

Two hands are shown, one at the top and one at the bottom, with fingers slightly spread, framing the central text. The hands are light-skinned and appear to be holding or presenting the text.

THE LISBON TREATY

YOUR EXTENDED GUIDE

The Referendum Commission

The Referendum Commission is an independent body set up by the Referendum Act 1998. The Chairman of the Commission is Mr Justice Frank Clarke. The other members are: Mr Kieran Coughlan, Clerk of Dáil Éireann; Ms Deirdre Lane, Clerk of Seanad Éireann; Ms Emily O'Reilly, Ombudsman and Mr John Buckley, Comptroller and Auditor General.

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This publication is also available in Irish, Braille, in an audio format through the National Council for the Blind of Ireland and in a sign language video.

What you are being asked on October 2nd

When you go to vote, you will be asked to vote Yes or No to a proposal to amend the Constitution to allow Ireland to ratify the Lisbon Treaty and implement the provisions of that Treaty.

This booklet was printed using paper sourced from a sustainably managed forest.

Introduction

This handbook has one simple purpose: to help you, the voter, understand the Lisbon Treaty before you vote in the referendum on October 2nd.

Political parties and campaigning groups are putting forward various arguments about the likely consequences of the referendum decision, and they are using those arguments to encourage you to vote yes or to vote no.

The role of the Referendum Commission is to encourage you to vote and to explain, as factually and clearly as possible, what you are voting on. This is a challenge, not only because the Treaty itself is a quite complex legal document but also because, in the heat of the debate, the no and yes campaigns will also be making statements and claims about what is and is not in the Lisbon Treaty itself.

We would urge you to see this document as an independent and unbiased account of the Treaty content. It is required by law to be impartial and factual, and that is what it is. Our role is to explain what is in the referendum proposal. The role of the political campaigners is to seek to convince you to vote for it or against it. Read our account of the Lisbon Treaty, listen to their arguments, and then decide for yourself which way to vote.



A handwritten signature in blue ink, which appears to read 'Frank Clarke'.

Frank Clarke
Chairman
Referendum Commission

What you are being asked to decide in the referendum

On referendum day October 2nd, you are being asked to decide whether or not to change the Constitution of Ireland. This proposed change would allow:

- Ireland to ratify the Lisbon Treaty
- Ireland to agree to certain decisions in the Area of Freedom, Security and Justice in future with the approval of the Dáil and Seanad
- Ireland to agree at the European Council to certain changes to the EU treaties in the future without a referendum but only with the approval of the Dáil and Seanad

If all EU member states, including Ireland, ratify the Treaty, then it can come into effect. If Ireland or any other member state does not ratify the Treaty it cannot come into effect and the EU will continue to operate under its present rules.

SEE NOTE 1 ON PAGE 17 FOR MORE INFORMATION ON THE REFERENDUM PROPOSAL

TRUTH



Developments since the 2008 Lisbon Treaty referendum

In the referendum on October 2nd, you are being asked a similar question to that which you were asked in June 2008: **Do you want Ireland to ratify the Lisbon Treaty?** The Lisbon Treaty itself has not been changed.

However, some decisions have been made since the June 2008 referendum which change the legal and political context in which this referendum is being held.

- The European Council has made a decision that, if the Lisbon Treaty comes into effect, the European Commission will continue to include a Commissioner nominated by each member state including Ireland.
- The European Council has also made a decision which sets out the effects of the Lisbon Treaty on Irish policy and law in a number of areas: the right to life, family and education; taxation; and security and defence. This decision is not part of the Lisbon Treaty, but is contained in a new international treaty which will be legally binding on all 27 member states of the EU. This new international treaty will come into force on the same day as the Lisbon Treaty, if the Lisbon Treaty is ratified by all the member states. The European Council has agreed that protocols will be added to a later EU treaty to give full effect in EU law to this decision (this is likely to be a Treaty of Accession for a new member state – such as Croatia or Iceland). This is because provisions in a EU treaty and any protocol to it become part of EU law and can then be enforced by the European Court of Justice and other courts in the same way as other EU laws.
- The European Council has also issued a solemn declaration on social issues including workers' rights. This is a political statement and is not legally binding.

SEE NOTE 2 ON PAGE 21 FOR MORE INFORMATION ON THIS DECISION AND DECLARATIONS

The Lisbon Treaty explained

The Lisbon Treaty deals with a number of different issues. In the following pages we explain the main issues.

Changes to how the EU makes decisions

The Lisbon Treaty proposes to make changes to some of the EU's institutions and bodies. The European Commission, the Council (of Ministers), the European Council (Heads of Government) and the European Parliament are the main institutions affected by these proposed changes. The other EU institutions are the Court of Justice of the European Communities, the European Central Bank and the European Court of Auditors.

In order to understand the proposed changes, it is necessary to know how the rules operate at present.

