cap on the indirect fee. Regarding passively-fished waste, current arrangements will be able to continue. The main examples of this in the UK are Fishing 4 Litter schemes, which provide a service to the ports for the organisation, collection and treatment of passively fished waste, but more importantly provide support and education on marine litter to sea users.

<u>The definition of "passively fished waste"</u>

We were actively involved in refining the definition of "passively fished waste" in relation to "waste from ships" under Article 2. We considered that a separate definition for "passively fished waste" was necessary to differentiate it as a different waste stream as it is not generated from a ship rather it is waste taken from the environment. We led on this amendment and successfully gained a separate definition

for "passively fished waste" in the General Approach compromise text. We will continue to actively support this approach in further stages of the proposal.

Issue of a Waste Delivery Receipt (WDR)

You asked for an update on any further developments on the provisions for a mandatory Waste Delivery Receipt (WDR). Through continued lobbying, we were able to gain clarification from the Commission that the requirement was verification of the exact amount and type of waste being delivered, and not just confirmation of receipt of waste (as some Member States had understood the proposal). In addition, the receipt would be applied to all ships in the scope of the Directive (including recreational craft and fishing vessels). This prompted concerns from some other Member States.

The Commission and other Member States did not wish to remove the requirement for waste delivery receipts for garbage, as they see this as a tool to strengthen the enforcement of illegal discharges. Therefore, we concentrated our efforts on reducing the burden, particularly for small ports and their users (mainly recreational craft and fishing vessels) and were successful in reducing the burdens for small ports with unmanned facilities or that are remotely located**,** as these will not have to issue a waste receipt delivery to their port users.

Separate collection of waste from ships in port

You will recall that negotiations were successful in gaining further clarification that port reception facilities will not be required to have separate collections for different MARPOL waste streams. We sought further clarification as to how many separate collections would be required under EU waste legislation, and the Commission confirmed this would be in line with the existing land-based waste framework.

You asked how many separate waste collections will be required. The Maritime and Coastguard Agency have consulted Defra to establish what this means in practice. The Waste Framework Directive requires undertakings which collect waste paper, metal, plastic or glass to take measures to ensure these are separately collected where this is necessary to achieve high quality and it is technically, economically or environmentally practicable to do so. This would mean a maximum of four separate collection streams for dry materials plus a residual waste stream. There will also be a requirement for international catering waste and electrical products to be collected separately. This Directive is already applicable to UK ports, as implemented domestically, and as such this represents a continuation of the status quo.

You asked whether the Government sought to address concerns raised by the short sea sector. Within our negotiating objectives we have been successful in ensuring that the definitions under the exemption criteria are as wide as possible to capture some of the short sea sector. We were aware not all would qualify; hence this is noted in recital 26(a). In addition to this, it has been negotiated that ports can reduce burdens on this sector by use of a differentiated fee.

You also asked if the Government's view of whether the measures under the compromise text will indeed reduce the discharge of ship-generated waste at sea. We believe that this proposal will provide further support to help reduce illegal discharges of ship generated waste into the sea. This will be achieved through a uniform and united approach across Europe by collection and exchange of data collection resulting in strengthened enforcement.

Regarding work that has been undertaken to assess the impact of this proposal for Gibraltar, we have engaged with Government of Gibraltar who confirmed that they are still assessing the impacts of this proposal.

The Bulgarian Presidency made considerable efforts in the Shipping Working Party to strike a balance between the differing concerns of Member States. As a result, no substantive changes were made at the Council itself and the Presidency were able to achieve the necessary level of agreement to reach a General Approach at the Council. The Government is content with this outcome.

The European Parliament (EP) is still expected to reach its first reading position in early October. I will, of course, continue to keep your Committee informed of developments in the remaining stages of this proposal.

25 June 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 17 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 June 2018.

We recognise the need for urgency to tackle illegal content online and the high public interest in this matter. We consider this Recommendation an important first step in encouraging hosting services to take proactive action.

We wish to know how you intend to encourage and assist UK companies to adopt the guidance within the Recommendation.

Regarding Brexit, you state in your EM that the Commission's work in this area may 'influence our negotiating objectives – especially if the EU considers legislation.' We would be interested in how EU consideration of legislation to address illegal content online would change UK negotiating objectives in this area.

We note that the Commission has asked for updates from Member States on their assessment of online platforms' implementation of the Recommendation; every three months for measures relating to terrorism, and every six months for all other measures. We would be grateful if you could provide a similar update to the Committee when you write to the Commission in six months.

The Commission's Recommendation has been subject to criticism for designating online platforms as the arbiters and enforcers of removals. While we understand that this is being considered as part of the Digital Charter, we would also appreciate an updated view on whether the UK supports the Commission's non-legislative approach when you write to us in six months.

We have decided to clear the file from scrutiny. We look forward to a response to our initial questions within 30 working days and a further update when you write to the Commission in six months.

7 June 2018

Letter from Margot James MP, Minister for Digital and the Creative Industries

Thank you for your letter of 7th June regarding the EM on the above EU Recommendation. I am writing to address the two questions that you require immediate answers to. This letter will also provide you with an update on the EU Commission's work in this area. I have also endeavoured to provide as full an update as possible in light of ongoing Brexit negotiations.

You asked how HMG intends to encourage and assist UK companies to adopt the guidance within the Recommendation. The UK Government has already been encouraging online businesses to adopt many of the actions set out in the Recommendation on a voluntary basis, particularly in respect of online terrorist and child sexual exploitation content. However, HMG has gone a step further than the Recommendation on online terrorist content by setting out an expectation that businesses should remove such content within an hour of it being made available, or ideally before it is made available in the first place.

Another key part of the Recommendation that we believe is helpful is the section on transparency, which also forms part of the UK government work as part of the Digital Charter. The Recommendation section on transparency has helped reinforce the UK Government's discussions with business on the need for them to provide meaningful publicly available data on, for instance, the number of items reported on their platforms and the number of reports which led to action being taken. A draft transparency reporting template for social media platforms was published as part of the Internet Safety Strategy Government response. Transparency reports will provide data on the amount of harmful content being reported to social media platforms in the UK by users and information on how these reports are dealt with. By asking companies to provide information on the number of items reported on their platforms and the number of reports which led to action being

taken, transparency reports will help us understand the extent of online harms and how effectively companies are tackling breaches in their terms and conditions. These reports will also complement the EU Internet Forum existing transparency reporting on online terrorist content.

The Committee should also be aware that EU European Commission has now carried out a public consultation entitled 'on measures to further improve the effectiveness of the fight against illegal content online'. The UK Government responded to the consultation, which ran until 25 June. The consultation is part of the Commission's evidence- gathering which may lead to further measures to improve the effectiveness of combating illegal content online including legislation sometime in September 2018.

You also asked how EU consideration of legislation to address illegal content would change UK negotiating objectives in this area. As we have suggested before, this is a complex issue, especially in the context of the UK's withdrawal from the EU, and we will be carefully considering the options and consequences of a change. We need to achieve the right balance, between addressing issues with content online and allowing the digital economy to flourish. Before taking any decisions we will be working closely with the full range of stakeholders both within Government and wider who have an interest in this area.

I trust that this helps to provide your committee with further clarity and that we will update you on how this initiative has worked out.

19 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 96/71/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 16 DECEMBER 1996 CONCERNING THE POSTING OF WORKERS IN THE FRAMEWORK OF THE PROVISION OF SERVICES (6987/16)

Letter from Andrew Griffiths MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy & Industrial Strategy

I am pleased to be able to write to you now to inform you of the completion of trilogues. The final trilogue occurred on 19 March, and a debrief was provided to Coreper by the Presidency on 21 March. We anticipate that Coreper will be asked for approval of the text agreed in trilogues on 11 April. If there is a qualified majority in favour of adopting the new Directive, it will be formally adopted at a Council meeting, at a date to be confirmed.

The Government's position on this file has been to recognise the low impact on the UK's legal framework of the revisions to the Directive, and to seek a final text that has legal clarity and provides an appropriate balance between protections for posted workers and limits on the burdens placed on businesses providing services between Member States.

You will recall that the government abstained on the General Approach in October 2017 as we could not support the balance of the proposed text. In the round, we do not believe that the balance of the text has materially changed throughout trilogues. While some aspects of the text have become clearer, there are some areas where the text is now more legally ambiguous.

Given the overall position of the final text for the new Directive, we expect that our approach to the discussion on adoption at Coreper will be guided by the same considerations and be consistent with our position on the General Approach.

I will write to you again after the vote on adoption of this file.

5 April 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUROPEAN LABOUR AUTHORITY (7203/18)

Letter from Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility, Department for Business, Energy & Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 5 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 June 2018.

We wish to better understand the challenges cited by the Commission in enforcing fair labour mobility and the potential benefits of the European Labour Authority (ELA) in the context of UK cross-border labour enforcement. Could you please provide information on how EU labour mobility rules are currently enforced in the UK, including data on the number of joint inspections undertaken by the UK and cross-border disputes involving the UK in 2017/18? How would the wide range of different bodies responsible for labour market enforcement in the UK be co-ordinated in their cooperation with the ELA and their approach to enforcing labour mobility rules?

Since matters related to employment and social security are devolved (to differing extents), could you please provide more detail on the views of the devolved administrations?

You note in your EM that social security data provided to the ELA would need to be strictly regulated. Could you detail how you intend to progress this concern with the Commission?

The EM does not give a timetable for consideration at Council, but notes the Commission intend for the Authority to be established in 2019. Could you please provide further details on timing of consideration as soon as it is available?

We have decided to retain the file under scrutiny. We look forward to a response to this letter in due course.

9 July 2018

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON THE EFFECTS OF THE EURO 5 ENVIRONMENTAL STEP FOR L CATEGORY VEHICLES (7343/18)

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

Thank you for your Explanatory Memorandum (EM) dated 17 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 June 2018.

We would be interested to know if the Government has made an assessment of the number of L-category vehicles in use in urban areas of the UK and their contribution to air pollution.

We have decided to clear the file from scrutiny. We look forward to a response to our letter, including an update on negotiations and the Council's agreed compromise text, in due course.

7 June 2018

COMMISSION REGULATION (EU) NO …/.. OF XXX AMENDING REGULATION (EU) NO 965/2012, AS REGARDS TECHNICAL REQUIREMENTS AND ADMINISTRATIVE PROCEDURES RELATED TO INTRODUCING SUPPORT PROGRAMMES, PSYCHOLOGICAL ASSESSMENT OF FLIGHT CREW, AS WELL AS SYSTEMATIC AND RANDOM TESTING OF PSYCHOACTIVE SUBSTANCES TO ENSURE MEDICAL FITNESS OF FLIGHT AND CABIN CREW MEMBERS, AND AS REGARDS EQUIPPING NEWLY MANUFACTURED TURBINE-POWERED AEROPLANES WITH A MAXIMUM CERTIFIED TAKE-OFF MASS OF 5 700 KG OR LESS AND APPROVED TO CARRY SIX TO NINE PASSENGERS WITH A TERRAIN AWARENESS WARNING SYSTEM (7555/18)

Letter from the Chairman to Baroness Sugg CBE, Parliamentary under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 23 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 24 May 2018.

We are interested to know if the Government has made an assessment of the proportion of UK airlines that are already compliant with some or all of the four proposed requirements on pilot fitness. We would be grateful to receive further details on the wider UK framework for monitoring pilot fitness, including any requirements for technology to detect erratic pilot behaviour and whistleblowing procedures.

We would also like to know how the Government proposes to review the effectiveness of these requirements in the UK after Brexit, given that EASA may report up to four years after the entry into force of the proposed Regulation.

We have decided to clear the file from scrutiny and look forward to a response to our questions in due course.

24 May 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL TO EMPOWER THE COMPETITION AUTHORITIES OF THE MEMBER STATES TO BE MORE EFFECTIVE ENFORCERS AND TO ENSURE THE PROPER FUNCTIONING OF THE INTERNAL MARKET (7621/17)

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for the letter dated 16 November 2017 from Margot James MP on this proposal. The EU Internal Market Sub-Committee considered this at its meeting on 25 January 2018.

This letter provided a useful update on how the Government will seek to amend the proposal to address concerns with the draft text, particularly in relation to the leniency provisions under Articles 21 and 22. We look forward to further updates on any developments to the text in this regard as negotiations progress.

We note the Government's concern that the proposed Directive is overly restrictive on the use of information, including that national competition authorities (NCAs) would not be able to use information collected as evidence to impose sanctions on natural persons.

This provision is not discussed in the explanatory notes to the proposal, although the proposal specifies that the Directive only applies to national laws in relation to the interplay of leniency programmes with the imposition of sanctions. We are unclear on the extent to which this provision would represent a diminution of current information-sharing arrangements under Article 12 of Regulation 1/2003 and would be grateful for further clarification on this matter.

If the intention is to entirely prohibit the use of information in evidence for the imposition of sanctions on natural persons, we would like to know the rationale for imposing greater restrictions on the use of information shared by Member States than are currently in place.

We have decided to retain the file under scrutiny and look forward to a response to this letter in due course.

25 January 2018

Letter from Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility

Thank you for your letter of 25 January to Lord Henley on the above Directive. I am sorry for the delay in responding, due to an administrative oversight in the department.

You asked about the extent to which the restriction on the use of information in Article 29 of the proposal would represent a diminution of current information-sharing arrangements under Article 12 of Regulation 1/2003.

Article 12 allows the European Commission and national competition authorities (NCAs) to share information with each other and to use this information for the purpose of applying EU competition rules. Information shared in this way may only be used to impose sanctions on natural persons in carefully prescribed circumstances and cannot be used to impose custodial sanctions. It is correct that, as originally drafted, Article 29 would have represented some diminution of current information-sharing arrangements under Article 12, as it would have meant information collected under the Directive could not be used to impose sanctions on individuals in any circumstances.

The Government's main concern with the restriction in Article 29 of the Directive, however, relates to information the Competition and Markets Authority would have collected itself rather than information provided by another competition authority under Article 12 of Regulation 1/2003.

In the UK, the Competition and Markets Authority is able to use information it acquires to impose sanctions on natural persons, either through the Criminal Cartel Offence (section 188 of the Enterprise Act), which can also be prosecuted by the Serious Fraud Office, or through director disqualification proceedings. It is also able to share information with other authorities in the UK, for example, where serious criminality unrelated to competition law is revealed in the course of one of its investigations.

Article 29(1) of the proposed Directive applies to all information gathered under the powers provided for the Directive. Most of these powers are the same powers the Competition and Markets Authority uses to enforce national law. At the point investigatory powers are used it may not be clear whether the information gathered would be used to enforce EU law, national law or both. The Article restricts the use of information gathered using these powers to the purposes for which it was acquired and provides that it should not be used in evidence for the imposition of sanctions on natural persons. This would restrict the CMA's use of information it had gathered.

