

Analysis

Revisions to the Irish Constitution - Lisbon Treaty

Professor Steve Peers, University of Essex

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The following sets out the current provisions of the Irish Constitution dealing with EU membership, and how they would be amended by the proposed constitutional amendment Bill. It comments briefly and factually on the changes in the text of the Constitution which would result if the proposed amendments were adopted. The Bill itself might be amended before its adoption, and of course the amendments would still require public support in a referendum.

Article 29.4, Irish Constitution

(Text which would be deleted by the constitutional amendment is in ~~strikeout~~; text which would be added by the constitutional amendment is in **bold/underline**)

3° The State may become a member of ~~the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). The State may ratify the Single European Act (signed on behalf of the Member States of the Communities at Luxembourg on the 17th day of February, 1986, and at the Hague on the 28th day of February, 1986).~~

Note: the amendments to this sub-section would remove reference to the ECSC Treaty (now extinct), the EEC (EC) Treaty (the EC would be merged into the EU if the Treaty of Lisbon is ratified), and the Single European Act (SEA), the first major amendment to the Treaties. The references to the EEC Treaty and the SEA would be redundant in light of the general provision on Ireland's EU membership at the end of the new sub-section 5.

4° ~~The State may ratify the Treaty on European Union signed at Maastricht on the 7th day of February, 1992, and may become a member of that Union.~~

Note: The current sub-section 4 concerns authority to ratify the original TEU (Maastricht Treaty), and would be redundant in light of the general provision on Ireland's EU membership at the end of the new sub-section 5.

4° Ireland affirms its commitment to the European Union within which the member states of that Union work together to promote peace, shared values and the well-being of their peoples.

Note: this would be a new sub-section, which would make a general political statement about Irish EU membership. The text is similar to Article 3(1) of the TEU, as it would be amended by the Treaty of Lisbon, which reads: 'The Union's aim is to promote peace, its values and the well-being of its peoples.'

~~5° The State may ratify the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Amsterdam on the 2nd day of October, 1997.~~

Note: The current sub-section 5 concerns authority to ratify the Treaty of Amsterdam, and would be redundant in light of the general provision on Ireland's EU membership at the end of the new sub-section 5.

5° The State may ratify the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on the 13th day of December 2007 ("Treaty of Lisbon"), and may be a member of the European Union established by virtue of that Treaty.

Note: this new sub-section would contain authority both to ratify the Treaty of Lisbon and more generally to be a member of the EU.

~~6° The State may exercise the options or discretions provided by or under Articles 1.11, 2.5 and 2.15 of the Treaty referred to in subsection 5° of this section and the second and fourth Protocols set out in the said Treaty but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.~~

Note: this current provision requires Irish parliamentary approval for participation in 'enhanced cooperation', as provided for in the Treaty of Amsterdam, as well as for the exercise of opt-ins related to Justice and Home Affairs (JHA) measures, and changes to decision-making relating to JHA matters. It would be replaced by sub-section 7 and (as regards changes in decision-making) sub-section 8 below.

6° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State, before, on or after the entry into force of the Treaty of Lisbon, that are necessitated by the obligations of membership of the European Union [...] referred to in subsection 5° of this section or of the European Atomic Energy Community, or prevents laws enacted, acts done or measures adopted by—

- i) the said European Union or the [...] European Atomic Energy Community, or by institutions thereof,
- ii) the European Communities or European Union existing immediately before the entry into force of the Treaty of Lisbon, or by institutions thereof, or
- iii) bodies competent under the treaties [...] referred to in this section,

from having the force of law in the State.

Note: this is the current sub-section 10 (see below), relating to the primacy of EU law. It would be amended simply to update the cross-references to Treaty texts.

~~7° The State may ratify the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Nice on the 26th day of February, 2001.~~

Note: The current sub-section 7 concerns authority to ratify the Treaty of Nice, and would be redundant in light of the general provision on Ireland's EU membership at the end of the new sub-section 5.

7° The State may exercise the options or discretions—

i to which Article 20 of the Treaty on European Union relating to enhanced cooperation applies,

ii under Protocol No. 19 on the Schengen *acquis* integrated into the framework of the European Union annexed to that treaty and to the Treaty on the Functioning of the European Union (formerly known as the Treaty establishing the European Community), and

iii under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, so annexed, including the option that the said Protocol No. 21 shall, in whole or in part, cease to apply to the State,

but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

Note: the new sub-section 7 would replace the current sub-sections 6 and 8 (see above and below), which already require Irish parliamentary approval as regards participation in enhanced cooperation and exercising opt-ins to JHA legislation. As regards point i), the Articles of the Treaty of Nice referred to in the current sub-section 8 all concern enhanced cooperation. As for points ii) and iii), the current sub-section 6 already applies.

~~8° The State may exercise the options or discretions provided by or under Articles 1.6, 1.9, 1.11, 1.12, 1.13 and 2.1 of the Treaty referred to in subsection 7° of this section but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.~~

Note: The current sub-section 8, which concerns Irish parliamentary approval to opt in to 'enhanced cooperation' measures, would be replaced by the new sub-section 7 (see above). The new sub-section would still guarantee Irish parliamentary approval of such decisions.

8° The State may agree to the decisions, regulations or other acts—

i under the Treaty on European Union and the Treaty on the Functioning of the European Union authorising the Council of the European Union to act other than by unanimity,

ii under those treaties authorising the adoption of the ordinary legislative procedure, and

iii under subparagraph (d) of Article 82.2, the third subparagraph of Article 83.1 and paragraphs 1 and 4 of Article 86 of the Treaty on the Functioning of the European Union, relating to the area of freedom, security and justice,

but the agreement to any such decision, regulation or act shall be subject to the prior approval of both Houses of the Oireachtas.

Note: This paragraph would relate mostly to new provisions of the Treaties to be inserted by the Treaty of Lisbon. Parts i) and ii) would require Irish parliamentary approval for any decision to apply either the general rules changing the decision-making process for EU acts, or the specific rules allowing a change in the decision-making process concerning specified areas (foreign policy, family law, environment, social policy, EU spending frameworks). Part iii) would concern decisions to extend EU power relating to criminal law and to adopt measures concerning a European Public Prosecutor; these decisions would equally require Irish parliamentary approval.

~~9° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 1.2 of the Treaty referred to in subsection 7° of this section where that common defence would include the State.~~

9° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 42 of the Treaty on European Union where that common defence would include the State.

Note: there would be no change in the substance of this provision, which rules out the application of any decision to adopt a common defence to Ireland. Only the cross-reference to the relevant Treaty provision would be changed.

~~10° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State.~~

Note: this sub-section would be replaced by new sub-section 6 - see above - which would not make any changes to the substance of the clause.

~~11° The State may ratify the Agreement relating to Community Patents drawn up between the Member States of the Communities and done at Luxembourg on the 15th day of December, 1989.~~

Note: This agreement was not ratified and so this sub-section is redundant. There would be no new sub-section 11.