

EUROPEAN UNION (APPROVALS) BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the European Union (Approvals) Bill [HL] as brought from the House of Lords on 21 January 2013. They have been prepared by the Ministry of Justice in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not require any explanation or comment, none is given.

SUMMARY

3. The purpose of the Bill is to approve two draft decisions of the Council of the European Union and one draft decision of the European Council. This is to fulfil the requirements of the European Union Act 2011 (“the 2011 Act”).

4. The first draft decision provides for the electronic version of the Official Journal of the European Union to be the authentic and legally recognised version of that journal. The second provides for a new Multiannual Framework for the Fundamental Rights Agency to operate from the beginning of 2013 until the end of 2017. The third maintains the number of European Commissioners at one per Member State of the EU.

BACKGROUND

Draft decision of the Council of the European Union in relation to the electronic publication of the Official Journal

5. A Council Regulation (document number 1022/5/11) proposed to be made under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”) gives legally binding effect to the online electronic edition of the Official Journal (“OJ”). The OJ is the gazette of record for the European Union. It is published on every working day in each of the 23 official languages of the Member States. Article 297 of the TFEU provides the authority for EU legislative acts to be published in the

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Official Journal. Decision 2009/496/EC sets out the conditions for the organisation and operation of the EU's Publications Office which, under Article 3(1)(a) of the TFEU, includes publication of the Official Journal and places the responsibility on the Publications Office to guarantee its authenticity.

6. The OJ is already available in electronic format, but currently only the publication of the printed version has legally binding effect as a result of Article 297 of the TFEU. The European Commission issued the proposed Regulation in April 2011 to give binding legal effect to the electronic publication. It is proposed that the decision to adopt this Regulation would be made under Article 352 of the TFEU.

7. The EU institutions believe that if publication of the electronic version were given legally binding effect, access to EU law would be faster and more economical. The proposed Regulation therefore seeks to give the electronic version of the OJ binding legal effect. The proposal also provides for an advanced electronic signature based, in accordance with Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures, on a qualified certificate and created by a secure signature creation device. This seeks to provide a sufficient guarantee of authenticity to the public. Access to the printed version of the Official Journal will continue and where, due to unforeseen and exceptional circumstances, it is not possible to publish and to make available the electronic edition, the printed edition will instead have binding legal effect.

8. Political agreement on the text of the Regulation was reached at the Justice and Home Affairs Council in March 2012. This enabled the proposal to be presented to the European Parliament for its approval. The European Parliament has formally approved the text of the Regulation, which can take legal effect only once the Council has acted unanimously to adopt it.

Draft decision of the Council of the European Union to establish a Multiannual Framework for the European Agency for Fundamental Rights for 2013-2017

9. The EU Fundamental Rights Agency ("FRA") was established in 2007 by Regulation 168/2007 EC. Its function is to provide expertise to the EU institutions and Member States in the field of fundamental rights. It collects and analyses data across the EU and provides advice by way of reports and opinions, raising awareness of fundamental rights.

10. According to Article 5 of the FRA's founding Regulation, the Council of the European Union is required to adopt a Multiannual Framework which determines the thematic areas of the FRA's activities for a 5-year period, in line with the EU's priorities. For this purpose the Council acts on a proposal from the Commission and after consulting the European Parliament. The previous Multiannual Framework for the period 2008-2012 expired at the end of December 2012. On 13 December 2011 the Commission brought forward a proposal for a Multiannual Framework for 2013-

2017. It is proposed that the decision to adopt this proposal would be made under Article 352 of the TFEU.

11. Political agreement on the draft decision (document number 10449/12) was reached at the Justice and Home Affairs Council in June 2012. This enabled the proposal to be presented to the European Parliament for its approval. The European Parliament has formally approved the text of the decision, which can take legal effect only once the Council has acted unanimously to adopt it.

Draft European Council Decision on the number of European Commissioners

12. The Treaty of Lisbon provides that from its entry into force a European Commission of one national per Member State is to be maintained, but commits to a reduction in the size of the Commission to a number corresponding to two thirds of the number of Member States from 1 November 2014 (the date when the next Commission is due to be appointed). This provision would mean the loss of a guaranteed Commissioner for each Member State. However, when the Irish people voted ‘no’ in a referendum on Lisbon Treaty ratification in June 2008 the loss of a guaranteed Commissioner emerged as a key concern. Without Irish ratification the Treaty could not enter into force, and as a result EU Heads of State and Government offered concessions to Ireland and agreed that, provided the Lisbon Treaty entered into force, a decision would be taken, in accordance with the necessary legal procedures, “to the effect that the Commission shall continue to include one national of each Member State”. This commitment was set out in both the December 2008 European Council Conclusions and the June 2009 European Council Conclusions.

