HOUSE OF LORDS
European Union Committee

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

This edition includes correspondence from 1 January 2019 – 31 March 2019

EU ENERGY AND ENVIRONMENT SUB-COMMITTEE

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Letter from the Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy

Thank you for your letter dated 14 December 2016 in response to Baroness Neville-Rolfe's letter of 3rd December which set out the state of play of negotiations on the Energy Labelling Regulation. This Regulation has now been agreed and came into force on 1 August 2017 replacing the Energy Labelling Directive.

I thank you for releasing these documents from scrutiny and am happy to provide answers to your remaining questions and provide an update of the outcome of the final negotiations in Council.

> **a) We welcome the establishment of a database that will allow consumers to compare product standards more easily. You indicate the other database will help market surveillance activities and ensure compliance with the labelling regulation. When do you expect these databases to come into force?**

The Regulation places an obligation on the Commission to establish a product database by 1 January 2019. The database consists of two parts; a compliance site containing technical information on energy-related products to support market surveillance authorities (MSAs) in their enforcement of energy labelling; and a public site where consumers can look up and easily compare information on the energy efficiency of products.

As of 1 January, product suppliers must now upload the relevant product information into the database before placing on the market products covered by an energy labelling regulation. For products placed on the market between 1 August 2017 and 1 January 2019, suppliers will have until 30 June 2019 to enter the relevant information into the database.

Due to delays in the Commission's implementation of the database we expect MSAs to have access to the compliance site and consumers to be able to search in the database from the second quarter of 2019.

> **b) We note that you prefer Implementing Acts, but that the European Parliament prefers Delegated Acts. We also note that the timescale for implementing revised labels will differ according to product classes, and that Council and the European Parliament prefer different time periods. Are you confident that an agreement can be reached on these two points?**

Regarding the issue of implementing acts versus delegated acts, the European Parliament maintained its preference for the use of delegated acts for introducing new product labels and rescaled labels on the basis that this was consistent with the procedure under the former Energy Labelling Directive. In order to reach a final agreement, the Council accepted the use of delegated acts for introducing new product labels and rescaled labels.

An agreement was also reached on the timescale for implementing revised labels. For products where the Commission had already completed preparatory research and analysis to inform necessary rescaling, a timescale of 15 months was agreed. For some product classes where a longer period was considered to be more appropriate (notably space heating technologies like heat pumps and boilers) a deadline of 9 years was agreed. For all other product classes the deadline is 6 years.

These were the final changes that were made allowing the regulation to reach a final agreement. The final vote took place in June 2017 and the result was unanimously in favour.

Until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. The future of energy labelling in the UK will be subject to what is agreed under negotiated terms of the Future Economic Partnership but as set out in the Clean Growth Strategy, it is the Government's ambition to keep step with equivalent minimum energy performance and energy labelling standards for products wherever possible and appropriate, or even exceed them where it is in the UK's interest to do so.

In the event that we leave the EU without an agreement, my officials have prepared legislation to ensure that all EU minimum energy performance and labelling standards in force before exit day remain applicable and enforceable in the UK after exit day.

1 February 2019

Letter from the Chairman to Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth

Thank you for your letter of 1 February 2019 on the above documents, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

Thank you for explaining that the Regulation came into force on 1 August 2017.

Thank you for explaining that the Commission's database has now been established, and that you expect consumers to be able to use it to compare information on the energy efficiency of products by the second quarter of this year.

We note that it was agreed that delegating, rather than implementing, acts would be used for introducing new product labels, as this is consistent with the former Energy Labelling Directive. Thank you for explaining that timescales for implementing revised labels were agreed, and that they vary according to product class from 15 months to nine years. We would observe that nine years seems an excessively long wait to introduce a change that is considered to be important to improve energy efficiency.

We are now content to close the correspondence on these files.

20 February 2019

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ASSESSING MEMBER STATES' PROGRAMMES OF MEASURES UNDER THE MARINE STRATEGY FRAMEWORK DIRECTIVE (11561/18)

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter of 19 December 2018.

We note that you have decided to retain under scrutiny EM 11561/18 on the Commission's staff working document assessing Member States' programmes of measures under the Marine Strategy Framework Directive, subject to obtaining clarity on two particular issues.

Regarding your request for an update on Gibraltar becoming a Contracting Party to the Barcelona Convention, we can assure you that discussions have been ongoing between the UK Government and HM Government of Gibraltar on this issue.

You also asked whether Cefas shares our view that attempting to remove chemicals from marine sediment would not only be expensive but could also exacerbate the problem by releasing them back into the marine environment. I can confirm that Cefas shares this view.

We trust that these explanations address your questions, and are happy to provide further advice if necessary.

10 January 2019

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary under Secretary of State

Thank you for your letter on the above Report, dated 10 January, which was considered by our Energy and Environment Sub-Committee at its meeting on 23 January.

Thank you for explaining that discussions on Gibraltar joining the Contracting Parties of the Barcelona Convention, which the Government of Gibraltar believes to be important to implementing aspects of the Directive, are ongoing.

Thank you also for explaining that Cefas supports your view that the UK's exception under the Directive in relation to contaminants is justified due to the expense, and the risk of releasing chemicals back into the marine environment.

We are now content to release this Report from scrutiny and close correspondence on this matter.

24 January 2019

PROPOSAL FOR A COUNCIL REGULATION OPENING AND PROVIDING FOR THE MANAGEMENT OF AUTONOMOUS UNION TARIFF QUOTAS FOR CERTAIN FISHERY PRODUCTS FOR THE PERIOD 2019-2020 (12082/18)

Letter from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 12 December 2018 regarding the above proposal. I apologise for the delay in responding.

The Regulation relating to the above proposal was adopted and entered into force in December, with the quotas opening on 1 January 2019. There were no changes to the final Presidency Compromise text as outlined in my letter of 28 November.

6 February 2019

Letter from the Chairman to Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food

We write in relation to your predecessor's letter on the above Proposal, dated 6 February, which was considered by our Energy and Environment Sub-Committee at its meeting on 13 March.

We note that the Proposal was adopted, with no further changes to the text, and has now entered into force.

We are now content to close correspondence on this issue.

13 March 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COPYRIGHT IN THE DIGITAL SINGLE MARKET (12254/16)

Letter from Chris Skidmore MP, Minister of State for Universities, Science, Research and Innovation, Department for Education and Department for Business, Energy and Industrial Strategy

I am writing to update you on trilogue negotiations on 12254/16, COM(2016) 593: Proposal for a Directive of the European Parliament and of the Council on copyright in the Digital Single Market. When my predecessor, Sam Gyimah, last wrote he outlined the positions of the Council and the Parliament on the most controversial aspects of the Directive, notably Articles 11 and 13, and the concerns in the European Parliament that would need to be considered during trilogue negotiations. Trilogue negotiations between the Parliament, Council, and Commission have now concluded and a provisionally agreed Directive text has been produced, taking into account these concerns, to be voted on in Council and in the European Parliament. This letter focuses on the most contentious aspects of this diverse Directive.

Article 13 (value gap)

As predicted, Article 13, which aims to solve the 'value gap', proved the most difficult element of the negotiations. This is because it seeks to rebalance the liability framework to impose greater obligations on user-uploaded content sharing services, which may have impacts upon internet platforms and their users. Negotiations were temporarily halted in January when the Presidency was unable to find a mandate due to conflicting positions between Member States. After another two weeks of high-level political discussion between a very small number of Member States, regarding the nature of a new differentiated liability regime for small and micro enterprises, a new compromise Article 13 text was produced, and the final trilogue took place.

The agreed Article clarifies that online content sharing service providers, as defined in the Directive, can in certain circumstances communicate or make available works to the public, and are liable for these acts if performed without permission of the rightholder. In a concession to the technical realities of running such services, service providers can mitigate this liability if they comply with a series of obligations laid out in the Article. Service providers must first make best efforts to obtain an authorisation from the rightsholder for any content available on their services in order to mitigate their liability. Authorisations are most commonly achieved through a licensing agreement. We strongly

supported the inclusion of these elements, and were one of the most influential Member States in their development

The second step relates to a situation where neither the rightholder nor platform wishes to enter into a licensing agreement. In an early draft of the Directive, one such obligation was the application of appropriate and proportionate measures, which may have included content filtering. However, given the European Parliament's concerns over content filtering, the text no longer includes references to these 'measures'. Instead it focuses on the requirement that service providers must make best efforts to prevent the availability of unauthorised works, by adhering to "high industry standards of professional diligence". This wording still ensures that service providers will be required to take action to prevent the availability of works, but is less focussed on formal 'measures'. The obligation occurs in two stages – the first being removal of content in a single instance (notice and takedown), and the second being an obligation to remove future instances of the same content (notice and stay-down).

One significant change to the draft Article since my predecessor last wrote is the inclusion of a carve out from liability for micro and small platforms (SMEs), as referred to above. This means that platforms which have been operating for under 3 years, with a turnover of less than 10 million Euros, and under 5 million unique yearly visitors will not have to comply with the Directive's more onerous conditions – including the duty to remove future instances of an infringing work (notice and stay-down) – until they breach one of those three criteria.

Another key change is the addition of a provision related to so called 'user generated content' (UGC). The provision states that Member States should ensure users can rely on certain exceptions and limitations when uploading user generated content. Earlier drafts of this provision appear to expand the scope of exceptions and limitations available in EU law. However, in the final draft this provision has been improved to more tightly reference the existing exceptions framework found in the Information Society Directive. This will be welcomed by rightsholders who were concerned about the potential expansion of the exceptions framework, and a subsequent reduction in licensing opportunities and enforcement of rights. It will also benefit users of these servicers, who will have clear access to these exceptions for the purposes of uploaded content.

Other aspects of the draft Article, including the complaints and redress mechanism and the obligation for the Commission to produce guidance on the application of the article, remain. We strongly support the inclusion of these elements.

In entering these negotiations, the Government collectively agreed a number of negotiating principles. Of particular relevance to this article are the following:

- Copyright reform should be **balanced and proportionate**, supporting the creative and digital economy, benefiting consumers, and promoting creativity, innovation and investment.
- Interventions should be **clear, targeted and justified by evidence**.

Government also agreed specific policy aims including: clarifying the obligations of, and responsibilities on, online services and to ensure they take appropriate action to remove copyright-infringing content; and fostering greater cooperation between rights holders and online services to negotiate appropriate licensing agreements.

The negotiated Article 13 includes a clear statement that service providers can communicate works to the public, and then sets out actions that they need to take in order to mitigate liability, including entering into licensing agreements and removing unauthorised content.

However, less welcome additions to the text were also present in the final Article. In particular, there are legitimate concerns from stakeholders that the proposed Article is not as clear as is desirable, and that platforms, particularly SME platforms, will remain unsure of which obligations will apply to them or how the obligations will work in practice. Technology stakeholders have consistently argued that the Article will harm the digital economy. SMEs have also expressed concerns that the differentiated liability regime for SMEs may actually act as a barrier to investment.

Some parts of the music and audiovisual sectors are also expressing concern that Article 13 may harm the creative economy. This is because the new liability regime established under the Copyright Directive appears to exclude SMEs from the existing liability framework under current case law and the E-Commerce Directive, which they argue will leave them in a worse position than under the current framework. They are also concerned with the SME carve out as a matter of principle, arguing that small platforms can still do considerable damage to rightsholders' interests, though helpful clarifications in this respect were made to the corresponding Recital 38b during the Trilogue.

Given these concerns, we welcome the inclusion of Article 13(9) in the final Directive which calls for the Commission to produce, in conjunction with Member States, best practice guidance. This will help addresses some of the uncertainties present in the final text, particularly around the practical

implementation of the Article. It is, however, likely that some elements will require judicial interpretation.

Article 11 (press publishers' right)

Another contentious aspect of the Directive is Article 11, which introduces a new right for press publishers. In the compromise Article, the right applies to online use of press publications by information society service providers, but not to private or non-commercial uses of press publications carried out by individual users. The right also does not apply to the act of hyperlinking or uses of individual words or very short extracts of a press publication. This is to ensure that basic navigational functions of the internet are unaffected. The term of protection of the right is 2 years. A new provision within the right is that Member States must provide that the authors receive an appropriate share of the additional revenues that press publishers receive for the use of their press publications by information society service providers. It is not yet clear how this provision will work in practice or how it will sit alongside contractual freedom between press publishers and journalists – this point may require further judicial interpretation.

I believe that negotiations on this Article have been successful from a UK perspective, and that the right will improve the position of press publishers in the value chain, giving them a better online environment that will allow them to more easily monetise and enforce the rights in their content, without undermining basic internet functionality.

Articles -14 and 16a (fair and proportionate remuneration, and revocation right)

As discussed in previous correspondence, prior to trilogues commencing the Parliament included a number of additional elements to the Directive that were not considered by the Council. Although most of these were deleted during trilogue negotiations, articles -14 and 16a now form part of the final Directive.

Article -14 provides that authors and performers should receive "fair and proportionate" remuneration when they transfer or license their rights to a third party for exploitation (e.g. a publisher or producer). The accompanying Recitals clarify that rightsholders are still free to assign their rights in return for a lump sum payment, provided that such remuneration is appropriate and proportionate. However, this is qualified by a statement that such payments "should not be the rule". It is not clear how this is likely to be interpreted in practice. The final wording of the Article grants Member States broad flexibility regarding how the right should be implemented in domestic law, taking into account their own national circumstances and the specificities of each affected sector.

Article 16a provides authors and performers with the ability to revoke rights granted to third parties which fail to commercially exploit their work. The compromise text builds in flexibility for Member States to determine how the right applies in practice, and to give authors or performers the ability to terminate the exclusivity of the contract instead of revoking their rights.

The UK did not support the addition of these Articles as they have not been the subject of an impact assessment. However, I believe that they are not contrary to the collectively agreed negotiating principle that creators and performers should be properly remunerated while maintaining incentives to invest in new content. Additionally, I believe that there is sufficient flexibility in these Articles that the Government will be able to consult fully ahead of domestic implementation to ensure that any new provisions complement existing UK regimes.

Article 9a (Extended Collective Licensing)

The Presidency was successful in negotiating the inclusion of a new Article 9a on Extended Collective Licensing (ECL). This corrects a deficiency in EU law that meant the status of ECL schemes, such as those allowed under UK law, was uncertain. The inclusion of this measure was a success in line with the UK's negotiation objectives.

Summary of other aspects of the negotiation

Trilogue negotiations on other aspects of the Directive went well and, in these areas, the final text is generally well-aligned to the Council approach and UK interests as outlined in the Government's agreed negotiating mandate. Further details of these provisions are provided in previous correspondence but a short summary is provided below:

- Article 3a introduces a text and data mining exception that would allow mining for journalism, commercial uses and by the general public, although rightsholders can protect their content by opting out of this. There was debate over whether this exception should be mandatory or optional and in trilogue it was agreed that it would be mandatory.

- Negotiations on Article 4, exceptions on cross-border digital use of educational materials and preservation, have gone well, and the compromise text is closely aligned with the Council position.
- The UK has supported Article 7, which aims to make it easier for cultural heritage institutions to use out-of-commerce copyright works by creating a legal mechanism for them to be licensed via collective management organisations (non-profit bodies representing right holders). This approach has been successfully agreed in trilogues. However, the Parliament has been successful in introducing a 'fall-back' exception which would allow cultural heritage institutions to use works without a licence if no licensing scheme was available. Although the exception contains certain safeguards for rightsholders, the Government is concerned that it is still too broad in scope and risks undermining the existing Orphan Works Directive (Directive 2012/28/EU).
- The negotiation on Article 10, a mechanism for video-on-demand platforms, went well and the final proposal for this article is closely aligned to that Council position, and is light-touch.
- Negotiations on the transparency provisions for authors and performers (article 14) and the contract adjustment mechanism (article 15) have progressed well.

Stakeholder reaction

Stakeholder reaction to the draft Directive has been mixed. The technology sector has long opposed the Directive, and though they have received some concessions in the form of mitigations to liability in Article 13 and protections for navigational use of press content in Article 11, they still have strong concerns about the practical impacts. In particular, they are unclear how the obligation to enter into licensing arrangements with rightsholders will affect their ability to mitigate their liability.

