BILLE AN AONTAIS EORPAIGH, 2001
EUROPEAN UNION BILL, 2001

EXPLANATORY MEMORANDUM

Purpose of Billl

The first purpose of the Bill is to introduce a set of procedures to enhance scrutiny by the Oireachtas of measures proposed to be taken by the Council of Ministers of the European Union. Provision is made by reporting to and consultation with relevant committees of the Houses of the Oireachtas by Government Ministers. The procedures relate to measures taken under the First (European Communities), Second (common foreign and security policy) and Third (Justice and Home Affairs) Pillars of the Union.

The second purpose is to amend the Defence Acts to provide for participation by contingents of the Defence Forces with the EU's Rapid Reaction Force (''RRF''). The Bill proposes that such participation should be authorised only where the RRF is operating under a mandate given by the Security Council or General Assembly of the United Nations.

Provisions of Bill

Section 1 is a definition section. It defines the ''legal instruments'', to which the Bill applies, as including all directives, regulations, framework decisions, decisions or conventions that are made or drawn up by the Council of Ministers, regardless as to whether—

—the proposal for an instrument is made by the European Commission or, in relation to cooperation in the field of justice and home affairs, is made on the initiative of a Member State, or

—the making of an instrument is subject to co-decision by the European Parliament.

(Regulations and directives can be made by the Council of Ministers, sometimes by way of co-decision with the Parliament, in relation to European Communities matters. Under the Third Pillar, the Council of Justice and Interior Ministers can make framework decisions and decisions and can draw up conventions for adoption by the Member States. These can be either on the initiative of the Commission or of a Member State.)

Section 2 provides that no Minister may, at a meeting of the Council of Ministers, commit the Minister, any other Minister, the Government or the State to support for any proposed legal instrument unless the provisions of *section 3* are first complied with.

The section applies to meetings preparatory to formal meetings of the Council of Ministers and extends to Ministers of State and all other persons, such as civil servants and ambassadors, who are authorised to act on behalf of or to represent a Minister, the Government or the State.

Section 3 requires that every proposal for a legal instrument to be made or drawn up by the Council of Ministers must, as soon as may be after the proposal is made, be laid before each House of the Oireachtas by the Minister of the Government having official responsibility, and be referred by that Minister to the ''appropriate committee''. The proposal must be accompanied by a statement outlining the background to, and the purpose and likely impact of, the proposal, and the position proposed to be adopted by the Minister.

''Appropriate committee'' is defined as meaning any committee of Dáil Éireann, Seanad Éireann, a joint committee of both such Houses (or a sub-committee of any such committee) to which, under the standing orders of the Houses of the Oireachtas, the Minister concerned is required to refer a proposal or make a report to which the section applies. In other words, the Houses of the Oireachtas are given flexibility to make their own internal arrangements for the operation of the Act, and to alter those arrangements from time to time.

By *subsection (2)*, if an appropriate committee decides within 21 days to consider a proposal for a legal instrument, reports its findings and conclusions to either or both Houses of the Oireachtas and a resolution rejecting the proposal concerned is passed by either House within the next 21 days after a report from an appropriate committee, the Minister concerned shall not have any competence to support that proposal or to bind any other Minister, the Government or the State in support of that proposal.

Subsection (3) imposes on every Government Minister an obligation to make a report to each appropriate committee not less than once every two months on all significant developments in the European Union and the European Communities (including proposals for legal instruments), relevant to matters for which that Minister has official responsibility, which have taken place since the last such report or which the Minister anticipates will arise within the next ollowing six months. Such a report must include a statement of the position adopted or proposed to be adopted by the Minister on the matters to which it relates.

Under the European Communities Act, 1972, there is a much less onerous requirement for a single report, on behalf of the Government as a whole, dealing with developments which have taken place in the Communities within the previous six months.

Section 4 amends section 4 of the European Communities Act, 1972, which was inserted by the European Communities (Amendment) Act, 1973. That section, as subsequently amended, confers on the Oireachtas Joint Committee on European Affairs the power to recommend to the Houses that a statutory instrument made under the Act, transposing a provision of European law such as a directive into domestic Irish law, should be annulled by joint resolution of the Houses. It is considered that, rather than one committee being expected to scrutinise all statutory instruments made under the European Communities Act regardless of subject matter, such scrutiny should be carried out by the joint committee which has been specifically appointed to deal with the area of public administration to which the statutory instrument relates.

