A review of the provisions of the Treaty of Lisbon May 2008

People's Movement
Gluaiseacht an Phobail

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The People's Movement campaigns against any measures that further develop the EU into a federal state and to defend and enhance popular sovereignty, democracy and social justice in Ireland.

Patrons:
Robert Ballagh, Alderman Declan Bree, Cllr. Neil Clarke, Raymond Deane, Cllr. Betty Doran, Tony Gregory TD, Prof. John Maguire, Cllr. Bronwen Maher, Terence McCaughey, Finian McGrath TD, Patricia McKenna, Dervla Murphy, Joe Noonan, Cllr. Chris O'Leary.

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Introduction

Regardless of your traditional support for or allegiance to any political party in general elections, it is important that you approach the Lisbon Treaty vote with an open mind. It is essential that after having analysed all the arguments for and against the Lisbon Treaty you make up your own mind, free from party political pressure, on whether or not you want to amend the Irish Constitution to allow the Government to ratify this Treaty which will give away a number of those powers to Brussels. Remember that it is you alone as citizens of this State who have the power to amend our Constitution. We are fortunate in that our Constitution is a document of the people and for the people, and only the people can decide to give away any rights or powers enshrined within it. Political parties regardless of their electoral strength must respect the Constitution, the people's ownership of it and their sole right to amend it.

During this debate you will hear much about the benefits of the EU membership and how it would be impossible for us to "Go it alone". However, there is no question of going it alone and the benefits of EU membership are not the issue, no one disputes that fact. What is at issue is whether or not the Lisbon Treaty will result in a more democratic, accountable, transparent and demilitarised EU. We in the People's Movement believe it will not. The EU has been moving in the wrong direction for many years. It has become more powerful, less democratic, less accountable and extremely more militarised despite claims and assurance to the contrary by our own political establishment.

In the run-up to this referendum the Government has used taxpayers' money to influence public opinion. Earlier this year during question time in the Dáil, Minister Dermot Ahern said 'the McKenna judgment does not kick into place until the legislation (i.e. Referendum Bill) is passed and signed by the President'. These words indicated the Government's intention to abuse their position and circumvent the principles of the McKenna judgment by delaying calling the referendum until they had influenced people to support the Treaty. The Government's engagement in an advocacy campaign, with the use of public money, prior to the calling of the referendum is, I believe, in breach of the Supreme Court ruling. The fact that the Government has circulated, at the taxpayer's expense, its own very one-sided 22-page explanatory pamphlet to every house in the country is clear evidence of this.

It has also been widely reported in the European press that the Irish Government has warned the EU to hold off on anything controversial until after the Irish people have voted. Two leaked memos published by the press suggest that the Irish government and Brussels are going to great lengths to suppress bad news that might encourage a No vote. An internal email from a British diplomat in Dublin let slip that the commission's vice-president, Margot Wallstrom, had promised the Irish government to "tone down or delay messages that might be unhelpful". The second memo, from Jo Leinen, the German chairman of the European Parliament's committee on constitutional affairs, warned that "politically sensitive" aspects of the treaty should not be discussed until it was in force".

Many of the controversial consequences of the Lisbon Treaty are been hidden from the Irish until after we vote. The French daily, *Le Monde* has said: "The Commission doesn't want to do anything that would risk jeopardising the ratification procedure of the Lisbon Treaty, notably in Ireland, where the text must be submitted to a referendum." According to *Le Monde*: "The work on a common company tax base has therefore been swept under the carpet, so as not to inflame the Irish debate, even though it will be re-launched under the French Presidency."

†According to the paper Commission President Jose Barroso has asked his colleagues to avoid "provocations".

† Our Government and those on the Yes side have invited European politicians to Ireland telling them what to say to dispel our fears. Interestingly, the French government was told to "keep out of Irish politics and to stop interfering with the Lisbon referendum" by Europe Minister Dick Roche and Labour Leader Eamon Gilmore when the French said things that we were not supposed to hear.

Following a recent statement from the French Economics Minister, Christine Lagarde, that "France would push for a common system of assessing company tax (common consolidated corporate tax base or CCCTB) across the EU" during their EU presidency which begins in July, Minister Roche said: 'They threw their own referendum, but we do not want any further inappropriate interference in our referendum'.

He said her intervention was inappropriate, especially coming just 10 days after the French Defence Minister's statements on military policy saying, "France would use its EU presidency to move on common defence policies and institutions." In this referendum voters will NOT be given Yes and No information from the Referendum Commission because that function of presenting the arguments for and against the Lisbon Treaty, as well as the function of fostering and promoting debate or discussion on it has been removed from the Commission by the Government. Why this was done is clear – the political establishment are afraid of the public hearing both sides of the debate so they have emasculated the role of this important independent body.

Patricia McKenna Chairperson

What is the People's Movement?

The People's Movement is a non-party-political movement that seeks to extend popular sovereignty and to promote democratic values in Irish life. It opposes EU supranational control at all levels of society and seeks to counteract its dominance in Irish political life.

The People's Movement campaigns to defend and enhance Irish national democracy and accountability and to ensure that the maximum power and decision-making will be in the hands of the Irish people.

The long-term aim of the People's Movement is to campaign for an end to the European Union as it is at present constructed and to establish more equal and democratic relationships between all the nations and peoples of Europe, from the Urals to the Atlantic.

Concerned by the progressive transfer of powers from the elected representatives of the Irish people to unaccountable supranational institutions, the People's Movement, to advance its long-term objectives, supports the following:

(1) the development and enhancement of national and local democracy;
(2) close co-operation with neighbouring countries and with EU member-states;
(3) moves to a socially desirable, environmentally aware and sustainable model of development;
(4) opposition to proposals that increase the competence of the European Union or reduce the influence of member-states;
(5) the devolution of powers from the European Union back to national and from national to local level in order to increase democratic control and accountability and to promote a culture of political participation;
(6) opposition to all measures of liberalisation involving the transfer of services or utilities from public to private ownership;
(7) the promotion of Irish neutrality and opposition to membership of any military alliance;
(8) the development of an independent foreign policy, based on support for human rights, national self-determination, and economic solidarity with the exploited peoples and countries of the world.

The People's Movement
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How was it drawn up? An undemocratic process

This rejected EU Constitution was drafted before the provisions of the Treaty of Nice came into force, mainly on the grounds advanced by the member-states that it was needed to facilitate the enlargement of the European Union to twenty-seven states or more. This provides a good demonstration of how the process of EU centralisation has developed a momentum of its own, which has virtually disconnected the process from external events or objective justification. Issues such as enlargement are merely used as a pretext to justify an agenda that is pursued with quasi-religious enthusiasm for its own sake. The Lisbon Treaty is the rejected EU Constitution's successor.

