



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

This edition includes correspondence from 1 June 2017 – September 2017

EU ENERGY AND ENVIRONMENT SUB-COMMITTEE

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PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EU) NO 2017/127 AS REGARDS CERTAIN FISHING OPPORTUNITIES (10741/17)

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

I am writing to explain my decision to over-ride Parliamentary scrutiny of the Commission's proposal for the second amendment to the TAC and Quota regulation for 2017 which was agreed by written procedure on 25 July.

The Commission brought forward its proposal for a second in-year amendment on 4 July. Defra submitted an explanatory memorandum (EM 10741-17) to Parliament on 12 July. While I understand that your committee have now considered this, it will not be seen by the House of Commons scrutiny committee until September.

The amendment is relevant to our fishermen given that in relation to the sea bass regulations, it clarifies that if a vessel is replaced the related bass catch eligibility may be transferred to the replacement vessel, while ensuring the number of qualifying fishing vessels and their overall fishing capacity does not increase. The amendment also includes a proposal relating to fishing opportunities for the seasonal North Sea sandeel fishery, which is important to Denmark. The proposal was discussed at European Council Working Group on 5 and 12 July and at Coreper on 19 July, before going forward for agreement by written procedure on 25 July. The UK voted in favour of the proposed amendment. Over-riding the scrutiny of proposals from the European Commission is not an action that I take lightly, however I believe it was in the best interests of the UK to support the proposal.

16 August 2017

COMMUNICATION FROM THE COMMISSION ON THE STATE OF PLAY OF THE COMMON FISHERIES POLICY AND CONSULTATION ON THE FISHING OPPORTUNITIES FOR 2018 (10742/17)

Letter from the Chairman to George Eustice MP, Minister of State for Agriculture, Fisheries and Food, 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 6 September.

We welcome your agreement that fishing opportunities for 2018 should be set so that stocks achieve their Maximum Sustainable Yield (MSY), and your commitment to assessing the Commission's coming proposals in accordance with their compliance with sound science, sustainability and eliminating discards.

The Commission's assessment of the sustainability of the waters surrounding the UK appears to be broadly positive, and we welcome in particular the improvements in the North Sea and North-Western Waters. However, the Commission notes that, although stocks in these areas are improving, only 59% of landings from the North Sea have been assessed as coming from sustainably managed stocks, and for the Celtic Sea this figure is only 37%. It also appears that significant challenges remain in the Irish Sea. What is your assessment of whether the Commission's proposals regarding the 2018 fishing opportunities are ambitious enough to increase the sustainability in the waters around the UK?

The proposals for improving the implementation of the Common Fisheries Policy (CFP) in the Mediterranean and the Black Sea do not appear to address the insufficient monitoring, enforcement and reporting methods which are noted in the Communication. What steps will be taken to improve enforcement standards in those areas?

The Commission states that Member States need to improve their discard data collection and put the necessary enforcement measures in place in order to better implement the landing obligation. What is your assessment of whether such improvements are necessary in the UK?

We note that the Commission is working with the International Council for the Exploration of the Seas (ICES) to fill gaps in scientific knowledge and to enable it to adopt ICES advice more systematically and transparently, and welcome this initiative.

We also welcome your assurance that the Government will assess the Commission's proposals regarding fishing proposals for 2018 in accordance with their compliance with sound science, sustainability and eliminating discards. However, we have been presented with evidence from the New Economics Foundation that TACs have often been agreed at levels significantly above those recommended by scientific advice. Can you confirm that you will not seek any TACs that exceed the limits established by scientific advice?

You indicate that avoiding by-catch discards may, in some situations, constitute a rationale for setting fishing opportunities at levels above those required to achieve a stock's MSY. Does the Commission agree with this position?

Finally, we have two wider questions, relating to the impact of Brexit upon fisheries management.

First, we note that several of the conditions cited in the Communication as making the Mediterranean and the Black Sea challenging areas in which to achieve sustainable fishing (such as the existence of mixed fisheries and stocks shared by EU and non-EU states) will also apply to UK waters post-Brexit. What steps will the Government take to overcome these difficulties post-Brexit and ensure the sustainability of UK waters continues to improve?

More specifically, in your response to our report *Brexit: fisheries*, you agreed that new structures for negotiating TACs will be an essential part of any post-Brexit fisheries management regime. Has the Government made any further assessment of how this might be achieved?

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

6 September 2017

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

Thank you for your letter of 6 September incorporating your response to our Explanatory Memorandum on the above Proposal.

We support the Commission's proposal that fishing opportunities should be set to achieve MSY by 2018 wherever possible, and recognise the need for certain exceptions to take into account other provisions in the reformed Common Fisheries Policy (CFP). However, we need to wait for the Commission's more detailed proposals, including those for individual stocks in 2018. These are due to be made available in October/November, to assess whether the proposals are ambitious enough to increase the sustainability in waters surrounding the UK.

With regards to the percentage of stocks exploited at sustainable levels that you highlight, the progress described by the Commission does not take into account the latest advice from the International Council for the Exploitation of the Sea (ICES). This was published on 30 June, hence further headway has been made on some stocks in the North Sea and North-Western Waters, when taking into account this latest ICES advice. For example, the latest advice shows a substantial improvement in the condition of both cod and haddock in the Irish Sea.

Concerning the implementation of the CFP in the Mediterranean and the Black Sea, we recognise the considerable challenges facing the Commission and Member States in these waters, and the need to make concrete progress towards an effective management regime. However, we must prioritise our focus and resources on areas where the UK has an active fishing interest, i.e. North Sea and North-Western Waters.

On 13-15 June 2017, the Commission carried out an audit on the implementation of the landing obligation in the UK. Initial feedback has been positive and broadly in line with the experiences of, and challenges faced by, other Member States. In terms of improving compliance, monitoring and enforcement, we believe that remote electronic monitoring (REM) will be the most effective and efficient way of ensuring this, given the shift the landing obligation represents from monitoring landings to monitoring catches at sea. The UK has developed relevant expertise through trialling REM

schemes, and has achieved successful results with the vessels participating. However, at EU level there is a lack of collective political agreement within the regional groups on how to proceed with a wider rollout, with Member States not wanting to go ahead without the assurance of a level playing field.

With regards to your question on the setting of TACs, it is true that there has been atendency in the past for TACs to be set above ICES advice. However, TACs are now being set in line with the advice and are progressively moving towards MSY. It is important that this same scientific advice is able to fully take into account the challenges posed by mixed fisheries. We believe that avoiding by-catch discards in mixed fisheries provides a rationale to setting fishing opportunities at levels above those required to achieve MSY. This analysis has been accepted by the Commission in previous years, particularly with regards to the Celtic Sea.

It is clear that some of the challenges derive from a collective failure of the EU and coastal states to co-operate. The UK has been a strong advocate for the sustainable management of fisheries and the Government is committed to ongoing co-operation with the EU and other countries, over the management of shared stocks in accordance with our obligations under the UN Convention on the Law of the Sea. Our overall objective of championing sustainable fisheries will be as strong as ever.

A range of analyses are being carried out to determine what different structures could be used in the future for negotiating TACs. This work will help us to form our negotiating strategy to agree a post Brexit fisheries management regime with the EU and coastal states.

20 September 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2003/87/EC TO ENHANCE COST-EFFECTIVE EMISSION REDUCTIONS AND LOW-CARBON INVESTMENTS (11065/15)

Letter from the Chairman to Claire Perry MP, Minister of State for Climate Change and Industry, Department for Business, Energy and Industrial Strategy

Thank you for the letter of 21 March from then Minister of State for Climate Change and Industry, Nick Hurd MP, on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 10 July.

Thank you for updating us on the progress of the dossier and the expected timeline. We welcome your statement that the position agreed in Council is a good outcome for the UK, and note your view that the proposal for a conditional increase in the proportion of free allowances is an acceptable alternative to a tiered approach to protecting at-risk industrial sectors.

Have you come to a view regarding whether you will seek to remain part of the EU ETS after withdrawal from the EU?

As you know, we have already cleared this dossier from scrutiny. But we remain very interested in the progress of this file, so please do keep us updated as negotiations progress. We look forward to hearing from you in due course.

10 July 2017

Letter from Claire Perry MP, Minister of State for Climate Change and Industry

Having recently begun my appointment at BEIS, taking over the portfolio of Nick Hurd, I thought it appropriate to update you on developments relating to the EU Emission Trading System (ETS) Phase IV negotiations, and on the work we are doing to determine the UK's relationship with the system post-EU Exit. The House of Lords' European Union Committee officially lifted parliamentary scrutiny in December 2016, but asked to be updated regularly on the progress of EU ETS reform negotiations. I am sending a separate letter to update you on the developments on the Aviation EU ETS file.

EU ETS Phase IV

In Nick Hurd's last letter in March, he set out the final Council and Parliament positions on Phase IV of the EU ETS. Since then Trilogue negotiations between these two parties and the Commission have

been underway. Scheduling issues as a result of national elections in Malta and the UK, and the replacement of the Parliament's Rapporteur for the file (Ian Duncan being replaced by Julie Girling), have meant that little progress has been made in this time. In light of this there has yet to be substantial discussion of what are broadly agreed to be the three key issues of the file, including: strengthening the system to provide a more effective low carbon investment signal; protection for Industrial sectors at risk of carbon leakage; and the funds to provide support for lower income Member States. As such, we have little further information about how these issues are going to be addressed and the likely final landing ground for negotiations, beyond the assessment set out by my predecessor in his previous correspondence.

We have been continuing to engage with key figures in the Commission, Parliament and other Member States, in order to promote UK interests and push for swift agreement. This July marks the end of the Maltese Presidency and the beginning of the Estonian, and we hope that this will be a catalyst to increase the pace of negotiations. The UK continues to push strongly for final agreement of the file in the second half of this year. We consider this to be necessary to allow progress to be made on tertiary legislation and implementing action to give effect to the Directive.

EU Exit

In regard to the UK's future involvement in the EU ETS, for both stationary emitters and aircraft operators, following the UK's exit from the EU, we continue to explore a wide range of possible options, from remaining in the EU ETS in the long-term; to exiting the system at an agreed point in the future and putting in place one of a number of long- and short-term domestic alternatives. We are considering these options in the light of the views of broad range of EU ETS participants and other stakeholders. Of course, the final outcome on the UK's future relationship with the EU ETS will be decided as part of the wider agreement with the EU. Our guiding principle will be ensuring an outcome which is in the best interests of the UK, including ensuring we can continue to meet our carbon budgets, under the Climate Change Act, as cost effectively as possible and maximising industrial competitiveness.

I plan to write again when the negotiations progress sufficiently to warrant an update. If you have further any questions in the meantime, I would be very happy to respond to them.

12 July 2017

Letter from the Chairman to Claire Perry MP, Minister of State for Climate Change and Industry

Thank you for the letter of 12 July on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 19 July.

Thank you for updating us on the progress of the dossier, and on your current position regarding whether you will seek to remain part of the EU ETS after withdrawal from the EU.

We remain very interested in the progress of this file. We look forward to hearing from you on both of these issues in due course.

20 July 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON BINDING ANNUAL GREENHOUSE GAS EMISSION REDUCTIONS BY MEMBER STATES FROM 2021 TO 2030 FOR A RESILIENT ENERGY UNION AND TO MEET COMMITMENTS UNDER THE PARIS AGREEMENT AND AMENDING REGULATION NO.525/2013 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON A MECHANISM FOR MONITORING AND REPORTING GREENHOUSE GAS EMISSIONS AND OTHER INFORMATION RELEVANT TO CLIMATE CHANGE
(11483/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE INCLUSION OF GREENHOUSE GAS EMISSIONS AND REMOVALS

FROM LAND USE, LAND USE CHANGE AND FORESTRY INTO THE 2030 CLIMATE AND ENERGY FRAMEWORK AND AMENDING REGULATION NO.525/2013 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL ON A MECHANISM FOR MONITORING AND REPORTING GREENHOUSE GAS EMISSIONS AND OTHER INFORMATION RELEVANT TO CLIMATE CHANGE (11494/16)

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS - ACCELERATING EUROPE'S TRANSITION TO A LOW-CARBON ECONOMY COMMUNICATION ACCOMPANYING MEASURES UNDER THE ENERGY UNION FRAMEWORK STRATEGY: LEGISLATIVE PROPOSAL ON BINDING ANNUAL GREENHOUSE GAS EMISSIONS REDUCTIONS BY MEMBER STATES FROM 2021 TO 2030, LEGISLATIVE PROPOSAL ON THE INCLUSION OF GREENHOUSE GAS EMISSIONS AND REMOVALS FROM LAND USE, LAND USE CHANGE AND FORESTRY INTO THE 2030 CLIMATE AND ENERGY FRAMEWORK AND COMMUNICATION ON A EUROPEAN STRATEGY FOR LOW-EMISSION MOBILITY (11522/16)

**Letter from Claire Perry MP, Minister of State for Climate Change and Industry,
Department for Business, Energy and Industrial Strategy**

First I would like to apologise for the delay in our response to your letter back in January for the proposals listed above, also known as the Effort Sharing Regulation (ESR) and the Land Use, Land Use Change and Forestry Regulation (LULUCF). Due to some miscommunication my department was not sighted on this until May, by which time, Purdah had commenced for the General Election. I am happy to clarify the points you raised in your communication.

