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Explanatory Memorandum](#)

An Bille um an Ochtú Leasú is Fiche
ar an mBunreacht 2005

Twenty-eighth Amendment of the
Constitution Bill 2005

*Mar a tionscnaíodh
As initiated*



**TWENTY-EIGHTH AMENDMENT OF THE CONSTITUTION
BILL 2005**

As initiated

ARRANGEMENT OF SECTIONS

Section

1. Amendment of Article 29 of the Constitution.
2. Citation.

SCHEDULE

PART 1

PART 2



**AN BILLE UM AN OCHTÚ LEASÚ IS FICHE AR AN
mBUNREACTH 2005**

Mar a tionscnaíodh

RIAR NA nALT

Alt

1. Airteagal 29 den Bhunreacht a leasú.
2. Lua.

AN SCEIDEAL

CUID 1

CUID 2



**TWENTY-EIGHTH AMENDMENT OF THE
CONSTITUTION BILL 2005**

BILL

entitled

AN ACT TO AMEND THE CONSTITUTION. 5

WHEREAS by virtue of Article 46 of the Constitution any provision of the Constitution may be amended in the manner provided by that Article:

AND WHEREAS it is proposed to amend Article 29 of the Constitution: 10

BE IT THEREFORE ENACTED BY THE OIREACHTAS AS FOLLOWS:

Amendment of
Article 29 of the
Constitution.

1.—Article 29 of the Constitution is hereby amended as follows:

(a) in subsection 3° of section 4 of the Irish text—

(i) the words “den Chomhphobal Eorpach do Ghual agus Cruach (do bunuigheadh le Connradh do sínigheadh i bPáras an 18adh lá d’Aibreán, 1951), de Chomhphobal Eacnamaíochta na hEorpa (do bunuigheadh le Connradh do sínigheadh insan Róimh an 25adh lá de Mhárta, 1957) agus”, and 15
20

(ii) the second sentence,

shall be repealed,

(b) in subsection 3° of section 4 of the English text—

(i) the words “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”, and 25

(ii) the second sentence,

shall be repealed, 30

(c) subsections 4°, 5°, 6°, 7°, 8°, 9°, 10° and 11° of section 4 of both texts shall be repealed,



AN BILLE UM AN OCHTÚ LEASÚ IS FICHE AR AN
mBUNREACTH 2005

BILLE

dá ngairtear

5 ACHT CHUN AN BUNREACTH A LEASÚ.

DE BHRÍ gur cead, de bhua Airteagal 46 den Bhunreacht, foráil ar bith den Bhunreacht a leasú ar an modh a shocraítear leis an Airteagal sin:

10 AGUS DE BHRÍ go bhfuil beartaithe Airteagal 29 den Bhunreacht a leasú:

ACHTAÍTEAR AG AN OIREACHTAS AR AN ÁBHAR SIN MAR A LEANAS:

1.—Leasaítear leis seo mar a leanas Airteagal 29 den Bhunreacht: Airteagal 29 den Bhunreacht a leasú.

(a) i bhfo-alt 3^o d'alt 4 den téacs Gaeilge, déanfar—

15 (i) na focail “den Chomhphobal Eorpach do Ghual agus Cruach (do bunuigheadh le Connradh do sínigheadh i bPáras an 18adh lá d’Aibreán, 1951), de Chomhphobal Eacnamaíochta na hEorpa (do bunuigheadh le Connradh do sínigheadh insan
20 Róimh an 25adh lá de Mhárta, 1957) agus”, agus

(ii) an dara habairt,

a aisghairm,

(b) i bhfo-alt 3^o d'alt 4 den téacs Sacs-Bhéarla, déanfar—

25 (i) na focail “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”, agus

(ii) an dara habairt,

30 a aisghairm,

(c) déanfar fo-ailt 4^o, 5^o, 6^o, 7^o, 8^o, 9^o, 10^o agus 11^o d'alt 4 den dá théacs a aisghairm,

(d) the subsections, the texts of which are set out in *Part 1* of the *Schedule* to this Act, shall be inserted after subsection 3° of section 4 of the Irish text, and

(e) the subsections, the texts of which are set out in *Part 2* of the *Schedule* to this Act, shall be inserted after subsection 5 3° of section 4 of the English text.

Citation.

