HOUSE OF LORDS
European Union Committee

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

This edition includes correspondence from October 2017 – December 2017

EU ENERGY AND ENVIRONMENT SUB-COMMITTEE

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Thank you for your letter of 20 September 2017, which was considered by our Energy and Environment Sub-Committee at its meeting on 11 October.

We welcome the more recent progress that you outline in areas which the Communication indicated could be of concern, such as the improved condition of cod and haddock in the Irish Sea.

We note your intention to prioritise effective fisheries management in areas where the UK has an active interest. Nonetheless, given that not only seas but also the trade in fish products are connected throughout the EU, we encourage you to share best practice on monitoring, enforcement and reporting methods with those Member States that have interests in the Mediterranean and the Black Sea.

We welcome the fact that the Commission's audit of the UK's implementation of the landing obligation is positive. You describe this as "initial feedback": if a more detailed assessment arises, please provide an update. It is encouraging that the UK has developed an effective remote electronic monitoring (REM) approach to enforcement: given that the Communication identifies this as an area that requires improvement, what steps will be taken in the coming months to secure political agreement and enable a wider rollout?

We note your statement that total allowable catches (TACs) are increasingly being set in line with scientific advice, and your view that such advice should account for the challenges posed by mixed fisheries.

Thank you for clarifying that the Commission has, in previous years, supported the view that avoiding by-catch discards in mixed fisheries constitutes a rationale for setting TACs above the level required to achieve Maximum Sustainable Yield (MSY). Is this view also shared by the International Council for the Exploitation of the Sea (ICES)?

We welcome your commitment to ongoing cooperation with the EU regarding the management of shared stocks after the UK leaves the EU. However, these are generalised assurances, and do not specifically address our question of what steps the Government will take to overcome the challenges to sustainable fishing that the Communication highlighted as applying in the Mediterranean and the Black Sea, and which will also apply to the UK after Brexit. Can you furnish us with any further detail? Are there current practices which you will seek to emulate or avoid?

We note that you are in the process of assessing alternative structures for negotiating TACs post-Brexit.

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

11 October 2017

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

Thank you for your letter of 11 October 2017 incorporating further questions on the above proposal.

Regarding the Commission's audit of the UK's implementation of the landing obligation, we have commented on a draft report and are waiting to see a final version. I will provide further details to you once the Commission's report is finalised.

Within the context of the EU regional groups, we will continue to advocate the use of remote electronic monitoring (REM) in the North Sea and North Western Waters and will continue to engage constructively with other Member States to achieve a wider rollout. There are clearly some difficulties in achieving consensus within the regional groups, however, as long as the UK is an EU

member, this is the only way in which we can achieve consistent implementation. Once the UK leaves the EU, we would be in a position to introduce REM as appropriate across fleets operating in UK waters, and we will be looking closely at how this could be successfully achieved.

Concerning the view of the International Council for the Exploitation of the Sea (ICES) on avoiding by-catch discards by setting total allowable catches (TACs) above the level required to achieve Maximum Sustainable Yield (MSY), ICES is requested by the Commission to provide advice on a range of fishing options. These are for both single species and mixed fisheries, particularly with reference to the North Sea and Celtic Sea. Their advice on mixed fisheries includes options that entail not immediately fishing at MSY when mixed fisheries and multi-species interactions are considered.

With regard to your question on ongoing cooperation with the EU, we will work within the existing Coastal States framework to ensure close cooperation with neighbouring countries in the pursuit of the sustainable use of shared fish stocks. Throughout the year, coastal States (e.g. EU, Norway, Iceland, Faroe Islands, Greenland and Russia) come together to discuss issues related to the management of shared fish stocks. Towards the end of each year, during the annual coastal States consultations, management (including the setting of TACs and agreement on shares) is agreed upon for the main pelagic stocks of importance to the UK, which includes mackerel, blue whiting, and Atlanto-Scandian Herring, for the following fishing season. These arrangements, alongside any additional fisheries measures, are subsequently formalised through the North East Atlantic Fisheries Commission (NEAFC). In addition, currently the EU has in place separate bilateral fisheries arrangements with Norway and the Faroe Islands. It is under these that annual negotiations on the sustainable management of shared fish stocks, such as for North Sea cod, saithe, whiting and haddock, as well as formalising exchanges of quota and access to waters will take place.

While it can sometimes be difficult to reach agreement across all Coastal States declaring an interest in a specific stock, operating within this well-established framework and implementing appropriate fisheries agreements (e.g. bilateral or trilateral arrangements), will represent the most effective means of ensuring sustainable fisheries.

20 October 2017

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

Thank you for your letter of 20 October 2017, which was considered by our Energy and Environment Sub-Committee at its meeting on 15 November.

We note your efforts to secure a rollout of remote electronic monitoring in the North Sea and North Western Waters, and that you intend to introduce it in UK waters after the UK leaves the EU.

Thank you for clarifying that the International Council for the Exploitation of the Sea (ICES) provides advice on fishing options that allow fishing above MSY where mixed fisheries and multi-species interactions are considered.

We note your explanation of the means by which you will cooperate with the EU regarding the management of shared stocks after the UK leaves the EU.

We are now content to release this Proposal from scrutiny. We look forward to receiving further details on the Commission's audit of the UK's implementation of the landing obligation once its report is finalised.

16 November 2017

Letter from Claire Perry MP, Minister of State, Department for Environment, Food and Rural Affairs

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 Emission Trading System (ETS) Phase IV reform negotiations. Following the conclusion of political negotiations on 8th November, I thought it appropriate to update you on the negotiations, and on the work we are doing to determine the UK's relationship with the system as we leave the EU. I have written separately to update you on the Aviation EU ETS file.

EU ETS Phase IV (2021-30)

In my last letter, in July, I outlined a number of issues which had delayed progress. Since taking over the EU Presidency in July 2017, Estonia has worked hard to find common agreement between the European Parliament and Council positions, and has acted as a catalyst for progress. There have been further political negotiations (trilogues) between the institutions which made significant progress, reaching a provisional agreement on 8 November. This agreement meets our key objectives of increasing the strength of the carbon price signal, while ensuring industrial sectors are given adequate protection from the risk of carbon leakage.

On the strengthening of the carbon price signal, the agreement includes the following to help drive up the price of allowances and incentivise greater investment in low carbon technologies:

- Improvements to the Market Stability Reserve (MSR) that will soak up a greater proportion of surplus allowances from the earlier start date of 2019.
- Measures to cancel surplus allowances in the MSR above a certain threshold from 2023 onwards.

The agreed package equally ensures that businesses who are operating in competitive international markets receive adequate protection to prevent the risk of carbon leakage:

- A conditional increase to the percentage share of free allowances by up to 3%, if needed to prevent the application of a cross sectoral correction factor that would otherwise uniformly reduce free allocation to industry as the cap declines and there are insufficient allowances to cover all emissions.
- From the middle of the phase (2026), as the risk of a correction factor increases, a reduction in free allowances for those sectors deemed not at risk of carbon leakage, allowing free allocation to be more focused.
- A conditional increase to the funding available for low carbon innovation projects, through the innovation fund, so that the total value is equivalent to 450 million allowances.

The deal does not include a central harmonised fund at EU level for compensation for indirect costs to industry, which would have compromised Member States' fiscal sovereignty.

Finally, in relation to the fund which supports lower income Member States energy infrastructure modernisation, agreement was reached to rule out funding for projects using coal as a fuel, with the exception of district heating projects in Romania and Bulgaria.

Subject to endorsement by Member States, it is expected that the agreement will formally be adopted by the European Parliament in mid December and by Environment Council on 19th December.

EU Exit

As you may be aware an amendment designed to protect the EU ETS from an abrupt UK departure from the system in March 2019 was proposed by the European Parliament on the aviation EU ETS file. This has now been adopted as part of those negotiations, subject to final approval by Environment Council and European Parliament in December. The Commission has subsequently proposed draft

regulations to amend the EU ETS Registry Regulation to implement this amendment, which must be adopted in accordance with regulatory procedure with scrutiny.

While I understand the motivation behind these amendments, I am concerned that these proposals would have significant negative impacts on the smooth operation of the carbon market. The Government is therefore working closely with the EU Institutions to explore alternative solutions. To this end we published a consultation on 6 November on bringing forward the 2018 compliance deadline for UK EU ETS operators to before the date of EU Exit. I hope through these actions we can find a suitable, alternative solution for all parties and stakeholders.

Looking further ahead, the Government continues to consider the UK's future participation in the EU ETS, or otherwise, after our exit from the EU. As set out in the Clean Growth Strategy, published in October, we remain firmly committed to carbon pricing as an emissions reduction tool, while ensuring energy and trade intensive businesses are appropriately protected from any detrimental impacts on competitiveness. Whatever our future relationship with the EU we, will continue to reduce emissions in the sectors covered by the EU ETS and will seek to ensure that our future approach is at least as ambitious as the existing scheme and provide a smooth transition for the relevant sectors.

15 November 2017

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 your letter of 15 November on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 29 November.

Thank you for updating us on the progress of the ETS reform negotiations. We were pleased to note that a provisional agreement has been reached that meets the UK Government's key objectives. We note that this is now subject to endorsement by Member States, before being formally adopted by the European Parliament, and would be grateful if you could keep us updated on progress.

We note your comments relating to the impact of Brexit on the EU ETS, including the Commission's proposed regulations and the UK Government's desire to find an alternative solution. Please could you outline what your concerns are, and provide an update on the outcome of your consultation and your work with EU institutions to agree a way forward.

Thank you also for your update on the Government's intentions post-Brexit, including that you will seek to ensure any future approach is at least as ambitious as the current scheme and that there will be a smooth transition. Please keep us updated on the progress of negotiations relating to our future relationship with the EU ETS. Has your department made an assessment of the impact that leaving the EU ETS would have on the UK's ability to meet its future carbon budget?

We look forward to hearing from you on these issues in due course.

29 November 2017

PROPOSAL FOR A COUNCIL REGULATION FIXING FOR 2018 THE FISHING OPPORTUNITIES FOR CERTAIN FISH STOCKS AND GROUPS OF FISH STOCKS APPLICABLE IN THE BALTIC SEA. (11404/17)

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

I am writing to explain my decision to override Parliamentary scrutiny of the Commission's proposals for fishing opportunities in the Baltic in 2018, which were agreed at the Agriculture and Fisheries Council on 9 to 10 October 2017.

The Commission brought forward their proposals for the Baltic Sea for 2018 on 29 August. Defra submitted an Explanatory Memorandum (EM 11404/17) to Parliament on 12 September. The proposals were scheduled to be agreed by Ministers at the Agriculture and Fisheries Council from 9 to 10 October. My officials were advised that the House of Commons Scrutiny Committee were

unlikely to meet before 11 October and we received confirmation of clearance by the House of Lords Scrutiny Committee on 12 October.

At the Council, I voted in favour of a package to set fishing opportunities for the Baltic Sea in 2018. Overriding the scrutiny of proposals from the European Commission is not an action that I take lightly. In this instance, I believe it was in the best interests of the UK.

While the UK has no direct fishing interests in the Baltic Sea, there are aspects of this year's proposals that could have an indirect effect on the UK. It is also important for the UK not to appear to be abstaining in key agreements at the Council, especially where they may have a bearing on the December negotiations on fishing opportunities.

There are two issues of particular interest for us. First, on the proposal to prohibit fishing for European eel in the Baltic, there was strong resistance from most potentially affected Member States. They argued that if there were to be a prohibition it should be considered for all EU waters, though the rationale for the Commission's proposal was that implementation of the eel regulation in the Baltic was especially poor. Working alongside

France, we were able to avoid a blanket prohibition. I wanted to ensure that a proper assessment and consideration will be given to any potential impact on UK fishermen before new measures are agreed. The proposed ban was dropped in favour of a statement to consider an EU-wide approach to this problem, which I expect will be discussed in December.

Second, the Commission proposed a roll-over of Total Allowable Catch (TAC) for western Baltic cod that would result in a fishing mortality above that set out in the Baltic Multi-Annual Plan. Given that remedial measures are already being taken to recover this seriously depleted stock, such a roll-over is not unreasonable for 2018. The approach is of potential interest to the UK if similar situations arise in the North Sea or North Western Waters.

I hope that you understand that it was in the best interests for the UK to vote in favour of the fisheries opportunities negotiated for the Baltic in 2018.

1 November 2017

PROPOSAL FOR A REGULATION AMENDING REGULATION (EU) NO. 1380/2013 ON THE COMMON FISHERIES POLICY (11483/17)

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 11 October.

We welcome this Proposal as a sensible and proportionate way to address the legislative shortfall that would be arise if the current discard plans were to elapse.

Neither the Commission's Proposal nor your explanatory memorandum (EM) explain why the multi-annual plans have not been developed in the time originally allowed. Why has this delay arisen? When do you expect the multi-annual plans to be ready? Are you confident that a three-year extension will be sufficient for the remaining plans to be developed?

You state that "It is important that we retain the exemptions contained within [the current plans]" to ensure UK fleets have sufficient flexibility in adapting to the landing obligation. Will those exemptions be automatically maintained under the proposed extension, or will they be subject to negotiation?

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

11 October 2017

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

Thank you for your letter of 11 October 2017 regarding the Explanatory Memorandum on the above Proposal.

I welcome your agreement that this Proposal is a suitable way of addressing the legislative gap when the current discard plans expire.