Rightsholders are split on whether or not they welcome the text. On the one hand, it has been welcomed by press publishers, authors, and song writers, who will see higher potential remuneration for creators of copyright works and increased licensing opportunities arising from the new liabilities imposed on platforms. However, the audio-visual sector, broadcasters, and some parts of the music industry are not supportive. These are the parts of the creative sector that are involved not only in licensing of copyright works, but also in their production. They argue that the Directive not only weakens their protections and ability to remove content from websites under the existing liability framework, but that it will disrupt established funding models through stricter rules on remuneration and rights of revocation for participants in the creation of works. They argue that these factors will undermine incentives to invest in the production of creative works in the EU.

Next steps

There will now be a period during which the provisional agreement is translated into all official EU languages. During this period MEPs will have the opportunity to consider the text before a vote in the plenary session of the EU Parliament, which is expected to take place either in March or early April. The ability for UK MEPs to vote on the proposal in Parliament will depend on whether the vote takes place before or after the UK leaves the EU. If the Directive is approved by the European Parliament, it will then proceed to a final vote by Ministers in the Council of the EU. If the vote takes place after the UK has left the EU, we will of course not have the opportunity to vote in the Council. The Directive itself now imposes a 24 month period by the end of which Member States must have transposed it into domestic law.

In summary, whilst there remain stakeholder concerns that the negotiated Directive fails to fully achieve our policy aims with respect to elements of Article 13, other aspects of this Directive have been negotiated successfully in line with UK aims. Furthermore, should the UK need to implement this Directive, the Government will have the opportunity to fully consult with stakeholders to address their issues in implementation, where flexibility has been achieved (for example in relation to Articles -14 and 16a). I am confident that the final agreement will meet a successful balance between the needs of copyright owners, online service providers and consumers. I am therefore now requesting final scrutiny clearance of this measure in order that the UK can vote in favour when it comes to Council for formal adoption.

6 March 2019

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

Thank you for your letter dated 6 March 2019 which was considered by the EU Justice Sub-Committee at its meeting of 19 March.

We decided to clear this proposal from scrutiny.

In October 2016, we decided to undertake a "light-touch" approach to the scrutiny of this matter because the Commission's proposal broadly aligned with the UK's copyright regime.

We note: (i) your concerns with aspects of the final text (for example, Article 13 dealing with the socalled value-gap); (ii) your conclusion that overall the final text reflects the UK's negotiating aims and will strike a "successful balance between the needs of copyright owners, online service providers and consumers"; and, (iii) your confirmation that the trilogue discussions have completed and that the Council is ready to agree this matter. It is, therefore, unlikely that the text of this proposal is going to change further.

We do not expect a response to this letter.

20 March 2019

PROPOSAL FOR A COUNCIL REGULATION FIXING FOR 2019 THE FISHING OPPORTUNITIES FOR CERTAIN GISH STOCKS AND GROUPS OF FISH STOCKS, APPLICABLE IN UNION WATERS AND, FOR UNION FISHING VESSELS, IN CERTAIN NON-UNION WATERS (13731/18)

Letter from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 5 December about the Commission's proposals for fishing opportunities in 2019. Political agreement was reached at the AgriFish Council on 17-18 December and I am writing to update you on the outcome. My colleague, Lord Gardiner, represented the UK Government.

The focus of much of the Council was on the need to find practical solutions to mitigate the potential for bycatch stocks to choke economically important fisheries in Western Waters. A compromise was reached; although work will need to continue during 2019, including further improvements to selectivity. Member States committed to produce a bycatch reduction plan at the latest by 30 April 2019 which we will be working with industry on over the forthcoming weeks.

You asked for an update on outcomes on specific items listed as bullet points in your letter.

Management of data-limited stocks (EM paragraphs 17-18)

UK objectives were achieved. "Use it or lose it" was not applied and decisions on total allowable catches (TACs) for these stocks were informed by best available evidence, including directional trends in fishing mortality, biomass and fishing effort. The TAC set for 2019 for Area 7 pollack was a rollover, and there was a -2% cut in the TAC for 7 anglerfish which is in line with the science.

Bycatch stocks in the Celtic Sea (EM paragraphs 22-26)

There was an underlying impetus during Council to find a practical solution that allowed TACs for bycatch stocks to be set in line with science while preventing them from choking economically important mixed fisheries. The scientific advice for zero catches for Area 7e-k cod and 7hjk plaice would have resulted in an immediate choke for the Celtic Sea mixed fishery. The Commission proposed a Union bycatch only TAC attempting to balance the risk of choke with the state of the stock as well as provide a solution for Member States with no relative stability share. This approach was not acceptable to other Member States who viewed the proposal as undermining relative stability.

As a result, a pool solution was agreed in which all Member States with an allocation contribute a fixed percentage (6% for Celtic Sea cod and plaice) to a pool for quota exchanges. This was combined with an increase in the overall TAC proposed by the Commission, though still within the maximum sustainable yield (MSY) ranges, to further mitigate the high risk of choke. The UK expects that the operation of the pools will be kept under review by the North West Waters High Level Group. Member States also committed to producing a discard reduction plan by 30 April 2019 with the objective of implementing measures which will further cut the catch of unwanted bycatch species. In addition, the UK made a statement at Council proposing a horizontal review of the implementation of the landing obligation in 2019 in order to improve its operation in year if needed.

The other key choke risk within the Celtic Sea is Area 7b-k haddock. This TAC was set towards the upper limit of the MSY range (+21%) as a result of pressure from other Member States; this will make the achievement of MSY by 2020 for this stock very challenging.

Irish Sea whiting (EM paragraphs 29-30)

A pool approach (with a 6% contribution) was also applied for Irish Sea whiting with a modest TAC increase from the original Commission proposal. The UK had particular concerns about the setting of

the TAC for 7a whiting given the very high risk of choke posed by whiting within the Irish Sea nephrops fishery, as well as uncertainty regarding the predicted level of catches in 2019. The UK therefore secured a statement from the Commission calling for an urgent review of the available scientific advice on the level of unavoidable bycatch for this stock. We envisage that this review will begin early in the 2019.

West of Scotland cod and whiting (EM paragraphs 33 and 35)

A similar pool arrangement was agreed for West of Scotland whiting and cod with contributions of 3% and 6% respectively. Again the TACs set were at a level somewhat higher than the original Commission proposal to further mitigate the high risk of choke in the West of Scotland mixed fishery which arises primarily from the previous high rate of discards. The UK also invoked Hague Preference on both stocks; in the case of whiting we invoked for the first time in order to ensure we have sufficient quota to mitigate a choke from developing in a key mixed fishery for the UK.

North Sea cod (EM paragraphs 39-41)

As part of EU–Norway negotiations, the high risk of choke posed by direct implementation of the advice for North Sea cod for a 47% cut in the TAC was mitigated by moderating the scale of the TAC reduction while still ensuring that the sustainable stock biomass (SSB) can reach its MSY by 2020. A cut of -35% for cod in International Council for the Exploration of the Sea (ICES) Area 2a, 3a and 4 was agreed. The TAC for cod in the Eastern Channel (7d), which is the same biological stock, was cut by 1% and flexibility to fish 5% of the TAC for North Sea cod in 7d was introduced. This will help mitigate the risk of increased abundance of cod in the early weeks of the year from choking economically important year round fisheries such as those for 7d sole.

North Sea herring (EM paragraphs 45-46)

A similar approach to TAC setting for North Sea cod was also agreed in the annual negotiations for North Sea herring due to the concerns of some Member States regarding the significant economic consequences of the cut of 51% recommended by ICES. A cut of 33% was agreed. The agreement does not afford increased access to UK waters for Norwegian vessels.

Irish Sea nephrops (EM paragraphs 47-48)

The TAC for Nephrops was set in line with the Commission proposal, but accepting concerns from the UK about the application of survivability criteria to the TAC, the Commission also agreed to seek further advice from ICES on this matter.

Other Stocks of interest to the UK

You also asked for an update on the outcome more generally and I have set out below details about other stocks of interest to the UK, as well as reviewing the position regarding stocks to be fished at their MSY in 2019.

In the North Sea TAC cuts were applied to North Sea whiting (-22%) and North Sea haddock (-31%) which bring these stocks to their MSY. However, there were TAC increases for anglerfish (+25%) and North Sea hake (+37%). The latter successfully resolving a UK priority to prevent an increased abundance of hake from choking the North Sea mixed fishery. There was also a 5% increase in the TAC for North Sea ling, as well as an agreement to increase west to east flexibility to help mitigate the risk of the choke to the mixed fishery posed by an increasing abundance of ling in the North Sea. While the TAC for North Sea nephrops was reduced by 10%, nephrops within the Farn Deeps functional unit (FU6), which had been seriously overexploited, is now being fished at MSY.

There were reductions in the TAC for 7b-k whiting (-14%) and 7d sole (-26%) in Area 7. These reductions are in line with science. However, increases were recorded for 7e sole (+3%), 7 megrim (+47%), Western skates and rays (+5%), 7d skates and rays (+10%) and 7fg plaice (+406%) – this stock has come under the landing obligation for the first time in 2019.

In the Irish Sea the TACs for cod (+16%), haddock (+17%) and herring (-2%) were set in line with the scientific advice. In the West of Scotland the TACs for haddock (+31%) and anglerfish (+25%) were also set in line with the scientific advice. There were also significant increases for saithe (+24%) and nephrops (+24%) though these levels differed from the advice. For mackerel a reduction of -20% was agreed in line with the "TAC constraint" approaches agreed through coastal state negotiations. This is less than the TAC reduction recommended by ICES scientific advice.

Stocks at MSY

The number of stocks fished at their MSY has fallen. Of all the quotas which were set using the ICES MSY approach, and for which the UK has an interest, 59% were set in line with MSY for 2019 (29 of 49), compared with 69% (31 of 45) in 2018.

- Quotas which have improved to be MSY compliant for 2019 include Irish Sea sole, 7fg sole, North Sea whiting, North Sea plaice and 7b-k whiting.
- MSY compliant fishing levels are maintained for 22 quotas, including Irish Sea cod and haddock and North Sea haddock.
- For ten stocks previously fished at MSY, including cod, sole and herring in the North Sea, the quotas agreed will mean fishing will exceed MSY levels in 2019.

The fall in the number of stocks fished at their MSY needs to be seen within the context of 2019 being the first year of the full implementation of the landing obligation, as our fleet needs to adjust its practices to avoid unwanted catches of bycatch species from economically important mixed fisheries while further discard reduction measures are developed and implemented.

11 January 2019

Letter from the Chairman to Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for the letter from George Eustice MP on the above Proposal, dated 11 January, which was considered by our Energy and Environment Sub-Committee at its meeting on 13 March.

We are deeply concerned that the quotas set in line with Maximum Sustainable Yield (MSY) have decreased from 69% in 2018 to 59% in 2019. While we appreciate the need to adjust fishing practices to avoid choke situations in light of the full implementation of the landing obligation, it is inexcusable that EU fishing Ministers failed so spectacularly in their responsibility to secure sustainable catch limits. The Common Fisheries Policy requires sustainable fishing by 2020. In your view, is that still achievable? If so, how will the necessary changes be made in the next ten months?

Similarly, while we welcome that several stocks of interest to the UK were brought to their MSY, we note that many of the stocks you listed had their Total Allowable Catches (TACs) increased, often by substantial amounts.[1] We understand that some of these increases – for example the 406% increase in 7fg plaice – reflect an anticipated increase in the number of fish landed rather than caught, as a result of the full implementation of the landing obligation which took effect from 1 January 2019. However, in our report *Fisheries: implementation and enforcement of the EU landing obligation*[2] we found that the UK is not ready to enforce the landing obligation, and consequently raised concerns about this quota uplift, concluding "if fishers continue to discard and simultaneously land their increased quota, they will be catching greater volumes … potentially leading to overfishing and damage to fish stocks". Indeed, your predecessor acknowledged this danger when providing evidence to the inquiry.[3] What reassurance can you provide that these stocks will be fished at MSY despite the quota uplift?

We note your statement that further work will be needed on mitigating the risk of choke in the Western Waters. Please update us on your progress towards producing a bycatch reduction plan, including details of your engagement with industry.

We note that you achieved your objective for data-limited stocks to be managed in accordance with the best available evidence, including directional trends.

We note that you were not successful in securing agreement to use discard rates rather than relative stability to set shares of cross-EU TACs to help manage bycatch difficulties relating to cod, plaice and haddock, and that instead a pool of quota for exchanges has been established. In your view, will this be an effective method of managing the bycatch difficulties?

We also note with concern your assessment that the agreed TAC for Area 7b-k haddock in the Celtic Sea will make it challenging to reach MSY by 2020.

We note that you were not successful in removing the TAC for whiting in the Irish Sea, but instead secured "a statement from the Commission calling for an urgent review of the available scientific advice on the level of unavoidable bycatch for this stock". Please confirm whether that review has begun, and clarify the effect you intend it to have.

We note that you were also not successful in removing the TAC for cod and whiting in the West of Scotland, but that you have invoked the Hague Preference to ensure fishers can manage choke risks.

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[1] Specifically, this concern relates to anglerfish, North Sea hake, 7e sole, 7 megrim, Western skates and rays, 7d skates and rays, and 7fg plaice.

[2] https://publications.parliament.uk/pa/ld201719/ldselect/ldeucom/276/276.pdf

[3] Q 60: http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-energy-andenvironment-subcommittee/implementation-and-enforcement-of-the-eu-landing-obligation/oral/94226.pdf

We note that you were successful in negotiating a smaller reduction to the North Sea cod TAC in order to manage the high risk of choke, and that the agreed TAC is nonetheless consistent with reaching MSY by 2020.

We note that although you were not successful in securing a larger reduction to the North Sea herring TAC, you did ensure that Norwegian vessels do not have increased access to UK waters to fish the stock.

We note that although you were not successful in securing a larger reduction to the nephrops TAC, the Commission will be seeking further advice from ICES regarding the survivability of the stock.

Finally, the Explanatory Memorandum (EM) for this proposal stated that the TACs agreed at the December Council will apply to the UK throughout 2019 under any Brexit scenario. However, in a letter to this Committee dated 29 November, Secretary of State Michael Gove stated: "If there is no deal, we would be leaving the EU and the CFP mid-way through the 2019 fishing year and would need to take a decision about the rules that will apply for the rest of 2019",[1] indicating that the position set out in the EM may have changed. Please clarify whether the TACs agreed for 2019 will continue to apply in the UK in a 'no deal' scenario.

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

13 March 2019

COMMISSION DELEGATED REGULATION (EU) …/... OF 28.11.2018 AMENDING DELEGATED REGULATION (EU) NO 1062/2014 AS REGARDS CERTAIN ACTIVE SUSBTANCES/PRODUCT-TYPE COMBINATIONS FOR WHICH THE COMPETENT AUTHORITY OF THE UNITED KINGDOM HAS BEEN DESIGNATED AS THE EVALUATING COMPETENT AUTHORITY (14911/18)

Letter from the Chairman to Sarah Newton MP, Minister of State for Disabled People, Health and Work, Department for Work and Pensions

Thank you for your Explanatory Memorandum (EM) on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

We note that, in the case of a 'no deal' Brexit, you intend to establish a stand-alone UK review programme, to evaluate the 488 active substances that have yet to be evaluated as part of the EU Programme. This is clearly a significant undertaking. We note that the scale of the work will depend on the number of businesses who wish their products to be authorised for use in the UK. Please provide an update on HSE's discussions with businesses to establish the level of demand. Would all the costs associated with a UK review programme be met by the businesses seeking approval for substances used in their products? If not, please explain what estimates you have made of the costs involved. Do you intend to complete the review to the same timescale as the EU (i.e. by 2024)?

As your EM reflects, some businesses may choose not to seek UK approval for substances used in their products. What assessment have you made of the number of products that may be lost to the UK market, and the impact that would have? Will substances for which businesses have sought approval under the EU Review Programme be automatically transferred to the UK list, unless a business notifies HSE it is not seeking approval, or will businesses have to 'opt in'? Products that use substances on the EU Review Programme list can stay on the EU market until a decision is made on approving it. Will that be the case in the UK?

Given that the EU Review Programme is not expected to be completed until 2024, in a 'deal' scenario do you anticipate establishing a UK review programme at the end of the transition period, to evaluate those substances yet to be approved through the EU Programme? What consideration has been given, as part of the UK-EU future relationship, to seeking continued access to the EU's evaluations (and the data that supports them), to mitigate the need to duplicate work in the UK?

