



HOUSE OF LORDS

Library Note

Debate on 17 December: European Union (Croatian Accession and Irish Protocol) Bill (HL Bill 59) and European Union (Approvals) Bill [HL] (HL Bill 57)

On 17 December the House is expected to consider the second readings of two Bills relating to the European Union: the European Union (Croatian Accession and Irish Protocol) Bill and the European Union (Approvals) Bill [HL]. The first part of this Note provides summaries of the debates held in the House of Commons on the European Union (Croatian Accession and Irish Protocol) Bill. The second part sets out the provisions in the European Union (Approval) Bill and provides further information about the draft decisions for which it seeks approval.

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Table of Contents

1. Introduction	1
2. European Union (Croatian Accession and Irish Protocol) Bill	1
2.1 Commons Second Reading	1
2.2 Commons Committee Stage	5
2.2.1 Clause 1: Approval of Croatian Accession Treaty	5
2.2.2 Clauses 2 and 3: Approval of the Irish Protocol	8
2.2.3 Clause 4: Freedom of Movement of Croatian Nationals as Workers	9
2.2.4 Clause 5: Parliamentary Control	10
2.2.5 Clause 6: Extent, Commencement and Short Title	12
2.3 Commons Third Reading	13
3. European Union (Approvals) Bill [HL]	15
3.1 Official Journal	16
3.2 Multiannual Framework for the European Agency for Fundamental Rights	17
3.3 European Commissioners	18

1. Introduction

This Library Note provides background reading in advance of the second reading debates in the House of Lords on the European Union (Croatian Accession and Irish Protocol) Bill and the European Union (Approvals) Bill. These debates are scheduled for 17 December 2012. Section two of this Note summarises proceedings on the European Union (Croatian Accession and Irish Protocol) Bill at second reading, committee stage and third reading in the House of Commons. Further information on the background to this Bill, and issues relating to it, is available in the House of Commons Library Research Paper, *European Union (Croatian Accession and Irish Protocol) Bill* (1 November 2012, RP [12/64](#)). This provides background to Croatia joining the EU, commentary on the Bill's clauses, consideration of the possible impact on the UK of Croatia's accession and information about the Irish Protocol. Section three of this Note sets out the provisions of the European Union (Approvals) Bill and provides further information about the draft decisions for which the Bill seeks parliamentary approval.

2. European Union (Croatian Accession and Irish Protocol) Bill

The European Union (Croatian Accession and Irish Protocol) Bill was introduced in the House of Lords on 28 November 2012 and is scheduled to have its second reading on 17 December 2012. This follows completion of its passage through the House of Commons where it passed unamended. The Bill was given a third reading by the Commons on 27 November 2012.

The purpose of this short, six clause Bill is to:

- a) give effect in UK law to the Treaty concerning the accession of the Republic of Croatia to the European Union;
- b) provide Parliamentary approval of the Accession Treaty for the purposes of section 2 of the European Union Act 2011;
- c) provide a regulation-making power to make provision on the entitlement of Croatian workers to work and reside in the UK; and
- d) provide approval for a proposed Protocol to be annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union on the concerns of the Irish people in relation to the Treaty of Lisbon.

(European Union (Croatian Accession and Irish Protocol) Bill: Explanatory Notes, 28 November 2012, para [3](#))

2.1 Commons Second Reading

On 6 November 2012 David Lidington, the Minister for Europe, opened the second reading debate on the Bill. He started by reminding MPs that, over many years, enlargement of the European Union had enjoyed cross-party support in the House of Commons. In this context he explained why the process remained important:

We can look back to the premiership of the noble Lady Baroness Thatcher to see support being expressed for enlargement covering the newly enfranchised democracies beyond what was once the iron curtain, at a time when it was not fashionable or even believed feasible that those countries of central and eastern Europe could become full members of the European family of nations. Today, for the countries of the western Balkans, including Croatia, that process of accession provides a means of entrenching political stability, democratic institutions, the rule

of law and human rights—traditions and values that that part of our continent needs but which were crushed for much of the last 100 years.

(*HC Hansard*, 6 November 2012, col [756](#))

He then set out the basis on which the Government supported Croatian accession:

The United Kingdom's interest in Croatian accession lies partly in the fact that we have a national interest in the long-term political stability of the western Balkans, and partly in the fact that there are economic benefits to expanding the single market. Our trade with the eastern and central European countries continues to grow. To give the House one example, United Kingdom exports to the "emerging Europe" countries of central Europe have trebled over the past 10 years, reaching around £16 billion in 2011. More recently, in the first quarter of this year our exports to countries in the east of Europe have increased by no less than 28 percent, so in economic terms, amidst the current financial crisis, the project of EU enlargement remains as relevant now as it ever has been to our economic as well as our political interests.

(*ibid*, col [760](#))

Mr Lidington moved on to concerns about Croatian accession and reassured MPs that progress was being made:

We expect Croatia to sustain the momentum of six years of significant reform, particularly on judiciary and fundamental rights issues, so that it meets fully all EU requirements by the time of accession. This is something to which I know the Croatian Government are committed. When I visited Zagreb in July this year to discuss the ongoing reform progress, I was impressed with the dedication in evidence, particularly from the Foreign Minister and the Justice Minister of Croatia. They are very aware of the challenges that face their country and they are keen to prove to us as their neighbours and friends, and to their own citizens, that they can make a success of accession. It is on that basis that we look forward to welcoming Croatia to the EU as the 28th Member State.

(*ibid*, cols [760–1](#))

The Minister said he wanted to address some of the specific concerns that had been raised by the European Scrutiny Committee in its report *Croatia: Monitoring the Accession Process* (24 October 2012, [HC 86-xvii](#)). On war crimes, Mr Lidington said Croatia was "fully cooperating" with the International Criminal Tribunal of the Former Yugoslavia. Domestically, however, progress on the backlog of domestic war crime cases had been "too slow" and that "the Croatians need to devote more resources to that work". The Government's assessment was "that the commitments Croatia made can be described as 'almost complete' but that more progress is still required. We are confident, given the commitments we have had from the Croatian Justice Ministry, that that acceleration will have taken place by the time we reach the expected accession date" (*HC Hansard*, 6 November 2012, col [763](#)).

