



European Scrutiny Committee

Meeting Summary: Wednesday 16 November 2016

The Committee looks at the significance of EU proposals and decides whether to clear the document from scrutiny or withhold clearance and ask questions of the Government. The Committee also has the power to recommend documents for debate.

A complete list of EU Documents considered of legal and/or political importance is published in the Committee's [18th Report of Session 2016-17](#).

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Brexit related issues

The Committee is now looking at documents in the light of the UK decision to withdraw from the EU. Issues are explored in greater depth in report chapters and, where appropriate in the summaries below, but the Committee notes that in the current week the following issues have arisen in documents or in correspondence with Ministers:

- **Europol Regulation (opt-in decision):** the Government has informed the Committee that it intends to recommend opting into the new Europol Regulation which was adopted earlier this year and will take effect on 1 May 2017. The Committee will consider the Government's Explanatory Memorandum on the Regulation at its meeting on 23 November.
- **Multiannual Financial Framework 2014-2020:** the Committee considered a letter from the Chief Secretary to the Treasury (Mr David Gauke) on a scrutiny override of the Multiannual Financial Framework. The Committee will consider this at its 23 November meeting. It noted the documents were recommended for debate in



European Committee B and added a document on the amendment of the EU budget to that debate.

Comprehensive Economic Trade Agreement (CETA) between the EU and Canada

Given its legal and political importance, the Committee recommended CETA for debate on the floor of the House at its meeting on 7 September. The Government overrode parliamentary scrutiny at the Foreign Affairs Council on 18 October as it endorsed the signature, provisional application and conclusion of this deal before this debate had taken place. The Committee called the Secretary of State in to give urgent oral evidence on the reasons for the override and its implications for parliamentary scrutiny of trade deals on 26 October.

The Secretary of State (Dr Liam Fox) now provides an update on recent developments (following the oral evidence session) and reiterates his commitment to a debate, which he expects to take place “sometime in November”. We consider such a debate to be urgent and ask that it be scheduled before 13 December.

The update does not address a number of issues which are of fundamental importance to the House in scrutinising this deal, such as: the expected distribution of benefits and losses of the deal for the UK - by region/stakeholder; the exercise of competence; who triggers provisional application and who can terminate it; the Government's position on elements of the Belgian compromise deal (notably the exclusion of Belgian mutual associations markets from market access provisions and its declaration on agricultural safeguards); the implications of Belgium's request for an opinion from the ECJ on the compatibility of the Investment Court system (ICS) with the EU Treaties; and the Brexit implications of the UK entering into and provisionally applying CETA, in particular the possible continuation of mixed agreements post Brexit (and how they are untangled), as these are necessary to inform the debate on the floor of the House.

Not cleared; further information requested; previously recommended for debate on the Floor of the House; drawn to the attention of the International Trade and Exiting the EU Committees.

Regulation of new psychoactive substances

Following protracted negotiations, the Commission has published a fresh proposal which seeks to improve existing mechanisms for the exchange of information on new psychoactive substances, strengthen the EU's early warning system and speed up the process for producing risk assessments. The proposal is a public health measure which excludes any harmonisation of national laws. The Government broadly supports the new proposal and expects negotiations to proceed quickly. The Government has ruled out UK participation in a related measure which would require Member States to introduce criminal sanctions for the most harmful substances on the grounds that decisions concerning the control of drugs should be taken by Parliament.

As well as seeking clarification of a number of technical issues, the Committee asks the Government to explain what assessment it has made of the costs and benefits of continuing participation in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) — the body responsible for operating the early warning system and preparing risk



assessments — following the UK’s withdrawal from the EU and whether it would be in the UK’s interest to establish a formal working relationship with the EMCDDA.

Not cleared; further information requested; drawn to the attention of the Home Affairs Committee.

First progress report on the Security Union

In May, the Committee considered a Commission Communication which set out a “roadmap” of measures to develop “an effective and genuine Security Union”. Since then, the UK has voted to leave the EU. There is a new EU Commissioner, Sir Julian King, whose mandate is to implement the Security Union. The Commission's latest Communication is the first in a series of monthly reports tracking the progress made to date and the areas in which further efforts are needed to combat terrorism and organised crime and improve the EU's resilience to threats to its internal security. The Security Minister (Ben Wallace) addresses the implications of the Communication for the UK while it remains a member of the EU, but says little on future security cooperation once the UK has left the EU.

The Committee notes that one of the Government’s main objectives once Article 50 negotiations are underway is to “keep our justice and security arrangements at least as strong as they are” now. The Committee asks the Minister to indicate whether, *in principle*, the Government wishes to maintain as close a relationship as possible with Europol and with Eurojust once the UK has left the EU and how this could be achieved. Similarly, he is asked whether the Government also wishes to preserve existing data-sharing arrangements with EU partners once the UK has left the EU.

Cleared; further information requested; drawn to the attention of the Home Affairs Committee.