I agree that what the EU does regarding emissions reductions is important and that climate legislation should be robust and fit for purpose. Both proposals have been designed with the UK remaining as part of the target and they do not include alternative allocations in the scenario wherein the UK does not participate. I am not aware of alternative proposals excluding the UK from the target but whether and how the EU reallocates targets to Member States should the UK not be part of the package is a matter for the EU. While the UK voted to leave the EU, it was not a vote to leave Europe; we want to continue to be reliable partners, willing allies and close friends with European countries. This includes our future relationship with the EU on climate change. As you know, we remain committed to the UK's domestic Climate Change Act which sets ambitious targets for UK emissions reductions.

Following working level negotiations, the Maltese Presidency of the Council of the EU presented a policy progress report and chaired an open debate and exchange of views between Ministers in the EU Environment Council on June 19th. Estonia will take over the Presidency from July and have expressed their intention to work towards the Council of the EU voting on a general approach for both proposals in the October EU Environment Council. With this in view the Estonians are keen to start negotiations again at the working level from July onwards. We support this aim. It would help clear the way for the EU to prepare for the first ambition cycle under the Paris Agreement 2018-2020.

Following a general approach at Ministerial level there will be discussions with the European Parliament in trilogue negotiations. This will be between the European Parliament, the Council of the EU (represented by the Estonian Presidency) and the European Commission. The UK is committed to decarbonisation and the Paris Agreement and therefore continues to support a swift agreement of the package.

14 July 2017

Letter from the Chairman to Claire Perry MP, Minister of State for Climate Change and Industry

Thank you for your letter of 14 July on the above Proposals, which was considered by our Energy and Environment Sub-Committee at its meeting on 19 July.

We note your explanation of why your response was delayed.

We note your statement that the proposals have been designed so that the UK remains part of the target, and that a potential reallocation of the UK's responsibilities after Brexit, should the UK no longer participate in the package, is a matter for the EU. 2 of 2

Your predecessor, Nick Hurd MP, told us in his letter of 15 December that the emissions reduction plan would set out how the Government will reduce greenhouse gas emissions in the 2020s. We remind you that we are still awaiting that plan, and that it is key to clarifying future UK policy given that EU-level policies could have contributed around 55% of the UK's required emissions reductions to 2030.

Thank you for your explanation of the anticipated progress of these Proposals.

We are now content to release these Proposals from scrutiny. Please update us in due course as negotiations progress.

20 July 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ESTABLISHING A MULTI-ANNUAL PLAN FOR DEMERSAL STOCKS IN THE NORTH SEA AND THE FISHERIES EXPLOITING THOSE STOCKS AND REPEALING COUNCIL REGULATION (EC) 676/2007 AND COUNCIL REGULATION (EC) 1342/2008 (AND ADD I, SWD(2016) 272 FINAL AND SWD(2016) 267 FINAL) (11636/16)

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 23 March.

I am writing to update you on progress being made to agree a multi-annual plan (MAP) for demersal stocks and nephrops in the North Sea. As you may recall, the Commission brought forward its proposal in August 2016. The Council agreed its position in April and the European Parliament is expected to agree its position later this month, opening the way for trilogue in July. We anticipate agreement and adoption of the MAP in 2017 and that it will be effective from 2018.

The Council position is largely the one described in my letter to you of 16 March, which followed the second Presidency compromise of simplifying the Commission's proposal. It removes changes to requirements for the prior notification of landings and for landings over a lowered threshold to be made at designated ports, which would have increased administrative burdens on industry and enforcement authorities with few benefits. In addition, the number of groups of stocks covered by the plan has been reduced in the compromise proposal. However, it continues to include the main demersal species and all Nephrops functional units in the North Sea, and will also allow for the sustainable management of bycatch species.

While not yet finalised, it appears that the final position of the Parliament is moving in the same direction as that of the Council.

In your letter of 23 March, you noted my concern that some proposed amendments could allow the EU to deviate from commitments to achieving maximum sustainable yield (MSY) in the event that a third country set unilaterally high quotas. There is no indication that this has been included in the position of either the Council or the Parliament. I am very mindful to avoid any conditions being set that could undermine UK Government objectives for sustainable management of fish stocks, or which would disadvantage the UK after it has left the EU.

In your letter, you also expressed concern about a draft amendment from the PECH Committee that seeks to enhance the applicability of EU law to third countries operating in the North Sea. This

appears to refer to the part of the rapporteur's report that suggests, with regard to future agreements with third countries, that jointly managed stocks should be managed in line with the goals of Article 2(2) of the Common Fisheries Policy regulation. This article refers to the objective of restoring and maintaining populations of fish above levels capable of producing their MSY. The Government remains a champion of sustainable fishing and we would welcome the EU's continued adherence to that principle. The legal scope of the MAP will be restricted to EU waters and all vessels fishing there. Once the UK leaves the EU and restores control over its own EEZ, we will set our own condition on any future access to our waters.

4 July 2017

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

Thank you for your letter of 4 July on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 19 July.

We note your assessment that the Council position remains largely unchanged compared to your last letter. The removal of the requirements regarding prior notification of landings and landings at designation ports seems proportionate and appropriate.

You note that, though the Proposal includes the main demersal species and all Nephrops functional units in the North Sea, the number of groups of stocks covered by the plan has been reduced. Are you content that the plan remains sufficiently ambitious?

We welcome your commitment to avoiding the inclusion of conditions that could undermine the UK's objectives for sustainable fisheries management or which could disadvantage the UK after Brexit has taken effect.

As you know, we granted you a one-off scrutiny waiver but retained the document under scrutiny. We are now content to release the Proposal from scrutiny, however, we continue to take an interest in the development of this Multi-Annual Plan and hence request that you keep us updated on the progress of the discussions with the European Parliament.

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

20 July 2017

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

Thank you for your letter of 20 July about the changes in the grouping of stocks covered by the North Sea multi-annual plan (MAP).

The specific stocks covered by the MAP proposal remain unchanged from the initial proposal. I am therefore content that the plan retains its original ambitions. The change to the way in which stocks are grouped is intended to simplify the proposal. The plan continues to ensure that the main commercially important species will be exploited at rates consistent with their maximum sustainable yield, by setting fishing opportunities using target fishing mortality ranges and the conservation reference points. For by-catch species, a precautionary approach will continue to be applied that uses the best available scientific advice. I fully expect the revised plan to help deliver the UK's objectives for sustainable fisheries management.

21 August 2017

COMMISSION DELEGATED REGULATION (EU) OF 25 SEPTEMBER 2015
SUPPLEMENTING REGULATION (EU) NO.609/2013 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL AS REGARDS THE SPECIFIC COMPOSITIONAL AND
INFORMATION REQUIREMENTS FOR PROCESSED CEREAL-BASED FOOD AND BABY
FOOD (12428/15)

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

On 27 January 2016, the (then) Parliamentary Under Secretary of State for Health, Jane Ellison MP, wrote to you (see Annex A) about three Delegated Regulations supplementing Regulation (EU) 609/2013 that had been submitted to the Scrutiny Committee. You replied on 3 February 2016 (see Annex B) saying you were content to release documents 12430/15 and 12431/15 from scrutiny, but were retaining document 12428/15 under scrutiny, pending further information from the Commission on the concerns raised about the high levels of added sugar in processed cereal based food and baby food. I now write to provide the Committee with further information and I am sorry for the delay in reply to the Committee's questions.

In August 2016, an informal update was provided to the Committee Secretariat, but at that time, there was little to report on other than outlining the procedural steps to be undertaken. Since then, there has been more progress, which I summarise below.

On 20 January 2016, the European Parliament adopted a Resolution objecting to the Delegated Regulation. The European Parliament had two broad areas of concern. First, the compositional requirements for processed cereal-based food and baby food, in particular with respect to the sugar levels in the products. Second, the labelling and marketing requirements for these products with respect to the provision of information on the introduction of complementary feeding before six months of age. As a result, the Parliament asked the Commission to bring forward a new delegated act, taking into consideration the findings of European Food Safety Authority's (EFSA's) planned review of the evidence on sugar and the early introduction of processed foods in relation to optimal infant feeding recommendations.

EFSA has accepted a mandate from the Commission to update its opinion on the appropriate age for introduction of complementary feeding of infants. This work is due to be finished by the end of September 2018. I understand that the work is proceeding well, that the systematic literature search carried out by an external contractor of EFSA is almost finished and that EFSA will soon start the systematic literature review.

In the context of the preparation of the new delegated act, the Commission intends to carry out a comprehensive review on the compositional and labelling requirements for weaning foods, in order to address the concerns raised by the European Parliament. The Commission has asked the Joint Research Centre (JRC) to carry out a study on processed cereal-based food and baby food that can feed into the preparation of EFSA's updated scientific opinion. This study is due to be completed by the end of March 2018. That work is also proceeding well; the JRC has already sent out a questionnaire to the Member States to validate and complement its first findings as regards the review of existing nutrient recommendations and food based dietary guidelines in the context of infant and young child feeding.

Taking into account these pieces of work EFSA will then, in its role of a risk assessor, be mandated to comment on the extent to which the consumption by infants and young children of processed cereal-based foods and baby foods with a given composition that would be reflected in the future delegated act may be compatible with a balanced diet.

Once all these building blocks are in place the Commission will proceed with a draft delegated act on processed cereal-based foods and baby foods for infants and young children for adoption.

I trust you find this update helpful and I would be happy to provide further information next year when the mentioned reviews have been completed.

31 August 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE MANUFACTURE, PLACING ON THE MARKET AND USE OF MEDICATED FEED AND REPEALING COUNCIL DIRECTIVE 90/167/EEC (13196/14)

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

Thank you for your letter of 28 March, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 10 July.

We welcome sight of the impact assessment checklist, which you enclosed with your letter.

The Checklist states that “A high proportion of veterinary antibiotics given to farmed animals are administered in feed” and notes that the Proposal has “introduced a series of changes” with regards to reducing the risk of antimicrobial resistance (AMR) developing in the food chain. The Checklist also notes that the anticipated benefits associated with the Proposal and the reduced risk of antimicrobial resistance would outweigh the anticipated costs on farmers and feed producers.

We welcome this assessment and the move towards minimising AMR. But, in the light of your previous letter informing us that the Proposal has been halted while the related Proposal on veterinary medicines (13289/14) catches up, we note that the timetable for the UK’s withdrawal from the EU might overtake the negotiations on these dossiers. What is the current timeline for the Proposal? In the event that Brexit takes effect before the Regulation comes into force, do you envision implementing the provisions associated with reducing AMR?

We note the Checklist raises some concerns about examination of animals prior to prescription, in particular in relation to the availability of specialised vets in the UK. Given that a large proportion of veterinarians in the UK are non-UK EU nationals, what plans do you have to mitigate the concerns associated with examinations and available staff, as set out in the Checklist?

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

10 July 2017

Letter from Lord Gardner of Kimble, Parliamentary Under Secretary of State

Further to your letter of 10 July 2017, I am writing in reply and to provide an update on the above proposal.

You asked for our assessment of the timelines for the proposal and whether we will implement the antimicrobial resistance related provisions upon leaving the EU. It is highly likely that the UK will leave the EU before the updated medicated feed regulation will come into force, especially as the regulation is not due to take effect until a year after it has been adopted.

Following our exit, it is likely that we will implement similar provisions to reduce the risk of antimicrobial resistance developing. We are supportive of the provisions to strengthen

the legislative framework and we have worked hard to ensure that the proposed measures are proportionate and evidence-based.

There are a number of new provisions in the medicated feed (and related veterinary medicines) draft regulations that the UK will look to implement to enable trade and maintain access to animal medicines for UK consumers.

The Estonian Presidency has proposed reopening discussions on the medicated feed proposal in September 2017 and a provisional meeting has been arranged. We will continue to participate in any future council negotiations on the Medicated feed regulation for as long as the UK remains in the EU.

You also asked what plans we have to mitigate the concerns associated with examinations and available staff, in particular in relation to the availability of specialised vets in the UK, given that a large proportion of veterinarians in the UK are non-UK EU nationals.

Government is working with the Home Office/EU Exit Immigration Policy Team to ensure that the UK's immigration system will develop a skills-based immigration policy which will take account of veterinary workforce needs and the wide range of roles that vets and vet nurses fulfil. Suitably qualified vets from overseas are prioritised for UK work visas or equivalent, particularly if they are working in public health and the meat industry.

The Government Veterinary Services network is working on contingency options to support retention and future recruitment of veterinary surgeons. This will focus on ensuring that there will be enough veterinarians and wider support staff to meet the UK's demands for animal welfare post EU exit

Government and its agencies also actively collaborate with the Royal College of Veterinary Surgeons and UK veterinary schools to attract students to this sector by increasing the capacity for UK veterinary education. This will ensure an appropriate supply of home-grown vets and veterinary nurses to offset any reduction in migration of those from overseas working.

20 July 2017

Letter from the Chairman to the Lord Gardner of Kimble, Parliamentary Under Secretary of State

Thank you for your letter of 20 July 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 6 September 2017.