The Government's concerns in relation to information sharing were also shared by a number of other Member State Governments. The latest Council compromise text addresses these concerns by removing these restrictions. The Government supports the latest text in this regard.

You also asked about the rationale for imposing greater restrictions on the use of information shared by Member States than are currently in place. The Government understands the European Commission to be primarily concerned about the protection of information received by NCAs as part of leniency applications and settlement submissions. The Impact Assessment accompanying the proposal highlights that the level of protection granted to such evidence varies significantly between Member States, and that this can weaken the incentives on potential leniency applicants to cooperate with NCAs.

The next meeting of the Competition Working Group will be on 21 March. The Council Presidency is aiming to ask COREPER to endorse the mandate to begin informal trialogue discussions with the European Parliament by April. The Government is seeking clarification on the intention of recent changes to the text on Article 22 of the directive and the associated recitals.

I will keep the Committee updated on any further developments.

19 March 2018

Letter from the Chairman to Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility

Thank you for your letter dated 19 March 2018 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 19 April 2018.

Thank you for explaining the Government's concerns regarding the proposed restriction on the use of information gathered by NCAs, and confirming that these concerns have now been addressed through amendments to the draft text.

You note that the Government is seeking clarification on the intention of recent changes to Article 22 of the proposal. Please provide further information on the purpose of these amendments as this becomes clearer, and confirm whether they address the Government's concern that this article would limit the CMA's discretion in granting type B immunity.

Your letter indicates that informal trilogues are expected to begin this month. Can you provide any indication of the expected timeframe for these talks, and when the file is likely to return to Council for formal agreement?

We have decided to retain the file under scrutiny and look forward to a response to this letter as trilogue negotiations progress.

19 April 2018

Letter from Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility

Thank you for your letter of 19 April about the above Directive.

You asked for information on the amendments to Article 22 of the proposal and on whether they address the Government's concerns regarding the Competition and Markets Authority (CMA)'s discretion in granting type B immunity. The wording of this provision in the Council compromise text clarifies that current and former employees of applicants for immunity shall only be granted immunity from criminal sanctions if (1) the application fulfils the evidential threshold set out in the Directive; (2) they actively cooperate with the competition authority; and (3) the application is submitted before they become aware of proceedings that could lead to the imposition of criminal sanctions.

It is possible that Article 22 would apply in a scenario where type B immunity could be granted in the UK, as employees of undertakings that apply for immunity after the beginning of an investigation could still qualify for automatic criminal immunity under this provision. However, since the compromise text requires the application to predate the time when individuals became aware of the investigation, the Government's view is that this preserves the spirit of type B immunity by ensuring that automatic criminal immunity is only granted to employees of undertakings that come forward before knowing of the risk of sanctions.

In the Government's view, the Directive also provides for sufficient flexibility in determining the scale of reductions in fines under Article 17 of the proposal. This will allow the CMA to exercise discretion to grant a greater than normal reduction in circumstances where a corporate immunity is the first to apply but fails to meet the conditions for automatic immunity under Article 16.

While these compromises would still require the CMA to make some changes to its published leniency guidance, the Government is satisfied that they would leave sufficient discretion for the CMA in applying the leniency provisions if they are implemented in the UK. The CMA has been closely involved in the negotiation of the Directive and is also content with the compromise reached.

You also asked for an indication of the expected timeframe for trialogues with the European Parliament and for formal agreement in Council. Trialogues are ongoing and will carry on until the end of this month. If an overall agreement is reached with the European Parliament before then, the final text will come back to Council for a vote in early June.

The Government considers that the compromises agreed in Council on the proposal largely meet its negotiating objectives:

- the provisions relating to powers UK authorities do not yet have are compatible with our domestic competition regime and would ensure more effective enforcement;
- the mutual assistance provisions would extend the ability of EU competition authorities to cooperate with each other and could work as a helpful template for future cooperation;
- the leniency provisions set high standards for automatic civil and criminal immunity and give national competition authorities sufficient discretion in determining whether these standards have been met; and
- Article 29 has been amended in the Council compromise text to allow national competition authorities to use and share collected information to support other criminal investigations and comply with individuals' rights of defence, while also providing for appropriate safeguards for information obtained as part of leniency statements and settlement submissions.

Article 3 still provides for the application of general principles of EU law and the Charter of Fundamental Rights of the EU. The Government would have preferred to see this provision removed since its view is that, as a matter of law, general principles and the Charter already apply in the way the Article specifies. The specific reference in this Directive could bring into question why similar provision is not made in other Directives. However, the Government is content that the UK should support a compromise that includes these provisions if its other key objectives are secured in trialogues.

If the spirit of the key provisions in the Council compromise approach is accepted in trialogues, I consider that the UK should vote in favour of the proposal when in returns to Council for formal agreement.

I will keep the Committee updated on any further developments

14 May 2018

Letter from the Chairman to Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility

Thank you for your letter dated 14 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 24 May 2018.

We welcome the helpful update you provided on the implications of recent amendments to Article 22, and your confirmation that the Government is now satisfied with the compromise text agreed by the Council. We are content to clear the proposal from scrutiny. Please update the Committee when the file has been agreed by Council.

24 May 2018

Letter from Andrew Griffiths MP, Minister for Business, Consumers and Corporate Responsibility

Thank you for your letter of 24 May 2018 and for clearing the proposal from scrutiny.

I am writing to update you on the progress of the Directive. An agreement has now been reached on a text that preserves the spirit of key provisions in the Council approach and that is within the Government's negotiating objectives. This text was adopted by the Committee of Permanent Representatives to the Council last week.

The proposal will be formally voted on by the Council and the European Parliament later in the year and the Government intends to vote in support. We expect the vote will take place in the Autumn. Member States will then have two years to transpose the Directive.

I will inform the Committee of the date of the vote when this is confirmed and keep the Committee updated on any further developments.

3 July 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 5 June 2018 the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 5 July 2018.

We look forward to receiving a full assessment of the Government's policy position on this proposal in your next letter. We are particularly interested in the following:

- Does the Government consider the proposal to be compliant with the principles of proportionality and subsidiarity?
- Is the proposal sufficiently clear in its definitions of online intermediary and search engine, and the distinction between them?
- Does the proposal align with the Government's digital policy priorities to be brought forward under the Digital Charter?

Overall, we note that the proposal focuses on transparency in the platform to business relationship rather than measures to promote competition where a platform is vertically integrated. Is this focus consistent with the views expressed by stakeholders in the Government's previous consultation work?

Lastly, we made a number of recommendations in our 2016 report Online Platforms and the Digital Single Market. Does the Government expect the Commission to propose further legislation on online platforms in the near future?

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days.

5 July 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 5 July 2018.

You asked a number of questions relating to the Commission's proposed Regulation on online intermediation services. I will answer your questions in turn.

1. **Does the Government consider the proposal to be compliant with the principles of proportionality and subsidiarity?**

We are content that the proposal is compliant with the principles of proportionality and subsidiarity. We are satisfied that the proposed Regulation, which contains comparatively general, principles-based rules and scope for industry action, meets the principle of proportionality measure in that it does not go beyond what is required to attain its objective. The aim of the proposal has been informed by a fact-finding exercise and stakeholder consultation conducted by the Commission. The monitoring function of the proposed EU Observatory may assist in ensuring that the proportionality principle continues to be met.

Given the cross-border nature of the online platform economy, the Commission argues that European Union level regulation avoids the negative effects of regulatory fragmentation caused by national level initiatives. As noted in the 2016 House of Lords report *Online Platforms and the Digital Single Market* notes, growing regulatory fragmentation should be addressed in order not to undermine a Digital Single Market. Therefore, to achieve a harmonised framework for the online platform economy, which is by nature cross-border, we are content that EU level action meets the principle of subsidiarity.

2. **Is the proposal sufficiently clear in its definitions of online intermediary and search engine, and the distinction between them?**

As reflected in the 2016 House of Lords report *Online Platforms and the Digital Single Market*, there has been debate around the definition of an online platform. We consider the proposal to be sufficiently clear in its definitions of online intermediary and search engine, and the distinction between them. We, like the 2016 report, see value in a definition which focuses on the intermediary role played by online platforms as this characteristic captures the Commission's intended scope without including 'all of the Internet'. According to the proposal, an 'online intermediation service' is a service which meets all of the following requirements:

a) they constitute information society services within the meaning of Article 1(1)(b) of Directive (EU) No 2015/1535 of the European Parliament and of the Council - that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services;

b) they allow business users to offer goods or services to consumers, with a view to facilitating the initiating of direct transactions between those business users and consumers, irrespective of where those transactions are ultimately concluded;

c) they are provided to business users on the basis of contractual relationships between, on the one hand, the provider of those services and, on the other hand, both those business users and the consumers to which those business users offer goods or services.

The proposal defines 'online search engine' as a "digital service that allows users to perform searches of, in principle, all websites or websites in a particular language on the basis of a query on any subject in the form of a keyword, phrase or other input, and returns links in which information related to the requested content can be found". As reflected in the proposal, a key distinction between an online intermediation service and an online search engine is that the latter does not usually enter into a contractual relationship with its users.

3. Does the proposal align with the Government's digital policy priorities to be brought forward under the Digital Charter?

The Digital Charter's core purpose is to make the internet work for everyone – for citizens, businesses and society as a whole. The Commission's stated aim of ensuring a predictable and transparent online trading environment is in line with the Charter's approach. The Commission expects that this proposal will encourage businesses to 'go digital' and make the most of the opportunities provided by online platforms.

4. Is the proposal's focus on transparency, rather than on measures to promote competition where a platform is vertically integrated, consistent with the views expressed by stakeholders in the Government's previous consultation work?

The proposed transparency measures are consistent with many of the views expressed by business users of online platforms in our consultation work. We are continuing to engage with stakeholders, both business users and platforms themselves, to understand how the proposed measures on transparency would affect them. In regard to vertically integrated services, Article 6, on differentiated treatment, sets out the requirement that online intermediation services must "include in their terms and conditions a description of any differentiated treatment which they give, or may give, in relation to, on the one hand, goods or services offered to consumers through those online intermediation services by either that provider itself or any business users which that provider controls and, on the other hand, other business users". This description of any differentiated treatment must cover:

a) access that the provider of online intermediation services, or that business users controlled by that provider, may have to any personal data or other data provided by business users or consumers through using their services;

b) ranking;

c) any direct or indirect remuneration charged for the use of the online intermediation services;

d) access to services directly connected or ancillary to the online intermediation services.

Since many platforms do not offer vertically integrated services (for example most hotel booking platforms do not themselves own hotels), the Commission believes that to effect the intended change

in the online platform economy it is necessary to address wider issues, in addition to the differentiated treatment of business users controlled by the platform.

5. **We made a number of recommendations in our 2016 report *Online Platforms and the Digital Single Market*. Does the Government expect the Commission to propose further legislation on online platforms in the near future?**

We thank the House of Lords for its very useful 2016 report *Online Platforms and the Digital Single Market,* which has contributed to the Government's thinking on the platform economy. As recommended, we remain conscious of the considerable benefits offered by online platforms and we will continue to consider how best to ensure business users' concerns are addressed, whilst ensuring that platforms are able continue to innovate and provide new services.

We do not expect the Commission to propose further legislation on online platforms in the near future. It should however be noted that the proposal contains a review clause whereby three years after the Regulation enters into force, and subsequently every three years following, the Commission will evaluate this Regulation and issue a report. In addition, the proposed Regulation is accompanied by a Commission Decision to establish an EU Observatory to monitor emerging issues and the effectiveness of intervention in the platform economy. Therefore, in years to come, the Commission may well decide to propose further legislation, depending on the findings of the Observatory and subsequent reviews.

The Government is working closely with stakeholders to understand the full impacts of the proposal. I will write back to the Committee in early autumn with an update on the Government's position on this proposal, as negotiations under the Austrian Presidency of the Council of the EU resume in earnest.

20 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE IMPLEMENTATION AND FUNCTIONING OF THE .EU TOP LEVEL DOMAIN NAME AND REPEALING REGULATION (EC) NO 733/2002 AND COMMISSION REGULATION (EC) NO 874/2004 (8468/18)

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 1 June 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 5 July 2018.

We have decided to clear the file from scrutiny. We would be interested to understand whether DCMS is helping those UK businesses currently with .eu domain names prepare for losing these when the UK leaves the EU.

We look forward to a response to this letter in due course

5 July 2018

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - ARTIFICIAL INTELLIGENCE FOR EUROPE (8507/18)

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 16 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 5 July 2018 and decided to clear the file from scrutiny.

5 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE RE-USE OF PUBLIC SECTOR INFORMATION (RECAST) (8531/18)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 5 June 2018 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 19 July 2018.

We note the importance of the re-use of public sector information for firms and researchers involved in artificial intelligence, and the proposal's intention to make it easier for SMEs to access public sector information. Does the Government intend to consult UK artificial intelligence and data analytics SMEs on the potential implications of the proposal?

We would be grateful for a further update as more clarity on the proposal's policy implications for the UK emerges during negotiations.

We have decided to retain the file under scrutiny. We look forward to a response to this letter in due course.

19 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON WORK-LIFE BALANCE FOR PARENTS AND CARERS AND REPEALING COUNCIL DIRECTIVE 2010/18/EU (8633/17)

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

Thank you for your letter on 16 November 2017, which sought further information on the above proposal. I would like to take the opportunity to respond to the questions you raised and to outline the proposed UK policy position and approach to negotiate the Work Life Balance Directive.

The Committee asked for the Government's view on the scope of provisions for carers leave under the draft Directive and whether the text should take a more flexible approach. Indeed, for comparable measures, such as the right to request flexible working for carers, the UK approach has been not to place restrictions on whether the person had a disability or an illness. However, in Council working group discussions, the Commission has re-iterated that the emphasis in the text is on the need for care as well as the condition, and that the terms 'serious illness', 'serious medical condition' or 'disability' are there to provide the necessary breadth but that it is with the need for care that the provision becomes effective. When analysing the definitions for carers leave, it is our view that the three terms referenced above, combined with the need for care, provides the necessary scope to capture the target group of carers.

Regarding the questions you raise on paternity leave, the current proposal would create an entitlement for a full-time worker to receive ten working days paid paternity leave. For workers who work less than five days a week, the leave entitlement may be reduced proportionally to the individuals working pattern. So an individual who works 2.5 days a week would be entitled to 5 days paternity leave. This corresponds with our existing arrangements in the UK where individuals leave entitlement is calculated pro-rata to reflect their working pattern. Regarding how and when the leave may be taken, the current proposal grants Member States discretion as to whether leave can be taken before or only after the birth and whether it can be taken in flexible forms. This discretion ensures that the UK Government could choose to specify how and when paternity leave may be taken in line with existing domestic legislation.

