



# EU Treaty Bills: the Whip and Referendum Clauses

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This Note looks on the one hand at whether the Whip has been used in relation to EC amendment bills, and on the other at referendum clauses proposed for such bills.

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## **A. The use of the Whip**

A 'three-line whip', when an item is underlined three times, indicates that attendance is required and pairing is not normally allowed. This is imposed on important occasions, such as second readings of major Bills and motions of no confidence.<sup>1</sup>

### **1. Treaty of Rome (1972)**

The Conservative Government of Edward Heath initially insisted that the vote on the paving motion on the principle of entry to the EEC should be subject to a three-line whip. This had the effect of provoking Conservative dissidents to press for a free vote so that they could oppose entry without being disloyal to the party. Just before the First Reading vote on the Bill on 28 October 1971 the Government declared that there was to be a free vote as the issue was a matter of conscience. Most Conservatives voted for membership, but 39 voted against and two abstained. There was a Labour three-line whip instructing Members to oppose UK entry, but Roy Jenkins and 68 pro-European Labour MPs joined the Conservative Government lobby in favour of entry and 20 abstained. The vote was 356 votes in favour to 244 against. In February 1972 the vote on the Second Reading of the Bill was 309 in favour to 301 votes against, with 15 Conservatives voting against and four abstaining. The Bill passed its Third Reading in July 1972 with 301 in favour, 284 against (16 Conservatives voted against and four abstained; there were 13 Labour abstentions).

### **2. Single European Act (1986)**

There was a Government three-line Whip and a 'guillotine'.

### **3. Treaty on European Union (Maastricht, 1992-3)**

There was a Government three-line whip. At Second Reading on 20-21 May 1992, 22 Conservative MPs defied the Whip and voted against the *European Communities (Amendment) Bill* on Maastricht. Bill Cash tabled 240 amendments to the bill and voted 47 times against the Government when a three-line whip was in place (Young 1998: 395)<sup>2</sup>

### **4. Treaty of Amsterdam (1997)**

There was an Opposition three-line whip: only one MP, Edward Heath, defied the party whip by abstaining.

### **5. Treaty of Nice (2004)**

There was an Opposition and a Government three-line whip. Although 100 Labour MPs did not attend, the Government won with a large majority.

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<sup>1</sup> [http://www.statistics.gov.uk/downloads/theme\\_compendia/UK2005/UK2005.pdf](http://www.statistics.gov.uk/downloads/theme_compendia/UK2005/UK2005.pdf)

<sup>2</sup> European Journal of Political Research 45: 851–869, 2006 <http://www.blackwell-synergy.com/doi/pdf/10.1111/j.1475-6765.2006.00638.x>

## **6. Treaty Establishing a Constitution for Europe**

Government and opposition three-line whip and programme motion.

### **B. Referendum clauses**

#### **1. Party positions**

Labour in opposition voted in favour of a referendum on the Maastricht Treaty but in government they were against referendums on the Amsterdam and Nice Treaties. The Labour Government promised a referendum on the constitutional treaty, which was supported by the Conservatives and Liberal Democrats.

In 1972 the Conservatives resisted a referendum on UK membership of the EEC. Conservatives in government were also against a referendum on the Single European Act and Maastricht Treaties. In the Maastricht referendum division in April 1993 72 Conservatives voted against the New Clause. In opposition they wanted one on the Amsterdam and Nice Treaties.

The Liberal Democrats were divided over a referendum on Maastricht. In the vote on 21 April 1993 12 Lib Dems supported a referendum, while four were against. They were against referendums on the Amsterdam and Nice Treaties, but are again split over a referendum on the Lisbon Treaty. Their leader, Nick Clegg, has called instead for a referendum on the UK's continued membership of the EU.

#### **2. Treaty of Rome**

Enoch Powell and Neil Marten put down an amendment calling for a referendum on entry to the EEC. This was pursued by Tony Benn in March 1972, who took it to the National Executive. It became official Labour policy in April 1972.

The Conservative Prime Minister, Edward Heath, rejected calls for a referendum.

#### **3. Single European Act**

No referendum amendments or clauses were debated during the *European Communities (Amendment) Bill* linked to the *Single European Act* in 1986.

#### **4. Maastricht Treaty**

There was a vote on 21 April 1993 on a new clause proposing a referendum on the Maastricht Treaty (the *Treaty on European Union*). The division in question was on New Clause 49, Commencement provisions, which stated:

This Act shall take effect on the first day of January 1996 or on such earlier date as may be specified in any subsequent Act of Parliament as the date for the holding of a

consultative referendum to establish whether or not majority opinion supports The Treaty on European Union.<sup>3</sup>

The division on the referendum clause was defeated by 363 votes to 124.

## 5. Treaty of Amsterdam

The then Leader of the Opposition, William Hague, made a call for a referendum on the Amsterdam Treaty at the Scottish Conservative Party conference on 27 June 1997, saying that the Treaty had removed the UK veto in 16 areas and extended the powers of the European Parliament in 23.<sup>4</sup> The demand for a referendum was repeated by the Shadow Foreign Secretary, Michael Howard MP, at the Conservative Party Conference on 8 October.

