



BRIEFING PAPER

Number 07355, 29 October 2015

European Union (Approvals) Bill 2015-16

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Summary

The [European Union \(Approvals\) Bill 2015](#) has two clauses. The first approves the two decisions and the second sets out the extent, commencement and short title of the Bill.

The Bill deals with the parliamentary approval of two draft EU Council decisions:

- draft decision on the participation of the Republic of Macedonia (Former Yugoslav Republic of Macedonia or FYROM) as an observer in the work of the European Union Agency for Fundamental Rights. Macedonia has been a candidate for EU membership since December 2005 and the legislation which set up the Human Rights Agency provides for candidate states to become observers.
- draft decision on a Tripartite Social Summit (TSS) for Growth and Employment,

The purpose of the Bill is to fulfil a requirement in section 8 of the [European Union Act 2011](#) which requires that EU legislative proposals made on the basis of the catch-all Article 352 of the [Treaty on the Functioning of the European Union](#) (TFEU) are approved by an Act of Parliament before the UK Government can support them in the EU Council.

The Bill, if passed, will authorise the Government to agree to the adoption of the two proposals in the EU Council.

1. Background

1.1 The Bill

The Bill deals with the parliamentary approval of two draft EU Council decisions:

- draft decision on the participation of the Republic of Macedonia (Former Yugoslav Republic of Macedonia or FYROM) as an observer in the work of the European Union Agency for Fundamental Rights
- draft decision on a Tripartite Social Summit for Growth and Employment¹

The purpose of the Bill is to fulfil a requirement in section 8 of the [European Union Act 2011](#) which requires that EU legislative proposals made on the basis of Article 352 of the *Treaty on the Functioning of the European Union* (TFEU) are approved by an Act of Parliament before the UK Government can support them in the EU Council.

1.2 Parliamentary process

The Bill ([HL Bill 51](#)) was [introduced](#) in the House of Lords on 25 June 2015. The short [second reading](#) took place on 6 July 2015 and it was sent to Committee in the Lords on 22 July 2015.² It received a [Third Reading](#) in the Lords on 16 September 2015.

The Bill ([HC Bill 73](#)) was introduced in the Commons on 17 September 2015 and will receive a Second Reading on 3 November.

¹ For a summary of the Bill contents, see European Union (Approvals) Bill [HL], [EXPLANATORY NOTES](#)

² See progress of the bill at <http://services.parliament.uk/bills/2015-16/europeanunionapprovals.html>.

2. The two proposals

2.1 Draft decision on the participation of the Former Yugoslav Republic of Macedonia [FYROM] as an observer in the work of the European Union Agency for Fundamental Rights

The [Regulation](#) establishing the EU's Agency for Fundamental Rights was approved on 15 February 2007. It replaced the [European Monitoring Centre on Racism and Xenophobia](#) and began work on 1 March 2007. It is based in Vienna, Austria, and is headed by Morten Kjærum.

The European Scrutiny Committee considered the proposal to create the Fundamental Rights Agency in its [5th Report of 12 October 2005](#) and did not clear it. The document was approved on 27 February 2006. The House of Lords EU Select Committee considered the proposal in March 2006.³

The [proposal](#) in the present Bill was sent to Member States on 22 December 2010 and was discussed at the EU working group on fundamental rights in February 2011, then at the EU-FYROM Stabilisation and Acceptability Council in summer 2011. However, the draft decision was not pursued in the Council at that time, due to Greek opposition linked to the issue of the name - Macedonia,⁴ which has since been lifted.

The proposal is based on Articles 218(9) and 352 TFEU. The Council needs unanimous approval and the consent of the European Parliament (EP) to adopt it.

What the Agency does

The [Europa website](#) sets out the Agency's main roles as follows:

The Agency's goal is to provide relevant institutions and authorities of the Community and its Member States with assistance and expertise on fundamental rights when implementing community law, and to support them in taking measures and formulating appropriate courses of action.

The Agency has the following main tasks:

- Collect, analyse and disseminate objective, reliable and comparable information related to the situation of fundamental rights in the EU;
- Develop comparability and reliability of data through new methods and standards;
- Carry out and / or promote research and studies in the fundamental rights field;

³ HL 155 2005-06, [29th Report, 28 March 2006](#).

⁴ See Greek Foreign Affairs Ministry [explanation](#).

- Formulate and publish conclusions and opinions on specific topics, on its own initiative or at the request of the European Parliament, the Council or the Commission;
- Promote dialogue with civil society in order to raise public awareness of fundamental rights.

The Agency is NOT, however, empowered to examine individual complaints or to exercise regulatory decision-making powers.

The Agency's thematic areas of work have been determined through a five-year Multiannual Framework (Decision (2008/203/EC), adopted by the Council after consultation with the European Parliament. The fight against racism, xenophobia and related intolerance remains included amongst the main priority areas of FRA.

The Agency is working closely with other institutions and bodies, operating at both the national and European level, and is developing a fruitful cooperation with the Council of Europe and with civil society, for instance through the creation of a Fundamental Rights Platform.

