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Sir William Cash MP
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International cooperation to combat match-fixing

[36704] 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 not related to substantive criminal law and judicial cooperation in criminal matters (“non-JHA Decision”)

[36705] 6721/15: 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 (“JHA Decision”)

I am writing to address the points raised by the Committee’s report in response to my earlier correspondence in relation to the Council Decisions for the EU to sign the Council of Europe’s Convention on the manipulation of sports competitions (match-fixing) of 29 November 2015.

Firstly, may I say how mortified I am about the delay in providing an update to the Committee. I have raised this with the Permanent Secretary. It was due to an administrative oversight by officials, that the updates to both the Commons and Lords Scrutiny Committees, as well as the Written Ministerial Statement, were not provided within the expected timeframes. However, lessons have been learned by my Department and, with a new Head of EU Strategy in place and a new EU Scrutiny Coordinator about to take up post, officials are ensuring that appropriate processes are put in place so this is never repeated – this will ensure that my Department complies fully with the Code of Practice in future.



Turning to the specific issues you raised. You asked me to confirm that the EU will only be authorised to act in areas for which it has exclusive competence, to identify the relevant areas, and to indicate whether the Government accepts that it is legitimate for the EU to act in these areas.

The final draft JHA Decision provides in recital 5 that the Member States retain their competence insofar as the Convention does not affect common rules or alter their scope. The EU is only being authorised to sign the Convention as regards matters falling within its competence insofar as the Convention may affect those rules or alter their scope. Therefore the EU is only being authorised to act in areas where it has exclusive competence. The UK considers that it is legitimate for the EU to act where it has exclusive competence, but does not agree that the EU has exclusive competence here.

Both the Convention and the EU legislation referred to in recital 4 to the draft JHA Decision simply set out minimum standards. The UK argued that the JHA Decision was unnecessary and that there should simply be one Decision, covering the non-JHA areas, authorising the EU only to exercise supporting competence. There was some support for the UK's position. The UK, and other Member States, subsequently lodged a minute statement regarding the JHA Decision with COREPER, and will do the same when the next opportunity arises to lodge it with the Council. The statement reads:

“STATEMENT BY THE REPUBLIC OF CYPRUS, THE REPUBLIC OF FINLAND, HUNGARY, THE REPUBLIC OF POLAND, THE REPUBLIC OF SLOVENIA AND THE UNITED KINGDOM

The Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom fully support the Council of Europe Convention on the Manipulation of Sports Competitions (the Convention).

The Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom continue to have doubts as to the existence of EU exclusive external competence in relation to Article 16(1) of the Convention. Article 83(1) of the Treaty on the Functioning of the European Union allows the European Parliament and the Council to establish minimum rules concerning the definition of criminal offences and sanctions in the area of particularly serious crime. In the view of the Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom, signature of the Convention will not affect the uniform application of common EU rules. Both the Convention and the European Union legislation simply set out minimum standards.

Therefore, in the opinion of the Republic of Cyprus, the Republic of Finland, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the United Kingdom, the Council Decision on signing the Convention on behalf of the European Union does not set a precedent concerning the exclusive external competence of the European Union."

You asked me whether I will be seeking to ensure that the substantive provisions of the proposed non-JHA Decision (and not just the recital) make clear that the EU is not authorised to act in areas of shared competence.

The insertion of this wording into the recital was a considerable achievement, and the Government believes that it sufficiently protects the UK's position. A similar statement in the substantive provisions of the non-JHA Decision would be desirable, but we do not think it is achievable bearing in mind the considerable difficulty in getting it into the recital and we do not propose to take the point further. We also want to avoid reopening discussion on the topic now that it has settled in a favourable place.

You may have noted that the Government published a new sport strategy, "Sporting Future: A New Strategy for an Active Nation", in December 2015. This strategy sets out a range of actions and recommendations that the Government will be taking forward and, in terms of protecting the integrity of sport, one of the actions is to sign and ratify the Convention.

I have noted that the Scrutiny Committee has agreed to rescind its predecessors' debate recommendation. The Council Secretariat remains aware that the UK still has a Parliamentary scrutiny reserve, but I hope that this subsequent update further reassures the Committee and now allows you to lift the scrutiny reservation.

This is my final week in the Department before I go on maternity leave, however, both my officials and David Evenett MP, who will be the acting Minister in my absence, will be pleased to assist you with any further queries you may have in relation to this file.

I am copying this letter to Lord Boswell, Chair of the European Union Committee, Eve Samson, Clerk of the ESC, Chris Johnson, Clerk of the EUC, Les Saunders, EGIS, and to Alexander Walford, Nazmeen Chowdhury and Pooja Lakhani, DCMS.

Yours ever



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