



# HOUSE OF LORDS

European Union Committee

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

This edition includes correspondence from 1 July to 13 October 2019

## EU JUSTICE SUB-COMMITTEE

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**Letter to the Chairman from Lord Callanan, Minister for Exiting the European Union, Department for Exiting the European Union**

I am writing to update you on the progress of the 'Omnibus Exercise'. As outlined in my previous letters, this exercise was intended to align existing tertiary legislation to the new post-Lisbon tertiary legislation methodology. The substance and effect has not been amended, but this tertiary legislation will instead become subject to the same updating procedures as apply to other, post-Lisbon Regulations. These changes were merely a technical adjustment forming part of a wider effort to streamline legislation, which the UK supported.

During trilogue discussions under the Romanian Presidency the Commission proposed that, in light of the EP elections and the appointment of a new Commission this year, the institutions should agree to align the acts where there was consensus amongst all three institutions. Negotiations on the remaining acts in the exercise would be resumed later this year, once the new Commission's term has begun.

The three institutions agreed to the approach put forward by the Commission on the basis that all three institutions would also commit to ensuring agreement on the remaining acts without undue delay.

This proposal was formally approved by the European Parliament on 17 April 2019 and then subsequently approved by Council on 14 June 2019, where the UK Government voted in favour of this proposal. Trilogues to reach agreement on the remaining acts will begin once the new Commission and Parliament start their terms later this year.

*10 July 2019*

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE PROTECTION OF PERSONS REPORTING ON BREACHES OF UNION LAW (8713/18)

**Letter from the Chairman to Kelly Tolhurst MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy**

Thank you for your letter dated 11 February 2019 which was considered by the EU Justice Sub-Committee at its meeting of 2 July. We decided to retain the proposal under scrutiny.

As you will know, staff of the EU Justice-Sub Committee have been in contact with your officials for some months about this proposal. They were, on several occasions, promised that the Government would send additional correspondence updating us on the Government's position on this proposal. This has never arrived.

Given the serious concerns that the Government raised about the proposal, coupled with the fact that the letter of 11 February indicated that the Government wished to pursue what appeared to be substantive amendments, we are surprised that we have yet to receive a further update on this file. For the avoidance of doubt, we are not prepared to clear the file, or grant a scrutiny waiver, in circumstances where significant issues remain unresolved.

In the circumstances, we look forward to a response to this letter in the usual 10 days.

2 July 2019

**Letter to the Chairman from Kelly Tolhurst MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy**

Further to my letter of 11 February, I am writing to update you on negotiations on the EU proposal for a Directive on the protection of persons reporting on breaches of Union law and to request scrutiny clearance.

The proposed Directive progressed rapidly through trilogues, which concluded on 11 March. Following trilogues, the file was approved for adoption by Coreper on 15 March. The UK abstained from this vote. Subsequently, the plenary of the European Parliament voted to adopt the Directive on 16 April.

The file is currently being prepared by lawyer-linguists. A meeting of experts was held to discuss the text on 21 June. I expect that it will be brought before a Council for formal adoption this month.

*Changes to the text arising from trilogues*

The Government was successful in achieving a major amendment to the text in co-operation with other Member States. The proposed Directive no longer requires a whistleblower to report internally (to an employer) before being able to report to an external 'competent authority'. Instead, a whistleblower will be free to report either internally or externally in the first instance. This approach more closely aligns with the UK's domestic position and removes an important barrier to whistleblowers coming forward to report.

During trilogues, the scope of measures for the protection of reporting persons found within the Directive were also extended to a wider class of individuals. The proposed Directive now includes protections for facilitators, third persons connected with the reporting persons who may suffer retaliation in a work-related context, and legal entities that the reporting persons own, work for or are otherwise connected with in a work-related context. I am concerned that such a broad widening of the personal scope may be disproportionate to the end it seeks to achieve and may lead to spurious claims for whistleblower protection. This may in turn lead to a higher number of claims heard by UK courts.

*Government position and views of the text*

The Government recognises how valuable it is that whistleblowers are prepared to shine a light on wrongdoing and believes that they should be able to do so without fear of recriminations. However, it retains concerns with the proposed Directive and its overall proportionality. Given its ongoing concerns, the Government will not be supporting the text when it is brought before Council.

I hope that I have informed the committee sufficiently in order that scrutiny can be lifted.

9 July 2019

**Letter to the Chairman from Kelly Tolhurst MP, Parliamentary Under-Secretary of State, Department for Business, Energy and Industrial Strategy**

I am writing in further to my letter to you of 9 July to update you on negotiations on the EU proposal for a Directive on the protection of persons reporting on breaches of Union law.

The Directive is scheduled to be presented for approval at the EU's Justice and Home Affairs Council on 7 October 2019.

Government still retains concerns with the Directive and its overall proportionality; but understands that there is sufficient support amongst Member States for the file to be approved. As a departing Member State, we will not be required to transpose the Directive into UK law, and as such the Government's view is that it would be inappropriate to vote against the file. Therefore, the UK will abstain from the vote on 7 October.

Given that under the terms of EU exit, the UK is not required to transpose the Directive into UK law, I hope that scrutiny can be lifted.

*4 October 2019*