As the Chancellor of Germany, Angela Merkel, has stated, "the fundamentals of the rejected constitution have been maintained in large part . . . We have renounced everything that makes people think of a state, like the flag and the national anthem," [1] – a view echoed by Bertie Ahern when he said, "Thankfully, they haven't changed any of the substance." [2]

The Laeken Declaration of the heads of state and government of December 2001 set out the following objectives for the European Union: the union must be brought closer to its citizens; the division of competence must be more transparent; the union should behave less bureaucratically; and there must be more transparency and efficiency. An intergovernmental conference was established to put these laudable objectives into effect.

In this context it is important to note that the Laeken Declaration suggested only the possibility of a constitution: "The question ultimately arises as to whether this simplification and reorganisation might not lead in the long run to the adoption of a Constitutional text of the Union." Dick Roche, the Minister for European Affairs, was later to correctly assert that the Laeken mandate did not authorise the intergovernmental conference to deal with institutional issues. [3]

This suggestion was rapidly seized on by the Euro-federalists, who set about undemocratically drafting a constitution. Some members of the convention were even refused the right to have their amendments translated, distributed, discussed, or voted on. [4] The convention that drafted the constitution was fundamentally undemocratic. Ireland was represented by three politicians: Dick Roche TD, Proinsias de Rossa TD, and John Bruton TD. John Gormley (Green Party) and Pat Carey (Fianna Fáil) were substitute members.

John Gormley refused to endorse the constitution but instead signed an alternative report that was appended to it. The opening paragraph of this states:

> The European Union shall not have a constitution. Instead, Europe should be organised on an inter-parliamentary basis by means of a Treaty on European Cooperation. This will create a Europe of Democracies in place of the existing EU.

The convention consisted of 105 members, and the constitution was adopted "by consensus." No votes were taken on more than a thousand amendments submitted by the governments of member-states, and only a few were even considered. This is the "convention method," which enables new measures to be taken to advance integration without their desirability having being considered by the voters of the member-states or by their national parliaments. A similar non-elected convention was used to draft the EU Charter of Fundamental Rights.

However, an even more secretive procedure was followed in the case of the Lisbon Treaty, in which the intergovernmental conference operated in secrecy. Members of national parliaments, as well as members of the the European Parliament, were excluded, with the exception of the special admittance restricted to the three largest groups in the European Parliament, while the five other groups were left

out – including the Green Party.

Following the "period of reflection" announced following the rejection of the constitution, this intergovernmental conference on the Lisbon Treaty was given a detailed mandate by the prime ministers and presidents to draw up a treaty that would have more or less exactly the same legal effect as the rejected constitution but that would do the job indirectly by amending the two existing treaties. There were therefore no real negotiations at this intergovernmental conference.

The first page of the IGC mandate notes:

> As far as the content of the amendments to the existing treaties is concerned, the innovations resulting from the 2004 IGC [on the Constitution] will be integrated into the TEU [Treaty on European Union – essentially the Treaty of Maastricht] and the TEC [Treaty Establishing the European Community – essentially the Treaty of Rome and the subsequent amendments to it]. The SEA, Maastricht, Amsterdam and Nice also added substantially to the TEC, which was then renamed the Treaty on the Functioning of the European Union (TFEU) as specified in this mandate.

Further on the mandate states:

> The amendments as agreed in the 2004 IGC will be inserted into the Treaty by way of specific modifications in the usual manner.

There can be little doubt but that this is the renamed constitution.

Valéry Giscard d'Estaing, architect of the original EU constitution, told members of the European Parliament that the new Constitutional Treaty is essentially the same as the rejected EU constitution. He said:

> What was [already] difficult to understand will become utterly incomprehensible, but the substance has been retained . . . Why not have a single text? The only reason is that this would look too much like the constitutional treaty. Making cosmetic changes would make the text more easy to swallow.

Dr Garret FitzGerald, former Taoiseach, has said that

> the idea of a new and simpler treaty containing all the provisions governing the Union has now been dropped in favour of a huge series of individual amendments to two existing treaties. Virtual incomprehensibility has thus replaced simplicity as the key approach to EU reform. As for the changes now proposed to be made to the constitutional treaty, most are presentational changes that have no practical effect. They have simply been designed to enable certain heads of government to sell to their people the idea of ratification by parliamentary action rather than by referendum. 5

And, before the ink was dry in Lisbon, a committee of "wise men" was being formed to "reflect on future challenges facing the Union." Up to twelve "highly respected personalities" will be mandated to produce "a plan for the development of the EU until the year 2030," in time for the 2009 elections to the European Parliament.

Felipe González, the former Spanish prime minister, was named chairperson of this "reflection group," which will be excluded from considering any future reforms to the European institutions. However, on past experience we can hardly expect that the group will allow itself to be so confined. One's suspicions are strengthened by the fact that several EU states – including Ireland – asked that the "reflection group" should not begin work until the ratification of the Lisbon Treaty is complete. Bertie Ahern has said that the treaty would be "the last reform for some considerable time," and the reflection group "should not cut across the reform treaty ratification process in any way" – in other words, raise the legitimate suspicions of voters.

> In any bureaucracy, certainly a bureaucracy as big as the Commission, an idea never finally dies. It may be

left aside for some time, but it always comes back. – Charlie McCreevy, EU Commissioner, "This Week," RTE, 22 July 22 2007.

An analysis of the principal articles of the Treaty of Lisbon

> Public opinion will be led to adopt, without knowing it, the proposals that we dare not present to them directly . . . All the earlier proposals will be in the new text, but will be hidden and disguised in some way. – Valéry Giscard d'Estaing (chairperson of the convention that drew up the EU Constitution), Le Monde, 14 June 2007, and Sunday Telegraph, 1 July 2007

The Treaty of Lisbon amends the Treaty on European Union (essentially the Treaty of Maastricht) and the Treaty Establishing the European Community (essentially the Treaty of Rome with amendments), which is then renamed the Treaty on the Functioning of the European Union.

EU law would have primacy over the law of member-states

In the "Declaration Concerning Primacy" [6] it is noted that,

> in accordance with well settled case law of the EU Court of Justice (ECJ), the Treaties and the law adopted by the Union on the basis of the Treaties have primacy over the law of Member States, under the conditions laid down by the said case law.

The statement of the Council Legal Service of June 2007 is added:

> It results from the case-law of the Court of Justice that [the] primacy of EC law is a cornerstone principle of Community law. According to the Court, this principle is inherent to the specific nature of the European Community.

As the Legal Services statement says, ECJ case law is legally binding. That is the relevant fact.

