

No to the Lisbon Treaty
Irish Arguments against the Lisbon Treaty
Short Version
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1. *Repetition of the referendum on the same treaty*

a) Rejection of the Treaty by the Irish

The Lisbon Treaty is only marginally different from the Constitution Treaty. The Lisbon Treaty does no longer speak of a “Constitution for Europe”, although it remains such a constitution, it no longer ordains symbols of the Union like the Hymn, the Flag, the Euro, although these symbols are being practised, and it conceals the primacy of the Treaties and the law adopted by the Union on the basis of the Treaties over the law of the Member States in the 17th Declaration, although this primacy is permanent usage of decision making in the European Court of Justice.

The people of Ireland rejected this treaty in the referendum of June 12, 2008. This means the treaty is a failure. In Germany, foregoing ratification, the Federal Constitutional Court had to decide on constitutional law suits by myself and others. It accepted approval of the Lisbon Treaty by the German parliament (“Bundestag” and “Bundesrat”) only “in consideration of the reasons” as stated

in the decision of the Court issued on June 30th 2009. Due to the reservations in the Court decision the Treaty has been changed essentially.

The repeated referendum on the Lisbon Treaty is illegal, because a plebiscite must not be repeated only because the government does not accept the result on pressure exerted by its contractual partners. The people have the sovereignty, in other words:

The people are sovereign, not the government, not the parliament. All people in Europe thinking in terms of freedom and justice are enraged that Ireland is forced to repeat its referendum. For this fact alone all Irish people should vote NO.

2) Dubious Concessions to Ireland

Neither the concessions of the heads of state or government of June 18/19th 2009 nor a protocol of the same content do change the Lisbon Treaty in any way, neither formally nor materially.

- a) The number of the commissioners was not fixed in a mandatory way.
- b) According to Section A of the Conclusion the provisions of the Treaty should not affect the applicability of the protection of the rights to life, protection of the family and the protection of the rights in respect rights of education providing by the Constitution of Ireland.” This Conclusion does not grant anything which is not valid anyway. The Irish people are being deceived if something else is pretended. The validity of the national constitutions and laws is not affected by the laws of the Union. The validity of the national constitutions and legislations is not affected by Union legislation. The terms which are decisive are “scope” and “applicability”. The applicability of Union

Law has primacy. The Irish protection of fundamental rights opposed to the Treaties and legislation of the Union will be lost

c) According to section B of the Conclusion the Lisbon Treaty “nothing makes any change of any kind for any Member State to the extent or operation of the competences of the European Union in relation to taxation”. Once again the Irish are told that their sovereignty will be respected although in fact nothing is being conceded or altered. The Treaty clearly rules in article 311 paragraph 3 sentence 2 (TFEU) that the EU Council may decide unanimously on “new categories of own resources” of the Union, meaning also taxes. Thereby the tax competences in the member states are not affected, but it paves the way for additional taxation by the European Union. By the way, according to Art. 269, paragraph 2 EVG, the Council could decide on the equity capital also before now.

d) Also section C (security and defence) does not change the Lisbon Treaty and does not justify a new referendum in Ireland. It states: “The Treaty of Lisbon does not affect or prejudice Ireland’s traditional policy of military neutrality”. This is made clear in article 42, paragraph 2, subparagraph 2, sentence 1, TEU and is repeated in paragraph 7, sentence 2 ruling the obligation for assistance if an armed attack strikes the sovereign territory of a member state. Ireland has to agree to a common defence by referendum. But what does the neutrality clause mean in reality?

The Constitution Treaty establishes a military Union power which to develop and strengthen becomes an obligation of the member states (art. 42 par. 3 TEU). “The Member States shall undertake progressively to improve their military

capabilities” (Subpar. 2 s. 1). For this purpose there is the European Defence Agency (Subpar 2 s. 2). This also applies to Ireland.

Part of the common security and defence Policies are “the missions outside of the Union for peace-keeping, conflict-prevention and strengthening of international security in accordance with the principles of the Charter of the United Nations” (art. 42 par. 1 TEU). The term “terrorism” is nowhere defined and unclear. The Union empowers itself for Combating against Terrorism also in third countries (art. 43 par. 1 s. 2 TEU). With “terrorism” the marching into a third country and its occupation may be justified. These are regarded as “tasks of combat forces in crisis management, including peace-making and post-conflict stabilisation.” (art. 43 par. 1 s. 1 TEU). With the authorization for missions the Union gives itself the right for making wars (*ius ad bellum*) which cannot be justified with the purposes as stated here. The prohibition of the usage of force is a foundation pillar of modern international law (art. 2 par. 1 UN-Charter). Interventions are prohibited, also the humane intervention. World peace only justifies the use of military forces in case this is resolved by the UN Security Council (art. 42 UN-Charter).