13. The decision, which would make the above European Council commitment binding, would be adopted under Article 17(5) of the Treaty on European Union (“TEU”) which states that from 1 November 2014 the Commission shall consist of a number of members corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number. The decision must be made in time to take effect prior to the 1 November 2014 deadline, when the next Commission will take up its duties. In reality, the formation of the new Commission is likely to begin earlier. Under the provisions of the EU Act 2011 any decision taken under Article 17(5) requires approval by an Act of Parliament before a Minister may vote for or otherwise support it.

14. The draft decision, which received political agreement in the Council at its meeting of 26-27 October 2012, provides that from 1 November 2014 the Commission shall consist of a number of members equal to the number of Member States. It provides for a review of the decision prior to the appointment of either the subsequent Commission following the one appointed in 2014, or of the first Commission after the accession of the thirtieth Member State, if earlier.

Requirements under the European Union Act 2011

15. Section 8 of the 2011 Act sets out the requirements for the approval by the UK of decisions under Article 352 of the TFEU. Section 8(3) provides that a Minister may only vote in favour of an Article 352 decision where the draft decision is approved by Act of Parliament. This requirement does not apply where urgent approval is required (section 8(4)) or where the draft decision relates to an exempt purpose (section 8(4)), as defined in section 8(5). Neither section 8(4) or 8(5) is applicable to the draft decision proposed under Article 352 relating to the OJ or to that relating to the FRA Multiannual Framework. Therefore, an Act of Parliament is required before the United Kingdom may vote in favour of either decision in the Council of the European Union.

16. Section 7 of the 2011 Act provides that certain decisions require approval by an Act of Parliament. Section 7(3) states that “A Minister of the Crown may not vote in favour of or otherwise support a decision to which this subsection applies unless the draft decision is approved by Act of Parliament.” Section 7(4)(a) provides that the provisions of subsection (3) apply to “a decision under the provision of Article 17(5) of TEU that permits the alteration of the number of members of the European Commission”. An Act of Parliament is therefore required before the United Kingdom may vote in favour of the decision on the number of EU Commissioners at the European Council.

TERRITORIAL EXTENT AND APPLICATION

17. The Bill extends to the whole of the United Kingdom.

18. The Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.

19. The Bill does not contain any provisions that would require a legislative consent motion in respect of Wales or Northern Ireland.

COMMENTARY

Clause 1: Approval of certain decisions under Article 352 of TFEU

20. *Clause 1(2)(a)* provides, for the purposes of section 8 of the 2011 Act, for the approval of the draft decision of the Council of the European Union under Article 352

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of the TFEU relating to the OJ. *Subsection (2)(b)* provides for the equivalent approval for the draft decision of the Council of the European Union relating to the FRA Multiannual Framework.

Clause 2: Approval of decision relating to number of EU Commissioners

21. *Clause 2* provides, for the purposes of section 7(3) of the 2011 Act, for the approval of the draft decision under the provision of Article 17(5) of the TEU relating to the number of EU Commissioners.

Clause 3: Extent, commencement and short title

22. *Clause 3(1)* provides that the Bill extends to the whole of the United Kingdom. *Subsection (2)* provides that the Bill will come into force on the day that the Bill receives Royal Assent. *Subsection (3)* provides for the Bill's short title.

FINANCIAL EFFECTS OF THE BILL

23. There will be no financial effects as a result of the Bill.

EFFECT OF THE BILL ON PUBLIC SERVICE MANPOWER

24. There will be no impact on public service manpower as a result of the Bill.

IMPACT ASSESSMENT

25. The provisions contained within this Bill do not require an Impact Assessment.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

26. The Department does not consider that any of the Bill's provisions engage Convention Rights. Accordingly, no issues arise as to the compatibility of the Bill with those rights.

27. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions in the Bill with the Convention rights (as defined by section 1 of that Act).

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28. The Secretary of State for Justice has made the following statement:

“In my view the provisions of the European Union (Approvals) Bill are compatible with the Convention rights.”

COMMENCEMENT DATE

29. The Bill will enter into force on the day of Royal Assent.

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