The case law contains all sorts of statements about the European Union being primary and superior to national law, about it having direct effect from the date on which directives are supposed to be implemented (even if member-states have not implemented them), and about the European Union itself being a new "constitutional order." The statement of the Legal Service gives a clear indication of the principles guiding decisions of the ECJ – the final ruling body in disputes between member-states and the European Union.

This is the first time that an EU treaty has explicitly drawn attention to the principle of the primacy or superiority of EU law over national law. This was already proposed in the constitution rejected in France and the Netherlands, [7] and it is a doctrine diligently developed over the years in the case law of the Court of Justice of the European Communities (commonly called the European Court of Justice).

The primacy of the ECJ has not been disputed by the member-states and governs their legal practice. The ECJ would be supreme de facto and de jure, and national courts would be required to be totally compliant with its provisions so far as EU law is concerned, although in various case judgements the ECJ has stated that national law should be brought into line with EU law if it is incompatible with it in the relevant areas.

An important point to note is that EU governments accepted the ECJ's affirmation of the superiority of EU law in the 1960s, when the then EEC dealt with a narrow range of issues. But it is one thing for member-states go along with a principle applied to a restricted range of matters like customs duties or tariffs; it is quite another to forfeit national sovereignty to a re vamped constitution whose writ covers everything from monetary policy to fundamental human rights. As the Minister for Foreign Affairs, Dermot

Ahern, has said, "The substance of what was agreed in 2004 has been retained. What is gone is the term 'constitution'." [8]

The European Union acquires legal personality

The Treaty on European Union states that the union will have legal personality and thus alters the legal relationship between the European Union and its member-states. [9] It also abolishes the existing European Community, which Ireland joined in 1973 and are still members of, and transfers all its powers and functions to the constitutionally new European Union, which the Lisbon Treaty would give legal personality to. It makes the European Union an international entity in its own right, with its own legal personality and independent corporate existence, separate from and superior to its members. This position is underlined by the requirement that,

> pursuant to the principle of sincere ["loyal" in the rejected constitution) cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties.

This article continues:

> The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives. [10]

National governments must give priority to EU objectives, even in areas of policy that have not been transferred to the European Union, because of the all-encompassing range of the union's objectives – even if these conflict with democratically decided national policy objectives.

The double majority rules for EU law-making and decision-making by the Council

As from 1 November 2014, a "qualified majority" will be at least 55 per cent of the members of the Council, comprising at least 15 of 27 and representing member-states that comprise at least 65 per cent of the total population of the union. A blocking minority must include at least four Council members, constituting more than 35 per cent of the European Union's population, failing which the qualified majority will be deemed attained. [11]

A number of other arrangements govern the qualified majority

> From 1 November 2014 . . . where the Council does not act on a proposal from the Commission or from the High Representative of the Union for Foreign Affairs and Security Policy, the qualified majority shall be defined as at least 72 % of the members of the Council, viz. 20 out of 27 representing Member States comprising at least 65 % of the population of the Union.

This "double majority" rule would make EU laws much easier to pass, provided the bigger states with large populations agree with them. They would also find it easier to assemble a blocking minority – at least four member states up to 2014, with 35 per cent of the population. France and Germany between them have nearly a third of the total. From that point onwards a blocking minority must include the minimum number of Council members representing 35 per cent of the population of the participating member-states. Germany, Poland and any other of a range of countries, including France, Italy, and Britain, could assemble a blocking minority to prevent the enactment of measures they disagreed with.

Under the Nice Treaty rules, Ireland has 2 per cent of the weighted votes, while under the Lisbon Treaty's population criterion it would have 0.8 per cent. In effect, our relative power would be reduced to a third of its present level. When Ireland joined the EEC in 1973 it had 3 votes in European law-making,

as against 10 each for the big states. Under the Nice Treaty we have 7 votes, as against their 29 each. Under Lisbon's population-weighted voting system, Germany's 82 million and approximately 60 million each for France, Italy, and Britain, as against Ireland's 4? million, would give the big states almost total control of the new European Union.

As the union enlarges, each individual state must have less influence in the whole. But what is happening with the Lisbon Treaty is a totally disproportionate increase in the weight of the big states, and a diminution of influence for the small ones.

Under the revamped constitution, some 45 per cent of the power to make EU laws would be held by the four largest states: Germany, France, Britain, and Italy. In an European Union of twenty-seven states, twelve could be outvoted and have a measure imposed on them by fifteen, as long as the latter contained 65 per cent of the EU population. In future, Germany and France, because of their joint population, would be able to block any EU law if they could get two other countries to vote with them.

An increase in power for both Parliament and Commission

Under the Lisbon Treaty the Commission – with its monopoly in proposing EU laws and setting the legislative agenda – would have a wider range of measures to propose. The European Parliament, with its power to amend EU laws emanating from the Council of Ministers, would get more laws that it could amend. The treaty also extends the range of laws coming from the Council of Ministers that the Parliament is given power to amend under the so-called "co-decision procedure." This gives the Parliament the power to block EU laws if the Council does not accept its amendments. The European Parliament increases its legislative power in more than forty new areas in this fashion – but at the expense of national parliaments.

The national veto would be abolished in more than sixty further areas

Under the Lisbon Treaty, majority voting in the Council of Ministers would replace unanimity – the veto system – in more than sixty new policy areas or matters, in addition to the thirty-five areas agreed in the Treaty of Nice (2002). It is important to remember that in the first decades of the EEC, majority voting was confined largely to trade matters. Over time it has been extended to more and more policy areas, while the threshold for a blocking minority has also come down, making it easier to pass EU laws. The Lisbon Treaty would extend majority voting much further.

(A list of the new areas where the national veto would be abolished can be seen on the People's Movement web site at www.people.ie.)

The competence of the Commission and the European Court of Justice would be extended

The Lisbon Treaty would give the legally new European Union a unified constitutional structure. It proposes abolishing the present "three-pillar" structure of the European Union and setting all areas of EU policy in "a single institutional framework." It would give the European Commission and the European Court of Justice [12] competence in the former "second-pillar" area of security and foreign policy and the "third-pillar" area of justice and home affairs, where they did not possess them before. The treaty thus seeks to eliminate "intergovernmental" policy areas between member-states, where EU law has not applied up to now and where the Commission and the ECJ have had no function. In practice there would be a presumption that the member-states would be permitted to exercise power only in the

residual areas left to them under the treaty. But even in those areas they would have to fit in with any over-arching EU policies or foreign policy imperatives, in accordance with their general duty to "facilitate the attainment of the Union's tasks and [to] refrain from any measure that could jeopardise the objectives set out in the TEU [Treaty on European Union]." [13]

The unelected Commission could make laws

The unelected Commission's monopoly in proposing laws is clearly spelled out:

> Union legislative acts may be adopted only on the basis of a Commission proposal, except where the Treaties provide otherwise. [14]

But there is a further extension of the Commission's power, in that

> a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.