On border controls, Mr Lidington said Croatia had been making "good progress". He stated:

She already has 81 fully operational border crossing points and has given assurances that the necessary infrastructure and technology will be in place to support those crossing points and ensure strong border management by the time

she accedes to the EU. The most important outstanding element is the need to provide formal border crossing points in the Neum corridor, which is the very narrow stretch of Bosnian territory that divides Croatia. The Croatians have told us that they are on course to complete the border crossing points in that important area next spring.

([ibid](#))

On reforms to its judiciary and courts, Mr Lidington acknowledged that Croatia was still finding it a “battle to reduce the backlog of civil cases” but said it was important not to be misled by the numbers involved:

According to the figures that I have for the first half of 2012, roughly 844,000 new civil cases reached the Croatian courts; in the same period, roughly 836,000 cases were resolved. Although the total number of cases pending increased slightly, it would be wrong to think that 800,000-plus cases simply sat there in the ‘pending’ tray and never moved. The truth is far from that. There has been a reduction in the backlogs in respect of the older cases—those over ten years old or over three years old. The Croatians have also assigned a significant number of additional judges to focus on the backlog. Again, although we accept that further work needs to be done, we think that Croatia has made good progress and is committed to completing it. We do not believe that that is a reason to delay its accession.

([ibid](#), col [765](#))

On migration, the Minister said that with a population of 4.5 million the potential impact of Croatian accession would be “relatively small” but that “appropriate immigration controls” would nonetheless be “crucial for stability in our labour market, particularly in the current economic climate” ([ibid](#), cols [765–6](#)). The Home Office had already published its intention to “impose transitional controls on Croatian workers” under the terms provided in the Accession Treaty. The Minister explained that for the first two years after accession Member States could apply controls on access to their labour markets by Croatians, either by national action or through bilateral agreements. From the third to the fifth year Member States could then either continue this or grant Croatians free movement. Should a Member State find their domestic labour market subject to “serious disturbance” they could apply controls for a further two years—totalling a maximum of seven years after accession. Mr Lidington said the Government intended that “for the first two years at least we would continue with the current arrangements under which Croatian nationals who would qualify to come and work here under the points-based system would be allowed to do so, although we do not envisage further relaxation beyond that” ([ibid](#), col [766](#)).

Mr Lidington closed his comments by welcoming the Irish Protocol, which, he said, was a “series of guarantees given to the Irish people as a condition of their ratification of the Lisbon Treaty”. The Protocol though did “not change the substance or application of the Treaty” but rather “confirms the interpretation of a number of provisions in relation to the Irish constitution” ([ibid](#), col [767](#)).

For the Opposition, Emma Reynolds, Labour MP for Wolverhampton North East, welcomed the Bill and Croatian accession to the EU. Economically, she said, it was “clearly in the UK’s national interest for British companies to have access to the largest single market in the world, with some 500 million consumers, and for that market to continue to grow with enlargement”. Ms Reynolds said she was “confident that British businesses will find new opportunities in a reformed Croatian economy” ([ibid](#), col [769](#)).

However, whilst she welcomed “the transformation of Croatia’s society, economy and democracy” that the adoption of European laws into its national legislation had brought about, Ms Reynolds said she still had “concerns about progress in certain respects”. In particular, she highlighted concerns about its progress in reforming its judiciary and protecting fundamental rights (ibid, col [770](#)). Border security was also important. Croatia’s role in the management of the EU’s south-east border, she argued, would be key to the prevention of illegal immigration and in helping to stop human trafficking into Europe (ibid, col [771](#)). The Opposition, she added, fully supported the Irish Protocol and welcomed the clarification it gave (ibid, col [772](#)). Ms Reynolds concluded:

Croatia’s preparations to join the European Union have been more thorough than in previous accessions. An impressive range of reforms have been introduced and valuable lessons have been learned from previous accessions. Croatia’s accession to the EU will send a signal to the rest of the Balkan countries that their future belongs in the EU, and it will provide encouragement and incentives to those Governments not to let up on the pace of reform, but to root out corruption, reform their political and judicial systems, and modernise their economies.

([ibid](#))

Of the backbench contributions, Jacob Rees-Mogg, Conservative MP for North East Somerset, thought that Croatia was not ready to join the EU, expressing particular concern about Croatian border management and its impact on the free movement of people in Europe. On the Irish Protocol, it showed, Mr Rees-Mogg argued, that the UK had missed an opportunity to address its concerns and repatriate some powers back to the UK:

The crux of the matter is that this was an opportunity for Her Majesty’s Government to ensure that we improved matters with regard to the free movement of people, extended the time for which that could be implemented, and asked the right questions about whether Croatia is ready to join and then delayed that until the right time. We are taking a risk with home affairs and justice by allowing this to go through and by recognising the Croatian justice system when it may not yet be fit. We are not taking the opportunity that the Irish have taken. We should do what the Prime Minister said in 2009 and use every single treaty negotiation to reinforce the repatriation of powers and to ensure that the United Kingdom can govern herself.

(ibid, cols [777–8](#))

Michael Connarty, Labour MP for Linlithgow and Falkirk East, hoped the House would agree to the Bill. However, he thought it was a “great pity” that the accession did not require a referendum to be held as it “not only allows Croatia to enter, but allows protocols to be added to the Lisbon Treaty—that is, to amend it” (ibid, col [779](#)). On Croatian accession, Mr Connarty doubted its readiness for membership in respect of its border management and feared the impact these weaknesses would have on preventing human trafficking. Croatia needed to continue to address these weaknesses, he said, though he did “not have confidence” Croatia’s “approach to the issues that we are discussing will be better than they were before it joined the EU. The factor that is changing things is the attraction of going into the EU, but that will be lost once Croatia goes through that door” (ibid, col [783](#)). In concluding, Mr Connarty said that while he welcomed Croatian membership of the EU he did not do so “blindly”. He added “I worry that those who drive the machine that is the European Commission want enlargement at any cost—regardless of the fact that it might bring in more problems. We have got to stop the Commission from doing this” (ibid, col [784](#)). William Cash, Conservative MP for

Stone, agreed. Croatian accession, he said, was another example of where “the whole of the European Union is enlarged without regard to the impact it will have” (ibid, col [785](#)).

