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 June 2017 – 31 September 2017

EU INTERNAL MARKET SUB-COMMITTEE

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Letter from the Chairman to Lord Callanan, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 22 June 2017 on the 'Open and Connected Europe' package. The EU Internal Market Sub-Committee considered this at its meeting on 20 July 2017.

We welcome the comprehensive initial overview of the package provided in the EM. However, we note that the Government is still considering and developing its position in relation to the proposed Regulation.

We note the Government's support for review and reform of EU ownership and control rules for European airlines in this EM and in previous correspondence on the Commission's 2015 Aviation Strategy for Europe. Has the Government developed its thinking further in this regard, for example in relation to the maximum ownership threshold? Has a timeframe been established for the Commission to conduct this review? Similarly, in relation to the review of Public Service Obligation rules, we would be grateful if you could identify any particular aspects of the current rules that the UK feels should be amended.

You highlighted the Government's concern the Commission may try to enforce the recommendations regarding Air Traffic Management continuity if they are not implemented by Member States, and that the proposed monitoring role for EUROCONTROL could be an indication that the ground is being laid for this. As EUROCONTROL is an intergovernmental organisation, not part of the EU institutions, could you clarify why the Government has taken this as a sign that the Commission may be preparing to assume competence in this area? Do other Member States share the UK's view that this is not an area where the Commission should regulate?

In terms of the proposed Regulation, we are disappointed that the Government is not planning any official consultation but note your assurance that you are in regular contact with stakeholders to inform your negotiating position. We would be grateful if you could share any specific feedback or concerns raised by the UK aviation industry and other stakeholders, including trade unions and consumer groups, to date on this proposal. We are currently minded to take evidence from aviation stakeholders on this, and other issues related to the UK's withdrawal from the EU.

We would also welcome a general update on the progress of discussions in working group, and whether this has addressed or reinforced the Government's concerns on the six key areas identified in your EM for further consideration. In relation to your point about how the interests of consumers should be taken into account when considering accusations of discriminatory practices, we would be interested to know whether the Government thinks that consumer organisations could be included in the list of those able to make a complaint, thereby potentially triggering a Commission investigation.

We also note your concerns about the extent to which there is scope for the Commission to impose measures which impact on international air services covered by Member States' bilateral air services agreements with third countries. Do other Member States share these concerns? Has there been any discussion in working groups of the potential for Member States to object to the Commission's decision to open an investigation, or regarding any redressive measures adopted by the Commission, in such cases? In relation to the proposed obligation for Member States to support Commission investigations, has there been any assessment of the potential additional burden this may place on Member State authorities? Particularly if, as your EM suggests, there is a higher likelihood of complaints being made under the terms of this Regulation than the one it intends to replace.

We have decided to retain the proposed Regulation under scrutiny. We look forward to your response to this letter within 30 working days.

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

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital, Department for Digital, Culture, Media and Sport

In October 2016 my Department submitted the explanatory memoranda (EMs) referenced above and committed to keeping your Committee updated as negotiations progressed. Since then I have provided updates to your Committee in February and April. I include in this letter updates on the 9 June Telecoms Council and 17-18 July Informal Telecoms Council, as well as on our general progress in EECC negotiations.

The Presidency intends to progress discussions on the EECC at pace during the second half of the year, aiming for either a general approach at the December Telecoms Council or potentially securing a COREPER mandate to begin trilogue negotiations in the months beforehand, dependent on the pace of technical discussions on the file. The Presidency also intends to reach a general approach on BEREC regulation in December. It is of course possible that this provisional schedule will slip.

Telecoms Council, Luxembourg, 9 June, and Informal Telecoms Council, Tallinn, 17-18 July

Given the proximity to the General Election, the UK was represented at the 9 June Telecoms Council by Katrina Williams, the Deputy Permanent Representative to the EU, for the policy debate on the EECC. The debate addressed whether there is room to strengthen predictability and coordination between Member States to increase regulatory certainty for investors in telecoms networks and services, such as 5G.

Member States were supportive of the Commission's view that the EECC needs to deliver further coordination. However, there was strong criticism of the Commission's proposal to achieve further coordination by setting detailed EU-level rules for frequency authorisation and management, and by creating an EU-level agency (the proposed change to BEREC) for telecoms regulation.

Member States generally agreed that it would be preferable to seek to achieve efficient spectrum management harmonisation by enhancing existing structures for Member States to cooperate. While some Member States based their objections on subsidiarity grounds, the general consensus was that more rules and more bureaucracy will not deliver the flexibility needed for innovative services - in particular 5G - to grow. There was some coalescence around a proposal to enhance the Radio Spectrum Policy Group (RSPG) so it has a more strategic role.

The UK delegation to Informal Telecoms Council was headed by Liam Maxwell, the National Technology Adviser, with Joe Butler, DCMS' Telecoms Director representing the Department on EECC. As the agenda focused primarily on issues relating to 5G there was very little discussion that was relevant to the EECC other than reiteration of the points made on 9 June.

Policy proposal updates:

Spectrum: Further Council Working Groups (CWGs) addressing Spectrum took place prior to the summer. The position of the UK, along with many other Member States, remains one of concern that the Commission's proposals unnecessarily extend Commission powers of intervention in spectrum management procedures, both in terms of efficient management of the resource, and in terms encroachment on Member State flexibility to respond to the unique characteristics of their individual national markets and circumstances. We remain concerned that the Commission's proposals are too broad in scope and inappropriately apply interventions designed for mobile broadband services to all other electronic communications services. We are continuing to work with other Member States to develop collaborative solutions to this area of the EECC.

Services: There have been a limited number of CWGs addressing services since my last letter. We continue to support the Presidency's revised position that end-user rights should be subject to minimum harmonisation, but Member States remain divided on the issue. We have therefore determined

amendments to the current text that we would require in order to be satisfied that the UK would be able to maintain existing end-user rights and flexibility for the future if full harmonisation were to be adopted. Turning to Over-The-Top services (OTTs), our position remains the same - we continue to argue for a proportionate approach to regulation only to be introduced only in the case of consumer harm or proven market failure and where appropriate to the characteristics of the service.

Regarding the Universal Service Obligation (USO), we continue to support the draft of the services text, which in March reintroduced full funding flexibility for the USO. There have been no substantive debates since then.

Access and Investment: We continue to support the Commission's vision of affordable, reliable and ubiquitous first class electronic communications networks across the EU in order to meet consumers' growing demands on connectivity and to boost competitiveness, its key objective to better encourage private sector investment required in infrastructure needed to meet this vision, and its commitment to retain the core principle of competition as a driver of this investment as well as consumer choice.

However, there are still points of detail in this area that need to be resolved. DCMS officials are working with like-minded Member States to argue against proposals by the Commission that will not support competitive markets and may re-create localised monopolies for national incumbent operators.

BEREC: Proposals for the draft Regulation establishing BEREC as an EU agency have not yet been addressed in CWGs - discussions on the matter are scheduled in September. As was evident at both Telecoms Councils, Member States are generally is opposed to making BEREC into an EU agency.

21 August 2017

Letter from the Rt Hon Matt Hancock MP, Minister of State for Digital

In October 2016, I submitted the explanatory memoranda (EMs) referenced above and committed to keeping your Committee updated as negotiations progressed. Since then, I have provided updates to your Committee in February and April, and most recently in August. The latter correspondence included updates on the 9 June Telecoms Council and the 17-18 July Informal Telecoms Council, which took place in Tallinn, as well as on our general progress in EECC negotiations.

As explained in my letter of 21 August, the Estonian Presidency intends to progress discussions on the EECC at pace. I am writing to notify you of my officials' understanding that the Presidency intends to use the COREPER I meeting on 11 October to agree a general approach and to attempt to secure a mandate for EECC trilogue negotiations.

Council Working Group discussions on the EECC start again on 5 September and as such there have been no other developments since my letter of 21 August.

5 September 2017

PROPOSAL FOR A DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON A COMMON FRAMEWORK FOR THE PROVISION OF BETTER SERVICES FOR SKILLS AND QUALIFICATIONS (EUROPASS) AND REPEALING DECISION NO 2241/2004/EC (12947/16)

Lette from the Rt Hon Anne Milton MP, Minister of State for Apprenticeships and Skills, Department for Education

Thank you for your letter dated 27 April clearing the Europass document from scrutiny. You asked for an update on the outcome of the Education Council on 22 May.

At the Council the Commission gave a progress report to Ministers on negotiations. Following working group negotiations the latest Council text makes it clear that arrangements for the National Skills Coordination points and the national contact points in each Member State that will receive EU funding, are to be in accordance with national arrangements. This clarifies the main area of concern to the UK, that the national points need to fit with our devolved arrangements.

Other Member States still have some concerns about the proposal to replace three existing EU level advisory groups for EU tools and services on skills and qualifications, by a single informal co-ordination group. We do not have concerns about this as we think that this will be a more effective and efficient arrangement.

Negotiations will continue under the Estonian Presidency. The European Parliament employment and culture committees are expected to vote on the proposal later this month, and the proposal is likely to be finalised for agreement at the Education Council in November.

27 June 2017

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 Lord Prior of Brampton, Parliamentary Under-Secretary of State, Department for Business, Energy & Industrial Strategy

Following my letter to the Committee earlier this year, I am writing to thank the Committee for the scrutiny waiver which was provided for the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) on 15 June, and to update the Committee on the progress of the negotiations on the above Directive, referred to as the European Accessibility Act (EAA).

After substantial progress on areas of interest to Member States, the Maltese Presidency initially aimed to present the text for General Approach at the June EPSCO. However a majority of Member States, including the UK, were of the view that the Council was not yet ready to reach a General Agreement, based on the text before them. The Maltese therefore presented a Progress Report setting out the key changes and developments regarding the proposed Directive over the course of their Presidency.

I enclose a copy of the progress report here and the amendments to the text are summarised below.

Proposed amendments

During the Maltese Presidency a number of substantial changes to the text have been made. The most significant amendments are summarised below:

- Removal of public procurement, EU funds, the built environment and transport infrastructure from the scope of the Directive
- Further clarification of the scope and definitions, for example so the proposal only covers self-service terminals dedicated to services that fall within the scope of the Directive and only services that are provided to consumers
- Rearrangement of and attempts to streamline Annex I, which sets out the accessibility requirements to be met by products and services
- Clarifications to avoid possible conflicts between the Directive and sectorial Union legislation, including the removal from scope of audio-visual and media services (AVMS) programming
- Exemption of microenterprises from the requirements on service providers
- Removing references to risk and product recalls, reflecting the view that these product safety enforcement measures are not appropriate for accessibility requirements
- Amendments to the clauses on disproportionate burdens and transitional measures, in order to reduce the burden on service providers to replace costly self-service terminals

The Government broadly supports these changes, in particular the removal of public procurement, the removal of disproportionate product safety legislation provisions, and amendments that mitigate the high cost to service providers of replacing self-service terminals. Many of the amendments to the scope provide useful clarification.

We also support the attempts to reduce the burden on small businesses and to avoid legislative overlap, although we consider that there are further improvements that can be made here.

We continue to share concerns with many Member States regarding the text's overly prescriptive approach, its lack of legal clarity and the potential costs of compliance to business. Specifically we remain concerned about:

- Lack of future-proofing and the danger of technology lock-in from highly specific functional requirements, which could reduce incentives to innovate;
- The disproportionate burden, particularly on small businesses, of both compliance and demonstrating compliance;
- On AVMS, electronic communications and transport, the remaining potential for overlap with existing legislation and consequent legal uncertainty;
- The inclusion of emergency communications, due to the high cost of replacing existing infrastructure that has not been justified in the Impact Assessment.