You ask why the multi-annual management plans have not been developed in the timeframe, as originally envisaged within the Common Fisheries Policy (CFP) basic regulation. The European Commission has not initiated proposals for these plans as early as we would have expected and the time taken to agree these plans has, in reality, been longer than first thought. Progress on the development of multi-annual plans across the different EU fisheries is as follows:

The Baltic Sea plan has been agreed.

- The North Sea plan for demersal species has entered the trilogue phase of negotiation between the European Parliament, Commission and Presidency and should be agreed in early 2018.
- The proposal for a North Western Waters plan for demersal species is now expected to appear early in 2018, having been delayed several times. We cannot be sure it will be finally adopted before EU Exit.
- The Commission has produced a proposal for a plan for pelagic fisheries in the Adriatic Sea.
- There is no sign of any proposal for Atlantic pelagic stocks as yet.

You ask whether a three year extension to the discard plans will allow sufficient time for the remaining multi-annual plans to be developed. We did put this question to the Commission. Their response was that another three year period would count as a 'minimal' change which could be progressed very quickly, as the CFP regulation originally specified that discard plans would be in operation for three years. The specification of a different

length of time could result in the initiation of a far more lengthy procedure, including a public consultation and a new Impact Assessment.

You also ask whether existing exemptions will be automatically retained under the proposed extension or whether these will be subject to negotiation. Since the discard plans are time limited they will need to be replaced with new plans, generally the intention of the regional groups is to retain those exemptions that have been agreed. Exceptions to this could be where exemptions have only been provisionally endorsed by the Commission's scientific advisors, or where Member States no longer see a need to retain a de minimis exemption as it is not being used by fleets.

30 October 2017

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

Thank you for your letter of 11 October 2017, which was considered by our Energy and Environment Sub-Committee at its meeting on 15 November.

We note the reason for why three years was the specific duration chosen for continuing to have discard plans, and the likely timetable for the development of multi-annual plans. We also note the intention to retain existing exemptions within the new discard plans that will now be adopted.

We are very disappointed at the length of time it is taking the Commission to develop these important multi-annual plans. Given that we agree that it is necessary to avoid a period where there is no discard plan in place, however, and that we believe the Proposal is a sensible way to address this, we have decided to release the Proposal from scrutiny and close the correspondence.

16 November 2017

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

I am writing to explain my decision to override Parliamentary scrutiny of the European Commission's proposal to amend the Common Fisheries Policy basic regulation, in order that discard plans can be extended for a further total period of three years. This proposal was agreed at the EU Foreign Affairs Council (Trade) on 10 November.

You wrote to me on 11 October with a number of questions on this proposal and I hope you found my response of 29 October informative.

This amendment is essential to maintain the consistent implementation of the landing obligation through the adoption of temporary discard plans, as multi-annual plans have not yet been fully developed and implemented to cover both pelagic and demersal fisheries in the North Sea and North Western Waters. This has become an urgent matter as the current pelagic discard plans are due to expire on 31 December 2017. I believe it was important for the UK to vote in favour of this amendment, rather than abstain, given the risk of a legislative gap and the potential adverse repercussions this would have had for the UK. Overriding the scrutiny of proposals from the Commission is not an action I take lightly, however I believe it was in the best interests of the UK to support the amendment.

16 November 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 1, SWD(2016) 272 FINAL AND SWD(2016) 267 FINAL) (11636/16)

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 21 August on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 11 October.

We welcome your clarification that the stocks included in the MAP proposal are unchanged, and your assessment that the plan will help to deliver sustainable fisheries management.

We continue to take an interest in the development of this Multi-Annual Plan, and 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 due course.

11 October 2017

PROPOSAL FOR A COUNCIL DECISION ON THE POSITION TO BE ADOPTED, ON BEHALF OF THE EUROPEAN UNION, WITH REGARD TO PROPOSALS FROM VARIOUS PARTIES TO THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS FOR AMENDMENTS TO THE APPENDICES OF THE CONVENTION AT THE TWELFTH MEETING OF THE CONFERENCE OF THE PARTIES (11770/17)

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

Thank you for your Explanatory Memorandum (EM) on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 11 October.

We welcome the commitment represented by this Proposal to international cooperation on the conservation of wildlife and habitats.

We note your rationale for removing *Gazella bennettii* and *Pan paniscus* from the proposed Decision, and your wish to ensure that species are listed in the correct Appendix. Have you secured the requisite amendments to the proposed Decision?

We agree that the EU should not exceed its competence, and it would be appropriate for any species that do not fall within the EU's remit to be removed from the proposed Decision. Have you been successful in securing the removal of the 23 species you believe fall outside the EU's responsibilities for the CMS?

We understand that this Proposal will go to Council for a final decision on 13 October. However, given in particular the competence issues that you raised in your Explanatory Memorandum (EM), we are unable to clear the Proposal from scrutiny.

We are content to grant a one-off scrutiny waiver to enable you to engage actively in the negotiations. We have decided to retain the Proposal under scrutiny and look forward to your response within 10 working days.

11 October 2017

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

Thank you for your letter of 11 October 2017. The proposals for listing species on the Appendices to the Convention on Migratory Species were discussed at the Working Party on the Environment. Amended proposals were made to Council and adopted on 13 October 2017. The UK was successful in securing some but not the full range of outcomes we would have liked and abstained in the final vote. In the Council Decision adopted:

- *Pan paniscus* (bonobo) has been correctly replaced with *Pan troglodytes* (chimpanzee) in the list of species suggested for inclusion in Appendix I;
- Changes have been made to correctly reflect the species proposed for listing in Appendices I and II;
- The proposal to list *Gazellus Bennetti* (Indian gazelle) on Appendix II is included, as there was a strong appetite from other EU Member States to support this listing; and,
- The proposals to list 23 species which are non-indigenous to the European Union area are included, as other Member States had little appetite to exclude these from the Decision.

The UK achieved some, but unfortunately not all of its objectives in this instance, given the positions of other Member States.

19 October 2017

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

Thank you for your letter of 19 October, which was considered by our Energy and Environment Sub-Committee at its meeting on 1 November.

We note that the erroneous reference to *Pan paniscus* was removed from the Proposal, and that other corrections were made to ensure that species were listed in the appropriate Appendices.

We also note that you were not successful in excluding the 23 species you believe fall outside the EU's responsibilities, and that you abstained in the final vote as a result.

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

2 November 2017

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

Thank you for your Explanatory Memorandum (EM) on the above Regulation, which was considered by our Energy and Environment Sub-Committee at its meeting on 25 October.

We note that the Delegated Regulation will amend the derogation period for 'free range eggs' from 12 weeks to 16 weeks. What is the rationale for 16 weeks specifically? What impact would this have had on UK egg producers during last winter's avian flu outbreak and would you expect future outbreaks to be contained within a 16 week window? Was consideration given to a flexible derogation period, which would match the length of time restrictions on access to open air runs were in place, rather than a set 16 week maximum?

We note that Defra are "currently working with enforcement bodies and the Devolved Administrations to determine whether the current enforcement powers are adequate to ensure that changes…can be enforced". We would be grateful for an update on this work. Have any concerns been raised over enforcement capability?

Whilst we note that the UK egg sector supports the changes, members of the public who responded to the Commission's consultation expressed concern that the derogation went too far. Has any assessment been made of the UK public's views on this issue and what plans have been put in place to communicate these changes to the public?

In addition to extending the derogation period, the Regulation is being amended to clarify that "that maximum period shall start from the date on which the group of hens in question, put in place at the same time, actually had their access to open air runs restricted". What assessment has been made of the impact this change will have in the UK? Your Explanatory Memorandum states that this means the derogation will be applied on a "flock by flock" basis. As restrictions on access to open air runs would normally be applied on a regional, if not national, basis, do you foresee this change creating additional work – either for producers or for enforcement bodies?

Finally, your Explanatory Memorandum does not provide a timeline for when you expect the amended Regulation to come into force. We would be grateful if you could provide these details to the Committee.

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

26 October 2017

Letter from Lord Gardiner of Kimble, Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity

Thank you for your letter of 26 October regarding the Explanatory Memorandum (EM) on the above draft Regulation. I will deal with each point that you have raised in turn.

The Delegated Regulation will increase the period during which eggs may continue to be marketed as "free range" where housing orders are in place from twelve to sixteen weeks. The rationale for the change is explained in our EM and in the recitals of the draft Regulation. In particular, the veterinary assessment is that avian influenza outbreaks are likely to become more prevalent in future and the experience of winter 2016/17 indicates that it is necessary to keep restrictions in place for a longer period of time for biosecurity reasons. The Commission therefore undertook a review of the current rules in the light of latest information/experience. The review also considered the application of the derogation in Member States and the improvements in husbandry leading to an increase in the average life expectancy of flocks.

As explained in the EM, the outcome of the Commission's review has resulted in two main changes to the current regime. First, the derogation period is extended by four weeks to sixteen weeks and, second, the derogation is applied on a flock by flock basis. The Commission has judged that the changes represent a fair balance between having workable rules that take account of the difficult situation in which free range producers are placed in the event of a prolonged avian influenza outbreak in order to maintain biosecurity, and the expectations of consumers that eggs labelled as "free range" are produced in systems where the birds have access to the outdoors.

In respect of your particular questions, the majority of free range egg producers were subject to compulsory housing restrictions in winter 2016/17 that lasted for twelve weeks. However, producers in the Higher Risk areas of England, accounting for approximately 20% of poultry producers, were subject to restrictions lasting for just over eighteen weeks. Thus even with the extension to sixteen weeks under the new Regulation, some producers would have found themselves in a position where they would not be able to label eggs as "free range". Consideration was not given to a more flexible system, primarily in order to ensure a common approach across the EU and to protect the expectations of consumers that eggs have been produced in free range systems.

The main implication for enforcement of the Regulations is that the sixteen week derogation period will apply on a flock by flock basis. During the last outbreak, some EU Member States applied the derogation period nationally and some on a flock by flock basis and this change was introduced in order to ensure uniform application across the EU. In order to effectively apply the sixteen week period, it will be necessary for producers to share with packers the date on which the relevant flock was placed into housing and to ensure that their eggs are stamped with the appropriate house code to identify the flock, where there are multiple flocks on the premises. This will ensure that the packer is aware of the date on which the derogation began in relation to the flock that produced the eggs. It will ensure that packers have sufficient information to allow them to properly stamp the eggs where required and apply the correct labelling to egg packs to identify the eggs as either "free range" or barn production. Where a flock is outside the derogation, housed for more than sixteen weeks, it is expected that the eggs stamp will identify the eggs as barn production. This will require the eggs being stamped as 2UK, "barn" rather than 1UK, "free range". We will be discussing this with the sector in meetings planned for November. The UK was one of a small number of Member States that, whilst appreciating the reason for the change, noted that it would have implications for enforcement. However, we consider that the proposal is in overall terms balanced

We have seen that some individual responses to the Commission's call for feedback on the proposals expressed the view that there should be no derogation period and that "free range should mean free range." While we have taken note of these views, we consider that the Commission's proposals strike the correct balance given the range of aspects that were taken into account, as set out above.

We will be issuing advice to egg producers and retailers about the requirement not to label eggs as "free range" beyond the sixteen week period, and in such cases what is acceptable in terms of clear labelling. We will also write to groups representing consumer interests to inform them of the rules that apply in the event of a prolonged housing order and to inform them what consumers can expect to see in terms of the labelling of egg packs in such circumstances.

The draft Delegated Regulation was adopted by the Commission on 20 September and transmitted to the Legislator. The Legislator has a period of 2 months in which to accept or reject the Regulation. Given that most Member States supported the changes proposed by the Commission when it was discussed in the Common Market Organisation (CMO) Experts Group, it is highly unlikely that there will be a qualified majority against the Regulation, and my expectation is that it will be published in the Official Journal of the EU by the end of November and shall come into force on the third day following publication

7 November 2017

Letter from the Chairman to Lord Gardiner of Kimble, Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity

Thank you for your letter of 7 November 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 29 November 2017.

Your letter states that the rationale for the change from twelve to sixteen weeks is explained in the Explanatory Memorandum (EM). We would like to know, however, why sixteen weeks specifically was chosen (as opposed to, say, fifteen or seventeen weeks). Given that, as your letter states, the derogation would have needed to be for nineteen weeks in order to help the UK producers whose hens were housed for longer than the current twelve week derogation during the winter 2016/17 restrictions, was a nineteen week derogation suggested?

You state that no consideration was given to a more flexible system. Why was it not considered possible to allow the derogation to last for as long as a disease outbreak requires housing orders to be in place?

Thank you for explaining that the main implication for enforcement is that the derogation will apply on a 'flock by flock' basis. Your EM stated that "Defra is currently working with enforcement bodies and the Devolved Administrations to determine whether the current enforcement powers are adequate". Has that work concluded yet? Thank you also for setting out the processes that will have to be put in place to comply with this change (i.e. producers sharing relevant dates with packers and ensuring eggs are stamped correctly). What assessment has been made of the impact of this change (including cost implications) on producers, packers and enforcement bodies?

Thank you for explaining you will be writing to consumer groups to explain the changes and that you feel the Proposal strikes the right balance between those who argued for no derogation period and those who wanted a longer period. Thank you also for providing the likely timeline for this Proposal to come into force.

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

30 November 2017

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

Thank you for your letter of 30 November, on behalf of the European Union Committee on the changes introduced by the Commission regarding the marketing of eggs as free range from flocks, where access to a range has been prevented due to a declaration of a Prevention Zone ("housing order") in order to protect the birds from avian influenza (AI).