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

20 February 2019

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[1] https://www.parliament.uk/documents/lords-committees/eu-energy-environment-subcommittee/nodeal/LetterfromMGtoLTnodeal29112018.pdf

Letter from Sarah Newton MP, Minister of State for Disabled People, Health and Work

I am writing in response to the questions raised in your letter of 20 February 2019 on EM 14911-18 on replacing the UK as evaluating competent authority for 57 biocidal products. I note that the EM remains under scrutiny.

Your letter asked for further information in four areas:

1) the level of demand for, costs and timescale associated with a UK review programme;
2) any impact associated with the loss of biocidal active substances from the UK market;
3) whether businesses need to opt in to the UK review programme; and
4) what happens in the event of a deal scenario, in relation to avoiding duplication of the EU's evaluation work.

Demand, costs and timescale associated with UK biocides review programme

During the development of the no-deal SI, HSE spoke widely to businesses through meetings with key trade associations and awareness-raising events. Since laying the SI it has been holding an ongoing series of stakeholder events which include a presentation on the Biocidal Products Regulation (BPR) and a question session, where the UK review programme has been raised. The demand will become clearer during the period of transitional provisions during which businesses that wish to seek approval in the UK would submit applications to HSE. These transitional provisions have been included in the statutory instrument.

The costs associated with a UK review programme would be met by the businesses seeking approval, consistent with the Government's long-standing policy on cost-recovery.

The Secretary of State has the power to set the final timescale for the review programme. This has not yet been decided and will depend on the level of demand, the extent to which HSE draws on the results of evaluations already undertaken and other factors.

In case of a no-deal exit, the Government would propose an approach to a UK biocide review programme after considering HSE's full analysis of the benefits, costs and feasibility of a range of options. Some public consultation is envisaged as part of the process of developing this programme.

Any impact of lost products

It is not yet known what the impact will be. In most cases there is a range of active substances and suppliers for each product-type. There are a few anecdotal reports that we could lose biocidal actives from the UK market, but HSE has not been provided with the evidence and the numbers to back this up. Conversely some active substances or product-types may not be needed in a UK context, meaning it would not matter greatly if they were not supported. Alternatively, the loss of a product could create a commercial opportunity for other suppliers to enter the market, either as an alternative source of an existing active substance or as a new applicant. There is also the option under BPR to retain key substances and products e.g. using essential use provisions.

Any need for businesses to opt in

The substances for which businesses sought approval under the EU biocidal products review programme will be carried over by the approach taken in the European Union (Withdrawal) Act and legislation made under it. However, to remain in the UK review programme, businesses will under the transitional provisions still need to support these actives by providing their applications to HSE by the deadlines set in the legislation. The UK would then take a UK-specific decision under its own review programme (in addition to any decision under the EU programme). Products containing substances under review can stay on the UK market until an approval decision is made.

The UK biocides review programme in a deal scenario

In relation to a Future Economic Partnership with the EU, the Government has stated that its ambition is for high alignment with the chemical regimes in which the European Chemicals Agency (ECHA) plays a role. If achieved, this would mean no need for the UK to undertake a separate UK review programme, nor for the UK to duplicate evaluation work in the EU.

I hope this information is of help to the Committee.

12 March 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2003/87/EC ESTABLISHING A SCHEME FOR GREENHOUSE GAS EMISSION ALLOWANCE TRADING WITHIN THE COMMUNITY,

IN VIEW OF THE IMPLEMENTATION BY 2020 OF AN INTERNATIONAL AGREEMENT APPLYING A SINGLE GLOBAL MARKET-BASED MEASURE TO INTERNATIONAL AVIATION EMISSIONS (15051/13)

Letter from Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy

In your letter from March 2014, you released the above proposal from scrutiny and asked for an update on negotiations. My officials were recently contacted by the Parliamentary clerks and were advised that the Committee had not received an update on this file. With apologies for the oversight which led to a delay in submitting this update to you, please find an update as follows:

The dossier was formerly adopted on 14 April 2014 and the Regulation (421/2014) came into force on 30 April 2014.

The main elements of the regulation are as follows:

- An Intra-European Economic Area (EEA) scope for the Aviation ETS was agreed to be in place from 1 January 2013 until 31 December 2016;
- An exemption was introduced, until 2020, for non-commercial operators which emit less than 1,000 tonnes of CO2 per year;
- Simplified procedures were introduced for operators emitting less than 25,000 tonnes of CO2 per year;
- It was agreed that a review would be undertaken by the European Commission to consider whether the scope of the Aviation ETS should be amended from 2017 onwards based on progress towards a global market based measure at the International Civil Aviation Organisation Assembly (ICAO) in 2016.

Following the 2016 ICAO Assembly, the European Commission published a proposal to amend the Aviation EU ETS. The main changes were to make the intra EEA scope permanent; and to undertake a review to determine the future of the Aviation EU ETS from 2021.

Following lengthy negotiations, it was agreed that the intra EEA scope would be in place until 31 December 2023 and that the European Commission would undertake a review on the implementation of global scheme and on the future of the Aviation EU ETS.

The agreement was adopted on 12 December 2017 and the subsequent Regulation 2392/2017 of the European Parliament and Council came into force on 13 December 2017. Full details on these negotiations were provided to the Committee under EM **5968/17** (Proposal for a Regulation of the European Parliament and of the Council amending Directive 2003/87/EC to continue current limitations of scope for aviation activities and to prepare to implement a global market-based measure from 2021).

I or my colleague, Baroness Sugg at the Department for Transport, would be happy to respond to any further queries.

1 February 2019

Letter from the Chairman to Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth

Thank you for your letter of 1 February 2019 on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

Thank you for explaining that the Regulation came into force in April 2014, and was amended by a further Regulation in 2017.

We are now content to close the correspondence on this file.

20 February 2019

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL INTERIM REPORT IN ACCORDANCE WITH ARTICLE 26(1) OF REGULATION (EU) NO 1144/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 22 OCTOBER 2014 ON INFORMATION PROVISION AND PROMOTION MEASURES CONCERNING AGRICULTURAL PRODUCTS IMPLEMENTED IN THE

INTERNAL MARKET AND IN THIRD COUNTRIES AND REPEALING COUNCIL REGULATION (EC) NO 3/2008 (15294/18)

Letter from the Chairman to David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum (EM) on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

We note from your EM that there will be "no cliff edge for UK participants of simple programmes" and that those that are on-going at the point of the UK leaving the EU "will be supported in reaching their agreed conclusion." Please could you tell us how many simple programmes will have begun, but not ended, on 29 March 2019, when each is due to complete, and who will be funding the remainder of the programme. Given that the purpose of the programmes was to promote EU products, is it anticipated that these programmes would be altered to promote UK products? Please clarify whether the future funding arrangements (and objectives) of these programmes will be different in a 'deal' scenario compared to a 'no deal' scenario.

Your EM also states that "multi-programmes are not being transitioned because the UK will no longer be eligible once we cease to be a Member State." Please confirm whether the UK is currently participating in any multi programmes. If so, what will happen to the programme after 29 March 2019?

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

20 February 2019

Letter from David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter of 20 February 2019 which raised a series of questions in relation to EM 15294/18. I have responded to each of these in the attached Q&A.

Supporting Q&A to EM15294/18

1) Please could you tell us how many simple programmes will have begun, but not ended, on 29 March 2019, when each is due to complete, and who will be funding the remainder of the programme.

As of 29 March 2019, there will be two simple programmes that have activity outstanding. Another simple programme will have concluded its promotional activity but may still have some of the payments for the final year outstanding.

The remainder of these simple programmes will be funded by the UK Government from the Government guarantee to continue to commit the same cash total in funds for farm support until the end of this Parliament, expected in 2022.

2) Given that the purpose of the programmes was to promote EU products, is it anticipated that these programmes would be altered to promote UK products?

The focus of the Agri- Promotion Scheme is to promote EU products, both within the EU and in Third Countries. However, both the simple programmes that will have activity continuing beyond 29 March 2019 are held by Dairy NI and promote Northern Ireland's dairy products to Third Countries. No change to the over-arching aims of these two programmes will therefore be required.

Under the EU version of the scheme, there are strict rules restricting participants' ability to promote the national origin of the products. The amendment SIs will remove this restriction on exit day to allow for the promotion of national origin.

3) Please clarify whether the future funding arrangements (and objectives) of these programmes will be different in a 'deal' scenario compared to a 'no deal' scenario.

If there were to be an implementation period following EU Exit, the European Commission have informed Defra that the UK would continue to be treated as a Member State for the purposes of the Agri-Promotions Scheme. Any existing simple or multi programmes could continue without change until the end of the implementation period. During this time, proposing organisations from the UK may continue to apply for and where appropriate receive funding, with the caveat that any UK participants to multi programmes would need to drop out at the end of the implementation period. Programmes

can run for up to 3 years so any such simple programmes accepted in 2019 and 2020 could run beyond the current Government guarantee.

In the event of a 'no deal' scenario, UK participants will not be able to continue their participation in multi programmes.

4) Please confirm whether the UK is currently participating in any multi programmes. If so, what will happen to the programme after 29 March 2019?

Proposing organisations based in the UK will be unable to participate in the multi programmes beyond the date of EU Exit in the case of a 'no deal' scenario, as the EU Regulation requires participants to be based in a Member State, or be an EU organisation. All UK involvement in these multi programmes will stop.

There is no funding guarantee from the UK Government to cover existing multi programmes.

It is our understanding that the European Commission will reassess each multi programme that had the UK as a participant to determine whether it is able to continue once the UK has dropped out. For example, those programmes where the UK was a relatively minor participant and leave behind more than one other Member State are likely to continue.

A table of the programmes that are currently underway and involve the UK as a participant can be seen below.

Type	Scheme Name	Scheme partners	Product(s)	Duration	Start Date	End Date	Budget
Multi	Dairy moments	Dairy Council (NI) with BE/DK/FR/IE	Milk/Dairy	3 years	Jan 2016	Jan 2019	€14.2m total €371k in UK (€186k of UK share from EU funding)
Multi	Normalising organic choice	Organics Trade Board and Denmark	Organic	3 years	Jan 2017	Jan 2020	€10.4m total €7.3m in UK (€5.85m of UK share from EU funding)
Multi	European Milk Forum Climate	Dairy Council (NI) with BE/DK/FR/IE/ND	Milk/Dairy	3 years	2017/18	Early 2021	€3.6m total €9k in UK (€7.2k of UK share from EU funding)
Multi	EU lamb	AHDB with IE/FR	Sheep and goat meat	3 years	2017/18	Early 2021	€10m total €4.7m in UK (€3.8m of UK share from EU funding)
Simple	Adding value with EU dairy products FESEA	Dairy council (NI)	Dairy	3 years	Feb 2018	Feb 2021	€2m of which €1.56m EU funding
Simple	Adding value with EU dairy products (ME)	Dairy council (NI)	Dairy	3 years	Jan 2018	Jan 2021	€1.1m of which €0.9m EU funding

Letter from the Chairman to David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter on the above Report, dated 27 February, which was considered by our Energy and Environment Sub-Committee at its meeting on 13 March.

Thank you for explaining that there are two 'simple programmes' that will have activity outstanding as of 29 March (and a third that will have completed its activity but may have payments outstanding) and that the UK Government would fund the remainder of these programmes in the event of a 'no deal' Brexit.

Thank you for explaining that a Statutory Instrument will amend the current rules of the scheme, so that the remaining participants are free to promote the national origin of their products (rather than that they are of EU origin, as per the purpose of the EU scheme).

Thank you for explaining that, for the purposes of this funding scheme, the UK will continue to be treated as a Member State by the EU during any transition period that is agreed and so existing programmes could continue without change if the Withdrawal Agreement is agreed. We note that UK organisations could continue to apply for funding during a transition period, and that if their activity extended beyond the transition period you have committed to fund the remainder of such programmes until the end of this Parliament (expected in 2022) but not beyond.

We note that the UK is involved in a number of 'multi programmes' but that this involvement will no longer be possible from 29 March in a 'no deal' scenario. We note that it is your understanding that the European Commission are assessing these programmes to determine whether or not they will continue if the UK can no longer participate.

We are now content to release this Report from scrutiny, and close correspondence on this issue.

13 March 2019

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL REPORT ON THE FUNCTIONING OF THE EUROPEAN CARBON MARKET (15721/18)

Letter from the Chairman to Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy

Thank you for your Explanatory Memorandum (EM) on the above Report, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

We note that, unlike most Member States who check all reports, the UK only checked 59 percent of annual emission reports for completeness. Why was this? How are you ensuring that installations are complying with the requirements of the EU ETS?

We also note that there was data missing for 79 UK installations "based on newly discovered historic errors." Please provide further details of what these errors were, how they occurred, what impact this has had and what steps have been put in place to ensure this does not happen again.

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

20 February 2019

Letter from Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth

Thank you for your letter of 20 February 2019. I have noted that you have raised the following questions in relation to the above report and I will answer your questions below in turn.

Unlike most Member States who check all reports, the UK only checked 59 percent of annual emission reports for completeness. Why was this? How are you ensuring that installations are complying with the requirements of the EU ETS?

All annual emission reports submitted to UK regulators of the EU ETS must be technically complete as the Regulators' information system used to receive these data will not accept a report as complete unless it is complete. The Environment Agency's approach to the review of annual emissions reports is in line with documented instructions and European Commission guidance[1] .All annual emissions reports are subject to a thorough risk assessment and those with the highest risk of containing errors or highest potential impact on the integrity of the scheme are reviewed in detail. This ensures a proportionate approach balancing the need to ensure the integrity of the system whilst minimising costs to businesses.UK Regulators are required by Government to recover the costs of their administration and regulation of the scheme from operators.

That there was data missing for 79 UK installations "based on newly discovered historic errors." Please provide further details of what these errors were, how they occurred, what impact this has had and what steps have been put in place to ensure this does not happen again.

There was some missing - 43 installations (from a total of 825 UK installations, excluding around 225 hospitals and small emitter opt out installations) but as some data were missing for more than one year this gives rise to 79 instances or missing data that is some installations discovered errors relating to several years.

All annual emission reports are subject to third party verification following a site visit by a verifier. Errors are most often discovered during the process of verification and the operator must correct those errors and notify their regulator as soon as possible. UK Regulators of the EU ETS are also required by EU and UK law to determine an operator's emissions where there has been an error which impacts on the reported emissions for their installation. This corrective work is undertaken as soon as practicable following notification of the errors. In addition, where under-reporting has occurred, the operator must surrender any additional allowances to address the deficit between the incorrect and corrected reports.

Errors can result from a variety of reasons including using the wrong emission factor or finding an emission source not previously included. Regulators work with operators to avoid repetition of errors, providing advice and guidance on common sources of errors each year. The Environment Agency also coordinates with verification bodies, other UK Regulators of the EU ETS and the United Kingdom Accreditation Service to ensure promulgation of lessons learned from verification every year.

Operators that make mistakes in their reports are liable to civil penalties which are determined in accordance with UK Regulations and Regulators' enforcement and sanctions policies. It is normal for a civil penalty to be served where errors lead to an under reporting of emissions and, to ensure transparency and provide a further deterrent to non-compliance, the Environment Agency publishes a list of operators in England that have received civil penalties for reporting errors. The Environment Agency aims to ensure penalties for reporting errors are issued within 12 months of these being reported although some complex cases can take longer.

I hope this information satisfies the questions raised.

11 March 2019

Letter from the Chairman to Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth

Thank you for your letter on the above Report, dated 11 March, which was considered by our Energy and Environment Sub-Committee at its meeting on 27 March.

In relation to the UK being one of only four Member States that does not check all annual emission reports for completeness, we note your explanation that the European Commission's guidance does not oblige you to do so and that you do review the reports that are considered to have the highest risk of containing errors.

In our previous letter, we raised concerns that there were 79 cases of missing data in UK emissions reporting (out of a total of 131 across the EU). We note your explanation that errors can result from "using the wrong emission factor or finding an emission source not previously included" and that they tend to get picked up through site visits by third party verifiers. We note that Regulators work with operators to avoid repetition of errors and to share lessons learned through verification, and that operators may be subject to civil penalties where mistakes have been made in their reports. We remain

[1] https://ec.europea.eu/clima/policies/etc/monitoring_en#tab-0-1

concerned, however, about the scale of historic errors that were found and would suggest it makes the case for checking all emissions reports. Do you intend to take any further action to ensure all operators are fully complying with their obligations under the EU Emissions Trading System? How does the figure of 79 compare to previous reporting years? How many of the 79 cases resulted in civil penalties? Do these errors have an impact on the accuracy of the UK's reporting under international climate obligations?

