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House of Commons
London
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5623/17 and 5705/17: Proposed Regulations adapting remaining legal acts in JHA and non-JHA fields using pre-Lisbon comitology to post-Lisbon delegated and implementing acts procedure

I am writing to update you on a further three Friends of Presidency (FoP) meetings since my last letter, looking at the proposed regulations to adapt acts using pre-Lisbon comitology to the post-Lisbon delegated and implementing acts procedure. During these meetings, a full General Approach and a possible way forward in trilogue negotiations was discussed.

As outlined in my previous letter, this exercise is intended to align existing tertiary legislation to the new post-Lisbon tertiary legislation methodology. The substance and effect is not being amended, but this tertiary legislation will instead become subject to the same updating procedures as apply to other, post-Lisbon Regulations. These changes are merely a technical adjustment forming part of a wider effort to streamline legislation, which the UK supports.

On 26 October and 23 November, two FoP meetings took place to discuss six acts in total. Five of the acts, three of which were in the non-Justice area and a further two in the Justice area, were not covered in the partial General Approach agreed at General Affairs Council on 20 March 2018. The FoP meetings also reviewed one act that was covered in the partial General Approach, in light of a new Commission proposal in May 2018.

Following the FoP meetings, the Presidency proposed a full General Approach on 12 December in an effort to ensure that a General Approach was agreed before the end of the year. Subsequently, the General Approach was approved at Council on 20 December by qualified majority vote, on which the UK abstained as there was not enough time to write to seek clearance.

The new General Approach includes the removal of four acts from the exercises following new Commission proposals to replace these pre-Lisbon directives and regulations. As these new proposals use post-Lisbon procedures, there is no need for these acts to be considered in this exercise. These were Act 98 (Motor Vehicle Directive) and Act 126 (Road Infrastructure Directive), as well as Act 1 (Cooperation Between Courts Regulation) and Act 3 (Extrajudicial Documents Regulation) from the Justice area. In addition to the removal of these four acts, the General Approach amends two acts - Acts 29 and 30 (Natural Gas Directives), so that they better reflect the views of Member States.

During the most recent trilogue discussions, the Commission proposed that, in light of the EP elections and the appointment of a new Commission in 2019, the institutions should align the acts where there is agreement amongst all three institutions before the EP elections in May 2019. The EP is open to agreeing to this approach, on the condition that it is guaranteed that the remaining acts will not be withdrawn.

The UK Government welcomes any move to reach agreement on the alignment of these acts and the UK would look to support this in the future.

The Presidency is seeking to reach final agreement on this exercise at a Council in February 2019. In order for the UK to support this Commission proposal, I am asking for scrutiny clearance.

I am writing in similar terms to Lord Boswell, Chairman of the Lords European Union Committee; the clerks of both committees and Les Saunders, Department for Exiting the EU.

A handwritten signature in blue ink, appearing to read 'Martin Callaghan', with a long horizontal flourish extending to the right.

Lord Callanan
Minister of State for Exiting the European Union