As a consequence of the changes introduced, free range producers will have additional flexibility to market eggs as "free range" when a housing order requires prolonged housing to reduce the risk of avian influenza transmission, for example in areas of the country that are categorised as "high risk areas" in line with Commission Implementing Decision 263/2017. This latest Commission amendment to the egg marketing standards Regulation (EC) No 589/2008 offers free range producers extra flexibility in the form of an additional 4 week grace period (to 16 weeks in total), which is applied on a flock-by-flock basis. When presenting the proposal to the experts of the Member States, the Commission explained that the rationale for the change was based on the anticipated prevalence and duration of future AI outbreaks and the changes in husbandry practices, leading to an increase in the average life expectancy of flocks.

To answer your specific question as to why the derogation is limited to 16 weeks. The changes introduced seek to strike a balance between affording producers flexibility and meeting consumers' expectations that eggs labelled as "free range" are produced in systems, where the birds have access to the outdoors. I would remind the Committee that the provisions on free range eggs in the eggs marketing standards Regulation were primarily introduced for the protection of consumers of such eggs, so that they are not misled when they pay premium prices for them.

I am sure you will appreciate, the duration and geographical extent of housing restrictions that may be imposed in any housing order declared by the Secretary of State depends on a range of factors. As such, it is not possible to predict in advance for how long restrictions might need to stay in force. The new Commission Delegated Regulation amending Annex II of Regulation (EC) No 589/2008 therefore aims to strike a balance between giving producers a reasonable period of transition to prepare for the implications of prolonged housing requirements, and the interests of consumers.

In response to the questions raised in your fourth paragraph, my officials are in discussion with the egg sector about how to apply the derogation on a flock-by-flock basis, which means that it is necessary to know when birds are confined indoors. We continue to work with our enforcement agency and the Devolved Administrations to discuss our enforcement powers and have consulted industry on the proposed changes. I can provide you with an update on these discussions once they have been concluded.

It is understood that the Commission's amendment to the egg marketing Regulation has been introduced, both to increase flexibility for producers and to ensure a common approach between Member States. Our aim is to reach an agreement with the sector that balances the efficient application of the requirement in terms of administration and checking compliance with minimising additional cost and burden for egg producers, whilst ensuring that consumers are kept properly informed about the status of the eggs that they buy.

14 December 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

Thank you for your letter of 11th October 2017 seeking clarification on three issues relating to the above document. Having discussed this with the Commission, I can confirm the following.

The rules laid down by Directive 2006/125/EC remain in force until the new delegated act has replaced them, so there is no legislative gap.

You are aware that 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 the European Food Safety's (EFSA's) updated scientific opinion (estimated completion end of March 2018), and that the EFSA will update its opinion on the appropriate age for introduction of the complementary feeding of infants (estimated to be finished by the end of September 2018). We are not currently able to provide an assessment of the impact of delaying new limits on the levels of sugar permitted in baby foods. This is because the Commission does not have such an assessment and we would need to consider the outcome of the JRC and EFSA's opinion before we could make one ourselves.

Until the JRC study has been completed and we have EFSA's scientific opinion, we are unable to provide a date of when we expect the delegated act to be adopted. However, as the EFSA opinion is not expected until September 2018, it is possible that this might not happen until after the UK has exited the EU. If this is the case, we are intending for Statutory Instruments made under the European Union (Withdrawal) Bill to transfer the Commission's updating powers to domestic authorities after EU Exit, so that the law can continue to be updated.

I trust you find this further update helpful and I re-iterate my commitment to provide further information next year when the previously mentioned reviews have been completed.

23 October 2017

Letter from the Chairman to Steve Brine MP

Thank you for your letter of 23 October on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on1 November.

Thank you for clarifying that the rules laid down by the existing Directive will remain in force until the new delegated act has replaced them.

Thank you also for clarifying that you are dependent on the outcome of the Joint Research Council and European Food Safety Authority's work before being able to determine both the likely timescales

for the revised legislation and the impact that the delay to introducing the new sugar level limits may have.

Given these factors are still unknown, we have decided to retain the Proposal under scrutiny and look forward to an update in due course.

2 November 2017

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL ON MEMBER STATE NATIONAL ACTION PLANS AND ON THE PROGRESS IN THE IMPLEMENTATION OF DIRECTIVE 2009/128/EC ON THE SUSTAINABLE USE OF PESTICIDES (13138/17)

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 Report, which was considered by our Energy and Environment Sub-Committee at its meeting on 29 November.

We are very concerned to read that the UK Government did not provide a response to the Commission's questionnaire, although we note from your EM that you believe the Report's commentary on the UK's response to requests for information is inaccurate. Please could you clarify whether you responded to the questionnaire, and clarify what information you provided to the Commission.

Your EM stated there were several inaccuracies in the Report. Please provide further details on these.

We note that the Commission has written to Member States where there are notable omissions in their Plans and/or in the implementation of the Directive. Did the UK Government receive such a letter?

The Report mentions several specific areas on which the UK failed to provide a response, i.e.:

- Whether the UK prohibits/ restricts the use of pesticides in protected areas.
- Whether there is a system for the collection and safe disposal of empty containers and packaging of Plant Protection Products.
- Whether there are publicly funded systems in place for forecasting, warning and early diagnosis for pest and disease control.

Please provide the Committee with the answers to these questions.

The Report mentions a number of areas in which the UK is not doing what is expected or desirable, i.e.:

- not reporting risk reduction targets;
- not including advisors on pest management in the certification system (although we note your EM states that this is inaccurate);
- not systematically monitoring chronic poisoning; and
- granting derogations to allow aerial spraying to take place.

For each of these issues, please could you explain why this is the case, and whether you have any plans to start/ stop doing these things.

We note that National Action Plans (NAPs) are expected to be reviewed at least every five years. What plans do you have for a review of the UK NAP? When Britain leaves the EU, do you intend to continue to follow the Directive and maintain an NAP?

The Report highlights significant variation between Member States, and cites a number of examples of good practice from other countries. Do you have any plans to adopt any of these practices in the UK?

We note that the Report was discussed at Agriculture Council on 6 November, and is due to be discussed by the European Parliament "in the near future". Please provide an update on the Council discussion.

Finally, we note that there are a number of strands of future work that the Commission hopes to take forward, that the UK is participating in discussion on these and that there is the possibility that subsidiarity concerns may arise. Please keep the Committee updated on these discussions.

We have decided to retain the Report under scrutiny. We look forward to a reply to this letter within 10 working days. This is an issue of significant interest to the Committee and we may decide to invite oral evidence, from yourself and others, on this matter in due course.

30 November 2017

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

Thank you for your letter of 30 November. You have raised a number of specific points and I have aimed to provide a concise response to each below.

The Government is committed to ensuring that risks to people and to the environment from the use of pesticides are minimised. An important part of this is the regulation of individual pesticides so that those that may cause harm to people or pose unacceptable risks to the environment are not authorised for use. Where safety standards can be met, use of pesticides is authorised with appropriate conditions. It is then appropriate to have further measures to encourage people to minimise their use of pesticides and to minimise the risks arising from pesticide use. This is the ground covered by Directive 2009/128/EC. When implementing the Directive, the UK built on pre-existing national measures. As explained in the Explanatory Memorandum, the current approach and key measures are detailed in the UK's National Action Plan (NAP).

On receiving the Commission's questionnaire, the Government initiated a meeting with Commission officials to discuss their information requirements and provided the information agreed at that meeting, including: the number of trained pesticide users, the quantity of application equipment tested; and details of aerial spraying operations. We took that approach, rather than responding directly to the Commission's questionnaire because we wanted to understand the context of the request and the way in which the Commission needed to use the information collected. We were also concerned that some of the information requested was not possible to provide with accuracy in the form requested.

There were several inaccuracies in the Commission Report. The most significant was the suggestion that Directive 2009/128/EC requires advisors to be certificated. This is not consistent with the Government's reading of the legislation, nor with the position taken by the Commission during the negotiation of the Directive (they were clear on that point, partly because they were anxious not to create a new profession). Other errors were minor.

The Commission wrote to the Health and Safety Executive (HSE - the UK regulator) on implementation of the Directive. We understand that most Member States received similar letters and the greater part of the letter to HSE set out the Commission's general approach to implementation of the Directive. In respect of issues that were specifically raised for the UK, the letter:

- Asked for further information on some issues covered in the questionnaire. The request was not entirely clear and HSE are following up with the Commission; and
- Asked the UK to provide material for the Commission's web-portal on Integrated Pest Management. HSE had already done this and have told the Commission that they will continue to post relevant material.

You asked about the position on three specific areas mentioned in the Report:

- Restrictions on the use of pesticides in protected areas (Article 12(b) of the Directive which refers to the Water Framework Directive, the Directive on the Conservation of Wild Birds and the Habitats Directive). Key measures are detailed in Section 14 of the NAP and include requirements that the amount used and the frequency of use are as low as reasonably

practicable, and that pesticide users obtain agreement or consult nature conservation authorities;

- The system for collecting and disposing of empty containers and packaging. Key measures are outlined in Section 15 of the NAP and include a number of legislative requirements for hazardous waste and the development of best practice by the Pesticides Forum's Container Management Working Group; and
- Systems for forecasting, warning and early diagnosis for pest and disease control. There are a number of commercial disease forecasting and monitoring services and we have supplied information to the Commission on this.

You requested explanations of the UK approach in several areas. The Government considers that its approach in all these areas is consistent with the requirements of the Directive, with the sustainable use of pesticides and with the Government's objectives to minimise burdens on business and gold-plating of EU requirements. Specifically on the four points you list:

- Risk reduction targets. These are not a legal requirement and in establishing the NAP (Section 7) the Government concluded that setting such targets would not be an effective tool to drive sustainable pesticide use.
- Certification of advisors. This is not a legal requirement. Ensuring that those using or advising on the use of pesticides are properly trained is a key means to support the sustainable use of pesticides. When implementing the Directive, the Government was concerned that it set requirements in this area that in some respects fell short of the previous UK rules. For this reason we maintained the UK requirement for certification of users. We did not set a requirement for certification of advisors, partly because market forces within the sector already mean that advisors are effectively trained.
- Systematic monitoring of chronic poisoning. This is, as the Report acknowledges, a challenging area and the approach continues to develop. The **Pesticide Users' Health Study** was established in the late 1990s to monitor the long term health of individuals potentially exposed to low levels of pesticides on a longer term basis, and to help fill the gaps in knowledge about the extent and nature of pesticide-related ill health. In
- 2013, the HSE Laboratory began the **Prospective Investigation of Pesticide Applicators' Health** (PIPAH). This builds on the earlier scheme, collecting more detailed information about the study participants.
- Granting derogations to allow aerial spraying to take place. This is allowed by the Directive under carefully controlled conditions. UK derogations are issued on a limited basis for the use of a particular herbicide under the terms of nature conservation agreements to manage bracken encroachment in upland areas. It is possible that other tightly controlled derogations could be granted in future, for example to control potato blight in situations where rainfall levels prevent normal spray applications.

We plan to review the current NAP in the first half of 2018 and will consult on a draft. The EU Withdrawal Bill will ensure that Directive 2009/128/EC will be converted into national law and so essentially the same legal provisions, including the requirement to have a NAP, will apply after Exit. This will provide continuity and stability for businesses and stakeholders. As with all retained EU laws we would then, over time have the opportunity, with Parliamentary scrutiny, to consider any changes to those laws so that our regulatory framework delivers our aims.

You asked about the adoption of practices from other countries. A feature of the Directive is that it recognises that Member States have different issues, priorities and cultures. In the UK we have a relatively mature regime for managing the use of pesticides and one in which a mixture of regulation and voluntary approaches has a track record of delivery. In addition, environmental factors such as the UK climate and soil structures means that our risk profiles are different from those of other Member States. We are therefore cautious about lifting measures from elsewhere. We have, however, considered the content of other NAPs and will keep this under consideration as we review our own.

Finally, you asked about the discussion at Agriculture Council on 6 November. As reported in the Written Statement made by Lord Gardiner on 28 November (HLWS275), there was widespread agreement that NAPs are a good way for Member States to tailor their approach to meeting the objectives of the Directive, and widespread support – including from the UK - for the principles of Integrated Pest Management. A wide range of issues were flagged including: building the knowledge of pesticide users; the need for a transparent approach that attracts public confidence; the development of non-chemical options; the role of new technologies in plant breeding and pesticide application; and the difficulties of effective monitoring.

14 December 2017

PROPOSAL FOR A REGULATION ON VETERINARY MEDICINAL PRODUCTS (AND ADD 1-3 OF THE PROPOSAL) (13289/14)

PROPOSAL FOR A REGULATION 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 the Chairman to Lord Gardiner of Kimble, Parliamentary Under-Secretary of State for Rural Affairs and Biosecurity, Department for Environment, Food and Rural Affairs

Thank you for your letter of 13 September 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 11 October 2017.

Thank you for your assessment of the Proposal as it stands following the third read through. We note that the Government secured a derogation allowing for the online sale of prescription medicines in the UK, and that measures regarding antimicrobial medicines have been introduced to mirror those in the medicated feed proposal.

We welcome your assurance that the Proposal is in line with the Government's position on the responsible use of antibiotics, and your intention to implement similar legislation in the UK after its withdrawal from the EU.

