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European Union (Amendment) Bill

Bill 48 of 2007-08

The *European Union (Amendment) Bill* was introduced on 17 December 2007. It paves the way for UK ratification of the *Treaty of Lisbon*, which was signed on 13 December 2007. The Lisbon Treaty is an amending Treaty and the Bill will amend the *European Communities Act 1972* to include it in the list of Community Treaties, with the exception of provisions on or linked to the Common Foreign and Security Policy.

The Lisbon Treaty aims to reform the European Union's institutions to enable it to function more efficiently with 27 Members. It also introduces new elements, many of which were in the 2004 constitutional treaty abandoned following two negative referendums in France and the Netherlands.

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Summary

The *European Union (Amendment) Bill* [Bill 48 of 2007] was introduced in the Commons on 17 December 2007. The Bill has eight Clauses and one Schedule. Its purpose is to amend the *European Communities Act 1972* to the extent that is necessary for the *Treaty of Lisbon*, signed on 13 December 2007, to have legal effect in the UK, and thus to pave the way for ratification of the Treaty.

The Bill makes changes to terminology, and modifies and adds to the 1972 Act to provide for new Treaty elements, and for legal and administrative continuity. It seeks to provide for all possible consequences and effects following implementation of the Lisbon Treaty. The main amendments to the 1972 Act that relate to the new Treaty concern

- The definition of “the Community Treaties”
- A mechanism for parliamentary approval of Treaty amendments using new procedures
- Changes to terminology under existing UK legislation to take account of the new Treaty

The “European Community” is re-named the “European Union” and the *Treaty Establishing the European Community* (TEC) is re-named the *Treaty on the Functioning of the European Union* (TFEU).

The 1972 Act remains the statutory basis for the UK’s relations with the EU.

The Bill can be amended, but amendments should not be such as to prevent ratification of the Treaty.

The text of the Lisbon Treaty is available in the European Union Official Journal¹ and as a UK Command Paper.² The following Library Research Papers look at provisions in the Treaty of Lisbon (previously referred to as the ‘Reform Treaty’).

- Research Paper 07/64, [EU Reform: a new treaty or an old constitution?](#), 24 July 2007
- Research Paper 07/80, [The EU Reform Treaty: amendments to the Treaty on European Union](#), 22 November 2007
- Research Paper 07/86, [The Treaty of Lisbon: amendments to the Treaty establishing the European Community](#), 6 December 2007

¹ OJC 306 Volume 50 17 December 2007 at <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>

² European Communities No. 13 (2007) *The Treaty of Lisbon amending the Treaty Establishing the European Union and the Treaty Establishing the European Community, including the Protocols and Annexes, and Final Act with Declarations* Lisbon, 13 December 2007, Cm 7294 at <http://www.fco.gov.uk/Files/kfile/TREATY%20FINAL%20TEXT.pdf>

The following acronyms are used.

ECA	European Communities Act 1972
IGC	Intergovernmental Conference
TEU	Treaty on European Union
TEC	Treaty Establishing the European Community
TFEU	Treaty on the Functioning of the European Union
QMV	Qualified Majority Voting
OLP	Ordinary Legislative Procedure
CFSP	Common Foreign and Security Policy

CONTENTS

I	Background	7
II	Treaty Ratification in the UK	7
III	The Bill	8
	A. An Amending Treaty	8
	B. Revising the Meaning of “The Treaties”	9
	C. “European Community” becomes “European Union”	10
	D. Increase in the Powers of the European Parliament	11
	E. Parliament and Treaty Revision	12
	1. Ordinary Revision Procedure	12
	2. Simplified Revision Procedures	13
	F. Nomenclature and Commencement Clauses	17
	G. Financial and Social Impact	17
IV	What is not in the Bill	17
V	Amending the Bill	18
Appendix	Ratification procedures in other Member States	20

I Background

A process of constitutional and institutional reform of the European Union (EU) led to the signing of the *Treaty Establishing a Constitution for Europe* (here referred to as the EU Constitution) in October 2004. The Treaty was abandoned following negative referendums on ratification in France and the Netherlands in 2005, although some Member States continued with ratification. A ‘reflection period’ was introduced, which was brought to an end in early 2007 by the German Presidency of the EU.

Germany re-opened the Treaty reform debate during the first half of 2007 and in March 2007 the “Berlin Declaration” confirmed the aim of achieving a “renewed common foundation” for the EU before European Parliament elections in 2009. In June 2007 the German Presidency set out a ‘road map’ for reform and the European Council adopted a Mandate in which it stated

The constitutional concept, which consisted in repealing all existing Treaties and replacing them by a single text called "Constitution", is abandoned. The Reform Treaty will introduce into the existing Treaties, which remain in force, the innovations resulting from the 2004 IGC³

An Intergovernmental Conference (IGC) was launched under the Portuguese Presidency in July 2007 in accordance with Article 48 of the *Treaty on European Union* (TEU), which based its deliberations on the IGC Mandate.

The *Treaty of Lisbon* was concluded in Lisbon on 18 October 2007 and signed on 13 December 2007. It comprises seven Articles, a number of legally binding Protocols and an Annex. In Article 1 the Lisbon Treaty sets out amendments to the *Treaty on European Union* (TEU), while Article 2 contains amendments to the *Treaty Establishing the European Community* (TEC). Articles 37 contain final provisions on amending Protocols, the re-numbering of Treaty Articles, sections, chapters, titles and recitals; ratification, duration, entry into force and the authentic languages of the Treaty.

The content of the Treaty, though not its structure, is similar in a great many respects to the EU Constitution. It is the sixth major Treaty amendment to the 1957 *Treaty of Rome*.⁴

II Treaty Ratification in the UK

Treaties are ratified by the Foreign Secretary or his/her representative, acting on behalf of the Crown (the ‘Royal Prerogative’). Parliament does not have a direct role in treaty ratification but there can be parliamentary activity relevant to it. Starting in the 1920s, and continuously since the 1930s, there has been a constitutional practice (not a law) known as the ‘Ponsonby Rule’ which requires that treaties subject to ratification should

³ European Council Conclusions, Annex 1 IGC Mandate, 11177/1/07 REV 1 20 July 2007 at http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/94932.pdf

⁴ The earlier amendments were: Single European Act (1986), Treaty on European Union (Maastricht, 1992), Treaty of Amsterdam (1997), Treaty of Nice (2001) and the Treaty Establishing a Constitution for Europe (2004).

be laid before Parliament for 21 sitting days before ratification, for information and to give Parliament an opportunity (not always taken) to debate them.⁵ The formal submission of the treaty text to Parliament as a Command Paper, together with the debates on the Bill, has covered this requirement for European Community Treaties.

