

EUROPEAN UNION (APPROVALS) ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the European Union (Approvals) Act 2017 which received Royal Assent on 7 December 2017 (c. 35).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

Table of Contents

Subject	Page of these Notes
Overview of the Act	2
Policy background	2
The draft decisions on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the European Union Agency for Fundamental Rights.	2
The draft decisions to sign and then conclude a competition Agreement between the European Union and the Government of Canada (the Canada decisions)	3
Legal background	4
The Fundamental Rights Agency Decisions	4
The Decisions on the EU-Canada Competition Agreement	4
Territorial extent and application	5
Commentary on provisions of Act	6
Section 1: Approval of draft decisions under Article 352 of TFEU	6
Section 2: Extent, commencement and short title	6
Related documents	6
Annex A - Hansard References	8

These Explanatory Notes relate to the European Union (Approvals) Act which received Royal Assent on 7 December 2017 (c. 35)

Overview of the Act

- 1 The purpose of the Act is to approve four draft decisions of the Council of the European Union ("the Council"). This is to fulfil a requirement in section 8 of the European Union Act 2011 ("2011 Act") which requires Parliament to approve draft decisions made under Article 352 of the Treaty on the Functioning of the European Union ("TFEU"). Parliamentary approval will enable the United Kingdom to vote in favour of the draft decisions.
- 2 The first draft decision is on the participation of the Republic of Albania as an observer in the work of the European Union Agency for Fundamental Rights.
- 3 The second draft decision is on the participation of the Republic of Serbia as an observer in the work of the European Union Agency for Fundamental Rights.
- 4 The third and fourth draft decisions are to sign and then conclude an Agreement between the European Union and the Government of Canada that will allow enhanced cooperation between the European Commission and the Canadian Competition Bureau on competition matters.

Policy background

The draft decisions on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the European Union Agency for Fundamental Rights.

- 5 The EU Fundamental Rights Agency ("the FRA") was established in 2007 by Regulation 168/2007 EC ("the Regulation"). Its function is to provide assistance and expertise on fundamental rights to the EU institutions and Member States. It collects and analyses data across the EU and provides advice by way of reports and opinions, raising awareness of fundamental rights.
- 6 Under Article 28 of the Regulation, the FRA is open to the participation of candidate countries as observers. The draft decisions are on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the FRA. The draft decisions will not, themselves, confer observer status. Instead they establish an EU position at other bodies, the EU-the Republic of Albania Stabilisation and Association Council and the EU-the Republic of Serbia Stabilisation and Association Council. Participation as observers, and the conditions of doing so, are determined by the respective Stabilisation and Association Councils.
- 7 The draft decisions are based on Articles 218(9) and 352 of TFEU. They have been proposed by the European Commission and can be made by the Council acting unanimously after obtaining the consent of the European Parliament.
- 8 The proposal includes the European Commission's estimate of the contributions that Albania and Serbia will be making to the EU budget in order to participate in the FRA. The figures for Albania are EUR 160,000 for Year 1, EUR 163,000 for Year 2 and EUR 166,000 for Year 3. The figures for Serbia are EUR 180,000 for Year 1, EUR 183,000 for Year 2 and EUR 186,000 for Year 3.
- 9 The draft decisions were deposited in Parliament on 9 March 2016. They were cleared from scrutiny by the House of Commons European Scrutiny Committee at its meeting on 13 April 2016 and by the House of Lords Europe Select Committee on 12 April 2016.
- 10 The text of the draft decisions is now settled and it is intended that the proposals are concluded in the Council as soon as possible.

The draft decisions to sign and then conclude a competition Agreement between the European Union and the Government of Canada (the Canada decisions)

