



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 15 October 2019 – 31 January 2020

## EU JUSTICE SUB-COMMITTEE

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(10943/14)

**Letter from the Chairman to Jesse Norman MP, Financial Secretary to the Treasury,  
HM Treasury**

We last received a letter on the above file, from your predecessor David Gauke MP, in March 2015.

Please could you provide an update on this document, to allow the EU Justice Sub-Committee to consider it at a future meeting.

This document continues to be retained under scrutiny and we look forward to your response within the usual 10 day deadline.

*23 October 2019*

COMMUNICATION FROM THE COMMISSION – TOWARDS A EUROPEAN  
HORIZONTAL FRAMEWORK FOR COLLECTIVE REDRESS (11499/13)

RECOMMENDATION ON COMMON PRINCIPLES FOR INJUNCTIVE AND  
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**Letter from the Chairman to Kelly Tolhurst MP, Parliamentary Under Secretary of  
State, Minister for Small Business, Consumers and Corporate Responsibility,  
Department for Business, Energy and Industrial Strategy**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear these items from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON COMBATING FRAUD AND COUNTERFEITING OF NON-CASH MEANS  
OF PAYMENT AND REPLACING COUNCIL FRAMEWORK DECISION 2001/413/JHA  
(12181/17)

**Letter from the Chairman to John Glen MP, Economic Secretary to the Treasury, HM  
Treasury**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear this item from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*21 January 2020*

COMMUNICATION FROM THE COMMISSION – PROGRAMMING OF HUMAN AND FINANCIAL RESOURCES FOR DECENTRALISED AGENCIES 2014-20 (12421/13)

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear this item from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS IMPROVING OLAF'S GOVERNANCE AND REINFORCING PROCEDURAL SAFEGUARDS IN INVESTIGATIONS: A STEP-BY-STEP APPROACH TO ACCOMPANY THE ESTABLISHMENT OF THE EUROPEAN PUBLIC PROSECUTOR'S OFFICE (12554/13)

**Letter from the Chairman to Jesse Norman MP, Financial Secretary to the Treasury, HM Treasury**

We last wrote to your predecessor on the above file in October 2013, but never received a response.

Please could you provide an update on this document, so that the EU Justice Sub-Committee can consider it at a future meeting.

The document continues to be retained under scrutiny and we look forward to your response within the usual 10 day deadline.

*23 October 2019*

COMMISSION WORKING DOCUMENT PREFIGURING THE PROPOSAL FOR AN AMENDMENT TO THE FINANCIAL REGULATION INTRODUCING A NEW TITLE ON THE FINANCING OF EUROPEAN POLITICAL PARTIES (13777/12)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE STATUTE AND FUNDING OF EUROPEAN POLITICAL PARTIES AND EUROPEAN POLITICAL FOUNDATIONS (13842/12)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EU, EURATOM) NO.966/2012 AS REGARDS THE FINANCING OF EUROPEAN POLITICAL PARTIES (17469/12)

**Letter to the Chairman from Kevin Foster MP, Minister for the Constitution, Cabinet Office**

Following a review of older documents under scrutiny, I am writing to provide an update on these documents. The Cabinet Office now leads on all of these issues so it is now my responsibility to provide an update on them.

Document No. 13842/12 established a European legal status specifically for European political parties (EUPP), and outlined the eligibility criteria, registration procedures, procedure for checking ongoing eligibility and sanctions regime associated with this status. This Regulation came into force on 1 January 2017.

Document No. 13777/12 sought to change the funding mechanism for European political parties from a grant based system to a contribution based system. This was subsequently outlined as a proposal to amend the Financial Regulation introducing a new title on the financing of European political parties (No. 17469/12). I understand your Committee continues to hold both documents under scrutiny to await further updates.

Previous letters from David Lidington, were issued on the 26 November 2012 and 3 March 2014. In the latter letter, Mr Lidington highlighted the negotiations on the proposals were drawing to a close. He said we were unlikely to see the draft Regulation changing significantly before it returned to the Council. It was also noted the European Parliament might press for changes during the trilogues on the proposals, and any proposed changes would be considered by the UK Government.