As the ordinary legislative procedure consists in the joint adoption by the European Parliament and the Council of a regulation, directive or decision on a proposal from the Commission, in effect it is the unelected Commission that will decide, within the terms of this article what is "essential." This measure would greatly extend the powers of a body that already proposes some two-thirds of our laws.

We would lose Ireland's commissioner for one-third of the time

From November 2014, Ireland would be without a commissioner for a third of the time, and we would find ourselves bound by EU laws – superior to national law – proposed by a Commission in which no Irish person participates in making decisions. [15] Furthermore, the Government would not have the final say in who represents us, even when Ireland had a representative on the Commission, but merely make "suggestions," instead of actually deciding. [16] The commissioners would then be decided by a super-qualified majority of 20 of the 27 prime ministers.

In practice, the individual commissioners would be decided by the new Commission president, who would be appointed by the prime ministers, taking into account the outcome of the elections to the European Parliament. However, the European Council would not vote on each individual commissioner but on the list of candidates as a whole. The *complete* Commission would then be put to a vote in the European Parliament, which must accept or reject it *in toto*.

This means that the power to appoint the European "government" in reality would go to an alliance of Christian democrats and social democrats, who would be able to align 20 of the 27 prime ministers in the case of each individual commissioner and 376 of the 751 members of the Parliament to endorse their collective choice. It can be seen that neither national parliaments nor the European Parliament – let alone citizens – would have a say in electing the new Commission, which would now be acting in effect as the government of the European Union, with greatly increased legislative, executive and judicial authority.

The European Court of Justice would decide on the allocation of powers

The Lisbon Treaty extends the area of exclusive competence of the European Union by providing that it alone would conclude any international treaties that are necessary "to enable the Union to exercise its competence internally, or [that] affects an internal Union act." [17] The European Union would also exercise its competence externally by signing treaties, operating its own diplomatic corps, having its own voice at the United Nations, operating its own international currency, and in countless other ways.

At present the European Community negotiates international treaties on behalf of its members only in relation to trade and tariff matters. This article would give the European Union power to negotiate and sign, on its own behalf, international treaties and conventions in all areas of its competence. Together with the common foreign and security policy articles, this article would deprive the member-states of most of their present treaty-making powers. The areas of shared competence between the European Union and member-states are clearly set out, [18] while the Lisbon Treaty provides that

> the Member States shall exercise their competence to the extent that the Union has not exercised, or has decided to cease exercising, its competence. [19]

So it is the European Union, not its member-states, that would have primacy even in these shared areas. In cases of dispute it is the European Court of Justice that would decide the policy boundaries and whether it is the union or national states that would make the laws – national supreme courts having already been rendered subordinate to the European Court of Justice.

The European Union would also have the power to promote and co-ordinate the economic and employment policies of the member-states and

> the competence to define and implement a common foreign and security policy, including the progressive framing of a common defence policy. [20]

The European Union, on its own initiative, could take supporting, co-ordinating or supplementary action with regard to the actions of its member-states and could ensure the co-ordination of their social policies. [21] The areas for such action at the European level would include "industry; education, vocational training, youth and sport; culture, and civil protection."

This "action" would affect vast areas of public policy. One is reminded of the much-trumpeted principle of subsidiarity from the Maastricht Treaty, repeated in the Treaty on European Union (article 3b), and might expect large-scale repatriation of power. The opposite is the case, as the revamped constitution would rapidly accelerate the pace of centralisation in Brussels and strip national parliaments of further powers.

The Lisbon Treaty could be amended without further treaties or referendums

The "simplified revision procedures" [22] or "escalator clause" provides that

> where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case.

This provision enables a summit meeting of EU presidents and prime ministers to move policy areas from unanimity to majority voting, without having to draw up new treaties and get them ratified by parliamentary vote or referendum. The provision also allows the European Union to abolish national vetoes on any item, without the agreement of national parliaments, following unanimous agreement between presidents and prime ministers. This would probably eliminate the need to hold referendums on any further amendments to EU policies or to the Treaty of Lisbon itself. National parliaments would be given six months' notice before this is done, and in the absence of objections the Council could proceed.

It is true to say that the likelihood of objection is rather slim, given the consensus among the EU elite. Inevitably, horse-trading and veiled threats would carry the day, and any domestic opposition would be swamped by the Government should it ever come to a Dáil vote.

Peter Hain, leader of the Labour Party in the British House of Commons, during the debate on the

rejected constitution dubbed this escalator clause "a formula for permanent revolution," while Valéry Giscard d'Estaing, president of the convention, called it "a central innovation" of the constitution. However, it should be noted that this provision would not apply under the Lisbon Treaty to decisions with military implications or those in the area of defence.

In addition, the "flexibility clause" states that if the treaties have not given the European Union enough power to attain one of its very wide objectives, the Council of Ministers, acting unanimously on a proposal from the Commission, will take the appropriate measures. The Commission would draw the attention of national parliaments to such proposals, but the only means of blocking the measures would be based on an appeal to subsidiarity before the European Court of Justice. [123]

This provision effectually permits the European Union to do what it likes, as long as the Council of Ministers acts unanimously and as long as no national parliament claims a breach of subsidiarity and rebels. It would enable the European Union to take extra powers to itself without further treaty negotiation, ratification by national parliaments, or referendum. This article is blatantly undemocratic and potentially reduces Dáil Éireann to the status of little more than a county council. Legally, the European Union already has these powers, except that they are not being exercised by qualified majority voting but unanimously. That would change if the Lisbon Treaty is ratified.

The European Union would be given the constitutional form of a supranational federal state

The result would turn Ireland and the other member-states into regions or provinces of this federation. It would do this in three legal steps: (1) giving the new European Union that it would bring into being its own legal personality and independent corporate existence for the first time, separate from and superior to its member-states; (2) abolishing the European Community that Ireland has been a member of since 1973 and replacing it with the new European Union; and (3) bringing all spheres of public policy either actually or potentially within the scope of the new union.

From the inside, this new post-Lisbon European Union would seem to be based on treaties between states; from the outside it would look like a state in itself. It would have all the normal powers of a federal state, except the power to force its member-states to go to war against their will. The Lisbon Treaty would make us all real citizens of this new federal European Union for the first time. We would owe it the normal citizen's duty of obedience to its laws and loyalty to its authority.

We would still retain our Irish citizenship, but the rights and duties attached to that would be subordinate to those of our EU citizenship in any case of conflict between the two. We would be like citizens of Virginia vis-à-vis the United States of America, or citizens of Bavaria vis-à-vis the Federal Republic of Germany. This new federal European Union would sign treaties with other states, would have its own political president, foreign minister and diplomatic service, its own foreign and security policy, its own voice at the United Nations, and its own public prosecutor. It would make most of our laws and would decide what our basic rights are in all areas of EU law.