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

27 March 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE QUALITY OF WATER INTENDED FOR HUMAN CONSUMPTION (RECAST) (5846/18)

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter dated 14 November 2018.

Since the start of 2019 the negotiations for this directive have been moving swiftly as the Romanian Presidency has prioritised the file. The Presidency, with the backing of the Commission, have put a General Approach on the Directive on the draft agenda for the upcoming Environment Council on 5 March. We expect that this file will be discussed at COREPER on Friday 22 February though we have not yet received confirmation.

I am therefore writing to you with an update, and would be grateful if you could consider granting clearance from scrutiny or provide a waiver. The proposals for the Directive have been changing at pace and the frequent revisions to the text have made it difficult to answer all of the questions you raised fully. I will address the Committee's remaining concerns shortly after the March Environment Council when the final text has been confirmed. Should the agenda change and the General Approach on the file be postponed until the June council I will inform the Committee immediately. My updates below are based on the latest text as of 11 February 2019.

Update on discussions over the parameters that should be set by the Proposal.

You have previously asked for an update on discussions about the Government's preference for maintaining a risk-based approach to monitoring perfluorinated compounds, rather than adopting the levels recommended by the WHO or proposed by the Commission. The latest drafting has amended the text to allow a risk-based approach to determine whether monitoring of per- and polyfluoroalkyl (PFAS) substances is required, while ensuring human health is protected. This change is helpful. We continue to engage with the Presidency on which substances have been shown to be a concern.

With respect to the chemical parameters to be monitored in drinking water, the Government's position is that parameters should be included if they have been shown through scientific evidence to give health concerns. We have also been pushing for some changes to allow us to exclude parameters from monitoring based on risk assessment that shows they do not pose a threat to our water. The Government is in agreement with the majority of parametric limits being suggested and where we had concerns there have been helpful changes made to the recent drafts of the Presidency text. There are some substances where the limits suggested are below, i.e. more stringent than, current WHO recommendations or where substances have been included on the basis of the precautionary principle which are not recommended by the WHO, for example endocrine disrupters.

The main outstanding concern from the UK is the proposed parametric value for lead, which would require the current limit to be halved within the next 15 years from 10µg/l to 5µg/l. At a working level, my officials are continuing to push for the text to match the WHO recommendations which recommended retaining the standard of 10µg/l for lead but with countries putting in place an action plan to achieve concentrations as low as reasonably practicable. While we acknowledge the health implications of lead in drinking water, the UK would likely need to remove a significant amount of existing lead piping in older properties to meet the more stringent level. This could cost billions of pounds for the water industry and consumers. Therefore we need the flexibility at Member State level to set the most appropriate action plan to meet our national circumstances.

Outline impact assessment of the potential costs of the proposal

Officials have been working to understand the implications of the proposed text. We are still seeking to provide the committee with an assessment of cost impacts at the end of March, once all text has

been finalised and the full implications of the wording are known. Currently the text is changing rapidly so that a full impact assessment is not possible.

Provisions on access to water and whether they breach the principle of subsidiarity

We support the principle of improving access to water. However, we share concerns with a number of Member States that the article likely does not respect subsidiarity. The Presidency has made numerous amendments to this Article but these still do not go far enough to address our concerns. Initially we have been pushing to have the contents of this Article in a recital but would accept changes to Article 13 that allowed the UK and other Member States discretion to decide how to improve access to water at a local level. We believe that our ambition set out in the 25 Year Environment Plan to increase access to water refill stations already meets the spirit of the objective.

Standards for materials and substances in contact with drinking water

Another priority for the UK is to ensure that standards for materials and substances in contact with drinking water are maintained or improved through this recast. The UK along with eight other Member States have recently put forward a proposal for achieving a harmonised approach to standards as opposed to the current situation where there is different national legislation in place, and the Government is working towards this proposal being adopted by the Council.

Providing information to consumers and the public

We have welcomed changes to this article that allow for information to be provided online or in other formats. England and Wales already have a website for water companies to provide relevant information as set out in the directive. It is unlikely that major changes to this will be needed to provide additional information. We are still analysing the impact of small water suppliers. The latest changes to the text have also removed the text which required information on the cost or price of water per litre which has been welcomed by Scotland and Northern Ireland since they have a different approach to charging for drinking water and would have found this difficult. We believe the information provided to consumers should be focussed on drinking water quality, aligning with the key objective of the Drinking Water Directive. We continue to push for the removal of the requirement to provide certain pieces of information, such as energy consumption of very large suppliers.

19 February 2019

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State

I am writing with an update to my recent letter, dated 19 February 2019. As mentioned in that letter, discussions on the recast of this Directive have been moving swiftly and there are a few points discussed at COREPER on 22 February that I would like to update the Committee on.

The Presidency has now confirmed that the Drinking Water Directive recast will be on the agenda for General Approach at the 5 March Environment Council.

Parametric Value for Lead

While recognising the evidence showing health implications of lead in drinking water, the UK had concerns with the previous Presidency text that required Member States to meet a lower parametric value of 5µg/l in the 15 year timeframe, due to the costs. At COREPER, Hungary tabled an alternative proposal which set the limit at 10µg/l but requires Member States to "use their best endeavours to meet the aspirational lower value of 5µg/l by 15 years of the Directive coming into force". The proposal has been accepted by the Presidency and will go to the 5 March Environment Council to agree General Approach. This proposal is similar to the recommendation from the World Health Organisation but additionally sets a timeframe for Member States to aim for. This proposal is softer and was supported by a number of Member States who has previously raised concerns and the UK agreed that it was preferable to the Presidency text. We are assessing the full impacts of this text to ensure that it meets our negotiating principles before voting.

Article 13: Access to Drinking Water

On Article 13 'access to water', opinion has been divided amongst Member States. The current text is a compromise which loosens the obligations on Member States from the original Commission proposal. At COREPER most Member States indicated that the text was a good compromise given the division and that reopening this would be problematic. The UK raised our concerns on this as did other Member States, such as Germany, Netherlands and Austria. Conversely other Member States, such as France, Spain and Greece would still prefer it to be strengthened. Because of this balance, it is unlikely that further compromise will be agreed. We believe that there are a number of initiatives in the UK which already meet the requirements of this Article and are undertaking final analysis of the impacts of the compromise text. We are content that this Article does not create a free-standing right to water.

Other Articles

We continue to have support on our proposals for Articles 10a and 10b and are content that the rest of the Directive is in line with our negotiating principles.

26 February 2019

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary under Secretary of State

Thank you for your letters on the above Proposal, dated 19 and 26 February, which were considered by our Energy and Environment Sub-Committee at its meeting on 27 February.

Thank you for providing an update on the negotiations, which we note have been progressing at speed.

Thank you for agreeing to provide us with your assessment of the potential impact of the Directive once it has been finalised; we note that a detailed assessment is not possible at this stage given that significant changes are still being made to the Proposal.

We note that the latest version of the text allays some of your concerns about the parameters being set for water quality, including allowing a risk-based approach to determine whether the monitoring of per- and polyfluoroalkyl substances is required. We note that you have been arguing more broadly for the ability to exclude parameters from monitoring where a risk assessment shows they do not pose a threat. Have you been successful in agreeing this change? We note that you now support the majority of parametric limits set, but that there are some substances for which more stringent limits have been set than those recommended by the World Health Organization. Are you willing to accept these tighter limits?

Your letter of 19 February made specific reference to the proposed limit for lead, which could cost the water industry and consumers in the UK billions of pounds as a result of having to replace lead piping. We note from your update letter of 26 February that the wording of this aspect of the Proposal has now been amended, raising the proposed value from 5µg/l to 10µg/l (while requiring Member States to use their best endeavours to meet a 5µg/l limit within 15 years) and that this is in line with World Health Organization recommendations (with the additional rigour of a timeframe). We note that you prefer this wording to the previous wording (which would have required Member States to meet the 5µg/l limit within 15 years) and that you are "assessing the full impacts of this text to ensure that it meets…[your] negotiating principles before voting." Please provide the conclusions of that assessment. While we understand that there would be significant financial costs to the UK if it had been required to meet the 5µg/l limit, "best endeavours" within 15 years does not sounds very aspirational. Please provide a summary of the extent to which levels of lead in drinking water in the UK exceeds 5µg/l and what plans the UK has to reduce lead levels.

We note from your 26 February letter that you continue to have concerns that the provisions on access to water in this Proposal do not respect subsidiarity but that you do not believe further compromise on this aspect of the Proposal is likely and that you believe the UK is already meeting the requirements it would create.

Thank you for telling us that you have proposed that the Directive includes harmonising standards for materials and substances in contact with drinking water. Please provide more details of your proposal and the impact you hope it will have, as well as an update on whether you secure agreement from other Member States on including this in the final Directive.

Thank you for explaining that you welcome the changes that have been made to requirements to provide information to the public, including allowing for information to be provided online and removing the need to provide the price of water per litre. We note that you are still seeking changes to this aspect of the text, including the removal of the requirement to provide the energy consumption of large suppliers. Why are you objecting to this being included? Again, please keep us updated on these negotiations.

We note your request for the Proposal to be cleared from scrutiny, or for a waiver to be granted. Given that your letter of 26 February states that you are content that the majority of the Directive is in line with your negotiating position and that the changes to the lead parameters mean that you are considering whether you could support that aspect of the Proposal, we are content to grant a waiver to allow you to vote in favour of the Proposal if your final assessment judges the Proposal to be acceptable. We have retained the Proposal under scrutiny, however, and look forward to an update (and a response to the questions posed in this letter) following the Environment Council meeting on 5 March.

27 February 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE CONSERVATION OF FISHERY RESOURCES AND THE PROTECTION OF MARINE ECOSYSTEMS THROUGH TECHNICAL MEASURES, AMENDING COUNCIL REGULATIONS (EC) NO 1967/2006, (EC) NO 1098/2007, (EC) NO 1224/2009 AND REGULATIONS (EU) NO 1343/2011 AND (EU) NO 1380/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, AND REPEALING COUNCIL REGULATIONS (EC) NO 894/97, (EC) NO 850/98, (EC) NO 2549/2000, (EC) NO 254/2002, (EC) NO 812/2004 AND (EC) NO 2187/2005 (6993/16)

Letter from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 14 November.

I note your comments on the gadoid percentage tolerance limit of 20% in a directed fishery that features in the latest overhaul compromise document, before vessel operators must switch to the higher default 120mm mesh size. Please note it was the UK that advocated adherence to the Commission's proposed figure of 10%. The Presidency was looking for a mandate position that most Member States could agree to – which was the 20% figure preferred by the majority. It was also the UK that cautioned against the even higher tolerances that some were advocating.

It is important to note, however, that mesh size specifications and related directed fishery catch requirements are no longer the only factors that influence selectivity. They need to be set in the broader context of the landing obligation, where the entire catch must be accounted for and counted against quota – which provides a key driver for optimising selectivity in directed fisheries. We also have agreement in the overhaul on the principle of establishing the catch requirements to define each directed fishery using derogated mesh sizes at regional level.

The handling implications for our EU exit legislation due to the lack of progress on this overhaul dossier relate to the different timelines of the respective legislative processes. In a 'no-deal' scenario, the final tranche of our statutory instruments made under the Withdrawal Act to make all currently extant EU fisheries regulations operable will need to be laid in January, in order to be in place before the end of March. As this overhaul of the technical conservation measures rules has not been concluded this year as we had hoped, we will be working on the basis of the existing, soon to be overhauled and repealed, EU legislation. Assuming that the overhaul is completed in good time in the first quarter of next year (which we believe is achievable) that would involve incorporating the new technical conservation rules into UK law after March using the Fisheries Bill, or potentially Withdrawal Act, depending on the circumstances in which we leave the EU, and when they come into force.

21 January 2019

Letter from the Chairman to George Eustice MP, Minister of State for Agriculture, Fisheries and Food

Thank you for your letter, dated 21 January, which was considered by our Energy and Environment Sub-Committee at its meeting on 6 February.

Thank you for explaining that the UK has argued for stricter rules on mesh sizes, but that the Presidency's position is supported by a majority of Member States.

Thank you for explaining how the delay in agreeing this Proposal is impacting on UK legislation to prepare for Brexit. We note that statutory instruments will need to be laid this month in order to make EU fisheries regulations operable in a 'no deal' scenario, and so these will need to be based on the current regulations and not the reforms being discussed as part of this Proposal. We note that, depending on timings, changes agreed as part of this Proposal could be incorporated into the Fisheries Bill.

In your previous letter (dated 1 November) you stated that you expected trilogues on this Proposal to restart in the New Year. Once these have restarted, please provide the Committee with an update on progress made and on any concerns that arise.

We have decided to retain this Proposal under scrutiny and look forward to a reply to this letter in due course.

6 February 2019

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State, Department for Environment, Food and Rural Affairs

I am writing to confirm the outcome of a trilogue on 13 February where a provisional political agreement to complete this dossier was reached. This will now proceed for formal adoption by both the European Parliament (EP) and the Council. The agreement of the key points that remained for resolution at that trilogue was as follows.

Pulse beam trawl

The agreement featured a ban on the use of pulse fishing gear from 1 July 2021, following a phase-out period to allow the sector using the gear to adapt. In addition restrictions on scientific studies were agreed. Such studies must be time limited, and pre-notified to the Commission if more than six commercial vessels are to be used. The Commission may seek advice from the Scientific, Technical and Economic Committee for Fisheries (STECF) to confirm the intended level of involvement is justified. Additionally for electric pulse trawl studies a specific protocol linked to a research plan must be reviewed or validated by the International Council for the Exploration of the Sea (ICES) or STECF.

These new conditions for scientific studies are key to this agreement, as we anticipate the effect in terms of pulse trawling when the new regulation comes into force will be to require the Dutch fleet to adhere to the 5% of their beam trawl fleet that can be authorised to use pulse gear under the derogation conditions originally agreed by Council. The Dutch are considering the implications of this for their fleet, but it is anticipated this will mean a drop from 84 vessels they have authorised to use pulse methods, to around 12 vessels operating during the phase out period.

As this means there will be far fewer vessels utilising the pulse method during the phase out period, and this culminates in a ban, we have felt able to support this deal. To set this into our UK context, as you may be aware from recent announcements, EU pulse phase out period notwithstanding, we do not intend to authorise the use of electric pulse beam trawl technology by foreign vessels in UK waters post EU exit (and will review the few UK authorisations). This is established in the EU Exit SI, which will apply if the UK leaves the EU without a negotiated deal, or after any implementation period included in a deal.

Mitigation measures for sensitive species

Annex XII of the overhaul proposal has had an adjustment to enhance mitigation measures for sensitive species (whales, dolphins and porpoises and seabirds) with an express requirement, on the basis of scientific advice, that additional mitigation measures must be adopted on a regional basis (or in a specific area of concern) through the regionalisation procedure as set out in Article 18.

Overall dossier content

As the pulse trawl issue has predominated the closing stages of this provisional agreement, it is worth re-capping on the overall content of the dossier:

- Technical measures related to how, where and when fishermen may fish, as well as determining the type of gear for directed fishing and dealing with accidental catches.
- Regionalisation of technical measures decisions to address regional fisheries issues.
- Provisions for the protection of the marine ecosystem and marine habitats
- Addressing unwanted catches of juvenile fish, by-catches of mammals like whales, dolphins and porpoises, and marine seabirds.
- A phase out period culminating in a ban on the use of pulse fishing gear from 1 July 2021.

Anticipated timing for adoption

With that agreement on the pulse trawl element, and the development of all the aspects of the features of this dossier, this deal is acceptable for the UK's interests, and we feel able to support its progress to formal adoption. I note you retain the dossier under scrutiny, so for the purposes of the Coreper consideration our position was set in the context of a positive scrutiny reserve, supportive of the substance. This is likely to proceed quickly to enable the EP to complete the dossier before re-election begins this year, so we anticipate the aim will be to complete during March.

