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Treaty of Lisbon

Introduction

A referendum will be held in Ireland in June 2008 to decide whether or not Ireland should ratify the Treaty of Lisbon. The Bill to amend the Constitution – the Twenty-Eighth Amendment of the Constitution Bill 2008 – has been published but has not yet been passed by the Oireachtas.

The Treaty is a lengthy, complex document which proposes to amend existing treaties. It is mainly concerned with changes to how decisions are made at European Union level. Large sections of the Treaty involve fairly technical proposed changes. The Treaty, as is usual with such treaties, includes a number of protocols and declarations. Protocols are part of the Treaty and are legally binding. Declarations are not legally binding – they are statements of political intent.

Here we briefly describe how the Treaty can be ratified and the main proposals for change contained in it.

Ratification of the Treaty

The Treaty of Lisbon has been signed by all the 27 member states but it cannot come into effect until it has been ratified by all of them. The member states have agreed that ratification should be completed by 1 January 2009. Each member state is entitled to decide on ratification in accordance with its own rules and traditions. In practice, it seems that all except Ireland will ratify the Treaty by means of a vote in the national parliament. Ireland is the only member state where a referendum is constitutionally necessary.

Structure of the treaties

The Treaty of Lisbon proposes to amend the treaties which govern the EU. The EU is governed by a complex set of treaties. The most important are the Treaty of Rome and the Treaty on the European Union (also known as the Maastricht Treaty). If the Treaty of Lisbon is ratified there will be two treaties governing the EU:

- The Treaty on European Union – that is the Maastricht Treaty as amended by the subsequent treaties including the Lisbon Treaty.
- The Treaty on the Functioning of the EU – that is the Treaty of Rome as amended by all the subsequent treaties including the Lisbon Treaty

Pillar structure

At present the EU has three pillars although the term “pillar” is not used in the treaties. The three pillars are:

- First Pillar: The “European Community” which is broadly the original institution. It covers a range of areas including social and employment policies, consumer, environment, competition and internal market laws and policies. These are sometimes called “Community” activities.
- Second Pillar: Common Foreign and Security Policy – this deals with security and defence policies and foreign policy generally.
- Third Pillar: Justice and Home Affairs – this covers areas such as law enforcement, asylum seekers and refugees and immigration (some of these issues are also in the First Pillar).

The three pillars together constitute the European Union. From a strictly legal perspective, the “European Community” (EC) refers to the First Pillar only while the Union (EU) refers to all three pillars. However, in practice, the terms tend to be used interchangeably. There are significant differences between how decisions are made in the First Pillar and in the others.

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The Treaty of Lisbon proposes to abolish this structure. Instead, the European Union (EU) will be the only title. Some differences in decision-making will continue.

Areas of competence

The Treaty proposes to set out the areas of competence which belong to the EU itself, the areas which are exclusive to national governments and the areas in which there can be co-operation between the EU and national governments.

The EU, unlike national governments, has no inherent jurisdiction. That means that it cannot legislate in areas in which the treaties do not give it competence. This has always been the case but the Treaty of Lisbon proposes to specifically list the areas of competence in the governing treaties themselves.

EU 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 trading policy
- The conclusion of certain international agreements

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
- Consumer protection
- Transport
- Transeuropean networks
- Energy
- Area of freedom, security and justice
- Joint security issues with regard to aspects of public health
- Research, technological development and space
- Development cooperation and humanitarian aid

Member states' exclusive competence

The member states have exclusive competence in:

- Protection and improvement of human healthcare
- Industry
- Culture
- Tourism
- Education, professional training, youth and sport

- Civil protection
- Administrative co-operation

The EU may support and help to co-ordinate in these areas but this cannot extend to harmonisation.

Specific arrangements

There are specific arrangements in the treaties for the co-ordination of economic and employment policies (see EU Supplement, October 2007). Common foreign and security policy is also governed by a special system.