We are now content to release this Proposal from scrutiny, and to close this correspondence.

11 October 2017

PROPOSAL FOR A COUNCIL REGULATION FIXING THE PRODUCTION LEVIES AND THE COEFFICIENT FOR CALCULATING THE ADDITIONAL LEVY IN THE SUGAR SECTOR FOR THE 1999/2000 MARKETING YEAR AND FIXING THE PRODUCTION LEVIES IN THE SUGAR SECTOR FOR THE 2000/2001 MARKETING YEAR (13659/17)

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 13 December.

We were disappointed to note that your Explanatory Memorandum made no mention of the amount that the UK Government expects it will have to pay back to UK producers, or of the mechanisms you will need to put in place to ensure sugar producers are refunded (and that they, in return, pay money back to beet sellers). Having that level of detail is important to enable us to scrutinise effectively.

On this occasion, however, given that this Proposal is necessary to comply with the European Court of Justice judgment, we have decided to release the Proposal from scrutiny and close the correspondence.

14 December 2017

PROPOSAL FOR A COUNCIL REGULATION FIXING FOR 2018 THE FISHING OPPORTUNITIES FOR CERTAIN FISH STOCKS AND GROUPS OF FISH STOCKS, APPLICABLE IN UNION WATERS AND, FOR UNION FISHING VESSELS, IN CERTAIN NON-UNION WATERS (13780/17)

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 this week.

Thank you for setting out the core principles that you will adopt during negotiations on this Proposal, and your initial negotiating positions. We note that there are a large number of areas where you seek to amend the Proposal. Please clarify the scientific advice or other evidence that you have received, which has prompted you to seek amendments to the Proposal.

Please provide an update on the negotiations and any success you have had in securing your suggested amendments. We note that you seek to secure the best possible deal for the UK fleet; please clarify what impact you would expect there to be on the UK fleet if you are unsuccessful in amending the Proposal.

We note that your Department will produce an evaluation of the final outcome. Please provide us with a copy.

We note your concern for a "potential spill-over to the EU exit negotiations". Did this occur? If so, what action did the UK delegation take?

We note that the Proposal will be considered at the Fisheries Council on 11-12 December. We have therefore decided to grant a one-off scrutiny waiver, to enable you to vote at Council, but to retain the Proposal under scrutiny. We look forward to a reply to this letter within 10 working days.

8 December 2017

PROPOSAL FOR A COUNCIL REGULATION AMENDING REGULATION (EU) NO 1370/2013 DETERMINING MEASURES ON FIXING CERTAIN AIDS AND REFUNDS RELATED TO THE COMMON ORGANIZATION OF THE MARKETS IN AGRICULTURAL PRODUCTS, AS REGARDS THE QUANTITATIVE LIMITATION FOR BUYING-IN SKIMMED MILK POWDER (14929/17)

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 20 December.

We note your support for the Proposal and that industry have raised no objections.

We also note your comment that this Proposal "should avoid large stocks being accumulated in the UK prior to our exit from the EU". What quantity of skimmed milk powder is currently held in public stocks in the UK? When the UK leaves the EU, and the Common Agricultural Policy, what will happen to whatever stocks are left in public stores? Please also clarify who will own these stocks, post-Brexit.

We have decided to release the Proposal from scrutiny but look forward to a reply to this letter within 10 working days.

21 December 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 (14973/15)

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

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

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2008/98/EC ON PACKAGING AND PACKAGING WASTE (14976/15)

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

Further to our previous correspondence, and to your officials attending the Sub-Committee's meeting on 15 November, these Proposals were considered again by the EU Energy and Environment Sub-Committee at its meeting on 29 November.

Considered as a whole, we would like to put on record our disappointment at the lack of concrete action to improve recycling rates in England. Whilst we welcome the Government's commitment in the recent Budget statement to bring forward proposals to reduce single-use plastics waste, we have been struck by the very low rates of recycling in some local authority areas and the Government's reluctance to sign up to ambitious European recycling targets.

In your last letter to the Committee, you stated that the UK could support a 55% recycling target, subject to the details contained in the final package. Please could you provide an update on discussions relating to this target? We understand that the proposed target would be for municipal waste, and not solely household waste. Please could you provide us with the current UK recycling rate for municipal waste (as it is expected to be defined by the amended Directive)? As per our previous letter, we would also like to be kept updated on your evidence review into the feasibility of a 60% recycling target.

Your previous correspondence has stated that urban populations and the number of Local Authorities (with different recycling regimes) are two of the barriers to achieving higher recycling rates. Please outline what plans you have to improve urban recycling and to encourage consistent adoption of best practice amongst Local Authorities, and what assessment you have made of the likely percentage increase in recycling rates that these plans will deliver.

Please also provide an update on the plans for Extended Producer Responsibility within the Proposals, and what assessment has been made of the impact they will have in the UK in terms of recycling rates, costs to businesses and any other impacts of note.

As per previous letters, please also keep us updated on the proposals for the marine litter recycling target.

Finally, please provide an update on progress to agree the Proposals more broadly, and clarify whether a final vote is still expected by the end of the year.

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

30 November 2017

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

Thank you for the letter of 10 August, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 11 October.

Thank you for the update on discussions of this Proposal thus far. We note and support your overarching aim to ensure the EU is in a position to meet its objectives, while allowing flexibility for Member States to decarbonise their energy systems cost-effectively.

We are concerned, however, that the Proposal may be weakening as negotiations progress. Your update raises several questions:

- You mention support from most Member States for making administrative requirements optional. This appears to risk undermining the benefits of collective action and the efficacy of the Commission's work to monitor progress. Please clarify which requirements would be optional, and why you welcome this approach.
- You also mention some support for allowing Member States to reduce their decarbonisation ambitions at a review point in 2023. Does the UK support this proposal? Has there been any discussion of the grounds on which such a reduction would be permissible?

Thank you for your assessment of the changes to the UK's current reporting framework that will be rendered necessary by the Proposal. We welcome your assurance that the overall financial burden of reporting is likely to remain broadly stable, and support your action to remove disproportionately burdensome requirements.

We also welcome your statement that the current proposal for the financing platform is viewed as unacceptable by many Member States and is unlikely to retain its current form, and support your position that alternative mechanisms would be appropriate. Please update us on discussions regarding those mechanisms.

We note that you expected a revised text in September alongside working group discussions, and would welcome an update on any resulting developments.

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

11 October 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

I am writing to you to give you an update on the Council negotiations on the proposals for a Regulation on the Governance of the Energy Union and a recast Renewable Energy Directive ('RED'), respond to your questions in your letters of 11 October 2017, and request a waiver from Scrutiny in order for the UK to be able to support a potential General Approach at the December Council on both dossiers.

I wrote to the Committee on 10 August 2017 to keep you informed of developments in the negotiations. This proposed Regulation and Directive are part of the Clean Energy Package, which will help set the direction of EU energy policy over the next decade.

<u>Update on recent progress</u>

Negotiations on the Governance Regulation have seen significant progress at Energy Working Party meetings in Council, and through a series of non-papers presented by various Member States ('MSs') on the backfill mechanism in particular. The UK has engaged effectively with our allies in Council and has seen a number of our suggestions reflected in the text.

A number of key points of consensus amongst MSs have emerged through these discussions:

- **Backfill mechanism:** Additional clarity has been introduced about how the EU might seek to make up any gap to the binding EU-level renewable energy target. The current proposals call for a two-step system, under which MSs would submit their proposed contribution to the EU-level renewable energy target as part of their national plans, and would then be responsible for making up any gap in their performance against the EU trajectory. If the total sum of MSs' contributions did not add up to the EU renewable energy target, then the Commission would make non-binding recommendations to MSs in order to seek an increase in ambition (and consequently their contributions). If a gap then emerged in the overall trajectory to the EU-level renewable energy target, those MSs who were beneath their national trajectories would be required to make up such gap.
- **Baseline mechanism[1]:** The proposal for automatic financial payments by MSs who drop below their 2020 target level at any time during the 2020s has been removed. However, there has been broad support amongst MSs for the principle that MSs should not fall beneath that level between 2021 and 2030; so this principle is maintained as a legal obligation in the RED text. The Governance Regulation includes a provision, however, to the effect that MSs who fall beneath their baseline are deemed to be in compliance with the RED so long as they cover the gap by the end of the year following the year in which they fell below their 2020 target.
- **National Energy and Climate Plans:** Many of the most burdensome new reporting requirements on both energy efficiency and renewable energy have been removed; as have some unnecessarily detailed aspects of the national plans. The timelines for initial submission have been deferred on grounds of practicality[2], whilst the timescales for submission of later plans aligned with the UNFCCC framework have been retained.
- Climate reporting: The climate reporting elements have largely been maintained or brought closer to those of the existing greenhouse gas Monitoring Mechanism Regulation (MMR) which will be superseded by this Regulation.
- Commission powers: Given the level of political sensitivity and discussion around the contents of the template for the integrated national plans, the Commission's powers to amend the template for such plans have been restricted to those necessary to reflect agreements at the UNFCCC level.

Negotiations on the RED have also seen significant progress at Energy Working Party meetings in Council. However, some issues and division amongst MSs remain, in particular around the transport target and sub-target. It is important to note that the provisions below are still subject to change.

- EU-level renewable energy target: The target remains at 27% and there has been no push from MSs to raise or lower the target.
- Heating and cooling (H&C) endeavour: There continues to be a binding obligation for MSs to try to increase the level of renewables in the H&C sector. However, according to the latest text, MSs may now aim for a yearly increase at any level above zero depending on their national circumstances. I consider this an improvement compared with the original Commission proposal, where MSs had a binding obligation to try to increase the amount of renewables in the H&C sector by at least 1 percentage point per year. I believe it is important for MSs to have flexibility to decide how to decarbonise the sector based on their national circumstances in order to incentivise investment in low-carbon options and to avoid significant impacts on energy bills.

[1] Relates to Article 3(3) RED and Article 27(4) of the Governance Regulation.
[2] Initial suggestion was for a draft plan by 1 Jan 2018.

- District H&C: The obligation for MSs to introduce measures to allow customers to disconnect from their district H&C systems remains, alongside new measures to increase heat from renewable and recoverable heat sources. However, the UK district H&C market meets a number of exemptions from implementation of these requirements, because of the small size of the market (less than 2% of buildings heat demand) and lack of large networks, which we believe should exempt the UK from these requirements.

- Transport: The Estonian Presidency has presented several compromise proposals on transport which are significantly different from the Commission's original fuel supplier obligation. The latest one is a 12% nationally-binding transport sector target which includes a 3% advanced biofuels sub-target. The cap on crop-based biofuels would no longer decline from 3.8% in 2030 (as in the original Commission's proposal), but would instead remain at 7%, which would allow MSs to use more crop-based biofuels to meet the 2030 target. At the same time, the double rewards for waste-based biofuels that exist under the current RED to encourage those fuels with higher greenhouse gas savings would no longer apply. (I note we have a 10% transport target to 2020.) Given the UK has agreed to move from crop-based biofuels to waste-based biofuels in the next decade, the proposed accounting rules would make the 12% target and the associated sub-targets more difficult to meet.

- Bioenergy sustainability: The restriction on biomass installations of more than 20MW having to be efficient cogeneration if they are to receive public support remains. I believe that MSs should retain the flexibility to use the resources they have as they see appropriate, where they are sustainable, and so consider more flexibility is needed. Overall, I believe that the proposed biomass sustainability criteria are more in line with UK biomass sustainability standards than were the Commission's original proposal; this is positive. Nonetheless, MSs would not be allowed to set additional sustainability or greenhouse gas criteria for publicly-funded projects and would be limited by those set out in the proposal. We will continue to argue that it should be possible for MSs to set additional sustainability and greenhouse gas criteria if they wish to do so, or at least be able to maintain their existing domestic standards, to protect sustainability.

- Permit granting: The 'one stop shop' (administrative contact point) for the determination of permit applications of renewable energy projects is now a requirement for MSs to provide one or more 'contact points' which would guide[3] renewable energy developers of any given project through the process. In my view, this is an improvement given that it reduces administrative burden and would not require the UK to change our well-functioning regulatory processes unnecessarily.

- Opening of cross-border support schemes: the mandatory requirement for MSs to open their support schemes to cross-border participation is now voluntary. I consider this an improvement over the original Commission's proposal, given that it is complex and costly for MSs to be required to open up their support schemes. However, the requirement for MSs to publish a three-year forward-look schedule covering their expected allocation of support remains in the proposal. I believe the schedule should be indicative and should apply to a given Parliamentary cycle so as not to cross over Parliaments.

On the specific questions raised in your letter of 11 October on Governance:

- ***Concerning the risks of making administrative reporting requirements optional***- I consider that the governance framework should be robust enough to provide sufficient assurance on the achievement of the strategic objectives, but I am also aware of the need to avoid imposing unnecessary burdens where effective frameworks, such as the UK's Climate Change Act 2008 already exist. The framework should provide structured monitoring of key strategic indicators, but leave enough flexibility for MSs to submit supporting information based on their own national frameworks and approaches. For example, I support the provision of a trajectory with respect to our expected progress on renewable energy which is essential to supporting achievement of the EU, but do not support the provision of

[3] This was previously a requirement for MSs to provide one or more contact points who would coordinate the entire permit granting/consenting process.

trajectories on individual renewables technologies, which are not included within the UKs existing plans.