The UK Government has done an initial assessment of the potential cost to business of the proposed Directive and will follow normal procedure in conducting an impact assessment when there is clarity on the text and ahead of transposition. The initial assessment accompanied the EM submitted on 3 July 2017, under the title 'Checklist for Analysis on EU Proposals.' We are aware that business representative groups at the European level (including the European Association of Craft, Small and Medium-sized Enterprises, UEAPME) have expressed their dissatisfaction with the proposal and would

follow the normal course of action and consult in advance of any legislation to transpose the Directive into British law.

I hope that the information above satisfies the questions raised in your letter of 16 November 2017. In addition, I would also like to take this opportunity to set out the proposed UK policy position and approach to negotiate the Directive.

The UK Government, along with many other Member States, are in agreement on the importance of facilitating the balance of work with family and other commitments, but believe any changes must not disrupt existing national systems unfavourably. There are elements of the Directive where we believe Member States could benefit from going further, such as the right to request flexible working for parents and carers, which the UK Government believes is key to achieving a good work life balance and has already been implemented domestically. However, we will want to probe the rationale for legislation at an EU level, and consider where responsibilities should ultimately lie with Member States.

All Member States have existing provisions to support parents and carers and in our view should be trusted to continue to provide the legislative framework that best suits their national arrangements. In addition, we have concerns about the cost implications of the Directive.

We will continue to seek to improve the legal clarity of the proposals, understand the full cost implications and aim to minimise the impacts on business and the Exchequer. We will also seek to retain as much flexibility as possible for Member States to maintain or develop their own systems of leave and pay for workers with caring responsibilities.

Council working groups will reconvene in mid-January and we anticipate that the Bulgarian Presidency will seek to reach a General Approach at the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 15 March 2018.

16 January 2018

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter dated 16 January 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 1 February 2018.

We welcome your confirmation that the scope of the provision for carers' leave is adequate, and also that the entitlement for paternity leave would be amended according to an individual's working pattern.

We remain interested in the Government's assessment of the potential costs to businesses of this proposal and we note that you share similar concerns. The signed copy of the EM dated 6 July 2017 did not include an initial impact assessment. Please would you send this to us and summarise the findings in relation to business costs. Please also confirm if the Government's concerns arise principally in relation to costs to the Exchequer, or to businesses.

We are grateful for your early notification of the upcoming EPSCO where the Bulgarian Presidency may seek a General Approach. Any request for a scrutiny waiver, or clearance, in advance of this meeting will require a fuller account of the Government's subsidiarity assessment, and confirmation of the Government's voting intentions—including what amendments would need to be made to the draft text for you to feel able to vote in favour of a General Approach.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 10 working days.

2 February 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter on 1 February, which sought further information on the above proposal. I would like to take the opportunity to respond to the questions you raised and to outline the UK approach as negotiations progress on the Work-Life Balance Directive.

The Committee asked for the Government's assessment of the potential costs to businesses of the proposal. Alongside the signed Explanatory Memorandum (EM) submitted on the 6 July 2017, the government shared its initial assessment of the impacts of the proposal, including costs to businesses (see Annex A[10]). These were very early assessments from which we are continuing to develop our analysis and we will conduct a full impact assessment during transposition when we have clarification on the text.

When assessing the potential costs to businesses we have categorised them as falling into two distinct areas, namely cost of staff absence, and a one-off administrative cost associated with the requirements to familiarise with the new regulations.

Any new, direct costs arising from the introduction of paid parental leave and paid carers leave will, for the most part, fall to the Exchequer with businesses likely to reclaim payments from the Exchequer in the same way that similar statutory payments currently operate, including Statutory Maternity Pay (SMP), Paternity, Adoption and Shared Parental Pay. Under these circumstances, we can expect the costs to the Exchequer to be greater than the costs to businesses. We do anticipate that the introduction of an entitlement for paid parental leave will increase take-up relative to current levels under the existing Parental Leave Directive, where leave is unpaid. Additionally the introduction of five days carers' leave would be a new entitlement and there are likely to be large numbers of individuals who fall within the scope of the broad definition of "carer" or who would be eligible for paid parental leave under the current proposal. We will continue to develop our analysis in this area and will share with the Committee the figures for cost of absence to businesses ahead of the Presidency seeking a General Approach.

As the proposal for paternity leave is in line with UK domestic provisions we do not expect the costs to the Exchequer and businesses to be significant.

There will also be some additional administrative costs to businesses associated with the requirements to familiarise with the new regulations. Familiarisation is typically a one-off cost although there will be some ongoing elements to ensuring staff remain trained and familiar with the regulations in future years. The familiarisation cost is likely to be in the region of £5 million each for paid parental leave and carers leave respectively. From previous consultations with employer representatives on parental rights, it is likely that small and medium-size businesses (fewer than 50 employees) will only familiarise themselves fully with the legislation as and when they really need to (therefore this would be included in ongoing costs and not the familiarisation costs above). At the point the legislation is introduced businesses with fewer than 50 employees may spend a very short amount of time understanding the basics, but little more. On the other hand, it is likely that larger businesses will invest more time in familiarisation at the point the legislation is introduced as they will have dedicated HR departments responsible for understanding and articulating changes to employment law routinely, as and when they occur.

In considering issues relating to subsidiarity we came to the view that, while supporting the overall aim of the proposal, there is not a clear case for legislating at EU level for paternity leave, paid parental leave and paid carers' leave. These are complex social and cultural areas that are best managed by a targeted policy approach specific to the Member States. Provisions for paternity leave already exist in most Member States and with no previous EU action in this area of shared competence we are not convinced of the need for Community legislation. Similarly, for carer's leave, the EU has not previously legislated in this area and Member States should have the flexibility to assess the best way to provide the appropriate measures to enable carers to have a better work-life balance. Finally, although there is already EU legislation in place for unpaid parental leave we feel it should be at the discretion of the Member State as to whether, and at what rate, to remunerate such leave and it is important they have the flexibility to do so to meet the needs of domestic circumstances. We do not intend for the point of subsidiarity alone to determine our position, recognising the merits of the proposal, and will seek to improve the legal clarity and content of the text.

We are awaiting the latest revision of the text from the Presidency and retain an open stance on our voting intention. We will write again to the Committee with our voting position and to seek scrutiny clearance when we have greater clarity on the text.

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[10] Not published here.

19 February 2018

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter dated 19 February 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 22 March 2018.

Your explanation of the potential costs to businesses of this proposal is helpful; we welcome your commitment to provide us with further figures.

Please keep us updated on the progress of negotiations as well as the Government's policy position, and voting intentions. We will require this in good time to consider any request for a scrutiny waiver or clearance ahead of a General Approach.

We are also interested to know your view of the broad timeframe for the adoption of this proposal into EU law, and the timeframe for subsequent implementation by Member States.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 30 working days.

22 March 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letter on 22 March, which sought further information on the above proposal. I would like to take the opportunity to respond to the points you raised and to outline the possible timeframe for adoption of this proposal into EU law and subsequent transposition by Member States.

Firstly, I would like to expand on the potential costs to business of this proposal, an area in which my officials have continued to develop and supplement their analysis. As noted in my previous letter, when assessing the potential costs to businesses we have categorised them as falling into two distinct areas, namely cost of staff absence, and a one-off administrative cost associated with the requirements to familiarise with the new regulations.

We do not anticipate that the one-off familiarisation exercise will be overly burdensome as businesses are already familiar with parental leave and with other types of leave for which there is statutory pay requirements (e.g. maternity leave). Across the entire population of businesses, we anticipate a cost of familiarisation close to £20 million. The cost of staff absence is harder to estimate, and the cumulative impact will depend very much on the rate of take-up of the new provisions. We have used evidence from CIPD and CBI on the cost of absence and reorganisation to estimate an annual cost to business for covering absence in the low hundreds of million of pounds. This annual cost also includes administrative costs associated with processing leave requests.

We are continuing to make progress in negotiations during Council working groups and the Bulgarian Presidency have made clear their intention to seek a General Approach at EPSCO on 21 June 2018. We are working to the expectation that a General Approach will be achieved on 21 June but that to reach this milestone there may well need to be movements in the text to alleviate Member States concerns over the cost of the proposal. We retain an open position at present but our overarching objectives are unchanged, namely to improve the legal clarity of the proposals, understand the full cost implications and aim to minimise the impacts on business and the Exchequer. We will also seek to retain as much flexibility as possible for Member States to maintain or develop their own systems of leave and pay for workers with caring responsibilities. We are eagerly anticipating revisions to the text over the coming month from which we will seek to establish our voting intention. We will of course write to the Committee in good time ahead of the 21 June.

The timetable for the European Parliament's consideration of the proposal is slightly different to that of the Council, with the Committee on Employment and Social Affairs due to vote on the proposal in mid-July and with a subsequent vote in plenary planned for September. This would mean that, provided a General Approach is reached by Council at EPSCO on 21 June, then the earliest trilogue negotiations could begin would be September/October. In this scenario it would be possible, but unlikely, that trilogues conclude by December 2018, with a more plausible timeframe likely to lead

towards early 2019. Adoption into EU law would follow shortly from this date. Turning to your question of implementation, the original Commission proposal included a two-year transposition period, although this has subsequently been extended to three years in the Presidency's current text. However, this may be a point of contention during negotiations with the European Parliament.

3 May 2018

Letter from Andrew Griffiths MP, Parliamentary Under Secretary of State

I am writing to set out the progress of discussions in the Council on the above proposal and to request that scrutiny is lifted.

Throughout negotiations, the UK Government has worked constructively with the EU Institutions and other Member States to improve the legal clarity of the proposals. We have sought to secure as much flexibility as possible for Member States to maintain or develop their own systems of leave and pay for workers with caring responsibilities. In addition, we have resisted the principle of the EU setting rules on levels of remuneration for paternity leave, parental leave and carers leave as we consider it more appropriate for this to remain in the remit of Member States, and to limit the costs to the Exchequer and business. We have also resisted attempts to establish an EU level definition of a worker.

There have been positive developments in Council over recent months and I am pleased to inform you that we have either achieved or made significant progress on our objectives. I will expand on these further below but the combination of this progress, recognition of the merits of the proposal and support of the principle of promoting equal opportunity in the labour market suggests to me that if the current positive direction of the text continues we may be in a position to support the general Approach at EPSCO on 21 June 2018 if both Committees are satisfied with this approach.

As noted in previous correspondence, the Commission's original proposal presented some significant challenges for the UK with certain provisions unacceptable in their original form. We have focused our efforts on resolving these issues and I will briefly outline the process undertaken and subsequent outcomes from the negotiations.

- **Scope**. The original Commission proposal sought to establish an EU level definition of a worker with the consequence of broadening the scope of application of the provisions under the directive. We have argued that it is important for Member States to have discretion in defining the concept of a worker for the purposes of this Directive given the way existing leave entitlements are transposed in the UK and other Member States. With the support of other Member States we have been successful in amending the text to allow Member State discretion on the definition of a worker for the purposes of this Directive.

- **Parental Leave**. A key negotiating objective for the UK has been to resist the introduction of a payment or allowance at a rate determined in the Directive for up to four months' parental leave, per parent, per child. The UK has raised subsidiarity considerations and challenged the principle that the EU should be setting levels of pay for these leave rights, arguing that it should instead be within the competence of Member States. Quite a few Member States have been supportive of this position but only a very small number advocate the deletion of pay requirements entirely. In consequence, our approach has been to limit requirements for pay in the Directive and we have been successful in reducing the total number of months for which pay applies and in amending the text to grant Member State discretion on the level of pay.

- **Carers Leave**. In the UK we do not, at present, have specific provisions for carers' leave. During negotiations in Council working groups we have argued against the inclusion of carers leave as it is not something the EU has legislated on previously, and on the basis that Member States should have maximum flexibility in establishing support mechanisms for carers that are best targeted to the needs of individuals. However, we recognise that there is support in Council to introduce carers leave at the EU level and in this context have successfully sought to disapply requirements for any payment or allowance for carers leave to enable the greatest level of flexibility for Member States in introducing this entitlement.

- **Paternity Leave & Flexible Working**. Throughout the negotiations we have sought to improve the legal clarity of the text and to impart knowledge from domestic experience to

influence the text. This has been evident in the articles for paternity leave and flexible working where we have been successful in making progress to ensure the provisions reflect our domestic legislation.

I hope that my efforts to summarise the progress that has been made in negotiations over the past months satisfies the Committee. We recognise that while we have taken strides to significantly reduce the overall cost of the proposal, there will be a cost to both for the Exchequer and for business. However, we judge that a combination of the progress made in negotiations, recognition of the merits of the objectives and support of the principle of promoting equal opportunity in the labour market provide sufficient grounds to support the directive were the current positive direction of the text to continue.

When the Committee has had the opportunity to consider this proposed approach, I would be grateful for a response ahead of the EPSCO meeting on 21 June 2018 to be able to vote on the proposal.

1 June 2018

Letter from the Chairman to Andrew Griffiths MP, Parliamentary Under Secretary of State

Thank you for your letters dated 3 May and 1 June 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letters at its meeting on 7 June 2018.

Your most recent letter provides a useful update on the progress of negotiations and successful amendments secured by the Government to allow for greater Member State flexibility. We would be grateful for further detail on the following:

- The Government's view on the appropriate definition of a worker for the purposes of this proposed Directive and how this would interact with the definition of worker under the proposed Directive on transparent and predictable working conditions (16018/17).
- The compromise text's position on pay requirements for parental leave and the number of months for which pay would apply.
- Whether the entitlement for carers' leave in the compromise text remains at 5 days and the Government's view on the advantages and disadvantages of mandatory pay or allowance requirements for carers' leave in the UK.
- The potential costs arising from this proposal for individual SMEs (rather than aggregate values).

We have decided to grant a scrutiny waiver for the 21 June EPSCO. We look forward to a response to this letter, including an update on the outcome of the Council meeting, within 30 working days.

7 June 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL SETTING OUT THE CONDITIONS AND PROCEDURE BY WHICH THE COMMISSION MAY REQUEST UNDERTAKINGS AND ASSOCIATIONS OF UNDERTAKINGS TO PROVIDE INFORMATION IN RELATION TO THE INTERNAL MARKET AND RELATED AREAS (8765/17)

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State. Department for Business, Energy & Industrial Strategy

I am writing as the newly appointed Minister of State for Immigration. I write to you to provide an update on the progress negotiations for reforming the Common European Asylum System (CEAS), which are currently under scrutiny and in reply to your Committee's letter of 14 September 2017. By way of update, I can inform you that discussions are progressing on each of the measures of the CEAS package, although at varying paces. I will provide an update on each measure in turn.

On the Asylum Procedures Directive, as you will be aware, the UK applies the first version of this Directive and has not opted into the recast. The Estonian Presidency progressed to the end of the second reading of this text and the Bulgarian Presidency commenced the third reading at the Asylum Working Group meeting in January.

On the Asylum Qualification Regulation, as you will be aware, the UK applies the first version of this Regulation and has not opted into the recast. Discussions are ongoing and the Council of the European Union has held four political trilogues since 25 September 2017. Some preliminary agreements were found with the European Parliament but many issues remain unresolved such as residence permit length.