2.—(1) The amendment of the Constitution effected by this Act shall be called the Twenty-eighth Amendment of the Constitution.

(2) This Act may be cited as the Twenty-eighth Amendment of the Constitution Act 2005. 10

(d) déanfar na fo-ailt, a bhfuil na téacsanna díobh leagtha amach i *gCuid 1* den *Sceideal* a ghabhann leis an Acht seo, a chur isteach i ndiaidh fho-alt 3^o d'alt 4 den téacs Gaeilge, agus

5 (e) déanfar na fo-ailt, a bhfuil na téacsanna díobh leagtha amach i *gCuid 2* den *Sceideal* a ghabhann leis an Acht seo, a chur isteach i ndiaidh fho-alt 3^o d'alt 4 den téacs Sacs-Bhéarla.

2.—(1) An tOchtú Leasú is Fiche ar an mBunreacht a thabharfar Lua.
10 ar an leasú a dhéantar ar an mBunreacht leis an Acht seo.

(2) Féadfar an tAcht um an Ochtú Leasú is Fiche ar an mBunreacht 2005 a ghairm den Acht seo.

SCHEDULE

PART 1

- 4° Tig leis an Stát an Conradh ag bunú Bunreacht don Eoraip a síníodh sa Róimh an 29ú lá de Dheireadh Fómhair, 2004, a dhaingniú agus tig leis a bheith ina chomhalta den Aontas Eorpach a bhunaítear leis an gConradh sin. 5
- 5° Ní dhéanann aon fhoráil atá sa Bhunreacht seo aon dlíthe a d'achtaigh, gníomhartha a rinne nó bearta lenar ghlac an Stát roimh theacht i bhfeidhm, ar theacht i bhfeidhm nó tar éis theacht i bhfeidhm an Chonartha dá dtagraítear i bhfo-alt 4° den alt seo de bhíthin riachtanais na n-oibleagáidí mar chomhalta den Aontas Eorpach dá dtagraítear san fho-alt sin nó mar chomhalta den Chomhphobal Eorpach do Fhuinneamh Adamhach, nó de bhíthin riachtanais na n-oibleagáidí mar chomhalta de na Comhphobail Eorpacha nó den Aontas Eorpach a bunaíodh faoi na conarthaí a aisghairtear leis an gConradh sin, a chur ó bhail dlí ná cosc a chur leis an méid seo a leanas— 10 15
- i dlíthe a d'achtaigh, gníomhartha a rinne nó bearta lenar ghlac an tAontas Eorpach nó an Comhphobal Eorpach do Fhuinneamh Adamhach nó institiúidí díobh, nó comhlachtaí atá inniúil faoin gConradh dá dtagraítear i bhfo-alt 4° den alt seo nó faoin gConradh ag bunú an Chomhphobail Eorpaigh do Fhuinneamh Adamhach, nó 20
- ii dlíthe a d'achtaigh, gníomhartha a rinne nó bearta lenar ghlac na Comhphobail Eorpacha nó an tAontas Eorpach a bunaíodh faoi na conarthaí arna n-aisghairm amhlaidh nó institiúidí díobh nó comhlachtaí atá inniúil faoi na conarthaí sin ar dlíthe, gníomhartha nó bearta iad a fhanann i bhfeidhm de bhua an Chonartha dá dtagraítear san fho-alt sin 4°, 25
- ó fheidhm dlí a bheith acu sa Stát. 30
- 6° Tig leis an Stát—
- i na roghnuithe nó na roghanna a fheidhmiú a shocraítear le hAirteagail I-44, III-270(4) agus III-271(4) den Chonradh dá dtagraítear i bhfo-alt 4° den alt seo, nó fúthu, agus le Caibidil III de Theideal VI de Chuid III den Chonradh sin, nó fúithi, agus le Prótacal Uimh. 17 agus Prótacal Uimh. 19 a ghabhann leis an gConradh sin, nó fúthu, agus 35
- ii aontú leis na cinní Eorpacha faoi Airteagail I-40(7), I-55(4), III-210(3), III-234(2), III-269(3), III-270(2)(d), III-271(1), III-274, III-300(3), III-422 agus IV-444, agus leis an dlí Eorpach faoi Airteagal III-274, den Chonradh sin, 40
- ach beidh aon fheidhmiú nó aontú den sórt sin faoi réir ceadú a fháil roimh ré ó dhá Theach an Oireachtais.
- 7° Ní ghlacfaidh an Stát cinneadh arna dhéanamh ag an gComhairle Eorpach chun comhchosaint a bhunú de bhun Airteagal I-41(2) den Chonradh dá dtagraítear i bhfo-alt 4° den alt seo i gcás ina mbeadh an Stát san áireamh sa chomhchosaint sin. 45