If the EU's politicians are intent on creating an EU federation, that federation should be run along normal democratic lines, with its laws being both proposed and made by people who are elected to make them, either in the European Parliament or national parliaments, and not by the EU Commission, Council of Ministers, and European Court of Justice. But that is not on offer in the Lisbon Treaty. Lisbon means less democracy at the EU level, not more.

The end of an independent foreign policy

The all-encompassing article 11 of the Treaty on European Union provides that

> the Union's competence in matters of common foreign and security policy shall cover all areas of foreign policy

and that

> the Union shall conduct, define and implement a common foreign and security policy, based on the development of mutual political solidarity among Member States, the identification of questions of general interest and the achievement of an ever-increasing degree of convergence of Member States' actions.

"Mutual political solidarity" would become an unequivocal obligation in relation to EU foreign policy, ending any possibility of an independent Irish foreign policy and sounding the death knell of the remaining vestiges of neutrality. We would be obliged to support an EU common position in the UN General Assembly, should the big states agree one. The rejected constitution required that

> Member States shall actively and unreservedly support the Union's common foreign and security policy in a spirit of loyalty and mutual solidarity and shall comply with the acts adopted by the Union in this area,

and there can be little doubt that this is what is intended by the slightly revised wording in the Lisbon Treaty.

The European Union could be financed from its own resources

Under the heading of "the Union's Resources" the European Union would provide itself with the means necessary to attain its objectives and carry through its policies, and it could also establish new categories of "own resources." Though these measures require unanimity in the Council and would not enter into force until they are "approved by the Member States in accordance with their respective constitutional requirements," it is clear that it opens the way for an EU taxation system, which would make the EU budget wholly independent of its member-states.

> T**he Union shall provide itself with the means necessary to attain its objectives and carry through its policies. The Council,** acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament **adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category**. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. [24]

This article would allow the EU Council of Ministers to finance the attainment of the new European Union's very wide objectives by means of "new categories of own resources." These could include virtually any kind of tax – income tax, sales tax, company tax, property tax, carbon tax – as long as it was unanimously agreed and approved by the member-states in accordance with their respective constitutional requirements, which in Ireland's case, if the Lisbon Treaty is ratified, would mean majority Dáil approval.

The Lisbon Treaty would therefore give permission to the Taoiseach and Government to agree to various EU taxes in the future, without having to come back to the Irish people in a referendum; and it is unlikely that the EU prime ministers and presidents would resist for very long the possibility of endowing the new European Union that they would be running with its own tax resources. Such provisions as

> The common foreign and security policy (CFSP) shall be put into effect by the High Representative and by the Member States using national and Union resources [25]

are especially ominous in this regard. At present Irish personnel on EU missions – unlike UN missions – are paid for by the Irish taxpayer, and with the expansion of the common foreign and security policy this burden is likely to increase substantially.

The corporation tax issue

Article 93 (TFEU) of the Lisbon Treaty proposes an important amendment to Article 113 of the Consolidated EU Treaties, which at present makes harmonised company tax laws across the EU a mandatory requirement, although that must be done by unanimity. This amendment states that such harmonisation must take place if it is necessary "to avoid distortion of competition", allowing a country or business firm to take a case before the EU Court of Justice alleging that, for example, Ireland's 12.5% rate of company tax constitutes a "distortion of competition" as compared with Germany's 30% rate.

It would then be open to the Court to apply the EU's internal market rules on competition matters,[26] to issues of company taxation. The Court could then require Member States to harmonise their company taxes over a specified period of time, although Governments would still decide the actual rates. Lisbon would therefore open a clear way around the present unanimity requirement for matters of company taxes.

And there is another method in that the "general escalator clause" in article 48 of the Lisbon Treaty could be applied to the new article 93 in the Treaty on the Functioning of the European Union:

> The Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market **and to avoid distortion of competition.**

That national differences in company taxes constitute "distortions of competition" would undoubtedly be the main argument after Lisbon for harmonising indirect taxes on companies, an issue that is especially sensitive in Ireland. The mandatory "shall adopt" makes it clear that there would be an obligation on member-states to harmonise company taxes, even though there is now a requirement of unanimity, and some states, including Ireland, are against any change.

If the Lisbon Treaty were to be ratified the general escalator clause or "simplified revision procedure" would be the practical way around the unanimity problem on taxes. At present there could be no shift towards qualified majority voting on indirect taxation, because the Constitution of Ireland would have to be changed to permit it. But if we ratify the Lisbon Treaty the Constitution would be changed, so that only the Taoiseach of the day would stand in the way of the European Council moving to harmonise taxes on companies – at least as far as Ireland is concerned.

At present the Irish people have a veto on EU indirect taxes. After Lisbon it would be the Taoiseach alone who would exercise this veto, or the Dáil majority that he and his Government would control. The veto that the Irish people at present have on EU company taxes would be replaced by reliance on the Taoiseach's determination to say No indefinitely.

Neo-liberalism would become EU economic policy

The principle of an open market economy with free competition is reinforced by the fact that "the internal market as set out in Article 3 [27] of the Treaty on European Union includes a system ensuring that competition is not distorted." [28] So, undistorted competition would become one of the European

Union's organising principles.

The Commission's objective is to make offers opening "a market" in all public services – including health and education – to transnational corporations through the General Agreement on Trade in Services (GATS). At present, and under the Lisbon Treaty, neither the European Parliament nor the Dáil is informed which services are "offered" for trade until the deal is completed. It is this process that leads to the privatisation of services, such as water and sewerage, and increased costs to the average citizen – as well as pressuring developing countries to privatise such services through EU trade agreements.

These changes conform to a general policy of "the achievement of uniformity in measures of liberalisation," [29] or deregulating the provision of goods and services. EU trade policy seeks to "encourage the integration of all countries into the world economy, including through the progressive abolition of restrictions on international trade." [30] This objective is reinforced and expanded through the commitment to "contribute, in the common interest, to . . . the progressive abolition of restrictions on international trade and on foreign direct investment, and the lowering of customs and other barriers." [31]

State aids or subsidies to industries or services "which distort or threaten to distort competition" continue to be forbidden. [32] The European Central Bank, which has "price stability" as its sole objective, [33] could, together with the Commission, take action with regard to members of the euro zone "to strengthen the coordination and surveillance of their budgetary discipline" and "to set out economic policy guidelines for them . . ." [34] In essence this would result in their reducing budget deficits, in turn leadng to further cuts in public spending and general pressure to pursue a deflationary economic policy[35].