- ***On your question regarding reducing the ambition of national plans at the review point in 2023***- It is important to note that the UK does not support allowing MSs to reduce their decarbonisation ambitions at a review point in 2023. Our concern is that as drafted Article 13(3) does not give significant flexibility to reduce ambition in any of the aspects of their national plans, even whilst increasing ambition overall. I would support text allowing MSs to rebalance ambition on renewable energy and/or energy efficiency, whilst maintaining or increasing ambition on decarbonisation overall. In this context, I would note the interlinked timescales of the National Energy and Climate Plans and the UNFCCC which should allow for updated UNFCCC commitments to be reflected in new and updated plans.
- ***With respect to the financing platforms***, the UK and many other MSs did not support the proposal for automatic financial transfers, preferring a system under which if a gap emerged to the baseline of the 2020 renewables targets, that gap was made up by the MSs concerned through measures that they determine. Current drafting of the Governance Regulation allows MSs a period of one year to make up the gap, rather than insisting on any transfers to the EU. The financing platform remains in the proposal, but on the basis of voluntary contributions; this is because a number of MSs saw value in the proposed platform as an option which they may wish to use in order to fund renewable projects.

On the specific questions raised in your letter of 11 October on RED:

- ***Regarding the measures that the Commission's Regulatory Scrutiny Board questioned with regard to their proportionality-*** The Board argued that issues with proportionality were particularly relevant for the options in the H&C sector set out in the Commission's Impact Assessment. In particular, the Board expressed a concern that the impacts and costs of the different obligations had not been assessed against their small contribution to the overall EU-level renewable energy target.
- ***With respect to any amendments to the proposal being discussed as a result of the Regulatory Scrutiny Board-*** The second negative opinion[4] issued by the Board on 4 November 2016 did not ask for the impact assessment to be further revised or resubmitted. The Commission took account of the Board's reservation, and replaced the H&C obligation with an endeavour; it also confirmed that all provisions were compatible with and complementary to State aid rules. The Commission then concluded that "the overall package of measures were a proportionate answer to the problems faced." As a result, the Commission did not make any further changes to the provisions.
- ***You referred to my previous statement that there would be no binding obligation to implement the H&C provision-*** I would like to clarify my statement. According to the Commission's original proposal, while there was no binding obligation to achieve a 1pp increase in renewable heating and cooling every year, MSs were still obliged to try to achieve this increase. This would have meant that the UK was still required to make efforts towards meeting a 1pp increase, even if it did not have to actually achieve it. As I have explained above, however, this provision has now changed and MSs have discretion to determine the level of endeavour that is appropriate in their national circumstances (as long as it is greater than zero).
- ***Regarding the reasons why it is necessary for the H&C endeavour to be optional-*** I believe that it is important for MSs to have flexibility to choose the most effective pathway to decarbonisation through the 2020s, especially as it is a sector with significant sunk costs and long timescales; for example, hydrogen from steam methane reform with CCS might be a more cost-effective low-carbon option to decarbonise the gas grid than renewables alone. In addition, I believe that having flexibility would allow the UK to continue to incentivise investment in low-carbon options and to avoid significant impacts to energy bills. I also note that a binding obligation to endeavour to increase renewables by 1pp per year in the H&C

[4] The first one was issued on 16 September 2016. The opinions from the Regulatory Scrutiny Board can be found here: http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm#ener

sector would impose higher costs on the UK than on other MSs, due to the extensive gas infrastructure in place in the UK. Furthermore, it would be a huge technical endeavour, with the effort far outweighing the carbon benefits.

- On your question regarding our assessment of the potential cost of complying with the proposed measures of renewable and district heating and cooling- I am not yet in a position to share our assessment of the costs we would incur if we had to comply with these provisions, given that we expect a new revision of the RED proposal before COREPER on 8 December (in addition to the various revisions officials are already analysing). We may also receive more revisions before Council on 18 December.

December Energy Council

At a meeting of COREPER on 24 November, the Presidency concluded that although some issues remained (e.g. transport and H&C) those would be further discussed at the Energy Council on 18 December. We therefore expect another COREPER meeting in early December ahead of the Council.

I did not expect that the Estonian Presidency would be able to progress the proposed Regulation and Directive so quickly, however I judge that enough progress on the Governance Regulation has been made to make a General Approach feasible at the 18 December Energy Council. The Presidency is, however, seeking to achieve a General Approach on these two dossiers, as well as three other files relating to Electricity Market Design at the same Council, which I judge is ambitious. At the present time, the text of the RED in particular remains subject to some changes, so I am requesting a scrutiny waiver which gives a clear indication of our overall priorities and provides me with the flexibility to engage effectively.

I am sorry to have to request a waiver with such urgency; however, progress has been unexpectedly rapid on the Governance dossier in particular, and I am keen to be able to operate effectively at the 18 December Council, seeking a General Approach on both Governance and RED in line with our negotiating objectives.

The approach to be followed at the December Council will be to continue focussing on seeking maximum flexibility for Member States to be able to develop their most cost-effective pathway for delivering their ambitious emissions reductions commitments, including deciding what contribution renewable energy should make to meet that commitment, whilst recognising the need for mechanisms to give the EU assurance over the delivery of its objectives on renewables. I will also seek to ensure that any nationally-binding targets or endeavours do not impose significant costs on the UK.

Our position is to seek to be part of the qualified majority that supports the Presidency's General Approach on these dossiers, so long as the outcome reached is satisfactory to the UK.

In addition to the priorities set out above, I will continue to:

- Minimise any administrative burden or implementation costs as far as possible, as well as the degree to which the Commission can issue recommendations or intervene in domestic policy.
- Seek flexibility for MSs to set additional biomass sustainability standards to those in the RED proposal, or the ability for MSs to continue applying their existing domestic standards.
- Seek to align EU and UK policy where possible to minimise policy changes or costs; as well as focus the Governance framework to achieve the aims of the Paris Agreement and set timescales in line with those in the UNFCCC framework.

30 November 2017

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

Thank you for your letter of 30 November, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 13 December.

EM 15090/16: Energy Union Governance

In terms of administrative requirements, we note your explanation that you support the structured monitoring of key indicators, accompanied by flexibility around providing supporting information based on each Member State's national approach. Please update us on the position reached in this regard.

We note your statement that you do not support allowing Member States to reduce their decarbonisation ambitions at the proposed 2023 review point, but that you would support amending the proposal to allow Member States to rebalance their ambition between renewable energy and energy efficiency at that point. We urge you to ensure as a priority that the agreed text does not allow Member States to reduce their overall ambition at the 2023 review point. Please keep us informed of any progress on your proposal to allow a rebalancing at that stage.

We welcome your reassurance that the financing platform is now voluntary. We note that although the legal obligation not to fall below 2020 renewable energy target levels remains in the Renewable Energy Directive Proposal, revisions to this Proposal mean that failure to do so will not result in automatic financial payments to the financing platform.

Thank you for your additional updates regarding the revised text. We note your explanation of the intended 'gapfill mechanism' for making up any shortfalls in reaching the EU-level renewables target. We also note that the Commission's powers to amend the template for national climate reporting plans have been restricted to those necessary to reflect UNFCCC-level agreements.

EM 15120/16: Renewable Energy Directive

Thank you for clarifying that the Commission's Regulatory Scrutiny Board's concerns related primarily to the proportionality of the proposed measures regarding the heating and cooling sector, and that as a result the obligation to increase renewables in heating and cooling by at least 5% each year has been replaced with an obligation to endeavour to increase renewables in heating and cooling by a level greater than 0% each year. We note your view that more stringent heating and cooling obligations would be particularly challenging for the UK, and that the effort involved in implementing them would outweigh their carbon benefit. However, we question the value of including such an obligation in the Directive when there is evidently not agreement across Member States as to its necessity. What is your assessment of a) the cross-EU impact of the obligation as drafted, and b) its policy implications for the UK?

We note your explanation that the proposed biomass sustainability criteria are now more in line with the UK's biomass sustainability standards, but that you are seeking flexibility that would allow individual Member States to set additional sustainability or greenhouse gas criteria. Please keep us informed on your progress in doing so.

Regarding sustainable transport fuel, we note your explanation that the Estonian Presidency has proposed converting the originally-proposed fuel supplier obligation into a transport sector target, which matches the approach taken in the current Renewable Energy Directive (RED). A number of questions arise from your comments on this aspect of the Proposal:

a) You note that the Presidency is proposing a 12% renewable fuel target for 2030, compared to the existing 10% 2020 target. A 2% increase over 10 years appears to demonstrate remarkably low ambition. What is your assessment of whether this is an appropriate target?

b) You note that under the current proposal "the double rewards for waste-based biofuels that exist under the current RED to encourage those fuels with higher greenhouse gas savings would no longer apply." Why have the double rewards been removed? Please clarify whether you support this change, and what the impact will be on UK companies that currently receive the double rewards.

c) You note that the amendment to raise the cap on crop-based biofuels, from 3.8% to 7%, conflicts with the UK's own ambitions to move towards waste-based biofuels at a faster rate. Please clarify why this would make the proposed 12% target more difficult to meet, and update us on any changes you negotiate to make it more acceptable to the UK. What is your view on the sustainability of crop-based biofuels, both in terms of their land use implications and their carbon intensity?

We note that the requirement to publish a three-year forward-look of expected public support for renewable energy remains in the Proposal, despite your desire for it to be indicative and aligned to Parliamentary cycles. Please keep us informed on your progress on negotiating any changes.

Finally we note your other updates on this Proposal, namely that: the UK will be exempted from the district heating and cooling obligations; it will now be voluntary to open renewable energy support schemes to cross-border participation; and changes have been made to the 'one stop shop' proposal which make it more in line with the UK's processes. On the last of these points, are you confident that providing one or more contact points to "guide" a renewable energy developer through the permit process will be as useful as the provision of contacts to "coordinate" the process?

Thank you for your update on the expected timeline of the negotiations on both of these Proposals. We are content to grant a one-off scrutiny waiver to allow you to vote on the General Approach to both of these Proposals at the Energy Council on 18 December. The Proposals are retained under scrutiny, and we look forward to your response addressing the questions above and providing an update on the outcome of the Council meeting within 10 working days.

14 December 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 the Chairman to Richard Harrington MP, Minister for Energy and Industry, Department for Business, Energy & Industrial Strategy

Thank you for your letter of 10 August 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 11 October 2017.

Thank you for clarifying that the text agreed at Council does not allow Member States to count energy savings that derive from EU-level measures towards the 2030 target, with the exception of those related to the renovation of existing buildings. Do you regard this as an appropriate restriction? Will it affect the UK's ability to reach the proposed energy savings target?

We note your statement that current policies alone will not allow the UK to reach the proposed 2030 energy savings target, but that the soon-to-be-published Clean Growth Plan will make progress in this regard. Once that Plan has been published, we would be grateful if you could provide us with an assessment of whether the measures contained therein will be sufficient to meet the proposed targets.

While we are grateful for the explanation of the EU Emissions Trading Scheme (ETS) reform package, your letter does not address our question of whether, given your disagreement with the Commission regarding the role of the Market Stability Reserve in managing the impact of the expected reduced ETS price resulting from the proposed targets, additional measures will be necessary to ensure the ETS price is effective. We would be grateful for your views on this question.

In relation to the issue of whether early energy savings from supplier obligations count towards the 2020 target, we note that, although you acknowledge there is a risk that the Commission's latest interpretation of the text will not allow the UK to credit those savings towards the target, you will nonetheless continue to report progress to the Commission according to your original joint understanding. This appears to create the potential for significant conflict between the UK and the Commission. In your letter you describe this as a "risk": has the Commission made its view on this explicit? What would be the impact on the UK's ability to meet its Article 7 energy efficiency target for 2020 if those savings were not accounted for? Does the same disagreement apply to the 2030 target?

Thank you for informing us that you now expect trilogue with the European Parliament to begin in December. Please keep us informed as those negotiations progress and, as requested in our last letter, provide an update on whether the Article 3 target will be indicative or binding.

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

11 October 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 11 October in which you raised a number of questions about the General Approach agreed on the Energy Efficiency Directive at Energy Council in June 2017. I apologise for the delay in responding.

You asked whether the fact that Member States cannot count energy savings derived from EU-level measures towards the 2030 is an appropriate restriction and whether it will affect the UK's ability to meet the target. In principle, we continue to believe that the inability to count EU-level measures towards national targets is an unreasonable constraint on Member States and provides a perverse incentive for Member States to restrict future ambition at the EU-level. Whilst the ability to meet our proposed national energy saving target would be enhanced if we were able to count the impacts of EU-level measures at the national level, it is likely that if the proposed Directive had allowed for this then the Commission would have proposed higher national targets to compensate for what they would have seen as reduced overall ambition.

You also ask whether existing measures combined with the new measures set out in the recently published Clean Growth Strategy will be sufficient to meet the proposed energy-saving target in Article 7. We assess that the national energy-saving target for 2030 as agreed in the General Approach can be met within the framework of the Clean Growth Strategy.

In relation to your question about the role of the Market Stability Reserve (MSR) – further to Claire Perry's letter of 15 November updating you on Phase IV reform negotiations, you may be aware Member States reached provisional agreement on 22 November, subject to final endorsement by EU Ministers, on strengthening the EU ETS carbon price signal through the measures outlined in Claire's letter. These measures, which have been agreed since our correspondence earlier this year on the potential impact of other policies on the EU ETS price, are expected to further strengthen the EU ETS carbon price signal beyond the expectations of the original MSR agreement. Furthermore, regular monitoring and review of the MSR, as well as the functioning of the EU ETS more generally, should ensure that any additional action that may be needed in future as a result of the impacts of other policies, including in relation to energy efficiency targets, can be considered and taken as appropriate.