Additionally, concerns were raised on the claims made by the proposal, that it could address the European Union's democratic deficiency. The letter highlighted electorates of the European Union will remain closely connected to national parties and parliaments. It pledged the UK would use the negotiations in order to improve the current Regulation.

Having reviewed these files I would like to inform you both proposed Regulations (No. 17469/12 & No. 13842/12) were adopted on 22 October 2014. In regards to the UK's position, the UK voted against both proposals at the 29 September 2014 General Affairs Council following concerns the proposals did not address the European Union's democratic deficiency. Notwithstanding this, during negotiations UK officials secured a number of improvements to the Regulations. This included reducing the power of incumbent Members of European Parliament over which European Union political parties would have access to European Union finance, reducing their reliance on public finance and introducing better protections for financial contributors.

I hope this update means scrutiny can be completed on these files. I am sorry the Committee was not updated at an earlier point.

It should be noted, further amendments have been made to the Regulation on the statute and funding of European political parties and European political foundations (Document No. 13842/12) since it was adopted in 2014. An Explanatory Memorandum on proposal 12308/17 was submitted by the Cabinet Office on 13th October 2017 to outline the proposed changes. This proposed to close loopholes, improve transparency and ensure the appropriate allocation of resources from the EU budget. This was adopted by the European Council on 26 April 2018, and cleared by the Committee in July 2018 following Chloe Smith's letter to you of 25 June 2018.

*16 October 2019*

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office (13777/12 & 13842/12)**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear these items from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office (17469/12)**

Thank you for your letter, dated 16 October 2019, which was considered by the EU Justice Sub-Committee at its meeting of 29 October.

We note that these Proposals were adopted in 2014. We have already cleared one of the documents (13842/12) from scrutiny. We are now content to release the other two and to close correspondence on all three files.

*29 October 2019*

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON PROCEDURAL SAFEGUARDS FOR CHILDREN SUSPECTED OR  
ACCUSED IN CRIMINAL PROCEEDINGS (17633/13)

**Letter to the Chairman from Chris Philp MP, Parliamentary Under-Secretary of State  
for Justice, Ministry of Justice**

I am writing to apologise for the delay in responding to Lord Boswell's letter of 19 April 2016 which indicated that the above document was retained under scrutiny, and that your Committee was waiting for my department's analysis of the cost of implementing the proposed Directive.

Given the passage of time since your letter, a brief summary of the key issues may be convenient. The proposal outlined in European Union's document 17633/13, which is dated 27 November 2013, became law in the European Union in the form of "Directive 2016/800/EU of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings".

The Rt Hon Dominic Raab MP, who was then Parliamentary Under-Secretary of State for Justice, wrote to your Committee on 29 January 2016 to provide a comprehensive update on the conclusion of the negotiations in Brussels, and to confirm the UK Government's decision not to opt into this Directive and the rationale thereon. My predecessor stated that the UK remained concerned about various aspects of the Directive, including for example its scope and the definition of a child, amongst other areas.

I also note that in a subsequent letter to your Committee, dated 22 March 2016, Mr Raab indicated that my department would provide a cost analysis of the Directive. It appears that this is the outstanding matter which was not completed at the time, and I apologise for that oversight.

The European Commission's impact assessment, accompanying the original proposal in document 17633/13, estimated (at 11 December 2013) a total cost of approximately 155 million Euros (including training costs) for implementing the Directive across the European Union, and a cost of approximately 46 million Euros (excluding training costs) for the UK.

For convenience, the European Commission's summary impact assessment and the full impact assessment are available at:

- [http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/17633-13\\_ADD\\_2\\_.pdf](http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/17633-13_ADD_2_.pdf) [see, in particular, paragraph 6 at p. 6]
- [http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/17633-13\\_ADD\\_1\\_.pdf](http://europeanmemoranda.cabinetoffice.gov.uk/files/2014/03/17633-13_ADD_1_.pdf) [see, in particular, pp. 46-48, 54-56, and 134]

In view of the decision not to opt into the Directive and the imminent exit of the UK from the European Union, my department did not carry out a more detailed analysis of the cost of implementing Directive 2016/800/EU across the UK. As set out in Mr Raab's letter of 29 January 2016, the issue of the potential cost was not the main consideration in the UK Government's decision not to opt in.

