



HOUSE OF LORDS

European Union Committee

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15th Report of Session 2004-05

**Clause 2 of the  
European Union Bill—  
the Constitution's  
Passerelle Provisions**

Report

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Ordered to be printed 5 April 2005 and published 13 May 2005

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Published by the Authority of the House of Lords

*London* : The Stationery Office Limited

HL Paper 102

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# Clause 2 of the European Union Bill—the Constitution’s Passerelle provisions

1. Articles IV-444 and IV-445 of the Constitutional Treaty provide “simplified” procedures exclusively for revision of the Constitutional Treaty<sup>1</sup>.
2. Article IV-444 would enable:-
  - (i) decisions in the Council of Ministers on matters in Part III of the Treaty to be changed from unanimity to qualified majority voting (QMV) and;
  - (ii) European laws and framework laws subject to a special legislative procedure to be adopted by the ordinary legislative procedure (i.e. co-decision of Council and European Parliament).
3. This procedure is called the passerelle (“bridge”). Passerelles are not new. Examples can be found in Article 137 of the EC Treaty and Article 42 of the EU Treaty.
4. If the European Council decided to invoke the passerelle, it could only do so unanimously and would first have to seek the consent of the European Parliament and notify national parliaments. In addition, any proposal for such a decision could be blocked “if a national parliament makes known its opposition within six months of the date of such notification”<sup>2</sup>.
5. A parallel provision (Article IV-445) sets out a simplified revision procedure concerning internal Union policies and actions.

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<sup>1</sup> The “Ordinary revision procedure” is contained in Article IV-443.

<sup>2</sup> This provision is entirely separate from the provision for control of subsidiarity set out in Protocol 2 to the Treaty, in which national parliaments also have a role (see our 14th Report: *Strengthening National Parliamentary Scrutiny of the EU – the Constitution’s Early Warning Mechanism* (paper 101)).

**BOX 1****Article IV-444 Simplified revision procedure**

1. Where Part III provides for the Council to act by unanimity in a given area or case, the European Council may adopt a European decision authorising the Council to act by a qualified majority in that area or in that case.

This paragraph shall not apply to decisions with military implications or those in the area of defence.

2. Where Part III provides for European laws and framework laws to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a European decision allowing for the adoption of such European laws or framework laws in accordance with the ordinary legislative procedure.

3. Any initiative taken by the European Council on the basis of paragraphs 1 or 2 shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the European decision referred to in paragraphs 1 or 2 shall not be adopted. In the absence of opposition, the European Council may adopt the decision.

For the adoption of the European decisions referred to in paragraphs 1 and 2, the European Council shall act by unanimity after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

6. The Government has made provision for the new role for national parliaments in the European Union Bill. Clause 2 of the Bill provides as follows<sup>3</sup>:

## BOX 2

### Parliamentary approval for Treaty changes

- (1) This section applies to a European decision under Article IV-444 or IV-445 of the EU Treaty (simplified revision procedures relating to qualified majority voting and legislative procedures or internal EU policies and action).
- (2) A decision to which this section applies may be recognised in law only if it falls by virtue of this section to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties.
- (3) A decision under Article IV-444 (majority voting and legislative procedures) shall be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties only if the initiative for the decision is approved by Parliament.
- (4) For this purpose the initiative for a decision is approved by Parliament if—
  - (a) the House of Commons sent a message to the House of Lords asking for its opinion on whether the House of Commons should resolve to approve the initiative; and
  - (b) the initiative was approved by a resolution of the House of Commons not less than 20 sitting days after the House of Lords received the message.
- (5) Her Majesty may by Order in Council provide for a decision under Article IV-445 to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties.
- (6) No recommendation may be made to Her Majesty in Council to make an Order in Council under subsection (5) unless a draft of the Order has been—
  - (a) laid before Parliament; and
  - (b) approved by a resolution of each House.
- (7) A decision which—
  - (a) provides for an increase of the powers of the European Parliament; and
  - (b) by virtue of this section falls to be treated as listed in section 1(2) of the 1972 Act as one of the EU Treaties, shall be deemed to have been approved for the purposes of section 12 of the European Parliamentary Elections Act 2002 (approval of treaties relating to European Parliament).
- (8) In this section “sitting day” means a day on which the House of Lords sits.

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<sup>3</sup> Bill 45 as printed for the House of Commons, 25 January 2005.