As a guide to scheduling priorities for your consideration, our understanding is the deal will be scheduled for adoption by the PECH committee on 7 March, with a view to subsequent EP plenary adoption – there are two plenary sessions in March that this dossier may be then scheduled for, either for w/c 11 March or w/c 25 March, with the Council approval by means of an 'A point' at any imminent Council after successful EP adoption on the basis of the provisional agreement reached.

4 March 2019

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary under Secretary of State

Thank you for your letter, dated 4 March, which was considered by our Energy and Environment Sub-Committee at its meeting on 6 March.

Thank you for providing an update on February's trilogue discussion on this Proposal. We note that provisional agreement was reached, and that the Proposal will now proceed for formal adoption by the Parliament and Council.

Thank you for explaining that the agreement reached included a ban on pulse fishing gear from July 2021, following a phasing out period, and restrictions on scientific studies using pulse trawls. We note that when the UK leaves the EU you do not intend to authorise foreign vessels to use electric pulse beam trawls in UK waters (and that you will review UK authorisations).

Thank you for explaining that the agreement also included enhanced measures to protect sensitive species, to be implemented on a regional basis based on scientific advice.

Thank you for explaining that you now support the Proposal's adoption, both in relation to pulse trawls and the other aspects of the dossier, which you believe "is acceptable for the UK's interests." We are, therefore, content to release the Proposal from scrutiny. Please write to us again when the Proposal is finally adopted, to provide the Committee with a final update.

6 March 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A MULTIANNUAL PLAN FOR FISH STOCKS IN THE WESTERN WATERS AND ADJACENT WATERS, AND FOR FISHERIES EXPLOITING THOSE STOCKS, AMENDING REGULATION (EU) 2016/1139 ESTABLISHING AMULTIANNUAL PLAN FOR THE BALTIC SEA, AND REPEALING REGULATIONS (EC) NO811/2004, (EC) NO 2166/2005, (EC) NO 388/2006, (EC) 509/2007 AND (EC) 1300/2008 (7245/18)

Letter from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 5 December. I note that the file was cleared from scrutiny, which I am grateful to the Committee for, and further information was requested.

I am pleased to inform you that trilogues on this dossier have reached agreement. On 12 December COREPER sought confirmation from Member States on a final compromise text with a view to political adoption of the official text once it is published. This is expected to be in March 2019. We indicated our support for the compromise text.

To address your points on the application of maximum sustainable yield (MSY), I would like to highlight the benefits provided by the application and adoption of MSY ranges, which is the way that the International Council for the Exploration of the Sea (ICES) is increasingly providing its advice. The upper end of MSY ranges is calculated to deliver no more than a 5% reduction in long term yield compared to the MSY point. This can be used as a "margin of error" that accounts for fishing over the MSY point at levels that are not unsustainable, thanks to the ICES precautionary approach of capping the upper end of the range. The ranges are also extremely helpful in reconciling different fishing efforts on stocks in a mixed fishery.

MSY is a benchmark for sustainable fishing set internationally, through the UN Convention on the Law of the Sea and most recently through the Sustainable Development Goals. Especially after Brexit, as an independent coastal state, we intend to continue our standing commitments to our international obligations such as restoring and maintaining fish stocks to levels that can produce MSY. Alongside our international obligations, we have also renewed our commitment to recover and maintain stocks at MSY levels through the 25 Year Environment Plan and the Fisheries White Paper, and the Fisheries Bill objectives.

The UK Government remains committed to continuing to work under the principle of MSY as a benchmark for sustainable fishing, and restore stocks to healthy conditions as quickly as possible, including taking a precautionary approach where necessary.

To answer your requests for updates on progress on seabass and proxy data, I am pleased to inform you that seabass has been successfully included in the multiannual plan (MAP), to cover divisions 4b, 4c, 6a, 7a, 7b, 7d–h, 7j, 8a, 8b, 8c and 9a. The inclusion of proxy points as an alternative to an automatic precautionary approach unfortunately has not gone through in the final compromise text. We

supported this as using proxy points can lead to more robust science based decision making rather than a fixed 20% cut on total allowable catch based on the previous year's fisheries opportunities.

The PECH Committee's proposal that a stock's transition to MSY by 2020 could instead be achieved over a period of three years was not accepted by the Commission and this proposal was dropped. The final compromise text makes a clear commitment to having target fishing mortality for the stocks under the MAP in line with the ranges of FMSY as soon as possible, and on a progressive, incremental basis by 2020.

On recreational fisheries, we are happy with the final compromise text, as it reflects already existing obligations from the Common Fisheries Policy on control and enforcement of recreational fishing. The measures required under the MAP are therefore aligned with those currently in place, including on the monitoring and collection of data.

8 January 2019

Letter from the Chairman to George Eustice MP, Minister of State for Agriculture, Fisheries and Food

Thank you for your letter of 7 January 2019 on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 23 January.

Thank you for informing us that this dossier was agreed by Member States on 12 December, and that you supported the text.

We note your explanation that the Maximum Sustainable Yield (MSY) ranges calculated by the International Council for the Exploration of the Seas ICES) help to offset the risk of accidental stock depletion; however, we remain worried by the allowance to exceed MSY, as this is a sure way to deplete the stock in question. We also note that the UK's domestic and international fishing commitments will continue to relate to MSY benchmarks in the future.

We note the inclusion of seabass in the Multiannual Plan (MAP) as you describe.

We also note that you support the use of proxy data rather than the precautionary approach where there is limited scientific information regarding the state of a particular stock as it entails more robust science-based decision making, but that this provision was not included in the final text.

We welcome the rejection of the PECH Committee's proposal that a stock's MSY could be achieved over a period of three years, and the stated commitment to reaching MSY as soon as possible.

We note that the final text does not extend pre-existing obligations regarding recreational fisheries.

We are now content to close this correspondence.

24 January 2019

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON UNFAIR TRADING PRACTICES IN BUSINESS-TO-BUSINESS RELATIONSHIPS IN THE FOOD SUPPLY CHAIN (7809/18)

Letter from David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare, Department for Environment, Food and Rural Affairs

Thank you for your letter of 12th December 2018.

My previous correspondence stated that a vote on the proposal of the European Commission was anticipated at the AgriFish Council on 17-18 December. However, the fifth trilogue discussion, held on 12 December, failed to produce a compromise text and, resultantly, the Directive was not on the agenda for the December AgriFish Council.

A sixth trilogue discussion was, however, arranged for 19 December and the Parliament and Council reached agreement on a compromise text. A date for the final Council vote is yet to be confirmed. It is possible this will take place at the SCA meeting on 21 January or AgriFish Council on 28 January. I am therefore requesting clearance from scrutiny.

I have detailed the final position of the Directive text as per the outstanding issues from my last letter below.

Scope of the Directive

On the question of scope, the final threshold for the 'mid-range' business category (which sets the boundary for the Directive's application) has been agreed at €350 million annual turnover. The dynamic

'step' approach, described in my previous letter, has been adopted. The various sub-categories are exclusively determined by annual turnover; divided into business with respective turnovers of less than €2 million, between €2-10 million, €10-50 million, €50-150 million and €150-350 million.

We consider this approach to be a sensible one and the upper limit to be acceptable. We are aware that other like-minded Member States also consider this outcome to be a positive compromise.

Territorial extension of the Directive

The original Directive applied only to buyers established in the EU and covered any supply arrangement with a seller established inside or outside of the EU. The final Directive has been amended to also apply to relationships where a buyer is established outside of the EU (i.e. third country buyers), and trades with a seller established inside the EU. Our concerns about the practicality of enforcing this remain. Exactly what is expected of enforcement authorities in third countries is still unclear, and the Commission will need to provide further clarification about how they expect third country enforcement to operate. The timeline for this information being provided is uncertain, but we will need to wait until further detail is available before we can undertake any detailed planning.

This extension does create long-term implications for the UK. Our 12 largest retailers are already regulated by the Groceries Supply Code of Practise in their dealings with EU based suppliers, so the applicability of this Directive to buyers beyond the borders of the EU introduces an additional (and different) set of laws.

Transposition period

With respect to the transposition period, the compromise text has retained the deadlines of 24 months for transposition and publication of laws and 30 months for those laws to take legal effect. If the current timetable for the general Brexit Implementation Period remains as planned, this will mean the UK will not be required to implement this Directive.

Implementing the Directive

As mentioned above, given the proposed dates for transposition and the Brexit Implementation Period, it is unlikely that the UK will need to implement this Directive. However, even as a third country there may still be some requirement for the UK to undertake enforcement activities.

I note your concerns about planning for how the UK would enforce any requirements. The new statutory codes of practice, which we propose to introduce under powers in the Agriculture Bill, will also require an enforcement regime and body. Decisions on whether this is an existing body (such as the Rural Payments Agency) or a new body will be influenced by the scale and nature of the statutory codes to be introduced, which will be subject to consultation. It is likely that the same body would also undertake enforcement of any requirements resulting from the Directive on Unfair Trading Practices. I can assure you that we will conduct a full assessment of the requirements and costs of enforcement should any result from the Directive; this includes consideration of the most appropriate enforcement body.

8 January 2019

Letter from the Chairman to David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter of 8 January 2019 on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 16 January.

Thank you for your explanation that a vote did not take place at the December AgriFish Council, but that agreement on a compromise text was subsequently reached and a vote may now take place on 21 or 28 January.

We note that the upper threshold for the application of the Directive has been agreed at €350 million, which is significantly below the €1 billion figure that you previously stated would stop you voting in favour of the measure. As per our previous correspondence, please set out the impact this threshold – and the intermediary sub-category thresholds – would have on the UK, for example in terms of the number of businesses affected, and the costs vs benefits to the Government and UK businesses, given that food retail trading protections are already in place in the UK. In addition, has any consideration been given to whether the imposition of sub-categories may affect trading behaviour as companies seek to stay within a certain classification?

We also note that the Directive has been extended to apply to third country buyers, which means that, post-Brexit, some larger UK retailers could face duplicate and / or contradictory rules. To what extent are any differences between the existing UK regime and the proposed Directive material, and what degree of regulatory burden would this present to those retailers?

Thank you for explaining that, if the UK were required to implement the Directive, enforcement activity would likely be conducted by the same body responsible for enforcing the Government's proposed new statutory codes of practice, and that this may be an existing or new body depending on the outcome of a public consultation. We welcome your assurance that a "full assessment of the requirements and costs of enforcement" would take place, though note that at least a high-level assessment of the potential costs would be necessary to form a negotiating position. We also note the uncertainty regarding the third country enforcement requirements that will apply to the UK, should the Directive be agreed, regardless of whether the UK has to implement the Directive itself.

Thank you for explaining that the agreed text includes a 24 month transposition deadline with a further 6 months for the laws to take effect, which means the UK will not be required to implement the Directive if a Brexit transition period ends on 31 December 2020. However, we believe your negotiations must allow for the possibility of an extension to the proposed transition period, and reflect the fact that the territorial extension of the Proposal means it will have direct implications for the UK post-Brexit.

We note that you have requested clearance from scrutiny to allow for a potential vote later this month. Although we recognise that you have now been able to provide further clarity regarding the size of businesses affected by the Proposal and give some sense of the means by which the Directive would be enforced, you have not provided a view on whether the costs of the Directive would exceed the benefits to UK businesses, or a high-level assessment of the potential enforcement costs to the UK whether or not it implements the Directive. Our view therefore remains unchanged, and we are not willing to clear the Proposal from scrutiny or grant a scrutiny waiver.

Please provide an update after the Council vote, in addition to responding to the points above. We look forward to a reply to this letter within 10 working days.

16 January 2019

Letter from David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter of 16 January. I am writing with a brief update on the progress of the Directive and I have also responded to your specific queries below.

At the Special Committee on Agriculture meeting on 14 January, Member States were asked for comments on the compromise text, with the Presidency hopeful of securing an indicative final agreement. The UK lodged our scrutiny reserve in the discussion, with other Member States demonstrating near unanimous support. The Presidency were satisfied that they had a sufficient majority to confirm to the Parliament that agreement had been reached.

The Commission have subsequently initiated the jurists linguists process, which indicates no further substantive changes to the Directive text are expected.

The European Parliament Committee on Agriculture voted to agree the Directive on 23 January. The Directive is scheduled to be submitted to the Parliament for approval in the plenary session on 19 March.

The anticipated Council vote on 28 January was not held. It remains unclear when the new Romanian Presidency intends to include the Directive on an AgriFish Council agenda. Given the expectation that the Directive will be voted on in the March Parliamentary plenary, it is likely that the Directive will be included for approval on the agenda of the March AgriFish Council.

We note that the upper threshold for the application of the Directive has been agreed at €350 million, which is significantly below the €1 billion figure that you previously stated would stop you voting in favour of the measure. As per our previous correspondence, please set out the impact this threshold – and the intermediary sub-category thresholds – would have on the UK, for example in terms of the number of businesses affected, and the costs vs benefits to the Government and UK businesses, given that food retail trading protections are already in place in the UK. In addition, has any consideration been given to whether the imposition of sub-categories may affect trading behaviour as companies seek to stay within a certain classification?

As a useful indicator of the general impact of the increased upper limit, the Commission published an assessment of the extension of the Directive to the €350million threshold, largely created by extrapolating data from France. This concluded that the €350million cap would capture 98% of undertakings in the agri-food sector.

Quantifying the impact for the UK is difficult, as accurate statistics for the UK (specifically in relation to a threshold of €350million) do not exist. We do not currently have the resources available to undertake

the kind of detailed economic analysis required to produce reliable results. It is possible, however, to arrive at some provisional estimates using available information, but the accuracy and robustness of these estimates will be limited and they should only be considered indicative.

BEIS statistics state that 250 of the UK's food and drink manufacturers (3.4% of the 7,290 total) are large businesses (defined as having more than 250 employees i.e. 'non-SMEs' by the Commission's definition)[1]. In terms of the large UK food retailers, an estimated number is harder to establish, but we estimate there to be around 110 large food retailers operating in the UK[2]. This suggests that under the Directive's original SME/non-SME division, there would be around 360 UK businesses subject to the provisions of the Directive in their relations with suppliers.

Under the new proposal, where any supplier in the food chain is protected from a buyer in a larger category, it becomes even more difficult to arrive at reliable numbers. We are not aware of any available statistics which break down the UK food sector along the lines of the newly created classification system. In 2018, there were 126,000 farm businesses in the UK[3]. BEIS and ONS statistics reveal the number of food manufacturing businesses in the UK to be 7,290, and food retailers number around 55,193 (see footnote 2). So this gives an indicative estimate of supply-chain actors of around 188,483.

Beyond identifying this number, it is impossible to estimate how many relationships could be covered if the UK were to implement the Directive, because the pattern of trade between the various sub-groupings is unknown. Currently, the Groceries Code Adjudicator regulates the relationships between the UK's 12 largest retailers and approximately 10,000 of their direct suppliers. Comparing these two figures suggest that the number of businesses who would need to be compliant with the Directive would be far greater than those currently covered under existing domestic legislation.

In terms of the effect the introduction of sub-categories may have on trading behaviour, this is impossible to predict.

We also note that the Directive has been extended to apply to third country buyers, which means that, post-Brexit, some larger UK retailers could face duplicate and / or contradictory rules. To what extent are any differences between the existing UK regime and the proposed Directive material, and what degree of regulatory burden would this present to those retailers?

As mentioned in my previous letter, quite how the extra-territorial enforcement is envisioned to work is not made clear in the Directive. Resultantly, the regulatory burden is difficult to estimate. The legal text suggests that the enforcement agency in the country of the complainant would be responsible for investigating, and potentially issuing fines to, businesses based in the UK. There remain some questions regarding the operational feasibility of this approach.

With respect to the regulatory burden on UK retailers, an in-depth analysis of the impact of the Directive on UK retailers has not been undertaken. In general (notwithstanding the questions around practical application) any duplication will only affect the twelve retailers currently regulated under the Groceries Supply Code of Practice (GSCOP). Whilst the prohibitions contained in the GSCOP and the Directive are broadly similar, there are some notable differences. The GSCOP contains an obligation for a buyer to pay for goods on time, meaning the payment period terms agreed to in the contract must be abided by. The Directive adopts a different approach and introduces a statutory 30-day deadline for payment for perishable goods and 60-day deadline for non-perishable goods. The Directive also includes a series of UTPs that are only permissible if agreed in clear terms in a contract, and this list of UTPs includes activities that UK retailers and their suppliers may engage in, such as returning unsold produce which can be used for further processing.