My officials will continue to work closely with other Member States to reduce the regulatory burden to business and unintended negative consequences for the provision of accessibility.

Stakeholder engagement

We will continue to engage with stakeholders throughout this process and reflect their views and concerns as we develop our position. As the proposal continues to undergo revisions in Working Group, we will keep you informed of any significant changes to stakeholder positions.

Next Steps

The incoming Estonian Presidency hope to continue the momentum set by the Maltese Presidency and is likely to aim for a general approach on this file at the EPSCO meeting provisionally scheduled for 23 October – although this is contingent on the various outstanding issues being resolved.

The Estonian Presidency has set Working Groups in July and September, and I will keep you informed about the progress of the negotiations.

5 July 2017

Letter from Lord Whitty on behalf of the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary of State

Thank you for your letter dated 5 July 2017 on the above proposal which, following the waiver granted in June, is once again under the scrutiny reserve. Your letter was considered by the EU Internal Market Sub-Committee at its meeting on 7 September 2017.

We note that, despite changes to the draft text under the Maltese Presidency, the Government remains concerned about the same issues outlined in your previous letter, including implications for innovation, the cost of compliance, and a lack of legal clarity.

In particular, you highlight the Government's concern about potential overlap with existing audio-visual media services (AVMS), electronic communications and transport legislation and consequent legal uncertainty. As transport infrastructure and AVMS have now been removed from the scope of the directive, could you clarify which aspects of the proposal continue to overlap with existing legislation in these areas?

The Government would also like to see further improvements to reduce the regulatory burden on small businesses. Could you provide us with greater detail about specific changes to the proposal that the Government is advocating to address this issue?

We would be grateful to receive your response, including an update on negotiations and the positions of stakeholders consulted by the Government, by the end of September.

8 September 2017

Letter from Richard Harrington MP, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 8 September 2017 on the above proposal.

The Estonian Presidency has stated its intent to seek a General Approach at the EPSCO meeting on 7 December, and not October as indicated in the previous letter to the committee. Discussions are continuing in Council Working Groups on a sector by sector basis, with Member States given the opportunity to discuss sectorial issues with Commission experts. This has led to an improved understanding of many of the technical aspects of the proposal.

Stakeholder positions

My officials have undertaken further informal stakeholder engagement on the proposal since I last wrote to you. Representatives from the banking, transport and computing industries welcome developments such as the proposed inclusion of transitional measures for self-service terminals and limiting the scope to products and services provided to consumers.

Stakeholders raised concerns relating to the 'box ticking' nature of the legislation, which targets specific aspects of a service, rather than aiming to make the overall service accessible. They are also keen to ensure that the general accessibility requirements are properly tailored to their specific sectors and that it is clear how to apply them in practice.

These concerns tie in with the Government's existing reservations about the prescriptive approach of the directive. My officials intend to carry out further stakeholder engagement, including disability groups, in the coming months.

Compliance costs and innovation

Your letter states:

> *"We note that, despite changes to the draft text under the Maltese Presidency, the Government remains concerned about the same issues outlined in your previous letter, including implications for innovation, the cost of compliance, and a lack of legal clarity."*

We are pleased that steps in the right direction have been made under the Maltese Presidency, but these have only partially addressed our concerns. Negotiations have so far focused on agreeing the scope and definitions, as well as the potential for reducing the burden of compliance in specific areas. However, we have broader concerns about the requirements on products and services which are set out in Annex I of the proposal which have not yet been addressed.

There is a balance to be struck in this Directive between requirements that are specific enough to allow businesses to understand their obligations, whilst allowing them to innovate and find new solutions to accessibility challenges. We do not yet think this balance has been found. In particular, we are concerned that some requirements are worded so as to restrict innovation, while others may not be legally clear or easily understood by those who have to comply.

Overlap with existing legislation

Your letter states:

> *"In particular, you highlight the Government's concern about potential overlap with existing audio-visual media services (AVMS), electronic communications and transport legislation and consequent legal uncertainty. As transport infrastructure and AVMS have now been removed from the scope of the directive, could you clarify which aspects of the proposal continue to overlap with existing legislation in these areas?"*

As regards audio-visual media services (AVMS), I should clarify that whilst AVMS programming has been removed from the scope of the Directive, services used to access AVMS (for example websites and streaming services) remain in the scope of the proposal. The Government's concern was that the negotiation of the AVMS Directive in parallel with the Accessibility Act could give rise to unintended overlaps and consequent lack of legal clarity. This concern is now alleviated following the General Approach on the AVMS Directive in May. We will of course continue to keep this under review during this negotiation and the AVMSD trilogues process.

As regards transport, I should also clarify that whilst transport infrastructure has been removed from the scope of the Directive, other aspects of transport services remain within the scope of the proposal, for example ticketing services, websites and the provision of travel information. Other Member States have consequently raised concerns that the proposal overlaps with existing EU transport legislation on passenger rights which could cause legal uncertainty. After considering the points raised by other Member States and the Commission's explanations, the Government no longer has concerns relating to overlap with existing EU transport legislation.

We do, however, retain concerns that the legislative overlap on electronic communications has not yet been satisfactorily addressed.

Regulatory burden on small businesses

Your letter states:

> *"The Government would also like to see further improvements to reduce the regulatory burden on small businesses. Could you provide us with greater detail about specific changes to the proposal that the Government is advocating to address this issue?"*

The Government would like to see provisions which make it easier for SMEs, where appropriate, to take advantage of Article 12 which allows businesses to be exempt from accessibility requirements that would pose a disproportionate burden. This could be achieved for example by allowing SMEs to make a less detailed cost-benefit analysis or by providing clearer guidance on making use of this exemption.

Small businesses are less likely to have legal and technical expertise in complying with accessibility standards and could be particularly disadvantaged in understanding complex accessibility requirements. The Government is therefore advocating more specific guidance and the clarification of accessibility-specific terminology to reduce this burden.

The Government would also like to see a reduction in the administrative requirements for small businesses, for example by reducing the time documents should be retained.

We will keep you informed about the progress of the negotiations and expect to write to request scrutiny clearance in early November.

26 September 2017

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 the Chairman to Margot James MP, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 24 February 2017 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 6 July 2017.

Thank you for your responses on this proposal. We look forward to further detailed updates on the file, and the Government's policy position, as negotiations progress. We also look forward to an update on the outcome of the UK insolvency review.

Our attention has been drawn to an academic analysis of the proposal written by Horst Eidenmüller, Professor of Commercial Law at Oxford University. We would be grateful if you could also include in your response to this letter an explanation of the Government's view on some of the issues raised by Professor Eidenmüller, specifically whether the proposed Directive: would effectively filter out non-viable firms that should be liquidated or if it would instead risk acting as a refuge where non-viable firms could 'buy time';

- gives adequate consideration to the possibility of the sale of a business as a going concern; and
- is clear on the rights of secured creditors, particularly in relation to priority for pay-out and how this will impact financing costs for small businesses.

We have decided to retain this document under scrutiny. We look forward to a response to our questions within 30 working days.

6 July 2017

Letter from Margot James MP, Parliamentary Under Secretary of State

Thank you for your letter dated 6 July 2017 regarding the above proposal. You refer to an academic analysis of the proposed Directive by Horst Eidenmüller, Professor of Commercial Law at Oxford University and ask for the Government's views on a number of points raised in his analysis, which I address below in the order raised.

Would the proposed Directive effectively filter out non-viable firms that should be liquidated or would it instead risk acting as a refuge where non-viable firms could 'buy time'?

The Directive contains a number of measures which seek to filter out non-viable firms:

- The procedures where judicial or administrative confirmation of a restructuring plan is required (Article 10) provide that the judicial or administrative authority may refuse to confirm a plan "where that plan does not have a reasonable prospect of preventing the insolvency of the debtor and ensuring the viability of the business".

- The initial stay of individual enforcement actions (Article 6) is for four months. The stay can only be extended in specified circumstances and with court approval. Moreover, there is a power for judicial or administrative authorities to lift the stay where creditors who could block the adoption of the plan do not support continued negotiations.

- The Directive sets specific duties for directors (Article 18) where there is a likelihood of insolvency, which include minimising losses, having regard to the interests of creditors, and avoiding deliberate or grossly negligent conduct that threatens the viability of the business.

We understand that the provisions on restructuring would sit alongside existing procedures in Member States' national frameworks and would not require other national measures to be repealed. Therefore the Directive should be viewed as part of the wider framework of restructuring and insolvency regimes within Member States. As the proposal is for a Directive, it would be for Member States to determine how to implement the measures into domestic law, alongside existing procedures, such as liquidation.

Essentially, the proposed Directive is a legal mechanism to facilitate restructuring. Creditors will determine whether or not a debtor will be able to restructure successfully. If the restructuring is not in creditors' interests (as a whole), then they will not support it.

Does the proposed Directive give adequate consideration to the possibility of the sale of a business as a going concern?

Professor Eidenmuller asserts that the draft Directive "*rules out an actual 'sale as a going concern' as a restructuring technique*". The proposed Directive does not regulate the terms of a plan (only the process) and leaves it to the parties to decide on what should be proposed and approved. Therefore a sale as a going concern could form the basis of a restructuring plan approved under the procedure.

As already mentioned, however, the restructuring plan procedure would likely sit alongside existing procedures including those more suited to effecting going concern sales. In the UK such sales would likely continue to take place via administration, if such proposals were introduced in the future. In 2016, the Government consulted on proposed reforms to the UK corporate insolvency framework, which were substantively similar to the proposed Directive. Based on responses to that consultation, such restructuring proposals as set out in the draft Directive would be used for different scenarios, for example financial restructurings of large corporate entities with complex debt structures, should they be implemented.

Professor Eidenmüller also states that the proposed Directive does not allow for economic distress to be addressed. As previously indicated the proposed Directive does not seek to regulate the terms

of a plan, so provision may be included to address economic problems with the debtor's underlying business operations. Creditor support and approval may be conditional upon a plan covering, for example, changes to the business model or management team or the appointment of a chief restructuring officer, which could accompany some element of debt write-off or debt postponement. Is the proposed Directive clear on the rights of secured creditors, particularly in relation to priority for pay-out and how will this impact financing costs for small businesses?

Under the terms of the Directive creditors have to vote in favour of proposals for restructuring, but the provisions on cross-class cram down (the involuntary imposition of a restructuring plan on dissenting creditors who voted against it) mean that even if secured creditors as a class or (several classes) vote against a proposed plan, it could still be adopted.

However, where cross-class cram down is applied, the proposed Directive contains three important safeguards to protect the rights of all creditors, including secured creditors:

Any plan that affects the interests of dissenting creditors or shareholders must be confirmed by a judicial or administrative authority (Article 10), ensuring independent scrutiny.

The 'best interests of creditors test' must be applied by the court when deciding whether to confirm a plan in these circumstances. The test provides, "*no dissenting creditor would be worse off under the restructuring plan than they would be in the event of liquidation, whether piecemeal or sale as a going concern*" (Article 2).

Lastly, the court may confirm a restructuring plan in the context of a cross-class cram down if the plan complies with the 'absolute priority rule'. The rule requires that "*a dissenting class of creditors must be satisfied in full before a more junior class may receive any distribution or keep any interest under the restructuring plan*" (Article 2).