Angus Robertson, SNP MP for Moray, said he was strongly in favour of Croatian membership of the EU but agreed “there was still work to be done”, particularly on war crimes and reforms to the judiciary and court services (ibid, col [786](#)). He pointed out there were however “post-accession safeguard clauses” that were “designed to deal with difficulties that might be encountered after membership” (ibid, col [787](#)). Mr Robertson also voiced support for the Irish Protocol and praised Ireland and its contribution to the EU and UN (ibid, cols [788–9](#)).

Charles Kennedy, Liberal Democrat MP for Ross, Skye and Lochaber, praised Croatia’s development, arguing that the “political and social distance travelled in just a couple of decades” was “immense”. The accession negotiations, he added, “were tough” (ibid, col [798](#)). In respect of the Irish Protocol, Mr Kennedy said it was “worth stressing that the Protocol does not change the content or application of the treaties”. He said he wanted to warn those who “might wonder whether the Bill could be used to prise open the argument over the repatriation of other powers”. The answer, he stated, was “most definitely non, non, non. That was made crystal clear some three years ago, but it is worth underscoring in the debate” (ibid, col [800](#)).

2.2 Commons Committee Stage

Committee stage on the Bill was held on 27 November 2012. The sections below summarise the debates on each clause.

2.2.1 Clause 1: Approval of Croatian Accession Treaty

David Nuttall, Conservative MP for Bury North, moved the first amendment. Amendment 6 would amend clause 1 to exclude the full application of EU law on the free movement of workers seven years after Croatian accession. Mr Nuttall said of the amendment:

Although the Government have made it clear that they intend to take whatever measures they can to stop an influx of Croatian workers during the seven-year transitional period, the risk of such an influx after the transitional period has elapsed nevertheless remains. The amendment would provide a solution to that problem.

(HC *Hansard*, 27 November 2012, col [145](#))

He explained:

Moving for work is likely to be the reason why most Croatians will want to emigrate to the UK, and this amendment focuses on worker immigration. Let us be clear that after the seven-year period has elapsed the UK will have to apply full EU law on the free movement of workers. So a Croatian could move to the UK and compete with a British national for any job, and a Croatian so employed would have the right to reside in the UK. Of course, it is not purely the number of Croatians seeking work that would boost the number of people living within our shores, because the worker could bring their spouse, their children under the age of 21, together with any other dependent children, and their dependent parents and grandparents. While all those parents have the right to reside in the UK

under EU law, they would all be entitled to equal treatment with British citizens, unless EU law stated otherwise. Of course that would include access to state welfare.

(ibid, col [147](#))

Mr Nuttall referred to the lack of estimates of the number of Croatians who would want to work in the UK but insisted: “It is reasonable to assume that once the UK is forced—we have no choice in this matter at the moment—to drop the transitional arrangements, our country could become a very attractive destination for those Croatians who have gone to the trouble of learning English as their second language” (ibid, col [148](#)). He added that a “major factor in determining whether a significant number of Croatians decide to move to the UK is probably the state of the Croatian economy relative to our own”. He referred to figures from EUROSTAT that showed “that unemployment in Croatia is running at about 15 percent, which is almost double the UK’s level. World Bank figures show that Croatia’s gross national income per capita in 2011 was equivalent to \$13,850, compared with a UK figure of \$37,780” (ibid). Returning to the purpose of the amendment he argued: “Our first duty must be to protect the interests of British workers. It does not make logical sense for the Government to argue for stricter controls on immigration on the one hand while agreeing to new EU treaties that will almost certainly lead to thousands and perhaps tens of thousands more workers arriving in the UK on the other” (ibid, cols [149–150](#)).

Keith Vaz, Labour MP for Leicester East and chair of the Home Affairs Select Committee, wanted MPs to debate EU migration “in the context of what has happened before”. He said “if we focus almost exclusively on all the negative aspects of EU migration, we miss the real importance of enlargement and the way in which these countries have made the European Union stronger and wider, and have created more jobs in our country”. He argued that “as a result of Croatia coming in, exports from our country to Croatia will increase, as they have done to other EU countries” (ibid, col [151](#)). In respect of the amendment, he said that the UK was “limited anyway in extending transitional arrangements beyond what has been agreed by the Government”. He wanted however to highlight the arrangements for Romanian and Bulgarian citizens, which would also be applied to Croatians. This had “not been a huge success”. He explained:

I have had representations from the Romanian and Bulgarian ambassadors about the length of time it takes for their citizens to exercise their Treaty rights in order, for example, to get their permits to work in this country—their worker registration cards.

The fact is that it now takes between eight and nine months for a Romanian citizen to write to the UK Border Agency and get approval to work here. I do not believe that this helps our reputation as a country that welcomes people from the EU who want to come here and work legitimately. We are not talking about people coming to work here illegally, or about people who do not wish to comply with the law of this land. We are talking about people who want to pay their tax and national insurance, want to be part of Britain and want to comply with the law. They are having to wait up to eight months just to get their cases seen to by the UKBA.

(ibid)

He said he agreed “the only possible control that the Government could introduce was the seven-year transition” and he thought the Government were “right to introduce it”.

However, he added that “we have to be fair to EU colleagues and say that if their citizens wish to come here to work, we will process their applications for work permits and accession documents quickly”. Ultimately: “if we sign up to a treaty, we have to abide by its words and ensure that, in doing so, we are fair to the other citizens of Europe and treat them as equally as possible” (ibid, col [154](#)).

For the Opposition, Emma Reynolds was in favour of applying a maximum transition period of seven years, as was applied to Romanians and Bulgarians (ibid, col [154](#)). She took issue though with Mr Nuttall’s argument that the UK would necessarily be an attractive option for Croatian workers. She said she agreed with a point made by Angus Robertson arguing it was “somewhat complacent and perhaps misleading to suggest that after the seven-year period the Croatian economy will not have improved and that the unemployment rate will not have fallen” (ibid, col [155](#)). The amendment itself presented Ms Reynolds with difficulties:

One of the principles of the founding treaties is the so-called four freedoms—the free movement of people, capital, goods and services. The Accession Treaty before us is a negotiation among all the Member States of the European Union and the new Member State of Croatia, and the seven-year transition period that is negotiated within that framework is a derogation from the principles in the European treaties. If the amendment tabled by the hon Member for Bury North were to be passed—which is highly unlikely, but let us say it is for the sake of argument—then it would either scupper the Accession Treaty altogether or put us in a situation in which our Government could be taken to court by the European Commission or another Member State.