EU General Budget

The Commission has presented a Letter of Amendment to update its Draft Budget for 2017, currently under negotiation. This is to take into account both technical adjustments on expenditure that have occurred within the course of the year, and proposals accompanying the Commission's mid-term review of the Multiannual Financial Framework 2014-2020. The Multiannual Financial Framework provides for a Contingency Margin, as a mechanism to be used to react to unforeseen circumstances as a last resort instrument, by redeployment between Budget Headings. When the Commission presented its Draft Budget for 2017 it proposed a mobilisation of the Contingency Margin. It now withdraws that proposal and instead proposes a larger mobilisation of the Contingency Margin in support of the migration and security section of the amending letter. We recognise that these documents are relevant primarily to negotiation of the 2017 EU General Budget.

Amendment Letter and Proposed Decision not cleared; recommended to be included in the debate, in European Committee B, on the Multiannual Financial Framework 2014-2020 mid-term review, which we have already recommended for debate.

Financial services and the Capital Markets Union

The Commission has proposed, in the context of building the Capital Markets Union, amendment to legislation governing European Venture Capital and European Social



Entrepreneurship Funds, with the aim of increasing uptake of these funds. When we previously considered this document in September, we retained it under scrutiny, seeking information from the Government on progress in negotiations on its aim to have as much as possible of the proposed technical standards specified in the body of the proposed Regulation.

The Government asks us to clear this proposal from scrutiny as it anticipates an appropriate outcome to negotiations in the next compromise text. We note the general acceptability of the emerging text but have not agreed to the request for scrutiny clearance at this stage. However, we do allow the Government a conditional waiver from the Scrutiny Reserve Resolution if an appropriate outcome is achieved.

We wish to hear promptly from the Government about the outcome of the COREPER meeting. At the same time we should like to know from the Government how it expects the registration process for large asset managers wishing to do cross-border business will operate after Brexit.

Proposed Regulation and ECB Opinion not cleared but a conditional scrutiny waiver given.

Tax evasion and avoidance, money laundering, terrorist financing

The EU wishes to counter financing of terrorism, money laundering and tax evasion and avoidance, including by increasing transparency of financial transactions and corporate entities. Amongst Commission proposals is a Directive to amend the Fourth Anti-Money Laundering Directive, which we have considered twice previously, hearing that the Government welcomed the proposal. The Government has now told us that it has decided to **opt into** the proposed Directive.

The Government also says that Council working party consideration of the proposal has resolved concerns on issues relating to shareholding thresholds for company registrations, but that the other two matters of concern for the UK - registration of beneficial owners of all trusts and trust-like legal arrangements, and registers of bank and payment accounts - are still being discussed. It adds that the Presidency intends to seek agreement on a General Approach at the December 2016 ECOFIN Council.

We also heard that the Government was considering a Justice and Home Affairs opt-in to the proposal. Our view, widely shared, is that the UK opt-in is not engaged unless the proposal has a legal base found in Title V of Part Three TFEU. However, we have reminded the Government that this difference of view will have no practical effect, since in our view the whole of the proposal, once enacted, will anyway apply to the UK.

Proposed directive not cleared, pending information about satisfactory outcomes. However, if such outcomes are achieved in time for the ECOFIN Council, we have granted a waiver from the Scrutiny Reserve Resolution for that Council meeting.

Digital Single Market: Consumer contract rights

These two proposed Directives aim to achieve maximum harmonisation of national consumer protection laws in relation to online trade in (a) digital content and (b) physical (or tangible) goods. The Commission hopes they will help boost cross-border e-commerce in the EU. As the UK has recently legislated on digital content in the Consumer Rights Act 2015 (CRA), it needs to ensure alignment between the CRA and the proposals.



The Government now responds to the Committee's requests for further information in its Report of 15 June. On the digital content proposal (a), we welcome the direction and focus of the negotiations so far on consumer expectations in relation to “fitness for purpose” and “quality”, the question of leaving damages remedies to regulation at national level and the need to reduce overlaps between the two proposals. We note the general acceptance amongst Member States that “free data” contracts will be covered (where consumers acquire “digital content” in exchange for their personal data) and agree with the Government that legal clarity on rights and obligations arising from such contracts is key. We ask the Government to continue to focus on proportionality concerns in the negotiations, namely achieving a balance between consumer protection and facilitating the digital and tech industry in the UK. It is also asked to respond to us on Brexit implications.

Not cleared; further information requested and drawn to the attention of the Business, Energy and Industrial Strategy Committee

Mandatory transparency register for EU Lobbying

The current EU register of lobbyists is only voluntary and does not extend to interactions with the Council. This proposed Inter-institutional Agreement would be binding on the EU institutions and would require lobbyists to register. It is relevant to work the Committee as already carried out on the issue of transparency of EU decision-making. Depending on the timing of the IIA's agreement, it could increase the transparency of lobbying by third parties in relation to the Brexit negotiations and we ask the Minister to respond on this point in due course.

Not cleared; further information requested and drawn to the attention of the Exiting the EU Committee given the possible relevance to its inquiry on scrutinising the UK's negotiating objectives for withdrawal from the EU.