The European Commission

PRESENT SITUATION: The Commission is composed of one member (a European Commissioner) nominated by each member state but is independent of the member states. At present, there are 27 member states and therefore 27 Commissioners. The Commission's role is to propose policies and laws, implement EU decisions and ensure that EU law is respected by member states.

PROPOSED CHANGE: A new Commission is due to be appointed towards the end of 2009. If the Lisbon Treaty is not in force when this happens, then the number of Commissioners must be reduced by virtue of the current laws. If the Lisbon Treaty is in force, then the European Commission will include a Commissioner nominated by each member state including Ireland.

SEE NOTE 3 ON PAGE 24 FOR MORE INFORMATION ABOUT CHANGES IN THE COMMISSION

The Council (of Ministers)

The Council (of Ministers) is composed of one government minister from each member state. Each member state is usually represented by the minister responsible for the



subject that is being discussed. For example, the Agriculture Council is composed of the 27 Ministers for Agriculture, the Transport Council is composed of the 27 Ministers for Transport and so on. The Council (of Ministers) makes the final decisions on legislation either alone or in co-operation with the European Parliament.

QUALIFIED MAJORITY VOTING

At present, some decisions by the Council (of Ministers) must be made unanimously while others are made by Qualified Majority Voting (QMV). Under the QMV system, each member state's vote is given a weighting. This is not directly proportionate to the population, but gives smaller countries a greater share than their populations would warrant under a directly proportional arrangement.

If ratified, the Treaty would increase the number of areas where QMV will apply. It would change the QMV voting system within the Council from 2014.

SEE NOTE 4 ON PAGE 25 FOR MORE INFORMATION ABOUT VOTING IN THE COUNCIL

MEETINGS

At present, the Council (of Ministers) takes decisions in private and holds some policy debates in public. If the Lisbon Treaty is ratified, the Council will meet in public when a law is being debated and voted on.

PRESIDENCY OF THE COUNCIL

At present, the Council (of Ministers) is chaired by the representative of the member state holding the six-month rotating Presidency. If the Lisbon Treaty is ratified, this will continue for all Councils except the Foreign Affairs Council which will be chaired by the High Representative for Foreign Affairs and Security Policy.

The European Council

The European Council is composed of the heads of government or state of each member state together with the President of the Commission. The European Council gives overall political direction to the EU.

The European Council is chaired at present on a rotating basis by the head of state or government of the member state holding the six-month EU Presidency. The Lisbon Treaty provides for a new full-time post of President of the European Council. The President would be elected (by qualified majority) by the European Council for two and a half years and could be re-elected once for a similar term thus serving a potential total of five years. The President would chair and co-ordinate the European Council's work.

The European Parliament

The members of the European Parliament (MEPs) are directly elected by the people eligible to vote in the member states.

PRESENT SITUATION: The Parliament adopts legislation jointly with the Council (of Ministers) in a number of areas, for example, in relation to consumer protection and environmental issues. [It is consulted by the Council (of Ministers) in some other areas.] This decision-making process is called co-decision. At present, the European Parliament and the Council have joint decision-making powers over most of the EU's budget but the Council has the final say over certain spending items. The Parliament also has certain supervisory functions over the European Commission.

PROPOSED CHANGES: The Lisbon Treaty proposes to increase the decision-making powers of the European Parliament. If the Treaty comes into force, co-decision would apply to a number of new areas. These include agriculture, asylum and immigration from non-EU countries.

If the Lisbon Treaty comes into force then the European Parliament and the Council (of Ministers) will have joint decision-making powers over the entire EU budget.



UNDERSTAND

The decision-making process

The usual way in which EU laws are made is called 'co-decision'. This is what happens: the Commission makes a proposal; the Council (of Ministers) and the European Parliament discuss it and may each make changes; and the final decision is then made by the Council and the Parliament jointly.

There are specific decision-making procedures in relation to Common Foreign and Security Policy where decisions are made by the Council alone.

The Lisbon Treaty proposes to rename the co-decision procedure as the 'Ordinary Legislative Procedure'. It also proposes to rename the decision-making procedures whereby the Council makes decisions alone. These would be called 'Special Legislative Procedures'.

DISCUSS



Other proposed changes

Role of National Parliaments

At present, national parliaments are not directly involved in EU decision-making. If the Treaty enters into force then national parliaments – in Ireland's case, the Dáil and Seanad – will have time to vet proposals and offer an opinion.

If a number of national parliaments object to a proposal it must be reviewed. Each national parliament has two votes, one for each house of parliament; the Dáil and Seanad have one vote each. In certain circumstances, the review must take place if one third of the national parliaments request this. In the case of judicial co-operation in criminal matters and police co-operation, fewer national parliaments – a quarter – would be able to require a review. The Treaty would also give national parliaments a specific role in relation to proposed changes to the Treaties.