The bodies of the Agency are:

- A Director responsible for the day-to-day management of the Agency, the appointment of its staff, and the preparation and implementation of the annual work programme;
- A Management Board responsible for ensuring that the Agency functions effectively and efficiently, as well as for establishing the draft budget and work programmes, and the monitoring of their subsequent implementation;
- An Executive Board providing assistance to the Management Board;
- A Scientific Committee responsible for guaranteeing the scientific quality of the Agency's work.

FRA covers the EU and its 28 Member States. In addition, candidate countries can participate in the work of the Agency as observers (Turkey, the FYROM – Former Yugoslav Republic of Macedonia), following a decision by the relevant Association Council determining the particular nature, extent and manner of their participation in FRA's work. The Council may also invite countries that have concluded a Stabilisation and Association Agreement with the EU to participate in FRA.

The Agency's latest annual report, [Fundamental rights: challenges and achievements in 2014](#), gives information on the kind of work it has been involved in recently.

Macedonia's status in relation to the EU

The Republic of Macedonia (formerly the Former Yugoslav Republic of Macedonia or FYROM) applied to join the EU in the spring of 2004. The [Stabilisation and Association Agreement](#) (SAA), providing a comprehensive contractual framework for EU relations with the country, took effect shortly afterwards. In December 2005 FYROM was granted EU [candidate country](#) status.

In late 2009 citizens of FYROM were granted the right to travel to the [Schengen Area](#) without a visa.

The European Commission has recommended opening negotiations on EU membership with Macedonia and issued an annual [Progress Report](#) in October 2014 assessing the country's progress towards EU accession.⁵

What the draft decision does

Under the 2007 Regulation which established the Human Rights Agency, candidate countries may participate in the Agency as observers.

Under the [draft decision](#) that is the subject of the present Bill, Macedonia would appoint an observer and alternate observer, who may participate in the works of the Agency's Management Board on equal footing with the members and alternate members appointed by Member States, but without a right to vote. Macedonia would also participate in initiatives undertaken by the Agency and make a financial contribution.

The decision will allow Macedonia to participate as an observer in the Agency's work and the Agency to cover fundamental rights issues in the country. This will help Macedonia in its bid for EU membership.

Parliamentary scrutiny

The draft decision was deposited in Parliament on 24 January 2011 and the Commons European Scrutiny Committee cleared it without a report on 2 February 2011 ([17th Report 2010-12](#)). The Lords European Union Committee cleared it at the sift on 1 February 2011 and sent it for information to the Sub-Committees on Foreign Affairs, Defence and Development Policy, and Justice and Institutions.⁶

The *European Union Act 2011* came into force in July and August 2011 and when the proposal re-emerged in December 2010, a scrutiny reserve was put on it pending approval by an Act of Parliament.

Government views on the proposal

The Government's [Explanatory Memorandum of 24 January 2011](#) on the proposal to grant FYROM observer status outlined the Commission's estimate of the contributions Macedonia would make to the EU budget in order to participate in the Agency. The figures were: €165,000 (£142,032) for Year 1, €170,000 (£146,336) for Year 2, and €175,000 (£150,640) for Year 3.

The EM expressed support for the participation of Macedonia in the activities of the EU Agency "aimed at assisting Macedonia in adapting its legislation to Union legislation by monitoring (and reporting on) fundamental rights issues arising from this process, and thereby assisting accession".

The proposal would have no impact on business, charities or the voluntary sector in the UK (so there was no further consultation) and there would be no direct costs to the UK Exchequer.

A similar proposal regarding Croatia ([COM/2008/0571 final](#)) was deposited in Parliament in September 2008 under former Article 308

⁵ Europa, [EU relations with the Former Yugoslav Republic of Macedonia](#).

⁶ Reported in [Progress of Scrutiny, 11th edition](#), EUC-11.

(now Article 352) and before the 2011 Act requiring primary legislation for approval. It received Commons and Lords clearance within three weeks.

2.2 Draft decision on a Tripartite Social Summit for Growth and Employment

What is the Tripartite Summit?

The Tripartite Social Summit (TSS) is a regular forum for meetings of representatives of the [European social partner organisations](#), the European Commission, and the Council, to enable high level discussion between the three parties of employment and social aspects of the European agenda for growth and jobs.

The present formal basis of the TSS is [Council Decision 2003/174/EC](#), which the new [decision](#) would replace, reflecting changes over the last decade.

Reasons for amending the 2003 Decision

The Commission EM sets out the reasons for amending the 2003 decision, which arise largely from institutional changes brought in by the Lisbon Treaty:

- It institutionalised the European Council and created the role of President of the European Council (Article 15 TEU);
- It recognised the role of the TSS as part of the EU social dialogue (Article 152 TFEU);
- It repealed Article 202 ECT, which was the legal basis used to adopt the 2003 Decision (the functions of the Council are now laid out in Article 16 TEU and the principles for comitology are in Articles 290 and 291 TFEU).

