



European Scrutiny Committee

House of Commons, London, SW1A 0AA

Tel (020) 7219 3292 Email escom@parliament.uk Website www.parliament.uk/escom

From: Sir William Cash MP

11 March 2020

Rt Hon. Harriet Harman MP

Chair of the Joint Committee on Human Rights

The EU's mandate for negotiating a new partnership with the United Kingdom
(Council document 5721/20 + ADD 1) (41058)

I am writing on behalf of the European Scrutiny Committee to invite you to share your initial views on the EU mandate for negotiations with the UK on the future relationship.

Section 13A of the European Union (Withdrawal) Act 2018 empowers the European Scrutiny Committee, after consulting other interested Departmental Select Committees, to put forward a motion for debate on the floor of the House if it considers that EU legislation "raises a matter of vital national interest to the United Kingdom". As the negotiations will involve a significant number of complex, cross-cutting policy areas and establish the framework for future economic and security cooperation between the EU and the UK, we consider that your insights and expertise will be invaluable in helping us to discharge our statutory function under the 2018 Act.

We appreciate that there will be many demands on your time at this early stage in the new Parliamentary session. As you will also be aware, the Prime Minister is seeking to negotiate "the broad outline of an agreement" with the EU by June so that it can be finalised by September. This leaves little time for Parliament to scrutinise the EU's negotiating mandate and, in so doing, feed into and inform the Government's approach. For this reason, we would welcome your initial thoughts on the EU negotiating mandate (agreed by the Council on 25 February 2020) in the policy areas for which your Committee is responsible **by the end of March** so that a debate can take place before the Prime Minister meets with

EU leaders in June. To assist in your deliberations, we suggest that you focus on the scope of the mandate, highlighting any key omissions or areas of concern for the UK, and the potential impact on a vital UK interest. ESC staff stand ready to provide further advice, support and expertise should you or your Committee require it.

I enclose the text of the mandate agreed by the Council of the EU in February as well as the Government's Command Paper setting out its approach to the negotiations.

I am writing in similar terms to the Chairs and Clerks of the following Committees: Business, Energy and Industrial Strategy; Defence; Digital, Culture, Media and Sport; Education; Environmental Audit; Environment, Food and Rural Affairs; Foreign Affairs; Future Relationship with the European Union; Health and Social Care; Home Affairs; Housing, Communities and Local Government; International Development; International Trade; Justice; Northern Ireland Affairs; Public Administration and Constitutional Affairs; Science and Technology; Scottish Affairs; Transport; Treasury; Welsh Affairs; Women and Equalities; Work and Pensions.

W. M. G. L.
B. L.

CHAIR



Joint Committee on Human Rights

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From Rt Hon Harriet Harman MP, Chair

Sir William Cash MP

Chair, European Scrutiny Committee
House of Commons
London, SW1A 0AA

31 March 2020

Dear Sir William,

Thank you for your letter of 11 March asking for the Joint Committee on Human Rights' initial views on the EU mandate for negotiations with the UK on the future relationship.

As I am sure you will appreciate, our committee has had to prioritise work on the human rights implications of the Government's response to the Coronavirus outbreak over the last few weeks. We will turn our minds to the important questions which you raise regarding the scope of the mandate and the potential impact on the UK's vital interests after the Easter recess.

Yours sincerely

Rt Hon Harriet Harman MP
Chair of the Joint Committee on Human Rights



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From Rt Hon Harriet Harman MP, Chair

Sir William Cash MP

Chair, European Scrutiny Committee
House of Commons
London, SW1A 0AA

[by email]

20 April 2020

Dear Sir William,

Thank you for your letter, dated 11 March 2019, requesting the views of the JCHR on the negotiating mandates for the future relationship between the UK and the EU.

We support the European Scrutiny Committee's use of its statutory powers to consult other Committees and to call for a debate in the House. This use of the powers under section 13A of the European Union (Withdrawal) Act 2018 provides an important means of facilitating effective parliamentary scrutiny on a matter of vital national interest.