SEE NOTE 5 ON PAGE 26 FOR MORE INFORMATION ON THE ROLE OF NATIONAL PARLIAMENTS

Power to change the Treaties

At present the Treaties governing the EU can be amended only by the member states first unanimously agreeing to an amending treaty, which must then be approved by each member state in accordance with its own constitutional requirements. In almost all cases this involves parliamentary approval. In some cases, for example in Ireland, a referendum may be required.

The Lisbon Treaty now proposes to give the European Council (Heads of Government) the power to propose changes to certain parts of the governing Treaties, although this proposed power is quite limited. Any such change cannot increase the competence of the EU – the scope of its powers (see page 27). In addition, any such proposals must be agreed unanimously by the European Council, meaning that any one member state may veto such a proposal. If the European Council does agree a proposed change, then in order for it to come into effect, it must be ratified by the member states in accordance with their own constitutional requirements. This may require a referendum in Ireland as happens at present.

The Lisbon Treaty also proposes to give the European Council the power to amend the Treaties so as to allow Qualified Majority Voting (see pages 6 & 25) to operate in certain areas where unanimity is now required. It will also give it the power to apply the Ordinary Legislative Procedure (see page 8) in certain areas where a Special Legislative Procedure applies at present. Any such proposal must be agreed unanimously by the European Council.

This means that any member state may veto such a proposal. If the European Council does agree a proposed change, any national parliament may prevent these changes coming into effect. Under the proposed amendment to the Constitution of Ireland, the approval of the Dáil and Seanad will be required for Ireland to agree to such proposed changes. Such changes would not require a referendum in Ireland.

The power to change from unanimity to Qualified Majority Voting, or from a Special Legislative Procedure to the Ordinary Legislative Procedure, does not extend to military and defence issues.

It could apply, for example, to taxation where unanimity is required at present. However, in this case, any such proposed change could be vetoed by Ireland.

Citizens' initiative

The Lisbon Treaty proposes that a citizens' initiative would allow for at least one million citizens of a significant number of member states to ask the Commission to bring forward proposals on a particular issue to implement the Treaties. The Commission would be obliged to consider the proposal. The details of how this would operate have yet to be decided.

Enhanced co-operation

Enhanced co-operation (sometimes called flexibility) is the term used for the procedure which allows a number of member states to use the institutions of the EU to promote closer co-operation among those member states.

At present there are various conditions to be met before these provisions are used. Among these conditions are:

- They do not apply to security and defence issues
- A minimum of eight member states must be involved
- The aim must be to further the objectives of the EU
- The principles of the Treaties must be respected
- It should not affect the body of decisions taken to date by the EU (known as the *acquis communautaire*) or the rights and interests of other member states
- It must be used only as a last resort (it must be clear that the aim cannot be achieved within a reasonable time by using normal EU procedures)



DEBATE

If the Lisbon Treaty is ratified, the number of member states required to be involved will be nine rather than eight and the exclusion of security and defence issues will be removed.

The Lisbon Treaty also provides that the procedure cannot be used in areas where the EU has exclusive competence (see pages 13 & 27). If it is being used in relation to Common Foreign and Security Policy it must be unanimously approved by the Council. In any other areas, it must be backed by the Commission, approved by the Council (by QMV) and approved by the European Parliament.

Joining the EU

The Lisbon Treaty proposes to put the present rules for joining the EU into the governing Treaties.

At present, certain conditions must be met before a new country can join the EU. It is now proposed by the Lisbon Treaty that these conditions are referred to in the governing Treaties. This means that they cannot be changed by the European Council and can be changed only by another change to the Treaties.

The conditions are:

- **The country must have stable political institutions which guarantee the rule of law, human rights and respect for and protection of minorities**
- **The country must have a functioning market economy and the capacity to cope with competitive pressure and market forces within the EU**
- **The country must have the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union**
- **The EU itself must be able to assimilate the new country and, at the same time, maintain the impetus of European integration**

Leaving the EU

At present, there are no specific arrangements for withdrawing from membership of the EU. The Lisbon Treaty provides a process for withdrawal.

Areas of competence

The EU has the competence or power to decide policies and make laws only in those areas which are set out in the Treaties. This has always been the case.

The Lisbon Treaty would specify who has the power to do what by listing the areas in which:

- **The EU has exclusive competence – this means that the decisions must be made at EU level and not at member state level**
- **The EU and member states have joint competence**
- **The member states have exclusive competence but the EU may support and help to co-ordinate**

The Treaty does not propose to give the EU any new exclusive competence but does propose some changes to the other areas.

SEE NOTE 6 ON PAGE 27 FOR MORE INFORMATION ABOUT THE COMPETENCE OF THE EU

Areas where Ireland may opt in or opt out

Ireland is not obliged to take part in, or be bound by, decisions in what is known as the 'Area of Freedom, Security and Justice'. This covers issues such as asylum, immigration, border controls, judicial co-operation and police co-operation.

