

EUROPEAN UNION BILL

Regulatory Impact Assessment

1. Title of proposal

European Union Bill

2. Purpose and intended effect of measure

(i) The objective

The EU Bill (“the Bill”), which applies to the UK (and, for some purposes, Gibraltar), has two main aims:

- to make provision for the EU Constitutional Treaty (“the Treaty”) in UK law. The Treaty brings together the main existing EU Treaties in one simplified text. It sets out clearly which powers the Member States chose to share and underlines for the first time that the EU has only those powers which the sovereign Member States agree it should have. The Treaty also aims to modernise the EU’s institutions and streamline its decision making in light of an enlarged Union so that it can act more effectively.

- to require, and provide for, a referendum about the ratification of the Treaty. This will allow the people to have the final say on whether the UK approves the Treaty or not. The Bill establishes the details of the referendum, by, among other things, setting out the question, determining the franchise, and providing for the date of the referendum to be set by order.

(ii) The background

The EU Constitutional Treaty

In June 2004, the Heads of States and Governments of the 25 EU Member States agreed to the text of the Treaty. The Treaty was signed in Rome on 29 October 2004. A first draft of the Treaty had been drawn up by the Convention on the Future of Europe which had been established by the Laeken European Council of December 2001 to propose reforms to the EU’s institutional structures in preparation for enlargement, and to reconnect the EU with its citizens. An Inter-Governmental Conference (IGC) was then convened in October 2003. During the IGC, the Member States negotiated the final treaty taking the draft prepared by the Convention as its starting point.

If ratified, the new Treaty will do several things. The main changes will be to the institutional structures of the EU. The Treaty also sets out a definition of the Competences of the EU, and incorporates the Charter of Fundamental Rights.

Institutional Changes

The Treaty would:

- Consolidate the main European Treaties into a single text.
- Transform the existing Presidency of the European Council into a full-time President, rather than the current rotating 6-monthly arrangement.
- Take the two current roles of High Representative for Common Foreign and Security Policy and External Relations Commissioner, and merge them into one post.
- Give national parliaments a voice in making European laws for the first time.
- Reduce the size of the European Commission.
- Reform the system for decisions that are taken by national ministers in the Council of Ministers.
- Extend the Qualified Majority Voting system to new policy areas, while maintaining unanimity in areas of vital national interest such as tax, social security, defence, key areas of criminal procedural law, the system of own resources and as the general rule for CFSP.
- Increase the number of policy areas where elected MEPs in the European Parliament also have to approve EU legislation.
- Simplify the procedures for some EU countries to work together more closely on certain issues.

Definition of Competences

For the first time the Treaty sets out the fundamental principles that underpin how the Union works in clear terms. This does not fundamentally extend the competences of the EU but sets them out in a straightforward way. The Treaty also organises the various competences into a number of categories. These are:

- Exclusive competence – areas where the EU has the sole right to act (for example Competition Rules in the internal market)
- Shared competence – areas where competence is shared between the Union and Member States (for example Agriculture and Energy)
- Supporting or coordinating actions – areas where the EU can only support or coordinate actions of the Member States.

The Treaty also collapses the pillar structure of the Maastricht Treaty and brings Justice and Home Affairs (JHA) and the Common Foreign and Security Policy (CFSP) into the main body of the Treaties. Decisions on CFSP and key aspects of JHA will still require unanimity at the Council before decisions can be taken.

Charter of Fundamental Rights

The Treaty incorporates the Charter of Fundamental Rights, which sets out a range of rights, freedoms and principles for EU citizens. The Charter does not create any new rights for the EU, but highlights existing ones. It binds only

the EU's institutions, and binds member countries only when they are implementing European laws. The Charter does not in itself establish any new powers or tasks for the EU or new obligations on Member States when they act within national competence.

The European Union Bill

Implementing the EU Constitutional Treaty into UK law.