The JCHR notes the commitment made in the Political Declaration by both the UK and the EU ("the parties") that the future arrangements should be "underpinned by long-standing commitments to the fundamental rights of individuals, including continued adherence and giving effect to the ECHR". Mutual trust in each other's respect for human rights standards will be important in our future relationship with the EU.

The negotiating mandates of each party are intended to build upon the commitments made within the Political Declaration. However, we are concerned that there seems to be a significant divergence between the negotiating positions of each party in relation to how any reference to human rights should be expressed in the agreement.

The EU's position

The EU's 'directives' for the negotiation with the UK, as agreed on 25 February 2020, stipulate that "the envisaged partnership should provide for automatic termination of the law enforcement cooperation and judicial cooperation in criminal matters if the United Kingdom were to denounce the European Convention of Human Rights (ECHR). It should also provide for automatic suspension if the United Kingdom were to abrogate domestic law giving effect to the ECHR, thus making it impossible for individuals to invoke the rights under the ECHR before the United Kingdom's courts."

It is our understanding that “abrogating” the domestic law giving effect to the ECHR refers to a repeal of the Human Rights Act 1998, which incorporated the ECHR into domestic law. However, it would be helpful to clarify the precise meaning of this language, given the potential implications.

We note that although the Member States of the EU are parties to the ECHR, the EU itself has not yet acceded to the Convention. We also note that the requirement for the UK to continue its adherence to the ECHR is unprecedented when compared to the EU’s third country agreements with other states.

The UK’s position

Although the UK Government’s mandate states that cooperation will be underpinned by the importance attached by the UK and EU to safeguarding human rights, it also states that “the agreement should not specify how the UK or the EU Member States should protect and enforce human rights and the rule of law within their own autonomous legal systems”. The UK Government does not, therefore, wish for the agreement with the EU to refer to any specific requirements for continued adherence to the ECHR.

The implications of divergence

On 3 May 2020, the EU Commission’s Head of Task Force for Relations with the UK, Michel Barnier, highlighted various points of divergence between the UK and the EU. In particular, he noted that the UK had informed the EU that they do not wish to commit formally to continue to apply the ECHR and that the UK does not want the Court of Justice of the EU to play a role in interpreting EU law. Michel Barnier warned that if this position is maintained, it would have an immediate and concrete effect on the ambition of our cooperation.

The UK’s refusal to commit to continued adherence to the ECHR may seriously affect the extent of cooperation that is possible with the EU on law enforcement and judicial cooperation. This may have consequences for the exchange of important data, such as biometric data concerning suspects and convicted persons, extradition arrangements, and the UK’s involvement in important institutions such as Europol and Eurojust. All of these mechanisms are important for securing cross-border justice and in protecting the security of the UK.

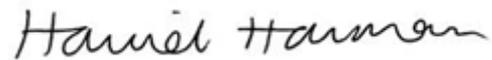
We are concerned that the UK Government’s refusal to make commitments to adhere to the ECHR may signal its future intention to withdraw from the ECHR, or to reform the Human Rights Act in a way that would prevent individuals from being able to bring human rights claims before domestic courts. We note that the Government’s manifesto included a commitment to “update” the Human Rights Act.

It is important that the UK continues to adhere to the ECHR, not only to guarantee the ongoing protection of rights for persons in the UK, but also to set an example to other countries. We do not want to see a regression in rights for individuals in the UK or EU Member States. At the very least, it is important that both parties agree to apply human rights standards that are equivalent to the ECHR. This would provide

reassurance to both parties that fundamental human rights standards would continue to be respected.

Thank you once again for requesting our views on this matter. We look forward to the forthcoming debate on the floor of the House

Yours sincerely

A handwritten signature in black ink that reads "Harriet Harman". The signature is written in a cursive, flowing style.

Rt Hon Harriet Harman MP
Chair of the Joint Committee on Human Rights