Ireland and the UK may each decide to be involved in particular issues – they may opt in or opt out of particular decisions. This special arrangement for Ireland and the UK has been in existence since these areas came within the remit of the EU in 1999. In practice, Ireland has opted in to a number of decisions, for example, in relation to asylum and judicial co-operation and has not exercised its right to opt in to others, for example, border controls.

The Treaty does not change the opt-out for Ireland and the UK. Ireland has issued a non legally binding declaration that it proposes to opt in to decisions in this area to the maximum extent possible and to review the entire opt-out clause within three years.

The wording of the proposed amendment to the Constitution proposes to allow Ireland to opt in to particular decisions only with the approval of the Dáil and Seanad. This would continue the present constitutional requirement. It also allows for Ireland to withdraw totally from the opt-out, again only if there is prior Dáil and Seanad approval.



Common Foreign and Security Policy

Common Foreign and Security Policy covers foreign policy and defence policy. The main decisions in this area must be made unanimously. The proposed change to the Constitution would continue the present arrangements for Ireland's military neutrality. This area is also covered by the European Council decision on the effects of the Lisbon Treaty on Irish laws and policies (see pages 3 & 21).

MUTUAL ASSISTANCE

The Lisbon Treaty provides that member states have an obligation to aid and assist another member state which is the victim of armed aggression. This assistance is to be in accordance with the UN Charter. The type of aid and assistance that is required is not specified. Mutual assistance is expressly stated not to compromise the specific character of the security and defence policy of certain member states which includes Ireland's policy on neutrality.

SOLIDARITY CLAUSE

This is a clause in the Lisbon Treaty which states that the EU and the member states are obliged to assist each other if one is the victim of a terrorist attack or a natural or man-made disaster. The precise details of this co-operation would have to be agreed unanimously by the Council.

Charter of Fundamental Rights

The Treaty proposes to give the Charter of Fundamental Rights of the European Union the same legal value as the main treaties.

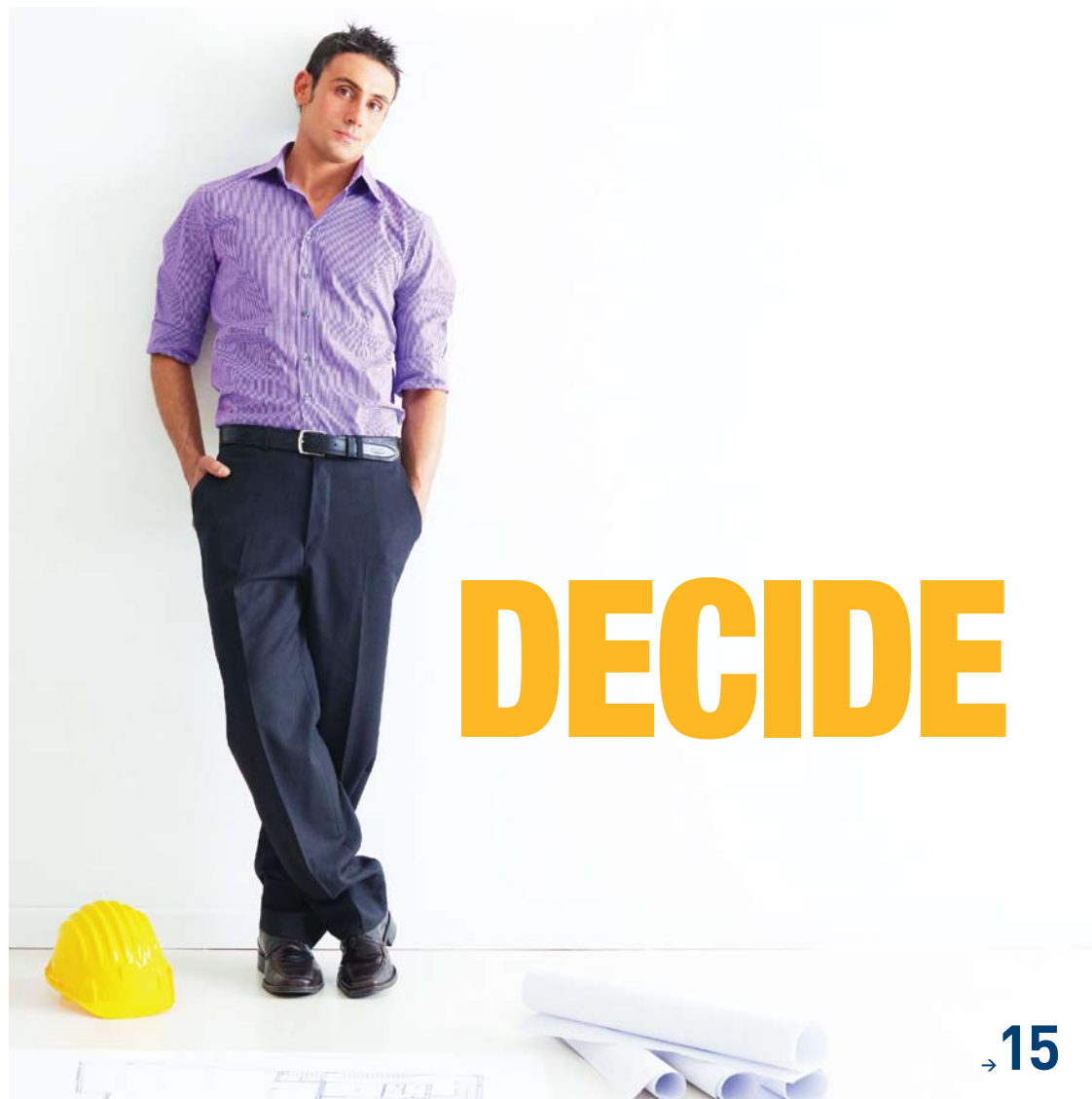
The Charter of Fundamental Rights lists the civil, political, social and economic rights recognised by the EU. These are listed under the headings of Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice. Specific principles apply to groups such as older people, children and people with disabilities.