We note your explanation that the UK is likely to have left the EU before this Regulation takes effect, but that it is likely the Government will seek to implement similar provisions of its own accord.

We welcome the Government's work with the Home Office, the Veterinary Services network and the Royal College of Veterinary Surgeons to ensure that there are sufficient veterinarians in the UK after Brexit to implement these measures. However, we would remind you of the UK's overwhelming reliance on EU citizens to fill official veterinary positions, and reiterate the conclusion from our Brexit: agriculture report that unless arrangements are made to preserve access to veterinary staff from outside the UK, the agri-food industry will suffer major disruption.

We are now content to release this Proposal from scrutiny. We remain interested in the dossier, and request an update on its progress in due course.

6 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON VETERINARY MEDICINAL PRODUCTS (13289/14)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 726/2004 LAYING DOWN COMMUNITY PROCEDURES FOR THE AUTHORISATION AND SUPERVISION OF MEDICINAL PRODUCTS FOR HUMAN AND VETERINARY USE AND ESTABLISHING A EUROPEAN MEDICINES AGENCY (13240/14)

Letter from Lord Gardner of Kimble, Parliamentary Under Secretary of State, Department for Environment, Food and Rural Affairs

Further to your letter of 2 March 2017, I am writing to provide an update on the above proposals.

The third read through continued under the Maltese presidency and the rate of progress has improved; all of the articles have now been discussed and redrafted at least twice. The Estonian presidency has stated its intention to finalise the Council's position by October in order to start the negotiations with the European Parliament as soon as possible. In light of the slow progress so far, we understand that the Presidency is under significant pressure to deliver progress quickly.

As previously advised, the European Parliament has adopted 289 proposed amendments, and referred the matter back to the Environment, Public Health and Food Safety Committee, with a view to

opening negotiations with the European Council. However, as the Council position has not yet been agreed, there has been no further progress.

20 July 2017

Letter from the Chairman to Lord Gardner of Kimble, Parliamentary Under Secretary of State

Thank you for your letter of 20 July 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 6 September 2017.

We note that the third read through was completed under the Maltese presidency, thus completing a redraft of all articles. Were any substantive changes made? Please provide us with your assessment of the Proposal as it stands following the redrafting process.

We note that the Estonian presidency intends to finalise the Council's position by October.

We have decided to retain these Proposals under scrutiny. We look forward to a reply to this letter in 10 working days.

6 September 2017

Letter from Lord Gardner of Kimble, Parliamentary Under Secretary of State

Further to your letter of 6 September 2017, and as requested, I am writing to provide an update on the above proposal, following the completion of the third read through.

You asked whether any substantive changes have been made to the text, and our assessment of the proposal as it stands. There have been a number of amendments made, the majority of which are minor. Many Member States are unfortunately still debating minor details rather than discussing and agreeing overall principles.

Amendments to the provisions covering the sale and supply of veterinary medicines at a distance have been proposed. A significant proportion of Member States wish to restrict online supply to non-prescription medicines. We, along with Sweden, have argued that Member States should be permitted to allow prescription medicines to be sold online in their territories if they wish to. We have successfully lobbied for a derogation to this effect to be included.

As expected, provisions restricting prophylactic and metaphylactic use of antimicrobial veterinary medicines have been introduced, mirroring the medicated feed proposal. We have supported these additions as they are in line with the Government's position on responsible use of antibiotics.

Although progress has remained slow, the Estonian Presidency has confirmed its intention to finalise the Council working groups position and move the discussions to the Attachés level in October 2017. We are hopeful that this will speed up the process in order for the negotiations with the European Parliament to begin.

It is highly likely that the UK will leave the EU before the updated regulation will come into force, especially as the regulation is not due to take effect until three years after it has been adopted. There are a number of new provisions in the draft regulations that the UK will seek to implement, in order to enable trade and maintain access to animal medicines for UK consumers. Following our exit, it is also likely that we will implement similar provisions to reduce the risk of antimicrobial resistance developing. We are supportive of the provisions to strengthen the legislative framework and we have worked hard to ensure that the proposed measures are proportionate and evidence-based.

13 September 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVES 2000/53/EC ON END-OF-LIFE VEHICLES, 2006/66/EC ON BATTERIES AND ACCUMULATORS AND WASTE BATTERIES AND ACCUMULATORS, AND 2012/19/EU ON WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (AND ADD 1-2 OF PROPOSAL) (14973/15)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT OF THE COUNCIL AMENDING DIRECTIVE 1999/31/EC ON THE LANDFILL OF WASTE (AND ADD 1-2 OF PROPOSAL) (14974/15)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2008/98/EC ON WASTE (AND ADD 1-3 OF PROPOSAL) (14975/15)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 94/62/EC ON PACKAGING AND PACKAGING WASTE (AND ADD 1-3 OF PROPOSAL) (14976/15)

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

Thank you for your letter of 25 January 2017.

I am writing to give an update on the six directives¹ currently being amended. Since I wrote to the Committee in January, rapid progress has been made under the Maltese Presidency.

The European Parliament adopted their amendments to the proposals in March 2017, securing a huge majority (over 600 votes) in favour of very ambitious measures. These include a 70% recycling target for municipal waste by 2030 (plus an additional 5% target for reuse of products), a 5% target for the amount of municipal waste going to landfill, and an 80% target for the reuse or recycling of packaging waste. They also supported additional targets for food waste and marine litter reduction and a very restrictive regime for Extended Producer Responsibility schemes.

On 19 May 2017, at COREPER, the Maltese Presidency assumed a mandate and started trilogue discussions with the Parliament. There was no opportunity to vote in Council on this but the Presidency's position is for ambitious but achievable measures. These include a 60% recycling target for municipal waste by 2030, a 10% target for landfilling of municipal waste, with a five year derogation for 11 Member States who are performing poorly at present (not the UK) and a 70% target for reuse and recycling of packaging waste. It also supported a more flexible approach towards Extended Producer Responsibility schemes which would allow Member States some degree of discretion when implementing the measures, compared with the original proposals.

The first trilogue discussion took place on 30 May, setting the scene and setting out priorities for the discussion. The second trilogue took place on 26 June. These discussions are expected to continue for several months. The Council, the Parliament and the Commission will negotiate a final compromise package. Member States will vote on whether to adopt the package once it has been finalised.

Once the amendments to the waste Directives are adopted, there will be a 2 year transposition deadline, which will run to the period when the UK has exited the EU. Therefore, it is too early to tell to what extent the UK would be required to implement the measures. However, there is likely to be an expectation that we do adopt these or broadly equivalent measures. The UK has therefore been fully engaged in the preparation of the Council position.

The UK broadly supports the Circular Economy waste proposals as these are generally aligned to our policy objectives to improve resource efficiency, increase recycling and reduce landfilling. We have

¹ The Waste Framework, Packaging and Packaging Waste, Landfill, Electrical and Electronic Equipment, Batteries and End-of-Life Vehicles Directives

concerns, however, about the feasibility of achieving very ambitious recycling targets for municipal waste:

- To increase recycling rates to 55%, we would need to improve the performance of household waste collection services. The local authorities with the highest recycling rates currently provide separate food waste, garden waste, dry recyclable materials and a fortnightly collection of residual waste. If we were to require all local authorities to do likewise the additional costs would be around £250m per year. There would, however, be savings, estimated to be around £380m per year, from reduced refuse disposal costs and increased recycling revenues for either local authorities or waste management industry. Recycling is particularly challenging in urban areas with high population densities. Some local authorities are tied into long term contracts, while others have extended contracts for financial reasons even though their recycling rate will not increase.
- A recycling target of 60% or more would also be likely to require the introduction of separate waste collection measures in the municipal commercial sector. While the exact cost implications of such a collection service change are uncertain due to the diversity of the sector, current analysis suggests that some sub-sectors may face additional collection costs from increased number of pick-ups of separate waste stream collections.
- Very high recycling rates would not be feasible without significant behavioural change from householders, as well as substantial operational changes from local authorities and businesses.

The Scottish and Welsh Governments support the European Parliament's 70% target while Northern Ireland shares the UK Government's view that targets must be both ambitious and achievable. Wales has introduced a statutory target to recycle 70% of municipal waste by 2025. Scotland has a public target to recycle 70% of all waste by 2025.

On targets, views are split amongst Member States. Those who have joined the UK in calling for achievable recycling targets for municipal waste are Bulgaria, Poland, Hungary and Romania. Those in favour of ambitious recycling targets are the Netherlands, France, Austria, Belgium and Sweden.

The UK is broadly supportive of the other elements of the Council position which include: (i) achievable targets for landfilling municipal waste and packaging waste, and (ii) a more flexible approach to the minimum requirements for Extended Producer Responsibility schemes including that requirements will not apply to voluntary schemes and that there will be some flexibility in the provisions covering financial responsibility.

We have concerns, however, about several aspects of the European Parliament's position, in particular:

- Very ambitious targets for recycling of municipal waste (70%) and packaging waste (80%);
- EU wide targets to reduce food waste by 30% by 2025 and 50% by 2030;
- Marine litter reduction target of 50% by 2030;
- A very restrictive requirement for Extended Producer Responsibility schemes that requires producers to bear full financial responsibility for the management of the waste stage of a product's life cycle.

In your last letter, you expressed a particular interest in calculation methods for accounting for waste. The Council has now agreed upon a single calculation method that will harmonise how Member States count and report recycling rates for municipal waste, packaging waste and waste sent to landfill.

With regards to municipal waste, the weight of waste recycled will be measured at the point it enters the recycling operation (i.e. after it has been sorted into separate fractions). It will include metals from incinerator bottom ash but not the ash itself. The UK has successfully defended our view that waste that is prepared for reuse be included, and that there is no need to separately report on municipal bio-waste. The European Parliament position is broadly in line with the Council's position on this issue.

Once the Council and European Parliament arrive at a compromise, the UK will decide on its voting position. The incoming Estonian Presidency has already stated at the last Environment Council that the Circular Economy Package is one of their top priorities. It is anticipated that they will seek to secure a final agreement before the end of their presidency in December 2017.

I will write to the Committee again to provide an update as discussions progress.

5 July 2017

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 letter of 5 July, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 19 July.

You indicate that the Maltese Presidency “assumed a mandate and started trilogue discussions with the Parliament. There was no opportunity to vote in Council on this”. You later on note that “once the Council and the European Parliament arrive at a compromise, the UK will decide its voting position”.

However, we are of the view that initiating trilogue negotiations without a scrutiny waiver or clearance undermines the spirit of the scrutiny reserve. On what basis did the Presidency assume this mandate? Why was there no Council vote? Do you expect the trilogue negotiations to progress on the basis of the assumed mandate?

Turning to the targets that you outline, we note with interest that the European Parliament’s position favours a very ambitious approach to recycling targets for both municipal and packaging waste.

You indicate that the Scottish and Welsh Governments support the EP’s proposed target for municipal waste of 70%, while you and the Northern Irish Government believe this is not achievable in the UK. Yet your letter seems to indicate that the costs of increasing recycling rates to 55% would be accompanied by substantial savings – around £380m according to your estimates - from reduced refuse disposal. Could you please clarify whether you intend to deliver on the 55% target at the least, or whether you seek a lower target? What estimates have you made of the costs and associated savings for the 70% recycling target?

Though we recognise the challenges associated with waste collection in urban areas and the long-term contracts that some local authorities are tied to, we fail to understand why even the 55% target is difficult to achieve, given the much higher ambitions set out by Scotland and Wales. Could you please elaborate on this? We also remind you that your letter indicates parts of the UK already deliver higher rates of waste collection and recycling, while other EU Member States successfully collect and recycle waste in their urban areas. What assessment have you made of the best practice from within the UK and across other EU Member States, and how could this be applied to the UK as a whole?

You do not comment on the potential environmental benefits of the targets, nor whether a more ambitious, albeit costlier, approach would be an effective means to establish a circular economy. We would welcome your views on this.

We also invite you to set out how these Proposals would relate to the collection and recycling of commercial waste.

Your letter also suggests that very high recycling rates would not be feasible “without significant behavioural change from householders”. At the same time, your letter indicates that higher recycling rates are seen in local authorities that provide separation of food waste, garden waste etc., and fortnightly collection of residual waste. What assessment have you made of the effect of recycling services on household behaviour? Is behavioural change feasible without more ambitious waste separation and collection services? What steps will you take to educate citizens to promote that behavioural change?

Lastly, you indicate that you have issues with the target for reducing marine litter. Please elaborate on this point, and what your concerns are.

We have decided to retain the documents under scrutiny. We look forward to receiving an update in 10 working days.

21 July 2017

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

Thank you for your letter of 21 July. You asked about the basis on which the Maltese Presidency assumed its mandate to proceed with trilogue negotiations, given the Council have not yet voted on the package. The Presidency concluded after discussion at Coreper on 19 May 2017 that they had sufficient support from enough Member States to begin the trilogue discussions. Trilogue discussions began in June and are proceeding on the basis of the position set out at Coreper. At the recent Council meeting another nation expressed its concern at the lack of political debate so far, which I reinforced. We appreciate that your Committee has a scrutiny reserve on these proposals. A final package is still far from being agreed but the Estonian Presidency expects a final vote in Council by the end of this year.