7. The Committee commented on the passerelle provisions in our earlier report on the draft Constitutional Treaty as it was under discussion in the Convention on the Future of Europe<sup>4</sup>. We expressed serious reservations about what was proposed. We particularly called for a role to be provided for national parliaments; and for the Treaty itself to set out those areas to which the passerelle might apply. The first of these concerns has in our view been addressed by the final text of the Treaty as presented for ratification. This is welcome.
8. What is both surprising and in our view unacceptable is the way in which the Government has chosen to propose that this provision be implemented in the United Kingdom.
9. The Treaty clearly provides that a decision under the passerelle can be blocked by “a national parliament”. The Treaty also, correctly in our view, does not seek to prescribe for Member States what this means. We note, however, that elsewhere in the Treaty (for example in the Protocol on Subsidiarity) the Treaty clearly notes the independent role played by the two chambers in a bicameral parliament.
10. In the European Union Bill, however, the Government has proposed that the role of the national parliament for the purpose of an objection to a passerelle provision be taken by the House of Commons alone, albeit that this House is allowed 20 days to decide whether to express a view.
11. It is not normally this Committee’s function to comment on bills. In the case of the European Union Bill, however, its provisions clearly fall within our terms of reference. We are reporting separately on the Constitutional Treaty’s subsidiarity provisions (also covered in the Bill)<sup>5</sup> and are in correspondence with the Government about both CFSP matters and the question of primacy of EU law.
12. We note that the Constitution Committee has a role to play in examining constitutional issues arising in bills and has reported on the European Union Bill<sup>6</sup>.
13. **We have, however, decided to make this report to the House on Clause 2 of the Bill because we consider that the Clause raises important issues which the House should debate during the passage of the Bill<sup>7</sup>.**
14. It is in our view Clause 2 as it stands is unacceptable in a bicameral system such as ours, where there is no overriding constitutional or other provision to determine the respective roles of the two Houses. The passerelle provision

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<sup>4</sup> 41st Report, session 2002-03, “*The Future of Europe—The Convention’s draft Constitutional Treaty*” (HL Paper 69, paras 177-8).  
<http://www.publications.parliament.uk/pa/ld200203/ldselect/ldcom/169/16901.htm>

<sup>5</sup> 14th Report, session 2004-05, “*Strengthening National Parliamentary Scrutiny of the EU—the Constitution’s Subsidiarity Early Warning Mechanism*” (HL Paper 101).

<sup>6</sup> 4th Report, session 2004-05 (HL Paper 78, paras 7 and 8 and Appendix 5). The Committee concludes that the Clause “appears to propose a constitutionally unprecedented procedure”. The Committee will make a further report in due course.  
<http://www.publications.parliament.uk/pa/ld200405/ldselect/ldconst/78/7802.htm>

<sup>7</sup> Concern about the Clause was expressed in the House during a Starred Question put by Lord Marlesford (HL Deb 6 April 2005, cols 727 – 731):  
[http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50406-03.htm#50406-03\\_star0](http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50406-03.htm#50406-03_star0)

should be implemented in such a way that the view of the national parliament represents that of both Houses.

15. **We accordingly recommend that Clause 2 of the European Union Bill be amended to provide that “an initiative for a decision” under Article IV-444 of the Constitutional Treaty must be approved by both Houses of Parliament.**

## APPENDIX 1: REPORTS

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### Recent Reports from the Select Committee

#### *Session 2002–03*

Review of Scrutiny of European Legislation (1st Report Session 2002-03, HL Paper 15)

The Future of Europe: National Parliaments and Subsidiarity—The Proposed Protocols (11th Report Session 2002-03, HL Paper 70)

Government Responses: Review of Scrutiny of European Legislation, Europol's Role in Fighting Crime; and EU Russia Relations (20th Report Session 2002-03, HL Paper 99)

The Future of Europe—The Convention's Draft Constitutional Treaty (41st Report Session 2002-03, HL Paper 169)

Annual Report (44th Report Session 2002-03, HL Paper 191)

#### *Session 2003–04*

The Future Role of the European Court of Justice (6th Report Session 2003-04, HL Paper 47)

Remaining Government Responses for Session 2002–03 (7th Report Session 2003-04, HL Paper 60)

Proposed Constitutional Treaty: Outcome of the Irish Presidency and the Subsidiarity Early Warning Mechanism (22nd Report Session 2003-04, HL Paper 137)

Annual Report 2004 (32nd Report Session 2003-04, HL Paper 186)

#### *Session 2004–05*

Strengthening national parliamentary scrutiny of the EU – the Constitution's subsidiarity early warning mechanism (14th Report Session 2004-05, HL Paper 101)

Developments in the European Union: Evidence from the Ambassador of the Grand Duchy of Luxembourg and the European Parliament's Constitutional Affairs Committee (3rd Report Session 2004-05, HL Paper 51)