It is proposed that the Charter will apply to the EU institutions, bodies, offices and agencies and to the member states when they are implementing EU law. The Treaty states that the Charter does not extend the field of application of EU law or give the EU any new area of competence.

The rights set out in the Charter are not absolute. Some are already provided for in the Constitution of Ireland, and/or in EU law and/or in the European Convention on Human Rights. Some are statements of principle rather than specific rights. Some are stated to be subject to, regulated by, or in accordance with national laws. The precise effect of the Charter is dependent on the right invoked, the limitations on it, the manner in which it is protected by the Charter and the competence of the EU in the area in question.

EUROPEAN CONVENTION ON HUMAN RIGHTS

All the member states have ratified the European Convention on Human Rights. The Treaty proposes that the EU itself (that is, not just the member states individually) accede to that Convention. If this accession occurs then the EU would be required, in all of its activities, to respect the European Convention on Human Rights. Individuals who believe that their rights under the Convention have been breached by the EU could then bring a case against the EU before the European Court of Human Rights.



FURTHER INFORMATION



Notes

NOTE 1: More information about the referendum proposal

The proposal to change the Constitution is contained in the Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Bill 2009. It proposes to amend Article 29.4 of the Constitution. Article 29.4 deals with international relations.

The current wording of Article 29.4 of the Constitution of Ireland is as follows:

- “1° The executive power of the State in or in connection with its external relations shall in accordance with Article 28 of this Constitution be exercised by or on the authority of the Government.
- 2° For the purpose of the exercise of any executive function of the State in or in connection with its external relations, the Government may to such extent and subject to such conditions, if any, as may be determined by law, avail of or adopt any organ, instrument, or method of procedure used or adopted for the like purpose by the members of any group or league of nations with which the State is or becomes associated for the purpose of international co-operation in matters of common concern.
- 3° The State may become a member of the European Coal and Steel Community (established by Treaty signed at Paris on the 18th day of April, 1951), the European Economic Community (established by Treaty signed at Rome on the 25th day of March, 1957) and the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957). The State may ratify the Single European Act (signed on behalf of the Member States of the Communities at Luxembourg on the 17th day of February, 1986, and at the Hague on the 28th day of February, 1986).
- 4° The State may ratify the Treaty on European Union signed at Maastricht on the 7th day of February, 1992, and may become a member of that Union.
- 5° The State may ratify the Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Amsterdam on the 2nd day of October, 1997.
- 6° The State may exercise the options or discretions provided by or under Articles 1.11, 2.5 and 2.15 of the Treaty referred to in subsection 5° of this section and the second and fourth Protocols set out in the said Treaty but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.
- 7° The State may ratify the Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts signed at Nice on the 26th day of February, 2001.
- 8° The State may exercise the options or discretions provided by or under Articles 1.6, 1.9, 1.11, 1.12, 1.13 and 2.1 of the Treaty referred to in subsection 7° of this section

but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.

- 9° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 1.2 of the Treaty referred to in subsection 7° of this section where that common defence would include the State.
- 10° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State.
- 11° The State may ratify the Agreement relating to Community Patents drawn up between the Member States of the Communities and done at Luxembourg on the 15th day of December, 1989.”

PROPOSED CHANGE

It is proposed to amend Article 29.4 by changing subsection 3° and replacing subsections 4° – 11° by six new subsections. *(Script in bold italics is an explanation of the changes.)*

The amended subsection 3° would read as follows:

“3° The State may become a member of the European Atomic Energy Community (established by Treaty signed at Rome on the 25th day of March, 1957).”