With regard to the issue of whether early and post 2020 savings from supplier obligations can count towards the 2020 target or not, I can confirm that the Commission has made its change of interpretation explicit. If the Commission's latest interpretation were ultimately to stand then the UK could face a potential shortfall. The scale and impact of this potential shortfall will be dependent on progress between now and 2020, the extent to which the Commission was prepared to accept any elements of the UK interpretation are accepted, and on how long the UK has to rectify the shortfall. The principal impact on our ability to meet the 2030 energy-saving target relates to Member States ability to carry forward surplus savings over and above the 2020 target and count them towards the 2030 target. With our interpretation of the existing Directive we will have such a surplus; with the Commission's interpretation we will not. However, we assess that we will be able to meet the 2030 target without any surplus being carried forward.

The European Parliament has taken longer than expected to agree a position and we do not now expect a plenary vote on their position until January with trilogues commencing shortly afterwards. I will write to the Committee again as the negotiations progress and the likely shape of the final agreement becomes clearer.

11 December 2017

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

Thank you for your letter of 11 December 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 20 December 2017.

Thank you for clarifying your view that the restriction on allowing energy savings deriving from EU-level measures to count towards the 2030 target is an unreasonable constraint, and for stating your

view that it will not affect the UK's ability to reach the proposed target, as it would have been higher if the restriction were not in place.

We note your view that the proposed national energy-saving target for 2030 can be met through the policies set out in the recently-published Clean Growth Strategy.

Thank you for setting out that that the separate Proposal on the EU Emissions Trading Scheme (ETS) Phase IV reforms has been strengthened beyond original expectations, which should help to counteract the expected reduced ETS price resulting from the proposed energy-saving targets; and for noting that regular monitoring of the Market Stability Reserve (MSR) will help to ensure that the need for any further action to maintain an effective ETS price is identified.

We note that the Commission has now been explicit that early energy savings from the supplier obligations will not count towards the 2020 target, and that as a result the UK's ability to meet the 2020 target depends on a number of variables: the UK's progress between now and 2020, the degree of flexibility in the Commission's definition of what savings will be permissible, and how long the UK will have to rectify the shortfall. What steps are you taking to clarify these points and amend the UK's plans in order to meet the required target?

We also note your assessment that the UK will be able to meet the 2030 target even without relying on a surplus from the 2020 target.

Thank you for informing us that you now expect trilogue to begin early in 2018. Please keep us informed as those negotiations progress and, as requested previously, provide an update on whether the Article 3 target will be indicative or binding.

We have decided to retain the Proposal under scrutiny and look forward to your response in due course.

21 December 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 Alok Sharma MP, Minister of State for Housing and Planning, Department for Communities and Local Government

Thank you for your letter of 6 July to the Secretary of State for Communities and Local Government, the Rt Hon Sajid Javid MP. I note the Committee has decided to retain the Proposal under scrutiny.

With regard to the Committee's question about the extent to which electric vehicle charging infrastructure will be consistent and interoperable across Member States, there are two different types of interoperability that have been considered; i) accessibility – how the end user accesses different chargepoints on different electrical vehicle networks and ii) physical interoperability (i.e. the plug and socket).

The UK is currently transposing the EU's Alternative Fuels Infrastructure Directive, ensuring that all UK publicly accessible electric vehicle charging points shall be required to offer access to all users on an ad hoc basis without entering into a contract with the electricity supplier or operator concerned. Powers are additionally being proposed in the forthcoming Automated and Electric Vehicles Bill to ensure the consumer experience is as seamless as possible.

For physical interoperability for public charging, the Alternative Fuels Infrastructure Directive also sets minimum common standards for both "fast" chargepoints and "rapid" chargepoints. In addition, any Government funding for chargepoints requires the provision of the industry standard socket (Type 2) for fast chargepoints and rapid chargepoints must be multi-standard, with three plug types, so that any electrical vehicle driver can utilise both types of charger.

The Directive only requires that the rapid chargepoints have "at least" a Combined Charging System plug. There is no legal requirement for other Member States to also offer any other alternative standards for rapid charging. Powers have additionally been proposed in the Automated and Electric Vehicles Bill to ensure drivers can continue to access all chargepoints.

We consider that the development of a smartness indicator through an implementing act and the examination procedure is preferable to it being through a delegated act as it allows for a formal committee of representatives from Member States to vote on the adoption of the indicator. A delegated act would have provided less flexibility as only the Commission can be empowered to adopt delegated acts with no formal Member State input or a vote, albeit Member States could object to a delegated act on any grounds. Ultimately, it is the voluntary nature of the smartness indicator and the commitment from the Commission to involve Member States in its development that has provided the assurances we need.

The Secretary of State also said we would write to you again further to the Energy Council meeting on 26 June to provide an update on the general approach on changes to the Energy Performance of Buildings Directive.

As the proposal was still under scrutiny when Parliament was dissolved and the main EU Select Committee and its sub-committees had not be reappointed in time to consider the proposal further before the Council meeting, we adopted a UK negotiating position at the Energy Council without scrutiny clearance.

Our position was to ensure that that the proposal was proportionate, practical and cost effective and in line with UK policy.

Along with a number of other Member States, we felt the right balance had been reached and the text – which we included in our previous letter – was passed as proposed by the Maltese Presidency.

As requested, I am now able to provide a checklist in line with proposals agreed by general approach. See attached annex (not published here).

9 October 2017

Letter to Alok Sharma MP, Minister of State for Housing and Planning

Thank you for your letter of 9 October and the accompanying checklist, which were considered by the EU Energy and Environment Sub-Committee at its meeting on 18 October.

We note your explanation of the extent to which electric vehicle charging infrastructure will be consistent and interoperable across Member States.

Thank you for clarifying that you view the use of the examination procedure to develop the proposed smartness indicator to be preferable to the use of a delegated act. We note that you welcome the voluntary nature of the proposed indicator, and note from the checklist that a decision has yet to be made regarding whether the UK will recognise or use the scheme.

Thank you too for the analysis provided in the accompanying checklist, particularly regarding the potential cost distribution of the electric vehicle charging infrastructure proposals.

A number of questions arise from statements made in the checklist.

The checklist states that the electric vehicle infrastructure requirements "do not apply to buildings which 'apply' for a building permit before the Directive comes into force". This phrasing implies some ambiguity. Is there an agreed definition of 'apply' across the EU, and will it therefore be clear to building developers whether the Directive applies to them?

The checklist also states that the benchmark rated output for inclusion in an inspection regime has been set at more than 70kw for heating and more than 70kW for air conditioning. Do you view these levels to be appropriate? Have you made an assessment of the types of building this will include in the UK?

You note in the checklist assessment that a national database for registering Energy Performance Certificates (EPCs) – as no longer required by the proposal – "would not have been practical or proportionate to implement". Why that is the case? How it would be distinct from the register of EPCs that is already required by the UK's domestic regime?

We note that at the Council meeting on 26 June you decided to vote in favour of the General Approach text and override the scrutiny reserve, and accept that this was necessary given Parliament's dissolution.

Please provide an update on the expected timeline for the remaining negotiations, and whether you expect this Proposal to be agreed by the time the UK leaves the EU.

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

18 October 2017

Letter from Alok Sharma MP, Minister of State for Housing and Planning

Thank you for your letter of 18 October with some further questions about this Proposal.

I am very grateful for the Committee's understanding of our approach at the Energy Council where we needed to adopt a UK negotiating position without scrutiny clearance.

You asked for clarity about the application of the electric vehicle infrastructure requirements where a developer applies for a building permit before the changes to the Directive comes into force. The general approach text agreed at the Energy Council on 26 June is now clearer on this, stating the requirements:

'*shall not apply to buildings in relation to which building permit applications or equivalent applications have been submitted before or within one year after the date referred to in Article 3(1) of this Directive.*'

Article 3(1) is the date by which Member States should transpose the Directive into laws, regulations and administrative provisions and will be 2 years after the adoption of the Directive. We do not have a system of "building permits" in the UK. Instead we have a system of notification of intended building work to a building control body (local authority or approved inspector). This means that, where a developer who submits a full plans building regulations application or building notice to a local authority (or an approved inspector gives an initial notice) before or within one year after the requirements are put into legislation, the electric vehicle infrastructure requirements would not be applied to their development.

You also asked about the benchmark threshold for the requirements relating to inspection regimes for heating or air conditioning systems and whether the level is appropriate. The 70kW threshold proposed is well in excess of the typical rated outputs of heating and air conditioning systems to be found in houses and individual apartments. The types of buildings likely to captured by this threshold for inspection regime would be large heated offices and large warehouses, or large apartment buildings with common heating systems, large air conditioned offices and air conditioned hotels. We believe that this is a proportionate threshold. The key issue for the UK on inspection regimes for heating and air conditioning systems is that the proposed alternatives to inspection must remain.

Our concerns about the national energy performance certificate (EPC) database were about the proportionality and practicality of the original proposed changes, not the requirement to have a database for registering EPCs per se. The requirement was for the database to be able to track the actual energy consumption from individual buildings as well as requirements on making the data available. The UK registers all EPCs and their associated data but does not hold actual energy consumption data which currently can only be derived from an individual property owner's energy bills. The general approach text does not mandate what should be included in the database, only that its data should be available on request for statistical and research purposes, at least to the public authorities. We consider this to be a more proportionate approach and one which the UK already meets.

The European Parliament will be voting on its amendments to the text shortly. The Proposal will then enter a 'trilogue' phase where the Presidency will try to reconcile Parliament's position with that of the Council's position (the general approach adopted at June's Energy Council meeting). The Estonian Presidency has indicated that it will aim for sign off of the Proposal by end December, though they acknowledge that this is ambitious. The text requires Member States to implement the changes within two years of adoption i.e. by January 2020.

I note the Committee has decided to retain the Proposal under scrutiny.

5 November 2017

Letter from the Chairman to Alok Sharma MP, Minister of State for Housing and Planning

Thank you for your letter of 5 November on the above Proposal, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 29 November.

We welcome your explanation that the definition of buildings to which the electric vehicle infrastructure requirements will apply has now been clarified, meaning that it will be clear to developers whether they will be required to comply.

We note your assessment that the thresholds for inspecting heating and air conditioning systems is proportionate.

We also note your clarification that your concerns about the proposed national database of Energy Performance Certificates (EPCs) related to its proportionality and practicalities rather than the principle of the proposal, and that these concerns have now been resolved.

Thank you for setting out the expected timeline of negotiations on and implementation of this Proposal. We acknowledge the Presidency's aim to agree the Proposal by the end of the year.

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

30 November 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 & Industrial Strategy

Thank you for the letter of 10 August, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 11 October.

Thank you for clarifying that most of the proposals concerning the electricity market design are in line with existing UK policy, and that the concerns you have do not relate to issues which would pose difficulties for the continued trade of electricity with the EU post-Brexit.

EM 15135/16: Proposal for a revised electricity Regulation

We note your intention to adopt a neutral position regarding the proposed emissions limit for capacity mechanisms. What, if any, would be the impact of the proposed limit on the UK?

We welcome your assurance that your concerns regarding the Regional Operational Centres (ROCs) are shared by other Member States, and that discussions are underway to address those concerns. Please update us on any proposed amendments as those discussions progress, including your view on whether any such amendments are sufficient.

We note that you have completed no additional assessment of the impact of this proposal as a whole on UK consumers' energy costs. This seems to be a material omission, given the Government's

ambition to reduce fuel poverty. While we acknowledge that the Commission's Impact Assessment provides few country-level figures, we would encourage you to conduct your own assessment.

Thank you for clarifying that although it will be mandatory for an EU Distribution System Operator (DSO) entity to be established, individual DSOs' membership will be voluntary. Have you consulted UK DSOs to ensure that the proposed aims and funding models would enable their participation? Would the entity's terms of reference allow UK DSOs to participate after the UK withdraws from the EU?

EM 15150/16: Proposal for a revised electricity Directive

We note your statement that the Commission has not defined "extreme urgency" in relation to permissible situations for price regulation in order to maintain flexibility. We also note that you will be seeking to agree wording that allows Member States to correct specific market failures in this regard. Please update us on these discussions as negotiations progress, including an assessment of whether any proposed wording would be compatible with the Government's intentions regarding a tariff cap.

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

Thank you for clarifying that the potential £2-3.2m cost of increasing staffing at the Agency for the Cooperation of Energy Regulators (ACER) is calculated on an annual basis. We note that the Commission has not indicated how this cost would be shared between Member States, and that you have completed no additional assessment of the potential cost to the UK.

We note that you will continue to advocate for more flexible wording regarding the third country requirements for participating in ACER. Please update us on any progress in relation to this.

As requested in our previous letter, please keep us informed regarding your efforts to modify 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.

EM 15151/16: Proposal for a new Regulation on risk preparedness in the electricity sector

We look forward to receiving further updates on the development of this proposal as negotiations progress.

We have decided to retain the Proposals under scrutiny and look forward to your response to the questions raised in this letter within 10 working days, and to receiving further updates in due course.