(ibid, col [155](#))

Jacob Rees-Mogg intervened to suggest that “a protocol to a future treaty could allow amendments passed by this House to be incorporated, allowing Croatia to accede in the normal manner” (ibid). Ms Reynolds disagreed:

I believe that such a provision goes against the Accession Treaty with Croatia that has been negotiated with the 26 other Member States and our Government. An amendment of this kind would send us back to the start of negotiations. All 16 Member States that have already approved the Treaty, and we and the remaining Member States, would have to go back to the drawing board, along with Croatia, yet again to reopen what has been a very long and arduous process—a thorough process, and rightly so—for Croatia in its negotiations to join the European Union. This is not like the Irish Protocol. It is not a post-factual situation—it has to apply from now on—and it is part of the Accession Treaty that we are discussing. We cannot just alter it and expect something to happen in future that would help us.

(ibid, col [156](#))

David Lidington responded for the Government. He said concern was shared across the House about “the need to ensure the appropriate management of potential labour market risks, particularly at a time when there are serious tensions in the UK labour market”. However, the Government had been “clear from the start that we intend, as a matter of course, to impose transitional controls on workers from any new Member State” (ibid,col [158](#)). He said that for Croatian workers “these restrictions should be as rigorous as the terms of the Accession Treaty allow and should provide no greater level of access than that already enjoyed by Croatian workers prior to their joining the European Union. That would put Croatian citizens on a par with workers from Romania and Bulgaria, who are subject to such vigorous control already” (ibid, col [159](#)).

Speaking to the amendment, the Minister stated that the agreed controls “cannot be extended beyond the seven year period” and that any amendment passed by the House could mean the UK being in breach of the free movement principles in the EU treaties “which could lead to the UK being infringed by the European Commission” ([ibid](#)). On Jacob Rees-Mogg’s point about the Irish Protocol, that, he said, was “a different beast”. Following an intervention from Mr Rees-Mogg, the Minister added:

I simply do not think that we can have 27 countries agreeing unanimously on a treaty text and committing themselves to ratifying it, only for 26 countries to ratify it while one country chooses to do so up to a point and not ratify one particular element. My hon Friend was right in his earlier intervention that it is legally and constitutionally possible for a separate protocol or derogation to be negotiated at the time of an accession treaty to exempt one or more Member States from particular obligations. However, that has not happened with any other accession treaty hitherto.

([ibid](#), col [160](#))

Mr Lidington concluded by stating that “if we look at the patterns of migration from Croatia and the history of Croatian migration to this country, and set that in the context of a small country with a small population, the Government judge that there is little risk of a mass migration of Croatian nationals to these shores when the seven-year transitional period is up” ([ibid](#), cols [160–1](#)). In addition, he said he did not think freedom of movement would be exercised “in one direction only”. He told MPs: “I can envisage the Adriatic coastline of Croatia becoming a magnet for people from elsewhere in Europe who are seeking a warmer climate in which to settle” ([ibid](#), col [161](#)).

The amendment was withdrawn following the debate, and the clause was agreed.

2.2.2 Clauses 2 and 3: Approval of the Irish Protocol

Jacob Rees-Mogg spoke to praise the Irish Protocol. He told MPs that while it “does not change a word of the Lisbon Treaty”, it clarified “the law so that Ireland knows it has a slightly different relationship with the EU, and clarifies any rulings that might be made in future by the European Court of Justice”. He regretted that the UK had not also used the opportunity to get its own guarantees. The Protocol, he argued, showed:

... that a country can push a little bit of a wedge underneath the collapsing portcullis of the EU—once a country is under it, it cannot get back out. The Protocol has given Ireland a measure of release from, and clarification on, the Lisbon Treaty. The UK could do more because we are a stronger player within Europe and contribute a substantial part of the budget, as I said to my hon Friend the Member for Cheltenham (Martin Horwood). We ought to use our negotiating heft to try to get back powers that, as most hon Members recognise, the British people want. We should begin a serious renegotiation and say to the EU, ‘Look, when the next treaty comes through, we want more than Ireland had. We want something that is powerful and strong, and that allows us—the British people—to make our laws for ourselves via Parliament rather than constantly doing so via Europe’. This is a great opportunity for the Government to build on that precedent to the advantage of our country.

([ibid](#), col [164](#))

Emma Reynolds spoke briefly for the Opposition to welcome the clarification the Protocol gave. However, she was clear that: “the Protocol does not reform the EU and is not a

renegotiation of the EU-Ireland relationship. It also does not repatriate power from the EU to Ireland” (ibid, col [165](#)).

David Lidington responded for the Government. He reminded MPs about the purpose of the Protocol:

Although it is true that the Irish Protocol clarifies and does not change either the content or application of the Lisbon Treaty, and in no way alters the relationship between the EU and its Member States, it has a positive effect, as my hon Friend has pointed out. The consequence of all Member States ratifying the Protocol is that it will have full treaty status. In effect, it is added, as a protocol, to the list of EU treaties and is binding in EU law. Although it is declaratory and clarificatory in purpose, the declaration and clarification take the form of something that can be justiciable in future litigation at the European Court of Justice, as my hon. Friend said.

([ibid](#))

He confirmed that the Protocol applied to all Member States and “that the clarifications that are provided square with the UK’s interpretation of the treaties” (ibid, col [166](#)).

Clauses 2 and 3 were agreed to without division.