(This involves deleting the references to the European Coal and Steel Community and to the European Economic Community. The European Coal and Steel Community no longer exists. The ratification of the Lisbon Treaty would make the reference to the European Economic Community redundant.)

It is proposed to repeal the existing subsections 4° – 11° and replace them by six new subsections:

“4° Ireland affirms its commitment to the European Union within which the Member States of that Union work together to promote peace, shared values and the well-being of their peoples.”

(This is a new provision with no corresponding provision in the existing Constitution. It reflects the wording in the Lisbon Treaty and is intended to express the commitment of Ireland to the EU and its values.)

“5° The State may ratify the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon on the 13th day of December 2007 (“Treaty of Lisbon”), and may be a member of the European Union established by virtue of that Treaty.”

(This allows for the ratification of the Lisbon Treaty. The existing provisions ratifying earlier treaties are no longer necessary as the Lisbon Treaty incorporates those treaties.)

“6° No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State, before, on or after the entry into force of the Treaty of Lisbon, that are necessitated by the obligations of membership of the European Union referred to in subsection 5° of this section or of the European Atomic Energy Community, or prevents laws enacted, acts done or measures adopted by—

- i the said European Union or the European Atomic Energy Community, or by institutions thereof,
- ii the European Communities or European Union existing immediately before the entry into force of the Treaty of Lisbon, or by institutions thereof, or
- iii bodies competent under the treaties referred to in this section,

from having the force of law in the State.”

(This is similar to the existing subsection 10° and allows for the provisions of the Lisbon Treaty to be put into effect in Ireland.)



FACTS

“7° The State may exercise the options or discretions—

- i to which Article 20 of the Treaty on European Union relating to enhanced cooperation applies,
- ii under Protocol No. 19 on the Schengen acquis integrated into the framework of the European Union annexed to that treaty and to the Treaty on the Functioning of the European Union (formerly known as the Treaty establishing the European Community), and
- iii under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, so annexed, including the option that the said Protocol No. 21 shall, in whole or in part, cease to apply to the State,

but any such exercise shall be subject to the prior approval of both Houses of the Oireachtas.”

(This is similar to the existing subsections 6° and 8°. It allows Ireland to opt in or opt out of provisions in relation to enhanced co-operation and certain aspects of the Area of Freedom, Security and Justice subject to the prior approval of the Houses of the Oireachtas – that is the Dáil and Seanad.)

The Schengen acquis is the body of law dealing with the Schengen area which is an area of free movement involving many member states of the EU other than Ireland and the UK. Ireland is entitled to take part in certain aspects of Schengen, notably police co-operation. The Protocol mentioned in iii is the one which allows Ireland to opt out of the Area of Freedom, Security and Justice. This clause would allow Ireland to withdraw from the opt-out. Ireland has made a declaration which is attached to the Lisbon Treaty that it will examine this opt-out within 3 years – declarations are not legally binding.)

CHOOSE



“ 8° The State may agree to the decisions, regulations or other acts—

- i under the Treaty on European Union and the Treaty on the Functioning of the European Union authorising the Council of the European Union to act other than by unanimity,
- ii under those treaties authorising the adoption of the ordinary legislative procedure, and
- iii under subparagraph (d) of Article 82.2, the third subparagraph of Article 83.1 and paragraphs 1 and 4 of Article 86 of the Treaty on the Functioning of the European Union, relating to the area of freedom, security and justice, but the agreement to any such decision, regulation or act shall be subject to the prior approval of both Houses of the Oireachtas.”

(This deals with the provisions in the Lisbon Treaty which allow the European Council to agree certain changes to the governing Treaties. Some of these changes could come into effect only when ratified by the member states in accordance with their own requirements – this could mean that a referendum would be required in Ireland. This amendment to the Constitution would allow Ireland to agree at the European Council to allow certain decisions which currently require unanimity to be made by QMV and certain decisions currently made by the Council to be made by joint decision of the Council and the European Parliament but this could be done only with the prior approval of the Oireachtas – the Dáil and Seanad.)

“9° The State shall not adopt a decision taken by the European Council to establish a common defence pursuant to Article 42 of the Treaty on European Union where that common defence would include the State.”

(This is similar to the existing subsection 9°, recast to take account of the Lisbon Treaty.)

The existing subsection 11° is effectively redundant as the Luxembourg Patents Convention never came into force.

Note 2: More information on the European Council decision on the effects of the Treaty of Lisbon on Irish laws and policies

In June 2009, the European Council made a decision setting out the effects of the Treaty of Lisbon on certain Irish laws and policies. These relate to the:

- Right to life, family and education
- Taxation
- Security and defence

RIGHT TO LIFE, FAMILY AND EDUCATION

The European Council decision states that nothing in the Lisbon Treaty attributing legal status to the Charter of Fundamental Rights or in its provisions on the Area of Freedom,

Security and Justice affects the scope and application of the articles of the Constitution of Ireland which deal with the right to life (Article 40.3.1°); the protection of the family (Article 41) and the protection of rights in respect of education (Articles 42 and 44.2.4° and 44.2.5°).