The Treaty must be ratified by the Member States in accordance with their constitutional requirements. Because treaties are not self-executing in UK law, the Government is introducing a Bill amending the European Communities Act 1972 (c 68) to give effect to those provisions of the Treaty which require implementation in domestic law. In broad terms, the Bill allows the 1972 Act to give effect to directly applicable provisions of the Treaty, and otherwise will allow Ministers, under section 2(2) of the 1972 Act to adopt secondary legislation to implement the Treaty and acts adopted under it

At present under the European Communities Act 1972 the Government can create criminal offences carrying penalties of up to 2 years' imprisonment. In order to implement measures adopted under the Treaty relating to judicial co-operation in criminal matters and to implement EU sanctions measures, the Bill extends this to 10 years. This is comparable with existing powers used to implement international sanctions measures: the Export Control Act 2002 allows for penalties of up to 10 years' imprisonment, whereas the United Nations Act 1946 allows for unlimited penalties.

The Bill specifies the franchise for the referendum, which will be those eligible to vote at a Westminster Parliamentary election, peers, and those Commonwealth citizens able to vote in Gibraltar at a European Parliamentary election.

The referendum question is also on the face of the Bill. The date and referendum period will be set by Order. Generally the Bill will allow for the referendum to be run in accordance with the generic legislation governing the holding of referendums at UK level, the Political Parties, Elections and Referendums Act 2000 (PPERA), with some adaptations to take into account the inclusion of Gibraltar in the referendum area.

There is also a provision for the combination of the referendum with other referendums or elections. As the date for the referendum will be set by Order it is at the moment impossible to know whether this provision will be necessary. In general, combination would be expected to produce efficiency and cost savings.

(iii) Risk assessment

Implementation of the EU Constitutional Treaty

The current treaties were negotiated when the EU had considerably fewer members. The Constitutional Treaty provides the institutional reforms necessary for an EU of 25 Member States to run more efficiently and effectively.

The Government must introduce primary legislation in order to implement the Treaty into UK law, and provide for a referendum to take place. The Bill will have the effect that the Treaty cannot be ratified in the UK without approval in a referendum.

3. Options

Option 1 – Do nothing. To do nothing would prevent the UK Government from ratifying the Treaty. Furthermore, the Treaty was agreed in June 2004 and signed by the Prime Minister and Foreign Secretary in October 2004 and we therefore have an obligation to pursue ratification.

Option 2 – Legislate. In order to give effect to the Treaty in UK law, the Government must enact primary legislation. Introducing a Bill to Parliament is part of the UK's ratification process.

4. Benefits

Option 1

As the Government believes that this Treaty is a good deal for the UK, there are no discernible benefits to this option. Although the Treaty does not substantively affect the UK business, charity and voluntary sectors, the indirect benefits to these sectors of a more efficient EU would be lost if the Treaty was not ratified. Moreover, there would be additional costs (see section 5).

Option 2

The Bill will have no direct impact on the business, charity or voluntary sectors as many of the substantive rules in the Treaty which will apply directly to these areas are taken from the current treaties. The new provisions introduced by the Treaty are chiefly concerned with the internal structures, procedures and competences of the Union's institutions.

There will be indirect benefits. The Treaty aims to introduce institutional reforms that will allow the Union to operate more effectively with a membership of 25 Member States. These reforms include for example, more streamlined decision-making and a more disciplined procedure to agree the Union's annual budget. The Treaty rules out tax, welfare and economic harmonisation. It allows the UK to remain as an influential power in the EU while retaining our economic flexibility. This would increase opportunities for UK business to benefit from the single market, and would mean better value for the UK contribution and a more prosperous Europe.

The Bill may benefit those businesses directly involved in supplying services for elections and referendums such as Royal Mail, printers and stationers.

5. Costs

Option 1

There could be significant costs to the UK business, charity and voluntary sectors should the UK fail to ratify this Treaty. Should all other Member States approve the Treaty – as we anticipate they will – but the UK fail to ratify it, then the UK would risk being marginalised within Europe, bringing damaging instability for UK business, trade, investment and jobs.

Option 2

As stated in the benefits section, the Bill will have no direct impact on the business, charity or voluntary sectors as many of the substantive rules in the Treaty which will apply directly to these areas are taken from the current treaties. The new provisions introduced by the Treaty are concerned with the internal structures, procedures and competences of the Union's institutions.

As set out above, the Government believes that these institutional changes are likely to lead indirectly to benefits for business, charity or the voluntary sector, rather than additional costs. The Treaty carries forward current arrangements for the coordination of economic and employment policies essentially unchanged; and Member States will retain a veto in decisions in key areas such as tax and social security. Inclusion of the Charter of Fundamental Rights will not extend any new powers to the EU. It will only be binding on the EU's institutions and the Member States when they are implementing EU law.