2.2.3 Clause 4: Freedom of Movement of Croatian Nationals as Workers

Opening the debate on clause 4 of the Bill, Jacob Rees-Mogg spoke to highlight issues with regard to the wider issue of free movement and immigration. He criticised the UK’s immigration policy saying that the “commitments we have made to our immigration policy throughout the European Union have made a nonsense of the rest of our immigration policy” (ibid, col [167](#)). He explained there were two problems at the heart of UK policy: “First, the number of people who have the right to reside and work here from the European Union, which is legion; and the very tight controls that we have to have on everybody else in the world to make the system vaguely work at all”. The consequence of this was that:

It is out of balance that countries with which we have much closer and longer standing associations than Croatia—I think, of course, of India, Canada, Australia, South Africa and Zimbabwe—and with which we have had intimate relationships, do not have the transition arrangements to allow their people to come and work here. They have to go through an extremely arduous and onerous process. Even if their grandparents were British citizens, they find it very difficult to get here. On the other hand, if they come from Member States of the EU they can just waltz in, or if they cannot waltz in, they can come in under transition arrangements. After a mere seven years at the most, they will be able to come in freely. This has become disproportionate.

([ibid](#))

Enlargement, he said, had “created a problem for Europe” and the transition arrangements were “not really enough” to resolve it. He welcomed that the Home Secretary had “decided to look into this to see whether the free movement of people is something we can continue to cope with”. He said he thought “we cannot, and as we reform our relationship with Europe, it is one of the aspects of the European Union—I accept that it is a fundamental aspect—to which we can no longer subscribe” ([ibid](#)).

Emma Reynolds spoke for the Opposition. She said that her party agreed with the imposition of a seven year transition period on free movement. Responding to the points raised by Mr Rees-Mogg she argued that “if a change were made it would require a substantial and wholesale amendment of the founding treaties”, observing that the process “would be long and difficult if the Government were to attempt to embark on it” (ibid, cols [167–8](#)).

For the Government, David Lidington said the Home Office would bring forward a statutory instrument in 2013 to implement the regulations for transitional controls on Croatian immigration. He used the opportunity to acknowledge that previous accession countries had not had such controls on free movement imposed and that the numbers arriving had been underestimated. Accordingly, he stated:

It is therefore right that we should say clearly not just that rigorous transitional controls will be employed in the case of Croatia, but that it would be our intention to apply transitional controls to the full extent permitted to any future new accession country to the European Union. That is both right and a way of providing reassurance to our citizens.

(ibid, col [168](#))

He also responded to a point raised about people taking advantage of free movement in the EU to move so as to benefit from a more generous welfare system in a different Member State. This concerned the Government, he said, and assured MPs that the Government took those risks seriously (ibid, col [169](#)).

Clause 4 was agreed to without division.

2.2.4 Clause 5: Parliamentary Control

Jacob Rees-Mogg moved amendment 1 and spoke to amendment 2. These sought to change the method by which Parliament would scrutinise the proposed regulations under clause 4. He explained: “Amendments 1 and 2 would simply ensure that the affirmative procedure was followed and would marginally improve parliamentary scrutiny—they would not change the world, but they would add a little to parliamentary scrutiny” (ibid, col [171](#)).

David Nuttall spoke to amendment 5, which he explained “would open the way for the draft regulations laid by the Government—pursuant to what will in due course become section 4 of the Act—to be amended by this House” (ibid, col [172](#)). He argued that:

We are all human, and it is just possible that a tiny little matter somewhere in those regulations—which will undoubtedly be fairly lengthy and detailed—might need amending. My amendment 5 would give this House the flexibility to amend the draft regulations, rather than simply having the option of accepting or rejecting them in their entirety. It is a minor, modest and humble amendment, and I hope that the Government and the Opposition will support it.

([ibid](#))

David Lidington responded for the Government. He said that he had thought carefully about amendments 1 and 2. To help the House he said he would explain the

Government's thinking about its intentions for the initial statutory instrument under clause 4 and how that would be scrutinised by Parliament:

The initial regulations that we intend to make pursuant to clause 4 would set out in detail the scheme of restrictions to be applied to Croatian nationals. They would set out the circumstances under which a Croatian national may be authorised to take employment and the penalties that may be applied for any breach of the restrictions. It is clearly appropriate that there should be a presumption that such regulations, setting out a broad scheme of controls and penalties, should require the positive approval of the House. We are therefore providing for the affirmative resolution procedure.

Mr Lidington then explained that the affirmative procedure may not always be appropriate for further instruments:

... any subsequent regulations pursuant to clause 4 are likely to be different in character and to have only a limited and technical purpose. For example, it may become necessary to make technical adjustments to the regulations to reflect European Court of Justice case law on the exercise of free movement rights or to adjust the circumstances in which work authorisation may be given, to reflect particular labour market circumstances.

As an example, he used the regulations regarding Romanian and Bulgarian workers to highlight his point:

There have been subsequent amendments to the original regulations, but to address minor and technical issues. For example, further amendments to the regulations have referred to arrangements for students undertaking employment during their holidays or vocational employment linked to their studies.

(*ibid*, cols [173–4](#))

As a consequence, he concluded: “I do not think it is proportionate that amendment of the regulations to deal with this kind of technical issue should require the affirmative resolution procedure” (*ibid*, col [174](#)). He added that while a future Government may try to “use the negative procedure to make more substantive change”, he was “confident that the political reaction in the House of Commons would be such as to require, through a prayer tabled under the normal procedures of the House, a debate and vote in Committee and then in the House as a whole” (*ibid*). The affirmative procedure proposed was “an appropriate level of scrutiny, and that the use of the negative resolution procedure for what are likely to be minor and technical amendments is also proportionate to the probable course of events” (*ibid*).

Turning to Mr Nuttall's amendment, Mr Lidington said he could not accept it because “the procedure that he is proposing does not fall within the normal forms of House approval”. Consequently “it would be wrong to use the Bill as an occasion for adopting what would amount to a significant precedent in how Parliament holds the Government to account. There might be a case for what he is proposing, but it would best be addressed, if it is going to be, as a matter of general principle rather than in this way” (*ibid*).

Amendment 1 was withdrawn following the debate. Clause 5 was agreed without division.

2.2.5 Clause 6: Extent, Commencement and Short Title

The final amendment was moved by David Nuttall. Amendment 4 would require there to be motions passed in both Houses before Croatian accession could be ratified by the UK. Mr Nuttall explained:

It would enable the House to revisit the question of whether Croatia was ready to join the EU before this Bill ratifying the Accession Treaty came into effect. The Minister made it clear on second reading that the accession process that Croatia had followed had involved more rigorous demands than those placed on Romania or Bulgaria, or any of the earlier accession states. However, I think it is accepted on all sides that, unless things have changed dramatically since the second reading debate, Croatia has not yet fulfilled all that is expected of it. Much progress has clearly been made, and that is to be welcomed, but more undoubtedly remains to be done.

