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European Communities (Amendment) Bill, 1998: Committee and Remaining Stages.

Wednesday, 17 June 1998

SECTION 1.

An Cathaoirleach: Amendment No. 5 is related to amendment No. 1. Amendments Nos. 1 and 5 can be discussed together. Is that agreed? Agreed.

Mr. Gallagher: I move amendment No. 1:

In page 3, subsection (1), line 18, after "and" to insert "1.14 to 1.16 (in so far as they relate to any of the treaties governing the European Communities as defined by this subsection) and".

The Minister did not hear my comments on these matters on Second Stage because he was obliged to fulfil a pre-existing appointment. However, in his reply to that debate he offered to consider them further on Committee Stage and I am taking him up on that offer. The points I made last week relate to the difficulty in drafting legislation of this type and putting it to the people in a comprehensive and comprehensible way. I mentioned then that some brave soul might draw up an instrument to consolidate the various Treaties relating to the European Union. If Members of the Oireachtas find it difficult to understand these instruments how much more difficult is it for the general public to understand proposals on which they are asked to vote at referendum time?

The people understand that they have passed the Amsterdam Treaty in a referendum and that it will now become part of Irish law. I asked the Minister to explain why the whole Treaty is not to be enacted in Irish law. The people have decided to allow the State to ratify the Amsterdam Treaty and the Bill is designed to give effect to that decision. However, it does not make the whole Treaty part of Irish law, only part of it. I understand the excluded part relates to the intergovernmental activities of the European Union rather than the European Communities proper. The Government has been a little too cautious and has excluded too much of the Amsterdam Treaty from Irish law. My amendments are designed to seek clarification on that matter.

Title VII, the last section of the Maastricht Treaty, is headed "Final Provisions" and deals with matters such as the duration of the Treaty, ratification, authentic languages, amendment and so on. When the Maastricht Treaty was made part of Irish law in 1992, all provisions of Title VII were made part of the law in so far as they relate to any of the Treaties governing the European Communities as defined by this subsection. The purpose of amendments Nos. 1 and 5 is to insert the same provision into this Bill. Since Articles 1.14 to 1.16 amend Title VII of the Maastricht Treaty they should be included in the Bill as this amendment proposes. For instance, Article 1.16 amends the definition of the authentic languages of the Maastricht Treaty which could be relevant in a legal dispute and should be part of the law.

Minister for Foreign Affairs (Mr. Andrews): I am grateful to the Senator for moving these amendments. One of the criticisms of this Bill was that sufficient time was not given for a full debate. While the amendments may not meet with the approval of the drafters of the Bill they are helpful in opening up a debate. While on the one hand I welcome the amendments I must take account of the realities of domestic and international law.

The Table, in the Bill, sets out many references to various Treaties and matters related to them. The Senator makes the very valid point that if it is difficult for Members of the Oireachtas to understand

these references it must be even more difficult for the ordinary citizen. I am not sure if consolidation of these Treaties into one corpus of law would improve the understanding of the ordinary person but it would make for ease of reference. However, in the mechanism of the *acquis communautaire*— regulations, Protocols, annexes and so on related to the law — it is not possible to give effect to what the Senator, quite properly, would wish for.

It must be remembered that this Bill amends the European Communities Act, 1972, as amended. The Act relates to the Treaties establishing the European Communities — the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community. My statement on Second Stage on 11 June contained a section headed "Matters not dealt with by the Bill". It is to that section that the Senator refers. It explained that the amendments proposed in the Bill do not include matters relating to, for example, common foreign and security policy. These provisions, as the Senator pointed out, are essentially intergovernmental in nature and do not require to be made part of the domestic law of the State. This was also the case with the Maastricht Treaty so there is a precedent. The Government is not attempting to engage in sleight-of-hand, quite the contrary. I also explained that, subject to one exception in relation to the European Court of Justice, Police and Judicial Co-operation in Criminal Matters is also not included in the amendments to the Act. This is because Police and Judicial Co-operation are the Third Pillar which is contained in Article 1 of the Treaty of Amsterdam but is dealt with outside the framework of the European Communities Treaties.

