



Department for
Business, Energy
& Industrial Strategy

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Department for Business, Energy &
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1 Victoria Street
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Sir William Cash MP
Chairman
European Scrutiny Committee
House of Commons
London
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09 January 2019

Dear Sir William,

15950/17 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL laying down rules and procedures for compliance with and enforcement of Union harmonisation legislation on products and amending Regulations

Thank you for reviewing this file on 21 November 2018 and your conditional waiver. You requested an update on the outcome of the Coreper meeting on 23 November, and an outline of the Government's next steps. The proposal is now in trilogues and there has been significant progress on this proposal since that meeting and I wanted to be able to update you with the latest information from the 6 technical and 3 political trilogues which took place in December.

At Coreper on 23 November, Article 4 (Requirement to have a person in the EU responsible for compliance) was discussed. The UK supported other Members States' interventions to remove the article, but there was insufficient support for removal and the Council adopted the revised text drafted by the Working Group. The Council text is an improvement on the Commission's original as it better targets the provisions of Article 4 towards products representing a risk to the consumer. However, it is worth noting that the European Parliament Mandate supports the original scope of the proposal where Article 4 applies to all harmonised Union legislation.

Overall, the Council's General Approach is more proportionate and better preserves Member State competency than the Commission's original proposal and is much more aligned to the UK's position than the European Parliament's Mandate. Trilogue negotiations so far suggest that the European Parliament may be willing to move towards the Council's position on some articles, notably on Article 4. However, on others the Council may move towards Parliament's position. Examples include Article 5 (Declaration of conformity), Article 15 (Market surveillance measures) and Article 20 (Union testing facilities). It is not clear whether the amendments made by the Council Working Group to

Article 31 (Union Product Compliance Network) will be retained through the trilogue process. Given the differences between the Council and Parliament positions on a number of articles, it is too soon to have clarity on what the final compromise text will look like.

The new Romanian Presidency is committed to finalising the proposal as soon as possible. Further trilogues are scheduled through January with a view to securing final agreement in the first week of February. We anticipate it going before the Competitiveness Council on 18-19 February.

The UK Government supports the overarching principles of the proposal, but we are awaiting the compromise text before taking a view on whether the proposal is sufficiently risk-based. We ask that scrutiny be lifted or waived so that the UK can take a position of opposition or abstention, depending on how trilogue negotiations develop and what provisions are secured or conceded in the final text.

I am copying this letter to the Chair of the House of Lords European Scrutiny Committee, Lord Boswell, Les Saunders, DExEU, and to Callum Gray, Departmental Scrutiny Coordinator for BEIS.

yours ever,



Kelly Tolhurst MP

Minister for Small Business, Consumers & Corporate Responsibility