



**AN BILLE UM AN OCHTÚ LEASÚ IS FICHE AR AN
mBUNREACTH 2005
TWENTY-EIGHTH AMENDMENT OF THE CONSTITUTION
BILL 2005**

EXPLANATORY MEMORANDUM

Purpose of Bill

The Twenty-eight Amendment of the Constitution Bill 2005 is necessary to enable the State to ratify the Treaty establishing a Constitution for Europe (commonly known as the European Constitution).

Content of Bill

The Bill provides for the amendment of subsection 3 of Article 29.4 of the Constitution, the deletion of the current subsections 4, 5, 6, 7, 8, 9, 10 and 11, and the insertion of new subsections 4, 5, 6, 7 and 8.

The amendment of subsection 3 of Article 29.4 and the deletion of the current subsections 4, 5, 6, 7, 8, 9 and 10 would remove provisions relating to the existing EU Treaties which would be repealed on the entry into force of the Treaty establishing a Constitution for Europe. The deletion of subsection 11 would remove a redundant provision relating to a 1989 Agreement relating to Community Patents which never entered into force. However, subsections 8 and 9 would insert a failsafe mechanism, providing that these amendments would only take effect on the entry into force of the Treaty. This would guard against a situation where after Irish ratification of the Treaty it did not enter into force and the existing Treaties remained in effect.

The new subsection 4 would allow the State to ratify the Treaty establishing a Constitution for Europe and to become a member of the European Union as established by it.

The new subsection 5, modelled on the current Article 29.4.10, which has essentially been in place since Ireland's accession to the European Communities, would ensure legal compatibility between the Treaty establishing a Constitution for Europe and the Constitution and would carry forward the concept of constitutional cover for laws, acts and measures "necessitated by the obligations" of EU membership.

The new subsection 6 lists those provisions of the Treaty in regard to which prior approval of both Houses of the Oireachtas would be required before the State could participate in or agree to decisions or actions under them. It updates the provisions inserted in relation to the Treaties of Amsterdam and of Nice covering those situations where, because a discretion exists to opt into a given action, Irish

participation cannot be deemed to be legally “necessitated”. The areas concerned are enhanced co-operation — the Schengen Protocol; and the Protocol covering the position of the UK and Ireland in respect of border controls, asylum and immigration, judicial co-operation in civil matters and police co-operation.

In addition, subsection 6 also states that prior Oireachtas approval would be a condition for action by the State under a small number of other Articles. This is not required for legal reasons but to provide for an enhanced role for the Houses of the Oireachtas in respect of the relevant issues. The matters concerned are the use of the general and specific passerelle provisions, which allow for decision-making in certain areas to be changed from unanimity to qualified majority voting or from a special to the ordinary legislative procedure, as well as decisions to extend the areas of criminal law in which the Union may legislate, or to establish a European Public Prosecutor.

The new subsection 7 carries forward the prohibition on Irish participation in an EU common defence, as contained in the current Article 29.4.9 which was inserted by the amendment to the Constitution approved in the second referendum on the Treaty of Nice. This does not prevent Irish participation in other aspects of the Common Security and Defence Policy.

As mentioned above, subsections 8 and 9 contain a mechanism whereby, with the exception of the license given to the State to ratify the European Constitution under subsection 4, the changes contained in the amendment would take effect only on the entry into force of the Treaty establishing a Constitution for Europe.

*An Roinn Gnóthaí Eachtracha,
Bealtaine, 2005.*