The *Treaty of Lisbon* was published as Cm 7294 in December 2007 and the Bill linked to its ratification, the *European Union (Amendment) Bill* received its first reading on 17 December 2007. The Second Reading will take place on 21 January 2007, to be followed by a Committee of the Whole House.⁶

When the UK joined the then European Economic Community in 1973, accession was preceded by the passing of an Act of Parliament which made the obligations under the Treaty and the law deriving from it applicable within the UK. This was the *European Communities Act 1972* (here referred to as the ECA). On all subsequent occasions when new treaties have been agreed, including treaties of accession, there has been new legislation in the UK to amend the ECA so that those parts of the new treaties which are intended to have domestic legal effect are also made applicable within the UK. Consequently, similar legislation is required to cover all parts of the *Treaty of Lisbon* which are intended to have direct legal effect in the Member States. In the UK the passage of the implementing legislation has not been formally part of ratification, but necessary for ratification to proceed smoothly and to avoid potential conflicts between national obligations under the Treaty and the domestic legal order. However, this bill formalises the *status quo* by specifying that amending treaties will not be ratified unless approved by an Act of Parliament.

III The Bill

The Bill contains eight clauses and one Schedule. It seeks to amend the ECA by making numerous substitutions, modifications and additions that provide for new Treaty elements which will need to have the force of law in the UK. It also contains provisions on parliamentary control that are not essential for ratification. The Bill is not identical with the Lisbon Treaty, but consists of provisions consequential on, or in connection with, its implementation. The Bill, if passed, will amend the ECA, which will remain the statutory basis for the UK's relations with the EU.

A. An Amending Treaty

There is a distinction between the EU Constitution, which repealed and replaced the current EC Treaties, and the Lisbon Treaty, which amends them. The EU will continue to operate on the basis of the two main Treaties (and the Euratom Treaty), as they are amended by the Lisbon Treaty. Like preceding EC Treaties, such as those signed at

⁵ There is a full description of the Ponsonby Rule on the FCO website at <http://www.fco.gov.uk/Files/kfile/ponsonbyrule.0.pdf>

⁶ For information on the parliamentary procedures linked to previous EC Amendment Bills, see Standard Note SN/IA/3341 *European Treaties: the parliamentary process of bills, official papers and Library information* 10 January 2005 at http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHE_R_PAPERS/STANDARD_NOTE/sn-03341.pdf

Maastricht, Amsterdam and Nice, the Lisbon Treaty amends the 1957 *Treaty of Rome* which established the European Economic Community (EEC).

B. Revising the Meaning of “The Treaties”

The Lisbon Treaty abolishes the European Community and provides for the European Union, which merges the three so-called ‘pillars’ of the Union: the Community or first pillar, and the two intergovernmental pillars: the second pillar Common Foreign and Security Policy, and the third pillar Provisions on Justice and Home Affairs/Judicial Cooperation in Criminal Matters. However, the Treaty retains the “Community method”, with the EC’s institutions and procedures in the amended and renamed TEC, the *Treaty on the Functioning of the European Union*. It also retains the intergovernmental second pillar, the Common Foreign and Security Policy (CFSP), in the amended TEU.

Under the Lisbon Treaty the CFSP remains a matter for Member State governments, with special decision-making procedures in the Council of Ministers and possible referral to the European Council (the meeting of Heads of State or Government), who generally act by consensus. The European Council will “determine the objectives of and define general guidelines for” the CFSP. The Foreign Affairs Council will “take the decisions necessary for defining and implementing” the CFSP. Both these bodies will act by unanimity, except where there is specific Treaty provision to act otherwise.⁷

Section 1(2) ECA contains a list of texts which are defined as “Treaties” for the purpose of their enforcement by Section 2 ECA. Previous EC Amendment Bills have added new EC Treaties to this list in parts, rather than as a whole, omitting the intergovernmental elements because these are not subject to the EC legislative and institutional framework and therefore do not require the ECA to be amended for their implementation.⁸ To have added them as a whole would, in some respects, have been tidier, but this would have breached the principle upheld by British Governments that it is important to maintain the distinction between the ‘intergovernmental’ and ‘Community’ aspects of any European Treaty. Only the latter has been of consequence with regard to UK law. Like other international treaties, the intergovernmental elements are binding externally on the UK, but not enforced internally by UK courts.

All amending Treaties and accession treaties have been added to the list in Section 1(2) ECA, the most recent being the Accession Treaty for Bulgaria and Romania, which joined the EC in January 2007.

The Bill

The list of “Community Treaties” in Section 1(2) ECA is amended to include the *Treaty of Lisbon*, its Annex and Protocols, all of which are legally binding. This Bill, unlike previous EC amendment bills, does not specify that it applies only to certain parts of the

⁷ Under Lisbon Article 1 (34) amending present Article 23 TEU, which will become Article 15b TEU, there are four CFSP areas where the Council will decide by QMV.

⁸ For example, the *European Communities (Amendment) Act 2002* concerning the Treaty of Nice added to Section 1(2) ECA only Articles 2 to 10 and other provisions “so far as they relate to those Articles” and any new Protocols.

Treaty covering 'Community' areas, thereby excluding those parts covering the intergovernmental matters.⁹ Instead, the Bill specifically excludes from the list "any provision that relates to, or in so far as it relates to or could be applied in relation to" the CFSP.

The CFSP is an element of the EU's new "external action" which encompasses both intergovernmental and 'Community' elements in Title V TEU and Part Five TFEU. Therefore, the exclusion will apply to other elements of the EU's "external action" and other Treaty Articles insofar as they relate to the CFSP. There is some room for interpretation as to what relates to the CFSP. For example, the "solidarity clause",¹⁰ although in the TFEU and not formally part of the CFSP, may have implications for the latter and could be covered by this exclusion.¹¹

C. "European Community" becomes "European Union"

The Lisbon Treaty states in Article 1(2)(b) that the Union "shall be founded on the present Treaty"; that is to say, the *Treaty on European Union* (TEU), which is the amended TEU, and the "Treaty on the Functioning of the European Union" (TFEU), which is the re-named *Treaty Establishing the European Community* (TEC). These are the "Founding Treaties" of the Union.

In the Treaty the "European Community" formally becomes the "European Union" (EU). The term "EU law" has been widely used informally for some time. Strictly speaking, however, it has been inaccurate to refer to "EU law" because only the EC has had legal personality and the capacity to make laws. The Lisbon Treaty changes this by giving legal personality to the EU.