A president for the European Union

There would be a political president of the European Union, elected by qualified majority vote of the Council, to "drive forward the work" of the EU summit meetings and to represent the European Union internationally. [36] The president would receive ambassadors to the European Union and sign treaties and important laws in its name. Selected for a term of two-and-a-half years (renewable once), he or she would in effect be head of state of the European Union, superior to the heads of state of the member-states. The rotating EU presidency confirmed by the Nice Treaty would be abolished. Ireland insisted that the terms of the Nice Treaty should be adhered to, and Dick Roche said that opening Nice would cause an "allergic reaction" and would "open Pandora's box." [37] No doubt his allergy will have receded in time for the referendum campaign and his powers of recollection will have faded with his "allergy."

An EU Foreign Ministry would be created

The European Council, acting by a qualified majority, would appoint the "High Representative of the Union for Foreign Affairs and Security Policy," in other words, a minister for foreign affairs. The high representative would conduct the European Union's common foreign and security policy and the common security and defence policy. [38]

As he or she would be appointed by majority vote of the presidents and prime ministers at an EU summit meeting, it is possible that under this treaty Ireland could be represented internationally by an EU foreign minster whom we do not want. The union foreign minister would "express the Union's position in international organisations and at international conferences." [39]

The foreign minister's position is strengthened by an article that proposes that

> Member States shall coordinate their action in international organisations and . . . uphold the Union's

positions in such fora [forums]. [40]

This position is further elaborated:

> When the Union has defined a position on a subject which is on the United Nations Security Council agenda, those Member States which sit on the Security Council shall request that the High Representative be asked to present the Union's position. [41]

The EU foreign minister would organise this co-ordination, and we would be precluded from putting an independent position. This must be the end of an independent foreign policy.

The creation of an EU Interior Ministry

Though there is no overt reference to an Interior Ministry in the proposed treaty, further articles dealing with the area of security, freedom and justice can only lead to the conclusion that such an institution is being established. Operational co-operation on "internal security" would be promoted and strengthened through a permanent standing committee. [42] Internal security in the European Union would extend to non-military crisis management, external border management, and the maintenance of public order. There is every possibility that the term "operational" would be used to exclude the committee from all normal mechanisms of democratic and judicial control and rules on access to documents.

Article II-5 of the rejected EU Constitution gave more information on this committee, referring to it as "a co-ordinating committee of non-elected senior officials from home/interior ministries" whose remit was to be internal security, among which was included operational co-ordination for "demonstrations on a European scale." No decision-making procedures were proposed in article II-5, though the European Parliament would be informed of its work, as in the case of the proposed standing committee. This means that the new standing committee would operate outside any parliamentary scrutiny or accountability.

This co-ordinating committee would become the centre of EU-wide operational decision-making and implementation for policing, public order and external border management. It would also organise ad hoc, informal and unaccountable meetings at the EU and international levels. This committee would be the emerging Interior Ministry of the European Union, overseeing the coercive powers of the emerging EU state.

A common defence policy

The Lisbon Treaty states unambiguously that the "common security and defence policy" it proposes "shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides." [43] This is an example of the incremental "policy creep" that has characterised each successive EU treaty.

This step-by-step approach is best illustrated by referring back to a similar article in the Nice Treaty. One of the most contested articles in that treaty stated that the progressive framing of a defence policy "might lead to a common defence, should the European Council so decide." "Might" has now been transformed into the imperative "will," and there can no longer be any doubt regarding the intention.

It is made clear that the European Union could use both "civilian and military means" and that the tasks undertaken

> shall include joint disarmament operations, humanitarian and rescue tasks, military advice and assistance tasks, conflict prevention and peace-keeping tasks, tasks of combat forces in crisis management, including peace-making and post-conflict stabilization. All these tasks may contribute to the fight against terrorism,

including by supporting third countries in combating terrorism in their territories. [44]

"Combat forces in crisis management," "peace-making" and "supporting third countries in combating [undefined] terrorism" implies a high level of engagement and combat and must be a cause for concern.

Member-states must also "make civilian and military capabilities available to the Union for the implementation of the common security and defence policy . . ." and "undertake progressively to improve their military capabilities." This means there would be a treaty obligation on Ireland to provide military resources to the European Union for its security and defence policies and to increase military spending as necessary in order to ensure such compatibility.

Should the Irish people decide to accept the Lisbon Treaty in the referendum, what remains of our military neutrality would finally disappear and we would be committed to the EU objective of a common defence. While it is likely that a referendum would be necessary before we actually joined a common defence, we would be making a political commitment to work towards the objective in accepting the Lisbon Treaty.

We would be committed to a mutual defence policy

This "common defence policy" is reinforced by a mutual defence clause:

> If a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power . . ." [45]

This is immediately followed by the statement that "this shall not prejudice the specific character of the security and defence policy of certain Member States," which is being presented by some commentators as protecting the specific character of Irish neutrality. But this qualification is followed in turn by a reassurance for the majority of member-states, including the big states that are members of NATO, that

> commitments and cooperation in this area shall be consistent with commitments under the North Atlantic Treaty Organisation . . .

As Ireland would also be bound by the same "commitments and cooperation" under its mutual defence commitments, we would be drawn closer into NATO operational planning and execution. In this way the European Union has devised a mutual defence clause that the neutral states claim does not prejudice them and that at the same time the NATO members say will be consistent with their commitments to NATO!

However, the rapporteur of the European Parliament's Foreign Affairs Committee on the Treaty of Lisbon, Andrew Duff, let the cat out of the bag when he proposed recently that the Western European Union, the military grouping linked with NATO and based on nuclear weapons, should be dissolved.[46] "The only surviving objective of the WEU," he wrote, "is to 'afford assistance to each other in resisting any policy of aggression' also known as 'collective self-defence' . . . However, this objective will soon be covered by Article 28 A(7) of the Treaty of Lisbon. The Treaty of Lisbon has taken the final step in exporting all WEU competences into the European Union."

There would be a solidarity clause in the treaty

> The Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack [47] or the victim of a natural or man-made disaster. The Union shall mobilise all the instruments at its disposal, including the military resources made available by the Member States . . . [48]

If the solidarity action has military or defence implications, decisions must be taken by unanimity.

However, this is a very broad mandate, as it covers the threat of terrorism as well as an actual terrorist attack, leaving the way open for pre-emptive military actions against arbitrarily defined terrorists.

A non-binding declaration was attached during the Irish presidency that states: "Without prejudice to the measures adopted by the Union to comply with its solidarity obligation towards a member state . . . none of the provisions of Article 188R is intended to affect the right of another Member State to choose the most appropriate means to comply with its own solidarity obligations towards that Member State."[49]

In fact the attached non-binding declaration gives the Irish Government no more leeway than it would have as a member of NATO. The NATO treaty doesn't require an automatic military response from all its members to an attack. Indeed article 5 of the North Atlantic Treaty states that in case of attack each NATO member "will assist the party or parties so attacked by taking forthwith, individually and in concert with the other parties, such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area."