With regards to recycling targets, you ask whether we intend to deliver on at least a 55% target or whether we seek a lower target. We do not wish to pre-empt the outcome of the negotiations but agree that the new recycling target should be higher than what we have today.

You ask what estimates we have made of the costs and associated savings for a 70% recycling target. Despite in-depth analysis, we have been unable to identify specific policies which would enable the UK as a whole to reach a 70% recycling target. As such, it is not feasible to put forward a reliable estimate at this stage. However, in light of the new municipal waste definition, which now includes household-like waste from commerce and industry, we are now in the process of further developing our evidence base to better understand the feasibility of a target of 60% or higher.

You asked for further elaboration on why even a 55% target would be difficult to achieve, given (a) the much higher ambitions of Scotland and Wales; (b) the fact that higher rates are already being achieved in some parts of the UK and (c) the fact that other Member States are achieving higher rates even in urban areas. You also asked what assessment has been made of best practice from within the UK and across other EU Member States, and how could this be applied to the UK as a whole.

Member states with the highest recycling rates typically have restrictions or bans on what waste can be sent to landfill and in some cases incineration. They may also have local targets and measures to mandate separate collection of all materials including biowaste and provisions to fine local authorities that do not comply. Some Member States, have “pay as you throw” systems where householders are charged according to the amount of residual waste put out for collection (for example by weight or per bag) - This is to incentivise householders to separate waste for recycling. Many also have powers to ensure householders follow local guidelines on separating recyclable materials from residual waste for collection. It should be recognised that the targets continue to be based on weight, rather than value.

Some local authorities in the UK have achieved higher recycling rates and these typically have a separate food waste collection service, a fortnightly collection of residual waste and a kerbside collection of garden waste. We think that decisions on introducing service changes need to be made at the local level, taking into account the situation of householders and implementation costs. We want all local authorities to look at their own performance and to apply best practice. To this end the Waste and Recycling Action Programme (WRAP) publishes best practice guidance on waste and recycling including on collection of food waste; dry materials and residual waste services and this is available for all local authorities to use in service planning. I am also concerned about the number of authorities that have a low recycling rate and have written to leaders of all those local authorities that have a recycling rate of 30% or lower to ask about their plans to increase recycling locally and also the barriers they may face in doing so.

You asked for our views on the potential environmental benefits of the targets, and whether an ambitious, albeit costlier approach could be an effective means to establishing a circular economy. We recognise that there are significant environmental benefits to the Circular Economy Package, in particular in the reduction in UK’s greenhouse gas (GHG) emissions.

In spite of these significant benefits, we do not see an excessively ambitious approach on weight based targets as being an effective means to achieving greater resource efficiency. Signing up to legally binding, unfeasible targets, would open up the risk of perverse outcomes such as increasing the

collection of heavy materials such as garden waste rather than better use of resources overall, causing business disruption and placing undue pressure on our waste management systems. The best approach to achieving greater resource efficiency is, in our view, a phased one, in which local authorities, households and businesses have the time to adjust to the new requirements and redefine best practice. This is essential to ensuring that their support is maintained.

You requested an explanation of how these proposals would relate to the collection and recycling of commercial waste. Both the European Council and Parliament support a proposal to broaden the definition of municipal waste, to include waste from commerce and industry that is similar to household waste in composition. This type of commercial and industrial waste would therefore count towards recycling targets and would be covered by the provisions requiring separate collection and increased recycling.

In our letter of 5 July we set out that the achievement of very high recycling rates would require significant behavioural change from householders, as well as substantial operational changes from local authorities and businesses.

You asked what assessment we have made of the effect of recycling services on household behaviour. You also asked whether behavioural change is feasible without more ambitious waste separation and collection services. According to our analysis, recycling services have a significant impact upon household behaviour, as do the introduction of new rules and incentives for householders.

Based on our analysis we do not expect behaviour change campaigns to be as effective as the policies referred to above. As such, we do not plan to deliver behaviour change campaigns as stand-alone policies, however the policies listed would involve communication with householders.

Lastly, you asked about Defra's concerns about introducing a target for the reduction of marine litter. Given its transboundary nature, there is no methodology in place for how such a target would be measured. We want to see less marine litter and we will achieve that by reducing land-based litter.

2 August 2017

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

Thank you for your letter of 2 August, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 6 September.

We note your explanation that the trilogue discussion of this proposal began “on the basis of the position set out at Coreper”, but remain disappointed that the Member States decided to pursue this matter with representatives of the Commission and the European Parliament with scant regard for national scrutiny procedures and timetables. As you know, the operation of our scrutiny reserve hinges on agreement in the Council by Government Ministers, and we take a dim view of any attempts by the Member States to circumnavigate these important rules via dubious arrangements such as discussion or agreement below Ministerial level in Coreper.

We note your statement that the new recycling target should be higher than the current 50% recycling target but, again, would appreciate clarity on whether you intend to support a 55% target at a minimum.

Your position that you have not assessed the costs and associated savings of a 70% recycling target as you have been unable to identify policies to achieve such a target is unsatisfactory, given the need for an evidence base from which to negotiate with the European Parliament's proposal of a 70% target, and given that Scotland and Wales already have 70% targets in place. We note that you are developing an assessment of the feasibility of a 60% or higher target. Please inform us of the outcome of that assessment as soon as possible.

Your response acknowledged but did not answer the question of why even a 55% target would be difficult to achieve, given (a) the much higher ambitions of Scotland and Wales, (b) the fact that higher rates are already being achieved in some parts of the UK, and (c) the fact that other Member States are achieving higher rates even in urban areas. We again request a response to this point.

We welcome your acknowledgement that recycling services have a significant impact on household behaviour. We therefore contend that the improvement and extension of such services will be necessary to induce the behaviour change required to achieve what you refer to as “very high recycling rates”. To what extent are you confident that your engagement with local authorities to improve poor performance on recycling and disseminate best practice will engender the improvements necessary to comply with the proposed targets?

We also welcome your review of successful approaches to increasing recycling that can be found across Member States, such as bans on certain types of waste being sent to landfill, local targets mandating separate collections, “pay as you throw” systems and powers to ensure householders separate their waste. What assessment have you made of how effective these measures could be in the UK?

Thank you for your explanation that you see a phased implementation of resource efficiency measures as a more effective way to establish a circular economy, rather than pre-emptively ambitious targets which risk introducing perverse outcomes.

Thank you for your explanation that some types of commercial waste would be included in the revised definition of municipal waste, and as such would contribute towards recycling targets and be subject to provisions regarding separate collections.

Thank you for clarifying your concerns regarding the European Parliament’s proposed marine litter reduction target of 50% by 2030. Please keep us informed regarding the status of that proposal as negotiations progress through trilogue.

We have decided to retain the documents under scrutiny. We look forward to receiving an update in 10 working days.

6 September 2017

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

Thank you for your letter of 6 September 2017.

I note your disappointment that the Member States decided to progress to trilogue discussions without agreement in the Council by Government Ministers, and the impacts that has on national scrutiny procedures and timetables. I share your disappointment but the Presidency decided that it had sufficient support to proceed. The Estonian Presidency is keen to have a final vote on whether to adopt the package to take place in Council by the end of this year.

I note also your request for clarity on whether I intend to support a 55% recycling target at a minimum. We are still assessing the implications of the waste package and the proposed targets. At this time the UK could support a 55% target, subject to agreement to suitable definitions and calculation methods. We will, however, need to make an assessment of the final package overall when coming to our final position.

With regards to our lack of assessment of the costs and savings of a 70% target, I assure you that we have undertaken rigorous analysis of possible policies which could be implemented to achieve higher targets. However, we have been unable to identify a mix of policies which would enable us to reach 70%. As such, it is not possible to draw meaningful or reliable conclusions as to the potential costs and savings of a 70% target.

While Scotland and Wales both have a 70% recycling target, this is not equivalent to the target proposed in the waste package, which is more narrow in terms of the types of waste in scope, and therefore more challenging to achieve. Furthermore, the geographical context in which Scotland and Wales are working is very different from England and the policies they intend to implement would not necessarily yield the same results if scaled across the whole of the UK. In addition to the challenge of achieving recycling targets in urban areas set out in my last letter, it may be helpful to consider that there are 418 local authorities in the UK (of which 353 are in England), most with their own waste management systems and contracts in place, relative to Scotland’s 32 and Wales’ 22 local authorities. Furthermore, the total combined population of Scotland and Wales is less than Greater London, which currently has a recycling rate of 32%. There are therefore significant challenges and complexities to be overcome in identifying suitable policies, and implementing these across the UK.

I note your request to be informed of results of our current evidence review as soon as possible. I will keep you updated on this.

You requested further explanation of why a 55% recycling target would be difficult to achieve, given a) the higher ambitions of Scotland and Wales, b) the fact that higher rates are being achieved in some parts of the UK, and c) the fact that some Member States are achieving higher rates even in urban areas.

As emphasised earlier in this letter, the challenges to increasing recycling rates are very different in Scotland and Wales compared with at a UK-wide level. This holds true when comparing high and low performing areas within the UK. It is unreasonable to expect policies implemented in South Oxfordshire (67% recycling rate) to yield the same results in Newham (15% recycling rate) given their contrasting population demographics, urban densities and waste management systems currently in place. Moreover the weight-based nature of the EU targets gives areas with access to high levels of garden waste an immediate advantage over densely populated urban areas such as Newham or Tower Hamlets, which have 75% or over flatted properties with small or no gardens.

The challenges to increasing recycling rates also differ between Member States. In 2014, only three of the 28 Member States achieved a 55% recycling rate, including Germany, which has the highest recycling rate in the EU. However, Germany was well ahead of the curve as early as the 1990s, when it was one of the first European countries to introduce landfill limiting policies. In 2004, Germany and the UK's recycling rates were 56% and 23% respectively. The UK has successfully made up lost ground in the last decade, increasing its rates by twenty-one percentage points, while Germany has only increased its rates by eight percentage points. Transitioning to a system of greater resource efficiency is a gradual process, with diminishing returns on investment. While the UK continues to learn from Germany's successes, it is not reasonable to expect the same results to be achieved across Member States with very different starting points.

You ask how far I am confident that our engagement with local authorities will engender the improvements necessary to comply with the proposed targets. From the replies received so far to my letter to local authorities with a recycling rate of 30% or below, there is an acknowledgement that recycling rates in their area are too low. There is also a desire to do more to improve these rates through engaging with householders to improve the quantity or quality of materials collected, or through improving services. They also highlight some challenges affecting their ability to achieve significantly higher rates, including the flexibility of waste contracts and population demographics. Defra will continue to work with local authorities and with the Waste and Resources Action Plan (WRAP) to help them to address these issues at a local level. As I explain above, I am not convinced that all authorities, especially those in urban areas, have the capacity to achieve the same level of recycling as the best-performing authorities. Furthermore, based on our top-down model, I am not confident that the proposed targets (between 60% and 70%) will be achievable. However, the results of the ongoing evidence review may shift my position.

You ask what assessment has been made of a range of policies being implemented in other Member States. With regards to mandating separate collection, available evidence (such as that for the Consistency Framework published by WRAP and industry advisers last year) does not suggest that this significantly increases recycling rates compared to comingled or other schemes. Rather, the quality of service and communications are the most important factors. Increases in landfill tax have been effective in helping us to achieve targets for reducing biodegradable waste sent to landfill. However, whilst landfill bans might have further impact, these may simply drive other disposal options such as incineration and energy recovery or refuse-derived fuel export, rather than recycling. Similarly, pay as you throw and additional enforcement powers can help to raise recycling rates and reduce levels of residual waste, but these can also have iniquitous impacts on different social groups and larger families. In my view there is much more to be gained from local authorities working directly with householders to recycle more, through providing good service standards and making it easier for householders to recycle.

I note your request to be kept updated on developments regarding the European Parliament's proposed marine litter target, and will keep you informed on this matter.

14 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE GOVERNANCE OF THE ENERGY UNION, AMENDING DIRECTIVE 94/22/EC, DIRECTIVE 98/70/EC, DIRECTIVE 2009/31/EC, REGULATION (EC) NO 663/2009, REGULATION (EC) NO 715/2009, DIRECTIVE 2009/73/EC, COUNCIL DIRECTIVE 2009/119/EC, DIRECTIVE 2010/31/EU, DIRECTIVE 2012/27/EU, DIRECTIVE 2013/30/EU AND COUNCIL DIRECTIVE (EU) 2015/652 AND REPEALING REGULATION (EU) NO 525/2013 (15090/16)

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry, Department for Business, Energy and Industrial Strategy

Thank you for the letter of 21 March from then Minister for Energy and Industry, Jesse Norman, and for the checklist received on 27 March, which were considered by the EU Energy and Environment Sub-Committee at its meeting on 5 July.

Thank you for your update on the progress of the Proposal. Though you did not expect significant progress or detailed discussions until the latter half of 2017, given the passage of some months we would welcome a further update on any discussions that have taken place since March.

We note your explanation of the form of governance that you envisage to ensure that the Commission respects Member States' competence with regard to selecting their energy sources. Please keep us informed of negotiation developments in this regard.