TAXATION

The European Council decision states that nothing in the Lisbon Treaty makes any change of any kind for any member state in relation to the powers of the EU in respect of taxation. (Decisions by the EU on direct taxation must be made unanimously).

SECURITY AND DEFENCE

The European Council (Heads of Government) decision sets out the guiding principles of the EU's international actions. These are democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law. The EU's common security and defence policy is an integral part of the Common Foreign and Security Policy. It provides the EU with the operational capacity to undertake missions for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

The European Council (Heads of Government) decision goes on to state that the EU's common security and defence policy does not prejudice the security and defence policy of each member state, including Ireland, or the obligations of any member state. It further states that the Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality. It will be for each member state to determine the nature of aid or assistance to be provided to another member state which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence requires a unanimous decision of the European Council. It would be a matter for each member state, including Ireland, to decide whether or not to adopt a common defence. It is also a matter for each member state to decide whether to participate in permanent structured cooperation or the European Defence Agency. The Treaty of Lisbon does not provide for the creation of a European army or for any form of conscription. It does not affect the right of Ireland or any other member state to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities. It will be a matter for Ireland or any other member state, to decide whether or not to participate in any military operation.

LEGAL STATUS OF THE EUROPEAN COUNCIL DECISION

This decision is contained in a new international treaty which will be legally binding on all 27 member states of the EU. It is not part of the Lisbon Treaty. The European Council has agreed that protocols will be added to a later EU Treaty to give full effect in EU law to these decisions (this is likely to be a Treaty of Accession for a new member state – such as Croatia or Iceland). The main difference between this international treaty and a protocol to a EU Treaty is that an international treaty, while binding on the parties who have signed it, does not have an enforcement mechanism. A EU Treaty and any protocol to it becomes part of EU law and is enforceable by the European Court of Justice in the same way as other EU laws.

The new international treaty will come into force on the same day as the Lisbon Treaty, if the Lisbon Treaty is ratified by all the member states.

IRISH GOVERNMENT DECLARATION

At the meeting of the European Council at which this decision was made, Ireland made a declaration in relation to military neutrality. This sets out Ireland's policies and practices. It reiterates that, in order for members of the Irish Defence Forces to take part in overseas operations including those carried out under the European common security and defence policy, the following requirements must be met:

- **Authorisation of the operation by the Security Council or the General Assembly of the United Nations**
- **The agreement of the Irish Government and**
- **The approval of Dáil Éireann**

This declaration will be associated with the instrument of ratification if Ireland does ratify the Lisbon Treaty.



KNOWLEDGE

SOLEMN DECLARATION ON WORKERS' RIGHTS

This is a declaration by the European Council that it confirms the high importance which the EU attaches to:

- Social progress and the protection of workers' rights
- Public services
- The responsibility of member states for the delivery of education and health services
- The essential role and wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest

The solemn declaration is a political statement. It is not legally binding.

NOTE 3: More information about proposed changes to the European Commission

IF THE LISBON TREATY DOES NOT COME INTO FORCE

The present rules provide that the number of Commissioners must be less than the number of member states once the number of member states reaches 27. There are currently 27 member states so, if the Lisbon Treaty is not ratified, then the next Commission must have less than 27 members. The current rules provide that the Council must decide, unanimously, how many Commission members there will be. The members must be chosen according to a rotation system based on the principle of equality and the Council must decide, unanimously, how exactly this is to be implemented.

IF THE LISBON TREATY DOES COME INTO FORCE

If the Treaty comes into force then all member states will nominate a Commissioner for the period 2009 – 2014. The Lisbon Treaty provides a mechanism for the possible reduction of the size of the Commission from 2014. This mechanism, if used, would result in two-thirds of the member states, rather than all of them, nominating a Commissioner in 2014. There are 27 member states at present. So, if the number of member states remains the same, there would be 18 Commissioners in the period 2014 – 2019.

Under this mechanism the right to nominate a Commissioner would rotate among the member states on an equal basis. This means that each member state would nominate a member of the Commission for two out of every three Commissions (that is, for 10 years out of every 15 year cycle).

However, the European Council has decided that, if the Lisbon Treaty is ratified, it will not implement this mechanism in 2014 and will instead continue the present arrangement whereby each member state nominates a Commissioner.