The EU military-industrial complex would be strengthened

Under the Lisbon Treaty the European Defence Agency would identify operational requirements, would promote measures to satisfy those requirements, would contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence industry, would participate in defining a European capabilities and armaments policy, and would assist the Council in evaluating the improvement of military capabilities in support of a common defence. [50]

Clearly the intention is the establishment of a military-industrial complex – first anticipated in the Amsterdam Treaty – to rival that of the United States .[51] Among the tasks of the agency would be "to promote [the] harmonisation of operational needs and [the] adoption of compatible procurement methods" [52] while the Agency benchmarks envisage significant increases in military spending. [53]

The Treaty of Lisbon further provides that civil and military assets may be used for foreign interventions under the common security and defence policy. These interventions ominously include "peacemaking and post-conflict stabilization" and "supporting third countries in combating terrorism in their territories." [54]

A two-tier defence?

The Treaty of Lisbon extends the principle of "enhanced co-operation," first introduced by the Treaty of Nice, to security and military matters. This is to be called "structured co-operation" and points the way to a two-tier Europe in defence and military affairs. [55] It provides for a minority of EU members, led by the big states and even against the wishes of some other EU members, using the common foreign, security and defence policy for their own purposes, as well as the EU agencies set up to serve it.

The European Court of Justice would decide our rights

The Lisbon Treaty proposes that the European Court of Justice in Luxembourg be given a human rights competence in areas of policy affected by EU law. This would include member-states when implementing EU law. This would remove the final decision regarding rights in a large range of areas from national supreme courts and from the European Court of Human Rights in Strasbourg. It would give the ECJ the power to rule on human rights issues coming before it and to take essential elements of that power away from national supreme courts. This would impose a uniformity of human rights standards throughout the European Union, despite significant differences in social values between

various countries.

The Treaty of Lisbon would give the EU Charter of Fundamental Rights – at present a political declaration attached to the Treaty of Nice – binding legal force. [56] Article 51 of the Charter states: "The provisions of this Charter are addressed to the Institutions, bodies and agencies of the Union" and to the member-states "when they are implementing Union law." The ECJ is thus given the power to decide rights under the Charter, while the language used throughout is so unclear that it will inevitably be interpreted at the discretion of the highly politicised judges, who are committed to widening their remit in the cause of ever closer centralisation of power in the European Union.

If the proposed Lisbon Treaty is accepted it would overturn a previous ECJ decision that stated that the European Union lacked competence in the area of fundamental rights. Many new areas of competence would be established: the protection of personal data (article 8), conscientious objection to military service (article 10), academic freedom (article 13), freedom of conscience and religion (article 10), and the right to education and health services (articles 14 and 35). Yet article 51 states: "This Charter does not . . . establish any new power or task for the Union, or modify powers and tasks defined in other Parts of the Constitution." If the European Union has no power or resources with which to provide or to oblige the provision of these benefits, why include them in the Constitution?

On past experience, the absence of a treaty basis for some of these rights may not be sufficient to prevent the ECJ from imposing obligations on member-states to apply all the provisions of the Charter. There is widespread consensus on what constitutes people's core human rights, but there is wide divergence in practice among the member-states. Ireland has habeas corpus, trial by jury, and the presumption of innocence until proved guilty. On the other hand, some EU states permit preventive detention, without the right to be brought before a court. Property rights, rights of succession, family law, rights relating to children, the treatment of refugees, legal aid, environmental controls, neutrality and the censorship of publications are some other examples of areas of difference.

There is provision for derogations from the Charter:

> Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law . . . limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or by the need to protect the rights and freedoms of others. [57]

The Charter continues by asserting:

> Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law . . . and by the Member States' constitutions. [58]

It would be the ECJ that would decide "the fields of application" on the grounds of human rights cases that came before it. It would have the scope to decide the boundaries between the EU and national levels, and is already notorious for "competence creep," that is, for using its case law to extend EU power and the boundaries of its own jurisdiction to the utmost extent possible, thereby reducing the power of national courts and constitutions.

"Fundamental rights" would not be fundamental

Limitations on the rights and freedoms recognised by the Charter are permitted [59] in order to "meet objectives of general interest recognised by the Union." [60] This offers wide scope for limitation by the European Union of the "rights" set out in the Charter. If a right is "fundamental" it must be valid in all circumstances. The Constitution of Ireland regards fundamental rights as superior to human-made law,

and as being based on natural law. This principle is not accepted in the EU treaties. Our fundamental rights are adequately catered for in the Constitution of Ireland. The proposed Charter on Fundamental Rights, in widening the remit of the European Court of Justice, could conceivably diminish our rights in the future. This seems especially so as the Lisbon Treaty records the accession of the European Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, [61] but Protocol 5 qualifies this by stating that "the accession of the Union [to the Convention] shall not affect the competences of the Union or the powers of its institutions."

(There is a substantive critique of the Charter on the People's Movement web site at www.people.ie.)

Subcontracting asylum policy

The Lisbon Treaty provides for "partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum . . ." [62] While it might be desirable to co-operate on the development of resettlement schemes or burden-sharing, this provision is open to misuse through member-states subcontracting their protection duties to third countries. Such activity would be inconsistent with the meaning of the Geneva Convention of 1951 relating to the status of refugees and with its 1967 protocol. Above all, it conflicts with the European Union's stated commitment to the protection of human rights in its relations with the rest of the world.

Civil and criminal law and procedures would be harmonised throughout the European Union

The "three-pillar" structure of the existing European Union would be abolished by the Lisbon Treaty. Under the Nice Treaty, justice and home affairs, as well as foreign and security matters, were treated as "intergovernmental" rather than supranational matters. Community law governed only the European Union's economic "pillar." The Lisbon Treaty would bring the European Court of Justice and the Commission into these policy areas for the first time. The treaties would give the European Union the power to harmonise civil law and procedures [63] and criminal law and procedures [64] in the member-states, with a view to bringing about an EU "area of freedom, security and justice." The European Council would be empowered to establish an EU public prosecutor to bring charges against people for serious offences affecting more than one member-state. [65] This prosecutor could take cases in the Irish courts.

A dangerous prospect is opened up by extending the powers of the ECJ through its new fundamental rights jurisdiction, while the Commission's role in "approximating" civil and criminal law and procedure could lead to moves to limit habeas corpus and trial by jury. Habeas corpus refers to the requirement that one be brought speedily before a court if one is arrested. It exists in common law legal systems, such as those of Ireland and Britain, but not in most Continental countries. These articles could also affect regulations regarding oral hearings, the use of live witnesses in civil cases, legal aid, the disposition of property under succession law, and many other matters of substantive civil and criminal law. At present these are entirely within the power of EU members, and many important differences exist between them.