You state that the quantity of information provided to the EU under the proposed reporting system would remain "broadly unchanged" from the current situation. However, in the Explanatory Memorandum (EM) you stated that it would not be proportionate to set up significant new reporting frameworks in addition to those established under the Climate Change Act 2008. Given that the Proposal requires reporting on the five dimensions of the Energy Union, all of which are not covered by the Climate Change Act, it seems inevitable that changes or additions will need to be made to the current reporting framework. What is your assessment of those changes or additions?

We support your view that the financing platform as drafted has an unquantifiable budgetary impact, and that further details will need to be clarified before it can be agreed. Please provide us with these details as they emerge.

We note and welcome the expected cost savings of the proposed streamlined reporting framework as outlined in the Proposal's checklist, as well as the resulting improved data availability for planning and research purposes.

We have decided to retain the Proposal under scrutiny and look forward to your response within 10 working days.

6 July 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 6 July 2017. I am writing to update you on progress in negotiations and to respond to the questions raised.

Update on recent progress including with respect to Member States' competence with regard to selecting their energy sources

Progress under the Maltese Presidency mainly consisted of initial exchanges of views on the proposal and the accompanying impact assessments, clarifying the opening positions of many Member States (MSs). Detailed discussion of drafting changes started under the Estonian Presidency in July, although it is too early to tell what specific changes the Presidency will propose in the next revision of the text expected in September.

The Estonian Presidency's aspiration is to reach a General Approach on Governance at the December meeting of the Energy Council which is possible, if ambitious.

Specific areas which have been discussed to date include:

- Administrative burdens: there has been a welcome push by most MSs to reduce the burden by limiting the requirements to where they are relevant and by making them optional;
- Trajectories for deployment of renewables to 2030: there has been broad support for MSs to have flexibility to indicate their own trajectory (not necessarily linear) and, to a lesser extent, to allow MSs to revise their ambition downwards at the review point (currently in 2023);
- Mechanisms to address any shortfall on targets: while the principle that there should be mechanisms to ensure MSs do not fall beneath their 2020 targets and that the EU is able to achieve its 2030 targets is widely supported, it seems clear that the proposal will not continue in its current form, with many MSs resisting the delegation of powers to the Commission in this area;
- Reporting deadlines: several MSs have pushed back, in particular on the climate elements, seeking to align the proposals more closely with the existing Climate Monitoring Mechanism (MMR).

The provisions which risk compromising MSs' competence over their energy mix are those relating to targets, trajectories and any actions that might flow from an analysis that MSs are, individually or collectively, not on track to meet them. The UK position remains that MSs should retain the maximum flexibility so as to be able to develop their most cost effective pathway for delivering their ambitious emissions reductions commitments, whilst recognising the need for mechanisms to give the EU assurance over the delivery of its objectives on renewables.

Your letter raised a number of additional questions.

Assessment of changes or additions to reporting framework

The Governance proposal seeks to consolidate MS reporting requirements across the five dimensions of the Energy Union. Those aspects of the reporting which are not covered by the Climate Change Act mostly relate to other existing EU frameworks (such as the EU Strategic Energy Technology Plan or Indirect Land Use Directive). Where there are entirely new reporting requirements, these focus mainly on measures relating to renewable energy.

We will continue to seek the removal of any disproportionate reporting burdens, although our follow up work has tended to show that most of the reporting requirements in the Governance Regulation are acceptable. So, while the framework remains under discussion and we will seek to remove a few specific items that we judge are excessive, the overall financial burden of reporting is likely to be broadly in line with what we have now.

Terms and criteria of the proposed financing platform

I welcome your assessment that the proposal as currently drafted represents an unquantifiable fiscal impact.

As set out above, there is currently a strong consensus amongst MSs that the proposals for a financing platform are unacceptable as drafted. That said, the principle that there should be mechanisms to ensure the 2030 targets are achieved is broadly supported and we expect further discussion on what sort of gap-filling mechanisms could be acceptable to a majority of MSs. We will continue to press for an outcome which ensures the EU is able to meet its objectives reliably whilst giving MSs the flexibility they need to decarbonise in the most cost-effective manner.

Next steps

The Government set the level of the fifth Carbon Budget in July 2016. We expect to set out our policies and proposals for meeting future carbon budgets in our forthcoming Clean Growth Plan after the recess.

In terms of negotiations, Council working groups will re-start in September and officials will continue to attend the technical working groups which discuss the format of the national plans. I expect to be able to give a more substantive update later this autumn.

The Clean Energy Package is wide-ranging with challenging timescales and interlinkages between directives. There are linkages too in respect to the wider Brexit negotiations, although it is too early

to assess whether and how these will have an impact on the various dossiers of the Clean Energy Package. While we expect the legislation to be agreed before we exit, the implementation date of at least some of the directives may fall into the period after we leave the EU. Our negotiating position on the Clean Energy Package seeks to take account of all these factors.

10 August 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2012/27/EU ON ENERGY EFFICIENCY (15091/16)

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

Thank you for your letter of 26 April to Jesse Norman granting a one-off scrutiny waiver on this dossier ahead of Energy Council on 26 June. You asked for an update on progress at Council.

The Maltese Presidency was successful in securing a General Approach on the dossier. The key elements of the compromise text included:

- A 30% EU-level target under Article 3 not currently defined as either indicative or binding. This was essentially a fudge to secure a qualified majority and means the final decision about the nature of the target will be taken in trilogues with the European Parliament.
- A binding national energy-saving target under Article 7 equivalent to 1.5% of annual energy sales from 1 January 2021 to 31 December 2025 and 1% from 1 January 2026 to 31 December 2030. This will be reviewed by December 2024 to consider whether to raise the target for the latter period to no more than 1.5%.
- The ability for Member States to reduce this national target by up to 35% (raised from 25% in the original proposal) using a range of flexibilities, including those the UK and other Member States were seeking to be able to count savings from long-term measures towards the target (though effectively capping the contribution of these flexibilities)
- Sufficient safeguards to ensure that provisions relating to metering and billing of heating and cooling are cost-effective, proportionate, technically feasible and deliverable within defined timescales.

Whilst the Government regrets that the compromise text failed to reflect the agreement reached at the European Council in 2014 that there should be no nationally binding targets post 2020, the compromise text does represent progress towards ensuring that obligations are consistent with the UK's domestic objectives under the Climate Change Act. However, although the balance of the proposal would have been acceptable to the UK, we were unable to support the text because the Commission refused to confirm the joint understanding reached with the UK in 2013 on what could be counted towards our 2020 binding national energy savings target. The UK therefore chose to abstain on the General Approach.

Trilogues with the European Parliament are now expected to begin in December. The Parliament has not adopted a position yet but we expect them to call for a higher and binding EU-level target and higher national targets. We would expect some Member States to try to use pressure from the Parliament to raise Council ambition back towards that in the original Commission proposal.

You also raised a number of questions related to the EU Checklist. On the question of costs to business, it is very difficult to assess potential costs at the present time. This is because:

- Any additional costs associated with meeting the EU targets would occur only if the UK has to undertake action to meet them that is additional to that taken to meet existing domestic objectives over the same period under the Climate Change Act framework.
- There is uncertainty at this stage over the policy mix that would be implemented to deliver any potential additional action (if required) which means it is difficult to say what the level or distribution of costs (and benefits) would be across consumers, businesses and government.

- There are a range of policy levers that could be used that may impose higher, lower or no policy costs on business, including taxation, regulation, information provision or public grant funding for energy efficiency technologies.
- Businesses subject to additional policy measures incentivising them to improve energy efficiency would, in addition to incurring costs, also accrue direct benefits through reduced energy use.

You also ask about enforcement regimes. The extent of enforcement measures will also depend on whether / how much additional action is required to meet our targets, as well as the policy mix implemented to bring about that action. Different policy measures will have different enforcement regimes based on the nature of the policy deployed. For example taxation measures will have a different enforcement regime from a supplier obligation, whilst grant funding or behavioural measures could have no enforcement regime as such. Due to these uncertainties at this stage we cannot assess what enforcement measures may be required.

With regard to impacts on the EU-ETS price, the Commission has argued that, to the extent that energy savings are delivered within the EU-ETS sector, the impact of the targets in the Directive on the demand for allowances (and hence cost) will be addressed through the operation of the ETS Market Stability Reserve. This mechanism reduces the auction supply of allowances if there is a significant oversupply in the market. The Government, however, considers that the Market Stability Reserve was negotiated specifically to remove the surplus of allowances that have accumulated due to changes in economic activity and prevent an accumulation of a new surplus in future in order to strengthen the EU-ETS price, and without any consideration of the potential impact of a stronger energy efficiency target.

14 July 2017

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 14 July 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 19 July 2017.

Thank you for your update on the General Approach agreed at the Energy Council in June. You mention that the agreed text allowed Member States to count savings from long-term measures towards the Article 7 target; further to the letter we received from your predecessor, Jesse Norman, on 21 March, does it also now allow Member States to count energy savings derived from EU-level action?

We note that the Agreement did not define the Article 3 target as either indicative or binding, and that its nature will be decided in trilogue with the European Parliament. Please keep us informed regarding this aspect of the negotiations.

We note your explanation of why the UK chose to abstain in the vote on the General Approach. Please clarify why a joint understanding regarding the 2020 national energy savings target is relevant in the context of negotiations for a 2030 target, and explain the impact of the joint understanding no longer being in place.

Your answers to our questions regarding costs to businesses and enforcement regimes indicate that you have not yet made an assessment of whether current UK policies will be sufficient to meet the proposed EU targets. Is that the case? If so, at what point will such an assessment be complete? And if not, what additional action will be required?

We note your disagreement with the Commission regarding the role of the EU Emissions Trading Scheme (ETS) Market Stability Reserve in managing the impact of the expected reduced ETS price resulting from the proposed targets. Do you believe additional measures will be necessary to ensure the ETS price is effective? If so, by what means will you seek to introduce such measures?

We have decided to retain the Proposal under scrutiny and look forward to your response within 10 working days.

20 July 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 20 July. I am writing to address the questions you raised.

Counting of energy savings derived from EU measures

You asked whether the text agreed by the Council allows Member States to count energy savings derived from EU-level action. As it stands, Member States cannot count savings that derive from EU-level measures towards the 2030 target. Only savings that result from Member State policies that deliver savings over and above those that would be delivered by the minimum standards set by the EU (for example for energy-using appliances or vehicles) can count towards the target. The one exception allowed for by the Directive is that all savings related to the renovation of existing buildings can be claimed by Member States.

2020 national energy saving target

You asked why the 2020 target is relevant in the context of a negotiation on the 2030 target. This is because in updating the Directive to reflect the new targets for 2030, the Commission also took the opportunity to update existing provisions in the Directive to clarify (from its perspective) what savings Member States could count towards the 2020 target in line with their interpretation of the current Directive. In doing so, they have diverged from what had been our earlier joint understanding that early savings from supplier obligations could count towards the 2020 target. The impact of this is that there is now a risk that the Commission's latest interpretation of the text will not allow us to credit these savings towards our 2020 target. We continue to stand by our interpretation of the target in line with the joint understanding and on that basis we remain on track to exceed our energy efficiency target under Article 7 of the Energy Efficiency Directive. We will report progress to the Commission on this basis.

Ability to meet 2030 targets.

You asked whether we have assessed whether current policies are sufficient to meet the 2030 targets. Current plans and policies are contributing to our carbon budgets in the 2020s but it is correct to say that current policies alone will not get us to the proposed 2030 target – not unexpected, given this is 13 years away. We are developing our Clean Growth Plan to set out how we will meet Carbon Budget 5 (2028-32). These policies will also help us get to a proposed 2030 EED target. We intend to publish the Clean Growth Plan when Parliament sits again after summer recess. Negotiation of the current text and the UK position has been informed by analysis undertaken for the Plan but a fuller assessment will be possible once it has been finalised.

The EU Emissions Trading Scheme

The EU ETS Phase IV reform negotiations have reached the trilogue stage. We expect a final reform package to be agreed over the coming months. We support the Council's position for both near term and long term measures to strengthen the carbon price through, respectively, a temporary increase in the feed-in rate of allowances to the Market Stability Reserve (MSR) as well as limiting the validity of allowances in the MSR from 2024 above a certain threshold, subject to review nearer the time. The MSR will be reviewed within three years of coming into operation in 2019, and at regular intervals thereafter, to help ensure it is working as intended including delivering a strengthened carbon price.

We now expect the trilogue with the European Parliament on the Energy Efficiency Directive to begin in December and I will write again as those negotiations with the Parliament progress.

The Clean Energy Package is wide-ranging with challenging timescales and interlinkages between directives. There are linkages too in respect to the wider Brexit negotiations, although it is too early to assess whether and how these will have an impact on the various dossiers of the Clean Energy Package. While we expect the legislation to be agreed before we exit, the implementation date of at least some of the directives may fall into the period after we leave the EU. Our negotiating position on the Clean Energy Package seeks to take account of all these factors.