There will be costs relating to the holding of the referendum. Given that this will be the first UK-wide referendum for over 30 years the cost is difficult to estimate. However, based on the cost of a general election, the estimate for the whole referendum could be in the region of £78 million.

6. Small Firms Impact Test

Costs and benefits to small firms should be seen in the same way as business as a whole, although costs are usually disproportionately higher for small business and the returns lower. The interests of the business community, including small and medium enterprise, were represented during the Convention by the European Economic and Social Committee (EESC), an EU advisory body set up to represent social and economic interests across Europe. Consultation since the signing of the Treaty has taken place with small business, mainly through the regional visits of Dr MacShane as outlined in the consultation section below. Foreign and Commonwealth Officials will continue to consult small firms over the coming months. Plans include explaining the effect of the Treaty to representatives of the CBI, British

Chambers of Commerce, Forum of Private Business, Institute of Directors and the Federation of Small Businesses.

7. Competition Assessment

The current situation is that the Royal Mail will be used for delivering referendum addresses and distributing postal votes on demand. It is the Universal Services Provider under the Postal Services Act 2000 and so is given the responsibility for delivering referendum addresses under the Political Parties, Elections and Referendums Act 2000. The regulators, Postcomm, have undertaken a consultation on the continued existence of a universal service provider and have recommended that the provision of the services currently undertaken by the universal service provider should be open to competition. Postcomm has stated that the Royal Mail should face competition in the delivery of all post from 1 January 2006, and is going to consult on these proposals. Assuming that the referendum will take place by the end of 2006 the Royal Mail may therefore no longer be the universal service provider.

As far as the advertising sector is concerned the Electoral Commission and others involved in the referendum will be able to engage in publicity. Details of publicity arrangements will be determined closer to the date of the referendum. The Bill should not affect competition in this sector as competition for contracts will be undertaken in the normal manner.

8. Enforcement and Sanctions

To the extent that the Bill amends the European Communities Act 1972 (c.68), enforcement and sanctions follow the terms of that Act. A person who decides to campaign in the referendum will be subject to the enforcement and sanctions measures contained in the Political Parties Elections and Referendums Act 2000.

9. Monitoring and Review

The Government will monitor the application of the subordinate regulations following from this Bill.

10. Consultation

Consultations have taken place across government departments throughout the negotiations and the preparations for the Bill. The Convention, in preparing its draft of the Treaty, consulted widely on its proposals as outlined in the costs and benefits section. Its members included representatives of national parliaments and governments and submissions were received from numerous civil, professional and other bodies. The Convention also included representatives of the Economic and Social Committee (EESC). Consultation between the Government and the CBI and TUC also took place during the IGC.

In addition the Government will continue to consult those who represent the business, voluntary and charity sectors about the Treaty and the Bill. Since the final text of the Treaty was agreed, Dr MacShane, the Europe Minister, has held discussions with a number of regional business groups on the Treaty. The Foreign Secretary also has a number of commitments planned to address business associations and trade unions on the Treaty. Government Officials have likewise given presentations on the Treaty to a number of different firms and professional associations.

During the consultations since final agreement of the Treaty, it has become apparent that the business community wants more information on the facts of the Treaty. The Government has now published a White Paper on the Treaty, a Guide to the European Union incorporating an explanation of the Treaty and other materials on the Foreign and Commonwealth website, including the text of the Treaty itself. The Government has also produced a commentary of the Treaty comparing it with the current treaties.

11. Summary and Recommendation

That the Government introduces legislation (Option 2). This is necessary in order for the Treaty to be implemented in UK law, and for a referendum to be held. Since the Treaty imposes no direct obligations on UK businesses, charities and voluntary organisations, and carries forward current Treaty arrangements in the areas of greatest relevance to those sectors, the Bill regulatory impact will be negligible (although the businesses involved in the sectors set out above may benefit). The main costs that arise due to the normal running of a referendum will be met by central government directly either through the Consolidated Fund or by the Speaker's Committee which will make payments to the Electoral Commission.

12. Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Signed.....[Jack Straw]

Date ...15th January 2005

Secretary of State
Foreign and Commonwealth Office