How EU decisions are made

The Treaty proposes to make a number of changes in how decisions are made at EU level. Some of these changes will not come into effect until 2014.

It is proposed to distinguish between the ordinary legislative procedure, that is legislation by Qualified Majority Voting (QMV) and joint decision-making by the Council and the European Parliament and the special legislative procedures, that is generally legislation by unanimity and with a different role for the Parliament. It is also proposed to extend the ordinary legislative procedure to more areas.

It is proposed to change the system of QMV from 2014.

Ordinary legislative procedure

The usual method of making EU decisions is as follows: The Commission makes a proposal; the Council and the Parliament discuss it and may each make changes; the final decision is made by the Council and the Parliament jointly (this is known at present as the co-decision procedure). The Treaty of Lisbon proposes to call this the "Ordinary Legislative Procedure" and to extend it to a number of new areas.

Special legislative procedures

There are specific decision-making procedures (called "Special legislative procedures" in the Treaty of Lisbon) in relation to two areas:

- Common foreign and security policy: decisions are made by the Council
- Area of freedom, security and justice: some decisions are made as described above while others are made by the Council

Voting in the Council

Some decisions by the Council must be made unanimously while others are made by what is called Qualified Majority Voting (QMV). Each member state's vote is given a weighting which is related, but not directly proportional, to its population.

The Treaty of Lisbon proposes to increase the number of areas where QMV will apply and change the voting system within the Council from 2014.

Areas to which QMV applies

Initially, almost all decisions were made unanimously. Each treaty extended the number of areas in which decisions are taken by QMV. The Treaty of Lisbon proposes to extend these areas further to include, among others, social security for migrant workers and energy policy. Some decisions will continue to be made unanimously – they include decisions on areas such as defence and taxation.

Changes within QMV

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
Austria, Bulgaria, Sweden	10
Denmark, Finland, Ireland, Lithuania, Slovakia	7
Cyprus, Estonia, Latvia, Luxembourg, Slovenia	4
Malta	3
Total	345

A Qualified Majority requires 255 weighted votes.

This system will remain in place until 2014. If the Treaty of Lisbon is ratified, from 2014, a qualified majority (also to be known as a double majority) will require that decisions must meet two conditions:

- 55% of the member states must agree: that means at least 15 member states while there are 27 member states and
- Those supporting must represent 65% of the EU population

In order to prevent a decision being made, a blocking minority will have to include at least 4 member states – this means that if there are fewer than 4 member states opposed to a decision then the qualified majority will be treated as having been reached.

There are transitional arrangements in place for the period 2014-2017; during that time, a member state may ask for the application of the current system rather than the new system.

Citizens' Initiative

The Treaty of Lisbon includes a proposal for a Citizens' Initiative. This would mean that at least one million citizens from a number of member states could ask the Commission to bring forward proposals on a particular issue. The Commission would be obliged to consider the proposal but there would be no obligation to proceed with it.

Role of national parliaments

The Treaty proposes to give a role to national parliaments in vetting proposed legislation. This means that national

parliaments must be informed of all proposals for policy and legislation. They may then object to the proposals. If enough parliaments object the proposals must be reviewed.

The Treaty also provides that national parliaments have a role in approving or rejecting proposals by the Council to make amendments to the treaties – see below.

Institutional changes

The Treaty of Lisbon proposes to make a number of changes to the institutions which govern the EU.

European Commission

The present arrangement whereby each member state nominates one member of the Commission will remain in place until 2014. If the Treaty of Lisbon comes into effect, two thirds of the member states will nominate a Commissioner in 2014. That means that there will be 18 Commissioners in the period 2014-2019 (if the number of member states remains at 27).

The nomination of Commissioners will rotate among the member states on an equal basis. This means that each member state will have the right to nominate a member of the Commission for each of two out of every three Commissions.

The European Council

The members of the European Council are the Heads of Government of the member states and the President of the European Commission. At present, the Presidency of the Council rotates between the member states every six months. The Treaty of Lisbon provides for a new post of President of the European Council. The President will be elected by the European Council for two and a half years (renewable once) and will chair the European Council.