10 August 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL AMENDING DIRECTIVE 2010/31/EU ON THE ENERGY PERFORMANCE OF
BUILDINGS (15108/16)

**Letter from the Rt Hon Sajid Javid MP, Secretary of State for Communities and Local
Government, Department for Communities and Local Government**

I am writing to inform the Committee that the Maltese Presidency of the EU is seeking to agree a general approach on changes to the Energy Performance of Buildings Directive at the Energy Council meeting in Luxembourg on 26 June. The proposal was still under scrutiny when Parliament was dissolved and we understand that the Main EU Select Committee and its sub-committees are unlikely to be reappointed in time to consider the proposal further before the Council meeting. Therefore, I hope as Chair, you will be able to consider granting a waiver in this instance to support the general approach. This letter sets out the position we intend to adopt at the Energy Council.

The then Minister of State for Housing and Planning, Gavin Barwell, wrote to the Committee on 25 March following the Committee's consideration of the Explanatory Memorandum and subsequent questions raised in a letter from Lord Boswell on 2 March.

Our aim is to ensure that the proposals are proportionate, practical and cost effective and in line with UK policy.

Since the proposed changes were originally published in November 2016, and submission of our Explanatory Memorandum in December 2016, the Presidency has sought views from Member States - other Member States have raised similar concerns to ours - and some welcome revisions have been made to the proposals.

The compromise proposals offer greater flexibility to Member States and are more proportionate than the original proposals. In particular the requirements on electric vehicle charging infrastructure have been revised to make them more practical and cost effective to implement.

There is also a change in the implementation deadline from 12 months to 24 months following the date of entry into force.

A summary of the Presidency's latest compromise changes to the proposals and their impacts are at Annex A (Not published here). The Presidency's latest text on which it will be seeking a General Approach (ref: 10288/17) is also attached (Not published here).

I will write to you again after the Energy Council to provide an update on the general approach. A full Checklist including the analysis of the potential costs and benefits in line with proposals agreed by general approach will also be provided.

21 June 2017

**Letter from the Chairman to the Rt Hon Sajid Javid MP, Secretary of State for
Communities and Local Government,**

Thank you for your letter of 21 June, which, in addition to the letter from then Minister of State for Housing and Planning Gavin Barwell of 24 March, was considered by the EU Energy and Environment Sub-Committee at its meeting on 5 July.

Thank you for providing the revised wording of the Proposal.

We welcome the improvements that have been made regarding the energy performance assessment, namely the exclusion of lighting from the list of systems which trigger a reassessment, and the alteration so that only the new / replaced / upgraded system needs to be reassessed.

We note your explanation of why removing the requirement to consider high-efficiency alternative systems for new buildings will result in cost reductions for industry and home-builders.

We note that the proposals regarding electric vehicle charging infrastructure in existing buildings undergoing major renovations will now only be mandatory where the cost does not exceed 5% of the total renovation cost. Although this does not match the wording your Department proposed in your letter of 24 March – that the requirement should only apply “where technically, functionally or

economically feasible” – we agree that it does appear to be more proportionate than the original proposal.

What assessment have you made of the extent to which electric vehicle charging infrastructure will be consistent and interoperable across Member States?

You note that the revised wording of the Proposal provides further detail on the definition of a smartness indicator. The proposed definition covers a wide range of capabilities, leading us to repeat our previously stated concern that it will be difficult to distil these various elements into a single Indicator. However, Annex I of your second letter states that the revised wording makes the adoption of the Indicator optional, and furthermore that it will be developed in consultation with the relevant sectors. We also note your view that the initial proposal to introduce the Indicator through a delegated act would not have provided Member States with sufficient flexibility, but that it is now proposed that it should be adopted in accordance with the examination procedure. Please clarify whether you view this as an improvement, and if so why.

We note your request for a scrutiny waiver, however, as the European Union Committee was yet to be appointed, we were unable to consider it until now. It is unfortunate that due to Parliament’s dissolution you incurred a scrutiny override in order to agree a general approach on this dossier. Given the contentious issues involved we have decided to retain the Proposal under scrutiny. Please update us on the progress of this dossier, and provide the checklist analysis of the proposals agreed by general approach, in due course.

6 July 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE INTERNAL MARKET FOR ELECTRICITY (RECAST) (15135/16)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON COMMON RULES FOR THE INTERNAL MARKET IN ELECTRICITY (RECAST) (15150/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ESTABLISHING A EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS (RECAST) (15149/16)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON RISK-PREPAREDNESS IN THE ELECTRICITY SECTOR AND REPEALING DIRECTIVE 2005/89/EC (15151/16)

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry, Department for Business, Energy and Industrial Strategy

Thank you for the letter of 21 March from then Minister for Energy and Industry, Jesse Norman, and for the checklists received on 27 March, which were considered by the EU Energy and Environment Sub-Committee at its meeting on 5 July.

Thank you for your assessment of which of the Clean Energy Package proposals you anticipate coming into effect before the UK leaves the EU, and for your assurance that the Government approach these negotiations as a third country to be as well as a current Member State.

We note your statement that “the Government is currently considering all aspects of our future relationship with the EU, including the arrangements for trading energy”. However, this does not directly address our question regarding whether any elements of the Clean Energy Package would pose difficulties for the continued trade in electricity between the UK and the EU post-Brexit. We therefore again ask for your assessment of this matter.

EM 15135/16: Proposal for a revised electricity Regulation

We note your concern that the emissions limits within the capacity mechanism proposal could conflict with domestic policies or create security of supply risks. However, we also note that the principle of the limit appears to be consistent with the overarching aim of decarbonising the electricity system. Please update us on your assessment of the impact of the proposed limit on the UK and whether you support its inclusion in the revised Regulation.

What is the view of other Member States regarding the accountability and liability issues created by the proposed responsibilities of the Regional Operational Centres (ROCs)? Are amendments being discussed to avoid these difficulties arising?

Thank you for clarifying that the UK's ROC region would be proposed by ENTSO-E, and would likely comprise those Member States in North Western Europe to which the UK is connected.

Thank you for your assessment of the costs of the proposed ROCs and EU Distribution System Operator (DSO) entity. We note your statement in the checklist for this proposal that "Network operation costs are passed through to electricity consumers through regulated network charges", and your assessment that while setting up the ROCs may be costly, other elements of the proposal may lower costs for consumers. Have you made an assessment of whether the proposal as a whole is likely to increase or reduce consumers' energy costs in the UK?

Your letter states that "membership of the DSO entity would be entirely voluntary", but the checklist you provided stated that "DSOs must establish an EU DSO entity". Please clarify whether UK DSOs will be obliged to become members of any such entity.

EM 15150/16: Proposal for a revised electricity Directive

We welcome your view that the proposed obligations to monitor and address fuel poverty would be consistent with the Government's current approach.

We note your statement that under this proposal Member States would be permitted to continue to regulate prices for energy poor or vulnerable consumers for five years after the Directive enters into force, and that thereafter it would only be permissible in situations of "extreme urgency". Please inform us when you have gained clarity regarding this definition.

We note your statement of the responsibilities of the UK's energy regulators regarding the protection of consumers. However, the Government's election manifesto proposed "a safeguard tariff cap that will extend the price protection currently in place for some vulnerable customers to more customers on the poorest value tariffs". Given that this consumer protection measure would not be compatible with the proposed Directive, have you made an assessment of alternative measures that could be employed if the UK were to continue to comply with EU energy legislation beyond the five year interim? We note that the Rt Hon Greg Clark MP wrote to Ofgem on 21 June regarding extending price protection to more consumers, but it is unclear whether the potential conflict with future EU legislation will shape the steps taken by either Ofgem or the Government.

EM 15149/16: Proposal for a revised Regulation on a European Agency for the Cooperation of Energy Regulators (ACER)

Thank you for your evaluation of the elements of the proposal that could reduce the influence that National Regulatory Authorities have over regional decisions. We note that you are particularly concerned about the proposed change from a two-thirds to a simple majority for ACER's decision making, and the transfer of responsibilities from ACER's Director to its Administrative Board. Please keep us informed regarding your efforts to modify these proposals.

In our letter of 1 March 2017, we asked what assessment had been made of any additional funding and / or staff that will be required for ACER to fulfil the roles set out in the revised regulation. We note that the checklist you have provided indicates a potential cost of £2-3.2m, likely to be funded by governments and potentially by market participants. Please clarify whether this would be on an annual basis or otherwise, and what proportion of the cost would fall to the UK.

We note your statement that the requirement for any third country participating in ACER to apply EU energy, environmental and competition law is to ensure a level playing field for trading, and that much of this Article is already included in the existing Directive. Nonetheless, it may place a considerable restriction on the UK's ability to legislate freely post-Brexit if it wishes to maintain close cooperation with the EU on energy. Have you considered taking steps to soften this requirement?

EM 1515116: Proposal for a new Regulation on risk preparedness in the electricity sector

We note your statement that the Government's management of electricity supply risks caused by incidents in mainland Europe will depend on the outcome of negotiations, and that continued cooperation between the UK and the EU will be a priority.

We welcome your view that the proposal would not substantially impede the UK in maintaining its current approach to managing security of supply.

Furthermore, we note the assessment in the checklist for this proposal that it is expected to result in reduced electricity prices and improved supply security.

Please continue to update us on the development of this proposal as negotiations progress.

We have decided to retain the Proposals under scrutiny and look forward to your response within 10 working days.

6 July 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 6 July on the Electricity Market Design proposals in the EU Clean Energy Package which responded to the letter of 21 March from Jesse Norman. You asked a number of questions which I answer below.

The Committee asked whether any elements of the Clean Energy Package would pose difficulties for the continued trade in electricity with the EU post-Brexit. Most of the Electricity Market Design proposals are in line with existing UK policy and the proposals with which we have concerns in their current form, such as on Regional Operational Centres (ROCs), would not pose problems for trading. The conditions under which the UK will trade electricity after its withdrawal from the EU will depend on the outcome of the wider Brexit negotiations. The Government will be seeking the best possible trading arrangements with our European neighbours.

EM 1513516 Proposal for a revised Regulation on the internal market for electricity

The Committee noted that the proposed emissions limit for capacity mechanisms appears to be consistent with the overarching aim of decarbonising the electricity system and asked for an update on our assessment of the impact on the UK and whether we support its inclusion in the revised Regulation. The Government supports ambitious climate targets and has committed to phasing out coal generation by 2025, subject to the outcome of last year's consultation. The proposed limit is therefore consistent with our direction of travel but does not sit well with the right of Member States to choose how they decarbonise their own energy markets. We are therefore minded to adopt a neutral position on this proposal.

The Committee asked about the views of other Member States on the accountability and liability issues raised by the proposals on ROCs. A substantial number of Member States share our concerns that the proposals would transfer competence in a number of important areas from a national to a regional level and raise liability issues. Discussions are underway on how these concerns might be addressed.

With regards to the costs to consumers of the proposed ROCs and EU Distribution System Operator (DSO) entity, we have not undertaken any further assessment on the impact of these proposals on UK consumers' energy costs. All figures in the European Commission's Impact Assessment cover EU-wide impacts as the European Commission's IA provides few figures at a country level.

You asked whether UK DSOs would be obliged to become members of the proposed DSO entity. Our interpretation is that DSOs would be able to choose whether they participate in the entity once established. However, if the DSO entity was to have an important influencing role, we would expect that DSOs would want to participate in it.

EM 1515016 Proposal for a revised Directive on the internal market for electricity

You asked if we had any clarity on the meaning of "extreme urgency" with respect to Member States' ability to continue to regulate prices for the energy poor or vulnerable customers. The Commission

has said that it has deliberately avoided defining “extreme urgency”, so as not to preclude the application of the provision in unforeseen scenarios. It has, however, given the example of severe energy shortages of when intervention might be permitted.

The Committee also asked if we had made an assessment of alternative means that could be used to give customers price protection if the proposals in the Directive were to limit intervention on prices. We will be seeking in the negotiations to agree wording that enables Member States to take action to correct specific market failures that disadvantage certain customers.

EM 15149/16 Proposal for a revised Regulation on a European Agency for the Cooperation of Energy Regulators (ACER)

You asked whether the additional funding of £2-3.2m for ACER would be on an annual basis or otherwise, and what proportion of the cost would fall to the UK. The £2-2.3m is an annual figure based on the Commission’s assessment of the cost of increasing ACER staffing to enable the agency to carry out the new tasks and responsibilities proposed. The Commission did not specify in its assessment what the profile of costs would be over time, or how the cost would be shared between Member States. We have not undertaken our own assessment of the potential cost impact on the UK.

You asked whether we would consider taking steps to soften the proposed third country requirements for participating in ACER. It has always been the UK’s position that the previous, more flexible, wording would be preferable as it will facilitate regulatory cooperation with third country partners which is essential for fair and efficient trade. We will continue to make this argument.

I will keep the Committee informed of developments on the proposal for a new Regulation on risk preparedness in the electricity sector.

10 August 2017

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS, AND THE EUROPEAN INVESTMENT BANK:
ACCELERATING CLEAN ENERGY INNOVATION (15176/16)

Letter from the Chairman to Claire Perry MP, Minister of State for Climate Change and Industry, Department for Business, Energy and Industrial Strategy

Thank you for the letter of 30 March from then Minister of State for Climate Change and Industry, Nick Hurd, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 5 July.