The Bill

In **Clause 3(1)** "The EU" is inserted into Section 1(2) ECA and is defined as the "Union established by the Treaty on European Union signed at Maastricht ...". In **subsection (2)** the Bill extends the new terminology to include the European Atomic Energy Community (Euratom) where necessary or relevant. It had been suggested during the 2003-04 negotiations on the EU Constitution that Euratom, which has a separate legal personality from the European Community although it is served by the common Community institutions, might be merged with the European Community in the single Union pillar. However, Euratom was excluded from the new European Union and will continue to exist as a separate Community, distinct from the EU. Commentators point to the anti-nuclear position of some Member States, which might have objected to its inclusion in the Union. The Explanatory Notes clarify, however, that "in many cases, "the EU" will be a convenient and suitable term to denote collectively the European Union and Euratom".

⁹ For example, the *European Communities (Amendment) Act 2002* linked to the Treaty of Nice states in Clause 1 that "Articles 2 to 10, and [...] the other provisions of the Treaty so far as they relate to those Articles ..." shall be inserted in Section 1(2) of the ECA.

¹⁰ Lisbon Article 2(176) inserting new Article 188R

¹¹ The requirement for Member States to act with "mutual political solidarity" is a specific CFSP provision in Lisbon Article 1(27), while the general principle of "mutual solidarity" is contained in the TFEU.

The Table in the Schedule details all the substitutions of terminology that will be made to Sections of the ECA and how many times they occur in each Section. This is necessary to avoid any doubt in the interpretation of the Act when it is used to implement EU treaties, legislation or other EU obligations. The Schedule replaces “Community” with “Union” or “EU” in terms such as “Community rights”, “Community Treaties”, “Community instrument”, “Community institution”, and “Community obligation”, which become “Union rights”, “Union Treaties”, “Union instrument”, “Union institution” and “Union obligation” respectively. However, the meaning of “rights”, “instruments” and “institutions” etc remains the same as in the ECA.

The reference in Section 1(2) ECA to “any other treaty entered into by any of the Communities” changes “Communities” to “EU”, but specifically excludes treaties that relate to or “could be applied in relation to” the CFSP. In other words, any treaty in this area to which the EU wishes to become party will not be enforceable by means of the present Act, but will have to be the subject of an intergovernmental agreement and ratified accordingly.

In **subsection (1)** the removal of the term “the European Court or any court attached thereto” takes account of Lisbon Treaty Article 9F, under which the Court of First Instance will be renamed the “General Court”, and the term “Court of Justice of the European Union” will officially designate the two levels of jurisdiction taken together. Whereas present Article 220 TEC provides for the Court of Justice and the Court of First Instance, with separate jurisdictions, there will no longer be other courts “attached to” the Court of Justice: the Court of Justice, the General Court and specialised courts will all be part of the one European Court.

The new terminology must also be applied to UK Acts generally, which means that the *Interpretation Act 1978* (“defined expressions”) must also be amended. Thus, in Part 2 of the Schedule, which is introduced in **Clause 3(3)**, the change from “Community” and “Communities” to “Union” and “EU” is stipulated for the relevant provisions of the 1978 Act as well as the ECA.

The Lisbon Treaty, like the Amsterdam Treaty, changes the numbering of Treaty Articles and provides a table of equivalence in an attached Annex. The Annex is an integral part of the Treaty and must therefore be given the force of law in the UK. **Sub-sections (4)** and **(5)** provide the Secretary of State with the power to make by order amendments to primary or secondary legislation to reflect the changes in terminology and the changes to the numbering of Articles in the Lisbon Treaty. The Bill ensures that there is legal continuity and certainty about the validity of either system of numbering in past and future references to the Treaties.

The “order” referred to in **sub-section (4)** may include incidental provision, will be by Statutory Instrument and will be subject to the negative resolution procedure (subject to annulment on a resolution of either House of Parliament).

D. Increase in the Powers of the European Parliament

Clause 4 refers to requirements under the *European Parliamentary Elections Act 2002*. This arises from a requirement originally enacted under the *European Parliamentary*

Elections Act 1978, when the UK Parliament introduced a specific limitation on the freedom of the Government to ratify treaties on the basis of the prerogative power. Section 6 of the 1978 Act required that “no treaty which provides for any increase in the powers of the European Parliament shall be ratified by the United Kingdom unless it has been approved by an Act of Parliament”.

Since 1978 Parliament has had to give its explicit approval (by Act of Parliament) to any treaty or other international agreement which increases the powers of the European Parliament (EP). The new role for the EP in Treaty amendment (Article 48(2) of the Lisbon Treaty) and the extension of co-decision in the new default decision-making procedure, the “Ordinary Legislative Procedure” (OLP, which is largely the same as the current co-decision procedure in Article 251, giving the EP co-legislative powers with the Council), make it such a treaty, and therefore it must be approved by the UK Parliament for this purpose.¹²

E. Parliament and Treaty Revision

Amended Article 48 TEU introduces different Treaty amendment methods: the “Ordinary Revision Procedure” and “Simplified Revision Procedures”. At present the EC Treaties can be amended only by a process set out in Article 48 TEU, which requires an IGC to be convened, and amendments to be agreed unanimously by the Member State governments and ratified according to their constitutional traditions. A process requiring Member State ratification is retained for future revision of the TEU and TFEU, but the TEU also provides for simplified treaty revision procedures. The use of the Convention process, already rehearsed in drawing up the Charter of Fundamental Rights and the draft constitution, is aimed at widening input to the process and making it more transparent. The broad intention behind the simplified revision procedures is to clarify, and to some extent to simplify, the amendment procedures, and thus to move away from the sometimes cumbersome IGCs. It is debateable whether this system will be simpler or more efficient than the existing one under Article 48 TEU. It has more stages and more actors, which may lead to greater scope for disagreement. On the other hand, the wider input may enhance credibility.

1. Ordinary Revision Procedure

Under the Ordinary Revision Procedure, proposals for amendment may come from a Member State, the EP or the Commission. A significant addition to the 2004 Constitution text is the provision in Article 48(2) that: “These proposals may [...] serve either to increase or to reduce the competences conferred on the Union in the Treaties”.

The proposals are submitted to the Council of Ministers, which passes them to the European Council. National parliaments are notified. The European Council then has to decide whether to submit the proposals for further examination, which it does by means of a decision by simple majority, after consulting the EP and Commission. If a decision is adopted to consider the proposals further, the President of the European Council calls

¹² See Research Paper 07/80, Appendix 2 on “Qualified Majority Voting Extensions”, for information on the use of QMV in the Lisbon Treaty.

a Convention. The Convention includes representatives of the national parliaments, the Heads of State or Government, the EP and the Commission. If the proposals concern institutional changes in the monetary area, the ECB will also be consulted. The Convention then makes a recommendation, adopted by consensus, to a conference of government representatives (an IGC), which is convened “for the purpose of determining by common accord the amendments to be made to this Treaty”.

