

EUROPEAN UNION (APPROVALS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union (Approvals) Bill as brought from the House of Commons on 11 October 2017 (HL Bill 67).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy and 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.
- These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Bill is to approve four draft decisions of the Council of the European Union ("the Council"). This is to fulfil a requirement in section 8 of the European Union Act 2011 ("2011 Act") which requires Parliament to approve draft decisions made under Article 352 of the Treaty on the Functioning of the European Union ("TFEU"). Parliamentary approval will enable the United Kingdom to vote in favour of the draft decisions.
- 2 The first draft decision is on the participation of the Republic of Albania as an observer in the work of the European Union Agency for Fundamental Rights.
- 3 The second draft decision is on the participation of the Republic of Serbia as an observer in the work of the European Union Agency for Fundamental Rights.
- 4 The third and fourth draft decisions are to sign and then conclude an Agreement between the European Union and the Government of Canada that will allow enhanced cooperation between the European Commission and the Canadian Competition Bureau on competition matters.

Policy background

The draft decisions on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the European Union Agency for Fundamental Rights (the FRA decisions).

- 5 The EU Fundamental Rights Agency ("the FRA") was established in 2007 by Regulation 168/2007 EC ("the Regulation"). Its function is to provide assistance and expertise on fundamental rights to the EU institutions and Member States. It collects and analyses data across the EU and provides advice by way of reports and opinions, raising awareness of fundamental rights.
- 6 Under Article 28 of the Regulation, the FRA is open to the participation of candidate countries as observers. The draft decisions are on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the FRA. The draft decisions will not, themselves, confer observer status. Instead they establish an EU position at other bodies, the EU-the Republic of Albania Stabilisation and Association Council and the EU-the Republic of Serbia Stabilisation and Association Council. Participation as observers, and the conditions of doing so, are determined by the respective Stabilisation and Association Councils.
- 7 The draft decisions are based on Articles 218(9) and 352 of TFEU. They have been proposed by the European Commission and can be made by the Council acting unanimously after obtaining the consent of the European Parliament.
- 8 The proposal includes the European Commission's estimate of the contributions that Albania and Serbia will be making to the EU budget in order to participate in the FRA. The figures for Albania are EUR 160,000 for Year 1, EUR 163,000 for Year 2 and EUR 166,000 for Year 3. The figures for Serbia are EUR 180,000 for Year 1, EUR 183,000 for Year 2 and EUR 186,000 for Year 3.
- 9 The draft decisions were deposited in Parliament on 9 March 2016. They were cleared from scrutiny by the House of Commons European Scrutiny Committee at its meeting on 13 April 2016 and by the House of Lords European Union Select Committee on 12 April 2016.
- 10 The text of the draft decisions is now settled and it is intended that the proposals are concluded in the Council as soon as possible.

The draft decisions to sign and then conclude a competition Agreement between the European Union and the Government of Canada (the Canada decisions)

- 11 The EU and Canada have cooperated in the area of competition policy enforcement since 1999 (pursuant to an existing cooperation agreement).
- 12 The draft decisions concern the replacement of the existing EU-Canada competition enforcement cooperation arrangement, with a new agreement that includes the exchange of information gathered by their respective competition authorities during antitrust and merger investigations (the new Agreement). The Commission may share such information with Member States' competition authorities (in the case of the UK, the Competition and Markets Authority (CMA)).
- 13 The new Agreement in practice means that information obtained during competition enforcement investigations may be discussed and transferred between the European Commission and the Canadian Competition Bureau. The European Commission states that the absence of the possibility to exchange information has become a major impediment to effective cooperation as bilateral cooperation between the European Commission and the Canadian Competition Bureau has become deeper and more frequent. The ability to share information is intended to increase the ability of both organisations to conclude competition enforcement investigations efficiently.
- 14 In cases where a UK company is involved in an investigation undertaken by both the European Commission and the Canadian Competition Bureau into the same merger or anticompetitive conduct, the new Agreement would mean that the UK company would only have to share information once with a single competition authority. Following the UK's exit from the European Union, UK companies operating in the EU will still be subject to the jurisdiction of the European Commission in antitrust investigations and, where the thresholds are met, in merger investigations in the same way as for other non-EU companies operating in the EU. Information relating to UK companies based in the EU would therefore still be transferable under the new Agreement.
- 15 The draft decisions are based on Articles 103 and 352 of TFEU. They have been proposed by the European Commission and can be made by the Council acting unanimously after obtaining the consent of the European Parliament.
- 16 The draft Council decisions to sign and conclude the new Agreement were deposited in Parliament on 6 July 2016. The Department for Business, Energy and Industrial Strategy submitted an explanatory memorandum covering the draft decisions on 12 August 2016. The documents were cleared by the European Union Committee of the House of Lords on 25 August 2016. The Commons European Scrutiny Committee considered the documents at its meeting on 12 October 2016 and assessed them as politically important. The documents were not cleared from scrutiny. Further information was requested on whether the Government would seek to participate in the new Agreement after the UK withdraws from the EU and, if so, how it may be possible to secure its continuing application. The documents were drawn to the attention of the Business, Energy and Industrial Strategy Committee. The Minister for Small Business, Consumers, and Corporate Responsibility (Margot James MP) wrote to the Chair of the European Scrutiny Committee (Sir William Cash MP) on 24 October outlining the options for international cooperation on competition law enforcement once the UK leaves the EU. The European Scrutiny Committee considered the documents again on 14 December 2016 and assessed them as politically important. The documents were cleared from scrutiny and drawn to the attention of the BEIS Committee and the Treasury Committee.
- 17 The text of the draft decisions is now settled and it is intended that the proposals are concluded in the Council as soon as possible.