Such missions do not at all affect the principle of neutrality, because they are no wars between states according to the traditions of international law, in particular international law of war. The so-called Irish clause does not apply. Nevertheless they are wars, modern or non-symmetrical wars. The EU of the Lisbon Treaty is arming for war. It is not an organ of peace. Ireland will not be able to escape from war. The EU is about to establish itself as global or great power beside the United States of America. Thus the obligation for peace (“Friedensparadigma”) which is being spread everywhere as the most important justification of EU integration is abandoned.

II Arguments against the Treaty

1. The Lisbon Treaty is incompatible with the Constitution of the Republic of Ireland. It infringes the irrevocable principles of structure of Ireland, i.e. the democratic principle, the principle of rule of law, the social principle, which are not at the disposal of politics, not even to those of the Irish people, because this would put an end to the freedom and equality of the Irish as well as to their brotherhood or solidarity to each other, ie the constitution which is born with man, the dignity of the Irish.

2. In consequence of the principle of democracy, the republic of Ireland must not transfer her existential statehood or existential tasks and competences of the state to an European Union who has no independent democratic legitimation and no original sovereignty, since power of government in Ireland is derived “under God from the people”.

3. As federal state by Treaty, the Union is provided with the tasks and competences of an existential state, without having been legitimated for these by a European people who had constituted itself to an existential state. The peoples of the member states are only able to legitimate joint exercising of the transferred rights of sovereignty, if the principle of restricted empowerment is observed. This principle alone makes possible democratic accountability of Union politics through national parliaments. The wide and open empowerments of the Union disregard the democratic principle of the Republic of Ireland insofar as this principle is irrevocable in a community of freedom, equality and fraternity. The principal of restricted empowerment is the “life-lie” of the Federal Constitutional Court of Germany. This principle is only laid down in the

Lisbon Treaty in German version. The English version speaks of “principle of conferral”.

4. The economic and monetary union brought about a neo-liberal constitution of markets and competition. The resulting denationalisation is incompatible with the principle of social welfare, and especially with the principle of economic stability which would include an obligation for effective employment policies. The social principle of welfare is predominantly emphasised in article 45 of the Irish Constitution, thus reflecting Christian social ethics. It is an irrevocable structural principle. Due to the Fundamental Freedoms (free movement of goods, services, capital, persons, meaning freedom of movement for workers and freedom of establishment) the Court of the European Union has enforced deregulation of the economic structures of the member states. With its judicature it has given over responsibility for the economy to the European and global markets and to an unlimited competition without consideration of regional and above all ethical aspects. It does not give any real chance to national employment politics. It is in particular the free movement of capital which led to the deterioration of the economy location of Ireland despite having had a temporary boom. As a member of the European Union, Ireland is not able to protect her people from “unlawful exploitation”. The crisis of the finance market has revealed to everybody the disastrous effects of undemocratic global capitalism.

5. The European Council and the Council control the principles of the economic policy of Ireland in accordance with the economic constitution of the Union, but to the disadvantage of the Irish economic Constitution with its social considerations, and - as far as seems ‘necessary’ – also to the disadvantage of Irish economic interests. On these principles multinational supervision of economic policy is based.

6. The principle of country of origin together with the principle of mutual recognition to a large extent removes democracy from the conditions of life in the member states, e.g. in the legislation on foodstuffs, in the legislation on services and labour, on enterprises, on the capital market, because it is not the laws of the country of destination, which have become authoritative, but those of the country of origin.

