



Department for  
Business, Energy  
& Industrial Strategy

Kelly Tolhurst MP

Department for Business, Energy & Industrial  
Strategy  
1 Victoria Street  
London  
SW1H 0ET

T +44 (0) 20 7215 5000  
E [enquiries@beis.gov.uk](mailto:enquiries@beis.gov.uk)  
W [www.gov.uk](http://www.gov.uk)

Our ref:  
Your ref:

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Lord Boswell of Aynho  
Chair  
European Union Select Committee  
House of Lords  
London, SW1A 0PW

## **12118/18: PROPOSAL FOR A DIRECTIVE DISCONTINUING SEASONAL CHANGES OF TIME AND REPEALING DIRECTIVE 2000/94/EC**

Thank you for your letter of 21 December 2018 to my colleague Oliver Henley. I note your requests for further information about aspects of this file. In addition to answering your specific questions, I would like to provide the Committee with a full update on negotiations on the proposals.

### Update on proposals

There have been a few developments since we were last in touch with your Committee. The Transport Council met on 3 December 2018 and received a progress report. This includes the Austrian Presidency's revised text which postpones the implementation of the Directive by two years until April 2021. This text also increases the notification period for any changes to Member States' time zones from 6 months to 18 months. The Government supports any moves to extend the transposition period. However, this does not affect our overall position on the Directive which is to continue to strongly oppose.

The Secretary of State for Transport represented the UK at Transport Council. The Austrian Presidency acknowledged that Member States need more time to formulate a position. Many Member States reiterated their existing positions on the proposals but there was no substantial discussion. Some Member States continue to be concerned about the potential for new time borders with neighbouring countries.

There have been no further meetings of the Land Transport Working Party and therefore no further negotiations have taken place. It will now be for the Romanian Presidency to decide how to take the proposals forward. We understand from UKRep that the Romanian Presidency will not organise any working group meetings on the proposal until the second half of its Presidency. They plan to hold an informal Transport Council on 26-27 March 2019. We expect that this meeting will provide some indication of how the Presidency will take the proposals forward. The next full meeting of the Transport Council is on 6 June 2019. It is not yet clear whether the proposals will go to General Approach at that meeting. I will continue to update your Committee on the progress of negotiations.

We have identified several Member States who are opposed to the proposals or have not yet made their final decisions. Oliver Henley has written to Ministers in each of these countries setting out our concerns and inviting them to join discussions with us about the future of the

proposals. We are part of a like-minded group of Member States opposed to the Commission's proposals.

### Legal Basis

I would now like to address the legal basis of the proposals. Article 114 TFEU is the legal basis for measures approximating national laws which have as their object the establishment and functioning of the internal market. It is a far-reaching power, that can be used to harmonise national laws in a wide variety of areas.

However the power of TFEU114 is not unlimited. It is not enough simply to show that there are disparities between national laws (or as in this case that some Member States are unsatisfied): it must also be shown that removing those disparities (or changing the means of harmonisation) would improve the functioning of the internal market. This means that the Commission does not have a general power to regulate the internal market, and measures must genuinely have as their object the improvement of the conditions for the establishment and functioning of the internal market. Whilst Article 114 is the correct legal base to bring forward proposals such as these, there are legitimate concerns that these specific proposals do not improve the functioning of the internal market. The Commission has produced insufficient evidence to justify the need the change. Therefore, in the Government's view, the use of Article 114 to advance these proposals is not justified. We have raised these points in Council negotiations.

### Devolved Administrations

We wrote to the Devolved Administrations (DAs) in November 2018. My officials have also been in contact with their opposite numbers in all three administrations. I can confirm that all three DAs support the UK Government position that the current system of daylight saving should be maintained. The Scottish Government believes that the proposed Directive would create practical difficulties for those making a living in northern and rural areas. They have told us that the proposed Directive would have a particular impact on the farming community and other outdoor workers and could also have a negative effect on Scottish rural business in general. The Welsh Government is concerned about the Directive's potential impact on various aspects of life in Wales including agriculture, energy, health, schools and transport. Officials in the Northern Ireland Executive have similar concerns.

I hope this information satisfies the questions raised.

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



**KELLY TOLHURST MP**

Minister for Small Business, Consumers & Corporate Responsibility