*31 October 2019*

**Letter from the Chairman to Chris Philp MP, Parliamentary Under-Secretary of State  
for Justice**

Thank you for your letter on the above Proposal, dated 31 October, which was considered by our Justice Sub-Committee on 21 January.

We note that the Proposal became part of European Union law in October 2016, but that the UK did not opt in to the Directive. We are therefore content to release this file from scrutiny and close correspondence on this issue.

*21 January 2020*

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE  
COUNCIL ON PROVISIONAL LEGAL AID FOR SUSPECTS OR ACCUSED PERSONS  
DEPRIVED OF LIBERTY AND LEGAL AID IN EUROPEAN ARREST WARRANT  
PROCEEDINGS (17635/13)

**Letter to the Chairman from Chris Philp MP, Parliamentary Under-Secretary of State  
for Justice, Ministry of Justice**

Thank you for your Committee's letter of 28 March 2017, which indicated that the above document was retained under scrutiny, but that your Committee did not require further information from my department.

By way of background, since 2013 when the above document was put forward by the European Commission, the proposal has become part of European Union law in the form of "Directive 2016/1919/EU of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings". As Sir Oliver Heald QC MP, the then Minister of State for Justice, explained in his letter of 2 February 2017 to your Committee, the UK did not opt into this Directive because of a principled position that these were not matters for the European Union to regulate at all, and were instead matters for national Governments.

Given the passage of time since your letter, and the imminent exit of the UK from the European Union, I should be extremely grateful if you would give us an indication of whether the Committee intends to retain the above document under scrutiny

*31 October 2019*

**Letter from the Chairman to Chris Philp MP, Parliamentary Under-Secretary of State  
for Justice**

Thank you for your letter on the above Proposal, dated 31 October, which was considered by our Justice Sub-Committee on 21 January.

We note that the Proposal became part of European Union law in October 2016, but that the UK did not opt in to the Directive. We are therefore content to release this file from scrutiny and close correspondence on this issue.

*21 October 2019*

PROPOSAL FOR COUNCIL DECISION ON THE DECLARATION OF ACCEPTANCE BY  
THE MEMBER STATES, IN THE INTEREST OF THE EUROPEAN UNION, OF THE  
ACCESSION OF GABON TO THE 1980 HAGUE CONVENTION ON THE CIVIL  
ASPECTS OF INTERNATIONAL CHILD ABDUCTION (5218/12)

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State  
(Minister for Europe and the Americas), Foreign and Commonwealth Office**

We last wrote to your predecessor on the above file in November 2015, but never received a response.

Please could you provide an update on this document and on the issues raised by the EU Justice Sub-Committee in our previous correspondence.

This document continues to be retained under scrutiny and we look forward to your response within the usual 10 day deadline.

*23 October 2019*

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL PROTECTING AGAINST THE EFFECTS OF THE EXTRA-TERRITORIAL APPLICATION OF LEGISLATION ADOPTED BY A THIRD COUNTRY AND ACTIONS BASED THEREON OR RESULTING THEREFROM (RECAST) (6237/15)

**Letter to the Chairman from the Rt Hon Conor Burns MP, Minister of State,  
Department for International Trade**

I am writing to update your committee regarding the above file which remains listed on your committee's Progress of Scrutiny files, and to request that the Committee clears the file from scrutiny.

The EU published this "recast" proposal to consolidate Council Regulation (EC) No 2271/96 and its subsequent amendments to protect against the effects on EU persons of the extra-territorial application of legislation adopted by third countries on 13 February 2015. The former Department for Business, Innovation and Skills (BIS) published an Explanatory Memorandum on the proposal on 4 March 2015, followed by Ministerial correspondence in October 2015 and January 2016.