Taking the above into account, the main changes to be introduced are:

- The role of the TSS is related to the Europe 2020 agenda for jobs and growth launched in 2010, which replaced the Lisbon agenda for employment and growth.
- The Council delegation now includes the European Council President as joint-chair, alongside the rolling 'Troika' of rotating Member State Presidencies.
- The TSS itself is now recognised as part of EU social dialogue arrangements.
- Name changes to some of the employers' federations are reflected.

Scrutiny in the EU and Westminster

The Council published the draft Decision on 12 November 2013. On 15 April 2014 the European Parliament [approved](#) by 527 votes to 59, with 38 abstentions, in the framework of a special legislative procedure (consent), an interim resolution on the proposal.⁷

⁷ The procedure file can be accessed at [http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0361\(APP\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0361(APP)&l=en).

The proposal cleared UK Parliamentary Scrutiny in both Houses in 2014. The European Scrutiny Committee considered it on 15 January 2014 ([30th Report](#)) and 5 March 2014 ([38th Report](#)).

The Lords European Union Committee cleared it on 7 January 2014 and sent it for information to the Sub-Committee on the Internal Market, Infrastructure and Employment. The Commons European Scrutiny Committee [cleared it](#) on 5 March 2014.

The Council needs to act unanimously to adopt the Regulation. The text of the draft decision has been approved by all other Member States.

Government views on the proposal

The Government [EM of 29 November 2013](#) acknowledged:

... the value of dialogue at high level with European social partners on issues related to the EU 2020 agenda for growth and employment such as the Tripartite Social summit facilitates. Engagement of the social partners can help with building consensus around essential labour market reforms in Member States. The proposal does not have wider implications for the UK, which does not have a national system of social dialogue.

The Government believes there are no direct financial implications from the Commission proposal and no need for formal consultation of social partner organisations.

3. The requirements of the *European Union Act 2011*

3.1 Article 352 TFEU

Article 352 of the [Treaty on the Functioning of the European Union](#) (TFEU)⁸ is as follows:

If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures.

Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.

This Article 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. This Article, referred to as the “enabling clause”, the “flexibility clause” and formerly “la petite revision”, has been controversial in the past. It was the subject of a Commons European Scrutiny Committee report in 2007, “Article 308 of the EC Treaty”.⁹

Draft proposals made under Article 352 TFEU require the unanimous approval of the 28 EU Member States and the consent of the European Parliament. The EP has no power of co-decision under this Article and cannot propose amendments to the draft Decision, but the Council cannot adopt it without the EP’s consent.

3.2 Section 8 of the 2011 Act

TFEU. In accordance with [Section 8](#) of the *European Union Act 2011*, a Minister may only vote in favour of an Article 352 TFEU decision in the EU Council (composed of government ministers from the Member States) if the draft decision has been approved by an Act of Parliament. This was intended to give Parliament the power to veto any extension of EU competence (“competence creep”) into areas not covered by the EU Treaties. But one of its consequences has been that an Act of Parliament is now needed for fairly unimportant decisions for which there is no Treaty base, as well as for the more significant ones.

The Section 8 requirement does not apply where urgent approval is required (section 8(4)) or where the draft decision relates to an exempt purpose (section 8(5)), as defined in section 8(6). Neither of these Sections in the 2011 Act applies to these two proposals, so an Act of

⁸ Formerly Article 308 TEC

⁹ [Twenty-ninth Report of Session 2006-07](#), 13 July 2007

Parliament is needed before the UK Government may support their adoption in the EU Council.

Article 352 TFEU may be the basis for a proposal of considerable significance, with cost and sovereignty implications, or it may be used to approve largely unimportant or non-contentious proposals. In debates on previous such bills some MPs have questioned whether it is a good use of parliamentary time; others believe it is a very good opportunity to scrutinise what is being done in the EU.

In the short Second Reading debate on the current Bill in the House of Lords on 6 July 2015, Baroness Ludford said “This almost makes a mockery of EU affairs and of the EU Act 2011” and asked how many such Acts could be expected.¹⁰ Lord Freud replied that there had been two in 2015 and two in 2014, “so it is not the beginning of the flood that Noah suffered”,¹¹ but adding “we can hope that we do not spend too much time in this House on matters such as this” (c 16).

Germany, like the UK, requires an Act of Parliament to adopt Article 352 TFEU proposals. Under Section 8 of the [Responsibility for Integration Act](#), the German representative in the Council may approve a decision on the adoption of measures based on Article 352 TFEU or abstain from voting on such a decision only after a law to that effect as defined in Article 23(1) of the Basic Law has entered into force. In the absence of such a law, the German representative in the Council must reject the proposal for a decision.¹² A draft law was [published](#) on 4 May to authorise the Macedonia proposal, and the German European Union Committee [reported](#) on it on 25 May 2011.

¹⁰ [HL Deb 6 July 2015, c13](#).

¹¹ *Ibid*, c15.

¹² *Bundestag* information, [IPEX website](#)

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