The European Commission is continuing its monitoring process, and the Minister mentioned that a further report was expected next spring. He provided the more accurate date of next March for its delivery, and we expect it to be the final report. On Croatia's progress in dealing with domestic war crimes, the Minister said on second reading that the Government's assessment was "almost complete", but that more work was still required. The amendment would allow the House the opportunity to assess whether Croatia had made further progress and whether the process had been completed.

(*ibid*, cols [175–6](#))

Jacob Rees-Mogg supported the amendment. He said that it was "a good thing that Parliament should have a further opportunity to approve the Bill before it is enacted". He drew on examples of previous accessions to illustrate how things could change between passing the Bill and Croatian accession:

We have found before when we have let countries join early that it is much, much harder to solve the problems when they are in than it was before they were in. Once they are in, they benefit from all that comes from the European treaties. Before they are in, they are of course supplicants, and the power rests with the European Union to decide whether to admit them. It is unquestionably sound and prudent to follow the recommendation of my hon Friend and to put this final brake on the process, so that it goes ahead only when we are comfortable that the Croatians have really got their act together.

(*ibid*, col [178](#))

Wayne David, Labour MP for Caerphilly, welcomed the opportunity to debate the issues the amendment raised. He noted that Štefan Füle, the EU Commissioner for Enlargement, had said there was "more work to be done before Croatia entered the EU on 1 July 2013" (*ibid*, col [179](#)). Mr David put a scenario to the House: "Let us suppose—unlikely though it is—that, as a result of, for instance, political crisis or institutional trauma, the work was not done. What would happen then? How would the Government respond if, for whatever reason, the Croatian Government decided to say 'Thus far and no further', irrespective of the commitments and promises that they had given? How, indeed, would the European Union respond?" (*ibid*, col [180](#)).

Emma Reynolds said the Opposition did not support the amendment. She argued that, were all Member States to pass a similar amendment, “Croatia’s accession would be delayed greatly”. She explained:

There are still areas where we want to see more progress but, as has been stated, the European Commission’s final report in March will set out the progress that has been made in those areas about which hon Members across the House have concerns. If the amendment were to be passed, it would delay the process unnecessarily and it could have a negative impact on that momentum. We encourage the Government and the Commission to monitor closely the progress in those areas, especially as they relate to the judiciary and fundamental rights, but we do not think the amendment is necessary, as we want to sustain the momentum.

[\(ibid\)](#)

David Lidington, on behalf of the Government, said that “in the Government’s view delaying Croatia’s accession to the EU, as proposed in the amendment, would not be helpful to the UK in securing its objectives in EU enlargement policy and it might cause some damage to our interests overall” ([ibid](#), col [181](#)). He said the “Government’s judgment, on the basis both of the Commission’s successive monitoring reports and of our own bilateral engagement, is that Croatia is on track to be ready in full to accede to the EU on 1 July 2013”. He added that there were safeguards in place were reforms not to be completed but the Government did “not expect to need to use those safeguards” ([ibid](#)). He concluded:

Member States signed the Croatian Accession Treaty with the firm intention that it should be ratified by 1 July 2013. We believe that new Member States should be able to join the EU when they have fulfilled their commitments as part of the tough and demanding accession process and are ready to take on the obligations of membership. Given the progress Croatia has made and the transparent commitment of its Government to completing the reforms that are still outstanding, we think there is no reason to delay this legislation coming into force and that we can be confident, on the basis of evidence, that Croatia will be ready. We should be eager to grasp the opportunities for the United Kingdom, both political and commercial, that stem from EU enlargement. Therefore, I think it is right to ask my hon Friend the Member for Bury North to withdraw his amendment and for the House to support clause 6 as it stands.

[\(ibid](#), col [184](#))

Amendment 4 was withdrawn following the debate. Clause 6 was agreed to without division.

2.3 Commons Third Reading

Following completion of the committee stage David Lidington moved that the Bill be given a third reading. He set out again why the Government supported enlargement and the accession of Croatia to the EU. He reassured MPs that there was no cause to fear that Croatian accession would impact negatively on the United Kingdom through illegal migration, asylum or human trafficking. He explained:

First, there will continue to be border controls between Croatia and neighbouring EU countries after accession. This will continue until Croatia fully implements the Schengen acquis, which is subject to its own evaluation process. As a result,

third-country nationals will continue to be subject to the same levels of controls after accession if they seek to leave Croatian territory to go to another EU Member State. There is not expected to be any significant increase in illegal immigration to the UK as a consequence of Croatia's accession.

Secondly, Croatia does not present a high risk to the UK as either a source or transit country for illegal migration. Thirdly, we have not identified any victims of trafficking from Croatia in the UK. As I noted on second reading, in 2011, the US State Department's 'Trafficking in Persons Report', which ranks countries in terms of their capacity to tackle trafficking and protect victims, designated Croatia as a tier 1 country, alongside the United Kingdom. That means that Croatia is viewed as fully compliant with the minimum standards of the US's Trafficking Victims Protection Act, so again I think we have good reason to be confident about Croatia's record.

(ibid, cols [186–7](#))

He concluded:

We are in favour of Croatia joining the EU, we believe that it is well on its way to demonstrating its readiness to join the European Union and we are fully confident that it will be ready by next July. The impact that Croatian accession will have in promoting stability and sending a message of hope across the western Balkans should be welcomed by every party in this House. I commend the Bill, and its third reading, to the House.

(ibid, col [187](#))

Emma Reynolds repeated that the Opposition supported Croatian accession, notwithstanding concerns about its progress in reforming a number of areas (ibid, cols [187–8](#)).

Jacob Rees-Mogg said he welcomed the opportunity to scrutinise the Bill. On a more general theme, he said that while "broadening and widening the EU has been welcome and good for this country and for the type of Europe that has developed", he felt the EU "could find that its end, if it is not reformed, is a disagreeable one, and one that has deep-seated problems within it". He concluded by returning to his point about renegotiation: "We should be challenging it and dealing with it as we get a better settlement for the UK. That will help to create a Europe that might be more stable and long-lasting than the bureaucratic, centralised version we currently have" (ibid, cols [188-9](#)).