We note your assessment that the UK is not reliant on the new Innovation Fund to progress its own programme of emissions reductions.

We also note your statement that the UK’s commitment to Mission Innovation will be met by cross-Whitehall budgets, and will thus still be met after the UK leaves the EU.

We welcome your willingness to continue to collaborate with the EU on science, research and technology initiatives.

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

6 July 2017

PROPOSED DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
ON CERTAIN ASPECTS CONCERNING CONTRACTS FOR THE ONLINE AND OTHER
DISTANCE SALE OF GOODS (15252/15)

**Letter from Jo Johnson MP, Minister of State for Universities, Science, Research and
Innovation, Department for Business, Innovation and Skills**

In the letter from Lord Prior to Sir William Cash of 14 March 2017, copied to you, on the Digital Single Market quarterly update I undertook to update both scrutiny committees once negotiations on this proposal had commenced.

While negotiations on the detail have not yet commenced there have been some developments which I hope the Committee will find of interest, including the letter of 31 July from Commissioner Jourova to the President of the Justice and Home Affairs Council (11619/17).

The Committee will recall that Member States had been reluctant to begin negotiating a new regime for consumer contractual rights to cover distance sales while the current regime under the Directive on the Sale of Consumer Goods and Associated Guarantees (1999/44/EC) was subject to the Commission's Regulatory Fitness (REFIT) review of EU consumer and marketing law.

On 9 June, during purdah, my officials provided a summary by email of the results of the Commission's review. In this context the Commission's essential conclusions in respect of the current regime were that the rules continue to be effective and were adaptable to modern markets and that, as far as possible, the rules should be consistent for distance sales and face to face sales.

In the light of the Commission's REFIT conclusions, on 7 July the Estonian Presidency sought views from Ministers at an informal JHA Council on the scope of any proposal for new sale of goods consumer rights. It was clear at that meeting that a large majority of Member States want to see consistent rights irrespective of the means by which goods are sold. We agreed. The issue of how that might best be achieved in the face of a proposal with limited scope from the Commission was not discussed, but some expressed the view that the text of the General Approach on the digital content proposal recently agreed in Council might provide a suitable model on which progress to better harmonise sale of goods rights might be based.

Member States now have a choice: whether to ask the Commission to work up a fresh all-encompassing (or 'modified') proposal; or, to work with the text of the Commission's current proposal on the understanding that the Commission will agree to extending the scope in due course.

At a recent Council working group Member State officials provided provisional views on the way ahead. A majority favoured asking the Commission to formulate a new proposal supported by a revised and full assessment of the increased impact. The Committee will appreciate that a proposal which would apply to all sales of goods represents a very considerable extension of the scope of the original proposal; it would bring in over 90% more sales transactions across the EU and would affect many more businesses, most of which do not sell on-line or otherwise at a distance. These businesses would not stand to benefit from the single market advantages in respect of cross-border sales which are expected by achieving better harmonised rules. There is a sense, therefore, that the Commission should now consider proposing a regime which is as close as possible to the current regime in the Sale of Consumer Goods Directive so as to minimise disruption to the vast majority of sales activity while exploring ways to achieve more harmonisation to better facilitate cross-border activity. Some Member States are clearly of the view that the current proposal is not the best starting place for an all-encompassing regime, particularly in the light of the agreed approach to digital content sales which is now better founded on the approach in the Sale of Consumer Goods Directive.

It will be appreciated from Commissioner Jourova's letter to the President of the JHA Council that the Commission's strong preference is to make progress on its original proposal. This would avoid the delay which would result from producing a modified proposal and a full assessment of the impact, including the costs and benefits of its approach across the whole market. All of these points were made at the working group referred to above.

The Presidency is now considering how it will handle the proposal and we expect further developments in September.

The Government continues to take an active role in EU negotiations and expects to do so on this dossier in due course, recognising the benefits of having a single coherent regime which applies to consumer transactions across all Member States. I shall of course keep the Committee informed when there are further developments.

5 September 2017

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE CLONING OF ANIMALS OF THE BOVINE, PORCINE, OVINE, CAPRINE AND EQUINE SPECIES KEPT AND REPRODUCED FOR FARMING PURPOSES (AND ADD 1-2 OF PROPOSAL) (18152-13)

PROPOSAL FOR A COUNCIL DIRECTIVE ON THE PLACING ON THE MARKET OF FOOD FROM ANIMAL CLONES (18153-13)

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

Thank you for your letter of 19 July 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 6 September 2017.

We note that there has been no substantive discussion of these Proposals since your last update, and that you do not expect further progress under the Estonian Presidency.

We shall retain both Proposals under scrutiny, and look forward to an update in due course.

6 September 2018

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND COMMITTEE OF THE REGIONS: RENEWABLE ENERGY PROGRESS REPORT (5890/17)

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry, Department for Business, Energy and Industrial Strategy

Thank you for your explanatory memorandum (EM) of 21 December 2016, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 19 July 2017.

Paragraph 12 of your EM states that “No significant direct adverse effects on biodiversity, soil and the water, food security or on developing countries have been identified” as a result of biofuel production. We note that this refers to conclusions drawn from Member States’ reports. However, we find this view to be complacent and overly optimistic. What assessment has either the UK or the EU made of the evidence concerning a lifecycle analysis of the biodiversity impact of biofuel production?

This Proposal was cleared from scrutiny at the sift. We look forward to your response by 4 September.

21 July 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 21 July, relating to the Explanatory Memorandum (EM) submitted on this report by the Department for Business, Energy & Industrial Strategy on 21 February 2017.

You said that the Committee had noted the comment in the EM that “no significant direct adverse effects on biodiversity, soil and the water, food security or on developing countries have been identified as a result of biofuel production” and found such a view to be “complacent and overly optimistic”. You asked what assessment had been made of the evidence concerning the lifecycle analysis of the biodiversity impact of biofuels.

While the Commission's Renewable Energy Progress Report does indeed make that comment it also states that "risks of indirect land use change impacts remain a concern." These risks have been identified by modelling analysis, such as the GLOBIOM study on "The land use change impact of biofuels consumed in the EU."² Both the UK and EU have commissioned research on the matter including the UK's Gallagher review³ of 2008. However, by its very nature, it is difficult to prove that indirect land use change has actually occurred.

Nevertheless, both the UK and the EU have sought to reduce the risks of direct or indirect impacts on biodiversity arising from biofuels through the introduction of mandatory sustainability criteria, as well as measures to reduce the use of biofuels with the highest risk of indirect land use change and to move towards waste-based biofuels.

Under the existing Renewable Energy Directive, biofuels supplied in the UK and other EU Member States must comply with mandatory sustainability criteria if they are to be eligible for financial support or count towards renewable energy obligations. Any fuel that does not meet the mandatory criteria is treated as a fossil fuel. In the UK, such fuels would consequently not be rewarded under the Renewable Transport Fuel Obligations Order 2007 (RTFO Order) as amended, but they would count towards suppliers' obligations, effectively increasing the volume of sustainable biofuels suppliers need to deliver.

The mandatory criteria agreed at the EU level specify that biofuels shall not be made from raw material obtained from land with high biodiversity value in or after January 2008, with specific protections for primary forest, areas designated for nature protection purposes or for the protection of endangered ecosystems and species, and highly biodiverse grasslands. In the RTFO's Obligation Period 8 (2015-16), 99.9% of renewable fuel met the sustainability criteria. The European Commission has also recognised a number of voluntary sustainability schemes as being able to demonstrate compliance with the mandatory criteria under the Renewable Energy Directive; around 99% of biofuels supplied in the UK are covered by a recognised scheme.

In terms of waste-based biofuels, 59% of all biofuels supplied in the UK in 2015/16 were made from waste feedstocks. Across the EU, the figure for 2015 was 23%. In the UK, the Department for Transport (DfT) has consulted on measures to further encourage the use of waste-derived biofuels and set limits on the contribution of crop-derived biofuels. DfT expect to publish a government response to the consultation later this year

10 August 2017

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 (5968/17)

Letter from Claire Perry MP, Minister of State for Climate Change and Industry, Department for Business, Energy and Industrial Strategy

I am writing to update you on negotiations on the Aviation EU Emissions Trading System (EU ETS) dossier, which is a joint BEIS and Department for Transport lead. I am sending a separate letter on the EU ETS Phase IV file and the approach to EU exit.

After considering the letter of 30 March 2017 from my predecessor, Nick Hurd, the European Scrutiny Committee decided to retain this dossier under scrutiny. The Committee then provided a scrutiny waiver after the General Election was called, to allow the UK to participate in the vote on 21 June to agree a Council position, on the understanding that we provided an update after that vote.

All Member States voted in favour of the proposed Council position. The final text does not differ significantly from the Commission proposal published on 3 February 2017, as outlined in the Explanatory Memorandum. The main elements of the Council position are as follows:

² https://ec.europa.eu/energy/sites/ener/files/documents/Final_Report_GLOBIOM_publication.pdf

³ <http://webarchive.nationalarchives.gov.uk/20110407094724/http://www.renewablefuelsagency.gov.uk/reportsandpublications/reviewoftheindirecteffectsofbiofuels>

- The Council agreed an indefinite reduction in the scope;
- A timeline, which was not specified in the Commission proposal, was set for the review of the Aviation EU ETS and the implementation of the Global Market Based Measure (GMBM);
- The Council agreed to the introduction of the Linear Reduction Factor from 2021, subject to the aforementioned review;
- The implementation of the GMBM monitoring, reporting and verification rules will be through an implementing act rather than – as proposed by the Commission - through a delegated act;
- A new provision was agreed to allow operators with a small number of flights in Europe to use the small emitters tool to simplify the process of verifying their emissions.

The European Parliament has made progress in its discussions on the file in its relevant committees: Environment, Public Health & Food Safety (ENVI); Transport & Tourism (TRAN); and Industry, Research & Energy (ITRE). Rapporteurs for all three Committees have been appointed. The ITRE and TRAN committees have debated and voted on their amendments. The lead Committee, ENVI, will take their opinions into account during their debate and vote on 11 July. The current timeline foresees a plenary debate taking place in September, which will be followed by trilogues with the Commission and Council.

We continue to engage regularly with the European Commission, European Parliament and other Member States, as well as industry, to protect UK interests and push for agreement by the end of the year, to allow sufficient time for transposition before the compliance deadline of 31 March 2018.

We also continue to explore the issues around the UK's exit from the EU and Aviation EU ETS, as discussed in Nick Hurd's 30 March letter to you.

I plan to write again in the autumn when the negotiations have progressed sufficiently to warrant an update. In the meantime, I or my colleague Lord Callanan at the Department for Transport would be happy to respond to any further queries.

12 July 2017

Letter from the Chairman to Claire Perry MP, Minister of State for Climate Change and Industry

Thank you for your letter of 12 July, which was considered by the Energy and Environment Sub-Committee on 19 July 2017.

Thank you for providing us with an update from the Council on 21 June. We note that all Member States voted in favour of the proposed position.

You indicate that the lead European Parliament committee – the ENVI committee – was due to debate and vote on amendments to the Proposal on 11 July. What assessment have you made of the EP position following this meeting? Do you envision significant divergence between the Council and the EP on elements of the Proposal, and if so, which?

As you know, we granted a one-off scrutiny waiver on 28 April to allow you support the Council position at that time. We have decided to keep the Proposal under scrutiny. We look forward to an update on how you plan to engage with the EU ETS for aviation and other sectors in the context of Brexit, as also discussed in our correspondence regarding the EU ETS Phase IV (EM 11065/15), and on the development of this Dossier in the autumn.

20 July 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY AND REPEALING REGULATION (EU) NO.994/2010 (6225/16)

SUPPLEMENTARY IMPACT ASSESSMENT RELATING TO THE PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL CONCERNING MEASURES TO SAFEGUARD THE SECURITY OF GAS SUPPLY AND REPEALING REGULATION (EU) NO.994/2010 (UNNUMBERED)

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry, Department for Business, Energy and Industrial Strategy

Thank you for the letter of 31 May from then Minister for Energy and Industry, Jesse Norman, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 10 July.

We note that the fourth trilogue with the European Parliament did not lead to any substantive changes and that the Proposal will now await a vote in the EP plenary before it will be tabled for agreement in Council.

You indicate that the revised Regulation will help ensure liquidity and price responsiveness to market conditions in the North West trading region, which, you indicate, will be beneficial to UK interests regardless of the post-Brexit trading arrangements between the EU and the UK.

Thank you for your thorough update on key elements of the Regulation, namely regional co-operation, state of emergency and solidarity provisions as well as information exchange, and their effect on the UK.

We note that you cannot at this point in time provide us with details about which technical regulations the UK would need to implement. You indicate that, depending on the new relationship with the EU, the UK will have to work with the EU regarding the evolution of regulatory frameworks to maintain an open trading environment. What steps are you taking to facilitate this co-operation post-Brexit?

We welcome your confidence that the UK and the Republic of Ireland would continue to work closely together and share data related to the security of gas supply after Brexit. Do you envision any complications in this relationship, given that the UK will become a third country from an EU perspective?