An alternative procedure is available whereby, if the European Council feels that the “extent” of the proposed amendments is not such as to justify consideration by a Convention, it may make a decision to this effect, by simple majority and after obtaining the EP’s consent. The European Council then defines the terms of reference for a conference of government representatives and there is no Convention. The amendments take the form of a treaty, which must be ratified by all Member States before it can enter into force.

There is a procedure in case of difficulty in gaining universal ratification. The matter is referred to the European Council if, two years after the signature of an amendment treaty, four-fifths of the Member States have ratified it, but one or more have “encountered difficulties in proceeding with ratification”. This will not, of course, apply to ratification of the Lisbon Treaty itself.

The Bill

Clauses 5 and 6 are not strictly speaking necessary for the UK to ratify the Lisbon Treaty. They allow Parliament to control decisions on the use of the new Treaty revision provisions by mandating the Government to support a decision on the use of the new provisions *only* following parliamentary approval.

Clause 5 concerns amendments to the EU founding Treaties, which will be the new TEU, TFEU and Euratom once the Treaty of Lisbon comes into force. Under this Clause, amendments agreed under the Ordinary Revision Procedure must be approved by an Act of Parliament, as are those currently agreed under Article 48 TEU. The Explanatory Notes comment that “Any increase in the competences of the EU will therefore be subject to prior Parliamentary approval”.

2. Simplified Revision Procedures

Amended Article 48(6) allows Treaty changes to be made without the necessity of a new, amending treaty and universal ratification (as required under Article 48(2)-(5), see above). However, some of the features of a treaty amendment are preserved. Article 48(6)-(7) provides a simplified way of changing Treaty provisions in the main areas of Union policy set out in Part Three of the TFEU. Either Member State governments or the EP or the Commission may submit to the European Council proposals for changes to these policies. For the proposals to be adopted the European Council must first consult the EP and the Commission (and the European Central Bank if the proposals are for institutional changes in the monetary area) and then it must act by unanimity. The decision thus adopted must be “approved by the Member States in accordance with their respective constitutional requirements.” This is not the same thing as treaty ratification, but it creates a possibility for national input and a national veto.

Under Article 48(6) this kind of decision “shall not increase the competences conferred on the Union in the Treaties” - that would require an amending treaty, using Article 48(2)-(5).

Amended Article 48(7), which has been called the ‘ratchet clause’, provides for *passerelle* procedures. *Passerelle* is a French word meaning ‘footbridge’ and has been called a ‘bridging’ or ‘escalator’ clause, as it allows the parties to move from the position set out in the Treaty to a different position by means of a provision in the Treaty text itself. The present EC Treaty also contains *passerelle* provisions in Articles 42 TEU and 67 TEC, but Lisbon broadens the range of matters which may be transferred from unanimity to QMV. Article 48(7) provides that where the TFEU or Title V TEU (“General Provisions on the Union’s External Action and Specific Provisions on the Common Foreign and Security Policy”) stipulate decision-making by unanimity, the European Council may decide to authorise the Council to act by QMV instead. Decisions with military or defence implications are excluded from potential moves. Article 48(7) also contains an equivalent provision for those laws adopted under a special legislative procedure (unanimous voting).

In both cases (i.e. under Article 48(6) and (7)) a European Council initiative to change the voting procedure in a given area is notified to national parliaments. If a national parliament makes known its opposition to an initiative within six months the decision will not be adopted. If a decision is adopted, the European Council acts by unanimity after obtaining the EP’s consent by a majority of its component members. The new *passerelles* in the Lisbon Treaty require Parliamentary approval, and there is a provision in the Treaty allowing national parliaments to block these changes.

The *passerelles* do not create a free-for-all, since they specify procedures that must be satisfied in order for changes to be made. Supporters of the *passerelle* technique point to efficiency gains, as the process of negotiating a new treaty may be laborious. Others argue that a detailed process of negotiation under the terms of treaty law is necessary for substantive changes. The British Government has said of the new procedures: “We support this increased flexibility in decision-making but would only agree to its use when clearly in British interests. The UK will insist that any fundamental change to the Treaties will still require an IGC”.¹³

The Bill

Clause 6(2) of the Bill takes account of the new Treaty revision and *passerelle* procedures in Article 48(6) and (7), setting out a process for obtaining parliamentary approval for draft decisions under Articles in the list in **subsection (1)**. Parliamentary approval means that each House agrees a motion approving the Government’s intention to vote for or support the adoption of a specified draft decision under one of the following Lisbon Treaty Articles:¹⁴

¹³ Cm 7174, July 2007, “The Reform Treaty: The British Approach to the European Union Intergovernmental Conference”, at http://www.fco.gov.uk/Files/kfile/CM7174_Reform_Treaty.pdf

¹⁴ The Treaty Article stated in the Bill has the numbering that will appear in the consolidated Treaty (TEU or TFEU) when the Lisbon Treaty is merged with the present Treaties.

- Article 48(6) TEU
European Council decision to amend Part Three of TFEU (policy areas)
- Article 48(7) TEU
European Council decision to authorise the Council to act by QMV instead of unanimity (use of *passerelle*)
- Article 31(3) TEU
This is the amended present Article 23(3) TEU on the CFSP, which in the Lisbon Treaty is Article 15b(iv) TEU. It allows the European Council to decide unanimously to act by QMV in areas in addition to those already set out in paragraph 2 of the amended Article.
- Article 81(3) TFEU
This is amended present Article 65 TEC, Article 65(3) in the Lisbon Treaty, which allows for the Council, acting unanimously after consulting the EP, to adopt decisions determining that aspects of family law with cross-border implications may become subject to QMV using the OLP, instead of a special legislative procedure with unanimity. Such a proposal will be notified to national parliaments, which may oppose the move and thereby prevent its adoption. Under present Article 67, co-decision/QMV was specifically excluded from decisions on family law.
- Article 153(2) TFEU
This is amended present Article 137 TEC and Lisbon Article 137 TFEU. It allows the Council to decide by unanimity that elements of social policy¹⁵ that are subject to a Special Legislative Procedure with unanimity can be adopted by the OLP and QMV.
- Article 192(2) TFEU
This is amended present Article 175 and Lisbon Article 175 TFEU, which allows the Council by unanimity and after consulting the EP to make the OLP applicable to the following matters, which are currently subject to unanimous decision-making:
 - measures primarily of a fiscal nature
 - measures affecting town and country planning

¹⁵ The relevant elements are in Article 137(1)(d), (f) and (g): protection of workers where their employment contract is terminated (d); representation and collective defence of the interests of workers and employers (f); and conditions of employment for third-country national legally residing in Union (at present Community) territory (g).