On the EU Asylum Agency Regulation, as you are aware, the UK has not opted in. Discussions are ongoing on this measure at political trilogue.

On the Eurodac Regulation, which, as you will be aware, the UK has opted into, political trilogues commenced last autumn. The attached document gives an overview of the progress made to date. Coreper has been invited to agree on compromise proposals with a view to extending the already granted mandate authorising the Presidency to start negotiations with the European Parliament. The attached document is being provided to the Committee under the Government's authority and arrangements agreed between the Government and the Committee for the sharing of EU documents carrying a limité marking. This carries a limité marking and, as such, is being shared with you in confidence. It cannot be published, nor can it be reported on in any way which would bring detail contained in the document into the public domain.

In his letter on your behalf of 14 September 2017, Lord Jay of Ewelme asked for further information on the discussions around allowing Europol direct access to Eurodac and the Government's view on this. The letter asked whether Europol would have full access to data held in Eurodac. The Government notes that Article 7 of the current Eurodac Regulation (EU) No 603/2013, applicable from 20 July 2015, already allows Europol to access Eurodac, but indirectly through the National Access Point of a Member State whereas the proposal under negotiation permits direct access. The Government broadly supports the EU's current work to improve interoperability of JHA information systems. In line with this the Government is supportive of Europol having greater access to data stored within Eurodac, as long as this respects data protection requirements and data providers retain ownership of any data that they have provided. Lord Jay also asked whether there would be any implications for the UK's participation in Eurodac if the Government decided not to participate in the proposed Regulation to reform EU-LISA. This question is hypothetical as the Government has decided to take part in the EU-LISA Regulation. We informed the House of that by Written Ministerial Statement on 23 October 2017. As the Minister of State for Policing and the Fire Service explained in his letter of 31 October to you (Lord Boswell), the Government believes it is in the national interest to continue participating in EU-LISA while we are bound by legislation governing some of the IT systems it manages, including Eurodac.

On the Dublin IV Regulation, the European Parliament has recently adopted its position on the file, which includes their view that a Dublin system should include a mandatory redistribution mechanism. Council has continued informal, bilateral discussions. Council continues to discuss the text, currently in an informal configuration. Divisions remain in key areas of the early Chapters of the text discussed to date, for example on the approach taken in the corrective distribution mechanism and the expanded definition of "family member" to include "sibling". We expect Leaders to come back to this issue at March European Council.

On the Reception Conditions Directive, as you will be aware, the UK applies the first version of this Directive and has not opted into the recast. Discussions are ongoing and the Council of the European Union held a first inter-institutional meeting on 12 December 2017 where Articles 3-5 of the recast were discussed. Further discussions are now due at the technical level.

On the Resettlement Regulation, which the UK has not opted into, the Council of the European Union held a first inter-institutional meeting on 13 December 2017 where high level overview of the regulation was given. Political trilogues will take place in due course.

I hope this information assists you in your further scrutiny.

5 February 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for the letters dated 25 October 2017 and 5 February 2018 on the above proposal. The EU Internal Market Sub-Committee considered these at its meeting on 22 March 2018.

We were grateful for the helpful responses provided to the Sub-Committee's initial questions on this file, and the detailed update on challenges to the validity of the proposal's legal bases. Following the Council Legal Service's (CLS) conclusion that none of the chosen bases are valid, we would like to know whether the Commission and European Parliament Legal Services have published their own opinions on this matter and, if so, what their conclusions were.

We note the CLS also believes that the Commission has not sufficiently demonstrated the need for the information powers it would gain under the SMIT, and that there is general concern about this issue in Council Working Groups and the European Parliament. Do these concerns call into question the value of the SMIT itself, or would Member States and the EP be content with amendments that provide for a more limited set of information powers?

Following the Government's conclusion that use of the SMIT in the UK would not be significantly limited by the CMA's own information collecting activities, please provide us with a summary of your analysis of the potential resulting financial implications for UK businesses.

We have decided to retain the file under scrutiny. We look forward to a response to this letter within 20 working days.

22 March 2018

Letter from Rt Hon Lord Henley PC, Parliamentary Under Secretary of State

Thank you for your letter dated 22 March 2018 on the Single Market Information Tool (SMIT) proposal. I am writing to you to provide a summary of the Commission and European Parliament Legal Services' Opinion on the legal basis of the SMIT, followed by responses to the questions set out in your letter. I hope you find the information useful.

Following the Council Legal Service's (CLS) conclusion that none of the chosen bases are valid, we would like to know whether the Commission and European Parliament Legal Services have published their own opinions on this matter and, if so, what their conclusions were.

Since my last letter, the European Parliament Legal Service published its own opinion on the legal bases of the SMIT proposal; and the Commission has presented further detail on its position. The Commission presented on this at the latest Working Group on 8 March where it maintained its view that all seven legal bases cited in the proposal were valid and necessary. It maintained that the inclusion of six policy-related legal bases; Article 43(2) (agricultural policy), 91 and 100 (transport), 114 (internal market), 192 (environment) and 194(2) (energy) was necessary, so that the SMIT could address situations where the full functioning of the internal market was jeopardised.

The Commission reasoned that Article 337, which allows the Commission to make provision to collect information required to perform its tasks, was justified and adequate as a legal basis. It argued that Article 337 was being used in the SMIT Regulation proposal as an additional legal basis, alongside integrated policy-related legal bases. The Commission justified the legal bases based on case law C426/93 (*Germany v Council),* which ruled that Article 337 was a valid legal basis. In addition to this they cited C-490/10 (*Parliament v Council)*, which decided a sectoral energy legal base was appropriate, rather than Article 337.

In contrast to the Council Legal Service Opinion, the Commission maintained that the Regulation is proportionate; that there are adequate safeguards to limit the use of the SMIT power as a 'last resort' and that it is narrowly targeted.

In the Working Group on 8 March, all Member States who responded continued to express strong concerns and reservations about the legal bases, and about proportionality and the added value of the proposal. Most Member States agreed with the Council Legal Service Opinion. As such, the Presidency acknowledged the lack of progress and indicated that unless circumstances changed, it did

not at this time see a way forward on the dossier in its current form. The Working Group did not discuss the European Parliament Legal Service Opinion.

In its Opinion of 27 February 2018, the European Parliament Legal Service concludes that the proposal is for a general tool to collect information to assist the Commission with its tasks and as such Article 337 appears to be an appropriate legal basis. The opinion further notes that Article 337 provides for the adoption of a non-legislative act under the special legislative procedure, which would not involve the European Parliament. It provides for measures to be adopted by a simple majority in Council. The European Parliament Legal Service view is that the six policy-related legal bases are not appropriate as additional legal bases for the proposal because the link to the specific policy fields listed in Article 2 of the proposal is too remote.

We note the CLS also believes that the Commission has not sufficiently demonstrated the need for the information powers it would gain under the SMIT, and that there is general concern about this issue in Council Working Groups and the European Parliament. Do these concerns call into question the value of the SMIT itself, or would Member States and the EP be content with amendments that provide for a more limited set of information powers?

The concerns from some Member States call into question the value of the SMIT itself, at least in its current form. In the last Working Group, Member States have raised concerns about proportionality and subsidiarity. Under the principle of proportionality, article 5(4) Treaty on European Union (TEU) states that the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties. Other Member States have expressed fundamental concerns about article 4 of the proposal, which gives the Commission the power to request information where *'a serious difficulty with the application of Union Law risks undermining the attainment of an important Union Policy objective'*. These conditions are widely viewed by other Member States as being too general and broad in scope.

It is unlikely that Member States would be content to agree the proposal with only limited amendments that provide for a more limited set of information powers, given the scepticism over proportionality, subsidiarity and the legal bases. Some Member States have publicly expressed support for the overarching objective of the proposal, namely to improve the functioning and compliance of the single market, despite their criticisms of the proposal more generally. However, it appears that in its current format, the proposal would have to be significantly amended if there is to be progress on the dossier in Council. No Member State has made any suggestion of what any such amendments could be.

Following the Government's conclusion that use of the SMIT in the UK would not be significantly limited by the CMA's own information collecting activities, please provide us with a summary of your analysis of the potential resulting financial implications for UK businesses.

In its impact assessment (IA) the Commission estimates that the annual Union-wide cost of the proposal ranges between €0.37m (£0.32m) and €0.61m (£0.53m) for businesses. Based on the Commission's IA, we estimate that each large firm in the UK would incur between €1200 – €4400 (£1046 – £3836) to comply with a Commission request for firm-level information, and €300 - €1000 (£261 – £872) for small and medium-sized enterprises (SMEs), increasing by €4000 (£3487) if legal advice is needed. It is not clear how frequently such requests would be made and of how many businesses.

Given the conclusion of the latest working group, I do not currently anticipate significant progress in negotiations for the foreseeable future. The proposal may well have to be reworked fundamentally for negotiations to begin again. We will conduct detailed analysis on the potential financial implications for UK businesses if discussions on the SMIT proposal resume meaningfully.

19 April 2018

Letter from the Chairman to the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

The EU Internal Market Sub-Committee your letter dated 18 December 2017 on the above proposal at its meeting on 25 January 2018.

Thank you for confirming that a General Approach was agreed on this file at the Competitiveness Council in November 2017, and for your comprehensive update on how the agreed text addressed the Government's outstanding concerns on the proposal.

We are content to clear the file from scrutiny and would welcome further updates as negotiations progress in trilogues.

25 January 2018

Letter from the Rt Hon Lord Henley PC, Parliamentary Under Secretary of State, Department for Business, Energy & Industrial Strategy

I last wrote to the Committee on this dossier in December 2017, where I provided an update after the Competitiveness Council on 30 November. I would like to thank the Committee for clearing the dossier from scrutiny. I am now writing to you to provide an update on the outcome of the Single Digital Gateway Regulation during the interinstitutional negotiations (trilogues). I hope you find the information useful.

Update following Trilogue Negotiations

Following the Competitiveness Council where a General Approach was agreed on 30 November, the European Parliament's Internal Market and Consumer Protection (IMCO) Committee voted on its report on 22 February. This vote was confirmed by the European Parliament in plenary on 5 March.

This Single Digital Gateway was a priority dossier for the Bulgarian Presidency. Both the Member States and the European Parliament have broadly supported the proposal's main objectives. Interinstitutional negotiations (trilogues) aimed at achieving a first reading agreement took place between March and May. The main points of difference between the European Parliament's and Council's positions were the length of the transition period, translation requirements, which services had to be provided "fully online" and what precisely "fully online" meant.

Member States' Ambassadors indicated support at their COREPER meeting on 20 June for the provisional agreement that was secured by the Bulgarian Presidency with the European Parliament at the trilogues. The UK continued to support the overall objectives of the Regulation and endorsed the final compromise text at COREPER. Belgium was the only Member State not to offer support, noting it would abstain because of concerns over provisions requiring Member States to offer some information in another EU language.

During the trilogues, the UK continued to negotiate based on the principles it had advocated throughout the negotiations. These were to argue for a longer implementation period, flexibility for Member States in rolling out online capability and for more user-centric quality requirements. The UK supported the inclusion of services which had the biggest cross-border impact, such as submitting admission applications to public higher education institutions. The UK argued against the inclusion of services such as VAT registration, which did not represent value for money and would have limited benefit for only a small number of cross-border users.

The outcome of the trilogue negotiations saw the Bulgarian Presidency protect the Council's position on the five-year implementation period for the requirements on Member States' online capability, but made concessions on the business registration procedure, the amount of online information on rights, obligations and rules and on the grounds for exemptions from the requirements to make procedures

"fully online". The European Parliament agreed with the Council's position on which procedures should be in scope of the "fully online" requirements, limiting these to where there is greatest evidence of cross-border benefit. For instance, the requirement to put online procedures relating to VAT were removed. The final compromise agreement also ensured measures to safeguard cybersecurity and fraud prevention were kept intact. Overall, the final text reflects the UK's preferred position.

Next steps

The Regulation will enter into force 20 days after it is published in the Official Journal of the European Union (OJEU); we expect this to happen in the autumn ahead of the UK leaving the EU. Some provisions will have immediate direct effect in the UK, for example the appointment of national coordinators and establishing a Single Digital Gateway coordination group. However, other substantive provisions, such as providing "fully online" access to procedures, will not apply until five years after entry into force of this Regulation.

The Single Digital Gateway Regulation would only be fully in force after the two-year transition period set out in the draft Withdrawal Agreement. The extent to which the Regulation's rules will apply in the UK is therefore subject to the negotiations on withdrawal and the future economic partnership.

BEIS will continue to engage with relevant Government Departments and the Devolved Administrations to ensure a coordinated cross-Whitehall approach to implementation and to consider the implications of the dossier in the context of EU exit. In any event, the UK will continue to support businesses and citizens through providing access to high quality online information and services.

10 July 2018

PROPOSAL FOR A COUNCIL DIRECTIVE ON IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT BETWEEN PERSONS IRRESPECTIVE OF RELIGION OR BELIEF, DISABILITY, AGE OR SEXUAL ORIENTATION (9010/15)

Letter from Victoria Atkins MP, Minister for Woman, Government Equalities Office

The then Minister for Women and Equalities wrote to your Committee on several occasions in 2016 to provide updates on negotiations on the above draft directive and further information requested by the Committee. Since it has been some two years – which have included key milestones in the UK's exit from the EU - I am now providing a further update as the current Minister for Women.

There have been a number of changes and suggested changes to the Directive text in the intervening period, but with two exceptions, these have been minor. The first notable change was where the 2016 Dutch Presidency sought to recognise and set out the relationship between the requirements of the draft directive and those of the draft European Accessibility Act, which you will be aware is also being negotiated by Member States. This resulted in the adoption of the following paragraph in Article 4:

> *(19e) Where Union law providing for detailed standards or specifications on accessibility or reasonable accommodation in respect of particular goods or services is complied with, the requirements of this Directive with respect to accessibility or reasonable accommodation should be deemed to be complied with.*

The effect of this paragraph is that where Union law requires manufacturers and service providers to adopt standards and specifications on goods and services so that they can be appropriately used or accessed by customers with disabilities, any requirements on reasonable accommodation or accessibility arising under the draft directive, are to be regarded as already complied with

The intention here is to recognise that, by definition, the Accessibility Act would adopt the strongest appropriate level of regulation in the field of the manufacture and supply of goods and as such, there would be nothing useful that the draft directive could add to this. Furthermore, the new test recognises that to stray into the ambit of the Accessibility Act's competence would be a recipe for confusion and would work against the interests of a clear set of rules for business to work with.