I can confirm that there has been no further progress on the proposal at EU level since 2015. The previous Finnish Presidency of the Council did not progress the file and there is no indication that the new Croatian Presidency will progress the file either. Whilst the new Commission could choose to revive the file, there are no indications that this is planned in the near future.

In this context, please would the committee clear the file from scrutiny. If the file were to be re-opened by the EU in the future, under current EU scrutiny procedures, the Government would prepare a new Explanatory Memorandum accordingly.

Finally, in regard to the future of these regulations in the UK, each House of Parliament has approved a draft Statutory Instrument laid under paragraph 1(1) of Schedule 7 to the European Union (Withdrawal) Act 2018. These Regulations may be cited as the 'Protecting against the Effects of the Extraterritorial Application of Third Country Legislation (Amendment) (EU Exit) Regulations 2019' and come into force on the day after the day on which they are made.

*7 January 2020*

PROPOSAL FOR A COUNCIL DECISION ON THE SIGNING, ON BEHALF OF THE EUROPEAN UNION, OF THE COUNCIL OF EUROPE CONVENTION ON THE MANIPULATION OF SPORTS COMPETITIONS WITH REGARD TO MATTERS NOT RELATED TO SUBSTANTIVE CRIMINAL LAW AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (6720/15)

PROPOSAL FOR A COUNCIL DECISION ON THE SIGNING, ON BEHALF OF THE EUROPEAN UNION, OF THE COUNCIL OF EUROPE CONVENTION ON THE MANIPULATION OF SPORTS COMPETITIONS WITH REGARD TO MATTERS RELATED TO SUBSTANTIVE CRIMINAL LAW AND JUDICIAL COOPERATION IN CRIMINAL MATTERS (6721/15)

**Letter from the Chairman to Nigel Adams MP, Minister of State (Minister for Sport,  
Media and Creative Industries), Department for Digital, Culture, Media & Sport**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear these items from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE A NEW DEAL FOR CONSUMERS (7875/18)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL DIRECTIVE 93/13/EEC OF 5 APRIL 1993, DIRECTIVE 98/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL, DIRECTIVE 2005/29/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AND DIRECTIVE 2011/83/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS BETTER ENFORCEMENT AND MODERNISATION OF EU CONSUMER PROTECTION RULES (7876/18)

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON REPRESENTATIVE ACTIONS FOR THE PROTECTION OF THE COLLECTIVE INTERESTS OF CONSUMERS, AND REPEALING DIRECTIVE 2009/22/EC (7877/18)

**Letter to the Chairman from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, Department for Business, Energy and Industrial Strategy**

Thank you for your letter dated 18 June 2019. I am writing to update you on the progress of the Collective Redress Directive and to inform you that a general approach was agreed on 28 November 2019 at the Competitiveness Council. I would also like to request that you clear the file from scrutiny because it has limited implications given the UK's departure from the EU on the 31 January 2020. The UK will have no legal obligation to transpose the Directive.

The outcome of the Competitive Council was that the Presidency concluded that the text as presented was adopted. The Directive had general support, abstentions included Germany and Austria.

Although a general approach was agreed and there will be progression of the file, several Member States made a joint statement indicating some dissatisfaction. Luxemburg, Cyprus, Latvia, Czechia and Slovakia voiced their disappointment that the compromised text had been significantly weakened when compared to the original proposal from the Commission. In particular, those states argued that the current text did not provide the clarity necessary for the effective functioning of cross border collective redress. Those states noted the text provided for significant flexibility to Member States with respect of eligibility criteria for qualified entities. They felt that this may lead to a lack of mutual recognition and thus legal uncertainty.

UK officials did not attend the meeting in line with the Government's guidance on non-attendance of EU meetings that are not deemed as essential. Similarly, the UK abstained from the vote, which is also in line with the Government's guidance on non-engagement with business as usual EU policy. It is unlikely that this position of nonattendance will change in light the UK's departure from the EU on 31 January 2020.

