

EUROPEAN UNION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Restrictions on Treaties and Decisions Relating to EU

Restrictions relating to other decisions under TEU or TFEU

Section 8: Decisions under Article 352 of TFEU

89. The Council can use Article 352 TFEU (sometimes referred to as the broad ‘enabling clause’) to adopt measures in order to attain one of the EU’s objectives, but only where the existing Treaties have not provided the necessary powers to do so already, and so long as the measure concerned remains within the confines of the EU’s existing competence. *Subsection (1)* provides that any one of the conditions in *subsections (3), (4) or (5)* needs to be satisfied in relation to an Article 352 decision.
90. *Subsection (3)* contains the general rule which is that the UK may not agree to a decision under Article 352 TFEU unless the decision has been approved by an Act of Parliament, which specifies the decision to be agreed.
91. *Subsection (4)* provides for the Parliamentary approval of urgent or emergency uses of Article 352 without the need for an Act of Parliament. Article 352 has been used in the past for urgent or emergency uses, where rapid EU action has been agreed but where there was no explicit legal basis on which to base that action. *Subsection (4)(a) and (b)* stipulates that the UK may agree to the adoption of a measure based on Article 352 in urgent or emergency cases if, in each House of Parliament, a Minister moves a motion that the House approve the Government’s intention to support a specified measure on the grounds of urgency, and both Houses of Parliament agree to the motion without amendment.
92. *Subsection (5)* stipulates that an Act of Parliament would not be required for any Article 352 proposal which satisfies any of the exemptions listed in *subsection (6)*. The exemptions in *subsection (6)* seek to prevent unnecessary Acts of Parliament to approve measures which have been agreed in substance under previous measures using the Article 352 TFEU legal base. They cover the following circumstances:
- a) any proposal using Article 352 TFEU as its legal base which is, in substance, the same as a previous measure agreed by the UK;
 - b) an extension in time of an existing Article 352 TFEU measure, for example a measure that has a three-year timeframe but on which it is decided to extend the measure for a further three years;
 - c) an extension in breadth of an existing Article 352 TFEU measure to incorporate another Member State or third country, such as a measure that proposes to repeat an existing training programme in a third country to safeguard against counterfeiting of the Euro in another third country;
 - d) any proposal to repeal an existing Article 352 measure; and

*These notes refer to the European Union Act 2011
(c.12) which received Royal Assent on 19 July 2011*

- e) any proposal to combine a number of existing Article 352 measures into one EU legal instrument or to consolidate several amendments of an existing measure in one text.
93. If a proposed use of Article 352 relates only to one or more of these exempt purposes, *subsection (5)* provides that a Minister may lay a statement before Parliament. This statement must specify the draft decision and state that, in the Minister's opinion, the decision relates only to one or more of the exemptions. As with all Ministerial decisions, it would be possible for a member of the public to challenge the decisions of the Minister in such a statement.
94. *Subsection (7)* provides that, where the Government has previously relied upon the emergency exemption in *subsection (4)* to agree an Article 352 proposal, the Government cannot then seek to rely upon the first two exemptions set out in *subsection (6)*. In other words, the Government would not be able to seek a further exemption to prolong an existing Article 352 measure, if that measure was adopted originally because it was considered urgent. In the case of a subsequent proposal to prolong or renew an 'urgent' measure, an Act of Parliament would be required.