The second significant drafting change occurred very recently under the Bulgarian Presidency and concerns the inclusion of multiple discrimination in the draft, which is proposed for definitional purposes as follows:

> *(12ab) Multiple discrimination is understood as discrimination, in any of its forms, occurring on the basis of the combination of two or more of the following grounds: religion or belief, disability, age or sexual orientation, or, in some circumstances1 sex, or racial or ethnic origin. Such multiple discrimination could also occur through the combination of two or more grounds, which taken separately would not give rise to discrimination against the person concerned. Multiple discrimination should be recognised in order to reflect the complex reality of discrimination cases, as well as to increase the protection of the victims thereof.*

The UK opposes the inclusion of a reference to multiple discrimination in the draft, not because the definition is technically defective, but because our domestic policy approach is that the substantial and potentially burdensome change associated with defining discrimination on many new grounds is not justified by evidence of lack of protection under the Equality Act 2010 as it stands. In particular we have noted in negotiations that in the UK, individuals may take concurrent action on two or more grounds (for example, concurrent claims for age and disability discrimination, or gender and race discrimination). We have also expressed concern about the practicability of introducing a potentially much more complicated approach to individual selfidentity and the burdens for service providers that this might entail.

The UK, along with the Netherlands, has accordingly registered reservations on the inclusion of this text.

<u>EU Exit</u>

UK alignment with EU legislation, including equalities legislation, will clearly be a matter for the wider exit negotiations and as such I hope you will appreciate that there is limited information that I can provide at this time. However, the Government has been clear that all protections covered in the Equality Act 2006, the Equality Act 2010, and equivalent legislation in Northern Ireland, will continue to apply after we have left the EU. This will include almost all the protections in the current draft of the directive, since, as previously noted, these are already in place domestically through the Equality Act 2010 and the Government has no plans to change that position.

I will write again in the event of there being any significant developments in the negotiations.

24 April 2018

Letter from the Chairman to Victoria Atkins MP, Minister for Woman, Government Equalities Office

Thank you for your letter dated 24 April 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 5 July 2018.

We have decided to retain the file under scrutiny. We note the continued obstructive of this Directive in Council, and would be grateful for a further update if it begins to make progress.

5 July 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2010/13/EU ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES CONCERNING THE PROVISION OF AUDIOVISUAL MEDIA SERVICES IN VIEW OF CHANGING MARKET REALITIES. (9479/16)

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

I am writing to inform the Committee of the progress and the timetable of the final phase of negotiations on the revision of the Audiovisual Media Services Directive (AVMSD).

A revision process is currently in the final stage of interinstitutional trilogue negotiations between the European Parliament, Council and Commission. Following a 23-month revision process, a preliminary political agreement on the main elements of revised rules was reached on 26 April 2018. The trilogue negotiations will officially conclude in June when the representatives of the aforementioned institutions will meet to finalise the last remaining technical details of the proposal.

The Directive sets out a regulatory regime for the entire audiovisual sector, including linear television, on-demand services and video-sharing platforms more broadly, and is as such highly complex and fragmented. This has resulted in numerous conflicting priorities for different Member States and many difficult compromises. A a consequence, the final text crosses two of the UK's red lines, namely i) an introduction of optional levies for video-on-demand and linear services, which give Member States an option of requiring these services to contribute financially towards national film funds in the country of operation; and ii) a considerable extension of the scope of the definition of videosharing platforms, to include social media and live-streaming services. Our concern with the latter provision related to additional burdens on industry, however we acknowledge that the final text aligns with the UK's Digital Charter proposals. Whilst the UK continued to oppose these two provisions, we recognise that our position was in the minority.

I am pleased to say that certain UK concerns, especially around the issues of regulatory clarity, have been addressed, and we continue to actively engaging with the Presidency and other Member States to influence the final wording of the Directive in its final stage.

The concluding interinstitutional trilogue meeting is scheduled for 6 June 2018. After formal confirmation by the Council and the European Parliament's plenary vote, which are expected in summer and autumn 2018 respectively, the new rules will have to be transposed into national law within 2 years, which means that we will be required to implement this Directive before the end of the Implementation Period.

A summary of the timeline is as follows:

Last informal trilogue meeting to finalise draft text	6 June 2018
Editing and translating the text into EU28 official languages	June - July 2018 (TBC)
Update in the EYCS Council meeting	22-23 May 2018
Acceptance of the proposal in the EU Parliament	Summer 2018 (TBC)
Acceptance of the proposal in the EYCS Council	November 2018 (TBC)
Implementation period	Nov 2018 - Nov 2020 (TBC)

I look forward to keeping the Committee updated on the progress of this proposal in due course. I hope this update is helpful and enables the Committee to lift the scrutiny reserve on this file.

2 May 2018

Letter from the Chairman to Margot James MP, Minister for Digital and the Creative Industries

Thank you for your letter dated 2 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 5 July 2018.

We have decided to clear the file from scrutiny. We would be grateful for an update after the November Council, at which you say you expect the Directive to be adopted. We would also like to understand how the UK broadcasting sector have been consulted throughout the trilogues negotiations.

We look forward to a response in due course.

5 July 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1071/2009 AND REGULATION (EC) NO 1072/2009 WITH A VIEW TO ADAPTING THEM TO DEVELOPMENTS IN THE SECTOR (9668/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/1/EC ON THE USE OF VEHICLES HIRED WITHOUT DRIVERS FOR THE CARRIAGE OF GOODS BY ROAD (9669/17)

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

Thank you for your letter dated 23 October 2017 on the above proposals. The EU Internal Market Sub-Committee considered your letter at its meeting on 18 January 2018.

Thank you for your detailed answers to our questions. We are pleased to hear that you are consulting with road safety organisations and we look forward to your summary of views received. We also welcome your confirmation that the Government is analysing the Commission's impact assessments on the use of LCVs for goods transport; we look forward to a summary of this work.

We are interested to know if the Government would be supportive of extending regulation to LCVs only above a specified weight and undertaking international transport. Please could you also explain if this aspect of the proposal would impact LCVs undertaking commercial passenger transport as well as haulage?

Your Explanatory Memorandum expressed concern at the proposal to remove Member State discretion to lay down additional requirements for access to the profession, particularly in relation to the current UK requirement for operators to have suitable parking. We would welcome an update on whether there has been any development of this measure.

Regarding the proposed Directive, we note your comment that there are currently no restrictions in the UK on the use of hired goods vehicles for own account transport. Please explain if the proposal would impact the use of hired goods vehicles not for own account and, if so, the effect of this in the UK.

Lastly, please update us on the estimated timeframe for Council consideration of these files, if there have been any substantial changes to the texts during the course of negotiations, and if the Government has now made full subsidiarity assessments.

We have decided to retain the files under scrutiny. We look forward to a response to this letter within 30 working days.

18 January 2018

Letter from Jesse Norman MP, Department Under Secretary of State

Thank you for your letter of 18 January about the Explanatory Memorandum (EM) on the above proposals, which form the 'market pillar' of the Commission's Mobility Package. I am writing in response to the Committee's queries as set out in your letter, and also to update the Committee on developments.

The Presidency is continuing to take these proposals forward in working group, with a view to reaching General Approaches on them at the 7 June Transport Council. This is ambitious, as progress in working group negotiations has been slow with consensus difficult to establish.

Regulation of Vans

You asked for a summary of our views on the Commission's impact assessment on the regulation of small vans (Light Commercial Vehicles or "LCVs"). In short, we feel that the Commission's impact assessment is not sufficiently well-evidenced in this area, and we have therefore carried out an evidence-based analysis of the potential impacts of the Commission's proposals on the UK LCV sector. Our findings, that the original proposals would place substantial additional burden on LCV

operators, were shared with the Commission and other Member States. My assessment is that this analysis has contributed to building support in working group for a more measured regulatory approach which would mitigate the impact of the measures on small businesses while still addressing some of the deeply-held concerns certain Member States have with cross-border van activity.

Although the legislative proposals are still in a state of flux given the ongoing negotiations, recent compromise suggestions have moved in the right direction, for example by limiting the new rules purely to LCVs over a certain weight. We are encouraged by the direction in which the Council is moving, but continue to analyse carefully any compromise proposals and push for a proportionate approach in order to minimise the burden on Government and on operators. I can also confirm that this aspect of the proposal would not impact LCVs undertaking commercial passenger transport.

Access to Profession and Hired Vehicles

The Committee asked for an update on the proposed requirement to limit the criteria for establishing a freight company to those set out at EU level, removing the current discretion for Member States to lay down additional requirements for engagement in the occupation of transport operator. Although we appreciate the cross-EU benefits that this type of harmonised approach could bring, we have made it clear in the course of negotiations that we would expect at least to be able to retain existing requirements we place on operators to have a sufficient number of parking spaces. On the basis of recent suggestions for compromise which would allow us to retain some flexibility in placing proportionate additional requirements on operators, my original concerns relating to subsidiarity have been mitigated and I assess the risk of our needing to abandon the parking space requirement as being low.

You asked me to explain if the proposal would have an impact on the use of hired goods vehicles not for own account and, if so, the effect of this in the UK. I can confirm that the proposal would also impact the use of hired goods vehicles not for own account. Currently, vehicles hired (and registered) in another Member State cannot be used on a GB or Northern Irish goods vehicle operator's licence. The proposal would allow vehicles hired in another Member State to be used for four months by the hiring country without restriction. It is envisaged that this will allow greater competition and equal access through permitting cross border hiring of vehicles. As UK freight vehicles are right hand drive, however, there is likely to be limited interest in hiring vehicles from mainland Europe for use in the UK and vice-versa. This may also be compounded by the additional fuel costs involved in such a scenario.

Engagement with Stakeholders

Engagement on these proposals has taken place with various stakeholders including the Road Safety Foundation who are charged with carrying out and procuring research into safe road design and road safety. We are planning further consultation with industry stakeholders (including the AA) which have interests in safety and will be meeting with the RAC on 21 February.

We have given further consideration to the subsidiarity implications of the proposals, including in our consultations with stakeholders. We feel that objectives of the proposed action cannot be sufficiently achieved domestically. While amendments to domestic legislation could be made, for instance, in the case of vans to GB goods vehicle operator's licence laws, we share the Commission's view that action at EU level would reduce disparities.

In addition, we believe that the direction of travel in the negotiations means that it is unlikely that the final legislation will go beyond what is required to achieve the proposal's objectives, and will retain the UK's ability to require operators to have a suitable parking space for vehicles.

The European Parliament's TRAN Committee is also considering the proposals and is expected to complete its reports on them at the end of May 2018.

I will, of course, continue to keep the Committee informed during further negotiations.

27 February 2018

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 27 February 2018 on the above files. The EU Internal Market Sub-Committee considered your letter at its meeting on 19 April 2018.

We are pleased that the measures for LCVs are moving towards a more proportionate approach. What is the Government's view of whether the new rules should apply only to LCVs undertaking international transport?

Please also summarise the views you have received from stakeholders so far.

In order to consider a request for a scrutiny waiver or clearance we will require an update on any further material changes to the texts as well as information on the Government's voting intention.

We have decided to retain these files under scrutiny. We look forward to a response to this letter within 10 working days.

19 April 2018

Letter from Jesse Norman MP, Department Under Secretary of State

I am writing to update you on the negotiations on the above proposals, which form the 'internal market pillar' of the Commission's Mobility Package, in advance of the Transport Council on 7 June 2018. I am also responding to your letter of 19 April.

My letter of 27 February noted that the Presidency was continuing to take these proposals forward in Working Group, with a view to reaching General Approaches in June. This is still the Presidency's intention, and the latest developments on both proposals are set out below.

Proposed amendment to Regulations (EC) 1071/2009 and (EC) 1072/2009 (9668/17)

You will recall that this pillar of the Mobility Package included proposals for changes to Regulation 1071/2009 which would:

- Amend the provisions for operator licensing in order to introduce a requirement for vans below 3.5 tonnes to be brought into the financial standing and effective establishment requirements of the operator licensing regulations applicable to larger vehicles.
- Clarify the provisions as to what constitutes an effective and stable establishment for the purposes of freight operator regulations by removing the ability of Member States to impose requirements additional to the core requirements set out in Regulation 1071/2009.
- Make minor technical changes to the provisions relating to transport manager qualification and disqualification.

The proposal would also amend Regulation 1072/2009 which governs access to the internal market. These changes would:

- Amend the time period allowed for cabotage from the current position (of 3 operations in 7 days) to allow unlimited operations in a 5 day period.
- Oblige Member States to undertake enforcement activities against a certain percentage of vehicles undertaking cabotage operations.

The compromises suggested in official-level discussions in Council Working Group represent a significant change from the Commission's original proposal. The provisions requiring all vans to be brought into operator licensing requirements have been significantly limited, in part as a result of UK interventions. In the latest working drafts, these provisions would now only apply to vans over a minimum weight threshold which do international work for hire or reward. Part of the rationale for this change was that all four of the operator licensing requirements would be applicable to such vans, not simply two as proposed by the Commission.

You have specifically asked whether the UK would support the bringing into regulation of vans undertaking international transport. We view the latest proposals as a much more proportionate measure, which would greatly reduce the number of operators affected across the UK while keeping the requirements for international transport in larger vans aligned with those for lorries. For this

reason, we view the current status of the proposal in Working Group as an appropriate means by which to address the concerns of some Member States relating to vans having a competitive advantage over their domestic industry, and we would be prepared to accept the regulation of vans doing international transport as an improvement on the original Commission proposal.

The revised proposal also allows Member States to impose additional requirements, reinforcing the link between the operator and Member State according to specific operational needs. For example, this would allow the UK to continue to mandate the provision of sufficient parking for all vehicles operated.

In Working Group negotiations, the proposed change to Regulation 1072/2009 relating to enforcement of cabotage has been revised so as not to require a specific percentage of cabotage operations to be inspected. This greater flexibility will make for significantly more targeted and efficient enforcement, and allow us to continue our risk-based approach to enforcing cabotage rules.

Regarding the proposals to change the number of days and number of trips allowed for cabotage, Member States' positions on this issue remain entrenched and polarised. In this context the Presidency acknowledges that this is best resolved at political level during the Transport Council negotiations, and in the wider policy context of the Mobility Package. However, given the finely balanced nature of Member States' positions, with the UK broadly in the middle in policy terms, I expect that the outcome of the negotiations at Transport Council will be a compromise that is in line with the UK objective of achieving a balanced outcome.

In the course of negotiations, several proposals for an additional "cooling-off period" for cabotage have been made and are likely to be reflected in some form in a final deal. The "cooling-off" period would set a period of days following the end of a cabotage operation during which an operator would not be able to begin a new one in the same Member State. Given cabotage operations are common on the island of Ireland, an excessively long "cooling-off period" could impose unnecessary restrictions on Irish and Northern Irish hauliers. For this reason, we have suggested that the provision be either optional for Member States to apply, or that it be very limited in duration. In practice, following a set of cabotage operations, a haulier is in any case likely to take a "break" during which they make another international operation, so in our view a period of a few days is unlikely to make a great deal of operational difference. Nevertheless, we have engaged throughout with colleagues in Northern Ireland to ensure that they are satisfied that any negative impacts would be minimal.