***Summary of the key changes in the text***

1. ***Treatment of domestic and cross-border actions*** – Under the latest text, the eligibility criteria consumer organisations must meet in order to become qualified entities able to bring domestic representative actions will be left to the discretion of Member States. For cross-border actions, the draft directive specifies eligibility criteria consumer organisations are required to meet in order to qualify as qualified entities.
2. ***'Opt-in and opt-out' rules*** - Whether opt-in or opt-out rule are applied in representative actions is left to the discretion of Member States. Consumers wanting to join a representative action in a Member State other than their own would be subject to an opt in criteria only.

3. **Timings** – The timings for the Directive such as the implementation and transposition deadlines have been extended. The transposition deadline now falls in the final quarter of 2023.
4. **Final decisions** – Previously the text established that if a decision by an administrative authority or court has become final, it would be considered ‘a rebuttal presumption of infringement’ (i.e. irrefutable evidence of an infringement), which was deemed as harming the collective interests of consumers in any subsequent action against the same trader for the same infringement. The text now stipulates that any final decisions, instead of being considered ‘a rebuttal presumption of infringement’, are only treated as evidence of infringement in any subsequent redress action against the same trader for the same infringement.
5. **Low value cases** - The Commission previously proposed that where consumers have suffered a small loss that it would be disproportionate to distribute the redress to the consumers. Instead, any funds awarded as redress should be directed to a public purpose serving the collective interest of consumers, such as awareness raising campaigns. The method of distribution of redress has now been left to discretion of Member States.

### **Next Steps**

The Directive will now go through ‘trilogue’ negotiations which begin on 13 January 2020. This process is likely to require at least six to eight weeks, until a compromise text can be reached between the EU institutions.

The Collective Redress Directive will not require transposition until the final quarter of 2023. This will fall outside the date of the UK’s departure of the European Union and the Implementation Period. The UK will therefore have no legal obligation to transpose or implement the Directive.

*17 January 2020*

PROPOSAL FOR A COUNCIL DECISION ON THE CONCLUSION, ON BEHALF OF THE EUROPEAN UNION, OF THE STABILISATION AND ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND OF KOSOVO, OF THE OTHER PART  
(8532/15)

RECOMMENDATION FOR A COUNCIL DECISION APPROVING THE CONCLUSION, BY THE EUROPEAN COMMISSION, ON BEHALF OF THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE STABILISATION AND ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND OF KOSOVO, OF THE OTHER PART  
(8534/15)

PROPOSAL FOR A COUNCIL DECISION ON THE SIGNING, ON BEHALF OF THE EUROPEAN UNION, OF THE STABILISATION AND ASSOCIATION AGREEMENT BETWEEN THE EUROPEAN UNION AND THE EUROPEAN ATOMIC ENERGY COMMUNITY, OF THE ONE PART, AND OF KOSOVO\*, OF THE OTHER PART  
(8535/15)

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office**

We last wrote to your predecessor on the above files in February 2016, but never received a response.

Please could you provide an update on these documents, and address the outstanding concerns that were raised by the EU Justice Sub-Committee in our previous correspondence.

These documents continue to be retained under scrutiny and we look forward to your response within the usual 10 day deadline.

*23 October 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 to the Chairman from Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility, 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*

**Letter from the Chairman to Kelly Tolhurst MP, Minister for Small Business, Consumers & Corporate Responsibility**

Thank you for your letter dated 4 October 2019 which was considered by the EU Justice Sub-Committee at its meeting of 22 October. We decided to retain the proposal under scrutiny.

Given the serious concerns that the Government has raised about the proposal, coupled with the fact that the Brexit timetable remains far from clear, we will revisit this decision in due course.