In keeping with the Government's approach of seeking no more authority in legislation than is strictly necessary for the purpose of giving effect in domestic law to the relevant provisions of the Treaty of Amsterdam, no authority is sought to make statutory instruments for issues relating to the Third Pillar which may arise in the future. The Third Pillar is Police and Judicial Co-operation in Criminal Matters which replaces Justice and Home Affairs. That is why it has not been necessary to make the main provisions of the Amsterdam Treaty relating to Police and Judicial Co-operation part of the law of the State.

In the circumstances of what I have said, it is not the intention of the Government to accept these amendments. They propose to make changes to Articles N, O and S of the Treaty on European Union. I can relate, if the Senator wishes, to Articles N, O and S of that Treaty, commonly known as the Maastricht Treaty, which is part of the domestic law of the State. The changes made to these Articles by the Treaty of Amsterdam are not changes of substance as I shall explain.

Article N of the Treaty on European Union deals with amendments to that Treaty. The change made to Article N of the Treaty of Amsterdam consists simply of removing the requirement to hold the 1996 Intergovernmental Conference. The Treaty of Amsterdam overtakes the Intergovernmental Conference which set up the Treaty of Amsterdam in the first instance. The Intergovernmental Conference was set up by the Government in which the Senator's party was a participant when he was a Member of the other House. The Government is doing nothing sinister; it is merely fulfilling the requirements of the Treaty.

The change made to Article O by the Amsterdam Treaty deals with who may apply to become a member of the Union and how this shall occur. As in previous enlargements, in the event of further states becoming members of the Union an Accession Treaty would be negotiated and in due course ratified by Ireland. At that stage the European Communities Act, 1972, will be amended again to take account of the changed membership.

The change to Article S provides that the Finnish and Swedish language versions of the Treaty shall be authentic. This brings these languages into line with the other Treaty languages of the EU which will now be Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish. There is nothing revolutionary about this.

Perhaps the Deputy wishes to achieve a more outward attitude in his amendment. This cannot be provided for in this Bill. The change to Article S has already been provided for by the European

Communities (Amendment) Act, 1994, which dealt with the accession of Finland and Sweden to the EU. I cannot accept the Deputy's amendment. However, his amendments are helpful in the context of a wider debate on Europe.

An Cathaoirleach: Is the amendment being pressed?

Mr. Gallagher: In the light of the Minister's clarification I will not press the amendment. I will respond to his initial comments later.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 6 is cognate on amendment No. 2 and both may be discussed together. Is that agreed? Agreed.

Mr. Gallagher: I move amendment No. 2:

In page 3, subsection (1), line 18, to delete “12” and substitute “15”.

Under the Bill, articles 13 to 15 of the Amsterdam Treaty are not made law. This amendment proposes their inclusion. Article 13 states that the Treaty is concluded for an unlimited period, article 14 defines when it will come into force and article 15 defines the authentic languages.

Mr. Andrews: I do not wish to be unhelpful to the House, but I am not in a giving mood today as I am required by law not to be. The Government cannot accept amendments Nos. 2 and 6. Article 13 of the Amsterdam Treaty provides that the Treaty is concluded for an unlimited period.

This provision will take effect in any event and therefore it is unnecessary to include it in the Bill. Repeal of any of the Treaties would require an amendment, and it would be appropriate at that time to amend the European Communities Act to provide for such repeal.

Article 14 of the Amsterdam Treaty deals with the ratification and entry into force of the Treaty. This is a matter of international treaty law and it is not necessary to make it part of domestic law by including it in the Bill. The Deputy's amendment is dealt with in a generalised and omnibus fashion in the sense that it is included in domestic legislation by association with international law. I do not wish to mislead the Senator or the House in that regard. Article 15 lists the authentic treaty languages which is also a matter of international treaty law. It is unnecessary to include the article in the Bill. I cannot accept the Deputy's amendments.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 7 is cognate on amendment No. 3 and both may be discussed together. Is that agreed? Agreed.