My previous letter to you of 24 February, discussed the difficulty of measuring the impact of legislative change on the price of credit due to the varying factors involved; the nature and value of assets provided as security, confidence in the business model and management ability of the borrower and wider market conditions. In his commentary, Professor Eidenmüller considers that the impact of the Directive would result in a rise in financing costs for businesses because of reduced recovery rates, particularly for secured creditors who matter the most in providing finance. However, there are protections within the draft Directive for dissenting creditors, as well as protection for new financing required as a result of the restructuring. Ultimately improving the effectiveness of insolvency regimes should lead to lower cost of credit and an increased availability of credit.

Moreover, one of the principal aims of the draft Directive is to provide greater investor/lender certainty in pricing risk through the introduction of EU wide restructuring tools. This is a key component in the EU's Capital Markets Union Action Plan which aims to encourage capital market growth and development in the EU. The Commission's Impact Assessment accompanying the draft Directive concluded that the proposals would lead to increases in recovery rates, which would in turn lead to lower borrowing costs for EU companies, having a positive effect on competiveness. This should benefit small businesses.

In my previous letter, I said I would keep you updated on the progress of the Directive and the outcome of the UK corporate insolvency review. Member States' consideration of the draft Directive is ongoing and my officials continue to engage with stakeholders on both this and the corporate insolvency review consulted on in 2016. I will update the Committee again in due course on both proposals.

15 August 2017

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 DOWN THE PROCEDURE FOR IMPLEMENTING REGULATION (EC) NO 883/2004 (TEXT WITH RELEVANCE FOR THE EEA AND SWITZERLAND) (15642/16)

Letter from Damian Hinds MP, Minister for Employment, Department for Work and Pensions

I would like to thank the EU Internal Market Sub-Committee for its further consideration of the above European Commission proposal and the request for further information.

In response to your letter dated 27 April 2017, the Government has not undertaken a consultation with workers regarding the special rules for those who could be subject to the social security rules of more than one Member State, and it has not conducted its own impact assessment on the proposals and has no plans to do so. The European Commission has carried out both a public consultation and an Impact Assessment on the proposals. Overall we do not anticipate the changes will increase the burden on business.

My statement of 4 July on the outcome of the Employment, Social Policy, Health and Consumer Affairs Council (EPSCO) that met on 15 June, provided an update on the progress of proposals for Regulation 883/2004. It explained that EPSCO took note of a progress report, with the Presidency outlining how close they thought Council was to agreement on the two chapters that were considered by the Maltese Presidency – equal treatment and applicable legislation. The Commission reiterated that this whole file should be concluded during the current mandate of the European Parliament, and supported by Germany, the UK stressed the importance of full codification of case law and the importance of striking a balance on applicable legislation.

Estonia took over the Presidency in July and are concentrating on two new chapters – long-term care benefits and family benefits. The Estonians also aim to address the outstanding issues relating to the equal treatment and applicable legislation chapters.

I will continue to keep the Committee informed of developments as the negotiations progress.

7 August 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE LEGAL AND OPERATIONAL FRAMEWORK OF THE EUROPEAN SERVICES E-CARD INTRODUCED BY REGULATION ....[ESC REGULATION].... (5283/17)

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business Energy and Industrial Strategy

Thank you for your letter dated 19 April 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 6 July 2017.

We note that you are still considering a number of issues and so are unable to give the Government's final policy position in response to some of our questions. We look forward to receiving a general update on negotiations as well as specific updates in relation to the following:

- Does the Government anticipate that an existing UK authority would adopt the role of e-card coordinating authority, or would this be a new undertaking?

- Regarding the cost of setting up and maintaining an e-card system, does the Government expect that this would be recovered entirely through charges for using the service?

- Does the Government believe there would be sufficient benefit to services providers to justify obliging insurers to provide information for an e-card on request? Has the Government brought forward any alternative proposals in this regard? What is the view of British insurance companies?

As requested in our previous letter, we would also be grateful to receive a copy of the Government's impact assessment of this proposal as soon as possible. In particular, your assessment of the impact of the proposed application process on coordinating authorities, including the appropriate amount of time for coordinating authorities to process e-card applications.

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

6 July 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary of State

I am writing to respond to your questions dated 6 July 2017 on the proposed regulation introducing a European services e-card and related administrative facilities. The European services e-card (ESC) is in the initial stages of discussion at technical level, but have been progressing over the past few months. Recent topics have included provisions within the proposed Regulation on access to professional indemnity insurance for cross-border services and the proposed administrative requirements placed on coordinating and competent authorities. We understand that over the summer, the Estonian Presidency will take views from Member States on options to take the file forward during the autumn.

In answer to your specific questions:-

Does the Government anticipate that an existing UK authority would adopt the role of e-card coordinating authority, or would this be a new undertaking?

This proposal is still at an early stage in the negotiation process, and the nature and role of the coordinating authority will become clearer as this process advances. I will continue to keep the Committee updated on progress.

Regarding the cost of setting up and maintaining an e-card system, does the Government expect that this would be recovered entirely through charges for using the service?

The Commission's proposal makes clear that the operational aspects of the ESC, including the public interface, back office function and notification facility are all linked to the operation of the existing European Commission Internal Market Information system (IMI). While there will be costs associated with setting up and operating ESC, overall the ESC system is expected to reduce and streamline the existing administrative burden placed on public administrations and service providers by establishing a simplified electronic procedure using an existing IT tool.

Does the Government believe there would be sufficient benefit to services providers to justify obliging insurers to provide information for an e-card on request? Has the Government brought forward any alternative proposals in this regard? What is the view of British insurance companies?

The Government supports the implementation of the Commission's 2015 Single Market Strategy, which requires Member States to reduce obstacles of an administrative nature that dissuade service providers from operating cross-border. The UK Government has heard from business stakeholders about the challenges they face accessing the correct insurance, differences between professional indemnity insurance in different Member States, and how these inhibit the cross-border provision of services. The Commission's 2014 Staff Working Document[1] on access to insurance provides a detailed summary of the situation.

Due to the potential costs of obliging insurers to provide information upon request, it is important that a solution be found that balances the needs of service providers and the insurance sector that minimises any costs to the latter. My officials will be engaging with a range of business groups, including those in the insurance sector, to consider the implications of this aspect of the proposal.

Assessment of the impact of the proposed application process on coordinating authorities, including the appropriate amount of time for coordinating authorities to process e-card applications.

[1] Commission Staff Working Document, Access to insurance for services provided in another Member State SWD (2014) 130

Consideration of how the ESC application process will impact both home and host member states is an integral part of the negotiation process. The Commission proposes to make the ESC a voluntary arrangement, so the impact on coordinating authorities will depend on the level of take-up from service providers. The UK will continue to press for an outcome that mitigates the risks of coordinating authorities being subject to unrealistic timetables for completing application processes.

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

3 August 2017

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 Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

I write as the Minister responsible for employment law to provide an update on discussions that took place at the Employment, Social Affairs and Health Council (EPSCO) concerning the posting of workers.

On 15 June 2017, Ministers from the 28 EU Member States attended EPSCO in Luxembourg. The Minister for Employment, Damian Hinds, represented the UK on social and employment issues.

The proposal to revise the Posting of Workers Directive was originally expected to be on the EPSCO agenda for a General Approach. However, as there was not enough agreement on this issue amongst Member States, it was changed to a Progress Report.

The common theme in almost all interventions on the Posting of Workers Directive was the need for EU unity and to build citizens' confidence in the EU. However, the two sides of the posting debate set out different views of the route to achieve that, reflecting the broader EU debate about the balance between the social dimension of the EU and the single market.

There was also no consensus regarding the Commission's new road transport proposals which would create a *lex specialis* for the sector. Some Member States called for the posting rules to fully apply to the road transport sector without exceptions, while others wanted sector-specific legislation but had concerns about the new proposals causing problems for their operators.

On the detail of the text, there was broad agreement on the importance of ensuring the text was legally clear and that provisions would be enforceable.

The European Parliament is continuing discussion of this file in the Employment and Social Affairs Committee and a vote is scheduled to take place in the autumn.

The UK Government reached an agreed collective position on the Directive in June. It was agreed that the UK should continue to work constructively with the EU Institutions and Member States, to improve clarity and transparency of the revision and to get the right balance between the needs of business and the protection of workers' rights. We are continuing to review as the file progresses. We will update the Committee as soon as further information is available, in the meantime I hope that you find this update useful.

20 July 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility

Thank you for your letter dated 20 July 2017 concerning the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 14 September 2017.

Thank you for confirming the Government's agreed position on the draft directive. Could you provide more detail on which aspects of the proposal the Government feels lack clarity and transparency? We

would also be interested to know how the Government thinks the text could be improved to strike a better balance between workers' rights and business needs.

Following the Maltese Presidency progress report at EPSCO in June, when does the Government expect the proposal to be put forward for a General Approach?

We look forward to receiving your response, including an update on the progress of Working Groups, within 15 working days.

15 September 2017

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 Lord Whitty, on behalf of the Chairman, to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 6 April 2017 which provided a clear and helpful account of the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 6 July 2017.

We welcome the Government's confirmation that the UK's legislative competition framework is both robust and well enforced. We note that the UK is expected to be largely compliant with the directive, although the Government does not expect to implement it due to the UK's withdrawal from the EU. It would be helpful if you could clarify which of the powers set out in the directive the Competition & Markets Authority (CMA), and concurrent regulators, do not already have.

Your EM outlines concerns related to the proposed leniency provisions which the Government believes could undermine the deterrent effect of enforcement regimes and restrict the discretion of national competition authorities (NCAs) in granting immunity. Has further discussion of these issues with the CMA reinforced the Government's position? If so, will you seek to amend Articles 16 and 22 during the course of negotiations? We would also be interested to know if any other Member States share these concerns.

Article 14 of the proposal relates to the maximum amount of the fine a NCA may impose for an infringement of Articles 101 or 102 TFEU, specifying that this "should not be set at a level below 10% of [an undertaking or association of undertakings'] total worldwide turnover in the business year preceding the decision." However, there does not appear to be any provision in case of parallel investigations by multiple NCAs.

In such cases, would each NCA be permitted to impose fines set at this maximum level? If so, does the Government think this is proportionate or should NCAs be required to take into account fines imposed by other NCAs for the same infringement?

We have decided to retain the proposal under scrutiny. We look forward to your response to our questions, and an update on the progress of negotiations, in 10 working days.

6 July 2017

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility

Thank you for your letter of 6 July about the above directive. You asked which powers in the directive the Competition and Markets Authority (CMA), and concurrent regulators, do not already have.

There is no power under UK law to fine for breach of commitments or interim measures as envisaged under Article 12(e) of the directive.

There are no provisions in UK law equivalent to those in Article 13, paragraph 2, of the directive, which relates to the calculation of fines imposed on associations of undertakings. The CMA has the power to fine associations of undertakings. However, there is no provision in UK law that provides that, when a fine is imposed on an association of undertakings, and the association is not solvent, the association must call for contributions from its members to cover the amount of the fine. There is also no provision in UK law for the CMA to require payment of the outstanding fine by any undertakings whose representatives were members of the decision-making bodies of the association, or to require payment by any of the members of the association active on the market where the infringement occurred.

Section 40A of the Competition Act 1998 allows for the imposition of periodic penalty payments up to a maximum of £15,000 per day, irrespective of the daily turnover of an undertaking. A single fixed penalty of up to £30,000 can also be applied instead of or in addition to the periodic penalty payments. Article 15 of the directive differs from this in that is provides for periodic penalty payments determined in proportion to the daily turnover of a company.