Would this Regulation, or the related Decision regarding intergovernmental gas agreements (EM6226/17), affect the Nordstream II project and the commercial agreements associated with it? Is Nordstream II compatible with these measures?

As you know, we have already released this document from scrutiny. We look forward to your reply to this letter in 10 working days.

10 July 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 10 July. I note that scrutiny was lifted earlier on this dossier.

My responses to your Brexit-related questions and the question on the relevance of the Regulation and the Decision on transparency of intergovernmental agreements (IGAs) between EU Member States and third countries to the Nordstream II project follow. However, as Jesse Norman intimated, on Brexit, you will appreciate that the Government cannot predict the nature of the arrangements that the UK will have with the EU after withdrawal and therefore the specific steps that will need to be taken to facilitate such arrangements. That will depend on the outcome of the negotiations.

- *“We note that you cannot at this point in time provide us with details about which technical regulations the UK would need to implement. You indicate that, depending on the new relationship with the EU, the UK will have to work with the EU regarding the evolution of regulatory frameworks*

to maintain an open trading environment. What steps are you taking to facilitate this co-operation post-Brexit?"

The UK enjoys good relationships with its trading partners in the EU and a shared understanding that functioning markets are the best means of ensuring supplies of gas at competitive prices. I would expect this to continue; it is in the interests of both the UK and our partners to continue our co-operative approach. Our markets are very interconnected and liquid.

- *"We welcome your confidence that the UK and the Republic of Ireland would continue to work closely together and share data related to the security of gas supply after Brexit. Do you envision any complications in this relationship, given that the UK will become a third country from an EU perspective?"*

The position, post Brexit, does not necessarily need to become more complex. All parties are aware of the dependencies (both Northern Ireland and Republic of Ireland) on GB for gas supplies. It is in all our interests to continue to work for mutual benefit. I would not expect that to change with the UK exiting the EU.

- *"Would this Regulation, or the related Decision regarding intergovernmental gas agreements (EM6226/17), affect the Nordstream II project and the commercial agreements associated with it? Is Nordstream II compatible with these measures?"*

The provisions of the security of supply regulation, including obligations on transparency of commercial contract conditions, are aimed at helping to assess supply vulnerabilities of Member States and to mitigate them. So I would not consider that the regulation has a material effect on the Nordstream II project. As regards the IGA Decision, if one or more IGAs are envisaged in relation to the Nordstream II project, then the text of those IGAs would be subject to ex ante (pre-signature) scrutiny by the Commission to check for compliance with EU law.

I trust my responses provide some clarity on the questions you raised.

28 July 2017

Letter from the Chairman to Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 28 July 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 6 September 2017.

We note your expectation of continued cooperation with the EU after Brexit in relation to gas security, and your view that the current arrangements which ensure a secure supply of gas to both Northern Ireland and the Republic of Ireland need not become more complex after the UK leaves the EU.

Thank you for your assessment that the Regulation will not have a material effect on the Nordstream II project.

We are now content to close this correspondence.

6 September 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON ORGANIC PRODUCTION AND LABELLING OF ORGANIC 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 THE 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

Thank you for your letter of 22nd February 2017, in which you asked for an update when things became clearer on this negotiation.

The Maltese Presidency made significant progress during its tenure but some key political issues including decertification thresholds and rules for greenhouse production threatened any agreement being reached. At a meeting of the Special Committee on Agriculture on 26th June, the Presidency was able to gain sufficient support for a revised mandate to take to a final trilogue on 28th June. The three institutions were then able to reach a provisional agreement in the trilogue. The agreement was very closely in line with the revised mandate that the UK has supported.

You raised three particular issues in your letter concerning unauthorised substances and residue levels, organic production in greenhouses and the phasing out of derogations for the use of non-organic seeds and livestock.

Crucially, automatic decertification of products containing pesticide residues above a certain level would not be obligatory, the use of demarcated beds would be phased out, and there would no longer be an abrupt end to existing derogations; all will be subject to a report to determine whether they are still necessary.

The organic dossier was on the table for the Agrifish Council on the 17th July but was withdrawn. The issue is with Germany where the Environment Ministry has overruled the Agriculture Ministry and doesn't support the text.

It has been decided to do all the technical and legal work now involving the legal services of the three institutions. The product of that exercise will then go before the Special Committee on Agriculture and subsequently AGRIFISH Council in the autumn. The hope is that this work may resolve Germany's issues. It will also take us beyond the German election which may help depending on the constitution of their next Government.

Our priority now is to ensure that the cleansing of the text is carried out thoroughly and that the final text is legally and technically robust.

18 September 2017

REPORT ON THE BLUE GROWTH STRATEGY: TOWARDS MORE SUSTAINABLE
GROWTH AND JOBS IN THE BLUE ECONOMY (8158/17)

COMMISSION STAFF WORKING DOCUMENT: FRAMEWORK FOR ACTION -
INITIATIVE FOR THE SUSTAINABLE DEVELOPMENT OF THE BLUE ECONOMY IN THE
WESTERN MEDITERRANEAN (8511/17)

**Letter from Margot James MP, Parliamentary Under Secretary of State, Department for
Business, Energy and Industrial Strategy**

I am writing to you with regard to the above two European Commission documents for which I am submitting explanatory memoranda. The Maltese Presidency will ask Member States to adopt council conclusions at the EU Energy Council on the 26 June which endorse the Commission staff working document on the western Mediterranean and welcome the report on the blue growth strategy. Unfortunately, due to short timescales and the recent General Election, you will not have an opportunity to consider the explanatory memoranda before the Energy Council intends to adopt the related council conclusions.

This is regrettable but, on balance, I feel it is in the UK's interest to allow the conclusions to be agreed at the Energy Council as the documents they refer to are not contentious. They do not have any significant policy implications for the UK, nor do they impose any additional burdens. The documents do not propose any new legislation or have any impact on business costs. Furthermore, the UK cannot abstain from agreeing the conclusions – we could only raise an objection at the point the conclusions are agreed by all. So I feel that is important to avoid delaying these conclusions, particularly given that the issues covered are of significance to the outgoing Maltese presidency, and in the context of the start of the UK's EU exit negotiations. Given the limited UK interest and the inclusive language secured in the Council Conclusions, we do not feel it is appropriate or proportionate for the UK to block or delay progress.

By way of background, the EU's Blue Growth Strategy was established in 2012 to boost jobs and growth through the better utilisation of the economic potential of Europe's oceans and seas. The European Commission estimates that Europe's maritime sector currently provides over 5 million jobs generating almost €500bn per annum, and the Blue Growth Strategy aims to ensure that the EU can harness the untapped economic potential of the seas in a sustainable way. This new report examines what has been learnt and achieved since the inception of the strategy. It highlights some of the work which the European Commission and EU Member States have already undertaken to support sustainable growth and jobs in the blue economy.

The second document, the Commission's *Initiative for the sustainable development of the blue economy in the western Mediterranean* originates in a joint call from France, Italy, Malta, Portugal and Spain with their counterparts in Algeria, Libya, Mauritania, Morocco and Tunisia for further cooperation in the marine and maritime sectors. It is a non-contentious initiative focusing on greater coordination among these five EU Member States and five North African States (the so-called '5+5') in order to improve the safety and security of activities at sea; boost sustainable resource management; and preserve ecosystems and biodiversity.

The '5+5' format does not explicitly include the UK and Gibraltar, however the Commission has stressed that the initiative does not exclude other countries. My officials have worked with UKRep to secure language in the draft European Council conclusions referred to above which makes this clear. The Government has made the Government of Gibraltar aware of the initiative, and they noted that it largely builds on existing activities. The Government of Gibraltar is content to allow the initiative to proceed without the involvement of the UK as a named party, though the UK Government will continue to be vigilant on the implications of aspects of the scheme such as coastal mapping.

22 June 2017

COMMUNICATION FROM THE COMMISSION: REVIEWING THE DECISION-MAKING
PROCESS ON GENETICALLY MODIFIED ORGANISMS (GMOS) (8344/15)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL AMENDING REGULATION (EC) NO 1829/2003 AS REGARDS THE
POSSIBILITY FOR THE MEMBER STATES TO RESTRICT OR PROHIBIT THE USE OF
GENETICALLY MODIFIED FOOD AND FEED ON THEIR TERRITORY (8356/15)

**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 the Committee on the above proposal, following our last exchange of letters in spring last year.

The proposal has not been discussed in the EU since an official level meeting in May 2016, which focused on the document which the Commission tabled in response to the Council's request for information on the proposal's impact. Most Member States including the UK expressed concern that the document fell short of being an impact assessment. However, the Commission stuck to its line that it cannot produce one because the impact would depend on the extent to which Member States exercise the option to prohibit GM food and feed. It felt nevertheless that its document was useful in highlighting the dependency on GM imports and the varying position between Member States.

It remains the consensus of opinion amongst Member States that the proposal is seriously flawed, given doubts about its compatibility with the principle of the Single Market and with international trade obligations. As such, it is apparent that there is little chance of the proposal being adopted, especially following its earlier rejection by the European Parliament. Although the Commission has not moved to formally withdraw the proposal, it does not feature in the work programme of the new Presidency nor for the two thereafter. We therefore do not expect the issue to be revisited.

I will continue to keep the Committee informed if there are any further developments in relation to this proposal.

12 July 2017

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

Thank you for your letter of 12 July, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 19 July.

Thank you for the update that you provide on this contentious Proposal.

We note that the Proposal has not been discussed since May 2016 and that there is little chance of it being adopted.

We look forward to your next update on the status of the Proposal, in particular whether the Commission will move to withdraw it. In the meantime, we retain the document under scrutiny.

20 July 2017

MAY AND JUNE 2017 AGRICULTURE AND FISHERIES COUNCILS

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

I am writing to provide you with a summary of the outcome of Defra's EU Agriculture and Fisheries Council business in May and June. You will find attached to this letter Annex A (not published here), outlining March Agriculture and Fisheries Council, and Annex B (not published here), outlining April Agriculture and Fisheries Council.

Should you have any further questions to raise, my officials and I are most happy to provide you with an answer.

20 July 2017

ESTONIAN 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, Department for Environment, Food and Rural Affairs

I am writing to provide you with an overview of Estonia's EU Council Presidency priorities, as they relate to Defra's Council business. The overview is attached to this letter as Annex A (Not published here). Estonia took over the rotating six month Presidency of the Council of EU Ministers from Malta on 1 July, and will run until 31 December. It also marks the start of a new EU Presidency trio with Bulgaria and Austria running until the end of next year.

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

19 July 2017

COUNCIL DECISION APPROVING A MANDATE FOR THE COMMISSION TO OPEN NEGOTIATIONS ON THE UNITED NATIONS WORLD TOURISM ORGANISATION'S CONVENTION ON THE RIGHTS OF TOURISTS AND THE OBLIGATIONS OF TOURISM SERVICE PROVIDERS

Letter from John Glen MP, Minister for the Arts, Heritage and Tourism, Department for Culture, Media and Sport

I am writing to inform you about the Council Decision to award a negotiating mandate enabling the Commission to negotiate the United Nations World Tourism Organisation's Convention on the Rights of Tourists and the Obligations of Tourism Service Providers on behalf of Member States. Following work to ensure that Member State competences are respected, the Government supports the proposed mandate.

On 23 June 2016, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. The government respected the result and triggered Article 50 of the Treaty on European Union on 29 March 2017 to begin the process of exit. 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. During this period the Government will continue to negotiate, implement and apply EU legislation.

The Convention covers protection for tourists in the event of an emergency, and tourists' relationship with package travel and accommodation providers:

- Annex I covers civil contingencies, a Member State competence.
- Annex II focuses on the obligations of package travel providers and is based on Directive (EU) 2015/2302 (the EU Package Travel Directive).
- Annex III covers the obligations of accommodation service providers regarding provision of contractual information and performance of contracts. This is based on the Directive (EU) 2011/83/EC (Consumer Rights Directive EU).

The Convention allows for signatories to accede to one or all of the annexes in the Convention. Due to the mixed content of the Convention, Member States have only awarded the Commission a mandate for negotiating areas where there is Union competence. Member States will retain their competence in the areas covered by the Convention which do not affect common rules or alter the scope of such rules. Therefore the Commission only has a mandate to negotiate in close cooperation with Member States:-

- (a) The preamble and Articles I to 21;
- (b) Annex II;
- (c) Annex III, with the exception of Article 5.

The mandate also obliges the Commission to seek to ensure that the Convention is compatible with EU law, in particular Directive (EU) 2015/2302 (the EU Package Travel Directive) and Directive (EU) 2011/83/EC (Consumer Rights Directive), to avoid or minimise any future legislative changes.

This represents the first of a two-stage process, as the Commission will return to seek Council approval for the text of the Convention once finalised. Member States will be regularly consulted throughout the process, and I will continue to update the Committee as these negotiations progress.

10 July 2017

JULY 2017 AGRICULTURE AND FISHERIES COUNCIL

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

I am writing to provide you with a summary of the discussions at the EU Agriculture and Fisheries Council held on 17 and 18 July in Brussels, which my noble friend Lord Gardiner attended on behalf of the UK Government on 17 July.

Should you have any further questions, my officials and I are most happy to provide you with an answer.

8 August 2017