Legal background

- 18 Article 352 TFEU allows the EU to act where there is no specific applicable treaty base, as long as this does not entail harmonisation or affect the Common Foreign and Security Policy. Proposals made under Article 352 TFEU require the unanimous approval of Member States and the consent of the European Parliament.
- 19 Under section 8(1) of the 2011 Act, a Minister cannot vote in favour of an Article 352 measure unless one of subsections (3) to (5) is complied with. Subsection (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 (subsection (4)) or where the draft decision relates to an exempt purpose (subsection (5)), as defined in subsection (6). Neither of these subsections in the 2011 Act applies to the FRA or Canada decisions, so an Act of Parliament is needed before the UK Government may vote for their adoption in the Council.

The Fundamental Rights Agency Decisions

- 20 Under Article 2 of the Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, the FRA's objective is to provide the relevant institutions, bodies, offices and agencies of the European Union and its Member States when implementing European Union law with assistance and expertise relating to fundamental rights.
- 21 Under Article 28(1) of the Regulation, the FRA is open to the participation of candidate countries.

The Decisions on the EU-Canada Competition Agreement

- 22 These proposals derive from a Council mandate of 9 October 2008 in which the European Commission was authorised to start negotiations to replace the existing cooperation agreement between the EU and Canada in competition matters.
- 23 The legal bases for the Canada decisions are Articles 103 and 352 TFEU. Article 103 is the legal basis for the implementation of Article 101 (which prohibits anti-competitive agreements) and Article 102 (which prohibits abuse of dominance). Article 352 is the legal basis for Regulation 139/2004 (the Merger Regulation) and the proposed new Agreement with Canada covers cooperation in merger investigations.

Territorial extent and application

- 24 All the provisions in the Bill extend to the whole of the United Kingdom.
- 25 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

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

- 26 Clause 1(2)(a) provides for the approval of the draft decisions of the Council of the European Union under Article 352 of the TFEU on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the FRA.
- 27 Clause 1(2)(b) provides for the approval of the draft decisions to sign and conclude an agreement between the European Union and the Government of Canada regarding the application of their competition laws.

Clause 2: Extent, commencement and short title

- 28 Clause 2 is self-explanatory.

Commencement

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

Financial implications of the Bill

- 30 The Bill has no implications for Government expenditure.
- 31 The draft decisions are expected to have no or negligible financial impact on business, charities or the voluntary sector in the UK, and no financial effects are therefore expected as a result of the Bill.

Compatibility with the European Convention on Human Rights

- 32 The Department for Business, Energy and Industrial Strategy and the Ministry of Justice do not consider that the FRA provisions engage the Convention rights. Accordingly, no issues arise as to the compatibility of the Bill with those rights.
- 33 The Canada Agreement engages Article 8 (right to private life and family life) as information exchanged between EU and Canada under the Canada Agreement may contain personal data. However, the Canada Agreement provides safeguards for the processing of personal data. The Canada Agreement requires each of the parties to the Agreement to handle personal information in conformity with its own procedural rights and privileges for personal data (which themselves must be Article 8 compliant). We therefore assess the Canada Agreement to be compatible with Article 8 and the ECHR.
- 34 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).
- 35 The Parliamentary Under Secretary of State, Lord Prior of Brampton, has made the following statement:

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

Related documents

36 The following documents are relevant to the Bill and can be read at the stated locations:

- Draft Council Decision on the position to be adopted on behalf of the European Union within the EU-Albania Stabilisation and Association Council on the participation of Albania as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities thereof, within the framework of Regulation (EC) No 168/2007 (Council Document 9877/16):
<http://data.consilium.europa.eu/doc/document/ST-9877-2016-INIT/en/pdf>
- Draft Council Decision on the position to be adopted on behalf of the European Union within the EU-Serbia Stabilisation and Association Council on the participation of Serbia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities thereof, within the framework of Regulation (EC) No 168/2007:
<http://data.consilium.europa.eu/doc/document/ST-9876-2016-INIT/en/pdf>
- Council and Commission Decision of 29 April 1999 (1999/445/EC, ECSC)1: Agreement between the European Communities and the Government of Canada regarding the application of their competition laws:
http://ec.europa.eu/competition/international/bilateral/ca2a_en.pdf
- Draft Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10819/16):
<http://data.consilium.europa.eu/doc/document/ST-10819-2016-INIT/en/pdf>
- Draft Council Decision on the conclusion of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10821/16):
<http://data.consilium.europa.eu/doc/document/ST-10821-2016-INIT/en/pdf>
- Proposed new Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10819, ADD 1):
<http://data.consilium.europa.eu/doc/document/ST-10819-2016-ADD-1/en/pdf>
- Explanatory memorandum prepared by the Department for Business, Energy and Industrial Strategy on Council Decisions 10819/16 and 10821/16:
http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/08/EM_10819-16.pdf
- Letter from the Minister for Small Business, Consumers and Corporate Responsibility (Margot James MP) to the Chair of the European Scrutiny Committee (Sir William Cash MP):
http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/11/Margot_James_to_William_Cash_-_Agreement_between_the_EU_and_the_Government_of_Canada_Regarding_the_Application_of_their_Competition_Laws.pdf

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Annex A – Territorial extent and application in the United Kingdom

All the provisions in the Bill extend to the whole of the United Kingdom. None of the provisions are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly. No Legislative Consent Motions are needed.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 1: Approval of draft decisions under Article 352 of TFEU	Yes	Yes	Yes	Yes	No	No	No	No
Clause : Extent, commencement and short title	Yes	Yes	Yes	Yes	No	No	No	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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