The Council of Ministers

The Council is composed of one Minister from each member state. The Council and the European Parliament are the main decision-making bodies of the EU. At present, the Council takes decisions in private and holds some policy debates in public. The Treaty provides that the Council must meet in public when a law is being debated and approved.

European Parliament

At present, the European Parliament makes decisions jointly with the Council in some areas. This is known as co-decision. In other areas, it has certain powers to change proposed legislation and it must be consulted about other areas. The Treaty proposes to increase the number of areas over which it will make joint decisions with the Council.

The Parliament and the Council have joint decision-making powers over most of the Budget but the Council has the final say over certain spending items – mainly in agricultural

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

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spending. The Treaty proposes that the Parliament and the Council will have joint decision-making powers over all aspects of the Budget.

At present, the Parliament has the power to approve or reject the appointment of the full Commission. From 2014, it is proposed that the appointment of the President of the Commission must be separately approved by the Parliament.

Area of freedom, security and justice

This area is generally called Justice and Home Affairs at present. It covers issues such as asylum, immigration, border controls, judicial co-operation in criminal matters and police co-operation. Ireland and the UK are not obliged to be bound by decisions in this area but may each decide to be involved in particular issues – they may opt in or opt out of particular decisions.

The Treaty of Lisbon proposes to bring many of the decisions in this area into the ordinary legislative procedure. The opt-out for Ireland and the UK is continued. Ireland has issued a declaration (which is not legally binding) 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 proposed amendment to the Constitution provides that Ireland's opt-in to specific proposals must have prior approval of the Oireachtas. It also allows for Ireland to totally withdraw from the opt-out, again only if there is prior Oireachtas approval.

Charter of Fundamental Rights

The EU Charter of Fundamental Rights lists the civil, political social and economic rights which are recognised by the EU. These are listed under the headings of Dignity, Freedoms, Equality, Solidarity, Citizens' Rights, and Justice and there are specific principles which apply to specific groups such as older people, children and people with disabilities. These rights are derived from a number of sources including existing EU law, the Social Charters of the EU and the Council of Europe, the European Convention on Human Rights and the constitutional traditions of the member states.

The Treaty of Lisbon proposes to give the Charter the same legal value as the main treaties. The Charter will apply to the EU institutions and to the member states when they are implementing EU law. It does not extend the application of EU law or give the EU any new area of competence. It is difficult to know precisely what effect it will have.

Amendments to the treaties

In general, the treaties governing the EU may be amended only if the governments of the member states agree an amending Treaty and that Treaty is then ratified by all the member states.

The Treaty of Lisbon proposes to give the European Council the power to make a number of changes to the treaties governing the EU. Some of these require the agreement of national parliaments. In Ireland's case, the proposed changes to the Constitution provide that the approval of the Oireachtas is required for all these changes.

For example, the Treaty proposes to give the European Council the power to allow QMV to operate in certain areas where unanimity is required and to allow the ordinary legislative procedure to apply in certain areas to which a special legislative procedure applies. This power does not extend to military and defence issues. In these cases, any national parliament could prevent such a change within 6 months. Again, in Ireland's case, the proposed changes to the Constitution provide that Ireland could approve such a change only if the Oireachtas agreed.

Further Information

The text of the Treaty of Lisbon is at:

http://europa.eu/lisbon_treaty/index_en.htm

The Irish language version is at:

http://europa.eu/lisbon_treaty/index_ga.htm

The consolidated versions of the main treaties are at:

Treaty establishing the European Community

http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf

Treaty on European Union

http://eur-lex.europa.eu/en/treaties/dat/12002M/pdf/12002M_EN.pdf

The Charter on Fundamental Rights is at:

<http://eur-lex.europa.eu/JOHtml.do?uri=OJ%3AC%3A2007%3A303%3ASOM%3AEN%3AHTML>

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