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12118/18 PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL discontinuing seasonal changes of time and repealing Directive 2000/84/EC

I am writing on behalf of the Minister for Small Business, Consumers & Corporate Responsibility, Kelly Tolhurst MP, to inform you of the proposed UK position and approach to negotiations on the EU proposal to abolish daylight saving.

The European Commission published a proposal to discontinue seasonal changes of time on 12 September 2018. The proposal would repeal the existing directive on summer time arrangements, which mandates seasonal time changes on specific dates. It proposes new arrangements, whereby seasonal time changes would not happen in future, but Member States would have a choice of whether to remain permanently on summer time or winter time. Member States would, as now, retain competence over which time zone they wish to be in. However, Article 2 of the proposal includes a new requirement to notify the Commission of changes to time zone. The Commission proposes that the new arrangements would come into force in 2019 with Member notifying the Commission of their chosen time zone by April 2019.

The Commission notes in the proposal that the overall impact is likely to differ depending on the geographical situation of each Member State. The northern Member States have a larger variance in available daylight over the course of the year. As one of the more northern Member States, this would lead to a proportionately larger impact on the United Kingdom. It would also affect particular sectors, such as agriculture, energy, health, transport, sport and logistics. The Commission has produced very little evidence in support of the proposal, which in my view falls short of the standard required to justify such a wide-ranging change. The government's assessment of the evidence put forward by the Commission and areas of potential impact are covered in the Analytical Checklist which is appended to this letter.

I consider that in bringing forward the proposal, the Commission has failed to provide sufficient evidence to demonstrate a strong case for changing the existing arrangements. In addition, there is limited assessment of the impacts of a change that would affect every citizen in the EU and a timetable for implementation that is unworkable.

The UK Government has no plans to change Daylight Saving Time, and Government ministers are actively working to convince other Member States to block this proposal.

I will now turn to a number of specific issues which have been raised by both Committees in your deliberations so far on this Directive.

Update on negotiations

A significant majority of Member States have raised concerns about both the content of the proposals or the speed at which the Commission is intending to push them through. At the recent informal Transport Council in Graz which I attended for the UK, both Portugal and Greece also spoke out strongly against the proposal. At that time Cyprus, the Netherlands, Ireland, France and Denmark had not taken a position. There is widespread agreement that the evidence base is lacking to justify this change, and that more time is needed for domestic consultation and implementation, including to ensure that the final arrangement of time zones does not result in a 'patchwork' across the EU. Amendments to the text to provide for a longer implementation and notification period have been proposed and gained broad support. However, negotiations are ongoing in Council and in the European Parliament.

Legal base

We believe that the Commission is able to bring forward proposals relating to daylight savings, such as further harmonisation, under Article 114 TFEU. The existing Directive (2000/84/EC) was introduced under the predecessor of this legal base. However, it is clear to me that this new proposal would not change the level of harmonisation across the EU. It would simply change the type of harmonisation and with little evidence that it would improve conditions for the functioning of the internal market. We therefore do not believe that it is appropriate to bring these proposals forward under this legal base as such benefits have not been demonstrated by the Commission.

In my view the case for change has not been made and the principles of subsidiarity and proportionality have not been met. Given this Directive would not increase the degree of harmonisation, there is no justification for EU level action.

The European Commission's consultation

The Commission brought forward the proposal following a public consultation in July and August 2018 and increasing interest from the European Parliament. However, less than 0.02% of the UK population responded.

It is not standard practice to publicise European Commission consultations, and therefore, we did not do so.

Devolved Administrations

Timescales, time zones and the subject matter of the Summer Time Act 1972 are reserved to Westminster for Scotland and Wales. There is no equivalent reservation or exception for Northern Ireland, so it is within the gift of the Executive and Assembly to change the arrangements as long as they remain compliant with EU law, for which the UK Government is responsible. The Summer Time Order 2002, which implements the last Directive on this subject, is a single instrument which extends to Great Britain and Northern Ireland.

All the Devolved Administrations have an interest in these proposals. Historically, the Scottish Government's view has been that the current system of daylight saving should be maintained to avoid putting practical difficulties in the way of those making a living in northern and rural areas.

My officials are working with officials in all the Devolved Administrations to understand the potential impacts. I have also written to the Devolved Administrations with an update on the proposals and have asked them to share with me any further views that they have on the proposals.

Timetable

In order to meet the Commission's timetable, the intention would be for a General Approach to be agreed in December. The Presidency has already indicated that this will not be possible. The next available opportunity would likely be in Transport Council, anticipated to be in March 2019.

Given the government's position set out above to oppose this Directive, we do not consider it necessary to consult on this Directive. As I have stated above, we have no plans to change Daylight Saving Time.

EU exit

We have been clear that the implementation period should be based on the existing structure of EU rules and regulations, so that people and businesses only need to make one set of changes as we move to our future partnership. Of course we need to discuss how all of this will work in practice in the next phase of the negotiations, including how we'll contribute UK views and share expertise during the period. Beyond the implementation period, the UK's relationship to EU legislation will be a matter for negotiations on the future relationship.

I hope that I have provided enough clarity over our position that scrutiny can be lifted, or a waiver provided, to enable us to vote on this proposal if necessary. Let me be clear, we have no plans to change the current arrangements and will continue to oppose this Directive.

I am copying this letter to Sir William Cash, Chair of the Commons European Scrutiny Committee, Les Saunders (DExEU) and Callum Gray (BEIS).

A handwritten signature in black ink, appearing to read 'Henley', with a large, stylized flourish below the name.

Rt Hon Lord Henley