11 October 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

I am writing to you to give you an update on the Council negotiations on the above EU legislative proposals for electricity market design, to request a scrutiny waiver in order to vote in Council and to respond to your letter of 11 October. My predecessor Baroness Neville-Rolfe submitted an Explanatory Memorandum on this proposal to the Committee on 20 December 2016 and I wrote to the Committee on 10 August 2017 undertaking to keep you informed of developments in the negotiations. These proposals form part of the broader Clean Energy Package of measures which also include legislation on risk preparedness in the electricity sector, renewable energy, energy governance, energy efficiency and energy performance of buildings.

The Estonian Presidency is aiming for a General Approach to be agreed in Council on 18 December on the proposals for a Regulation and Directive on the internal market in electricity (15135/16 and 15150/16**)**, and early in the New Year for the proposal for a Regulation on the European Agency for the Cooperation of Energy Regulators (ACER) (15149/16). I am therefore requesting a scrutiny waiver in order to be able to vote in favour in Council, subject to conditions which I set out below.

I am sorry to have to request a waiver with such urgency. This is because of the exceptional speed that the Presidency is progressing the Electricity Market Design proposals. The Presidency has resisted calls for the pace to be set at a more reasonable level as it has placed a high premium on achieving a General Approach on these dossiers before the end of its term.

The proposals are largely consistent with our own electricity market reforms. Where we have raised concerns, we have generally been successful in securing changes to address them. The most significant of these include: Regional Operational Centres will be re-named Regional Security Coordinators and national system operators will retain decision making powers on all significant issues relating to security of supply; the UK will be able to retain its 30 minute Imbalance Settlement Period; and the UK's model for the use of interconnector revenues - which has been central to the UK's success in attracting investment for interconnectors - will be able to continue.

There are, however, two issues which are important to the UK and which have still not been finally settled. The first of these is public intervention in the setting of retail electricity prices. The current wording is largely acceptable to us and would allow the UK to implement its proposed energy price-cap. The Council is split on this issue, with half of the Member States supporting price regulation and half opposed. We are hopeful that the General Approach will allow for the UK price-cap but, if not, I am proposing that the UK abstains.

The second issue concerns the proposals relating to resource adequacy assessments and capacity mechanisms. The current wording gives too much weight to the European adequacy assessment in determining whether Member States may operate capacity mechanisms. It is important for the UK's energy security that a capacity mechanism can be operated where it is deemed necessary by the UK's national resource adequacy assessment. I am proposing that the UK should abstain if the General Approach does not meet these conditions.

I am also sorry for the delay in responding to your letter to me dated 11 October in which you asked a number of questions. With regard to the Electricity Regulation, you enquired about the effect of the proposed emissions limit for capacity mechanisms on the UK. As the UK has committed to phasing out unabated coal by 2025, there would be no impact on us. On the proposals for Regional Operational Centres (ROCs), there has been a considerable improvement in the text. As I have mentioned above, the ROCs have been renamed 'Regional Security Coordinators' and system operators will retain all the decision-making powers needed to safeguard security of supply. You suggested that we should complete our own assessment of the impact of the proposals on consumers' energy costs. As the text is now very closely aligned with our national policies, we do not expect there to be any significant cost impact on consumers so do not believe that a national impact assessment is necessary. On your last question, we have engaged closely with the Energy Network Association (ENA), the UK's DSO trade body, on the proposals for DSOs. The ENA is satisfied that the DSO entity would be able to represent UK DSOs effectively and we expect that the DSO entity would be able to allow DSOs in third countries to participate.

Turning to the Electricity Directive, as I have mentioned above, the current wording is largely acceptable to us as it provides flexibility for time limited and proportionate intervention on retail prices. We consider the latest version of the ACER Regulation a considerable improvement on previous versions. The conditions for third country participation now refer to the need to comply with relevant rules in the fields of environment and competition, as was in the original ACER Regulation. The voting procedure for the Board of Regulators has been changed from a simple majority to two-thirds majority which gives National Regulators a much greater degree of influence.

5 December 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

Thank you for your letter of 5 December, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 13 December.

EM 15135/16: Proposal for a revised electricity Regulation

Thank you for clarifying that the proposed emissions limit for capacity mechanisms would have no effect on the UK because of its commitment to phase out unabated coal by 2025. We note your concern that the current Proposal places too much weight on the European adequacy assessment to determine whether Member States may operate capacity mechanisms, and your intention to abstain if the Proposal is not amended to leave that decision in the hands of Member States.

We welcome your assurance that the proposed Regional Operational Centres will now be known as Regional Security Coordinators, and more materially that national system operators will retain all significant decision-making powers regarding security of supply.

We note your view that the Proposal is now so closely-aligned to current UK policies as to render an assessment of its impact on UK consumers' energy costs redundant.

Thank you for your assurance that you have engaged with the Energy Network Association as this Proposal developed, and that they are content with the proposed Distribution System

Operator (DSO) entity. We welcome your expectation that third country DSOs would be able to participate in said entity.

EM 15150/16: Proposal for a revised electricity Directive

We note your explanation that the current wording of the Proposal would allow the UK to implement its proposed energy price cap, and your intention to abstain from the General Approach vote if this is no longer the case. Please update us on the outcome of this issue at the December Energy Council.

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

We welcome your assessment that the latest version of this Proposal represents a "considerable improvement" on previous versions.

We note your assessment that the conditions for third country participation in ACER set out in the Proposal are now compliance with relevant rules in the fields of environment and competition. Are you continuing to advocate for more flexible wording in this regard? If so, please update us on any progress.

We welcome your assessment that the change of voting procedure for the Board of Regulators from a simple to two-thirds majority will give National Regulators a greater degree of influence.

Thank you for your update on the expected timeline of these negotiations. We are content to grant a one-off scrutiny waiver to allow you to vote on the General Approach to these Proposals at the Energy Council on 18 December and early in the new year. The Proposals are retained under scrutiny; please provide an update on negotiations after the relevant Council meetings.

14 December 2017

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

I am writing to you to give you an update on the Council negotiations on the proposal for a Regulation in the electricity sector which repeals Directive 2005/89/EC on security of electricity supply. My predecessor Baroness Neville-Rolfe submitted an Explanatory Memorandum on this proposal to the Committee on 20 December 2016 and I wrote to the Committee on 10 August 2017 undertaking to keep you informed of developments in the negotiations. This proposed Regulation is part of the package of proposals on a new electricity market design and its aim is to ensure that all Member States put in place appropriate tools to prevent, prepare for and manage crises in the supply of electricity.

At a meeting of COREPER on 16 November a draft General Approach was agreed and the Estonian Presidency informed Member States that this will put as an 'A' point to Council as soon as possible. I am therefore requesting a scrutiny waiver in order to be able to vote in favour at Council.

We were not expecting the Presidency to progress this proposed Regulation so quickly and have tried strenuously to persuade the Presidency to adopt a slower timeline in light of the Scrutiny Reserve. However, the Presidency has the very ambitious objective of trying to achieve at the Energy

Council on 18 December a General Approach on the three other components of the new Electricity Market Design package, as well as on the revised Renewable Energy Directive and the Regulation on the Governance of the Energy Union. The Presidency is therefore seeking to agree a General Approach on this uncontentious proposal on risk preparedness earlier to leave more time for discussions on the other proposals in December.

I am sorry to have to request a waiver with such urgency but believe that we should support the General Approach. The requirements in this proposed Regulation are broadly consistent with our existing resilience arrangements and the strengthening of obligations on the management of regional security risks could benefit the UK if future investment in interconnection takes place as planned. As interconnection increases, so will the potential for incidents in mainland Europe having an impact on the UK. The enhanced regional co-ordination efforts prescribed in the Regulation will help lessen any risks. In the negotiations on the proposal we managed to ensure that risk preparedness plans are not prescribed in detail but remain at the level of principles, thereby preserving the right of Member States to take account of national specificities in their plans.

I am also sorry for the delay in responding to your letters to me on each of the electricity market design proposals dated 11 October. You raised a number of questions to which I will provide answers shortly.

22 November 2017

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

Thank you for the letter of 22 November, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 29 November.

We note your wish to support the General Approach when it is discussed at Council. We also note your explanation of the expedited timescale.

We are content to grant a one-off scrutiny waiver to enable you to support the General Approach. We have decided to retain the Proposal under scrutiny and look forward to a further update on negotiations in due course.

30 November 2017

Letter from Richard Harrington MP, Minister for Energy and Industry

I am writing to thank you for your letter of 30 November and granting a scrutiny waiver for this draft regulation which allowed the UK to support the General Approach proposed by the Estonian Presidency. In the event this was agreed at the TTE Council on Monday 4 December.

As yet I have no date for when trilogue discussions will begin with the European Parliament, but when sufficient progress has been made towards agreeing a final text, I will write again to update your Committee.

11 December 2017

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION OF THE DOHA AMENDMENT TO THE KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE AND THE JOINT FULFILMENT OF COMMITMENTS THEREUNDER (15878/13)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU) NO 525/2013 AS REGARDS THE TECHNICAL IMPLEMENTATION OF THE KYOTO PROTOCOL TO THE UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (15889/13)

Letter from Claire Perry MP, Minister of State, Department for Environment, Food and Rural Affairs

I am writing to update you on progress on EU and Member State ratification of the second commitment period of the Kyoto Protocol. It has been six months since the last correspondence with the Committee on this issue and as requested, I will set out the developments that have taken place and the current position.

Since my predecessor Minister Hurd last wrote to you, I welcome the news that five more countries including India have ratified the Doha Amendment, increasing the total number of countries who have ratified to 80. To bring the Doha Amendment's entry into force a total of 144 countries need to ratify.

My officials raised the subject of ratifying the Doha Amendment with their EU Member State counterparts on two separate occasions. My representative at the EU Informal Ministerial in July also encouraged progress on this issue in his intervention at that meeting. My officials have also raised this with counterparts in the Commission who have confirmed the continuation of the current approach. As yet, there has been no change in Poland's position and the timeline for completion of their domestic process still remains unclear, though I expect that the focus of the forthcoming Presidency of COP24 will provide additional impetus to the Polish system.

As you are aware, the timetable for EU ratification does not affect the implementation of EU Commitments under the Doha Amendment as the EU agreed on the immediate application of it from 1 January 2013 onwards. The necessary domestic legislation to meet our target is in place and the EU is on track to over-achieve on this target.

The UK's position remains that the EU and its Member States should adhere to the principle of simultaneous ratification as agreed under the Council Decision. However, we will continue to keep our position and other Member States' positions under review on this issue.

30 October 2017

Letter from the Chairman to Claire Perry MP, Minister of State

Thank you for your letter of 30 October 2017 on the above proposals, which was considered by our Energy and Environment Sub-Committee at its meeting on 29 November 2017.

We welcome your interventions with other Member States and with the Commission regarding the continuing non-ratification of the Doha Amendment, and your reassurance that the EU is on track to exceed its target. However, it is disappointing that the EU still has yet to ratify the Amendment, given the significant diplomatic value of such a commitment.

We understand that this issue was to be discussed this month at COP23, and that Siim Kiisler, the Estonian environment minister, has been quoted as stating "I am sure that the ratification is imminent. It will happen, it will happen in a matter of months, if not weeks." We also understand that Climate Commissioner Miguel Arias Cañete has publicly raised the possibility of ratifying without Poland. As per our previous letters, we would welcome consideration of this possibility.

In light of these statements, please update us on the progress towards ratification when a significant development occurs or within three months, whichever is earlier.

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

Thank you for your letter of 10 August 2017, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 11 October 2017.

We welcome your acknowledgement that the risk of land use change resulting from the production of biofuels is an area of concern. We also note your explanation that the UK and EU are seeking to reduce this risk by applying sustainability criteria, reducing the use of biofuels with the highest risk of indirect land use change, and increasing the use of waste-based biofuels.

We are now content to close this correspondence.

11 October 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, Department for Environment, Food and Rural Affairs

I am writing to update you on negotiations on the Aviation EU Emissions Trading System (ETS) dossier, which is a joint BEIS and Department for Transport lead, and to answer your questions from your letter of 20 July. I will send a separate letter to update you on the EU ETS Phase IV file in due course when trilogues are complete, which is likely in the coming weeks.

In your letter of 20 July you asked what assessment I have made of the European Parliament (EP) position, following the debate and vote of the lead Committee for this file, Environment, Public Health & Food Safety (ENVI) on 11 July.

Following the meeting on the 11 July, ENVI compiled a compromise report, taking account of the comments from the two opinion Committees, Transport & Tourism (TRAN); and Industry, Research & Energy (ITRE). This was taken forward to the EP plenary session on 13 September, where the EP position was agreed. The EP position differed to that of the Council position in the following key areas (unless otherwise indicated, the Council position was no change to the original Commission proposal):

- The derogation reducing the scope of the Aviation EU ETS to cover only flights within the EEA, should end on 31 December 2020. This compared to the Council position that the derogation should be indefinite.
- A reduction of the aviation cap by 10% in 2021 and an increase in the share of allowances auctioned, as opposed to allocated for free, from 15% to 50% from 2021.
- Changing the word "should" to "shall" on the use of revenues from auctioning of aviation allowances, which would mandate the use of such revenues for tackling climate change.
- A last-minute amendment to invalidate allowances, issued from 2018, which are issued by a Member State where the obligations for aviation operators and other operators are 'lapsing'. This would make the allowances issued by the UK from 2018 invalid for compliance in the EU ETS, due to the UK's withdrawal from the EU before the compliance deadline for 2018 emissions (30 April 2019). The objective of this amendment was to protect the environmental integrity of the EU ETS in the event of an abrupt UK departure from the System in March 2019.