- quantitative management of water resources and their availability
- land use (with the exception of waste management)
- measures significantly affecting a Member State's choice between different energy sources and the general structure of its supply.

- Article 312(2) TFEU

This is new Article 270a TFEU on the Multiannual Financial Framework. Paragraph (2) provides that the Council under a special legislative procedure will adopt by unanimity and after obtaining the consent of the EP a regulation laying down the framework. It also allows the European Council to adopt by unanimity a decision authorising the Council to adopt the regulation by QMV.

- Article 333(1) and (2) TFEU

This Article will replace present Articles 11 and 11A TEC and Articles 27A-27E, 40-40B, and 43-45 TEU. In the Lisbon Treaty it is Article 280H. It concerns enhanced cooperation, which is the arrangement whereby some States decide to integrate their policies and actions, while others do not, or do not join in until later. In this context, where the Treaties provide for unanimous voting in the Council, the Council may decide unanimously among the participating States only (under Article 280E TFEU) to stipulate that it will act by QMV. There is a similar provision for a Council decision to move from using a special legislative procedure with unanimity to the OLP with QMV, after consulting the EP.

Clause 6(3) provides that a motion may include a “disapplication provision” to preclude the requirement for further parliamentary approval should the draft decision be amended by the Council. Parliamentary approval will be required for the basic principle of whether to move from unanimity to QMV in the areas listed in Clause 6(1). However, in the event of amendments other than the principle of changing or not changing to QMV – subsidiary amendments to a draft, such as the date of a move to QMV – the Minister may certify it as an amended draft decision and agree to it without having to bring it back to Parliament for a further motion. Not every motion seeking approval will have a disapplication provision in it (“may include provision disapplying subsection (1)”), so presumably, other forms of amendment could be in order. An amendment to remove the disapplication provision is not an amendment that rejects the principle of the draft decision and could be seen as a delaying tactic rather than opposition to the principle.

F. Nomenclature and Commencement Clauses

Clause 6(4) clarifies that the Treaties to which the section applies are the *Treaty on European Union*, which is the 1992 Treaty signed at Maastricht (TEU) as amended by the Lisbon Treaty; and the *Treaty on the Functioning of the European Union*, which is the 1957 *Treaty Establishing the European Economic Community*, as amended and renamed by Lisbon. In the note in parentheses in **subsection (4)(b)** referring to “what was then called” the European Economic Community (EEC) the Bill acknowledges that the popular, historical description of the EU no longer applies to the EU as it will have evolved with the adoption of the Lisbon Treaty. However, the Explanatory Notes state in the section on “Effects of the Bill on public expenditure and public sector manpower” that the Lisbon amendments “will not fundamentally change the objectives and activities of the European Union”. Some argue that it is not just the nomenclature that has changed; that the EU is now fundamentally different from the Community established in 1957 and that which the UK joined in 1973.

Clause 8 is a commencement clause stipulating that, with the exception of Clause 3 and the Schedule, both of which concern changes to terminology, the Bill will enter into force following Royal Assent. Clause 3 and the Schedule will come into effect by means of commencement orders made by Statutory Instrument. In practice, the Bill will not come into force until the Treaty of Lisbon is implemented. This is envisaged for early 2009, and will happen only after all 27 Member States have ratified the Treaty and deposited their instruments of ratification with the Italian Government.

G. Financial and Social Impact

The Explanatory Notes state in Paragraph 35 that the Bill “will have no direct financial impact on the United Kingdom”; that it will not have “significant implications for the EU budget” and that there will be “no substantive change in the EU budgetary system, and no commitment to the provision of new resources”.¹⁶ The EU budget and Own Resources Decision are the subjects of separate EU negotiations and in the UK the latter is approved by an EU (Finance) Act.¹⁷

IV What is not in the Bill

Certain omissions from the Bill might seem surprising. For example, there is no reference to the *Charter of Fundamental Rights*, which is given legal status in the Lisbon Treaty under amended Article 6 TEU; to third pillar matters that have been moved into the TFEU, such as judicial cooperation in criminal matters and police cooperation; to the principles of subsidiarity and proportionality and the legally binding protocol

¹⁶ For information on the most recent EU Budget and Own Resources decisions see Research Paper 07/77, “The European Communities (Finance) Bill [Bill 2 2007-08]” 15 November 2007 at <http://hcl1.hclibrary.parliament.uk/rp2007/rp07-077.pdf>

¹⁷ See Library Research Paper 07/77 *The European Communities (Finance) Bill: Bill 2 2007-08* 15 November 2007 at <http://hcl1.hclibrary.parliament.uk/rp2007/rp07-077.pdf> and Standard Note SN/EP/4566 *European Communities (Finance) Bill: Other Issues* 10 January 2008 at http://pims.parliament.uk:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHE_R_PAPERS/STANDARD_NOTE/snep-04566.pdf

implementing their application; or to the statements on the primacy of EU law and mutual solidarity. The reason may be that these aspects are covered by the Bill in a more general sense, or that there is no need to change UK law to reflect these particular aspects of the Treaty. The ECA provides for all the *acquis communautaire*¹⁸ to be given the force of law in the UK. The Bill ensures that this is continued in respect of the Lisbon Treaty and makes new provisions only where new obligations mean that the existing provisions need additional legal enforcement or amendment.

Amended Article 3b TEU under Lisbon Article 1(6) states that the Charter provisions are addressed to the EU institutions and to Member States only when implementing EU law. Under amended Article 6 TEU, the Treaty states that the Charter “does not extend in any way the competences of the Union as defined in the Treaties”. Lisbon does not alter the present position of the UK with regard to its opt-out and opt-in arrangements and there should therefore be no need for specific provision in the Bill.

The Bill does not, strictly speaking, have to provide for matters of international treaty law, such as primacy. The principle of the primacy of EC law and the Treaties over national law has been established by the Court of Justice in several rulings¹⁹ and neither primacy nor mutual solidarity gives rise to new procedures or obligations.

The subsidiarity/proportionality Protocol attached to the Lisbon Treaty establishes new mechanisms for Member State involvement in the legislative process through an early warning mechanism and the opportunity to submit a complaint to the Commission that subsidiarity has not been complied with. In the 2005 Bill concerning the EU Constitution new parliamentary procedures were set out to take account of the new procedures at EU level. Such provisions are not necessary for ratification of the Lisbon Treaty as legislation is not needed to enable Parliament to scrutinise EU procedures. This can be achieved by amendments to Standing Orders.