There are some powers in the directive that have no direct equivalent in UK law, but where UK law includes more flexible provision that includes the powers. For example, Article 6 of the directive refers to the *"right to seal business premises and books or records for the period and to the extent necessary for [an] inspection"*. Section 27(5) of the Competition Act, which deals with the power to enter business premises without a warrant, provides that the investigating officer may *"take any steps which appear necessary for the purposes of preserving or preventing interference with any document which he considers relates to the matter relevant to the investigation"*. Section 28(2)(d) of the Competition Act, which deals with the power to enter business premises under warrant, provides that an officer is authorised *"to take any other steps which appear necessary for preserving any documents of the relevant kind or preventing interfering with them"*. These provisions ensure business premises and books or records can be sealed as necessary.

You asked whether further discussion of the leniency provisions in the directive had reinforced the Government's position that the provisions could undermine the deterrent effect of enforcement regimes. I can confirm that further discussions with cartel experts in the CMA have reinforced these concerns. I understand that a number of other Member States also have concerns about the leniency provisions in the directive. The Government will engage these States to understand whether they share our concerns.

You asked whether the Government will seek to amend Articles 16 and 22 of the directive during negotiations. The Government has not finalised its negotiating position but, given the concerns raised by the CMA, I am minded to explore whether there is support in the Council to ensure that the leniency provisions (Articles 16-22) do not unnecessarily limit the ways in which EU Member States can apply leniency programmes at a national level.

You asked about Article 14 of the directive which relates to the maximum amount of the fine a National Competition Authority (NCA) may impose for an infringement. The Article specifies that this *"should not be set at a level below 10% of [an undertaking or association of undertakings'] total worldwide turnover in the business year preceding the decision."* In this context you wanted to know whether each NCA would be permitted to impose fines set at the maximum level.

Sections 38(1) and 38(1A) of the Competition Act provide that the CMA guidance on penalties must include provision about the circumstances in which, when determining a penalty, the CMA may take into account effects in another EU Member State of the agreement or conduct to which the penalty relates. Section 38(9) of the Competition Act provides that if a penalty has already been imposed by the European Commission, or by a court or other body in another EU Member State in respect of an agreement or conduct, the CMA, or the appropriate court in the UK, must take account of that penalty when setting the amount of any penalty it imposes.

I do not know whether similar provision is made in the domestic law of all other EU Member States but the legal principle of avoiding double jeopardy would apply. In practice, competition authorities are careful in calibrating a fine for effects in their jurisdiction if fines have already been imposed in other jurisdictions. This situation has not arisen for the CMA in the context of parallel investigations with other EU NCAs, but the CMA did take account of the fines imposed by the US Department of Justice in the BA/Virgin Airline passenger fuel surcharges case in 2012.

19 July 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility

Thank you for your letter dated 19 July 2017 which provided useful responses to our initial questions on this proposal. The EU Internal Market Sub-Committee considered this letter at its meeting on 14 September 2017.

We note that the Government has not yet finalised its negotiating position on the proposal. As this evolves, we ask that you provide us with greater detail about specific changes the Government is advocating, including whether and how you will seek to ensure that Articles 16-22 do not unnecessarily limit Member States' application of leniency programmes at the national level.

We look forward to an update on the timetable and progress of discussions in Working Group, and on the Government's negotiating priorities, in due course.

15 September 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EUROPEAN INTEROPERABILITY FRAMEWORK – IMPLEMENTATION STRATEGY (7791/17)

Letter from the Chairman to Caroline Nokes MP, First Secretary of State and Minister for the Cabinet Office, the Cabinet Office

Thank you for the Government's Explanatory Memorandum (EM) dated 24 April 2017 on the above proposal. The EU Internal Market Sub-Committee considered the EM at its meeting on 6 July 2017 and decided to clear the document from scrutiny.

6 July 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON THE EUROPEAN CLOUD INITIATIVE - BUILDING A COMPETITIVE DATA AND KNOWLEDGE ECONOMY IN EUROPE (8099/16)

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

Thank you for your letter dated 2 February 2017 on the above proposal. The EU Internal Market Sub-Committee considered the letter at its meeting on 6 July 2017 and decided to clear the file from scrutiny.

We are pleased to learn that the UK is leading the first major project of the initiative.

Please keep us updated on the progress of this project and any further UK bids.

We look forward to a response to this letter in due course.

6 July 2017

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)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS AN INITIATIVE TO SUPPORT WORK-LIFE BALANCE FOR WORKING PARENTS AND CARERS (8631/17)

Letter from the Chairman to Margot James MP, Minister for Small Businesses, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 6 July 2017 on the above documents. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 September 2017.

We note that the proposed provision for carers' leave would be a new entitlement in the UK. Please would you provide further details on the Government's view on this aspect of the proposal? Is the Commission's definition of 'carer' consistent with that used in the UK, for example in determining eligibility for Carer's Allowance?

We note that UK law currently provides for 18 weeks of unpaid parental leave for all parents. However, the proposed Directive would mandate that four months of parental leave would be compensated at least at the level of sick pay. Please explain the Government's view on this aspect of the proposal. Would the provision to make parental leave non-transferable require a change in UK law?

In relation to requirements to compensate leave at the level of sick pay, would these costs by borne by employers or national governments?

Regarding paternity leave, we look forward to an explanation of when and how this leave could be taken once the Government has gained further clarity.

Finally, your EM explains that some businesses have reacted negatively to the proposal. Has the Government received representations from UK businesses, particularly SMEs? If so, please summarise their concerns. Does the Government intend to formally consult with stakeholders, including trade unions and civil society, on this proposal in the future?

We have decided to retain the proposal for a Directive under scrutiny and clear the Communication. We look forward to a response to this letter within 10 working days.

8 September 2017

Letter from Margot James MP, Minister for Small Businesses, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 8 September, which sought further information in relation to the above proposed Directive.

Carers' leave

The Directive proposal is for at least 5 working days carers' leave a year for employees, paid at least the rate of sick pay. The Directive defines a "carer" as a worker providing personal care or support in case of a serious illness or dependency of a relative. It then goes on to define "relative" as a son, daughter, mother, father, spouse or partner in civil partnership; and "dependency" as a situation in which a person is, temporarily or permanently, in need of care due to disability or a serious medical condition other than serious illness.

As drafted, the Directive does not establish any level of care the worker must provide, nor does it require that carers' leave be taken for the purpose of caring.

The UK does not currently make specific provision for employment rights for carers. Prior to extending the right to request flexible working to all employees in 2014, the right was restricted to parents and carers. The Flexible Working (Eligibility, Complaints and Remedies) (Amendment) Regulations 2006

set out that, in addition to standard arrangements applying to parents (such as continuity of service), a carer had to be caring or expected to be caring for a person in need of care who is married to or a civil partner of the employee, a relative of the employee or living at the same address as the employee. The definition of partner included couples (including same sex) living together and the definition of relative was expansive, including siblings, step-relatives and guardians.

The British approach taken in respect of the right to request flexible working for carers was more flexible (there was no restrictions on whether the person had a disability or an illness), and the group of people for which the employee could request flexible working was expansive, as compared to the provisions in the Work Life Balance Directive.

Section 57A of the Employment Rights Act provides for an employee to take a reasonable amount of time off during the employee's working hours to provide assistance or make arrangements in an emergency when a dependent is ill, injured or dies. A dependent for this purpose is defined as a spouse or civil partner, parent, child or a person who lives in the same house as the employee (and is not his or her employee, tenant, lodger or boarder) or any person who reasonably relies on the employee to make arrangements for the provision of care. This leave is usually used for urgent and unforeseen events. In addition to the requirement for carers' leave, the Work Life Balance also provides for time off from work on grounds of *force majeure*.

The Committee has asked about entitlement to Carer's Allowance. There is a definition of an informal carer used by the Department of Work and Pensions to determine eligibility for entitlement to Carer's Allowance, a benefit that may be paid to help support the carer.

Entitlement for Carer's Allowance does not require a familial link between the carer and the cared for person, but does depend on certain conditions relating to the circumstances of both the disabled person and the carer being satisfied. The carer must provide a minimum of 35 hours care a week and not be earning (after tax and certain expenses) more than £116 a week. In addition, the disabled person must be in receipt of a certain specified benefit (Attendance Allowance; the middle or highest care rate component of Disability Living Allowance; the equivalent rate of a Constant Attendance Allowance; the daily living component of Personal Independence Payment or Armed Forces Independence Payment).

As Carer's Allowance requires a carer to provide such a high and persistent level of care, it is clear that using the eligibility criteria for Carer's Allowance to determine entitlement to carer's leave would not deliver the approach intended by the Directive, which is aimed at people who are primarily working and doing some caring.

Parental leave

The Parental Leave Directive (2010/18/EU) requires at least 4 months' of unpaid parental leave, of which at least one month must not be transferable. The leave must be available to a given age up to 8 years. In Great Britain, this Directive has been transposed by the Maternity and Parental Leave Regulations, which provides for 18 weeks (our equivalent of 4 months) of unpaid leave, per parent per child, to be taken before the child reaches 18 years. The proposed Directive repeals the Parental Leave Directive and instead provides for at least 4 months of parental leave, paid at a minimum of sick pay rates, to be available until the age of at least 12 with at least 4 months non-transferable.

Our regulations already provide for 18 weeks of parental leave per parent per child, so none of the leave is currently transferable and we could retain this aspect of our law. The Government would need to take a policy decision about how to implement the paid element, if the Directive was interpreted as currently drafted.

Compensated leave

The Directive provides that paternity, carers' and parental leave should be compensated at least to the level of sick pay. A policy decision would need to be made as to who would bear the costs of carers' and parental pay, and whether it would be paid at the level of sick pay or the higher statutory payment rate. Paternity pay and shared parental pay is currently paid at the flat statutory payment rate of £140.98 a week (or 90% of income, if this is lower). Statutory pay is paid by the employer and is currently recoverable from the Exchequer (at 103% for smaller firms and 92% for larger employers).

Business reaction

The Government has not received representations directly from business on the proposed Work Life Balance Directive. However, business representative groups at the European level have expressed their dissatisfaction with the proposal. Business Europe considers that the legislative proposal jeopardises the current functioning of leave arrangements in the Member States, and creates the risk of making leave counterproductive for the economy. The Council of European Employers of the Metal, Engineering and Technology-based Industries (CEEMET) "regrets that the Commission decided to take legislative action in the fields of leave and flexible working arrangements, despite European employers unanimously rejecting this course of action". And the European Association of Craft, Small and Medium-sized Enterprises (UEAPME) is concerned by the financial costs related to the level of sick leave payments and believes that adding on labour costs will hamper the capacity of companies to hire staff.

Consultation

The Government would follow the normal course of action and consult in advance of any legislation to transpose the Directive into British law.

22 September 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEANPARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ESTABLISHING A EUROPEAN PILLAR OF SOCIAL RIGHTS (8637/17)

PROPOSAL FOR A INTERINSTITUTIONAL PROCLAMATION ON THE EUROPEAN PILLAR OF SOCIAL RIGHTS (8693/17)

REFLECTION PAPER ON THE SOCIAL DIMENSION OF EUROPE (8717/17)

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE REPORT ON THE IMPLEMENTATION BY MEMBER STATES OF DIRECTIVE 2003/88/EC CONCERNING CERTAIN ASPECTS OF THE ORGANISATION OF WORKING TIME (8635/17)

Letter from Margot James MP, Minister for Small Businesses, Consumers and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

I write as the Minister responsible for employment law to provide an update on discussions that took place at the Employment, Social Affairs and Health Council (EPSCO) concerning the European Pillar of Social Rights.