The then Prime Minister, Tony Blair, rejected a referendum in parliamentary answers of July 1997:

Apparently, the reason why some people say that there should be a referendum is the extension of qualified majority voting. I have looked carefully at both the Single European Act and the Maastricht Treaty, and there are vastly greater extensions of qualified majority voting in both. Not a word about a referendum did we ever hear from Conservative Members - but then they are consistent at least in their inconsistency. (...)

The idea that this country should have a referendum on the Amsterdam Treaty is one of the most absurd propositions that has been advanced in recent times. What happens in Denmark is a matter for Denmark and does not affect us.<sup>5</sup>

During the Second Reading of the *European Communities (Amendment) Bill* on Amsterdam, the then Foreign Secretary, Robin Cook, answered a question about a referendum amendment as follows:

**Mrs. Louise Ellman (Liverpool, Riverside):** Does my right hon. Friend have any confirmation that the statements made by the right hon. and learned Gentleman and by the Leader of the Opposition that they would call for a referendum on the treaty of Amsterdam will lead to an amendment being tabled? If my right hon. Friend has no information on that, would he care to ask the right hon. and learned Gentleman if that is the case?

**Mr. Cook:** The right hon. and learned Gentleman will make his speech in his own good time. It is certainly true that he was loud in his demands throughout the summer for a referendum. Indeed, he was demanding a referendum as late as the Conservative party conference on 8 October. He may have read with interest, as I did, in *The Daily Telegraph* only five days later that his leader had decided quietly to ditch the commitment to a referendum. I can only conclude that the Conservative party is now so weary of being defeated in elections and referendums that it has decided to draw a line under them.<sup>6</sup>

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<sup>3</sup> <http://pubs1.tso.parliament.uk/pa/cm199293/cmhansrd/1993-04-21/Debate-31.html>

<sup>4</sup> *The Times*, 28 June 1997.

<sup>5</sup> HC Deb 2 July 1997, c289 and 9 July 1997, 933.

<sup>6</sup> HC Deb 12 November 1997 c911 at <http://www.publications.parliament.uk/pa/cm199798/cmhansrd/vo971112/debtext/71112-22.htm>

## 6. Treaty of Nice

Tony Blair stated that he did not intend to hold a referendum on the Treaty of Nice.<sup>7</sup> However, amendments were tabled during the passage of the bill. On 18 July 2001 Richard Spring introduced New Clause 12 - Referendum (No. 1) in the Commons Committee stage of the *European Communities (Amendment) Bill* relating to the *Treaty of Nice*:

New Clause 12  
Referendum (No. 1)

'This Act shall not take effect prior to the laying before Parliament of the draft of an Order in Council making provision for ascertaining, by means of a referendum, the preponderance of national opinion with respect to the provisions of the Treaty signed at Nice on 26th February 2001, provided that the Order shall not be made unless separate provision has been made by Parliament for defraying out of public funds any expenses to be incurred by a Minister of the Crown or Government Department in carrying the Order into effect.'—[Mr. Spring.]<sup>8</sup>

This was taken with two other amendments tabled on the matter of a referendum:

New clause 37—Referendum (No. 3)—

'This Act shall not take effect until the laying before Parliament of the draft of an Order in Council making provision for ascertaining, by means of referendum, the preponderance of national opinion with respect to the provisions of the provisions of the Treaty signed at Nice on 26th February 2001 amending the Treaty on European Union and the Treaty establishing the European Community, provided that the Order shall not be made unless separate provision has been made by Parliament for defraying out of public funds any expenses to be incurred by a Minister of the Crown or Government departments in carrying the Order into effect.'

New clause 44—Referendum (No. 4)—

'.—This Act shall not take effect prior to the laying before Parliament of a draft Order making provision for the ascertaining by the Government of the preponderance of national opinion with respect to the Nice Treaty by means of a referendum (providing that the Order shall not be made until provision from public funds has been made by Parliament in respect of expenditure incurred in the undertaking of such a referendum).<sup>9</sup>

In the Lords Committee stage Lord Blackwell moved Amendment No. 39:

After Clause 3, insert the following new clause—

REFERENDUM

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<sup>7</sup> HC Deb 11 December 2000 c 356.

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo010718/debtext/10718-20.htm>. Division 34 at [http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo010718/debtext/10718-30.htm#10718-30\\_div34](http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo010718/debtext/10718-30.htm#10718-30_div34)

<sup>9</sup> <http://www.publications.parliament.uk/pa/cm200102/cmhansrd/vo010718/debtext/10718-21.htm>.

This Act shall only come into force after the provisions of the Treaty of Nice have been approved in a referendum by the people of the United Kingdom, conducted under procedures approved by the United Kingdom Parliament."<sup>10</sup>

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<sup>10</sup> HL Deb 26 November 2001 c 72 at <http://www.publications.parliament.uk/pa/ld200102/ldhansrd/vo011126/text/11126-09.htm>