V Amending the Bill

Parliament's role in debating the Bill is not to renegotiate the Treaty but to either accept or reject it. The Bill can be amended like other bills, but with the proviso that, were it to be amended in such a way that it no longer made provision in UK law for those parts of the Lisbon Treaty which are intended to form part of the EU's legal order, then the Government would be prevented from ratifying. The *European Communities (Amendment) Bill 1992-3*, which made provisions consequential on the *Treaty on European Union* (Maastricht Treaty), was amended quite significantly during its passage through Parliament.²⁰

The Lisbon Treaty itself cannot be amended by the action of any Member State or its national parliament during the ratification process. Amendments may be adopted that

¹⁸ The whole body of EC Treaty and secondary law, including the case-law of the European Court of Justice

¹⁹ See Standard Note SN/IA/3087, *The Draft European Constitution: the primacy debate* 1 June 2004, at <http://hcl1.hclibrary.parliament.uk/notes/iads/sn1a-03087.pdf>

²⁰ See Library Research Paper 93/24, *The Maastricht Debate: Further Developments in the Argument over Ratification*, 3 March 1993

are relevant to the Treaty, but which would not prevent the Government from fulfilling its obligations under the Treaty. For example, Parliament could decide that entry into force of the Bill is made conditional upon a consultative referendum on the Treaty. This could be achieved by means of an amendment to Clause 8 of the Bill.

Appendix Ratification procedures in other Member States

Austria

Austrian practice since it joined the EU in 1995 has been for the Parliament to adopt a constitutional Act authorising the Federal President, on a proposal by the Federal Government, to ratify the treaty in question. If a new treaty is deemed to amend the Austrian Constitution, a vote in the National Council is necessary, for which a two-thirds majority is required.

The required parliamentary majority in favour of the Lisbon Treaty is expected to be achieved, with opposition only from right-wing FPÖ and BZÖ. The ratification process is expected to be completed by June 2008

Belgium

EC treaties are generally considered to be 'composite' treaties, that is to say, they do not deal exclusively with matters of either community, regional or federal competence as set out in the Belgian constitution. Arrangements for the ratification of such treaties are laid down in a cooperation agreement between the federal authorities and the regional and community authorities, and are designed to strike a balance between the autonomous prerogatives of the different components of the state. All parties at national and sub-national government levels are involved on an equal footing at each stage of the ratification procedure. Treaties must be adopted by a simple majority in parliamentary votes at federal, community and regional levels (i.e. by the federal Senate and the Chamber, the Brussels, Walloon and Flemish regional legislatures and the French and German speaking Communities). The whole process is co-ordinated by the federal Foreign Affairs Ministry. Composite treaties are signed by the federal minister for foreign affairs and the minister designated by the governments of the regions and/or communities concerned.

There is no constitutional provision for a referendum on treaties. It is unlikely that the Lisbon Treaty will necessitate any constitutional change. The Lisbon ratification process is expected to start in March - April 2008.

Bulgaria

The Bulgarian National Assembly decides whether to ratify a treaty and whether amendments to the Constitution are needed. Bills are normally read and voted on twice during different sessions.

The National Assembly can decide to hold a referendum on a treaty.

Cyprus

Under Article 169 of the Constitution, non-commercial treaties require the approval of the House of Representatives in the form of a law. The EC *acquis communautaire* has already been incorporated into national legislation and the Constitution has been

changed so that EC law is considered the supreme law of the Republic of Cyprus. Under Article 50 the President and/or Vice President has a final right of veto on any laws in the area of foreign affairs, including the conclusion of international treaties, conventions and agreements. There is no constitutional provision for referendums.

The ratification process is expected to start after presidential elections in February 2008.

Czech Republic

A constitutional amendment of 18 October 2001 inserted a new Article 10a on the ratification of international treaties, allowing powers to be transferred to international organisations or institutions, with the consent of the Parliament, unless a constitutional law stipulates that a referendum is necessary.

Ratification of the Lisbon Reform Treaty is not expected to give rise to any constitutional changes. The Czech Parliament voted on 30 October 2007 to ratify the treaty via the parliamentary route, and not via a referendum.

Denmark

Under the Danish Constitution there are two possible routes for treaty ratification. In order to ratify a treaty which involves the transfer of powers to a supranational organization like the EC/EU, there must be either a five-sixths majority in the *Folketing* (the Danish Parliament), or, if there is a smaller majority in the *Folketing*, ratification can take place if a bill on the treaty is confirmed in a referendum. Should the Treaty be deemed to require constitutional amendment, the procedure is more demanding. The bill must be passed by two successive Parliaments with intervening elections and then confirmed by at least 40% of the electorate.

In October 2007 the Danish Government was still undecided on the question of a referendum. The centre-right government of Anders Fogh Rasmussen, who was returned to government following elections in November 2007, announced that it could not make a decision until the final treaty text had been agreed and it became clear to what extent the treaty would lead to a delegation of powers from the state to the EU. The Danish Government, like the British, negotiated on the basis that if its 'red lines' were met, there would be no need for a referendum. It drew up nine points which could not be included in the Treaty if a referendum were to be avoided.

A decision of the Danish Ministry of Justice in early December 2007 concluded that, based on Article 20 of the Danish Constitution, the new Treaty would not transfer further sovereignty to the EU and that no constitutional amendment was needed. The Prime Minister announced on 11 December 2007 that he would not submit the treaty to a referendum, a decision which MPs confirmed in a vote on the same day.

Estonia

Under Article 121(3) of the Constitution, the Estonian Parliament (the *Riigikogu*) ratifies treaties on membership of international organisations or unions. Under Article 105 Parliament may decide to hold a binding referendum. The EU Constitution was ratified without a referendum, making it unlikely that a referendum on Lisbon will be necessary.

Finland

Treaties which affect the legislative power of Parliament require approval by Parliament, by a simple majority in the third (final) reading of the bill on the treaty. If provisions of the treaty conflict with the Finnish Constitution, the bill must be approved by at least two-thirds of the votes cast at third reading. The decision on which procedure to apply is made by the Constitutional Law Committee of the Parliament.

Ratification of the Lisbon Treaty is not expected to necessitate changes to the Finnish Constitution. A referendum may be held for consultative purposes, but a referendum was not held on the EU Constitution and it is therefore unlikely that one will be held on Lisbon.

France

The President of the Republic ratifies treaties, but parliamentary authorisation is necessary for treaties which relate to international organisations. There is no obligation to hold a referendum, although a referendum was held on the *Treaty on European Union* and the *Treaty Establishing a Constitution for Europe*.

Under Article 89 of the French Constitution, a constitutional amendment requires a majority in both Chambers and a referendum on the constitutional amendment. However, the proposed amendment is not submitted to a referendum when the President of the Republic decides to submit it to Parliament convened in Congress, in which case, the proposed amendment is approved if accepted by three-fifths of the votes cast.

