

European Union Bill

House of Lords Third Reading

Thursday 23 June 2011

This briefing sets out the Commission's view on key amendments to the European Union Bill ahead of Third Reading in the House of Lords.

Please note that this briefing paper comments only on certain amendments which the Commission believes raise significant issues of workability or policy. We also welcome amendments that give effect to recommendations we have previously made. The note does not comment on every amendment tabled, and the absence of comment on an amendment does not imply that we support it.

Clause 2 - Treaties amending or replacing TEU or TFEU Clause 3 - Amendment of TFEU under simplified revision procedure

During the first day of Report Stage consideration of the European Union Bill in the House of Lords on 8 June amendments tabled by Lord Williamson of Horton, Lord Triesman, Lord Howe of Aberavon and Lord Dykes were accepted, which change the provisions in Clauses 2 and 3 setting out the conditions under which a Treaty may be ratified by Parliament.

The amendments accepted into the Bill require the Electoral Commission to issue a certificate stating 'whether or not it appears to them that more than 40 per cent of the persons entitled to vote in the referendum have voted in it'. If the certificate states that the turnout was greater than 40%, then the Treaty may be ratified by Parliament, while a turnout of less than 40% would require each House to agree to a motion moved by the Minister before the decision is formally approved.

The Commission's view is that the question of whether any referendum should be subject to any minimum turnout threshold is for Parliament to decide. However, in order for the Commission to issue a certificate that would provide Parliament with the information it would need to consider whether the threshold had been reached, it is essential that two key elements are more clearly defined in the Bill than at present – these concern the size of the electorate and the definition of turnout.

While Clause 11 of the Bill defines the franchise for any referendum held under this legislation, the amendments tabled by Lord Williamson of Horton, Lord Triesman, Lord Howe of Aberavon and Lord Dykes do not clarify whether it would include amendments made to the electoral register up to and including polling day to correct clerical errors. In addition, their amendments do not specify whether the turnout figure should be based on all ballot papers included in the count for the referendum (including spoiled ballots) or only valid votes.

In the event that Parliament decides to retain this proposal during the remaining stages of the Bill then we believe that clarity on these points is essential. We have brought this to the attention of the Government so they can consider if any further work might be needed to address the points that I have outlined above.

Further information

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