

EUROPEAN UNION (APPROVAL OF TREATY AMENDMENT DECISION) ACT 2012

EXPLANATORY NOTES

BACKGROUND

The Treaty amendment Decision

4. The Treaty amendment Decision came about as a result of the need for a permanent mechanism to be established by the Member States of the euro area to safeguard the financial stability of the euro area as a whole. Prior to this, EU Member States had already established two temporary mechanisms in May 2010 to deal with the emerging sovereign debt crisis:
 - a) the European Financial Stability Facility (“EFSF”) was established by means of an intergovernmental agreement between the euro area Member States as a temporary facility to provide loans to euro area Member States in difficulty. The EFSF is funded by issuing bonds backed by members’ guarantees and involves no UK liability or participation in the programmes;
 - b) the European Financial Stabilisation Mechanism (“EFSM”) was established by means of Council Regulation 407/2010 of 11 May 2010 under Article 122(2) TFEU. That provision enables the Council, on a proposal from the Commission, to provide Union financial assistance to Member States that are facing exceptional occurrences beyond their control. It is financed using money raised on the financial markets, backed by the EU budget and therefore creates an indirect liability for the UK.
5. At a meeting of the European Council on 28 and 29 October 2010, the Heads of State or Government of the 27 Member States of the EU invited the President of the European Council to consult members of the European Council on a limited treaty change to Article 136 TFEU to provide for the establishment of a permanent stability mechanism, the European Stability Mechanism (“ESM”) to replace the EFSF and EFSM. Only euro area Member States would be members of the ESM; the UK would not be part of it and would therefore have no liability under it. The amendment would be made pursuant to the simplified revision procedure in Article 48(6) of the Treaty on European Union (“TEU”).
6. [Article 48\(6\)](#) was inserted into the TEU by the Lisbon Treaty and sets out the simplified revision procedure which allows the European Council to amend Part Three TFEU (internal policies) without recourse to the ordinary revision procedure in Article 48(2) to (5) TEU. It can only, however, be used to amend Part Three TFEU and only where this does not increase the competences conferred on the EU. Any amendment relying on the simplified revision procedure in Article 48(6) TEU has to be ratified by all 27 Member States of the EU in accordance with their respective constitutional requirements before it can enter into force.
7. [Article 136](#) TFEU is a treaty provision which applies only to Member States whose currency is the euro and is among the provisions in Chapter 4 of Title VIII of Part Three

These notes refer to the European Union (Approval of Treaty Amendment Decision) Act 2012 (c.15) which received Royal Assent on 31 October 2012

TFEU that are specific to euro area Member States. Paragraph 1 of Article 136 TFEU provides for the Council to adopt measures specific to Member States of the euro area in order to ensure the proper functioning of economic and monetary union. Paragraph 2 makes it clear that only those Member States whose currency is the euro may vote on measures adopted pursuant to paragraph 1.

8. In December 2010, the European Council agreed to amend Article 136 TFEU. The Treaty amendment Decision, adopted on 25 March 2011, adds a new paragraph 3 to Article 136 TFEU, which provides that:
 - “3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.
9. The new paragraph 3 would apply only to Member States whose currency is the euro and only those Member States may establish the ESM. The UK would therefore not be part of the ESM and would have no liability under it.
10. Article 2 of the Treaty amendment Decision provides that the Decision shall enter into force on 1 January 2013, subject to notification having been received from all 27 Member States of the completion of the procedures for the approval of the Decision in accordance with their respective constitutional requirements, or failing that, on the first day of the month following receipt of the last of the notifications.
11. The Treaty amendment Decision also sets out (in recital 4) the agreement that once the ESM was put into place, Article 122(2) TFEU would no longer be needed for safeguarding the financial stability of the euro area and should no longer be used for that purpose.
12. Recital 6 of the Treaty amendment Decision confirms that the amendment to Article 136 TFEU does not increase the competences conferred on the Union in the Treaties.
13. Before the UK Government could agree to the adoption of the Treaty amendment Decision by the European Council, it had to submit the draft Decision for approval by both Houses of Parliament in accordance with the requirements of section 6 of the European Union (Amendment) Act 2008 (since repealed by the 2011 Act). That provision required Parliamentary approval of proposed treaty amendments made under the simplified revision procedure by means of an affirmative resolution in both Houses. Debates on the draft Decision took place in the House of Commons on 16 March 2011 (followed by a vote on 23 March 2011) and in the House of Lords on 21 March 2011. In each House, the motion to approve the draft Decision was agreed to without amendment.
14. During the debates on the proposed Treaty amendment Decision, the Minister for Europe confirmed that the Decision would also be subject to the provisions of the then European Union Bill once it had entered into force.

Requirements under the European Union Act 2011

15. The 2011 Act sets out three requirements for the approval, by the UK, of a decision under Article 48(6) TEU: a Ministerial statement as to whether the decision triggers a referendum under section 4 of the Act; an Act of Parliament approving the decision; and compliance with the referendum condition, the exemption condition or the significance condition. Each of those conditions is set out in section 3 of the Act. The “exemption condition” is met if the Act providing for the approval of the decision states that the decision does not fall within section 4 of the Act.
16. [Section 4](#) sets out the cases in which a treaty or Article 48(6) decision attracts a referendum. Section 4(4)(b) sets out an exemption to the referendum requirement and provides that an Article 48(6) decision does not fall within section 4 merely because it

These notes refer to the European Union (Approval of Treaty Amendment Decision) Act 2012 (c.15) which received Royal Assent on 31 October 2012

involves the making of a provision that applies only to Member States other than the United Kingdom.

17. The Treaty amendment Decision amends Article 136 TFEU with regard to a “stability mechanism for Member States whose currency is the euro”. Article 136 itself is part of Chapter 4 of Title VIII TFEU which includes only provisions specific to Member States whose currency is the euro.
18. Under section 5 of the 2011 Act, the Minister must lay a statement before Parliament setting out his or her opinion as to whether a referendum is required under section 4 of the Act within two months of the date on which the decision was adopted. Subsection (6) makes transitional provision in relation to a European Council decision adopted before section 5 came into force. In such a case, a statement must be laid within two months of the commencement date of that section of the 2011 Act. Section 5 came into force on 19 August 2011. The Foreign Secretary laid a statement before Parliament on 13 October 2011 to the effect that, in his opinion, the Treaty amendment Decision does not fall within section 4 of the 2011 Act. The statement relies on the exemption in section 4(4)(b), on the basis that the Treaty amendment Decision applies only to Member States other than the UK.