EU-US data transfer for law enforcement purposes under the Umbrella Agreement

These proposed Council Decisions authorise the EU to sign and conclude the Umbrella Agreement on transfers of EU citizens' data to the US for law enforcement purposes. The Council Decision on signature has already been agreed and was the subject of a scrutiny override earlier in the year. Some four months following our last Report, the Government only now writes to inform us that the Council Decision on conclusion is due to be voted on in Council and requests clearance from scrutiny. We only grant a scrutiny waiver on document (b) on the condition that the Minister clarifies promptly some confusing statements the Government has made about the exclusive external competence that the EU is exercising in the Agreement. He is also asked to respond to us on Brexit implications.

The Council Decision on signing is cleared but a conditional scrutiny waiver is granted in respect of the Council Decision on conclusion; further information requested and drawn to the attention of the Culture, Media, and Sport Committee, Justice Committee, Home Affairs Committee and the Joint Committee on Human Rights.

Fisheries: catch and effort limitation for EU vessels in 2017

The EU Total Allowable Catches (TACs) for particular fish stocks have to be agreed by the Council before the start of the calendar year to which they apply, but, because of the need to take into account scientific advice, official texts have often been available too late to be scrutinised



properly. This has been a particular problem for those stocks (including a number of considerable importance to the UK in the North Sea) which are jointly managed with third countries, notably Norway.

Even though no figures are yet available for jointly managed stocks, or those subject to management by regional fisheries organisations, the Commission has sought in this draft Council Regulation to set TACs for 2017, as well as effort (days at sea) limits for certain stocks, the proposals reflecting scientific advice, the EU's commitment to restore stocks to levels which will achieve maximum sustainable yields, and the CFP objectives of ensuring that EU fisheries are ecologically, economically and socially sustainable. The hope is that the proposals will be agreed by the Fisheries Council on 12-13 December, when the Government's objectives will be to obtain the best possible outcome for the UK consistent with following scientific advice, achieving maximum sustainable yields by 2015 where possible (and no later than 2020), and minimising discards.

Since the Committee recognises the desirability of establishing the TACs in question before the start of 2017, it has decided at this stage simply to report the current position to the House, but, in order that as many Members as possible should have a chance to raise points with the Government before any decision is taken, it has expressed the hope that, as in recent years, it will be possible to hold a general debate on fisheries (either in Westminster Hall or preferably on the Floor of the House). It has also commented that, whilst this would in any case be desirable as regards 2017, it would be of particular value at this time, as it would enable the Government to share its thinking on the sort of arrangements which might apply from 2018 onwards in the light of the referendum on the UK's membership of the EU.

Proposal for a Council Regulation not cleared but scrutiny waiver granted, pending information on the outcome of the European Council meeting.

Documents drawn to the attention of select committees:

(‘NC’ indicates document is ‘not cleared’ from scrutiny; ‘C’ indicates document is ‘cleared’)

Business, Energy and Industrial Strategy Committee: Digital Single Market: Consumer contract rights [(a) Proposal for a Directive (b) Proposal for a Directive (NC)]

Culture, Media and Sport: EU-US data transfer for law enforcement purposes under the Umbrella Agreement [Proposed Council Decisions on (a) the signing (C) and (b) the conclusion (NC but a conditional scrutiny waiver granted) of an Agreement]

Environment, Food and Rural Affairs Committee: Fisheries: catch quotas and effort limitation for 2017 [Proposal for a Council Regulation (NC) - scrutiny waiver granted]

Exiting the European Union Committee: Establishing a Security Union: first progress report [Commission Communication (C)]; Mandatory transparency register for EU Lobbying [Proposal for an Interinstitutional Agreement (NC)]; Regulation of new psychoactive substances [(a) Proposal for a Regulation (b) Proposal for a Directive (c) Proposal for a Regulation (NC)]; Comprehensive Economic Trade Agreement (CETA) between the EU and Canada [Council Decisions on (a) the signing (b) the provisional application and (c) the conclusion of CETA (NC)]



Home Affairs Committee: Establishing a Security Union: first progress report [Commission Communication (C)]; Regulation of new psychoactive substances [(a) Proposal for a Regulation (b) Proposal for a Directive (c) Proposal for a Regulation (NC)]; EU-US data transfer for law enforcement purposes under the Umbrella Agreement [Proposed Council Decisions on (a) the signing (C) and (b) the conclusion (NC but a conditional scrutiny waiver granted) of an Agreement]

International Trade Committee: Comprehensive Economic Trade Agreement (CETA) between the EU and Canada [Council Decisions on (a) the signing (b) the provisional application and (c) the conclusion of CETA (NC)]

Joint Committee on Human Rights: EU-US data transfer for law enforcement purposes under the Umbrella Agreement [Proposed Council Decisions on (a) the signing (C) and (b) the conclusion (NC but a conditional scrutiny waiver granted) of an Agreement]

Justice Committee: EU-US data transfer for law enforcement purposes under the Umbrella Agreement [Proposed Council Decisions on (a) the signing (C) and (b) the conclusion (NC but a conditional scrutiny waiver granted) of an Agreement]