7. The in no way democratically legitimised Court of the European Union understands itself as an engine of integration. It has usurped the legislation on issues of principles especially regarding fundamental rights, by means of direct and primary applicability of Union legislation which it has executed, but also by transforming the Freedoms of Movement into subjective fundamental rights, resulting in social deregulations. Thus the European Court devalued national responsibility for the law. It has also deprived national politics from power in contradiction to the Constitution of Ireland. The 17th Declaration to the Treaty of Lisbon expressively emphasises the primacy of the Treaties and all Acts of the Union, including secondary and tertiary Union legislation, over the whole of the member states, even over their constitutional law. This has been permanent practice of the Court since 1963. It is in contradiction to the Maastricht judgement and the Lisbon judgement of the German federal constitutional court and is incompatible with the existential statehood of the member states.

8. The protection of the fundamental rights against judicial acts of the Union is running idle to a large extent, since the Court of the Union has been responsible for fundamental rights. In more than half a century the Court had declared only one act of Union legislation as opposed to the fundamental rights. The reservation of the German constitutional court demanding that the essence of the fundamental rights must remain sacrosanct in general is without practical consequences.

9. The protection of fundamental rights has come into bad hands, because the Court of the Union neither is democratically legitimised nor possesses the

required knowledge of the national systems of law for providing protection for the rights of the people. The European Charter of Fundamental Rights weakens the protection of fundamental rights. Neither do you find it as social liability of property as emphasised in the Irish constitution in art. 43 nor as a right of employment. Freedom of the media is only to be respected, freedom of teaching is not mentioned, a.s.o. The Christian constitution of Ireland is totally neglected by the outspoken secular judicature of the Court, in particular regarding protection of the families and of mothers from economic enforcement of having to go to work (in contradiction to art. 47 par 2 of the Irish Constitution).

10. The Charter of Fundamental Rights permits capital punishment in case of war and in case of immediate threat of war. The death penalty may also be introduced by the Union according to its empowerments regarding defence politics. In order to “legally suppress” an “uprising” or “riot” the permission to kill may be given despite the right to life.

11. The area of freedom, security and justice is an existential territory of state. The security guarantee for it is increasingly being taken over by the European Union without really being capable for doing it. The European state attorney and the European arrest warrant deeply interfere with national criminal sovereignty. According to the Lisbon Treaty the Union is allowed more and more to set criminal rules, too.

12. Member states lose to a large extent their defence sovereignty by integration of their armed forces into Common Defence. Missions out of area of the Union for purposes of making peace, conflict management and strengthening of international security may and will be wars, since the missions are to be authorised to combat terrorism also in third countries. A intervention of this kind is prohibited by the international prohibition of using force. The Union, however, is giving itself the right to war. The traditional neutrality of Ireland is being respected, but is no longer relevant in the new asymmetrical wars

[combating terrorism etc]. It is in fact restricted to armed aggression on sovereignty of a member state.

13. The Lisbon Treaty empowers the Union in a general financial policy clause of art. 311 (TFEU) to provide itself with European taxes and further own resources, without the national parliaments having to agree to this. In the simplified proceedings for the alterations of the Treaty {art. 48 par. 6 TEU) the European Council is empowered to change totally or in part all regulations of the Part Third of the Treaty on the Functioning of the Union {TFEU) comprising the internal market, the economic and monetary union, the employment and social union, the area of freedom, security and justice, and most other areas of politics, without the national parliaments, and less so the peoples, having to agree to this according to the Treaty. Also the European Parliament and the Commission are only to be heard. In fact the competence of the Union must not be extended but these competences are extremely extensive as stated in articles 3-6 TFEU. For the agreement of the member states that of the governments shall be sufficient, because the Conclusion of the European Council is no international treaty and the empowerment as such changes the constitution of Ireland, thus making a new referendum not compulsory.

The principle of subsidiarity is completely devalued through the competence of ultimate decision by the European Court.

III. Outlook

New international Treaties have to generate a European Europe which is democratic, ruled by the law and social, which preserves freedom, equality and fraternity of people and peoples, which does not develop the European Union to a centralised unionised state, but which is upholding cooperation of peoples determining their fate independently. In particular the economic constitution has to become a social one not allowing the further exploitation of people. The present Union is organised in a way which may degenerate into a dictatorship.

Only in a republic of republics we Europeans can live in a free and European manner.

The Irish people are called upon to defend the rights of the Irish through saying NO to the Treaty of Lisbon. The Irish people have the last chance to defend freedom, equality and fraternity, democracy, the rule of law and the social welfare state for all peoples in the European Union. Without an Irish NO all people in Europe face exploitation, war and injustice. The Irish have the opportunity to save human dignity in Europe.