Wayne David said that the single market and enlargement had been the EU's "two great pivotal achievements" (ibid, col [190](#)). He said that he hoped Croatia's accession would not be the end but a "staging post" and that "the agenda will move forward with regard to Iceland, and to Turkey" and that negotiations with the Western Balkans would "gather momentum" (ibid, col [191](#)).

Martin Horwood, Conservative MP for Cheltenham, hoped that lessons would be learnt for future accession negotiations. He said that "any outstanding border disputes should be fully resolved before accession takes place. That will be important for the other Balkan nations, let alone for more distant and even more challenging situations in countries such as Georgia, if their aspirations to European Union membership ever became a serious process" (ibid, col [193](#)). The debate concluded with Graham Stringer, Labour MP for Blackley and Broughton. He argued that "if we want to get some

sovereignty back, and if we want to pay less into the European Union, we should negotiate hard at every opportunity”. He added “I do not see the point of being communautaire and good Europeans at one table, then going into the next room and saying that we are not good Europeans and that our objective is completely different. Every treaty and negotiation presents an opportunity to put forward our view” (ibid, col [194](#)). He added that he was concerned that Croatia was not ready for membership and the possible implications of it:

In agreeing to Croatia becoming part of the European Union, allowing a country that currently has very poor judicial standards and a very poor judiciary, albeit one that it is trying to improve, we are giving that country the power to arrest British citizens very quickly. I worry about that. It can be problematic enough in France, Germany and other EU countries when people are arrested in this country for things that are not against this country’s law, but those countries at least have well established, albeit different, judicial systems to our own. Croatia, however, does not have that, so it might well leave some of our citizens vulnerable to the European arrest warrant.

(ibid, cols [195–6](#))

The Bill was given a third reading without division.

3. European Union (Approvals) Bill [HL]

The European Union (Approvals) Bill [HL] was introduced in the House of Lords on 26 November 2012. It is scheduled for a second reading on 17 December 2012. This short, three clause Bill provides parliamentary approval for:

1. a draft decision of the Council of the European Union providing that the electronic version of the Official Journal of the European Union is the authentic and legally recognised version of that journal;
2. a draft decision of the Council of the European Union providing for a new Multiannual Framework for the Fundamental Rights Agency which will operate between the beginning of 2013 and the end of 2017; and
3. a draft decision of the European Council that will maintain one European Commissioner per Member State.

(European Union (Approvals) Bill [HL] Explanatory Notes, 26 November 2012, paras [3–4](#))

Further information about each of these is considered in sections 3.1–3.3 below.

An Act of Parliament is required for approval of these draft decisions under the terms of the European Union Act 2011. The explanatory notes state:

Section 8 of the 2011 Act sets out the requirements for the approval by the UK of decisions brought under Article 352 of the TFEU. Section 8(3) provides that a Minister may only vote in favour of an Article 352 draft decision where the draft decision is approved by Act of Parliament. This requirement does not apply where urgent approval is required (section 8(4)) or where the draft decision relates to an exempt purpose (section 8(4)), as defined in section 8(5). Neither section 8(4) or 8(5) is applicable to the draft decision proposed under Article 352 relating to the OJ or to that relating to the FRA Multiannual Framework.

Therefore, an Act of Parliament is required before the United Kingdom may vote in favour of either decision in the Council of the European Union.

With regard to the decision on the number of EU Commissioners, Section 7 of the 2011 Act deals with decisions requiring approval by an Act of Parliament. Section 7(3) states that “A Minister of the Crown may not vote in favour of or otherwise support a decision to which this subsection applies unless the draft decision is approved by Act of Parliament.” Section 7(4)(a) confirms that the provisions of subsection (3) apply to “a decision under the provision of Article 17(5) of the TEU that permits the alteration of the number of members of the European Commission”. An Act of Parliament is therefore required before the United Kingdom may vote in favour of the decision at the European Council.

(ibid, paras [15–16](#))

3.1 Official Journal

The draft decision of the Council of the European Union (1 March 2012, [10222/5/11](#)) proposes giving legal effect to the online electronic version of the Official Journal of the European Union. In April 2011, a Europa press release announced the proposed change and explained the need for it:

The European Commission today proposed giving the electronic edition of the European Union’s Official Journal legal status. At the moment, only the printed edition is legally valid. With this proposal, EU citizens and businesses across Europe will have more legal certainty and save time and money. The proposal follows a trend at national level where all EU countries have electronic official journals, more than half of which have full legal status. The proposal needs unanimous support from the Council and consent of the European Parliament before it takes effect.

“This proposal provides for simple, easy and reliable access to EU law online. In times of crisis, I warmly welcome this move to make life easier and less expensive for businesses and citizens”, Vice-President Viviane Reding, the EU’s Justice Commissioner, who is in charge of relations with the Publications Office, said.

The Official Journal (OJ) was created in 1952 for the then European Coal and Steel Community. It is how the EU keeps its records: only legal acts published in the Official Journal are binding. Currently, and despite the fact that a majority of European citizens and businesses mainly consult the online version, only the paper version of the Official Journal is legally valid. What this means is that no decision taken by the Commission can be enforced based on the electronic version. If citizens want to claim a right based on what is published in the Official Journal (such as the EU Treaties) they currently need to obtain—at cost—a copy of the print version. The Commission proposes to change this by giving legal status to the electronic edition of the Official Journal. The proposal thus broadens access and ensures that citizens’ right to make themselves acquainted with EU law is enforced.

The proposal will not only benefit businesses and professionals in the field of law, but will also serve citizens who want to be informed from a reliable source about the rights they benefit from under EU law.

Currently, consultation of the paper version of the Official Journal costs about €1,000 a year per subscription. The Commission is proposing to give free and direct access to the legally valid Official Journal online, making everyone's lives a little easier. Legal acts passed by the EU will be instantly accessible to all. At the same time, electronic publication will ease the search of data, by minimising the time and effort citizens' need to put into searching for information.

(Europa Press Release, '[The EU's Official Journal is Going Fully Digital](#)', 4 April 2011)

The Bill's explanatory notes state that political agreement was reached at the Justice and Home Affairs Council in March 2012 and that the [European Parliament has now given its approval](#).