Overall, I consider that the proposed General Approach is satisfactory provided that the proposal remains broadly as outlined above and a balanced outcome is achieved on cabotage. I do, of course, appreciate that the Committee will wish to retain the proposal under scrutiny given the further developments that will take place at the Transport Council on 7 June, but would be grateful if the Committee would consider granting a scrutiny waiver ahead of the Council to enable the UK to support a balanced General Approach.

Proposed Directive on the use of hired vehicles (9669/17)

The internal market pillar also includes a separate proposal for increased flexibility on vehicles hired without drivers. This is intended to make it easier for undertakings to hire vehicles registered in a Member State other than that where the undertaking is established. The proposal would allow for these vehicles to be used without re-registration for a short period to deal with demand surges. According to the Commission's Impact Assessment this would have environmental and road safety benefits, as there is evidence to show that these vehicles are often newer and cleaner than regular vehicles.

I am also content with progress made on this more technical, and much less controversial, proposal. The compromise being proposed would allow Member States flexibility to restrict their own operators from hiring vehicles registered in a different Member State under certain conditions. In particular, Member States may choose to restrict the hiring of vehicles for a period of greater than one month, reduced from three months in the original proposal, or where those vehicles would make up a proportion of greater than 25% of the overall fleet.

In the course of negotiations so far, we have succeeded in keeping Member States' administrative obligations proportionate. Given the relative rarity of operators hiring goods vehicles in this way in the UK, we do not expect this proposal will have a significant impact on domestic policy.

Nevertheless, we view the current state of the proposal as a good balance between keeping the market of hired goods vehicles relatively open and allowing Member States the freedom to impose certain restrictions if they so wish. On that basis, I consider that the current compromise proposals on hired vehicles are a satisfactory basis for trilogue negotiations with the European Parliament and would be grateful if the Committee could consider clearing this dossier from scrutiny in advance of the 7 June Council .

Overall, the negotiations to date on the internal market pillar have been passionate but broadly constructive, and I consider that the current state of both dossiers is a significant improvement on the Commission's original proposals.

You have specifically requested a summary of stakeholder views, which is attached as an annex[11] to this letter.

I will, of course, inform the Committee of the outcome of the Transport Council and will continue to keep the Committee informed of progress on both of these proposals. The European Parliament's TRAN Committee is also continuing its consideration of both proposals and is still expected to complete its reports on them at the end of May 2018, with a possible plenary vote in July.

8 May 2018

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 8 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We are pleased that several positive changes to the proposed amending Regulation (9668/17) have been achieved. We have decided to grant a scrutiny waiver for this file for the 7 June Transport Council. We look forward to an update on the outcome of the Council meeting, including the agreed cabotage restrictions, in due course. Please also include information on how the agreed position might impact Irish and Northern Irish hauliers.

Thank you for your update on the proposal on hired vehicles (9969/17). We have decided to clear this file from scrutiny.

18 May 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 561/2006 AS REGARDS ON MINIMUM REQUIREMENTS ON MAXIMUM DAILY AND WEEKLY DRIVING TIMES, MINIMUM BREAKS AND DAILY AND WEEKLY REST PERIODS AND REGULATION (EU) 165/2014 AS REGARDS POSITIONING BY MEANS OF TACHOGRAPHS (9670/17)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/22/EC AS REGARDS ENFORCEMENT REQUIREMENTS AND LAYING DOWN SPECIFIC RULES WITH RESPECT TO DIRECTIVE 96/71/EC AND DIRECTIVE 2014/67/EU FOR POSTING DRIVERS IN THE ROAD TRANSPORT SECTOR (9671/17)

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

Thank you for your letter dated 23 October 2017 on the above proposals which the EU Internal Market Sub-Committee considered at its meeting on 18 January 2018.

We note that progress in negotiations on these files has been relatively slow, particularly with regard to the sector-specific posting of workers proposals. We look forward to further updates as negotiations progress and the Government develops its policy position. In particular, we would like to

[11] Not published here.

be kept informed of the expected timeframe for consideration and political agreement of these files in Council, and any significant compromise proposals put forward in working groups.

We would also like to receive a summary of the views expressed by the stakeholder groups listed in your letter, and a copy of the assessment you are undertaking on the potential impact of these proposals on UK drivers and operators, in due course.

We are aware that several stakeholder organisations are seeking amendments to these proposals and would be interested to know the Government's views on the following:

- The European Transport Workers' Federation (ETF) call for the proposed Regulation to specify that – in relation to drivers returning home for a weekly rest at least once within three consecutive weeks – 'home' is defined as a driver's country of residence, and that employers are obliged to pay for this journey.
- The Freight Transport Association (FTA) call for operators (e.g. in the entertainment industry) who have invested in vehicles with state-of-the-art sleeping accommodation to be exempted from the requirement to pay for accommodation for drivers to take rests away from their vehicles.

In the impact assessment accompanying the proposals, the Commission notes the low level of compliance with current working time provisions and the implications of non-compliance, namely, reduced protection of workers and a competitive advantage to those breaking the law by allowing for cost reductions and productivity gains. We therefore welcome the Government's recognition of the importance of ensuring driver working time rules are respected.

In light of your concerns about the resource implications of proposed roadside checks on working time rules, do the Government believe there are any viable alternatives which would achieve the aim of improving compliance levels? We would also be interested to know if the Government has similar resource concerns in relation to other enforcement obligations, for example checking that drivers are taking rest breaks away from their vehicles. Please also explain what sanctions would apply in cases of infringements of the proposed weekly rest and working time rules.

We have decided to retain these documents under scrutiny. We look forward to your response to this letter within 30 working days.

18 January 2018

Letter from Jesse Norman MP, Department Under Secretary of State

Thank you for your further letter of 18 January, in response to my letter of 23 October 2017, about the above proposals which form the 'social pillar' of the Commission's Mobility Package.

The Committee asked to be kept informed of the expected timeframe for consideration and political agreement of these files in Council. The Bulgarian Presidency hopes to reach General Approaches on the proposals at Transport Council on 7 June 2018. The European Parliament's TRAN Committee is also considering the proposals and is expected to complete its reports on them at the end of May 2018, with a possible plenary vote in July. Subject to these stages being completed, it is expected that the final texts would not be adopted until the first half of 2019.

Since I last wrote to the Committee, the Estonian Presidency gave a progress report on the social and market pillars of the package at the Transport Council in December 2017. We were broadly content with the progress report and welcomed the Estonian Presidency's efforts to find compromises on certain issues, such as restricting the mandatory enforcement of the working time rules to operator premises, rather than roadside checks. We also welcomed the work that the Presidency did to explicitly clarify in the legislation that transit operations do not constitute a driver "posting" to the territory of the Member State being crossed, and that the administrative requirements and control measures for enforcing the posting rules should be exhaustive (a "closed list").

Negotiations are continuing in the Land Transport Working Groups under the Bulgarian Presidency. Our approach remains to take a pragmatic, case-by-case approach to the proposals, in line with the following principles:

- that any new obligations on businesses or national enforcement authorities should be workable, proportionate and of clear benefit;
- greater clarity around the existing rules is to be welcomed as they are complex and open to differing interpretation across Member States; and
- increased flexibility for businesses should be welcomed, where this does not conflict with the objectives of road safety and driver welfare.

You asked for a summary of the views expressed by the stakeholder groups mentioned in my letter of 23 October. Attached at Annex A[12] is a summary of the initial views expressed by the trade associations and the trade unions.

We are not conducting a formal impact assessment of the potential impacts of these proposals on UK drivers and operators. The proposals under negotiation remain fluid. In addition, the nature of the proposals is not suited for a quantitative assessment of the impacts, in particular in relation to potential effects on road safety. We are taking a judgement-based approach, informed by ongoing discussions with interested stakeholders, as the proposals develop in negotiation, and in the context of the principles mentioned above.

You asked for the Government's views on the proposed amendments put forward by the European Transport Workers' Federation (ETF) and the Freight Transport Association (FTA). We agree with the ETF that drivers should be given the opportunity to return home for a weekly rest at regular intervals, and that employers should cover the cost of this. Negotiations in the Working Groups appear to be moving in this direction, and the definition of 'home' is under active discussion. Our preference is that the definition of 'home' should primarily relate to a driver's main residence, but that it should also take into account the situation in which a driver has sought employment at an undertaking established in a Member State other than his or her country of residence.

We appreciate the FTA's concerns for operators who have invested in vehicles with state-of-the-art sleeping facilities, and need to pay for accommodation for their drivers. Our view is that a total ban on drivers taking their weekly rest in the vehicle is not necessary, provided that the vehicle is parked in a suitable rest area providing for safe and secure parking with adequate driver welfare facilities. Working Group discussions currently appear to be developing along these lines.

Compliance with the mobile working time rules is estimated to be high in the UK, where the Driver and Vehicle Standards Agency (who enforce both the drivers' hours and mobile working time rules) have a well-established mechanism in place for enforcing working time at the operator's premises. The Road Transport (Working Time) Regulations 2005 specify that drivers' weekly working time must not exceed an average of 48 hours. Statistics from the Annual Survey of Hours and Earnings show that HGV drivers worked on average 48 hours per week in 2016 (down from an average of 50 in 2004, before these Regulations came into force).Compliance in some other Member States is believed to be more limited, which explains the Commission's proposals to bolster the enforcement of these rules.

In this context of an effective existing system in the UK, we do not believe roadside enforcement is a practical and cost effective method of enforcement. We are therefore welcomed the Estonian Presidency's suggestion in the December progress report that enforcement obligations should remain linked to checks at the operator's premises.

The Government does not have any resource concerns in relation to other enforcement obligations proposed. DVSA's current enforcement sanctions policy allows for graduated Fixed Penalty Notices to be issued to drivers depending on the severity of the offence (ranging from £50 to £300). The changes proposed will not affect this policy, as Member States will remain responsible for setting their own sanctions.

27 February 2018

[12] Not published here.

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 27 February 2018 on the above proposals, which the EU Internal Market Sub-Committee considered at its meeting on 26 April 2018.

Your letter indicates that progress has been made in addressing some of the Government's concerns with these proposals. Can you confirm whether Member States have agreed the previous Presidency's suggestion to remove roadside checks from the expanded enforcement obligations (referred to in your letter) as an amendment to the draft text?

We note your comment that the "proposals under negotiation remain fluid" and would be grateful if you could keep us informed of significant amendments to the draft text, such as the definition of 'home' for drivers' weekly rest breaks and the obligation to take rests away from their vehicles.

We would also like to know whether the Government intends to put forward any specific amendments based on the UK stakeholder views outlined in the Annex to your letter. For example, the trade associations' preference for the timeframe for exemption from host country minimum wage and paid annual leave rules (proposal 9671/17) to be longer than three days.

Your previous letters have noted ongoing disagreement among Member States over the necessity of road transport sector-specific rules for the posting of workers. Can you provide an update on the progress of discussions on this issue? Do you think this debate may disrupt the Presidency's aim to secure a General Approach on the proposed Directive in June?

In the light of the Bulgarian Presidency's intention to table both files for General Approaches at the June Transport Council, we expect to receive your response to this letter – including any scrutiny waiver request – within 10 working days. In order to consider any waiver request, we require a comprehensive update on the latest draft text and, as far as possible, the Government's policy position and voting intentions for the Council meeting. In the meantime, we retain these documents under scrutiny.

30 April 2018

Letter from Jesse Norman MP, Department Under Secretary of State

Thank you for your letter of 30 April. I am writing to update you on the negotiations on the above proposals, which form the 'social pillar' of the Commission's Mobility Package, including the Presidency's plans to seek a General Approach on them at the Transport Council on 7 June 2018.

You will recall that this pillar included proposals to amend the driving and rest time rules, to strengthen the enforcement regime for the social legislation and to create a specific regime for the posting of workers employed in the road transport sector. Overall, the negotiations to date on the social pillar proposals have been constructive and I consider they have greatly improved on the Commission's proposals from the UK's perspective. The UK has sought to be a constructive negotiating partner, in particular tabling amendments to improve the practicality of the text (for example in order to find workable solutions to drivers being permitted to sleep in their vehicle within suitable rest areas) and this has generally been a successful approach.

Proposed Regulation on driving and rest time (9670/17)

In relation to the driving and rest time proposals, the latest working texts represent a significant change from the Commission's proposals. In particular, the originally proposed additional flexibility that would allow a reduced weekly rest of 24 hours to be taken for two consecutive weeks has been removed. During negotiations the UK argued to limit the proposed increased flexibility, on the basis of potential adverse effects on road safety and driver welfare, and this is therefore a significant success.

The originally proposed obligation for drivers to be able to return home periodically has been retained, although the frequency has been reduced (from every 3 weeks to every 6 weeks). We welcome its retention as we see benefits in this provision in the context of promoting driver welfare and fair cross-continental competition. In your letter of 30 April you specifically asked about the latest working text's treatment of the proposed 'return to home' obligation. The concept of 'home' includes either a person's place of residence or the company's operational base. We consider that the

inclusion of the latter option is helpful in order to account for drivers who may choose to work for a company far from (or indeed in a different country to) their place of residence. An important change to the Commission's proposals has been the addition of a provision to enable weekly rests to be taken in the vehicle, provided it is parked in a suitable area with adequate security and welfare facilities. This is in line with the UK's view that it is proportionate to ban 'cab sleeping' where this is done in unsuitable locations such as lay-bys, as I indicated to you in my letter of 27 February.

I therefore welcome the developments on driving and rest time rules, which meet our objectives, including ensuring that the outcome does not introduce potential risks to road safety. The final working group discussions of this text took place in April and it is therefore unlikely that there will be further significant amendments ahead of the Council. I consider that the proposed General Approach here is welcome and would be grateful, therefore, if the Committee could consider clearing this proposal from scrutiny ahead of the 7 June Transport Council.

Proposed Directive on enforcement and posting of workers (9671/17)

The proposed enforcement measures have also undergone amendments during negotiations, in the direction of the UK's position. While the proposal would still create an obligation on Member States for some roadside checking of compliance with working time limits, the amendments made in working group mean that this is now strictly limited to those provisions that can practicably be checked in this manner, without undue additional costs to enforcement authorities. Importantly, the proposed numerical target for the number of days to be checked has been removed, enabling national enforcement authorities to apply their discretion in targeting resources.

Other provisions, supported by the UK, to enhance cross-border enforcement cooperation and data exchange have been retained. Especially in the context of these helpful proposals, I consider the proposed General Approach on this aspect of the proposal to be welcome.

On the proposals in relation to the posting of workers, progress in working groups has been mainly limited to the more technical matters of implementation and enforcement of new sector-specific rules. On these points, the proposal as amended in working group is broadly satisfactory and meets the UK's objectives of limiting the burdens on businesses and drivers, for example by defining an exhaustive list of the paperwork that is required to be carried in the vehicle.