Following the EP plenary session, two trilogue meetings took place on 25 September and 18 October. Political agreement between the Council; the European Parliament; and the Commission was reached on 18 October. The main elements of the deal are:

- the end date for the derogation reducing the scope to intra-EEA flights is set at 31 December 2023;
- an annual reduction (the Linear Reduction Factor) will be applied to the Aviation EU ETS cap from 2021;
- the exemption for non-commercial operators emitting less than 1,000 tonnes CO2 per annum will continue to the end of 2030 (it would otherwise have ended in 2020);
- aircraft operators with emissions of less than 3,000 tonnes CO2 per annum will benefit from simplified verification procedures;
- the European Commission will undertake a review on the implementation of Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) and the future of the Aviation EU ETS within 12 months of the rules on the CORSIA being adopted in ICAO;5
- a compromise was agreed on the use of auction revenues. The word "should" was retained. However the following sentence was deleted from the text: "It shall be for Member States to determine the use to be made of revenues generated from the auctioning of allowances"; and
- the proposed amendment to invalidate allowances issued from 2018, which are issued by a Member State where obligations are lapsing, was agreed.

Following political agreement, the text was presented to the Coreper meeting on 27 October. The UK supported the main elements of the agreement. However stated our intention to vote against the deal for the following reasons:

a) The UK opposes the amendment to invalidate allowances from 2018, which could have negative impacts on the EU ETS carbon market in general and specifically on the UK.

b) The compromise text on revenues from the auctioning of aviation allowances goes against fiscal sovereignty by not making clear that it is for Member States to decide how to use their revenues.

In relation to the amendment designed to protect the EU ETS from an abrupt UK departure from the System in March 2019, the Commission has proposed a draft regulation to amend the EU ETS Registry Regulation to implement the amendment. The UK Government is working closely with the EU Institutions to explore alternative solutions that would be better for the EU and the UK, and to this end published a consultation on bringing forward the 2018 compliance deadline for UK EU ETS operators to before the date of EU Exit on 6 November.[6]

The next steps for the aviation agreement are for formal adoption by the EP and the Council. This will involve a vote at the at an EP plenary session around mid-December. The text will then be presented at the Environment Council on 19 December for final sign off. It is expected that the regulation will come into force by the end of the year.

We are seeking your clearance to vote against the package at Environment Council on 19 December for the reasons described above, and would request that this file is lifted from scrutiny. You should note that the UK's position will not affect the overall outcome of the vote and it is expected to be adopted as we believe that a qualified majority of Member States will support the package.

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

14 November 2017

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[5] Link to International Civil Aviation Organisation background on CORSIA https://www.icao.int/environmental-protection/Pages/market-based-measures.aspx

[6] https://www.gov.uk/government/consultations/bringing-forward-eu-emissions-trading-system-2018-compliance-deadlines-in-the-uk

Letter from the Chairman to Claire Perry MP, Minister of State

Thank you for your letter of 14 November on the above Proposal, which was considered by our Energy and Environment Sub-Committee at its meeting on 29 November.

Thank you for your update on the European Parliament's plenary session, the trilogue discussions and the Coreper meeting and we note that you support the main elements of the agreement that has now been reached.

We note your opposition to the amendment to invalidate ETS allowances issued by the UK, and that you have responded by proposing an alternative solution (bringing forward the ETS 2018 compliance deadline). Please provide an update on the outcome of your consultation and on how these proposals have been received by the European institutions you have been engaging with.

Your letter states that you expect the package to be adopted, despite the UK's opposition. If this is the case, what assessment have you made of the impact on the UK of the ETS amendment? Your letter states that the amendment could have negative consequences for the UK; please explain what these are.

We note your concern that the compromise text on auction revenues goes against fiscal sovereignty by not making it clear that it is for Member States to decide how to use their revenues.

We note your request to clear this matter from scrutiny. Given your intention to vote against this matter at Environmental Council, however, the danger of an override does not arise. We have therefore decided to keep the Proposal under scrutiny and look forward to your response within 10 working days.

29 November 2017

Letter from Claire Perry MP, Minister of State

I am writing to respond to the points raised by the House of Lords European Union Committee at its meeting on 29 November on the above proposal, which is a joint BEIS and Department of Transport lead.

As noted in your letter, the UK responded to the amendment to invalidate EU Emissions Trading System (ETS) allowances issued by the UK, by proposing an alternative measure, which was to bring forward our 2018 compliance deadlines to before the date of UK Exit from the EU in 2019 thereby providing clarity that UK participants will comply with the EU ETS for 2018 regardless of the outcome of EU Exit negotiations.

While the amendment was included in the final package agreed, it has been implemented through amendments to the EU ETS Registries Regulation agreed by a technical-level body, the EU Climate Change Committee. I am delighted to be able to tell you that on 30 November, Member State representatives at the Climate Change Committee formally endorsed the UK alternative approach. It was agreed that if the UK amends its domestic regulations to put in place the earlier compliance deadline, UK allowances will not be marked with a country code at the beginning of 2018 and will be able to be used for compliance. The Commission confirmed this in a press statement published after the meeting.

The relevant Statutory Instrument to bring forward compliance was laid in Parliament on 6 December and is scheduled to come into force on 27 December. This follows a public consultation on the measure in November; BEIS will be publishing a summary of the responses in the New Year.

This very positive result avoids the negative impacts on the UK and wider EU that marking and invalidating UK allowances would have had. It would have created two tiers of allowances (UK and other) with different values and would have significantly impacted the UK, in particular UK industrial installations who would not be able to use the allowances they are due to receive for free, to protect against the risk of carbon leakage, for compliance[7].

[7] Free allowances are allocated in February to cover the emissions that will occur during that calendar year, though operators are able to use allowances issued in February for compliance with the previous year's emissions (e.g. allowances issued in February 2018 could be surrendered in April 2018 for compliance with 2017 emissions).

Finally, in my letter of 14 November I explained that it was our intention to vote against the package when presented to the Council for formal adoption. The reason to vote against was because the text included the amendment to invalidate UK allowances; and a compromise on auctioning which although judged to be a remote risk, could potentially compromise our fiscal sovereignty. Given that the amendment to the EU ETS Directive still stands but its negative impacts have been avoided through the positive outcome on the implementing legislation, described above, it was deemed appropriate for the UK to abstain in the vote on the file, at the Agriculture Council meeting on 12 December. The package was adopted on the basis of sufficient Member State support.

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

20 December 2017

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL LAYING DOWN RULES ON THE MAKING AVAILABLE ON THE MARKET OF CE MARKED FERTILISING PRODUCTS AND AMENDING REGULATIONS (EC) NO 1069/2009 AND (EC) NO 1107/2009 (7396/16)

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 13 February 2017. As requested, I am writing to provide an update on the proceedings of the proposal for a new EU Fertilisers Regulation. Since my last update, the proposal has had opinions adopted by all relevant European Parliament Committees. Please see a short description of each below:

The Environment, Public Health and Food Safety Committee has suggested tightening limits for certain contaminants and pathogens. It has also, with regards to cadmium content limits in phosphate fertilisers, suggested bringing forward the date from which the 20 mg/kg limit would apply (nine years after application of the regulation instead of twelve).

The Committee for Agriculture and Rural Development proposed to add a greater focus on products improving the nutrition efficiency of plants, alongside creating better conditions for innovative fertilising products.

The Committee on International Trade proposed that the Commission had not focused enough on the potentially negative impact of tight cadmium limits on the market and on trade relations between countries. It suggests that more should be done to evaluate the impact of this regulation on the market as it is applied.

The Committee on the Internal Market and Consumer Protection amendments focused on reducing the administrative burden for economic operators, tightening quality requirements for specific fertilising products and requiring the Commission to report back on the functioning of the internal market for fertilising products.

On 24 October, the European Parliament voted to approve the draft text with amendments by 343 votes to 252, with 59 abstentions. The proposal was referred back to the rapporteur of the IMCO committee allowing inter-institutional negotiations with the Council to begin. The Presidency will look for a first reading position in the Council around mid-November, thereby allowing the 'trilogue' process to begin in earnest.

29 November 2017

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

Thank you for your letter of 29 November, which was considered by the EU Energy and Environment Sub-Committee at its meeting on 13 December.

Thank you for providing an update on the progress of this Proposal. We note that the various committees of the European Parliament all put forward recommendations, that an amended draft text

was approved by the Parliament and that it is now the subject of trilogue discussions. Please provide the Committee with an overview of the key amendments to the Proposal that were agreed by the European Parliament, and the UK Government's position on them. Please also provide an update on any progress made in trilogue.

In our last letter, we recommended that your department undertook an investigation into the cadmium content of fertiliser produced in the UK (information that will be necessary to ensure the UK complies with this Regulation, once it comes into force). Has any progress been made in this regard?

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

14 December 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 (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 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 18 September 2017, which was considered by our Energy and Environment Sub-Committee at its meeting on 11 October.

Thank you for your explanation of the progress of the dossier under the Maltese Presidency, including the provisional agreement reached in trilogue.

We note that the agreement was broadly in line with the mandate supported by the UK, in particular with regard to unauthorised substances and residue levels, organic production in greenhouses and the phasing out of derogations for the use of non-organic seeds and livestock.

As you know, the Proposal has already been cleared from scrutiny. We would nonetheless welcome an update on this Proposal after the legal review is complete, including an assessment of any consequential changes and of Member States' support for the text at that point in time.

11 October 2017

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

Thank you for your letter of 11 October 2017, in which you requested an update on this Proposal after the legal review was complete, including an assessment of any consequential changes and of Member States' support for the text at that point in time.

In June, the Commission, the European Parliament and the Council held their final Trilogue where any remaining concerns about the proposed regulation were settled. The UK secured three of its main negotiating priorities: automatic decertification of products containing pesticide residues above a certain level will not be obligatory, the use of demarcated beds will be phased out, and there will no longer be an abrupt end to existing derogations for non-organic seeds and livestock. Presidency, Parliament and Commission Legal Services then completed a lengthy legal cleansing process aiming to create a logical and restructured regulation. There was no substantive change to the content of the regulation. In early November, an attachés meeting was held in Brussels to enable the Presidency to talk through the process.

The proposed new organic regulation was voted through by qualified majority at the Special Committee on Agriculture (SCA) on 20 November 2017. The SCA Chairman informed the Chair of the European Parliament Agriculture Committee (COMAGRI) of this result, enabling COMAGRI to approve the regulation at their meeting on 22 November 2017.

The regulation will be subject to a vote in European Parliament Plenary in due course. Once the European Parliament has confirmed its support, the regulation goes to a Council of Ministers and is adopted as a legislative 'A' point.

14 December 2017

ENERGY COUNCIL

Energy Community Ministerial Council 14 December 2017

I am writing to inform the Committee of a document issued by the European Commission in advance of the Energy Community Ministerial Council in Kosovo on 14 December. Before each Ministerial Council, the European Commission proposes a European Union position on the agenda, for approval by the Council of the European Union. Your Clerk has previously advised my officials that your Committee would appreciate a letter providing information on the proposed EU position on the Ministerial Council agenda and the Government's views on it.

We expect the Ministerial Council to adopt a number of measures, including proposals to prepare for the implementation of environmental measures and decisions relating to failure to comply with Energy Community legislation. The environmental measures that the Ministerial Council will agree, which should reduce air pollution and other environmental impacts related to energy and encourage action on climate change in the Energy Community Contracting Parties, include:

- A recommendation to prepare for the development of integrated national energy and climate plans
- A recommendation to prepare for the implementation of Chapter II, Chapter IV and Annex Vi of Directive 2010/75/EC on industrial emissions
- A recommendation to prepare for the implementation of Directive 98/70/EC relating to the quality of petrol and diesel fuels and amending Council Directive 93/12/EC

A number of other items will be adopted where no discussion is foreseen including:

- Annual report on the activities of the Energy Community
- Audit report
- Director's report on the budget
- Financial discharge of the Director of the Energy Community Secretariat
- Energy Community budget for 2018-19

The Ministerial Council will also agree on action against a number of Contracting Parties for failure to comply fully with Energy Community measures.

The Permanent High Level Group of the Energy Community (the official-level working group which is empowered by the Ministerial Council to take certain measures) will also meet on 14 December and will adopt a number of detailed implementation acts relating to the Third Energy Package. They include:

- A decision to amend Annex I to Regulation (EC) No 715/2009 on conditions for access to the natural gas transmission networks
- A decision to incorporate Regulation (EU) No 2015/703 establishing a network code on interoperability and data exchange rules
- A decision to incorporate Regulation (EU) 2016/631 establishing a network code on requirements for grid connection of generators in the Energy Community

- A decision to incorporate Regulation (EU) 2016/1447 establishing a network code on requirements for grid connection of high voltage direct current systems and direct current-connected power park modules in the Energy Community
- A decision to incorporate Regulation (EU) 2016/1388 establishing a network code on demand connection in the Energy Community

The European Commission has proposed that the EU should support all the items for decision at the Ministerial Council. The Government can support this approach. We consider that the decisions to be taken are broadly sensible measures which will improve the functioning and usefulness of the Energy Community. There are no implications for the UK in relation to competence or additional costs in any of the decisions.

The Government considers the Energy Community a successful tool for extending European Union energy market liberalisation outside the European Union and for strengthening energy security in the European neighbourhood. We welcome the work to develop the Energy Community.

5 December 2017