AN SCEIDEAL

CUID 1

4° Tig leis an Stát an Conradh ag bunú Bunreachta don Eoraip a
síníodh sa Róimh an 29ú lá de Dheireadh Fómhair, 2004, a
5 dhaingniú agus tig leis a bheith ina chomhalta den Aontas Eorpach a bhunaítear leis an gConradh sin.

5° Ní dhéanann aon fhoráil atá sa Bhunreacht seo aon dlíthe a d'ach-
taigh, gníomhartha a rinne nó bearta lenar ghlac an Stát roimh
theacht i bhfeidhm, ar theacht i bhfeidhm nó tar éis theacht i
10 bhfeidhm an Chonartha dá dtagraítear i bhfo-alt 4° den alt seo de bhíthin riachtanais na n-oibleagáidí mar chomhalta den Aontas Eorpach dá dtagraítear san fho-alt sin nó mar chomhalta den Chomhphobal Eorpach do Fhuinneamh Adamhach, nó de bhíthin riachtanais na n-oibleagáidí mar chomhalta de na Comhphobail Eorpacha nó den Aontas Eorpach a bunaíodh faoi na conarthaí a aisghairtear leis an gConradh sin, a chur ó bhail dlí ná cosc a chur leis an méid seo a leanas—

i dlíthe a d'achtaigh, gníomhartha a rinne nó bearta lenar ghlac
an tAontas Eorpach nó an Comhphobal Eorpach do Fhuinn-
eamh Adamhach nó institiúidí díobh, nó comhlachtaí atá
20 inniúil faoin gConradh dá dtagraítear i bhfo-alt 4° den alt seo nó faoin gConradh ag bunú an Chomhphobail Eorpaigh do Fhuinneamh Adamhach, nó

ii dlíthe a d'achtaigh, gníomhartha a rinne nó bearta lenar ghlac
na Comhphobail Eorpacha nó an tAontas Eorpach a bunaíodh
25 faoi na conarthaí arna n-aisghairm amhlaidh nó institiúidí díobh nó comhlachtaí atá inniúil faoi na conarthaí sin ar dlíthe, gníomhartha nó bearta iad a fhanann i bhfeidhm de bhua an Chonartha dá dtagraítear san fho-alt sin 4°,

30 ó fheidhm dlí a bheith acu sa Stát.

6° Tig leis an Stát—

i na roghnuithe nó na roghanna a fheidhmiú a shocraítear le
hAirteagail I-44, III-270(4) agus III-271(4) den Chonradh dá
dtagraítear i bhfo-alt 4° den alt seo, nó fúthu, agus le Caibidil
35 III de Theideal VI de Chuid III den Chonradh sin, nó fúithi, agus le Prótacal Uimh. 17 agus Prótacal Uimh. 19 a ghabhann leis an gConradh sin, nó fúthu, agus

ii aontú leis na cinní Eorpacha faoi Airteagail I-40(7), I-55(4),
40 III-210(3), III-234(2), III-269(3), III-270(2)(d), III-271(1), III-274, III-300(3), III-422 agus IV-444, agus leis an dlí Eorpach faoi Airteagal III-274, den Chonradh sin,

ach beidh aon fheidhmiú nó aontú den sórt sin faoi réir ceadú a fháil roimh ré ó dhá Theach an Oireachtais.

7° Ní ghlacfaidh an Stát cinneadh arna dhéanamh ag an gComhairle
45 Eorpach chun comhchosaint a bhunú de bhun Airteagal I-41(2) den Chonradh dá dtagraítear i bhfo-alt 4° den alt seo i gcás ina mbeadh an Stát san áireamh sa chomhchosaint sin.

