



Home Office

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Sir William Cash MP
European Scrutiny Committee
House of Commons
London
United Kingdom
SW1A 0AA

06 MAR 2019

Dear Bill

On 30 November 2018, an Explanatory Memorandum was sent to you on a "Proposal for a Regulation amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the EU". The Committee raised some questions about this document, which were addressed in a letter of 22 January 2019. The Committee has raised further questions, which are addressed below.

The Committee has asked for assurance that Parliament would be informed of, and consulted on, any proposal to change the visa status of EU citizens. Imposing or removing a visa regime on any country, including an EU member state once the UK has left the EU, would require an amendment to the Immigration Rules. Changes to the Immigration Rules are laid before Parliament for forty days and either House may disapprove of the statement of changes. In those circumstances, the Home Secretary must bring back an amended set of rules within forty days and re-lay them before Parliament for a further forty days.

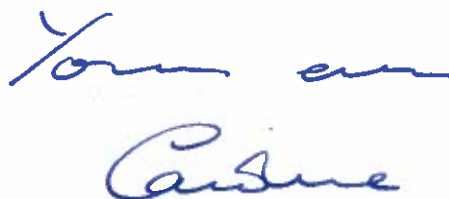
The Committee has asked for the Government's view on the proposed amendments, particularly in relation to calls on the European Commission to "monitor the respect of the principle of reciprocity on a continuous basis". The amendments in the European Parliament report reiterate the principles of the reciprocity mechanism as set out in [Regulation \(EU\) 1289/2013](#), which entered into force in January 2014. Our view is that this doesn't change the material effect of the proposal, as our proposals set out in the Immigration White Paper intend to treat all EU Member States equally and EU citizens won't need visas for short stay.

The Committee has also asked for a copy of the negotiating mandate agreed by COREPER, which is attached with this letter, and for comment on the significance of any changes made, particularly towards Gibraltar. The Government welcomes the fact that this measure provides certainty for British nationals, including those in Gibraltar. However, the language used on Gibraltar is unacceptable, specifically the references to Gibraltar as a colony; and to a 'controversy' over the sovereignty of Gibraltar. The UK is certain of its sovereignty over the whole of Gibraltar and the current wording does not reflect the modern and mature relationship between the UK and Gibraltar, freely determined by the people of Gibraltar in a 2006 referendum.

The Government believes it would be more appropriate to use language adapted from the draft Withdrawal Agreement's Gibraltar Protocol, which both the UK and EU (including Spain) have agreed to, such as: "This is without prejudice to the respective legal positions of the Kingdom of Spain and the United Kingdom with regard to sovereignty and jurisdiction" and recommends this wording replace all the wording currently in the draft footnote. We have laid a Minute Statement and made an intervention expressing our concern, and we continue to explain our position to the language on Gibraltar with EU counterparts.

Finally, the Committee has also asked for an update on the progress of trilogue negotiations with the European Parliament. The first political trilogue took place on 12 February and several have taken place since, most recently on Wednesday 27 February. As yet there is no agreement, but the European Parliament would like to bring any compromise agreement to the second plenary session, taking place week commencing 25 March.

I am copying this letter to Lord Boswell of Aynho chair of the Lords EU Select Committee, Pippa Patterson, Clerk to the Lords Committee; Lynn Gardner, Clerk to your Committee; Les Saunders, the Department for Exiting the European Union; and Alex Bernal, Scrutiny Coordinator, Home Office.

A handwritten signature in blue ink, appearing to read 'Tom an' on the top line and 'Caroline' on the bottom line.

**Rt Hon Caroline Nokes MP
Minister of State for Immigration**