Mr. Gallagher: I move amendment No. 3:

In page 3, subsection (1), line 18, after “with” to insert “the Annex to the Treaty referred to in Article 12.1 thereof and”.

The Bill includes the Protocols to the Treaty in legislation. However, it omits the annex, which is not a protocol and which alters and renumbers the Articles of the Treaty of Rome and other Treaties. This annex should be included as it amends treaties which are part of Irish law.

Mr. Andrews: These amendments are unnecessary. Article 12 of the Amsterdam Treaty deals with the renumbering of the articles, titles and sections of the EU and EC Treaties. This article is made part of domestic law by the Bill. Article 12.1 which refers to the annex containing the renumbering of articles is already covered and does not need to be dealt with separately. The Deputy's amendments are dealt with in the Treaty and I cannot accept it as to do so would be to open a legislative can of worms.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 8 and 9 are cognate on amendment No. 4 and all may be

discussed together. Is that agreed? Agreed.

Mr. Gallagher: I move amendment No. 4:

In page 3, subsection (1), to delete lines 19 to 26 and substitute “second to thirteenth Protocols annexed thereto”.

This is a drafting amendment designed to simplify the Bill. I am glad that the Minister addressed the desirability of making this legislation as simple as possible. I accept it may not necessarily make European law more understandable to the gnáthduine. However, our efforts to simplify this legislation will achieve an important objective — to remove one of the arguments which opponents of treaties such as the Amsterdam Treaty use in debates, some of which I have attended. They point to legislation like this and ask people do they understand the ECSC Treaty or the Treaty amending certain budgetary provisions of the Treaties establishing the European Communities. They confuse people and sow the seeds of doubt in their minds by referring to the complexities of law.

While nothing earth shattering was achieved at the recent meeting of the European Council, I was glad to see that one of the political objectives of the next Presidency will be to bring the Union closer to the citizen. Will the Minister assure us that it will be a priority of the Government to ensure that the EU, as one of its next phases of development, consolidates this area of law and makes it as simple as possible? In this way the ammunition which can be given to opponents of treaties such as the Amsterdam Treaty is removed in so far as is practicable.

Instead of referring to the Protocols in the complex way of paragraphs 1 to 3 etc., this amendment proposes to insert “second to thirteenth Protocols”, which is how they are referred to in the Constitution, in the new Article 29.4.6 inserted by the amendment agreed to in the referendum on the Amsterdam Treaty.

Mr. Connor: I listened with interest to the points made by Senator Gallagher and the Minister's responses. I support the Senator's comments regarding the obtuse or so-called treaty language of the Treaty of Amsterdam. I was on the speakers' panel of the European Movement — Irish Council and addressed a number of meetings on the Treaty of Amsterdam encouraging people to vote for it. My problem is the same as that raised by Senator Gallagher, namely, opponents quoting from the Treaty and asking if we understand a particular provision, very often confusing me and the punters who have many doubts in their minds.

Understanding the language of the Treaty is a major problem and seems to be an Irish phenomenon — perhaps I am open to correction. I try to keep an eye on the debate throughout member states in relation to membership of the EU as I am interested in scepticism relating to the EU, something about which I worry. In other member states scepticism in relation to membership and integration is not related to lack of knowledge or understanding of treaties.

The word “treaty” is stronger than “agreement”. A treaty is sworn and lasts for a long time. I expect treaties are written in a standard language throughout the community, but why is there a great difficulty in Ireland? The greatest opposition to the Maastricht Treaty and the Single European Act arose from opponents effectively playing on the lack of understanding of the language used and the poor way the provisions were communicated to ordinary citizens.