7 February 2019

Letter from the Chairman to David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter of 7 February 2019 on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 6 March.

Thank you for your update on the progress of the Directive, including the fact that at the meeting of the Special Committee on Agriculture on 14 January you lodged your scrutiny reserve while the

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[1] Business Population Estimates2018, Food and Beverage Manufacturers

[2] According to ONS Annual Business Survey data, we know that in 2017 there were 30,808 enterprises in SIC code 47.11 (retail sale in non-specialised stores with food, beverage or tobacco predominating) and 24,385 enterprises in SIC code 47.2 (Retail sale of food, beverages and tobacco in specialised stores). In BEIS Business Population Estimates we know that 0.2% of businesses in SIC code 47.2 are large businesses. Extending this proportion over the combined number of enterprises in 47.11 and 47.2, we estimate there to be 110 large retailers in the UK

[3] https://www.statista.com/statistics/319325/number-of-farmers-in-the-uk/

proposal received "near unanimous support" from other Member States; and that the anticipated Council vote on 28 January was not held, but it is likely that it will be approved at the March AgriFish Council.

We note that you are unable to evaluate the impact the €350 million threshold would have on the UK, beyond an estimation that the number of businesses which would have to comply with the Directive is "far greater" than those covered by existing domestic legislation. We note that you have not provided an assessment of the costs vs benefits of the proposed Directive to the Government and UK businesses. And we note your statement that it is "not possible to predict" the effect that the introduction of sub-categories may have on trading behaviour. Although we note that the Commission published an assessment of the impact of the revised threshold, we question whether basing such an assessment on data from a single Member State is a robust enough methodology to justify the creation of crossEU legislation.

We appreciate that the UK will not be required to implement the Directive if a Brexit transition period ends on 31 December 2020, and as such it would not be proportionate for you to conduct your own impact assessment of the Directive at this stage. However, please clarify what impact assessment and implementation planning you would undertake in the event a Withdrawal Agreement with the EU is reached and the transition period is subsequently extended, thus requiring the UK to implement the Directive.

In relation to the impact of the Directive on UK companies post-Brexit, we note that you believe there to be "questions regarding the operational feasibility" of enforcement agencies in EU-27 countries investigating and issuing fines to third country businesses. Please explain your reservations, and whether anything is being done to resolve them as the Directive is finalised.

Thank you for explaining the differences between UK legislation in this area and the conditions in the Directive that will affect the twelve UK retailers regulated by the Groceries Supply Code of Practice (GSCOP), including the deadline for payment and differences regarding what activities are considered to be 'unfair trading practices'. Do you intend to modify the GSCOP so that it is aligned to this Directive? If not, how do you intend to clarify to those twelve retailers which obligations apply in which circumstances if they are trading with EU businesses post-Brexit?

Given that you are still unable to provide an assessment of whether the costs of the Directive would exceed the benefits to UK businesses, or an assessment of the potential enforcement costs to the UK, we are not willing to clear the Proposal from scrutiny or grant a scrutiny waiver.

Please provide an update after the Council vote, in addition to responding to the points above. We look forward to a reply to this letter within 10 working days.

6 March 2019

Letter from David Rutley MP, Parliamentary Under Secretary of State for Food and Animal Welfare

Thank you for your letter of 6 March. I have answered your specific points in turn below.

I would also like to take the opportunity to provide an update on the political progress of the Directive. The Directive was put to a plenary vote in the European Parliamentary session on 12 March – where it was agreed with an overwhelming majority (589 votes in favour, 72 against, nine abstentions).

It is expected to be included as a non-discussion point on the agenda for the Special Committee for Agriculture meeting on 25 March, and to be voted on in a General Affairs Council meeting on 9 April. As I have previously explained, unanimous support is expected. On the existing timetable for the United Kingdom's departure from the European Union, we would not expect for UK ministerial representation at the April General Affairs Council meeting.

Final signature by the Presidency and the Parliament is expected to take place in Strasbourg on 17 April.

We appreciate that the UK will not be required to implement the Directive if a Brexit transition period ends on 31 December 2020, and as such it would not be proportionate for you to conduct your own impact assessment of the Directive at this stage. However, please clarify what impact assessment and implementation planning you would undertake in the event a Withdrawal Agreement with the EU is reached and the transition period is subsequently extended, thus requiring the UK to implement the Directive.

If a final Withdrawal Agreement is reached which includes a timeline whereby the UK will need to transpose this Directive, we would undertake a proportionate cost-benefit analysis on proposed implementation, including a Regulatory Impact Assessment, as per the Better Regulations guidelines. It is assumed that the consequences of this Directive may exceed the 'impact on business' threshold which

would mandate independent scrutiny of any analyses conducted, and if this proved to be the case then this would also be arranged.

In relation to the impact of the Directive on UK companies post-Brexit, we note that you believe there to be "questions regarding the operational feasibility" of enforcement agencies in EU-27 countries investigating and issuing fines to third country businesses. Please explain your reservations, and whether anything is being done to resolve them as the Directive is finalised.

As we currently understand it, businesses in third countries will be expected to comply with the Directive when buying from EU suppliers, but the UK Government is not held to any legal enforcement obligations.

This means if any UK retailers were in breach of the Directive, it would fall to enforcement authorities in the nation of the affected party to investigate and, if necessary, issue fines. Our reservations relate to how an enforcement body in an EU Member State intends to carry out such duties in practice.

We have voiced concerns about the limited information available regarding expectations to be placed on third countries, but it is possible that no concrete answers will be available until the process of Member State transposition has begun and these issues are considered in greater detail.

Thank you for explaining the differences between UK legislation in this area and the conditions in the Directive that will affect the twelve UK retailers regulated by the Groceries Supply Code of Practice (GSCOP), including the deadline for payment and differences regarding what activities are considered to be 'unfair trading practices'. Do you intend to modify the GSCOP so that it is aligned to this Directive? If not, how do you intend to clarify to those twelve retailers which obligations apply in which circumstances if they are trading with EU businesses post-Brexit?

The GSCOP was issued by the Competition and Markets Authority (CMA) and the powers to amend it lie with the CMA. There are no current plans to modify the GSCOP to align it with the provisions of the EU Directive. The GSCOP was established following a specific market investigation into the UK groceries supply chain. Resultantly, the provisions contained within it are well suited to the characteristics of our domestic situation. We would not want to see the GSCOP amended without the same level of analysis which informed its creation.

It is of course a possibility that, when the UK leaves the EU, a trading practice could exist involving a buyer in the UK and a supplier in the EU which would constitute a breach of the GSCOP and of the Directive. The approach to such a situation would in all likelihood depend on the supply agreement between the buyer and supplier. If it is non-compliance of GSCOP, EU suppliers will continue to approach the GCA. In relation to the Directive, they will have their national enforcement authority.

The Directive allows Member States considerable discretion as to how it is enforced, and provides for the creation of national enforcement authorities in each Member State. Therefore, when further information is available as to the enforcement approach of those authorities, it will be possible to provide clearer answers to the 12 retailers regarding the interaction between the GSCOP and the Directive.

It will be important to avoid duplication over the two regimes, so that suppliers have one clear route for raising complaints, or contradictory requirements which would make compliance with both regimes impossible.

18 March 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ORGANIC PRODUCTION AND LABELLING OF PRODUCTS, AMENDING REGULATION (EU) NO XXX/XXX OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL [OFFICIAL CONTROLS REGULATION] AND REPEALING COUNCIL REGULATION (EC) NO.834/2007 (AND ADD 1-5 OF PROPOSAL) (7956/14)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE

COMMITTEE OF THE REGIONS - ACTION PLAN FOR THE FUTURE OF ORGANIC PRODUCTION IN THE EUROPEAN UNION (8194/14)

Letter from George Eustice MP, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

I am writing to update you on progress of the above regulation.

The basic act was published in the Official Journal of the European Union on 14 June 2018.

We are continuing to engage with the Commission, other Member States and UK stakeholders to develop the Implementing and Delegated acts that will support the basic act. Most recently we have been working on the production rules, including those for poultry, livestock and aquaculture.

An EU organic expert group has been established to ensure in depth discussions on sectors which haven't had specific production rules previously, with a view to provide both consistent rules across the EU and allow room for the sectors to develop further.

Consideration on how this regulation will be reflected in the UK when it comes into force in 2021 and after we have left the EU is ongoing.

18 February 2019

Letter from the Chairman to Robert Goodwill MP, Minister of State for Agriculture, Fisheries and Food

Thank you for your predecessor's letter of 18 February 2019 on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 27 March.

We note that the Regulation has now been published in the Official Journal of the European Union, and that you are working with UK and EU stakeholders on the Implementing and Delegated acts.

We note that your consideration of how the Regulation will be reflected in the UK post-Brexit is ongoing.

We are now content to close correspondence on this dossier.

27 March 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE TRANSPARENCY AND SUSTAINABILITY OF THE EU RISK ASSESSMENT IN THE FOOD CHAIN (8518/18)

Letter from Steve Brine MP, Parliamentary Under Secretary of State for Public Health and Primary Care, Department of Health and Social Care

Following my previous letter to you on 28 September, I am writing to provide an update on the negotiations and requesting that you consider clearing scrutiny for this proposal. I apologise for not replying earlier to your letter of the 31 October.

Officials from the Food Standards Agency have attended nine Council working group meetings dedicated to this proposal with further discussions now at attaché level. The UK delegates have been active in discussions and expressed the concerns we highlighted in the Explanatory Memorandum provided to you in June.

On 18 December, the Council adopted a General Approach with a revised text for this proposal based on the majority views expressed by ourselves and other member state representatives. The General Approach changes the Commission proposal in a number of ways which alleviate many of the concerns we raised. Most notably, the amendments remove the requirement for member states to nominate experts and returns to a centralised call for experts managed by the European Food Safety Authority (EFSA) and based on merit similar to the existing procedure. This will minimise the risk of increased political involvement in risk assessment.

Amendments have also been proposed regarding the increased transparency through releasing non-commercially sensitive data. This is a key element of the proposal and one where the food industry has expressed concerns. The original Commission proposal included the immediate disclosure of non-confidential data when a dossier was submitted by the applicant which has been modified in the General Approach so that data is only disclosed once the dossier has undergone an initial review and is considered valid and admissible by EFSA. The General Approach includes additional elements that are eligible to be considered as confidential in order to provide further protections to commercially

sensitive data and also provides for an internal appeal process with regards to decisions made on confidentiality. This will go some way to providing further flexibility to businesses and providing balance between transparency and commercial interests.

As noted in our Explanatory Memorandum, the Commission has not provided an Impact Assessment for this proposal. The Commission has provided further details on the proposed increases to the budget for EFSA and how this has been calculated. The impact of this for the UK remains subject to negotiations on our future relationship. The original proposal may have led to an increased burden on member state competent authorities in the nomination of scientific experts but the amendments in the General Approach will largely remove this burden. The Commission has expressed the view that there will be minimal impact to industry. Some representatives of the food industry have concerns that early release of data will give more time for competitors to develop rival products and so provide less return on investment for companies researching innovative products. However, it is not possible to quantify these impacts.

The incoming Romanian Council Presidency and Commission continue to push this proposal forward. An attaché meeting was held on 9 January to prepare a trilogue mandate and so it would be beneficial if you could consider clearing this proposal from scrutiny as we expect it to quickly return to Council after the Coreper meeting on 16 January.

18 January 2019

Letter from the Chairman to Steve Brine MP, Parliamentary Under Secretary of State for Public Health and Primary Care

Thank you for your letter on the above Proposal, dated 18 January, which was considered by our Energy and Environment Sub-Committee on 24 January.

Thank you for explaining that the Council has adopted a General Approach with a revised text that alleviates many of your concerns.

We note that the requirement for Member States to nominate experts to scientific panels has been removed, which addresses your concern about political involvement.

We also note that the requirements on releasing the data that accompanies applications have been amended to ensure this only applies once the application has been judged to be admissible by the European Food Safety Authority (EFSA) and that further protections have been put in place to prevent commercially sensitive data being released. Thank you for explaining that you think this provides a balance between transparency and commercial interests.

Thank you for explaining that the Commission has provided details of the proposed increase to the EFSA budget, and that the impact of the Proposal on the UK will depend on the UK's post-Brexit relationship with EFSA.

We note that swift progress is now expected on this Proposal. With that in mind, and given that your concerns now appear to have been addressed, we are content to release this Proposal from scrutiny. Please provide an update on the final outcome once it has been agreed.

25 January 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATION (EC) NO 1224/2009, AND AMENDING COUNCIL REGULATIONS (EC) NO 768/2005, (EC) NO 1967/2006, (EC) NO 1005/2008, AND REGULATION (EU) NO 2016/1139 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS FISHERIES CONTROL (9317/18)

Letter from the Rt Hon Robert Goodwill, Minister of State for Agriculture, Fisheries and Food, Department for Environment, Food and Rural Affairs

Thank you for your letter of 19 December 2018. I appreciate the consideration the Energy and Environment Sub-Committee has given to this matter. Please find responses to the questions you raised below.

The proposal to track smaller vessels and for smaller vessels to report their catches relate to the frequency smaller vessels land (often more than once a day), that smaller vessels do not have electronic systems on board, that signal (to enable fishers to supply information prior to landing) can be unreliable and that smaller scale fishers often only sort their catches once ashore. Do other Member States share your concerns? Are you seeking to amend the Proposal to reflect your concerns?

Other Member States share the concerns over monitoring of smaller vessels as they perceive this to have less of an environmental impact than larger vessels. Finland's under 12 metre fleet is mainly catching non-quota species and therefore they see little need for additional control measures. Spain is concerned about cost, therefore they have suggested using alternative means of monitoring, for instance using mobile phone applications.

England has recently consulted on the introduction of an Inshore Vessel Monitoring System (IVMS) for the under 12 metre fleet. This will improve our data gathering and enhance our understanding of the activities of the under 12 metre fleet operating in English waters. This is required to create sustainable fisheries for the future through more effective enforcement and informed management. Wales have recently a consulted on a similar proposal. Scotland and Northern Ireland are also looking into similar proposals.

The UK is exploring and testing to address issues with smaller vessels that do not have a power supply. Rollout of such systems to smaller vessels would be towards the end of the I-VMS implementation period and should any significant issues arise, the UK will consider reviewing the proposals at that time.

The Marine Management Organisation is developing catch recording technology in conjunction with Welsh Government and Crown Dependencies. This will allow vessels to notify their catch prior to landing using a mobile phone application. The catch will need to be recorded by species and by weight prior to landing for quota species only. Non-quota species can be reported up to 24 hours after landing.

The requirement to submit all information electronically includes information on location, gear used and catch compositions. In our last letter, we asked you to explain what impact you expected this to have on the UK Fisheries Monitoring Centre and the UK Fishing Call Centre, as well as on implementation and data systems and compliance with the Data Protection Act (all concerns you had raised in your Explanatory Memorandum). We restate that request.

We do not foresee a significant impact on the UK Fisheries Monitoring Centre, as I-VMS and catch recording data will be submitted electronically and go directly into existing fisheries systems. Large scale failures with the electronic reporting may produce a requirement for manual reporting. The impact of this could have implications on the UK Fishing Call Centre but this is not envisaged. The systems have been through a type-approval process and tested rigorously therefore system failure is unlikely. This scenario is however, being discussed as part of the I-VMS project.

The UK already adheres to the General Data Protection Regulations (GDPR) and would continue to do so. All data are gathered and stored in line with GDPR.

Please let us know what response you receive to the imposition of penalty points.

The UK administers penalty points and sanctions on vessels found to have committed an offence. The requirement for serious infringements is that any action needs to be supported through a civil court.

No response has been received, though ongoing workshops should help the definition of serious infringements and the action with regards to serious infringements, including the imposition of penalty points. Amendments have been proposed to the penalty point system which would allow the UK to meet the proposal.

We note other Member States share your concerns over the aspects of the Proposal related to recreational fisheries. We also note that there is no system in place currently in the UK to monitor recreational fisheries, or to enforce compliance with legislation, as you consider it to be impractical and without clear benefits. In our last letter we asked what proportion of the UK catch sea anglers are responsible for; we note you have not provided a response. Could you confirm whether or not that information is known?

We do not hold a full suite of evidence on all recreational fisheries, though some specific evidence has been provided below.