President Nicolas Sarkozy has said he wants France to be among the first to ratify the Lisbon Treaty. At a special congress on 4 February 2008 officials will discuss revision of the French Constitution, paving the way for ratification of Lisbon later in February.

Germany

The *Bundestag* (Lower House) and the *Bundesrat* (Upper House) need to approve a new treaty by a two-thirds majority. The law is then signed by the President. However, under Article 93(1) of the German Constitution (the 'Basic Law'), the German Constitutional Court may have to take a decision on the constitutional implications of the treaty, a process that can take several months.

There is no constitutional provision for a referendum.

Greece

According to Article 28 of the Greek Constitution, a new treaty that does not require a constitutional amendment can be ratified by a simple majority of the Parliament. For the approval of a transfer of sovereignty with a constitutional amendment, a parliamentary majority of three-fifths is required.

There is no provision for a referendum on the ratification of treaties, although Article 44 of the Constitution allows, in the case of vital national interests, the President of the Republic to call a referendum, following a resolution supported by a majority in Parliament on a proposal from the Council of Ministers.

Hungary

Under Article 30a of the Hungarian Constitution the ratification of a treaty involving a transfer of sovereignty but without the effect of constitutional amendment requires a simple parliamentary majority. If a constitutional amendment is required, a two-thirds majority in parliament is required under Article 24 of the Constitution.

The parliamentary ratification of the Lisbon Treaty was held on 17 December 2007. The Treaty was approved by a majority of 325 votes in favour, to 5 votes against, with 14 abstentions.

Ireland

In order to ratify an international treaty in which sovereignty is transferred, a constitutional amendment is needed. To approve such a transfer a majority in both Chambers and a binding referendum are required under Articles 46 and 47 of the Constitution of Ireland. The decision as to whether a referendum is required is made by the Government, acting on the advice of the Attorney General.

Ireland will hold a referendum on the Lisbon Treaty. Opposition campaigns were announced in advance of the Treaty signing. It cannot be taken for granted that Ireland will vote in favour of the Treaty. *EurActiv* reported in November:

According to a [TNS mrbi](#) opinion poll commissioned by the *Irish Times* daily newspaper, only 25% of Irish citizens would vote in favour of the Lisbon Treaty, while 13% would vote against. An overwhelming 62% of those asked are undecided, with little more than a year left until the 1 January 2009 deadline to ratify the new treaty, which EU leaders will sign on 13 December in Lisbon.

The opinion poll published on Monday (5 November) indicates a sharp drop in support compared to a survey on the draft EU Constitution conducted in 2005, which showed that 46% would vote in favour, with only 12% saying that they would vote against. The new Lisbon Treaty largely takes on the main elements of institutional reform proposed by the draft EU Constitution, rejected by voters in France and the Netherlands in 2005.²¹

Italy

The ratification of a treaty affecting Italian sovereignty is provided by Article 11 of the Italian Constitution, which states that "Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order ensuring

²¹ *EurActiv* 5 November 2007 at <http://www.euractiv.com/en/future-eu/public-support-eu-treaty-low-ireland/article-168115>

peace and justice among the Nations". Articles 80 and 117 concern the ratification of treaties, EC and international law obligations. Both the Senate and the Chamber of Deputies must authorise the ratification of the Treaty by a simple majority.

Under Article 75 referendums are not admissible in the case of tax, budget, amnesty and pardon laws, or laws authorising the ratification of international treaties.

Ratification of the Lisbon Treaty will not necessitate constitutional changes.

Latvia

Under Article 68 of the Latvian Constitution international treaties require ratification by the Parliament by an absolute majority of votes, except in cases specifically set out in the Constitution. Under Article 41 the President implements the decisions of the Parliament concerning the ratification of international agreements.

Under Article 68(iv) substantial changes to the terms of EU membership are decided by a national referendum, if requested by half the members of the *Saeima* (the Parliament). Matters excluded from a referendum under Article 73 include "agreements with other nations" (and certain other matters, such as the budget, declaration and commencement of war, peace treaties).

Lithuania

Article 138 of the Lithuanian Constitution states that Parliament ratifies or denounces international treaties, including those which concern "political cooperation with foreign countries, mutual assistance, or treaties related to national defence" or "the participation of Lithuania in universal or regional international organisations".

Article 9 makes provision for referendums and requires a majority of votes in favour and a turnout of over 50%. The EU Constitution was ratified by Parliament without a referendum.

Luxembourg

Under Article 37 of the Luxembourg Constitution, the Grand Duke concludes treaties, but they are not effective until they have been approved by two-thirds of the Chamber of Deputies (40 out of 60 Members). Constitutional amendments will not be necessary in order to ratify Lisbon.

The Luxembourg Constitution does not provide for referendums as an instrument of ratification of international treaties.

Malta

There is no constitutional regulation governing a transfer of sovereignty to the EU, although a constitutional amendment would be needed to approve a transfer of sovereignty with the effect of a constitutional amendment. This requires a parliamentary majority under Article 66 of the Maltese Constitution.

The Constitution does not provide for referendums on the ratification of international treaties and there is no evidence of referendums being held in recent years.

Netherlands

The ratification of treaties requires a parliamentary vote by a simple majority, although a non-binding referendum may be held, as it was in 2005 on the EU Constitution.

On 21 September 2007 the Dutch Cabinet decided against holding a referendum and in favour of parliamentary ratification. Based on the Netherlands State Council opinion on the new Treaty, the Prime Minister, Jan-Peter Balkenende, did not think a referendum was “necessary” or “desirable”.²² The Dutch Government website sets out “three decisive arguments” against holding a referendum:

- The new treaty does not have a constitutional nature: the idea of a single written Constitution has been abandoned, the Charter of Fundamental Rights have not been included and the symbols of European integration have been dropped.
- The government feels that a referendum would not be credible, since one of the two outcomes would confront the government with an impossible task. After two countries had rejected the Constitutional Treaty, the other member states eventually agreed to new negotiations, often against their will. The Netherlands has now achieved what it wanted. It is highly unlikely that other member states would be willing to reopen negotiations yet again.
- The previous referendum showed that, in practice, a non-binding referendum can quickly take on the character of a binding referendum. This happens if the government or parliamentary parties say in advance that they will respect the outcome. A binding referendum is impossible without amending the Constitution. The government believes it is important for the reform treaty to be approved quickly. It is ready to debate its position with parliament.²³

Three opposition parties in the Dutch parliament said they would propose an own-initiative bill to organise a referendum, as in 2005, when the *Treaty Establishing a Constitution for Europe* was rejected by the Dutch electorate. However, in September 2007 a majority of Labour MPs decided not to support a referendum.