However, many Member States' positions remain entrenched and polarised on the extent of the proposed time-limited exemption from postings rules for transport workers. It is expected that this will only be resolved at political level during the Transport Council negotiations, and in the wider policy context of the rest of the social pillar and the market pillar of the Mobility Package. Nonetheless, given the current fine balance between the positions of the two opposing groups of Member States which have the most extreme views on this matter (with some arguing for a very lengthy exemption from postings for transport workers and others insisting on no exemption at all), I anticipate that the outcome of the negotiations at Transport Council will be a compromise that avoids radical changes to the Commission's proposals and will be acceptable to the UK.

I appreciate that the Committee may wish to retain the enforcement and posting of workers proposal under scrutiny pending the outcome of discussions at Transport Council, but would be grateful if the Committee would consider granting a scrutiny waiver ahead of the Transport Council on 7 June.

I will, of course, inform the Committee of the outcome of the Transport Council and will continue to keep the Committee informed of progress on both of these proposals. The European Parliament's TRAN Committee is continuing its consideration of both proposals and is still expected to complete its reports on them at the end of May 2018, with a possible plenary vote in July.

8 May 2018

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 8 May 2018 on the above proposals. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We welcome your helpful update on negotiations on both files, particularly regarding the ongoing dispute over rules for posting drivers in the road transport sector. We are content to clear proposal

9670/17 from scrutiny, and to grant your request for a scrutiny waiver on proposal 9671/17 for the Transport Council on 7 June 2018.

We look forward to an update on the outcome of the Transport Council in due course.

18 May 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 1999/62/EC ON THE CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN INFRASTRUCTURES (9672/17)

PROPOSAL FOR A DIRECTIVE ON THE INTEROPERABILITY OF ELECTRONIC ROAD TOLL SYSTEMS AND FACILITATING CROSS-BORDER EXCHANGE OF INFORMATION ON THE FAILURE TO PAY ROAD FEES IN THE UNION (RECAST) (9673/17)

PROPOSAL FOR A COUNCIL DIRECTIVE AMENDING DIRECTIVE 1999/62/EC ON THE CHARGING OF HEAVY GOODS VEHICLES FOR THE USE OF CERTAIN INFRASTRUCTURES, AS REGARDS CERTAIN PROVISIONS ON VEHICLE TAXATION (10175/17)

Letter from Jesse Norman MP, Department Under Secretary of State, Department for Transport

Thank you for your letter of 27 October regarding the Internal Market Sub-Committee's consideration of the Explanatory Memorandum (EM) on the above proposals. The Committee asked for further information on a number of the proposed changes related to road charging; please find below my response to each of these questions.

To what extent would the proposed amendments mandate the level at which Member States may set vehicle charges? Are calculation methods specified?

The existing Eurovignette Directive sets the regulatory context limiting how, at what level, and on what roads Member States can set vehicle charges - for example, charges for time-based schemes are capped at around £10 a day.

The new proposals would significantly change that regulatory context, by focussing on CO_2 emissions through distance-based (per mile rather than per day) charging systems with charges differentiated by carbon emissions.

As is already the case these charging systems would have a set of prescribed conditions (such as the methodologies provided for deriving the maximum allowable charges) and, as set out in Annex II, be limited by maxima.

As is also already the case with the existing Directive, the proposed amendments would not oblige Member States to introduce charging systems, but instead mandate that any systems in place would have to fit into a common framework.

Under these proposals the Directive would continue to set the allowable percentage difference between daily, monthly and annual rates for both HGVs and passenger vehicles. It would also continue to allow Member States to apply higher rates to passenger cars, for schemes which started before May 2017, until 1 January 2024 by which point they must conform to the rates proposed in the Directive.

Annexes IIIa and IIIb set out the minimum requirements and methods of setting external-cost charges related to the cost of traffic-based or noise pollution (or both).

Annex V sets out the rules for a congestion charge.

Annex VI sets out the maximum permissible levels for congestion charges for light duty vehicles; for HGVs the maximum is based upon calculations based upon Annex V.

Would the same charging framework apply to heavy and light-duty vehicles, including the ability to vary charges according to CO_2 emissions?

The Commission's proposals would see a framework introduced that gave Member States the right to vary charges for Light Duty Vehicles (LDVs) according to CO_2 emissions, but whereas the proposals would require any (existing or planned) HGV charging scheme to include all HGVs over 3.5 tonnes including buses and coaches they would not require the inclusion of LDVs.

Would the proposal only allow for varying charges according to CO_2 emissions or could charges also be varied according to levels of other pollutant emissions?

The Commission proposes that from 1 January 2022 tolls and user charges (at least for annual charges) should be varied according to the CO_2 emissions and pollutant emissions of the vehicle. However, this would no longer be linked to the EURO emissions class of a vehicle.

Under these proposals Member States would however retain the ability to introduce an external-cost charge for both HGVs and LDVs, and this could be related to the cost of traffic-based air or noise pollution.

Would UK Vehicle Excise Duty be considered a time-based levy under the proposals and if so, due to be phased out?

No. The UK Vehicle Excise Duty (VED) is a vehicle tax not a charge and as such will continue to be a domestic decision rather than be covered by the Eurovignette.

Is the Commission planning to insert rules on how charges should be collected and receipts provided into the draft text, or through another legislative instrument? Does the Government think that standardisation in this manner is necessary and proportionate?

Yes, the Commission is planning to insert rules on how charges should be collected and receipts provided.

This approach would ensure similar methods are established for payment and provision of receipts for all types of charge. This seems proportionate and fair - it holds the potential to help make the process of using tolls and charges across the EU less administratively cumbersome and so help business.

Regarding the proposed EETS Directive, would the requirement for vehicle registration authorities to provide information to other Member State authorities include any additional enforcement responsibilities for the 'information provider'?

No. It is however true that the proposed requirement for information about vehicle owners to be shared across national boundaries charges would necessarily add to the number of requests made to the Driver and Vehicle Licensing Agency (DVLA) since they already provide information related to safety infringements.

The Committee also asked for an update on the proposals' compliance with the principle of subsidiarity, and on developments generally.

With regards to the first point, and following examination of the Commission's proposals, our view is that there are some areas of concern in relation to the principle of subsidiarity, and that some of the measures in the proposals would be more appropriately left to Member States to decide for themselves.

In particular, we disagree with the proposal to require Member States to hypothecate revenues from congestion charging, and with the requirement to phase out time-based charging schemes (which, like our own existing HGV Levy, charge operators per day or week or year of transport) in favour of distance-based charging (which charges operators per mile/km).

With regards to the point on developments more generally, the Estonian Presidency prioritised the market and social "pillars" of the Mobility Package proposals in working group discussions, and this approach is likely to continue during the Bulgarian Presidency. Negotiations on the charging pillar are therefore less developed, but preliminary comments suggest that our concerns on hypothecation and the requirement to phase out time-based schemes are shared by other Member States. We will work with like-minded Member States to argue that the legislation should allow Member States maximum

flexibility to implement charges that are appropriate to their own circumstances, which would ensure that subsidiarity is respected.

6 February 2018

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 6 February 2018 on the above proposals. The EU Internal Market Sub-Committee considered your letter at its meeting on 22 March 2018.

Please would you confirm if, under the proposals, a Member State could vary charges for HDVs according to CO2 emissions? Please would you also provide further information about the capability for Member States to introduce an "external cost charge"—could this charge cover pollutant emission such as Nitrogen Oxide?

Could you please explain how much flexibility would be left to Member States to decide how to meet the hypothecation requirement? We also seek clarification on the way in which the Commission is planning to insert rules on how charges should be collected and receipts provided. For example, would this be through an implementing act?

Your initial EM raised several questions under consideration, we would welcome an update on the Government's position on the following:

- Whether requiring buses and coaches to be subject to the same charges as HGVs would be counterproductive, given their role in tackling congestion and air quality problems—we note that the Commission is separately taking action to boost the internal market for bus and coach services.
- Whether requiring HGVs from 3.5 tonnes to be included in a HGV charging scheme could place an unnecessary burden on operators of small vehicles for no significant gain.
- Whether varying charges by CO2 emissions will prove robust, given that the methodology for estimating these emissions is not yet proven.

We also note your concerns with the proposals' compliance with the principle of subsidiarity and look forward to an update on this point as negotiations progress.

We have decided to retain the files under scrutiny. We look forward to a response to this letter, as well as a general update on negotiations, within 30 working days.

22 March 2018

Letter from Jesse Norman MP, Department Under Secretary of State

Thank you for your letter of 22 March regarding the Internal Market Sub-Committee's consideration of my letter dated 6 February on the above proposals which form the 'road charging pillar' of the Commission's Mobility Package.

The Mobility Package negotiations so far have concentrated on the 'social' and 'internal market' pillars. However, the Presidency has also pushed forward discussions on the largely technical EETS proposal (9673/17), and intends to seek a General Approach on it at the 7 June Transport Council.

The Eurovignette Directive proposal has not been prioritised by the Presidency and will not be taken to the 7 June Transport Council for agreement.

The Committee asked for further information on a number of the proposed changes related to road charging; please find below my response to each of these questions.

Eurovignette (9672/17, 10175/17)

Confirm if, under the proposals, a Member State could vary charges for HDVs according to CO_2 emissions? Please would you also provide further information about the capability for Member States to introduce an "external cost charge"—could this charge cover pollutant emission such as Nitrogen Oxide?

Under the proposals a Member State will in future be required to vary charges for HDVs according to CO_2 emissions as a replacement for varying charges by Euro Class (vehicle emissions). A number of Member States have suggested that the proposal may be premature given that the necessary secondary legislation and estimating methodologies are not yet in place, and I consider the planned timing of implementing this change to be too short.

The Commission's proposals would also introduce "external cost charges" to cover pollutant emissions such as Nitrogen Oxide. The plan to extend the scope of the Directive to include all road vehicles will mean these charges can be set for cars as well as HDVs. Annex III and Annex VII cover the 'external cost charge' rates to be charged for HDVs and passenger cars respectively.

An explanation of how much flexibility would be left to Member States to decide how to meet the hypothecation requirement?

We are opposed to any hypothecation requirement and we are continuing to make this point. The draft European Parliament position released in January sought an even greater extension of hypothecation so that all road charging is hypothecated with very specific provisions on what it can be spent. Many Member States are similarly sceptical about the hypothecation requirement.

Clarification on the way in which the Commission is planning to insert rules on how charges should be collected and receipts provided. For example, would this be through an implementing act?

The Commission plans to use delegated acts regarding the setting of charge rates, the variation of charges by CO_2 emissions, and the categorisation of vehicles by CO_2 emissions. It also proposes the use of implementing acts to ensure uniform conditions for the setting of external-cost charges.

Under the proposals the collection of charges and provision of receipts remains a matter for Member States, although they would be required to cooperate in establishing methods for the payment of user charges 24 hours a day inside and outside the Member State in which the charge is applied. An itemised receipt would also need to be provided to the person paying the charge, in a digital format where possible.

For charges recovered via EETS systems, the Commission would be able to amend, by delegated acts, the definition of requirements of the EETS and the contractual rules relating to its provision, including rights and obligations of EETS providers, toll chargers and EETS users and administrative arrangements. This could include the collection of charges and issuing of receipts.

The proposal would introduce rules on the reporting of tolls and charges levied in Member States, obliging Member States to produce reports on an annual basis. The text would also allow the Commission to use implementing acts to define harmonised indicators to be used by Member States for reporting purposes.

An update on the Government's position on the following:

Whether requiring buses and coaches to be subject to the same charges as HGVs would be counterproductive, given their role in tackling congestion and air quality problems

I view buses and coaches are part of the solution to the problems of congestion and air quality the Commission is trying to address, and therefore feel that requiring buses and coaches to be subject to the same charges as HGVs would be counterproductive. We should consider very carefully whether bringing these types of vehicles into scope of road charging rules could disincentivise their use.

Whether requiring HGVs from 3.5 tonnes to be included in a HGV charging scheme could place an unnecessary burden on operators of small vehicles for no significant gain.

I support the focus of the current Eurovignette Directive: that is, heavy goods vehicles engaged in international freight transport, which is principally done by larger HGVs. For this reason, I support the current 12 tonne threshold. Any requirement to reduce the threshold at which charging applies to 3.5 tonnes would need careful consideration of the potential unintended consequences, including, for example, the potential added burdens on smaller vehicle operators.

Whether varying charges by CO_2 emissions will prove robust, given that the methodology for estimating these emissions is not yet proven.

My view is that there remain a number of unanswered questions in the Commission's proposals regarding the variation of road charges by CO_2 emissions. A number of Member States have suggested that the proposal may be premature given that the necessary secondary legislation and estimating methodologies are not yet in place, and we consider the planned timing of implementing this change to be too short.

Whether the proposals comply with the principle of subsidiarity.

The UK and several other Member States have concerns that the Eurovignette proposals are overly prescriptive in what they demand of Member States in comparison to the overall benefits that greater harmonisation across the EU would bring. My Explanatory Memorandum of 5 July 2017 highlighted our initial concerns. I would draw the Committee's attention to the fact, however, that the Eurovignette Directive has not seen a great deal of progress in Council negotiations since the initial proposals were adopted in May 2017 and has therefore developed very little since that time. My understanding is that the Bulgarian Presidency will not seek to reach an agreement on the file by the time of Transport Council in June, and intends to continue to prioritise other elements of the Mobility Package instead. I will, of course, keep the Committee updated on any future progress the proposal may make.

EETS (9673/17)

In comparison with the Eurovignette Directive proposals, I view the proposals for a revised EETS Directive favourably. My position has always been that the proposal to mandate the equipment that EETS providers must be able to interact with should not place extra financial burdens on road users, but I think that this risk is contained in the most recent amendments.

The UK has played an active role during official-level discussions, though as we were largely content with the original EETS Directive proposal, we have not sought wide-ranging changes to the text. We do not expect that any of the technical changes proposed in negotiations will have a negative impact on the UK, and will continue to work with other Member States in order to reach a positive compromise text which supports our interests.

On balance, the benefits that the revised Directive will bring, such as making it easier to chase up non-payment of tolls by foreign drivers, as well the limited impact on the UK of much of the proposal, make it desirable to support the compromise that the Presidency has prepared.

Given this, we expect that the Presidency will be able to achieve a General Approach on the EETS proposal at the 7 June Transport Council. I would be grateful if the Committee could therefore consider clearing the proposal from scrutiny.

I will, of course, continue to keep the Committee informed about any developments in the negotiations on both proposals.

8 May 2018

Letter from the Chairman to Jesse Norman MP, Department Under Secretary of State

Thank you for your letter dated 8 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

Your letter highlights a number of outstanding issues on the proposed amendments to the Eurovignette Directive (9672/17 & 10175/17). We have decided to retain these files under scrutiny and look forward to an update, including on all of the concerns highlighted in your letter, in due course. We have decided to clear the EETS file (9673/17) from scrutiny.