On 15 June 2017, Ministers from the 28 EU Member States attended EPSCO in Luxembourg. The Minister for Employment, Damian Hinds, represented the UK on social and employment issues. A further exchange of views on the Social Pillar took place amongst Ministers responsible for Health on 16 June.

The Presidency reported that there was agreement that the proposal for a joint proclamation on the Social Pillar was *sui generis* and there should be flexibility about the process, although EPSCO should provide the political steer.

There was general support for the objectives and principles of social rights within the Pillar, and the proposal was considered as a strong basis for future work. There were divisions on some aspects of the Pillar but this should not stand in the way of improving the welfare of citizens. However, there was also agreement that the different starting points and national positions of Member States must be considered and that subsidiarity and the existing division of EU competences must be respected, as well as the involvement of social partners where applicable. The UK focussed on how Member States could learn from innovations made by others on the issues addressed in the Pillar. Ministers agreed that the goals of increased competitiveness and upwards social convergence should be met simultaneously in delivering the Social Pillar.

Ministers agreed that improving the means of monitoring social progress was important, but voiced concerns about the new social scoreboard and the reliability of the proposed indicators. Ministers for Health in particular agreed that the reliability of health-related indicators would require further consideration at technical level.

It is expected that the Commission, the Parliament and the Council will give a joint proclamation on the Social Pillar by the end of this year. Some Ministers requested clarification on the intended political nature and status of this Proclamation and the steps leading to its signature, as well as clarification on the implementation of the Pillar as a whole.

Discussions on the Social Pillar will be taken forward by the Presidency through COREPER I, with the European Parliament also closely associated. The Estonian Presidency intends to work towards an agreement within Council at the October EPSCO, and to reach agreement between the three institutions on the Proclamation by the end of 2017. I will update the Committee as soon as further information is available, in the meantime I hope that you find this update useful.

20 July 2017

Letter from the Chairman to Margot James MP, Minister for Small Businesses, Consumers and Corporate Responsibility

Thank you for your Explanatory Memorandum (EM) dated 6 July 2017 on the above documents. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 September 2017 and decided to clear the files from scrutiny.

8 September 2017

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 Chairman to Lord Prior to Brampton, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 10 July 2017 on the above proposal. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 September 2017.

Your EM explains that the proposal is unclear in a number of aspects. Please would you explain if further clarity has been gained from the Commission regarding:

- the precise conditions that must be met before the SMIT could be used;
- the practical application of safeguards included in the proposal;
- measures to protect confidential information, and details of exemptions that would
- apply in this regard; and
- the potential inclusion of third country undertakings operating in the Single Market.

Your EM also mentions that there is a question of compatibility of the legal bases provided by the Commission for the proposal. Has the Government gained further clarity in this regard?

We share your view that information sought through the SMIT should not duplicate the work of the Competition and Markets Authority (CMA). However, your EM notes that under the Regulation, the Commission could only make a request where "the information cannot be obtained by existing means". Would information held by the CMA be considered as already available to the Commission, and therefore out of scope of the SMIT?

Has the Commission provided examples, outside of public procurement exemptions, where being able to obtain firm-level data would have improved compliance with or enforcement of Single Market rules?

Please would you also confirm if the SMIT would only apply to Single Market breaches involving more than one Member State?

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

8 September 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ACTION PLAN ON THE REINFORCEMENT OF SOLVIT: BRINGING THE BENEFITS OF THE SINGLE MARKET TO CITIZENS AND BUSINESSES (8770/17)

Letter from Lord Whitty on behalf of the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 10 July 2017 on the above document. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 September 2017 and decided to clear the file from scrutiny.

8 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ESTABLISHING A SINGLE DIGITAL GATEWAY TO PROVIDE INFORMATION, PROCEDURES, ASSISTANCE AND PROBLEM SOLVING SERVICES AND AMENDING REGULATION (EU) NO 1024/2012 (8838/17)

Letter from Lord Whitty, on behalf of the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 10 July 2017 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 7 September 2017.

It was helpful of you to include a copy of the Government's impact checklist with the EM. We would also be interested to hear the outcome of the Government's consultation with key stakeholders and the Devolved Administrations in due course.

We welcome your confirmation that the UK is already advanced in rolling out e-government programmes and that it would be relatively easy for the Government to comply with the proposed regulation, with benefits for businesses and citizens. Could you clarify which of the procedures listed in Annex II the UK does not currently provide fully online? Could you also provide more detail on how the Government thinks the quality requirements could be amended or extended to focus more closely on user experiences? Could there be a facility for citizens and businesses who have travelled to live, work or do business in another Member State to share their experiences as part of the gateway initiative?

Although your impact checklist indicates that compliance costs for the UK are likely to be marginal, we note the Government's particular concerns regarding the potential costs of translating key areas of information into another official EU language. We would be grateful if you could tell us:

- the Government's view on the estimated translation costs per Member State
- outlined in section 6.1.5 of the Commission's Impact Assessment;
- which, if any, of the areas of information outlined in the proposal the UK already
- provides in another language; and

- whether EU funds would be available to cover any of the translation costs.

You also suggest that Member States should be given more flexibility in deciding what information to translate. Would this not risk inconsistency in the accessibility of information and procedures for citizens and businesses across the Single Market? Are there any particular areas of information listed in Annex I which the Government believes are unnecessary to translate?

We would welcome an update on discussions in Working Group, including whether there has been confirmation of when this proposal might be tabled for 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.

8 September 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS ON THE MID-TERM REVIEW ON THE IMPLEMENTATION OF THE DIGITAL SINGLE MARKET STRATEGY - A CONNECTED DIGITAL SINGLE MARKET FOR ALL (8998/17)

Letter from the Chairman to Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) dated 4 July 2017 on the above communication. The EU Internal Market Sub-Committee considered this at its meeting on 20 July 2017.

We welcome your confirmation that the UK will continue to play an active role, and promote UK interests, in Digital Single Market negotiations.

In correspondence on the 'Building a European Data Economy' communication, the Minister of State for Digital and Culture told the Sub-Committee that the UK was pushing for a regulatory proposal on data localisation to facilitate the free flow of data. Is it your understanding that the legislative proposal on the EU free flow of data cooperation framework (outlined in this review) will address the use of localisation measures?

We have a particular interest in the opportunities and challenges associated with online platforms, and published our report Online Platforms and the Digital Single Market in April 2016. In that report, we highlighted the importance of preventing abuse of market power and protecting consumers' rights and data while recognising the important role played by online platforms as drivers of growth, innovation and competition. In relation to this Communication, does the Government believe that a legislative instrument will be necessary to tackle unfair contractual clauses and trading practices in online platform to business relationships, or should the Commission focus on non-legislative measures including existing competition enforcement powers?

We note that your EM did not reflect on Section 4 of the communication. Does the Government agree with the Commission's assessment of the areas requiring more effort in order to address the challenges and seize the opportunities of digital transformation? In particular, we would like to know the Government's view on the various legislative and non-legislative initiatives outlined by the Commission in that section.

We have decided to retain this document under scrutiny and would welcome a response in 30 working days.

20 July 2017

Letter from Lord Prior of Brampton, Parliamentary Under Secretary of State

Thank you for your letter of 20 July in response to the Explanatory Memorandum (EM) of 4 July on the above communication. I am sorry to hear my response did not address all of your concerns.

You have raised a number of questions and I will address each one in turn.

On the **free flow of data** you asked if it was my understanding that the legislation on the EU free flow of data cooperation framework will address the use of localisation measures. We welcome the Commission's commitment to make a legislative proposal which, subject to Impact Assessment, takes into account the principle of the free flow of data within the EU. It is the understanding of the UK Government that one of the purposes of such a proposal will be to restrict the practice of unjustified data localisation – an objective with which we agree. However, the Commission has yet to explain in detail how it intends this to be achieved and we will continue to monitor developments and, where possible, assist the Commission in its policy-making.

Turning to your point about **online platforms**, you asked if the Government believes that a legislative instrument will be necessary to tackle unfair contractual clauses and trading practices in online platform to business relationships or if the Commission should focus on non-legislative measures including existing competition enforcement powers. We acknowledge that there may be competition issues within specific businesses or markets. However, it is important to note that the vast majority of these competition issues are not exclusively limited to online platforms. The Government holds that the existing principles-based competition law framework is sufficient to tackle competition concerns relating to online platforms, and is capable of being applied in the new market contexts created by the digital economy – a point noted in your committee's Online Platforms in the Digital Single Market report. We therefore believe that a legislative instrument is not necessary. Instead efforts should be made to ensure better enforcement of existing regulation and the development of non-regulatory, industry-led approaches.

With regards to **Section 4 of the communication on managing the digital transformation of our society and economy**, we share the Commission's assessment of the importance of each Member State taking swift action to address the digital skills challenges they all face, whilst recognising that education and reskilling fall within the competence of national governments. Digital skills are required by all individuals, from the basic digital literacy skills everyone needs to participate in the digital economy, and general digital skills needed to use technology and work efficiently, to the advanced digital skills needed in specialist digital roles. The UK Government is taking action in this area, for example, by delivering an ambitious Industrial Strategy which takes full advantage of digitalisation and through the UK Digital Strategy announced in March.

Measures include funding for the Computing at Schools Network of Teacher Excellence in computer science to provide development to teachers to further develop their computing expertise; we created the Digital Training and Support Framework enabling Government to procure the support they need to provide digital training and support services to reduce the number of digitally excluded people in the UK; and we introduced the lifelong learning pilots to up-skill people in digital across their working lives in response to the pace of technological change and changing skills requirements.

On the digitalisation of industry, we believe this is best led by industry itself and we continue to work on many of the priority areas to fully implement the Digital Single Market Strategy and take stock of achievements in 2018. For example, the UK Government provides funds to develop 5G and boost the roll-out of super-fast broadband. We are in favour of the use of Horizon 2020 funding to support national innovation hubs, such as the UK's Catapult system, providing the money continues to be dispersed on the basis of research excellence and maintains a strong focus on start-ups and SMEs.

The UK Government also recognises the significant safety and socioeconomic benefits that cooperative, connected and automated mobility can bring. We are committing over £200 million, matched by industry, to fund research into connected and autonomous vehicles (CAVs) and to strengthen the CAV testing ecosystem. Through an agile programme of policy reform of both domestic and international regulatory frameworks, the UK Government is actively working to maintain the UK's position as one of the best places in the world to test and deploy CAVs.

The Centre for Connected and Autonomous Vehicles (CCAV), alongside other government departments, has been positively engaging with the European Commission and its members on shared research and development projects, particularly through the InterCor project (a pilot to streamline C-ITS implementation in the UK, Belgium, France and the Netherlands). While the UK Government did not sign the European Commission's Letter of Intent on 23 March 2017, we are continuing to prioritise cross-border testing projects, such as the A2/M2 corridor, and will continue to working closely with our European counterparts on these issues.

Development of eGovernment has a central role to play in making the best use of emerging digital opportunities. Among others, digital transformation can strengthen the trust in government by increasing the transparency, responsiveness, reliability, and integrity of public administrations. The EU eGovernment Action Plan 2016-2020 has been a very significant step in this transformation journey and has encouraged collaboration, the development of interoperable solutions and the sharing of good practice throughout public administrations and across borders. However, we agree with the conclusion that more needs to be done and faster to ensure its implementation, in order to spread digitisation across the full range of policy areas, by putting citizens and businesses at the centre of digital service design.

Specifically on the questions of 'digital by default' we agree with the plans to ensure that European citizens and businesses can interact digitally with any public administration, if they choose to do so and if this is appropriate from a cost-benefit perspective of service delivery.