Poland

Article 90 of the Polish Constitution sets out the procedure for approving the ratification of international agreements that delegate State authority to an international organisation or institution. The Lower House, the *Sejm*, decides which procedure to follow in a resolution adopted by an absolute majority by at least half the statutory number of Deputies.

²² Ibid

²³ Press release 21 September 2007 at http://www.government.nl/News/Press_releases_and_news_items/2007/September/Normal_procedure_for_new_EU_treaty

Under the first procedure, ratification consent must be granted by the *Sejm* and the Senate in a statute passed by the *Sejm* by two-thirds of at least half the Deputies, and by the Senate by a two-thirds majority by at least half the Senators.

The second procedure gives rise to an obligation to hold an all-state referendum under Article 125 of the Constitution and provisions of the Act of 14 March 2003 on "The Nation-Wide Referendum". The result of the referendum is binding if turnout is above 50%.

Two decisions of the Polish Constitutional Tribunal (CT) help in the formulation of a decision on the constitutional implications of the Lisbon Treaty. In a judgment on 11 May 2005²⁴ the CT found that the EU Constitution conformed with Poland's 2003 EU Accession Treaty. The CT stated the principle of a "pragmatic" interpretation of the Constitution "in the light of the EU law", under which major contradictions between the two legal orders "may occur only exceptionally". The CT extended its pre-accession doctrine of "friendly" interpretation of the EU Constitution with regard to EU law to Poland's post-accession membership.

The Tribunal held:

Such a collision may in no event be resolved by assuming the supremacy of a Community norm over a constitutional norm. Furthermore, it may not lead to the situation whereby a constitutional norm loses its binding force and is substituted by a Community norm, nor may it lead to an application of the constitutional norm restricted to areas beyond the scope of Community law regulation. In such an event the Nation as the sovereign, or a State authority organ authorised by the Constitution to represent the Nation, would need to decide on: amending the Constitution; or causing modifications within Community provisions; or, ultimately, on Poland's withdrawal from the European Union.²⁵

In an earlier judgment of 27 April 2005²⁶ on the European Arrest Warrant (EAW) the CT decided that the introduction of the EAW was inconsistent with Article 55 of the Polish Constitution insofar as it allowed Polish citizens to be extradited to foreign countries. This was a case of an "irreconcilable contradiction" between EU law and the Polish Constitution, so the CT recommended amending Article 55. The amendment was adopted in 2006.

The Lisbon Treaty will also be subject to the "friendly" interpretation of the CT, which will diminish the likelihood of a finding of inconformity. It is still possible that the CT will decide Lisbon does require constitutional amendment, although Polish officials indicate that the removal of controversial provisions, such as the symbols of the EU, makes this less likely.

Portugal

²⁴ K 18/04 judgment, CODICES website at <http://codices.coe.int>

²⁵ Judgment of 11 May 2005, K 18/04 "Poland's Membership in the European Union (The Accession Treaty), English summary, at http://www.trybunal.gov.pl/eng/summaries/documents/K_18_04_GB.pdf

²⁶ P 1/05

Ratification is achieved by means of a decree adopted by the Assembly of the Republic, following a report by the competent Standing Committees.

According to Articles 295 and 115 of the Portuguese Constitution, a referendum may be called "on the approval of a treaty aimed at the construction and deepening of the European Union". The Prime Minister, José Sócrates, had pledged to hold a referendum on the European Constitution and wanted on the Lisbon Treaty. However, all the political parties except the Left Bloc have been unenthusiastic. On 9 January 2008 the Prime Minister told the Portuguese Parliament that "A referendum in Portugal would jeopardise, without any reason to do so, the full legitimacy of the ratification by national parliaments that is taking place in all the other European countries".²⁷

No constitutional amendments are needed to ratify the Lisbon Treaty.

Romania

Under Article 11(2) of the Romanian Constitution, treaties are ratified by Parliament. According to Article 90, "After consultation with the Parliament, the President of Romania may ask the people of Romania to express, by referendum, their will on matters of national interest".

Slovakia

The approval of international treaties requires a parliamentary majority under Article 86 of the Constitution of Slovakia. To approve a transfer of power without the effect of a constitutional amendment, a parliamentary majority of three-fifths is required (Article 7(II)). Under Article 84(IV) a three-fifths majority is required for a constitutional amendment.

Under Article 93 a referendum can be called to confirm a constitutional law on entering into an alliance with other states or on withdrawing from that alliance, or on important issues of public interest.

Ratification of the Lisbon Treaty will not involve any constitutional changes.

Slovenia

Under Article 86 of the Slovenian Constitution, the approval of international treaties without a transfer of sovereignty is achieved by a parliamentary majority vote. The approval of a transfer of sovereignty without the effect of constitutional amendment is by a two-thirds parliamentary majority and under Article 3a a binding referendum can be called by Parliament on that transfer of sovereignty.

For the approval of a constitutional amendment, a parliamentary majority of two-thirds is needed on a proposal from the Government, at least 20 Members of Parliament or at

²⁷ *EurActiv* 10 January 2008

least 30,000 voters (Articles 168-9). A referendum is binding if a majority of votes is achieved and turnout is more than 50% (Article 170).

Spain

The ratification of treaties is governed by a procedure in Article 93 of the Spanish Constitution, which requires an absolute majority in the Congress of Deputies. For the approval of a transfer of sovereignty without a constitutional amendment a majority in both Houses is required under Article 94. To approve a constitutional amendment on a transfer of sovereignty, a majority of three-fifths in both Chambers is required. If this cannot be achieved, a Committee drafts a new text which must be approved by a three-quarters majority in the Chamber of Deputies and a majority in the Senate (Article 167).

A referendum on the constitutional amendment is required if demanded by one tenth of the Members of one of the Chambers (Article 167).

Spain held a non-binding referendum on the EU Constitution in February 2005, in which the Spanish electorate voted in favour by 73% to 17.24%.

Sweden

The approval of the *Riksdag* (the Swedish Parliament) by three-quarters of those voting is required if a treaty relates to a subject over which the Parliament has competence. Approval of the Lisbon Treaty will require a decision by the *Riksdag* to transfer further decision-making powers to the EU. The introduction of QMV in new areas (e.g. in the field of criminal law) constitutes such a transfer of power. If the three-quarters majority cannot be achieved, the decision can be made by two consecutive, simple majority decisions with a general election in between.

The Legislative Council gave its opinion on the EU Constitution in 2005, but the ratification procedure was later suspended. The opinion, which held that no constitutional amendments were needed, is likely to be valid for the Lisbon Treaty.

The Swedish Constitution does not require referendums to be held in any particular situation. The *Riksdag* can decide to hold a non-binding referendum on any issue.