- 8° Faoi chuimsiú fho-alt 9°, ní bheidh éifeacht leis an leasú a dhéantar ar an alt seo leis *an Acht um an Ochtú Leasú is Fiche ar an mBunreacht 2005* go dtí an dáta a thiocfaidh an Conradh dá dtagraítear i bhfo-alt 4° (arna chur isteach leis an Acht sin) i bhfeidhm agus— 5
- i déanfar fo-ailt 5°, 6° agus 7° (arna gcur isteach leis an Acht sin) den alt seo a fhágáil ar lár as gach téacs oifigiúil den Bhunreacht seo a fhoilseofar tar éis an tAcht sin a achtú ina dhlí agus roimh an dáta sin, agus
- ii déanfar na focail agus na forálacha den alt seo a aisghairtear leis an Acht sin a chur san áireamh i ngach téacs oifigiúil den Bhunreacht a fhoilseofar tar éis an tAcht sin a achtú ina dhlí agus roimh an dáta sin. 10
- 9° Beidh éifeacht leis an bhfo-alt seo agus le fo-ailt 4° agus 8° (arna gcur isteach leis *an Acht um an Ochtú Leasú is Fiche ar an mBunreacht 2005*) ar achtú an Achta sin ina dhlí, agus uaidh sin amach, agus déanfar na fo-ailt sin 4° agus 8° a uimhriú mar fho-ailt 12° agus 13°, agus déanfar an fo-alt seo a uimhriú mar fho-alt 14° i ngach téacs oifigiúil den Bhunreacht seo a fhoilseofar tar éis an achtaithe sin agus roimh an dáta a thiocfaidh an Conradh dá dtagraítear san fho-alt sin 4° i bhfeidhm. 15 20

PART 2

- 4° The State may ratify the Treaty establishing a Constitution for Europe signed at Rome on the 29th day of October, 2004, and may become a member of the European Union established by that Treaty. 25
- 5° 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 referred to in subsection 4° of this section that are necessitated by the obligations of membership of the European Union referred to in that subsection or of the European Atomic Energy Community, or were necessitated by the obligations of membership of the European Communities or the European Union established under the treaties repealed by the said Treaty, or prevents— 30 35
- i laws enacted, acts done or measures adopted by the European Union or the European Atomic Energy Community or by institutions thereof, or by bodies competent under the Treaty referred to in subsection 4° of this section or the Treaty establishing the European Atomic Energy Community, or 40
- ii laws enacted, acts done or measures adopted by the European Communities or European Union established under the treaties so repealed or by institutions thereof or by bodies competent under those treaties, that remain in force by virtue of the Treaty referred to in the said subsection 4°, 45
- from having the force of law in the State.
- 6° The State may—
- i exercise the options or discretions provided by or under Articles I-44, III-270(4) and III-271(4) and Chapter III of Title VI of Part III of the Treaty referred to in subsection 4° of this section and Protocol No. 17 and Protocol No. 19 to that Treaty, and 50

- 8° Faoi chuimsiú fho-alt 9°, ní bheidh éifeacht leis an leasú a dhéantar ar an alt seo leis *an Acht um an Ochtú Leasú is Fiche ar an mBunreacht 2005* go dtí an dáta a thiocfaidh an Conradh dá dtagraítear i bhfo-alt 4° (arna chur isteach leis an Acht sin) i bhfeidhm agus—
- 5
- i déanfar fo-ailt 5°, 6° agus 7° (arna gcur isteach leis an Acht sin) den alt seo a fhágáil ar lár as gach téacs oifigiúil den Bhunreacht seo a fhoilseofar tar éis an tAcht sin a achtú ina dhlí agus roimh an dáta sin, agus
- 10
- ii déanfar na focail agus na forálacha den alt seo a aisghairtear leis an Acht sin a chur san áireamh i ngach téacs oifigiúil den Bhunreacht a fhoilseofar tar éis an tAcht sin a achtú ina dhlí agus roimh an dáta sin.
- 9° Beidh éifeacht leis an bhfo-alt seo agus le fo-ailt 4° agus 8° (arna gcur isteach leis *an Acht um an Ochtú Leasú is Fiche ar an mBunreacht 2005*) ar achtú an Achta sin ina dhlí, agus uaidh sin amach, agus déanfar na fo-ailt sin 4° agus 8° a uimhriú mar fho-ailt 12° agus 13°, agus déanfar an fo-alt seo a uimhriú mar fho-alt 14° i ngach téacs oifigiúil den Bhunreacht seo a fhoilseofar tar éis an achtaithe sin agus roimh an dáta a thiocfaidh an Conradh dá dtagraítear san fho-alt sin 4° i bhfeidhm.
- 15
- 20