Recent studies have demonstrated that recreational fisheries can account for between 2-43% of the total removals, however this information only relates to a limited number of stocks due to lack of data. Where data indicates that recreational sea angling may have an impact on failing stocks the evidence will be considered at UK level to determine whether any further action needs to be taken. For example, at EU level there have been restrictions on sea bass fisheries to reduce fishing pressure on the stock while they are subject to recovery measures. This has included a daily bag limit for anglers to retain some bass catches during agreed periods of the year. Anglers were estimated to be responsible for around 25% of the total fishing mortality on the stock before EU measures were introduced. At UK level, in future we will look to establish an appropriate balance of fishing opportunities for bass between our fishing sectors as we determine how to manage the bass stock resources available to us in our waters.

The variations in the types of Remote Electronic Monitoring (REM) available could cause difficulties in being able to share data with inspectors and that you believe agreements on standards for audits and data sharing need to be reached. Do other Member States share your concerns? Is work currently being done to develop these agreements?

The UK has been attending technical working group meetings with the European Fisheries Control Agency (EFCA) and other Member States to develop European minimum requirements for REM systems. The discussions have taken place at a technical level and have attempted to establish common standards on board vessels.

This work will be considered by the regional group control expert groups in the coming weeks. Agreement on data sharing and standards for audits has not yet been reached and other Member States share our concerns over the difficulties this may bring. It is the intention of the EFCA to establish a REM providers working group in 2019 to address this issue.

We note that, while you have concerns at the level of investment required to implement the proposed measures on traceability, you have not made any assessment of the potential cost. We would recommend you consider conducting such an assessment, in order to properly understand the potential impact of the Proposal.

The UK Fisheries Enforcement and Compliance Co-ordination Group (UKFECCG) holds a UK Road Map to address traceability issues. UKFECCG has provided clear advice to industry on requirements that relate to the buying and selling of fish and fish products. This group has been working with the Food Standards Agency and will continue to do so in the future.

In a no deal scenario, catch certificates will be required for UK caught fish and fishery products destined for the EU. To facilitate this the UK is developing an electronic system which will enable industry to obtain a catch certificate 24 hours a day, 7 days a week.

We have produced technical notices for business on the traceability of fish and fish products for a no deal scenario as well as guidance on exit requirements relating to the trade of fish. Should a deal be agreed then we will look into assessing the impact of the Proposal after EU exit.

We note that the UK would not have access to the CATCH system in a 'no deal' Brexit scenario, but observe this would only cause a problem if the UK decided to implement this aspect of the Proposal. Please could you confirm that if an implementation (transition) period is agreed there will be no difficulty in linking catch certificates to the CATCH system?

The UK will not require access to the EU CATCH system to export UK caught fish and fish products to the EU after exit. We are developing our own IT System to enable exporters to obtain a UK catch certificate online (24 hours a day, 7days a week) to facilitate trade.

All catch certificates for imports to the UK from the EU will be subject to catch certificate requirements. There are several other countries that have electronic systems and these are available for exporters to use in the flag state of the catching vessel only, similar to the UK and EU system.

Thank you for explaining that other Member States share your concerns over the obligation for continuous engine power monitoring, and for logging and recording lost fishing gear. Please keep us updated on negotiations over these aspects of the Proposal.

At the last technical workshop held on 20 February, there was a short update on the control regulation review with a number of amendments tabled. These included changes to continuous engine power monitoring for use in effort regimes only. Lost fishing gear was not mentioned in this update.

Finally, please provide an update on progress of the Proposal overall and any additional concerns that have arisen.

There are no additional concerns regarding the Proposals at this time. There is no imminent decision on the Proposal and the workshops will provide an opportunity for all Member States to share concerns ahead of any decision.

The Control Regulation Review has had its first reading followed by two working party meetings with a further two planned. There have been a number of amendments tabled and they are due to be voted on in Strasburg on 25 April.

Further amendments to the Proposal include changes to electronic reporting systems and vessel monitoring for smaller vessels to include all, with derogations for certain fisheries. Also, that smaller vessels are to complete either a Log Book or Landing Declaration (not both). Remote Electronic Monitoring (REM) is not supported in favour of observers and sensors; recreational fisheries should be tightly controlled; penalty points should be awarded for Serious, Major and Minor offences; continuous Power Monitoring should only apply in effort regime fisheries; the European Fisheries Control Agency

should be further empowered and become the hub for all fisheries across Europe and these proposals must create a level playing field across the EU.

21 March 2019

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE ALIGNMENT OF REPORTING OBLIGATIONS IN THE FIELD OF ENVIRONMENT POLICY AND THEREBY AMENDING DIRECTIVES 86/278/EEC, 2002/49/EC, 2004/35/EC, 2007/2/EC, 2009/147/EC AND 2010/63/EU, REGULATIONS (EC) NO 166/2006 AND (EU) NO 995/2010, AND COUNCIL REGULATIONS (EC) NO 338/97 AND (EC) NO 2173/2005 (9617/18)

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your letter on the above Proposal, dated 14 November. As negotiations conclude, I would like to offer the Committee a final update on their status since my last letter, dated 6 November.

With sufficient progress having being made in Working Parties, on 7 November 2018 the Committee of Permanent Representatives (Coreper), agreed on a mandate for the Presidency to open trilogue discussions with the European Parliament. The first trilogue meeting took place on 15 November, during which no agreement was found between the parties. As such, a second trilogue was scheduled for the 19 December – in which a provisional agreement was reached with the European Parliament.

Subsequently, on 18 January 2019, Coreper approved the compromise text agreed at trilogue and the European Parliament Committee on the Environment, Public Health and Food Safety (ENVI) did the same on 21 January. The file will now proceed to a European Parliament Plenary Session. The Proposal will then progress as an "A" item on any suitable Council agenda.

With regards to Article 3 on the Environmental Liability Directive (ELD), the compromise reached followed a drafting proposal put forward by Belgium, Germany, Spain, Italy and the Netherlands, which the UK supported. We welcome the idea of making information on cases of environmental damage publicly available in the interest of greater transparency for citizens. The compromise reached will also require Member States to collate information centrally, and be ready to report it to the Commission by 30 April 2022 and every five years thereafter. We welcome this outcome, and are confident that the compromise text agreed on Article 3 addresses our concerns around proportionality and reporting burdens.

On Article 7 regarding the European Pollutant Release and Transfer Register Regulation (E-PRTR), we are pleased that an achievable compromise for the UK of 11 months was agreed as the deadline for reporting, with a recital introducing a long-term, non-binding vision of reducing this to three months of the year end. The Commission's initial proposal wished to reduce the reporting timescale from 15 months to nine, which would have significantly increased the burden on UK competent authorities and industries involved in collating and quality assuring the required detailed analysis for reporting.

Overall, we are content with the outcome of the negotiations, and believe that the agreement strikes the right balance between providing streamlined environmental reporting, without adding burdensome or disproportionate obligations on Member States.

12 March 2019

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary under Secretary of State

Thank you for your letter on the above Proposal, dated 12 March, which was considered by our Energy and Environment Sub-Committee at its meeting on 27 March.

Thank you for providing an update on the negotiations; we note that a compromise text has now been agreed by Coreper and by the European Parliament's Environment, Public Health and Food Safety Committee.

We note that you support the compromise that has been reached on reporting requirements under the Environmental Liability Directive, so that information will be accessible to the public on cases of environmental damage but in a proportionate way.

We note that you also welcomed the compromise on reporting timescales under the European Pollutant Release and Transfer Register Regulation, which is being reduced from 15 months to 11 (rather than 9).

We are now content to close correspondence on this Proposal.

27 March 2019

PROPOSAL FOR A COUNCIL REGULATION ESTABLISHING THE RESEARCH AND TRAINING PROGRAMME OF THE EUROPEAN ATOMIC ENERGY COMMUNITY FOR THE PERIOD 2021-2025 COMPLEMENTING HORIZON EUROPE – THE FRAMEWORK PROGRAMME FOR RESEARCH AND INNOVATION (9871/18)

Letter from Chris Skidmore MP, Minister of State for Universities, Science, Research and Innovation, Department for Education and Department for Business, Energy and Industrial Strategy

Further to your letter to my predecessor of 31 October 2018, I am writing to update you on progress on the above draft Regulation.

Seeking association to the future Euratom Research & Training (R&T) Programme remains the UK Government's negotiating objective. Detailed discussions on association cannot begin until the Regulation for the 2021-2025 Euratom R&T Programme, and associated MFF funding decisions, are finalised.

Examination of the proposal for the 2021-2025 Euratom R&T Programme began on 14 February 2019 and we do not expect this file to proceed to COREPER or EU Council votes until after the UK has left the EU. However, my officials will continue to engage constructively in Council Working Group discussions until the UK leaves the EU, to influence the development of the Programme in line with UK interests, and ensure the programme remains attractive for a potential future UK association.

As outlined in previous correspondence, we will be working to ensure the programme's proposed research budgets are maintained and will seek clarity on the potential impact of an increased focus on innovation activities. These aspects are yet to be discussed in Working Group.

We do not expect the Regulation article governing third country participation in the programme to be formally discussed until after the UK has left the EU. However, we will continue to use all available opportunities to argue for fair and reasonable terms for associated countries in line with our negotiating objectives.

I will write to you again following any material developments in this process, particularly in regard to the priorities outlined above.

28 February 2019

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

Thank you for your letter on the above Proposal, dated 28 February, which was considered by our Energy and Environment Sub-Committee at its meeting on 13 March.

Thank you for providing an update on the progress of the Proposal. We note that you do not expect it to be voted on until after the UK leaves the EU but that your officials will continue to engage in Working Group discussions until that point.

Thank you for agreeing to keep us updated on negotiations, including in relation to the two areas of concern your predecessor identified (potential reductions to existing Programme budgets (particularly the fusion budget) and the intention to add 'innovation and deployment actions' to the Programme). We note that these have yet to be discussed in the Working Group.

We note that detailed discussions on a future UK association with the Programme cannot begin until the Regulation and associated funding decisions are finalised. Thank you for explaining that you do not expect the article in the Proposal that relates to third country participation to be discussed until after the UK has left the EU, but that you "will continue to use all available opportunities to argue for fair and reasonable terms for associated countries."

We have decided to retain this Proposal under scrutiny and look forward to a reply in due course.

13 March 2019

ROMANIAN PRESIDENCY OF THE COUNCIL OF THE EUROPEAN UNION - PRIORITIES FOR THE ENVIRONMENT, AGRICULTURE AND FISHERIES

Letter from the Rt Hon Michael Gove MP, Secretary of State for Environment, Food and Rural Affairs

I am writing to provide you with an overview of Romania's EU Council Presidency priorities, in terms of Defra's Council business. The overview is attached to this letter (Annex A).

Romania took over the rotating six month Presidency from Austria on 1 January 2019, and its term runs until 30 June 2019. It is the first time that Romania has held a Council Presidency since its EU accession. It is also the first Presidency of the new trio, consisting of Romania, Finland and Croatia.

The Presidency will be important to us for many reasons. This Presidency spans the UK's exit from the EU and many of the files that will be agreed in the first three months will be relevant to us in the implementation period. Given that elections to the European Parliament are due to take place in May, it is expected that work on live legislative files will progress at speed until the end of March.

Should your Committee be interested in further information on the priorities for this Presidency, my officials and I would be happy to assist with an informal briefing session.

Annex A

Council Arrangements

There are two Environment Councils and five Agriculture and Fisheries Councils scheduled to take place during the Romanian Presidency.

Environment Councils are scheduled for 5 March in Brussels and 26 June in Luxembourg. An informal meeting of Environment Ministers is scheduled for 20-21 May in Bucharest. Given the UK's departure from the EU on 29 March, we will only be attending the first Environment Council. The Romanian Presidency has yet to decide whether the UK will be invited to its Informal Environment Council meeting.

The first Agriculture and Fisheries Council of Romania's Presidency took place on 28 January in Brussels. Further Councils are scheduled for 18 March in Brussels, 15 and 16 April in Luxembourg, 14 May in Brussels, and 18 June in Luxembourg. An informal meeting of Agriculture and Fisheries Ministers is scheduled for 3-4 June in Bucharest. The UK will only attend the first two Agriculture and Fisheries Council in January and March given our departure from the EU. It is to be confirmed whether the UK will be invited to the Informal Agriculture and Fisheries Council meeting.

Environment Councils

The following information is based on provisional agendas and only refers to items that have a Defra focus.

5 March

At March Environment Council we anticipate the main Defra business to be a policy debate on the Regulation on water re-use. The Presidency may seek to table a general approach on the recast of the Drinking Water Directive, together with an exchange of views on Greening the European Semester and a policy debate on The European Union Framework on endocrine disruptors.

26 June

General Approaches may be sought at June Council on the Regulation on water re-use, and if not secured for March Council, the recast of the Drinking Water Directive. There may also be a possible exchange of views on the Commission's Environmental Implementation Review (EIR) initiative.

Key Environment Dossiers

The Romanian Presidency is the first of the new trio (Romania, Finland, and Croatia) covering the next 18 months, and their priorities will broadly coalesce around issues of climate, biodiversity and sustainable water use.

The Presidency aims to reach significant progress on ongoing legislative files by mid-February ahead of the European Parliament election recess. They are prioritising sustainable water use and aim to secure General Approaches on both the Water Reuse Regulation and the recast of the Drinking Water Directive. On chemicals legislation they aim to rapidly conclude the negotiations with the European Parliament on the Persistent Organic Pollutants (POPs) Regulation, to start the policy debate on the new proposed approach for managing Endocrine Disrupters, and to consider the findings of the Regulatory Fitness Performance (REFIT) review of EU chemicals legislation – excluding REACH which is due at the end of February.

Agriculture and Fisheries Councils

The following information is based on provisional agendas and refers only to items within my Department's remit.

28 January

At January Council, the Presidency presented its political priorities and work programme. Ministers also discussed the Common Agricultural Policy (CAP) post-2020 reform package and held a policy debate on the report on the development of the Commission's Protein Plan.

A number of AOB items were also debated, including the establishment of an International Centre for Antimicrobial Resistance Solutions (ICARS), the outcome of the ministerial conference on the eradication of African Swine Fever (ASF) in December, the state of play on the dual quality of foods, and Rural Development and the Multiannual Financial Framework (MFF).

18 March

In March, it is expected that Council will exchange views on the CAP post-2020 legislative proposals. Further items that are scheduled to be discussed are the Bioeconomy and Task Force Rural Africa (TFRA). Under any other business, Ministers will likely be updated by the European Commission and the Presidency on the outcome of the workshops on water and agriculture, organised by the Task Force on Water.

15-16 April

At AgriFish Council in April, it is anticipated that the debate on the CAP post-2020 legislative proposals will continue. It is expected that Ministers will also exchange views from an agricultural perspective on 'a Clean Planet for all: a strategic long-term vision for a climate neutral economy'. Ministers will most likely also exchange views on the market situation, including possible initiatives on market transparency. Under any other business, it is foreseen that Council will be informed by the Presidency on research and agriculture.

14 May

In May, it is foreseen that Council will hold another policy debate on the CAP post-2020 reform package. Ministers are also expected to exchange views on trade-related agricultural policies. It is likely that the state of play on the Protein Plan will be tabled as an AOB item.

18 June

At June Council, it is expected that Ministers will aim to adopt a partial general approach on the CAP post-2020 legislative proposals.

On fisheries, it is anticipated that Ministers will adopt the Proposal for a Regulation of the European Parliament and of the Council on the European Maritime and Fisheries Fund and repealing Regulation (EU) No 508/2014 of the European Parliament and of the Council. It is expected that an exchange of views on the Communication from the Commission on the state of play of the Common Fisheries Policy and consultation on the fishing opportunities for 2020 will also take place. Under any other business, it is likely that Council will be informed about the state of play on the Protein Plan and the G20 Agriculture Ministerial meeting.

Key Agriculture, Fisheries, Animal and Plant Health Dossiers

Agriculture

The Romanian Presidency is taking over two legislative files that are due to be finalised: the Spirit Drinks Regulation and the Directive on Unfair Trading Practices in the Food Supply Chain. During the Austrian Presidency agreement was reached at trilogue for both files and they are expected to be in force before the European Parliament election in May.

As regards the third legislative file that the Presidency is taking over – the CAP post-2020 reform package comprising three Regulations – substantive negotiations will continue. The Presidency will be producing new texts on the Delivery Model, Indicators, Rural Development, Greening, and Interventions, aiming to reach a partial general approach at June Council.