NOTE 4: More information about voting in the Council

CHANGES WITHIN QUALIFIED MAJORITY VOTING

At present, each member state has a weighted vote as follows:

France, Germany, Italy, the UK	29 each
Spain, Poland	27 each
Romania	14
The Netherlands	13
Belgium, Czech Republic, Greece, Hungary, Portugal	12 each
Austria, Bulgaria, Sweden	10 each
Denmark, Finland, Ireland, Lithuania, Slovakia	7 each
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4 each
Malta	3
TOTAL	345

A Qualified Majority Vote (QMV) at present requires 255 weighted votes – that is almost 74% of the total. This system would remain in place until 2014. If the Treaty is ratified, from 2014, a qualified majority (also to be known as a double majority) will require that decisions must meet two conditions:

- a) 55% of the member states must agree: (for example, while there are 27 member states, 15 member states must agree);
- b) those member states supporting the decision must represent 65% of the EU population.

In addition, at least four member states must be opposed to a decision in order for it to be blocked. This ensures that decisions cannot be blocked by just three of the larger member states acting together.

If there are fewer than four member states opposed to a decision then the qualified majority will be deemed to have been reached even if the population criterion is not met.

AREAS TO WHICH QUALIFIED MAJORITY VOTING APPLIES

At present, QMV applies to decisions on a wide range of issues including agriculture, competition rules, consumer protection and the environment. It is proposed to apply QMV to a number of new areas – these include energy, asylum and immigration from non-EU countries. Certain decisions will continue to be made unanimously – they include decisions on defence and taxation. This means that any member state may veto a proposed change in these areas.

NOTE 5: More information on the role of National Parliaments

The process would operate as follows:

- **The national parliaments must be provided with all relevant policy and legislative documents (for example, green papers, white papers, proposals for directives and regulations)**
- **The parliaments would ordinarily have eight weeks to consider the proposals**
- **The parliaments may send a ‘reasoned opinion’ to the EU institutions on whether draft legislation complies with the principle of subsidiarity – which is that decisions should be taken at local or national level, rather than at EU level, if possible**
- **If enough national parliaments vote to send a reasoned opinion, the draft legislation must be reviewed**
- **Each national parliament has two votes. The Dáil and Seanad have one vote each. In general, one third of the available votes (18 at present) are required to ensure a review; one quarter of the votes (14 at present) is enough in the case of draft legislation in the areas of judicial co-operation in criminal matters and police co-operation**
- **The review does not mean that the proposal must be withdrawn. If the proposer (usually, the Commission) wishes to continue with the proposal, it must set out a reasoned opinion on why it considers that the principle of subsidiarity has not been breached**

VOTE



NOTE 6: More information on the competence of the EU

The Treaties governing the EU give the EU power to make laws and policies in certain areas and they allow for co-operation with or support for national governments in other areas. The EU has no competence in any area that is not mentioned in the Treaties.

The Lisbon Treaty proposes to list the areas in which:

- **The EU has exclusive competence – this means that the decisions must be made at EU level and not at national government level**
- **The EU and national governments have joint competence**
- **The national governments have exclusive competence but the EU may support and help to co-ordinate**

This list reflects the existing areas over which the EU has competence. The Lisbon Treaty provides for no new exclusive competences. It would add areas of joint EU competence with the members states. These include energy and aspects of the environment and public health.

Under the third heading where member states have exclusive competence but the EU may provide support and co-ordination, it would add tourism, sport, civil protection and administrative co-operation.

The following are the areas as listed in the Lisbon Treaty.

EU EXCLUSIVE COMPETENCE

The EU is exclusively responsible for:

- **Customs Union**
- **Establishment of competition rules necessary for the functioning of the internal market**
- **Monetary policy for member states which use the euro**
- **Conservation of the biological resources of the sea as part of the common fisheries policy**
- **Common commercial policy**
- **The conclusion of an international agreement when this is within the framework of EU legislation or when it is necessary to help the EU exercise an internal competence or if there is a possibility of the common rules being affected or of their range being changed**

JOINT COMPETENCE OF EU AND MEMBER STATES

The EU and the member states are jointly responsible for:

- Internal market
- Social policy with regard to specific aspects defined in the Treaty
- Economic, social and territorial cohesion
- Agriculture and fisheries except for the conservation of the biological resources of the sea
- Environment (the Treaty includes specific reference to climate change)
- Consumer protection
- Transport
- Trans-European Networks
- Energy
- Area of Freedom, Security and Justice
- Common safety concerns with regard to aspects of public health
- Research, technological development
- Space
- Development co-operation and humanitarian aid

MEMBER STATES EXCLUSIVE COMPETENCE BUT EU MAY PROVIDE SUPPORT AND CO-ORDINATION

Member states are exclusively responsible for the rules in these areas but the EU may provide support and co-ordination – this cannot include harmonisation:

- Protection and improvement of human healthcare
- Industry
- Culture
- Tourism
- Education, professional training, youth
- Sport
- Civil protection
- Administrative co-operation

SPECIFIC ARRANGEMENTS

There are specific arrangements in the Treaties for the co-ordination of economic and employment policies. Common Foreign and Security Policy is also governed by a special system.



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