The final declarations of the Cardiff summit, which was fairly nondescript, speak of working to bring the Union closer to the citizen. Such platitudes result from almost every meeting of Heads of States at the beginning or end of each Presidency. The language used in describing treaties and agreements must be simplified. The Minister has heard this comment made *ad nauseam,* but it cannot be made often enough. We have been discussing these issues since the 1970s. In 1986 in the context of the Single European Act there was a major debate on the problem of obtuse, incomprehensible and often repetitive language which opponents use as a stick to beat those of us who fight very hard for the ideal of the Union and of greater integration.

Mr. Andrews: The Government does not propose to accept the amendments because, as the Senator

correctly indicated, they are effectively stylistic in nature. I understand the intention of the amendments is to give a better verbal picture of what the Treaty of Amsterdam sought to achieve. In this sense the amendments have merit, but they are stylistic and do not change the substance of the Bill. They seek to change the manner in which the protocols are referred to in section 1. However, the Protocols to the Treaty of Amsterdam are not numbered but rather identified in groups by reference to the treaty or treaties to which each protocol is annexed. The formulation proposed by the parliamentary draftsman in the Bill precisely reflects the way the protocols are identified in the Treaty of Amsterdam.

I do not disagree with what either Senator has said in relation to the obtuse and arcane language of treaties. Even the Bill, particularly the table and the references to parts of treaties, gives rise to confusion at the very least. To add further to the difficulty the Treaty is set out in Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish. The Senators have a very valid point when we take this into account and in the context of the founding treaties of the European Communities, including those of the European Coal and Steel Community and the Euratom Treaty.

The issue not only concerns the language of the treaties but also relates to the feeling of remoteness of the institutions of the treaties from the daily lives of people. This relates to the much used and sometimes abandoned principle of subsidiarity, the idea whereby issues can be effectively dealt with by member states.

In this context the Cardiff Council was referred to. I pay tribute to the Taoiseach, who made a number of significant interventions in relation to the original draft conclusions which were amended to take account of the needs and wishes of Ireland, particularly in relation to Agenda 2000 and employment. I had to return to appear before the Foreign Affairs Committee yesterday evening. The Taoiseach dealt with a particular reference to Ireland's input to the non-proliferation Treaty.

To have such an issue enshrined in the conclusions of the Cardiff Council was very significant. The next logical step is to bring the initiative before the UN General Assembly when it meets next September. At that time we hope the declaration concerning nuclear proliferation will become a resolution supported by over 180 nations, including, hopefully, nations which are not members of the current Treaty, namely, Pakistan, India and Israel. While the Cardiff Council may have been low key, there was much work done in the context of preparation for what we will seek in the areas of Structural and Cohesion Funds and the poor deal proposed in the March communications by the Commission in the context of the Common Agricultural Policy.

The Senators have made valid points. There is a general feeling among opponents of the Treaty that it is a “them and us” situation. This is very understandable as many of the institutions are not intrusive on the daily lives of citizens. To speak of a citizens' treaty is to speak of a pious hope rather than a reality. All we can do is seek to bring about a resolution to the remoteness of the European experience from the daily lives of people. The sense of remoteness exists in the minds of people and it is up to us to address it as a genuine issue. People voted “no” not because they did not understand the Treaty but because they felt remote from what they were being asked to approve. In these circumstances the Senators have a very valid point. The legislation is not magic and was not proposed by a legislative magician. It is difficult to comprehend and to refer to. We have a duty and responsibility to bring reality to the mystery of European legislation. Europe is viewed as being physically remote from people's lives.

I am grateful for the Senators' contributions. I am sorry I cannot accept the proposed amendments, but in the circumstances those would add to the difficulties involved in bringing efficiency and coherence to this legislation.

Amendment, by leave, withdrawn.

Amendments Nos. 5 to 9, inclusive, not moved.

Section 1 agreed to.

Section 2 agreed to.

Title agreed to.

Bill reported without amendment and received for final consideration.

Question proposed: “That the Bill do now pass.”

Mr. Lydon: On behalf of Senators, I thank the Minister for the generosity of his responses to Senators' contributions. He is an example to other Ministers.

Question put and agreed to.

Sitting suspended at 11.45 a.m. and resumed at 12 noon.

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