18 May 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN THE LEGAL FRAMEWORK OF THE EUROPEAN SOLIDARITY CORPS AND AMENDING REGULATIONS (EU) NO 1288/2013, (EU) NO 1293/2013, (EU) NO 1303/2013, (EU) NO 1305/2013, (EU) NO 1306/2013 AND DECISION NO 1313/2013/EU (9845/17)

Letter from the Chairman to Tracy Crouch MP, Minister for Sport and Civil Society, Department for Digital, Culture, Media and Sport

Thank you for your letter dated 16 November 2017 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 25 January 2018 and decided to clear the file from scrutiny.

25 January 2018

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE MONITORING AND REPORTING OF CO2 EMISSIONS FROM AND FUEL CONSUMPTION OF NEW HEAVY-DUTY VEHICLES (9939/17)

COMMISSION RECOMMENDATION OF 31.5.2017 ON THE USE OF FUEL CONSUMPTION AND CO2 EMISSION VALUES TYPE-APPROVED AND MEASURED IN ACCORDANCE WITH THE WORLD HARMONISED LIGHT VEHICLES TEST PROCEDURE WHEN MAKING INFORMATION AVAILABLE FOR CONSUMERS PURSUANT TO DIRECTIVE 1999/94/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL (C(2017) 3525)

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

Thank you for your letter dated 7 December 2017 on the above files. The EU Internal Market Sub-Committee considered your letter at its meeting on 18 January 2018.

Please would you confirm if trilogue negotiations have now begun on the proposal for a Regulation, and when this file is expected to be taken to Council? We are also interested to know the views of other Member States on the use of software to model emissions for heavy-duty vehicles and the potential for such tools to be manipulated.

We look forward to further information on the rationale for the vehicle labelling switch date, and if the Commission's Recommendation impacts how information on other pollutants such as nitrogen oxide (NOx) is provided to consumers.

We have decided to retain the files under scrutiny. We look forward to a response to this letter within 30 working days.

18 January 2018

Letter from Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letter of 18 January 2018. I am writing to provide an update on the proposed heavy-duty vehicles (HDV) Regulation and a response to your query on the rationale for the switch date on the vehicle labelling information under the Commission Recommendation C(2017) 3525.

Trilogue discussions on the proposal for regulation on the monitoring and reporting of CO_2 emissions on heavy duty vehicles opened on 27 February and made positive progress on a number of points. A second and final trilogue took place on 26 March. Discussions focussed on delivering greater transparency on fuel consumption and CO_2 emissions to the market, allowing operators to purchase more efficient heavy duty vehicles.

Throughout the negotiations, we emphasised the importance of including on-road verification tests to ensure the results from the VECTO model accurately reflect real world emissions performance. This

received strong support, but development of a suitable procedure has proved technically challenging. Rather than delay the whole file, a 'requirement' has been added to introduce a test as part of the third phase of the Mobility Package, expected in May.

My last letter referred to discussions around making engine and aerodynamics performance data available to the public. The final package will protect commercially sensitive data by grouping it into performance bands and ensures these data are easily accessible and free of charge.

References to the Paris Agreement and the Commission's 2016 low emission mobility strategy have been added to ensure the HDV Regulation has a direct link to long term objectives and to encourage Member States to continue to pursue carbon reduction policies in the transport sector.

No further amendments are expected to the draft deal which is scheduled for discussion at the European Parliament at the end of April, and is likely to be considered by the Council in the summer. We are content with the outcome of the negotiations on the proposal, and would wish to support it. I would be grateful, therefore, if the Committee could clear the proposal from scrutiny.

You asked for clarification on why the Commission Recommendation for the consumer labelling of new car CO_2 emissions specifies the use of WLTP (World Harmonised Light Vehicle Test) from January 2019, given that WLTP has applied for new models from September 2017 and will apply to new vehicles from September 2019. The Commission's recommendation that this change in labelling should be made from 1 January 2019 was made on the basis of consultation with the Expert Group for policy development and implementation of CO_2 from road vehicles, and with experts from industry, consumer organisations and other non-governmental organisations and Member States on how best to smooth the transition from the previous NEDC (New European Driving Cycle) system. Even though the requirement to approve vehicles to WLTP began in September 2017 this was only for new models. It is from September 2018 that all vehicles will have been subject to the WLTP requirements. We agree with the Commission's conclusion that this is a reasonable date to ask industry to implement the changes to provide more representative data on fuel economy. The recommendation aligns with ongoing plans by government and stakeholders to communicate the change with consumers and allows the old NEDC procedure to be retained for official consumer information, while WLTP-derived figures are shared through other sources. In the UK these other sources will include the Government's own fuel economy database, which will provide a careful explanation of the difference, until adoption of WLTP derived fuel economy data on 1 January 2019. The date of adoption of WLTP derived data on CO_2 is a more complex question; I will write to you pending the outcome of our recent consultation on this and other vehicle approval issues.

The Commission's recommendation does not impact on the reporting of NOx emissions. The tightening of standards through the introduction of RDE (Real Driving Emission's Test) is an important step in improving air quality. This and the introduction from 1 April 2018 of a first year supplement on Vehicle Excise Duty for most new diesel cars registered in the UK is explained in the point of sale label and in our annual fuel economy guide. With a number of changes that will influence car buyers government is working with industry and other stakeholders on how best to inform consumers.

1 May 2018

Letter from the Chairman to Jesse Norman MP, Parliamentary Under Secretary of State

Thank you for your letter dated 1 May 2018 on the above proposal. The EU Internal Market Sub-Committee considered your letter at its meeting on 17 May 2018.

We have decided to clear both files from scrutiny. We look forward to an update on WLTP derived data on CO2 in due course.

18 May 2018

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2009/45/EC ON SAFETY RULES AND STANDARDS FOR PASSENGER SHIPS (9953/16)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 98/41/EC ON THE REGISTRATION OF PERSONS SAILING ON BOARD PASSENGER SHIPS OPERATING TO OR FROM PORTS OF THE MEMBER STATES OF THE COMMUNITY AND AMENDING DIRECTIVE 2010/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON REPORTING FORMALITIES FOR SHIPS ARRIVING IN AND/OR DEPARTING FROM PORTS OF THE MEMBER STATES (9964/16)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A SYSTEM OF INSPECTIONS FOR THE SAFE OPERATION OF RO-RO FERRY AND HIGH-SPEED PASSENGER CRAFT IN REGULAR SERVICE AND AMENDING DIRECTIVE 2009/16/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON PORT STATE CONTROL AND REPEALING COUNCIL DIRECTIVE 1999/35/EC (9965/16)

Letter from the Nusrat Ghani MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your letters of 26 November 2016 and 3 March 2017 which cleared the proposed Passenger Ship Safety package proposals from scrutiny. I am writing to update the Committee on the progress, following discussions with the European Parliament.

As reported in the Explanatory Memorandum in July 2016, and our further correspondence to the Committee, we broadly welcomed these proposed simplification measures but had concerns about some aspects which we have been able to address satisfactorily during the negotiations.

The Committee will recall that the Council of Ministers reached General Approaches on all three of the proposals making up this package, and that the European Parliament TRAN Committee position was broadly similar to that of the Council.

Since then, trilogue discussions were opened with the European Parliament. Given the broad similarity of the Council and EP positions, these talks reached a draft compromise on all three proposals extremely quickly.

Directive (EU) 2017/2108 amending 2009/45/EC, on Safety rules and standards for passenger ships (9953/16)

The proposed compromise maintains the removal of ships less than 24m in length from the scope of the Directive. This will allow the UK to apply its own technical standards, which we deem more suitable for ships of this type. Meanwhile, the Commission has been tasked to develop specific standards for these ships. We also welcome that the draft compromise maintains the agreement that aluminium is equivalent to steel, and so within scope of the Directive. Agreement was reached that Member States with large aluminium fleets currently not certified to the Directive, will have a generous transition period in order to ensure such ships comply. Similarly we welcome the agreements that ship board tenders, sailing ships and ships carrying offshore personnel have been excluded specifically from the scope of the Directive although a requirement to review the suitability of requirements for these ships has been included in the recitals.

The proposed compromise upholds the removal of Article 14, which required the EU to expedite the work of the International Maritime Organization to revise the SOLAS Convention. This is welcomed, as we felt that the original proposed Article 14 risked extending Union competence to the entirety of the Convention.

As the Committee will recall, the UK has continually argued that the sea area definitions should not be linked to a significant wave height limit, but we accepted that there is no solution at this time that would address our concerns and the very different needs of another Member State. Details of these

concerns have been contained in my previous letters. Following discussions with the European Parliament, these limits remain within the text although Greece has been given a derogation to assign sea routes rather than sea areas. This relaxation for Greece may lead to future discussions on the issue and give scope to the UK applying a similar philosophy for areas such as the Isles of Scilly and Scottish Islands.

Directive (EU) 2017/2109 amending 98/41/EC and 2010/65/EU, on Passenger counting and registration (9964/16)

The major UK concern within the proposal was the potential additional burden placed on operators due to the requirement to report passenger details into the Maritime National Single Window (NSW) rather than to the company shore-based register when on voyages of over 20 miles. In order to alleviate these concerns the Council, in its General Approach, proposed a 10-year transitional period during which company shore-based registers could continue to be used. The European Parliament's position was that a transitional period of two years would be sufficient. Following discussions, a proposed compromise was reached by the Council and Parliament for a six-year transitional period. When combined with the transposition period of 24 months, this allows a total period of eight years to transition to the Single Window, which is acceptable.

The original proposal to allow the use of the ships' Automatic Identification System (AIS) for ships required to report passenger numbers only (those on voyages of 20 miles or less) remains unchanged and also includes an allowance that this data can be communicated to the NSW using a suitable technical means. Similar to the Single Window requirement, there has been a compromise agreement on a six-year transitional period.

Directive (EU) 2017/2110 amending 2009/16/EC and repealing 199/35/EC, on Port State Control Inspections (9965/16)

We have continued to welcome the proposal to repeal and replace Directive 1999/35/EC in order to remove overlaps with Directive 2009/16/EC on port state control. Trilogue discussions on this proposal were particularly short, with the vast majority of the Council provisions accepted by the European Parliament and no significant compromises required.

General

The proposed compromise texts were voted in by the European Parliament Plenary on 4 October 2017, and adopted by the Council of Ministers on 23 October. These three directives were published on 30 November, and came into force on 20 December 2017.

While the outcome of overall exit negotiations will determine what arrangements will apply to the UK once the UK has left the EU, the 24-month transposition deadline for these Directives will fall on 21 December 2019.

9 March 2018

UPDATE ON E-PRIVACY REGULATION

Letter from Margot James MP, Minister for Digital and the Creative Industries, Department for Digital, Culture, Media and Sport

I am writing to update you on the EU-UK data protection relationship as set out in the Government's Future Partnership Paper.

As you will be aware from the Government's paper, we remain committed to our leadership role in setting data protection standards across the globe. Our commitment to this is demonstrated by the Data Protection Bill, which we published in September 2017, and which has a number of aims including:

- Ensuring that we have a data protection framework fit for our new data age, ensuring the very best standards for the safe, flexible and dynamic use of data, and enshrining our global leadership in the ethical and proportionate regulation of personal data; and

- Giving people new rights to ensure they are in control of their own personal data, including the ability to require major social media platforms to delete information held about them at the age of 18, the ability to access and export personal data, and an expectation that personal data held should be stored in a secure way.

In addition to this, we aim to ensure that, at the point of the UK's exit from the EU, our data protection framework will be aligned with that of the EU. The EU (Withdrawal) Bill will ensure that the remainder of the GDPR is incorporated into domestic law. In this regard, we will use the powers contained in that Bill to address any operability issues that arise on exit.

Future partnership in data protection and data flows

The ability to collect, share and process data is particularly crucial to the continued growth of the digital economy, but a good data sharing relationship between the EU and the UK is important for all sectors across the economy to operate effectively and take advantage of technological change.

It is therefore vital in both the UK's and EU's interests, that data flows are not disrupted. For this reason, it would be in our shared interest to agree early, a basis for the continued free flow of data between the EU and the UK from the point of exit until new and more permanent arrangements come into force.

Our future partnership paper published in August outlined the Government's wish to explore a UK-EU model for exchanging and protecting personal data, which could build on the existing adequacy model. While the exact details of this model will be determined in negotiations, it could provide for the continued free flow of personal data and also ongoing regulatory cooperation. Regulatory cooperation will be important for both the UK and the EU in future agreements, and an ongoing role for the ICO could provide for this. The Government would be open to exploring a model which allows the Information Commissioner's Office (ICO) to be fully involved in EU regulatory fora in a way to be agreed, which would reassure businesses and other stakeholders.

Implementation period

Whilst the Government will continue to have responsibility for the content and direction of data protection policy and legislation within the United Kingdom, the model explored in the Government's future partnership paper could provide sufficient stability for businesses, public authorities and individuals.

Unhindered flow of data is essential to the UK forging its own path as an ambitious trading partner and a global leader in data protection standards. We will need to build a bridge from our exit to our future partnership, to allow business and people time to adjust, and to allow new systems to be put in place.

This is why the Government proposes a strictly time-limited implementation period, based on the existing structure of EU rules and regulations.

The Government will seek to ensure that data flows between the UK and the EU, and also appropriately between the UK and third countries and international organisations, remain uninterrupted after the UK's exit from the EU.

We are clear that any deal must respect UK sovereignty, including the UK's ability to protect the security of its citizens and its ability to maintain and develop its position as a leader in data protection.

The Investigatory Powers Act is world-leading legislation that provides unprecedented transparency and substantial protection for privacy. The use of the powers contained within it are subject to significant oversight arrangements, which ensure UK intelligence and law enforcement activity adheres to strict principles of necessity and proportionality

We are confident that our legislation in this area should not present a significant obstacle to the data protection negotiations.

6 March 2018

Letter from the Chairman to Sam Gyimah MP, Minister of State for Universities, Science, Research and Innovation, Department for Business, Energy & Industrial

Thank you for your Explanatory Memorandum (EM) dated 13 February 2018 on the above decision. The EU Internal Market Sub-Committee considered this at its meeting on 22 March 2018.

As this decision gives effect to a necessary consequence of the UK's withdrawal from the EU, we are content to clear the file from scrutiny. Nonetheless, we would like to express our disappointment in your department's failure to produce an EM on this file before it was adopted in January 2018. We are pleased to hear that steps are being taken to avoid similar situations arising in the future.

You may be aware that the Internal Market Sub-Committee recently hosted a roundtable discussion on the implications of Brexit for the UK space sector, and will be visiting the 'space cluster' at Harwell in the coming weeks. We take this opportunity to welcome the Government's ambition to continue collaborating with the EU on science and space programmes, and to explore all options for achieving this as part of Brexit negotiations.

22 March 2018