- 11 The EU and Canada have cooperated in the area of competition policy enforcement since 1999 (pursuant to an existing cooperation agreement).
- 12 The draft decisions concern the replacement of the existing EU-Canada competition enforcement cooperation arrangement, with a new agreement that includes the exchange of information gathered by their respective competition authorities during antitrust and merger investigations (the new Agreement). The Commission may share such information with Member States' competition authorities (in the case of the UK, the Competition and Markets Authority (CMA)).
- 13 The new Agreement in practice means that information obtained during competition enforcement investigations may be discussed and transferred between the European Commission and the Canadian Competition Bureau. The European Commission states that the absence of the possibility to exchange information has become a major impediment to effective cooperation as bilateral cooperation between the European Commission and the Canadian Competition Bureau has become deeper and more frequent. The ability to share information is intended to increase the ability of both organisations to conclude competition enforcement investigations efficiently.
- 14 In cases where a UK company is involved in an investigation undertaken by both the European Commission and the Canadian Competition Bureau into the same merger or anticompetitive conduct, the new Agreement would mean that information provided by the UK company to one competition authority would not necessarily have to be provided again to the other party's competition authority. Following the UK's exit from the European Union, UK companies operating in the EU will still be subject to the jurisdiction of the European Commission in antitrust investigations and, where the thresholds are met, in merger investigations in the same way as for other non-EU companies operating in the EU. Information relating to UK companies operating in the EU would therefore still be transferable under the new Agreement.
- 15 The draft decisions are based on Articles 103 and 352 of TFEU. They have been proposed by the European Commission and can be made by the Council acting unanimously after obtaining the consent of the European Parliament.
- 16 The draft Council decisions to sign and conclude the new Agreement were deposited in Parliament on 6 July 2016. The Department for Business, Energy and Industrial Strategy submitted an explanatory memorandum covering the draft decisions on 12 August 2016. The documents were cleared by the European Union Committee of the House of Lords on 25 August 2016. The European Scrutiny Committee considered the documents at its meeting on 12 October 2016 and assessed them as politically important. The documents were not cleared from scrutiny. Further information was requested on whether the Government would seek to participate in the new Agreement after the UK withdraws from the EU and, if so, how it may be possible to secure its continuing application. The documents were drawn to the attention of the Business, Energy and Industrial Strategy Committee. The Minister for Small Business, Consumers, and Corporate Responsibility (Margot James MP) wrote to the Chair of the European Scrutiny Committee (Sir William Cash MP) on 24 October outlining the options for international cooperation on competition law enforcement once the UK leaves the EU. The European Scrutiny Committee considered the documents again on 14 December 2016 and assessed them as politically important. The documents were cleared from scrutiny and drawn to the attention of the BEIS Committee and the Treasury Committee.
- 17 The text of the draft decisions is now settled and it is intended that the proposals are concluded in the Council as soon as possible.

These Explanatory Notes relate to the European Union (Approvals) Act which received Royal Assent on 7 December 2017 (c. 35)

Legal background

- 18 Article 352 TFEU allows the EU to act where there is no specific applicable treaty base, as long as this does not entail harmonisation or affect the Common Foreign and Security Policy. Proposals made under Article 352 TFEU require the unanimous approval of Member States and the consent of the European Parliament.
- 19 Under section 8(1) of the 2011 Act, a Minister cannot vote in favour of an Article 352 measure unless one of subsections (3) to (5) is complied with. Subsection (3) provides that a Minister may only vote in favour of an Article 352 decision where the draft decision is approved by Act of Parliament. This requirement does not apply where urgent approval is required (subsection (4)) or where the draft decision relates to an exempt purpose (subsection (5)), as defined in subsection (6). Neither of these subsections in the 2011 Act applies to the FRA or Canada decisions, so an Act of Parliament is needed before the UK Government may vote for their adoption in the Council.

The Fundamental Rights Agency Decisions

- 20 Under Article 28(1) of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, the FRA is open to the participation of candidate countries.
- 21 Under Article 2 of the Regulation, the FRA's objective is to provide the relevant institutions, bodies, offices and agencies of the European Union and its Member States when implementing European Union law with assistance and expertise relating to fundamental rights.

The Decisions on the EU-Canada Competition Agreement

- 22 These proposals derive from a Council mandate of 9 October 2008 in which the European Commission was authorised to start negotiations to replace the existing cooperation agreement between the EU and Canada in competition matters.
- 23 The legal bases for the Canada decisions are Articles 103 and 352 TFEU. Article 103 is the legal basis for the implementation of Article 101 (which prohibits anti-competitive agreements) and Article 102 (which prohibits abuse of dominance). The legal bases for Regulation 139/2004 (the Merger Regulation) are Articles 103 and 352 and the proposed new Agreement with Canada covers cooperation in merger investigations.