In the circumstances, we do not expect a response to this letter

*23 October 2019*

**COMMISSION COMMUNICATION - REPORT ON THE 2014 EUROPEAN PARLIAMENT  
ELECTIONS (8876/15)**

**Letter from the Chairman to Chloe Smith MP, Parliamentary Secretary (Minister for the Constitution), Cabinet Office**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear this item from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING COUNCIL REGULATION (EC) NO 1206/2001 OF 28 MAY 2001 ON COOPERATION BETWEEN THE COURTS OF THE MEMBER STATES IN THE TAKING OF EVIDENCE IN CIVIL OR COMMERCIAL MATTERS (9620/18)

PROPOSAL FOR A REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING REGULATION (EC) NO 1393/2007 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE SERVICE IN THE MEMBER STATES OF JUDICIAL AND EXTRAJUDICIAL DOCUMENTS IN CIVIL OR COMMERCIAL MATTERS (SERVICE OF DOCUMENTS) (9622/18)

**Letter to the Chairman from the Rt Hon Robert Buckland QC MP, Lord Chancellor & Secretary of State for Justice, Ministry of Justice**

I am writing to update you on the development of these proposals during the negotiations and to inform you that the Finnish Presidency is likely to seek a General Approach on both at the December JHA Council.

Common to both proposals was the objective to make more use of modern communication technology, including introducing an IT system to transmit requests between Member States. There was a lot of discussion about the added value of sending requests electronically and, if so, what system should be used. A majority of member states supported the introduction of a decentralised system that will allow existing national IT systems to communicate with each other but wanted a higher level of security than e-mail would provide. Negotiations are continuing on the basis that the existing e-CODEX (e-Justice Communication via Online Data Exchange) system will be used. This provides a secure gateway through which national IT systems can communicate with each other. There were concerns about the costs that would fall to member states to use e-CODEX so the Commission agreed to develop implementation software which member states will be able to use if they choose to and if they do it will reduce the costs of connecting via e-CODEX. In addition it has been suggested that the IT system will not be obligatory until five years after the entry into force of the implementing acts which will establish the IT system. It is planned that electronic transmission will not be obligatory in circumstances where, for example, transforming voluminous documents to an electronic format would impose a disproportionate administrative burden. We joined with other member states in querying how a system would work in those systems (including in Scotland) where private bailiffs are responsible for service of documents. The Commission confirmed that it would be for member states to decide how to give effect to the IT system in a way that was compatible with the national systems for service.

I turn now to the main changes that have occurred to each of the proposals during the negotiations to date.

*Taking of Evidence Regulation*

The definition of court in Article 1 has been clarified to say that it includes courts and other authorities competent to take evidence for the purposes of judicial proceedings in civil and commercial matters. The Government considers this to be acceptable.

The provision on the introduction of the IT system now specifies that Member States will be responsible for the costs of installation, operation and maintenance, thereby mirroring the proposed provision in the Service Regulation. The text clarifies that while documents transmitted electronically shall not be denied legal effect just because of the means of transmission, a recital will clarify that this will not otherwise affect a court's competence to assess the legal effects of a document, which is a welcome addition.

The Government welcomes the fact that the text has reverted to the current Regulation so that direct taking of evidence can only be undertaken on a voluntary basis. Your Committee will recall that the proposed change to direct taking of evidence by compulsion was the reason why the UK did not opt in when the proposal was issued. Whether the UK will request a post-adoption opt in will depend on the UK's relationship with the EU at the time. Another welcome change is that the proposed

presumption that requests for permission to take evidence directly should be deemed accepted where a reply has not been received in 30 days has been deleted.

Also in relation to direct taking of evidence the new provision (Article 17a) which provides for use of videoconference or other distance communication technology and allows courts to continue to have discretion about whether they hear a person by such means or in person has been agreed. References to “a witness, party or expert” have been deleted. In addition the Government is pleased that the obligation on the requested member state in relation to interpretation during a videoconference extends only to assistance in finding an interpreter.

There have been no significant objections to the provision on evidence being taken by diplomatic officers or consular agents (Article 17b) (in relation to nationals of the state they represent, taken voluntarily, and in accordance with proceedings in the state they represent) so this remains with just minor drafting changes.

The majority of member states have made it clear that the monitoring and evaluation system should be agreed with the Council but the wording has yet to be finalised. Finally there has been consensus that the Annexes should be agreed by delegated acts under the usual conditions for such acts and that the IT system should be determined by implementing acts.