The Presidency will also put focus on a number of non-legislative items, including the Protein Plan following the Commission document and conference in November 2018. Bioeconomy will be another key item as well as linked research and innovation measures which will also be subject of Informal Council. Further topics to be followed up include market information and international trade updates, accompanied by the progress of the Commission's Task Force Rural Africa.

Fisheries

On fisheries, the Presidency has committed to make progress in all areas of outstanding business. These include the transposition of Northwest Atlantic Fisheries Organisation measures, the Western Mediterranean Multi-Annual Plan and Mediterranean swordfish recovery plan. These are, however, of minor importance to the UK.

The UK will be investing most effort in making progress with Romania, Finland (the next Presidency) and the Commission on how the UK will be consulted on files and 2020 fishing opportunities once we have left the EU, and the Fisheries Working Party at the end of March.

Veterinary

The Romanian Presidency have no live veterinary files, and residual work on implementing and delegated acts from the Medicated Feed and Veterinary Medicinal Products files is being managed by the Commission through expert level groups.

The Romanians plan to hold a conference on transboundary animal diseases and animal welfare during sea transport in Bucharest in June and a conference on antimicrobial resistance (AMR) in Brussels in March. The Romanians are keen to emphasise the importance of the One Health approach to tackling AMR. Whilst ASF is not a named priority it is an ongoing concern to member states and the Commission and it is likely to appear on Council agendas over the next 6 months.

Food safety

The General Food Law proposal, which aims to introduce greater transparency in the EU risk assessment process and improve risk communication, is a priority for the Romania Presidency. The Presidency has put forward an ambitious timetable which foresees the trilogue stage concluding by mid-February 2019.

4 February 2019

EUROPEAN COURT OF AUDITORS SPECIAL REPORT 24/2018: DEMONSTRATING CARDON CAPTURE AND STORAGE AND INNOVATIVE RENEWABLES AT COMMERCIAL SCALE IN THE EU: INTENDED PROGRESS NOT ACHIEVED IN THE PAST DECADE (UNNUMBERED)

Letter from Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth, Department for Business, Energy and Industrial Strategy

Thank you for your letter of 19 December 2018 following the Explanatory Memorandum (EM) on the above Report by the European Court of Auditors (ECA) covering carbon capture, usage and storage (CCUS), and innovative renewables.

The Government is actively supporting both CCUS and innovative renewable technologies.

For example, I co-hosted, with Dr Fatih Birol of the International Energy Agency, the world's first dedicated global CCUS Summit on 28 November 2018 in Edinburgh. This brought together 50 world energy leaders to progress CCUS, confirming the central role CCUS need to play in meeting global climate ambitions.

In parallel to the Summit I published '*The UK CCUS Deployment Pathway: An Action Plan*'[1]. Our Action Plan is designed to enable the development of the first CCUS facility in the UK, commissioning from the mid-2020s and has been well received by industry, including the Carbon Capture and Storage Association (CCSA) and Energy UK.[2]

The Government also continues to support low-carbon electricity generation through Contracts for Difference (CfDs). In July 2018 I announced that the next CfD auction is planned to open by May 2019. Further allocation rounds will be held around every two years after that.[3] This is more certainty than in any of the other European markets and the support we have provided has ensured we are on track to meet our emissions reduction targets.

You raised four specific questions seeking more information on the Government's response to the ECA Report and I have set out a response to each of these below.

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[1] https://www.gov.uk/government/publications/the-uk-carbon-capture-usage-and-storage-ccus-deployment-pathway-anaction-plan

[2] Energy UK press release, 28 November 2018: https://www.energy-uk.org.uk/media-and-campaigns/press-releases/4122018/6930-energy-uk-responds-to-the-government-s-announcement-on-first-uk-carbon-capture-project.html. CCSA press release, 28 November 2018 http://www.ccsassociation.org/index.php/download_file/view/1136/97/

[3] July 2018 CfD announcement: https://www.gov.uk/government/news/energy-minister-claire-perry-hails-success-story-ofoffshore-wind-in-newcastle-today CfD: third allocation round details https://www.gov.uk/government/collections/contracts-for-difference-cfd-third-allocationround

1. **What measures were in place to monitor and ensure the effectiveness of the European Energy Programme for Recovery (EEPR) and the New Entrants' Reserve (NER 300), and thus ensure public funding is deployed productively? Do you believe the measures were applied effectively in this case?**

The European Commission was responsible for selection of the EEPR proposals and assessing compliance. Member States, including the UK, undertook monitoring of successful projects including spot-checks to certify conformity with the EEPR Regulation.[1]

The European Commission is responsible for the overall management and implementation of NER 300, drawing on the expertise of the European Investment Bank (EIB). The UK participates in decisions related to the NER through the Climate Change Committee of the EU, including supporting changes to improve governance proposed by the Commission in 2017.[2]

The recommendations of the ECA report are addressed at the Commission rather than the Member States and have been accepted by the Commission, apart from some minor technicalities. The Commission will put in place measures to ensure sound financial management, including auditing and reporting, for the upcoming EU ETS Innovation Fund, which is the successor to NER 300, and the European Council will issue formal conclusions relating to ECA Report 24/2018 in 2019.

2. **Neither the EEPR nor NER 300 effectively supported the commercial demonstration of carbon capture and storage (CCS) between 2008 and 2017. What implications does the lack of progress have for the UK and EU's decarbonisation pathways?**

As set out in the November 2018 report by the European Environment Agency (EEA)[3] the EU as a whole remains on track to meet its 2020 targets to reduce greenhouse gas emissions and increase renewable energy use. The preliminary EEA data for 2017 also shows that 20 Member States were on track to reach their individual targets on renewable energy by 2020, including the UK.

The UK carbon budgets already set in legislation are among the most stringent in the world, requiring a 57% cut in emissions by 2028-2032 from a 1990 baseline.[7.] The Government has exceeded our first carbon budget by 1.2%; is on track to meet the second and third (201322); and is already on track to deliver over 90% of our required performance against 1990 levels for the fourth and fifth carbon budgets.

The Clean Growth Strategy sets out three illustrative pathways to 2050. As set out in the Clean Growth Strategy, the Government's ambition for CCUS is to ensure that we have the option to deploy CCUS at scale during the 2030s, subject to costs coming down sufficiently.[8] The Action Plan that I published in November last year sets out how we intend to deliver on this ambition and designed to enable the development of the first CCUS facility in the UK, commissioning from the mid-2020s, which will help give option to deploy at scale in 2030s.

3. **Why has the UK-based offshore wind EEPR project been delayed; and will the remaining funding will be available given the UK's impending departure from the EU?**

The project in question is the European Offshore Wind Deployment Centre, located off Aberdeen. This facility has now been completed and is fully operational having been officially opened in September 2018. The project will receive all of the remaining funding from the Commission and will not be impacted by the UK's departure from the EU. We understand from the operator that the project has received €32 million in grant funding from the Commission to date and expects to receive the remaining €8 million at the beginning of 2019.

4. **What is your assessment of the impact on UK industry of not receiving the funding that would have been available through the EEPR and NER 300 if UK energy policy had been more stable and if longer-term domestic funding certainty had been available?**

Several UK project were successful in receiving funding from the EEPR and NER300 after submitting high quality bids. The UK was one of only 6 Member States to receive EU funding from EEPR to support CCUS, and three UK projects also received funding from NER 300. As the ECA report states, EEPR contributed to the development of the offshore wind sector, and the European Offshore Wind Deployment Centre in the UK which became operational in 2018 is a good example of this.

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[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009R0663&qid=1546598933724&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017D2172&from=EN
[3] https://www.eea.europa.eu/publications/trends-and-projections-in-europe-2018-climate-and-energy
[7.] https://www.gov.uk/guidance/carbon-budgets
[8.] https://www.gov.uk/government/publications/clean-growth-strategy

We do not believe the failure to secure EEPR and NER 300 funding for individual projects has had a major negative impact on UK industry. Long term policy stability has enabled offshore wind to thrive with 7.9 GW currently installed in the UK accounting for over 36% of world's capacity[9.] and the UK is at the forefront of international efforts to accelerate CCUS.

In addition, I should point out that the UK has an excellent record in supporting the deployment of renewable generation. Support provided through the Contracts for Difference, Renewables Obligation and Feed-in Tariff schemes has been successful in driving the renewable share of UK electricity generation from 6.9% in 2010 to 29.4% in 2017 whilst also providing value for electricity consumers.[10] And the CfD scheme in particular has, through its competitive approach, made a significant contribution to driving down the costs of some key technologies. Our commitment to holding further CfD auctions every two years from 2019 will give a further boost to the UK's low carbon supply chain as part of the government's ambitious Industrial Strategy and Clean Growth Strategy.

We continue to support CCUS and the government is investing £45 million in CCUS innovation programmes, on top of £365 million invested since 2011. In 2017 the Government put in place a new re-oriented approach and a new ambition to ensure the UK has the option of CCUS being available to deploy at scale during the 2030s, subject to its costs coming down sufficiently. The UK CCUS Action Plan which was published in in Edinburgh in November provided further details on the steps we will take to meet that ambition.

I hope you find this information helpful and find that this provides further clarity on your important questions raised.

11 January 2019

Letter from the Chairman to Rt Hon Claire Perry MP, Minister of State for Energy and Clean Growth

Thank you for your letter of 11 January 2019 on the above Report, which was considered by our Energy and Environment Sub-Committee at its meeting on 23 January.

We note and welcome the actions you are taking to support both carbon capture use and storage (CCUS) and innovative renewables within the UK.

We note your explanation that the Commission was responsible for managing and assessing compliance with both the European Energy Programme for Recovery (EEPR) and the New Entrants' Reserve (NER 300), and that the UK fulfilled its own monitoring obligations.

We note your assessment that, although neither the EEPR nor the NER 300 effectively supported the commercial demonstration of CCUS, the EU is on track to meet its greenhouse gas reduction targets for 2020, and the UK is on track to meet its second and third carbon budgets. You also state that you hope to "have the option to deploy CCUS at scale during the 2030s, subject to costs coming down sufficiently". We would remind you that in 2016 the Committee on Climate Change (CCC) emphasised the need for CCUS in order to deliver the fifth carbon budget,[1] and in 2015 reported that "the period to 2032 will be vital to the development of carbon capture and storage".[2] We urge you to fully consider the CCC's advice in relation to this policy area.

Thank you for explaining that the UK-based offshore wind EEPR project has now been completed, and will receive all of the remaining €8 million of funding from the Commission despite its delay.

We note your assessment that individual UK projects' failure to receive EEPR and NER 300 funding, as a result of domestic policy uncertainty, did not have a "major negative impact" on UK industry, demonstrated by the UK's international leadership in relation to both offshore wind and CCUS.

We are now content to release this Report from scrutiny and close the correspondence.

24 January 2019

COMMISSION IMPLEMENTING DECISION OF XXX ON AMENDING COMMISSION IMPLEMENTING DECISION (EU) NO 2017/1984 DETERMINING, PURSUANT TO REGULATION (EU) NO 517/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON FLUORINATED GREENHOUSE GASES, AS REGARDS REFERENCE VALUES FOR THE PERIOD FROM 30 MARCH 2019 TO 31 DECEMBER 2020 FOR

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9. Global World Energy Council, 2017, http://gwec.net/global-figures/global-offshore/
10. UK Government Energy Statistics https://www.gov.uk/government/statistics/energy-trends-section-6-renewables
1 https://www.theccc.org.uk/wp-content/uploads/2016/07/Letter-to-Rt-Hon-Amber-Rudd-CCS.pdf (page 1)
2 https://www.theccc.org.uk/wp-content/uploads/2015/11/Committee-on-Climate-Change-Fifth-Carbon-BudgetReport.pdf (page 28)

PRODUCERS OR IMPORTERS ESTABLISHED WITHIN THE UNITED KINGDOM, WHICH HAVE LAWFULLY PLACED ON THE MARKET HYDROFLUOROCARBONS FROM 1 JANUARY 2015, AS REPORTED UNDER THAT REGULATION (UNNUMBERED)

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary under Secretary of State, Department for Environment, Food and Rural Affairs

Thank you for your Explanatory Memorandum (EM) on the above Implementing Decision, which was considered by our Energy and Environment Sub-Committee at its meeting on 20 February.

We note that, in the event of a 'no deal' Brexit, the UK Government intends to establish its own system to allocate quota to sell hydrofluorocarbons (HFCs) in the UK. Have the necessary calculations been made and businesses been informed of what their quota will be? If so, have any businesses expressed concern about the quota they have been allocated? Are the resources necessary to administer this system in place, so it could be fully operable by 30 March?

We also note that both the UK Government and businesses have expressed doubt over whether the EU's revised quotas for UK businesses to put HFCs on the EU market post-Brexit are accurate. Please provide an update on discussions with the Commission on this matter. Have any revisions been made? Have your concerns been resolved?

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

20 February 2019

Letter from Dr Thérèse Coffey MP, Parliamentary under Secretary of State

Thank you for your letter of 20 February 2019 asking a number of questions about the Government's activity on the allocation of quotas for hydrofluorocarbons (HFCs) in the event of a "no deal" Brexit. I have answered each of your questions in turn below.

Have the necessary calculations been made and businesses been informed of what their quota will be?

The Environment Agency (EA) notified businesses of their indicative UK HFC quota values in December. These numbers were based on the average quantities of HFCs each business placed on the UK market between 2015 and 2017 (using EU quota) which had not previously been placed on the EU market.

Since then, Defra and the EA have requested further information from businesses to determine whether any additional UK quota allocations are warranted, based on gas supplied to the UK which was already in circulation on the EU market. Any additional quota will be allocated to businesses before exit day.

If so, have any businesses expressed concern about the quota they have been allocated?

Some UK businesses have queried whether UK quota should be allocated to them, as the importer of the gas, rather than to the EU based supplier (currently holding the EU quota). In most cases, as the EU supplier was still the owner of the gas when it was supplied to the UK, it was they who placed it on the market here for the first time. Under the retained EU legislation, which assigns quota for placing on the market, it would, therefore, be the EU supplier who is entitled to the UK quota. The European Commission has likewise followed the legislation in its allocation of EU27 quota to UK companies who place gas in the EU27 market so that they can continue to do so in the event of no deal.

Are the resources necessary to administer this system in place, so it could be fully operable by 30 March?

Yes. The IT systems and EA staff are all in place to operate the system fully from 30 March. The IT went live on 11 February and over 100 businesses, including 32 out the 48 main suppliers to the UK (67%), have already registered to receive quota.

We also note that both the UK Government and businesses have expressed doubt over whether the EU's revised quotas for UK businesses to put HFCs on the EU market post-Brexit are accurate. Please provide an update on discussions with the Commission on this matter. Have any revisions been made? Have your concerns been resolved?

A few businesses told Defra that the amounts were lower than they had expected, though others said they were accurate. As the Commission did not share with the UK Government the (commercially sensitive) data that companies had provided to them, we were unable to determine the accuracy of the quota calculations.

The UK, therefore, abstained in the vote to adopt the decision and we informed the Commission that we could not support the proposals because we could not determine the accuracy of the figures. However, all other Member States voted in favour and the decision was adopted without amendment.

We advised companies to contact the Commission directly if they wished to query the allocations.

7 March 2019

Letter from the Chairman to Dr Thérèse Coffey MP, Parliamentary Under Secretary of State

Thank you for your letter on the above Implementing Decision, dated 7 March, which was considered by our Energy and Environment Sub-Committee at its meeting on 27 March.

Thank you for explaining that UK businesses were informed of their indicative UK hydrofluorocarbon (HFC) quota in December. We note that some businesses have been confused over whether or not, as a HFC importer, they would need quota allocated to them but that the UK and EU have taken the same position that it would be the owner of the gas who has placed it on the market, rather than the importer, and so it is the owner who needs the quota. Thank you for explaining that the IT systems and staff needed to operate the system are already in place.

Thank you for explaining that "a few" businesses found the EU quotas were lower than expected but that you are unable to assess the accuracy of the quota allocations because they are based on commercially sensitive data supplied by companies to the EU. We note that this led you to abstain in the vote on the Implementing Decision and that you have advised the companies concerned to contact the Commission with their queries.

We are now content to release this Implementing Decision from scrutiny and close correspondence on this issue.

27 March 2019