Territorial extent and application

24 All the provisions in the Act extend to the whole of the United Kingdom.

Commentary on provisions of Act

Section 1: Approval of draft decisions under Article 352 of TFEU

- 25 Section 1(2)(a) provides for the approval of the draft decisions of the Council of the European Union under Article 352 of the TFEU on the participation of the Republic of Albania and the Republic of Serbia as observers in the work of the FRA.
- 26 Section 1(2)(b) provides for the approval of the draft decisions to sign and conclude an agreement between the European Union and the Government of Canada regarding the application of their competition laws.

Section 2: Extent, commencement and short title

- 27 Section 2 is self-explanatory.

Related documents

- 28 The following documents are relevant to the Act and can be read at the stated locations:

- Draft Council Decision on the position to be adopted on behalf of the European Union within the EU-Albania Stabilisation and Association Council on the participation of Albania as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities thereof, within the framework of Regulation (EC) No 168/2007 (Council Document 9877/16): <http://data.consilium.europa.eu/doc/document/ST-9877-2016-INIT/en/pdf>
- Draft Council Decision on the position to be adopted on behalf of the European Union within the EU-Serbia Stabilisation and Association Council on the participation of Serbia as an observer in the European Union Agency for Fundamental Rights' work and the respective modalities thereof, within the framework of Regulation (EC) No 168/2007: <http://data.consilium.europa.eu/doc/document/ST-9876-2016-INIT/en/pdf>
- Council and Commission Decision of 29 April 1999 (1999/445/EC, ECSC)1: Agreement between the European Communities and the Government of Canada regarding the application of their competition laws: http://ec.europa.eu/competition/international/bilateral/ca2a_en.pdf
- Draft Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10819/16): <http://data.consilium.europa.eu/doc/document/ST-10819-2016-INIT/en/pdf>
- Draft Council Decision on the conclusion of the Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10821/16): <http://data.consilium.europa.eu/doc/document/ST-10821-2016-INIT/en/pdf>

- Proposed new Agreement between the European Union and the Government of Canada regarding the application of their competition laws (Council Document 10819, ADD 1): <http://data.consilium.europa.eu/doc/document/ST-10819-2016-ADD-1/en/pdf>
- Explanatory memorandum prepared by the Department for Business, Energy and Industrial Strategy on Council Decisions 10819/16 and 10821/16: http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/08/EM_10819-16.pdf
- Letter from the Minister for Small Business, Consumers and Corporate Responsibility (Margot James MP) to the Chair of the European Scrutiny Committee (Sir William Cash MP): http://europeanmemoranda.cabinetoffice.gov.uk/files/2016/11/Margot_James_to_William_Cash_-_Agreement_between_the_EU_and_the_Government_of_Canada_Regarding_the_Application_of_their_Competition_Laws.pdf

Annex A - Hansard References

29 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard reference
Introduction	22.06.2017	Vol.626 Col.227
Second Reading	04.07.2017	Vol.626 Col.1043
Committee of the Whole House	10.10.2017	Vol.629 Col.253
Third Reading	10.10.2017	Vol.629 Col.266
Introduction	11.10.2017	Vol.785 Col.262
Second Reading	25.10.2017	Vol.785 Col.952
Committee of the Whole House	13.11.2017	Vol.785 Col.1804
Report	N/A	
Third Reading	27.11.2017	Vol.787 Col.490
Commons Consideration of Lords Amendments	N/A	
Royal Assent	07.12.2017	Vol.787 Col.1149

© Crown copyright 2019

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.



a Williams Lea company

Published by TSO (The Stationery Office), part of Williams Lea, and available from:

Online

www.tsoshop.co.uk

Mail, Telephone, Fax & E-mail

TSO

PO Box 29, Norwich, NR3 1GN

Telephone orders/General enquiries: 0333 202 5070

Fax orders: 0333 202 5080

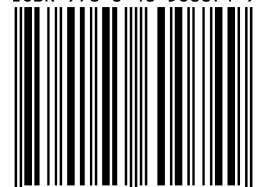
E-mail: customer.services@tso.co.uk

Textphone: 0333 202 5077

TSO@Blackwell and other Accredited Agents

£6.90

ISBN 978-0-10-560074-9



9 780105 600749