#### Service Regulation

The provision on the right of refusal to accept a document (Article 8) has developed to make it easier to administer. Under the current Regulation authorities responsible for service need to provide a notification about the right of an addressee to refuse service on language grounds by enclosing a form in all official EU languages. Now the form will only be needed in an official language of both the member state of origin and the member state where service is to be effected. In addition the form can be provided in the official language of another member state if there is an indication that the addressee understands that language. The proposed paragraph about courts verifying whether a refusal on language grounds was well founded has been removed. While the Government considered that it would be useful for courts to have that power, provided it was discretionary, given that this provision is not in the current Regulation, it is not essential.

The Government is pleased that the provisions on postal service (Article 14) and direct service (Article 15) have been simplified. For postal service the text now refers only to the use of registered letter with acknowledgment of receipt. The requirement for postal operators to use a specific form of receipt has been removed as well as the requirement that service on another person at the same address as the addressee will be considered valid. The latter change does not affect the fact that service on certain third parties at the same address will be considered valid to the extent that that has been established by CJEU case law. Direct service will continue to be available only in those member states where it is allowed.

There has been general support for the introduction of a provision allowing electronic service (Article 15a). The consensus is that service by electronic means in another member state should be permitted as it is under the law of the forum member state, if it is sent using qualified electronic registered delivery in accordance with Regulation 910/2014 and if the addressee has given advance consent for such service. Alternatively, service is permitted if the addressee is a national of the forum state and may, in accordance with the law of that member state, accept that method of service, or if the addressee has expressly accepted, through acknowledgment to the court or authority seised with service of the documents, the use of ordinary e-mail. The Government considers these conditions to be reasonable.

The provision on where a defendant has not entered an appearance (Article 19) has been subject to a lot of discussion. The UK was concerned that judicial discretion should not be fettered by the changes. The result of the discussions is that, subject to drafting changes, the effect of the new provision is the same as the current Regulation and accordingly is acceptable.

The provisions on monitoring and evaluation as well as the delegated and implementing acts are the same as for the Taking of Evidence Regulation.

*1 November 2019*

**Letter from the Chairman to the Rt Hon Robert Buckland QC MP, Lord Chancellor & Secretary of State for Justice**

Thank you for your letter dated 1 November 2019 which was considered by the EU Justice Sub-Committee at its meeting of 21 January 2020.

We decided to clear both proposed Regulations from scrutiny. We are grateful for your update on their negotiation and understand, as anticipated by you, that the Council agreed a General Approach to both texts in December last year. We do not expect a response to this letter.

*21 January 2020*

ARTICLE 10(4) OF PROTOCOL 36 TO THE TREATY ON EUROPEAN UNION AND THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (TFEU) - THE '2014 DECISION' MEASURES THAT ARE THE RESPONSIBILITY OF HM TREASURY, HMRC, DEPARTMENT FOR TRANSPORT AND FOREIGN & COMMONWEALTH OFFICE (OTNYR)

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear this item from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

ARTICLE 10(4) OF PROTOCOL 36 TO THE TREATY OF THE FUNCTIONING OF THE EUROPEAN UNION (TFEU) – THE '2014 DECISION' MINISTRY OF JUSTICE MEASURES (OTNYR)

**Letter from the Chairman to the Rt Hon Robert Buckland QC MP, Lord Chancellor & Secretary of State for Justice, Ministry of Justice**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear this item from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*

COUNCIL DECISION (CFSP) 2016/609 OF 18 APRIL 2016 AMENDING DECISION 2010/413/CFSP CONCERNING RESTRICTIVE MEASURES AGAINST IRAN (UNNUMBERED)

**Letter from the Chairman to the Rt Hon Christopher Pincher MP, Minister of State (Minister for Europe and the Americas), Foreign and Commonwealth Office**

As part of the EU Justice Sub-Committee's review of items retained under scrutiny, we have considered the above and are content to clear these items from scrutiny and close correspondence on the matter. You do not need to reply to this letter.

*23 October 2019*