We are examining the feasibility of introducing the 'once only principle' domestically for key public services at least as an option if so requested by citizens and businesses (in due respect of data protection rules). This will be a significant undertaking with legal, technical and economic implications. Future work may then assess how this could be applied in a cross-border context.

The UK Government is also currently examining the Commission's proposal for a Single Digital Gateway which was released on 2 May 2017. We recognise the potential benefits of this initiative for helping businesses, particularly SMEs, partake in cross-border trade, and for assisting citizens living and working in the EU. In line with the Government's Digital Strategy, the UK remains committed to supporting businesses and citizens through high quality online information and services.

Lastly, on eHealth we agree with the Commission's assessment of the importance and potential of digital health and care to both enable service transformation and empower patients. This is reflected in our current plans to further digitise our health and care system in England, as set out in the National Information Board's framework for action: Personalised Health and Care 2020, published in 2014.

24 August 2017

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 the Rt Hon Matt Hancock MP, Minister of State for Digital, Department for Digital, Culture, Media and Sport

I am writing to provide an update on the Education, Youth, Culture and Sport (EYCS) Council on held on 23 May.

There was not an agreement for a General Approach at the start of the meeting, and a number of amendments were tabled on the day in order to reach a compromise.

These amendments included:

- an increase in the quotas for video-on-demand services from 20% of European Works to 30%.
- A change to the definition of video-sharing platforms to include services where *an essential functionality* of the service includes video-sharing. What this means in practice will be defined by Commission guidance at a later stage.
- A change to the circumvention criteria so that Member States no longer have to prove the intention to circumvent, rather ascertain a number of collaborative facts to demonstrate circumvention.

There were no changes to the proposed levies or the extension to linear.

The UK did not support the text. The increase in quotas and retention of levies crossed the UK's 'red-lines' in this area. My Department is now assessing the implications of the new wording *an essential functionality* in relation to video sharing platforms.

The Council did not have a formal vote. Member States were asked to indicate if they could not support the text. Those who did not support (in addition to the UK), were Ireland, Sweden, Denmark, Netherlands, Luxembourg, Finland and Czech Republic. Hungary expressed reservations that compromises regarding Country of Origin did not go far enough.

The text was accordingly considered to reach a qualified majority for a Common Approach and will now go into trilogue with the Commission and Parliament, once the Estonians have taken on the Presidency.

I will provide an update in the early autumn with regard to the timeframes and process for trilogue. I remain at your disposal if you have any further questions.

6 July 2017

Letter from the Chairman to the Rt Hon Matt Hancock MP, Minister of State for Digital

Thank you for your letter dated 5 July 2017 on the above proposal. This was considered by the EU Internal Market Sub-Committee at its meeting on 7 September 2017.

We note that, despite opposition from the UK and several other Member States, a General Approach was agreed by qualified majority at the Education, Youth, Culture and Sport Council on 23 May 2017.

We understand that trilogue talks on the proposed directive were due to begin in July and would welcome a general update on their progress. Do you expect any of the Government's ongoing concerns, such as the increased European works quota, to be addressed through these discussions?

We also note that the compromise text leaves it to the Commission to clarify potentially contentious definitions through future guidelines. This includes the criterion of essential functionality for determining the inclusion of social media services, and thresholds for the exemption for low audience/low turnover companies from European works obligations. We would be interested to know the Government's views on this.

Finally, the compromise text does not appear to establish a deadline for transposition. Have there been any developments on this in trilogue talks? Is it likely that the Government will have to implement the directive before the UK's withdrawal from the EU? Is there any mechanism for enforcement of the proposal, for example country of destination levies, against third countries?

We look forward to a response to this letter in due course.

8 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ADDRESSING GEO-BLOCKING AND OTHER FORMS OF DISCRIMINATION BASED ON CUSTOMERS' NATIONALITY, PLACE OF RESIDENCE OR PLACE OF ESTABLISHMENT WITHIN THE INTERNAL MARKET AND AMENDING REGULATION (EC) NO.2006/2004 AND DIRECTIVE 2009/22/EC (9611/16)

Letter from Lord Prior of Brampton, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 30 March 2017 on the above proposal, and for agreeing to clear this document from scrutiny. I am writing to answer questions from your previous correspondence and update you on progress made.

The Maltese Presidency has identified geo-blocking as one of their main priorities during their Presidency. There have already been two trilogue meetings (29 May & 13 June) to discuss the Regulation, with the next meeting planned on the 27 June. Depending on how quickly a compromise can be reached by the Presidency and the Commission, an agreement may be finalised before the end of the Maltese Presidency (the end of June).

The major substantial issue left to be resolved involves the scope of the regulation; the European Parliament have made it clear that they want digital services which provide access to copyright protected works to be included in the Regulation.

Your letter asked how the Government intended to protect UK consumers from unjustified geo-blocking by EEA businesses following the UK's withdrawal from the EU.

During the EU exit negotiations we will aim to achieve the best possible deal for the UK. Until the UK exits the EU, all rights and obligations of EU membership remain in force. During this period we will continue to play an important role and represent the interests of the British people and continue to play an active role in DSM negotiations to ensure that UK objectives are met - including those on geo-blocking. The UK has a strong track record of protecting consumers, and this will continue.

I will of course keep you updated on any further progress on this file.

27 June 2017

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 Lord Whitty on behalf of the Chairman to Jesse Norman MP, Parliamentary Under Secretary of State, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 5 July 2017 on the above proposals. The EU Internal Market Sub-Committee considered your EM at its meeting on 7 September 2017.

Regarding the Government's concerns about proposed changes to the rules on cabotage, could the potential challenge of foreign hauliers being able to operate more extensively in the UK market be counterbalanced by increased opportunities for UK operators in other Member States? Is it the Government's assessment that the cabotage proposals would meaningfully reduce the number of empty heavy goods vehicles on UK roads? Could changes to cabotage rules have any impact on road safety?

We note that you do not believe the Commission has adequately justified bringing Light Commercial Vehicles (LCVs) into scope of the legislation. Has the Government undertaken any analysis on the number of LCVs being used for the transport of goods in the UK and if this is increasing? Please would you also confirm if the proposed changes to cabotage rules would apply to LCVs undertaking haulage?

On a related note, is it the Government's view that the Commission's weight categorisations of LCVs remains appropriate, given the changes in weights of modern vehicles? In general terms, does the Government consider that these proposals adequately take into account present and future technological advancements in the haulage sector, such as the potential for autonomous vehicles?

We would also like to know the Government's views on measures under the proposed Directive to allow undertakings to use vehicles hired anywhere in the EU across the EU, and the impact that this would have on the UK's transport market. Are there any security implications associated with the increased liberalisation of the market for hired goods vehicles?

We welcome your engagement with the road transport industry and other interested parties on these proposals and would be interested to receive a summary of the views gained through this consultation in due course. Please would you also confirm if the Government has consulted with road safety organisations regarding these proposals?

We have decided to retain these documents under scrutiny. We look forward to your response to our questions, as well as a general update on negotiations, within 30 working days.

8 September 2017

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)

Letter from Lord Whitty on behalf of the Chairman to Jesse Norman MP, Parliamentary Under-Secretary of State for Roads, Local Transport and Devolution, Department for Transport

Thank you for your Explanatory Memorandum (EM) dated 5 July 2017 on the above proposals. The EU Internal Market Sub-Committee considered this at its meeting on 7 September 2017.

We note that you are currently undertaking a more detailed assessment of these proposals. We look forward to further updates as the Government develops its policy position, including your assessment of: the overall impact of these proposals on the UK; the impact of more flexible rest times on driver fatigue; any road safety implications of the proposals; and, the scale of the impact on the resources of the Driver and Vehicle Standards Agency of extended enforcement obligations relating to working time rules.

We welcome your intention to engage with industry representatives on these proposals and would be interested to hear the outcome of this consultation in due course. Does the Government also intend to include police, highway, and local government bodies in its consultation, particularly in relation to driver rest times?

In an update from the Department for Business, Energy & Industrial Strategy on a related amendment to the Posting of Workers Directive, we were told that there is no consensus among Member States on this *lex specialis* for the road transport sector. Some states are support full application of the posting rules, while others support sector-specific legislation but are concerned about the impact on operators.

We would like to know the Government's view on the overall balance to be struck by these proposals between adequate working conditions for drivers and operators' freedom to provide cross-border services.

We have decided to retain these documents under scrutiny. We look forward to your response to this letter, including a general update on discussions in Working Group, within 30 working days.

8 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON CROSS-BORDER PARCEL DELIVERY SERVICES (9706/16)

Letter from Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 27 April, in response to mine of 21 April, granting my request for a scrutiny waiver for the Telecoms Council which took place on 9 June.

As you may recall, I set out that it was difficult to predict the approach which would be taken at the Council, due to the number of issues that needed to be resolved ahead of the vote.

The Presidency undertook a series of meetings with Member States to address these outstanding issues and revised the text accordingly. The result was a file which achieved General Approach, with no votes against and only the UK abstaining due to the proximity to the General Election and the file being held under scrutiny in the Commons.

At the time of last writing, I set out that we had concerns around four areas:

- definitions;
- affordability assessment;
- mandated access; and

- the list of postal items in the annex which will be subject to article 4 (price transparency) and article 5 (affordability).

The final draft does the following:

Definitions (Article 2) – we have secured a carve out for retailers which only deliver their own goods, but have ensured that delivery operators, such as Amazon, who use their networks to deliver both their own and goods on behalf of others, are captured by the regulations.

Affordability assessment (Article 5) – Unfortunately the word 'affordability' was removed from an earlier draft of the text, and despite numerous attempts to have the word reinstated, with substantial support from other Member States and the Commission, the Presidency would not move its position on this point The assessment is to consider whether cross-border tariffs are unreasonably high.

However, the Presidency has made reference to affordability, by inserting in the recital a reference to Article 12 of the Postal Services Directive. The recital states that in considering whether tariffs are unreasonably high account should be taken of Article 12. This stipulates

> "Member States shall take steps to ensure that the tariffs for each of the services forming part of the provision of the universal service comply with the following principles:
>
> Prices must be affordable and must be such that all users have access to the services provided".

The overall drafting of the Article is now wide enough to give the National Regulatory Authority (NRA) more discretion over which postal items to assess in order to identify the cross-border tariffs that are unreasonably high, unlike the Commission's proposal which would have required NRAs to carry out a blanket assessment of all tariffs, rather than focus on those which are considered problematic.

Mandated access (Article 6) – This provision was removed from the draft entirely with the deletion of Article 6, which is a positive outcome. As I noted previously, the Commission had failed to outline a clear market failure that this measure would have addressed.

The list of postal items in the Annex – This remains unchanged, although NRAs are now only required to assess those items which form part of the universal service obligation in their Member State, carving out "track and trace" products from the assessment in Article 5.

Overall, the draft Regulation is now in a much better place than it was originally. We do still have concerns, specifically with the **provision of information (Article 3).** This should have been a relatively straightforward requirement for parcel delivery providers to submit information to the NRA, e.g. VAT number, address, annual turnover and average number of persons working for the service provider.

However, an additional requirement was introduced in a later draft which requires the parcel delivery provider to also obtain the same information from any subcontractor they work with that has on average 50 persons or more working for them, and to submit that information to the NRA on their behalf. Although well intentioned, this creates a convoluted situation where parcel delivery operators will be required to request information including sensitive business information, from subcontractors, in order to comply with the Regulation. We will work to ensure that a more balanced approach is struck in trilogue.