3.2 Multiannual Framework for the European Agency for Fundamental Rights

The draft decision of the Council of the European Union (13 June 2012, [10449/12](#)) proposes a new Multiannual Framework for the European Union Agency for Fundamental Rights (FRA) for the period 2013 to 2017. The current framework was agreed when the Agency was founded in 2007 and is set to expire at the end of December 2012. The explanatory note published by the Commission when the new framework was proposed explained that:

The objective of the Agency is to provide the relevant institutions, bodies, offices and agencies of the Union and its Member States, when implementing Union law, with assistance and expertise relating to fundamental rights in order to support them when they take measures or formulate courses of action within their respective spheres of competence to fully respect fundamental rights. The tasks entrusted to the Agency relate to the collection and analysis of information and data; to the provision of advice through reports and opinions; and to cooperation with civil society and raising awareness of fundamental rights. The Agency is not authorized to deal with the legality of Union acts nor with the fulfilment of Member States' obligations under Union law.

It then explained the need for a new framework:

According to Article 5 of the Regulation, the thematic areas of activity of the Agency shall be determined through a five-year Multiannual Framework. The Agency shall carry out the above-mentioned tasks within these thematic areas. The Multiannual Framework is not a work programme. The Agency's work programmes are adopted each year by its Management Board within the thematic areas determined by the Multiannual Framework.

(Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013–2017, 13 December 2011, 2011/0431, page [2](#))

A background note, prepared by the Europa press office ahead of the Justice and Home Affairs Council meeting that endorsed the Framework, set out the proposed changes and the next steps:

The compromise text submitted by the Presidency includes the following thematic areas (10615/12):

- access to justice;

- victims of crime, including compensation to crime victims;
- information society and, in particular, respect for private life and protection of personal data;
- Roma integration;
- judicial cooperation, except in criminal matters;
- rights of the child;
- discrimination based on sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation;
- immigration and integration of migrants, visa and border control and asylum;
- racism, xenophobia and related intolerance.

This proposal is based on Article 352 of the Treaty on the Functioning of the European Union and requires unanimity in the Council and the consent of the European Parliament. The final adoption of the decision will take place after the European Parliament has given its consent.

(Europa Press Release, 'Background Justice and Home Affairs Council Luxembourg', 7–8 June 2012, pages [10–11](#))

According to its website, the [European Parliament is due to consider the draft decision on 13 December 2012](#).

3.3 European Commissioners

The draft European Council decision (2 October 2012, [EUCO 176/12](#)) concerns the number of Commissioners for each Member State. Previously the Treaty of Lisbon had committed to the reduction of the size of the Commission to two thirds the number of Member States from 1 November 2014. Subsequent concessions provided to Ireland to enable it to ratify the Treaty resulted in a commitment to “the effect that the Commission shall continue to include one national of each Member State” once the Lisbon Treaty entered into force. The draft decision provides for one Commissioner per Member State from 1 November 2014. The decision will be subject to review prior to the appointment of the next Commission (or the accession of the thirtieth Member State, if earlier) (*European Union (Approvals) Bill [HL] Explanatory Notes*, 26 November 2012, para [14](#)).

In its recent report, the House of Commons European Scrutiny Committee considered the Government’s view of the decision:

In an Explanatory Memorandum and letter of 27 September 2012, the Minister for Europe (Mr David Lidington) says the Government welcomes the inclusion in the draft decision of a commitment to review its effect on the functioning of the Commission during the lifetime of the next Commission. It will be important to approach this review as part of wider considerations about increased transparency, efficiency, legitimacy and cost-effectiveness across the EU institutions.

That said, the Government’s view is that having made a commitment to Ireland, it is important that the UK acts in good faith and honours that commitment. Moreover, it thinks it is right to ensure that a commitment made by the European Council to Ireland is upheld.

The size and composition of the European Commission is, however, a fraught subject the Minister says. It is difficult to identify a solution that is equitable, legitimate in terms of the relative size and weight of different European countries and efficient. This decision will ensure the retention of a British Commissioner in the medium-term, and avoid the risk that the largest Member States find themselves unrepresented. This means that a UK voice will continue to be heard within the Commission, and will argue the case for an EU that recognises and reduces regulatory burdens on business, maximises the potential of the single market to create growth, and realises the benefits of an outward-facing Union that supports free trade and promotes democracy.

(House of Commons European Scrutiny Committee, *13th Report—Document considered by the Committee on 17 October 2012*, 2 November 2012, HC 86-xiii, paras [25.5–25.10](#))

Due to the delay in reaching political agreement at Council level, the European Scrutiny Committee was unable to scrutinise the proposal. The report noted:

On the timetable the Minister says that a draft decision was not formally circulated to Member States until 6 September 2012, and has been under discussion at working groups since then. Unfortunately due to delays in the draft decision being communicated to Member States and because of Parliament being in recess there will not be time for the European Scrutiny Committee—unless it decides to meet during recess—to scrutinise the proposal prior to political agreement needing to be reached on the draft decision at the General Affairs Council on 16 October 2012.

Under the provisions of the EU Act 2011 the Government ensured that an Act of Parliament is required before the Prime Minister can agree to the decision at a future European Council. Thus, the Minister says, Parliament will have control over this approval and will have the opportunity to debate and scrutinise the decision fully when this approval is sought through primary legislation. The European Scrutiny Committee will also be able to consider the decision and report on it in detail to inform Parliament in advance of the debate.

Clearly it would be sensible for all EU Member States to have completed their national procedures for approving this Decision in time for the appointment of the new Commission in 2014, the Minister says. The Government's intention is to use the legislative vehicle of the Bill to ratify Croatian accession, planned for introduction later this year, to enact this measure too.

(ibid, paras [25.8–25.10](#))

The Committee concluded that it would lift scrutiny on the document, noting that a further opportunity would be provided with the need for parliamentary approval of Croatian accession (ibid, paras [25.11–25.12](#)). Political agreement to the draft decision was later received in Council on 26–27 October 2012 (*European Union (Approvals) Bill [HL] Explanatory Notes*, 26 November 2012, para [14](#)).