The sections substitutes for the reference to the Joint Committee on European Affairs a reference to ''the relevant joint committee'', defined as being such joint committee of both Houses of the Oireachtas as has, pursuant to orders of both such Houses, been formed to consider matters of policy for which the Minister who made the regulation is officially responsible. In default of any such committee having been appointed, the scrutiny will be carried out, as heretofore, by the Joint Committee on European Affairs.

Section 5 relates to the EU's Common Foreign and Security Policy (''CFSP''), conducted under the Second Pillar of the Union. The CFSP does not result in legislative acts such as regulations or directives. There are, however, proposals for joint action by the Member States. The section provides that, subject to certain qualifications, the provisions of *sections 2* and *3* shall apply to proposals for joint action on matters of common foreign and security policy as they apply to proposals for legal instruments. In other words, such proposals must be laid before the Houses and referred to the appropriate committee.

Given that proposals for joint action may arise in a much shorter time frame than that which applies to proposals for legislation, *subsection (2)* provides that the Houses of the Oireachtas may from time to time agree by joint resolution to vary the 21 day time periods referred to in *section 3(2)*, in relation either to a particular proposal for joint action or to proposals of a particular class.

It is also provided that the section shall not apply so as to prevent a Minister from agreeing to joint action under CFSP in a case where such joint action is, in the opinion of the Government, required as a matter of urgency. However, in such a case, the Government must, as soon as may be thereafter, lay before both Houses of the Oireachtas a statement of the joint action agreed to, the reasons for the action and the grounds of urgency.

Section 6 makes two amendments to the Defence Acts. Section 2(1) of the Defence (Amendment) (No. 2) Act, 1960, at present provides that, subject to certain limited exceptions, a contingent of the Permanent Defence Force may be despatched for service outside the State as part of a particular International United Nations Force if, but only if, a resolution has been passed by Dáil Éireann approving of the despatch of such a contingent for such service as part of that International United Nations Force. The section does *not* state that service outside the State by Defence Force contingents can only be with a UN Force: it stipulates rather that service with a UN Force can only be pursuant to a resolution of the Dáil.

Subsection (1) amends this provision by inserting a substitute section 2 into the Act of 1960. Subsection (1) of the substitute section provides that a contingent of the Permanent Defence Force may be despatched for service outside the State if, but only if —

—such service is as part of a particular International United Nations Force, and

—a resolution has been passed by Dáil Éireann approving of the despatch of a contingent of the Permanent Defence Force for service outside the State as part of that International United Nations Force.

In other words, the effect of the amendment is to stipulate that the only service outside the State authorised by the section is with a UN Force.

Subsection (2) of the substitute section contains the same limited exceptions as the Act of 1960. Subsection (3) of the substitute section makes an additional exception in favour of service outside the State for the purpose of engaging only in joint training or joint exercises with the military or armed forces of a Member State of the European Union — the RRF.

Subsection (2) amends section 1 of the Defence (Amendment) Act, 1993, which contains the definition of ''International United Nations Force''. That definition at present provides that such a force must be ''an international force or body *established* by the Security Council or the General Assembly of the United Nations''. There is no provision in the definition to cover service with forces, other than forces established by the UN itself, which have been given a mandate by the UN.

The subsection inserts a new definition which provides that ''International United Nations Force'' means—

—an international force or body established by the Security Council or the General Assembly of the United Nations, or

—an international force or body established by the Member States of the European Union, where that force or body has had particular functions given to it by the Security Council or the General Assembly of the United Nations; but such a force or body is an International United Nations Force only in connection with, and for the purposes of, the performance of the functions so given.

The effect of the two amendments taken together will be to confine service by Defence Force contingents outside the State to International United Nations Forces but to provide that the RRF may fall within the definition of an International Nations Force if, but only if, it is discharging a United Nations mandate.

Section 7 provides for the short title and collective citation and construction of the Bill.

An Teachta Ruairí Quinn,
Meitheamh, 2001.

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