CUID 2

- 4° The State may ratify the Treaty establishing a Constitution for Europe signed at Rome on the 29th day of October, 2004, and may become a member of the European Union established by that Treaty.
- 25
- 5° 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 referred to in subsection 4° of this section that are necessitated by the obligations of membership of the European Union referred to in that subsection or of the European Atomic Energy Community, or were necessitated by the obligations of membership of the European Communities or the European Union established under the treaties repealed by the said Treaty, or prevents—
- 30
- 35
- i laws enacted, acts done or measures adopted by the European Union or the European Atomic Energy Community or by institutions thereof, or by bodies competent under the Treaty referred to in subsection 4° of this section or the Treaty establishing the European Atomic Energy Community, or
- 40
- ii laws enacted, acts done or measures adopted by the European Communities or European Union established under the treaties so repealed or by institutions thereof or by bodies competent under those treaties, that remain in force by virtue of the Treaty referred to in the said subsection 4°,
- 45
- from having the force of law in the State.
- 6° The State may—
- i exercise the options or discretions provided by or under Articles I-44, III-270(4) and III-271(4) and Chapter III of Title VI of Part III of the Treaty referred to in subsection 4° of this section and Protocol No. 17 and Protocol No. 19 to that Treaty, and
- 50

ii agree to the European decisions under Articles I-40(7), I-55(4), III-210(3), III-234(2), III-269(3), III-270(2)(d), III-271(1), III-274, III-300(3), III-422 and IV-444, and the European law under Article III-274, of that Treaty,

but any such exercise or agreement shall be subject to the prior approval of both Houses of the Oireachtas. 5

7° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article I-41(2) of the Treaty referred to in subsection 4° of this section where that common defence would include the State. 10

8° Subject to subsection 9°, the amendment of this section effected by the *Twenty-eighth Amendment of the Constitution Act 2005* shall not have effect until the date on which the Treaty referred to in subsection 4° (inserted by that Act) of this section enters into force and— 15

i subsections 5°, 6° and 7° (inserted by that Act) of this section shall be omitted from every official text of this Constitution published after the enactment into law of that Act and before the said date, and

ii the words and provisions of this section repealed by that Act shall be included in every official text of this Constitution published after the enactment into law of that Act and before the said date. 20

9° This subsection and subsections 4° and 8° (inserted by the *Twenty-eighth Amendment of the Constitution Act 2005*) shall have effect upon and from the enactment into law of that Act, and the said subsections 4° and 8° shall be numbered as subsections 12° and 13°, and this subsection shall be numbered as subsection 14°, in every official text of this Constitution published after such enactment and before the date on which the Treaty referred to in the said subsection 4° enters into force. 25 30

- ii agree to the European decisions under Articles I-40(7), I-55(4), III-210(3), III-234(2), III-269(3), III-270(2)(d), III-271(1), III-274, III-300(3), III-422 and IV-444, and the European law under Article III-274, of that Treaty,
- 5 but any such exercise or agreement shall be subject to the prior approval of both Houses of the Oireachtas.
- 7° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article I-41(2) of the Treaty referred to in subsection 4° of this section where that
10 common defence would include the State.
- 8° Subject to subsection 9°, the amendment of this section effected by the *Twenty-eighth Amendment of the Constitution Act 2005* shall not have effect until the date on which the Treaty referred to in subsection 4° (inserted by that Act) of this section enters
15 into force and—
- i subsections 5°, 6° and 7° (inserted by that Act) of this section shall be omitted from every official text of this Constitution published after the enactment into law of that Act and before the said date, and
- 20 ii the words and provisions of this section repealed by that Act shall be included in every official text of this Constitution published after the enactment into law of that Act and before the said date.
- 9° This subsection and subsections 4° and 8° (inserted by the
25 *Twenty-eighth Amendment of the Constitution Act 2005*) shall have effect upon and from the enactment into law of that Act, and the said subsections 4° and 8° shall be numbered as subsections 12° and 13°, and this subsection shall be numbered as subsection 14°, in every official text of this Constitution published
30 after such enactment and before the date on which the Treaty referred to in the said subsection 4° enters into force.



**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.*