I would like to respond to a question you put forward on 15 September 2017 relating to the penalty regime the Government is considering. Depending on the final text of the regulation, it may be necessary to introduce a regulation to give effect to requesting further information under Article 5. We will seek further legal advice on the final wording of the regulation once this is finalised.

The Parliament is now considering the Regulation through the Transport and Tourism Committee. Lucy Anderson MEP (UK, Labour) is the Rapporteur.

MEPs have been invited to make amendments to the Commission's proposal and compromise amendments are being prepared. They are due to vote on this on 11 July. We expect the draft from the Parliament to go much further than the Presidency draft. We expect the draft to extend the scope of Article 5 to all operators rather than just incumbent operators, which will introduce an increased level of regulatory burden. We also expect to see an attempt to impose an obligation on retailers to make more information available to consumers at the pre-contractual stage including which delivery

service is being offered, a choice of provider and an ability to opt out of non-attended delivery. We are maintaining dialogue with the European Parliament in order to encourage a balanced, pragmatic approach to the text with a focus on Articles 3 and 5.

We expect trilogue to start in the Autumn with the Regulations agreed by December under the Estonian Presidency.

6 July 2017

Letter from the Chairman to Margot James MP, Minister for Small Business, Consumers, and Corporate Responsibility

Thank you for your letter dated 6 July 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 20 July 2017.

We note that a General Approach was reached on this file and have decided to clear it from scrutiny. We would be grateful if you could update us on any further developments on this file in due course, as trilogue talks progress.

24 July 2017

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 Tracey Crouch MP, Minister for Sport and Civil Society, Department for Digital, Culture, Media and Sport

Thank you for your Explanatory Memorandum (EM) dated 30 June 2017 on the above proposal. The EU Internal Market Sub-Committee considered this at its meeting on 20 July 2017.

Please would you share with us the Government's general view on the UK's future participation in European youth exchange schemes, such as Erasmus, after Brexit?

Please would you also confirm if the 1 January [2018] start date given in the EM refers to the implementation deadline for the proposed Regulation? Given that the initial phase of the European Solidarity Corps is currently live, what additional obligations would the Regulation place on the UK regarding the promotion and the implementation of the scheme as of 1 January [2018]?

We note that youth policy is a devolved matter and your EM states that the Government has consulted with the devolved administrations. Please would you provide further detail on the views of the devolved nations and how the Government is consulting with them on this issue, particularly Northern Ireland which is currently without an executive. Do the devolved nations share concerns that the European Solidarity Corps would overlap and potentially cause confusion with domestic volunteering schemes and traineeships? Have any of them expressed an interest in participating in the European Solidarity Corps after Brexit?

Lastly, please share with us the number of UK citizens who have already registered for the European Solidarity Corps and the number of host organisations that are based in the UK.

We have decided to retain the proposal under scrutiny. We look forward to your response to our questions, and an update on the progress of negotiations, in 30 working days.

20 July 2017

Letter from Tracey Crouch MP, Minister for Sport and Civil Society

I am writing in response to the Committee's report on the Proposal for a Regulation laying down the legal framework for the European Solidarity Corps. I shall respond to the Committee's questions in turn.

Regarding future participation in youth exchange programmes such as Erasmus+, the Prime Minister has been clear that Britain will remain a truly global nation following EU exit – the best friend and neighbour to our European partners, but a country that reaches beyond the borders of Europe too.

Accordingly, we recognise the value of international exchange and collaboration for young people. As part of our vision for the UK as a global nation, there may be specific European programmes that we might still want to participate in and we will consider this as part of the negotiation of the terms of our departure from the European Union.

The Commission states in the draft Regulation (and has stated elsewhere) that it intends for the Regulation to apply from 1 January 2018. Given our own and other Member States' position on the Regulation, we believe that it will apply from a later date as it will not be able to be agreed at Council by that date. Negotiations are currently on hold due to the Commission's summer schedule, but will begin again in early September.

The Regulation would not impose any additional burdens on the UK per se. However the scheme is likely to be administered through existing Erasmus+ delivery architecture. This involves a National Authority (an oversight body) and a National Agency (administrative body) in each Member State. The Department for Education is the UK's 'National Authority' and the 'National Agency' is a joint venture by the British Council and Ecorys UK Ltd.

We anticipate that, as the Solidarity Corps scheme establishes itself via this Regulation and over time, additional administrative burdens will be placed on the National Agency (the British Council and Ecorys) as part of their contract agreement. However we understand that these additional administrative burdens (on the National Agency) will be compensated via an increased administrative fee.

The devolved administrations were given the opportunity to comment on the Explanatory Memorandum, and on the Solidarity Corps more generally, via the standard process recommended in the cross-government guidance on drafting Explanatory Memorandums. Devolved administration policy colleagues working in traineeships were also approached.

With regards to participation in the Solidarity Corps post-exit, we have been clear that we will pursue a deep and special partnership with the EU, taking in both economic and security cooperation. As we prepare for negotiations on this partnership, we will not publish anything that would undermine our negotiating position. We are committed to securing a deal that works for the entire United Kingdom - for Scotland, Wales, Northern Ireland and all parts of England - and have been clear that the devolved administrations should be fully engaged in this process

Finally, you requested the number of UK citizens who have registered for the Solidarity Corps and the number of host organisations based in the UK. We have asked for this information from the European Commission but they have not yet responded to our request and we will update you as soon as we receive these figures. Host organisations are not yet able to register and so no UK-based organisations have signed up to host Solidarity Corps participants yet.

18 September 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS EUROPE ON THE MOVE AN AGENDA FOR A SOCIALLY FAIR TRANSITION TOWARDS CLEAN, COMPETITIVE AND CONNECTED MOBILITY FOR ALL (9967/17)

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

Thank you for your Explanatory Memorandum (EM) dated 5 July 2017 on the above communication. The EU Internal Market Sub-Committee considered this at its meeting on 7 September 2017 and decided to clear the document from scrutiny.

We would like to join the Government in welcoming the Commission's general objective to deliver clean, socially fair, competitive mobility to all Europeans. We also note the particular significance of this 'Mobility Package' of measures in the context of the land border between Northern Ireland and the

Republic of Ireland, which will become an external EU border, and which sees substantial cross-border traffic.

8 September 2017

ESTONIAN PRESIDENCY PRIORITIES

Letter from Lord Prior of Brampton, Parliamentary Under Secretary of State, Department for Business, Energy and Industrial Strategy

Estonia will assume the Presidency of the Council of the European Union on 1 July. The Estonians have indicated four main priorities for their Presidency: an open and innovative European economy; a safe and secure Europe; a digital Europe and the Free Movement of Data; and an inclusive and sustainable Europe.

I am writing to summarise the policy areas within BEIS's remit.

An Open and Innovative European Economy

The Estonian Presidency is focussed on the development of a business environment that favours stability, knowledge-based growth and competitiveness. To this end, we expect the Estonian Presidency to pursue a number of initiatives, including concluding a general approach on the Single Digital Gateway, the introduction of an e-services card, beginning discussions on a possible company law legislative package on cross-border mergers cross-border divisions and potentially cross-border transfer of company seats. The Presidency will aim to further discussions on industrial policy with the aim of influencing the Commission's future industrial strategy.

Thinking around the FP9, the next research funding programme and successor to Horizon 2020, will also begin under the Estonians.

On energy, the Presidency will look to progress the Clean Energy Package, with a particular focus on the electricity market design proposals, but also taking forward the more advanced negotiations on energy efficiency, renewables and Energy Union governance.

Digital Europe and the Free Flow of Data

The Presidency holds a proud record on digital governance and will be keen to progress in this area. For the Digital Single Market (DSM), Estonia will push for a definitive VAT regime for cross-border trade, including removal of the VAT obstacles on e-commerce. The Presidency will also push for a General Approach for the directive on copyright in the DSM.

The Presidency is also committed to the free movement of data, and will aim to abolish restrictions on the free flow of data. With Estonia currently piloting a data exchange project with Finland, this will be an area that the Presidency will be keen to progress where possible. The Presidency see strong data protection as fundamental for free flow of data, as such we expect a new data protection package in the form of an E-Privacy Regulation.

As well as the legislative files, there are a number of DSM events scheduled for Tallinn, as the Estonians seek to make this a centrepiece of their presidency. BEIS will seek suitable representation as appropriate.

An Inclusive and Sustainable Europe

On Climate, the Presidency inherits a number of high-profile and politically sensitive files from the outgoing Maltese Presidency, namely the Emissions Trading System (Phase IV) including the Aviation Emissions Trading System file, the Effort Sharing Regulation and Land Use, Land Use Change and Forestry. The Presidency will hope to complete all of these files by the end of their period. The conclusion of all these files would represent a significant achievement for the Estonian Presidency.

Overall, the Estonians are a long standing ally on the growth and competitiveness agenda, and their legislative agenda reflects this. As such we are hoping for good progress on a number of files.

I hope you find this information useful. Should your committee be interested in further information on the priorities for this Presidency, my officials would be happy to assist in providing an informal briefing session on any BEIS-specific topics the Committee may wish to hear more about.

2 July 2017

Letter from the Rt Hon Karen Bradley MP, Secretary of State for Digital, Culture, Media and Sport

I write to inform you of my Department's priorities under the Estonian Presidency of the Council of the European Union.

The Estonian Presidency has identified four broad priorities for the EU Presidency. They are: an open and innovative economy; a safe and secure Europe; digital Europe and the free flow of data; and an inclusive and sustainable Europe.

The Audio-Visual Media Services Directive (AVMSD) file governs EU-wide coordination of national legislation on all audiovisual broadcasts. There was a General Approach agreed at the Education, Youth, Culture & Sport Council in May 2017, which did not meet the UK's cleared negotiating position. Further progress on this file will be a substantial part of the Estonian agenda - with a trilogue process expected to start in July. We anticipate that the process will finish by November 2017. We do not know how like-minded the Estonians are to the UK on this file, as they have been neutral for the last six months.

There will also be movement on the European Electronic Communications Code. This file has not cleared scrutiny yet and we are in communication with both Committees on this file. The Estonian Presidency is generally aligned with the UK and this will be a priority for the Presidency. We expect the brisk pace with negotiations will continue and that the new Presidency will seek a General Approach on the Code in Autumn 2017. We will, of course, keep in close contact with both Parliamentary Scrutiny Committees on this matter.

The e-privacy regulation is a key priority for the Estonian Presidency. The Commission published its proposal in January, setting an ambitious deadline of entry into force for May 2018, to coincide with the General Data Protection Regulations. We expect that the Estonians will try to increase the pace of discussions, but this deadline may be optimistic.

Finally, in terms of data, Estonia describes free movement of data as the "fifth freedom" - fundamental to support the four freedoms of the single market. This is a substantial political goal for the Presidency, as Estonia is rightly proud of its record in digital governance. The broader data economy will no doubt be discussed at the Informal Telecoms Council in Tallinn, 17th-18th July. Following that, the Commission has committed to table a legislative proposal on the free flow of data by the Autumn. However, we doubt there will be further specific milestones and realistically do not believe there will be much progress under this Presidency. However, the Estonians will work with Bulgaria and Austria to ensure progress over the next 18 months.

I hope the above provides you with a substantive overview of my Department's priorities over the coming six months.

13 July 2017

Letter from Lord Callanan, Transport Minister for Aviation, International and Security, Department for Transport

As you will know, the UK continues to engage in normal EU business until exit negotiations are concluded. I am therefore writing to inform you of our expectations for the transport agenda during the Estonian Presidency of the EU Council of Ministers.

We understand that the Presidency's priorities will be to focus on the roads initiatives in phase one of the Mobility Package, the Aviation Strategy, in particular the EASA Regulation, and connectivity. The Presidency will also work towards eliminating the obstacles to digitisation of transport and will work on Council conclusions on that.

Following the example of recent Presidencies, Estonia will hold only one Transport Council, which will take place on 5 December in Brussels. They are also planning a number of other events, including an Informal Transport Council and Connecting Europe Conference in Tallinn on 21 September.

In more detail:

Maritime Transport

The maritime agenda will be relatively light during the Estonian Presidency following the recent conclusion of trilogue discussions with the European Parliament on the **Passenger Ship Safety Package** (EM 9953/16, 9964/16 and 9965/16), and the **Inland Waterways Professional Qualifications Directive** (EM 6285/16).

As a result, the Estonians will not have any maritime files to work on until the proposal for a revised **Port Waste Reception Facilities Directive** is published by the Commission in late October. The Estonians plan to make as much progress on this as possible during the final months of their Presidency, aiming for an update at the December Transport Council.

Intermodal Transport

The Estonians also hope to agree Council Conclusions on the implementation of the **Trans-European Transport Network** (TEN-T) and the **Connecting Europe Facility** at the December Transport Council. Preliminary negotiations at working group will take place over July and September, before being discussed at ministerial level at the Informal Transport Council and the Connecting Europe Conference in Tallinn on 21 September. The Conclusions will aim to put transport in a good position for the next Multi-annual Financial Framework.

The December Council will also see Conclusions on Digital Transport which aim to consider transport elements related to 'Digital Europe' and the free flow of data. The Conclusions will be negotiated in working group over September and October, with input from a 'Digital Days' event in Tallinn on 8-10 November. Lastly, the Estonians plan Conclusions on the European Geostationary Navigation Overlay Service (EGNOS) and Galileo programmes.

The Commission is due to publish proposals to revise the **Combined Transport Directive 92/106/EEC** and the **Clean Vehicles Directive 2009/33/EC** in November. Both of these will be discussed in Council working group meetings over the last few months of the Estonian Presidency.

Land Transport

The Estonian Presidency will start to take forward the **internal market** (EM 9668/17 and 9669/17) and **social** (EM 9670/17, 9671/17 and C(2017) 3815) pillars of the **Mobility Package**, published by the Commission on 31 May. Estonia are gathering initial Member State positions and are aiming for a Progress Report focused on principles at the Transport Council.

Estonia will largely leave the **road charging** pillar (EM 9672/17, 10175/17 and 9673/17) for the Bulgarian Presidency, but are planning an orientation debate on these proposals at Transport Council in December. They will take a similar approach to the land transport proposals in the second tranche of the Mobility Package (on access to the market for buses and coaches, and the revision of the Combined Transport Directive), due to be published in November.

Given this significant workload, Estonia will place lower priority on other land transport proposals such as the revision of the Regulation on **Rail Passenger Rights**, which is currently expected to be published at the end of this month. Estonia will also devote working group time to Council Conclusions responding to the expected European Court of Auditors report, due to be published before the end of this year, into whether the European Rail Traffic Management System (ERTMS) has been properly designed, implemented and managed. Finally, Estonia hopes to take trilogue discussions with the European Parliament forward on the **Driver CPC Directive** (EM 5671/17) towards the end of their Presidency.

Motor vehicles

Following the work by the Maltese Presidency to reach a Council general approach on **type approval and market surveillance of motor vehicles** (5712/16), the Estonians will now take forward discussions with the European Parliament.

Aviation

Estonia hopes to reach agreement with the European Parliament by the end of November on the **EASA Regulation** (EM 14991/15), through monthly trilogues, starting in September, and are also expecting to open trilogue discussions on the proposal for the future of the EU **Emissions Trading System for aviation** (EM 5968/17).

The Commission's long-awaited proposal to **repeal and replace Regulation (EC) No. 868/2004** (EM 9744/17 and 10146/17) with a new measure on safeguarding competition was finally published on 8 June. The proposal has drawn questions over the case for action and whether the measure could have a negative impact on the competitiveness and connectivity of the EU aviation sector. There will be a dedicated working group session on the Commission's Impact Assessment on 8 September.

Estonia may also test the appetite of Member States to grant the Commission further mandates for aviation agreements with third countries, however we expect that Member States will continue to prefer to wait until further progress has been achieved on the mandates already granted.

In addition, Estonia may provide the Commission the opportunity to make a second presentation to Member States on the merits of the proposal on a harmonised certification system for **airport screening equipment** (EM 12090/16). We understand that the Commission is working on a refined proposal, although we also understand that in discussions so far the European Parliament appears to share Member States' concerns on the proposal.

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

19 July 2017

Letter from Damian Hinds MP, Minister for Employment, Department for Work and Pensions

Estonia assumed the Presidency of the Council of the EU on 1 July 2017. Now it is clear what business the Presidency is expecting to take forward, I would like to update you on their plans and priorities over the coming months. This letter sets out the key dossiers that Estonia hopes to make progress with in DWP's areas of responsibility.

This is the first time that Estonia has held the rotating Presidency of the Council since it joined the EU in 2014, and it is the first of a Presidency trio that includes Bulgaria and Austria. Estonia has chosen "Unity through balance" as the overarching theme of its Presidency. It places its work on employment and social policy under one of its four key priorities: an inclusive and sustainable Europe. The other three high-level priorities are an open and innovative European economy; a digital Europe with free movement of data; and a safe and secure Europe.

Employment, Social Policy, Health and Consumer Affairs Council (EPSCO)

The Council will meet in its **EPSCO formation 23 October** in Luxembourg and **7-8 December** in Brussels. The Presidency has circulated provisional draft agendas for these meetings (attached at Annex[2]). The key legislative file for DWP on the provisional agendas is amendment of the social security co-ordination regulations, for possible partial general approach in December. The precise content of these agendas is always likely to change in some respects in the run-up to Council meetings. Parliament will be provided with annotated agendas and the usual written statements before and after each Council meeting.

Social security co-ordination

The Presidency will continue negotiations on a European Commission proposal to amend social security co-ordination Regulation 883/04 and its implementing regulation. The Estonian Presidency seeks to take forward negotiations on two new chapters – long-term care benefits and family benefits. The Presidency also aims to address the outstanding issues relating to the equal treatment and applicable legislation chapters discussed under the Maltese Presidency. It hopes the Council will be in a position to agree a

[2] Not published here.

"partial" general approach on these chapters in December. The full negotiation is expected to span several Presidencies.

European Pillar of Social Rights

The Department for Business, Enterprise and Industrial Strategy leads on the Pillar but due to the draft principles in the latest proposal covering employment policy DWP has an obvious stake in this. Supportive of the Commission aims to secure broad political support and high-level endorsement of the Social Pillar through an "inter-institutional proclamation" the Presidency intends to reach agreement within the Council at the 23 October EPSCO meeting and to reach agreement between the three institutions (Council, Commission, and Parliament) by the end of the year. Negotiation of all proposals under the Pillar banner is expected to span several Presidencies.

European Semester 2018:

As is traditional in the Semester cycle, in October the EPSCO Council will endorse a package each of Key Employment Challenges and Key Social Challenges for the year, supported respectively by analysis in the Employment Performance Monitor (EPM) and Social Protection Performance Monitor (SPPM). In December the Commission will present to EPSCO the Annual Growth Survey (AGS), Alert Mechanism Report (AMR), draft Joint Employment Report (JER). At the same time the Council will approve its contribution on the employment and social aspects of the draft Recommendation on the economic policy of the euro area. The UK continues to engage in the Semester process to ensure that any proposals for draft Country Specific Recommendations reflect UK priorities and interests.

Other issues

The Presidency will host a high-level conference on 13-14 September on the future of work, and intends to invite the Council to agree Conclusions on the theme in December.

I hope you find this information helpful.

18 August 2017

INFORMAL TRANSPORT COUNCIL 20-21 SEPTEMBER 2017

Letter from Lord Callanan, Transport Minister for Aviation, International and Security, Department for Transport

I am writing to let you know the outcome of the Informal EU Transport Council held under the Estonian Presidency in Tallinn on 20 and 21 September. The UK was represented at senior official level.

The overarching theme of the Informal was "Connectivity". The Estonian Presidency believes that well-connected Member States are the backbone of the European single market.

The meeting started with a joint session with Energy Ministers which looked at expectations for infrastructure development by 2020 and beyond, and the value of the Connecting Europe Facility (CEF) instrument which supports the development of the Trans-European Networks for Transport, Energy and Digital Communications. The focus of the debate was improving synergies between the different networks to strengthen the instrument for the next EU Financial period. In line with the HMG position on preparations for negotiations for the 2021-2026 Multi-Annual Financial Framework (MFF), the UK did not intervene as this is an issue for the EU27.

The second session of the day, for Transport Ministers only, was centred on air connectivity. A presentation was given on an air connectivity index which is being developed by the European Commission and attendees were asked for their initial comments on the concept and views on how to enhance air connectivity in Europe. The discussion focused on how the index could be improved, how it might be used to inform policy making, and what measures (regulatory or otherwise) might be used to improve connectivity.

Member States generally welcomed the work done on the index, but some improvements were suggested, including that it could be expanded to cover other modes of transport and multi-modal journeys, and that a more nuanced view was also needed which could better explain regional differences. The recent proposal for a Regulation on safeguarding competition in air transport, repealing Regulation

(EC) No 868/2004, was mentioned a number of times in Member State interventions, though there were differing views about whether it would contribute to greater connectivity.

The UK's intervention welcomed the index and stated our intention to consider it in more detail. We commented that effective competition and more consistent information for consumers could better enable connectivity, and that we should be cautious about additional regulation that could distort the functioning of the market. We also reiterated that any proposals that are considered should address a proven need, underpinned by clear evidence on the impact on the market as well as consumers.

The closing session discussed the future financing needs for the CEF. This focussed on the evidence to support the value the programme brings to the EU economy in preparation for the negotiations for the next MFF. Topics included the state of play on completion of the Trans-European Transport Network (TEN-T) and the gap in available funding; removing barriers to investment in transport infrastructure and making the most of financial instruments to encourage private sector investment. As with the first session the UK did not intervene in this discussion on the future priorities of the EU Budget.

The Presidency will continue to work on the future of the Connecting Europe Facility with a view to further discussion by Transport Ministers at the Transport Council scheduled for 5 December 2017, where Council Conclusions on the CEF will be adopted.

28 September 2017

BREXIT TRADE IN NON-FINANCIAL SERVICES

Letter from Lord Whitty, on behalf of the Chairman, to the Rt Hon Baroness Anelay of St Johns DBE, Minister of State, Department for Exiting the European Union

Thank you for your letter of 16 August, enclosing the Government's position papers on customs arrangements and on Northern Ireland and Ireland. This letter was considered by the EU Internal Market Sub-Committee on 14 September.

Whilst we were sympathetic to the delays caused by the election and immediate aftermath, it has now been some months since purdah ended and we are disappointed that the response to our report has still not been forthcoming. We also note that, whilst interesting, the papers you enclosed with your letter do not relate to post-Brexit trade in services. They are therefore not particularly helpful in understanding the Government's position while we await your formal response to our *Brexit: trade in non-financial services* report.

We do not consider it acceptable that the Government's response to our report should be delayed by your publication of policy papers. However, given that this is the approach you have taken, please let us know the Government's schedule for the publication of relevant position papers and the date by which we will receive the response to *Brexit: trade in non-financial services*.

19 September 2017