The Irish opt-out

The changes in the Lisbon Treaty to EU justice and home affairs law (which concerns immigration and

asylum, civil law, policing, and criminal law) are more far-reaching than the changes this treaty would make to any other areas of EU law.

These changes entail a shift to "qualified majority voting" by the member-states in the EU Council as regards legal migration and most areas of criminal law and policing, along with much-increased powers for the Commission, the European Parliament and the ECJ in this area, as well as revised EU competences in this field – which would in many cases increase the powers of the European Union.

In the areas of policing and criminal law, Ireland is in most instances giving up a veto in return for an opt-out in the Lisbon Treaty. We secured the opt-out from policing and criminal law proposals as part of the deal to negotiate the Lisbon Treaty; this opt-out was not part of the treaty, and at no point was such an opt-out even the subject of discussion as part of the negotiations for the treaty.

Nevertheless, we would be subject to the expanded jurisdiction of the European Court of Justice as regards asylum and civil law, legislation that we have already opted into (or would opt into in future), as well as any future policing and criminal law legislation that we opt into. Member-states would not be subject to the expanded jurisdiction of the ECJ as regards existing policing and criminal law legislation for a period of five years after the entry into force of the new treaty. The Council, acting by a qualified majority on a proposal from the Commission, could determine that Ireland could bear the direct financial consequences incurred as a result of the cessation of its participation in an existing measure. [66]

Co-option as "participatory democracy"

"The principle of participatory democracy" is alluded to by the Lisbon Treaty.

> The Union Institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views on all areas of Union action. [67]

These associations, many subsidised by the EU Commission, are at present nominally consulted by the appropriate EU institutions. They have little real power but provide a façade that masks the undemocratic nature of the decision-making process in the European Union.

Not less than one million citizens who are nationals of a significant number of member-states could take the initiative of inviting the Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the European Union is required for the purpose of implementing the treaties. The procedures and conditions required for such a "citizens' initiative," including the minimum number of member-states from which such citizens must come, would be determined by the Parliament and the Council. The Commission, in a most democratic manner, could respond to or ignore such a petition as it saw fit. The provision is therefore practically useless but, by mirroring the initiation process for a popular referendum, gives the illusion of democracy.

The Protocol on the Role of National Parliaments

A "Protocol on the Role of National Parliaments" proposes that national parliaments be informed of proposals for EU laws at the same time as the Council of Ministers and the European Parliament. Most of this information is already freely available on the web, and no procedures are specified should a national parliament be unhappy with a proposal other than to "send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft European legislative act complies with the principle of subsidiarity."

A "Protocol on Subsidiarity" states that national parliaments may send to the presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative

act complies with the principle of subsidiarity. If one-third of national parliaments complain within eight weeks of learning about it, the draft must be reviewed and the Commission could decide to maintain, amend or withdraw its proposal, but it could not be forced to withdraw or change the proposal. So only in exceptional cases – if at all – would this measure bring about any changes.

It is also difficult to see how this provision can be reconciled with the requirement of the Treaty on European Union that member-states respect in full the acquis communautaire or body of EU law, which now fills 120,000 pages.

The climate-change article

The Lisbon Treaty commits the European Union to "promoting measures at [the] international level to deal with regional or worldwide environmental problems, and in particular combating climate change."

The laudable sentiments expressed are just that, but this article is being "spun" in a way that suggests specific measures. This does not give the EU new powers internally and adds no new legal powers to the existing article on the environment. Any internal actions on environmental problems would have to be reconciled with the EU's rules on distorting competition, safeguarding the internal market and sustaining the energy market.

Important questions, such as the priority to be accorded if such measures should interfere with "the functioning of the energy market," might involve state aid to industries or entail services that "distorted or threatened to distort competition." If this is–as proposed–a significant reason for accepting the treaty, it could only be so if the European Union intended to ignore the issue of climate change altogether the treaty be rejected, and that is hardly credible.

The Euratom Protocol

The Lisbon Treaty has a binding protocol attached, which was added without debate at the last minute to the original EU Constitution and has been carried over. This protocol links the provisions of the European Atomic Energy Treaty to the Lisbon Treaty and applies the financial provisions of the Union to the European Atomic Energy Community. The Euratom Treaty binds EU member states to "create the conditions necessary for the speedy establishment and growth of nuclear industries" while "facilitating investment to develop nuclear energy".

The pro-nuclear lobby have been arguing for years that nuclear power is the solution to climate change and this Protocol will be of great benefit to their campaign. France and the UK are already planning a new generation of nuclear power plants.

We could see the diversion of larger portions of the EU budget to the development of nuclear power. Furthermore, the Lisbon Treaty at Title XVI 'Energy' states that '....the Council may unanimously adopt measures ... significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply. With a pro–nuclear Commission, a legally binding Euratom Treaty and the majority of member states using nuclear power, we will come under extreme pressure to acquiesce in the drive for a nuclear – powered EU

Could we voluntarily leave the European Union?

There is provision for a member-state to withdraw voluntarily from the European Union and for the European Union to negotiate and conclude an agreement setting out the arrangements for its withdrawal and for its future relationship with the European Union. [71] The Lisbon Treaty would cease to

apply to a state wishing to withdraw after the entry into force of the withdrawal agreement or, failing the successful negotiation of that, two years after the notification of its intention to withdraw. If a state was unhappy with the terms of its withdrawal agreement, the suspension of its rights under the treaty in this way could be used to put it under pressure to agree to measures that were not in its interests. The European Union is unlikely to be magnanimous in these circumstances, and the withdrawing state would probably have to pay billions for the privilege of bilateral agreements – as Norway does at the moment. A more prudent course of action would be to reject this treaty now.

What happens if we vote No?

The Lisbon Treaty, embodying the rejected EU Constitution, must be ratified by all the EU member-states "in accordance with their respective constitutional requirements" in order for it to enter into force. This is normal with all EU treaties. This treaty would enter into force on 1 January 2009 provided that all the instruments of ratification had been deposited or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory state to take that step. [72]

There would be a formal procedure for member-states to leave the European Union, under which the remaining member-states would have a majority vote regarding agreement with the withdrawing state. However, there is no mechanism for expelling a state or states from the European Union on the grounds that they are reluctant to refound it on the new legal basis of this proposed treaty and give the EU Constitution primacy over their own constitutions and laws. Just as when France and the Netherlands voted No, therefore, there is no other option but to go back to the drawing-board, as unanimity is necessary for acceptance of the treaty .[73]

Conclusion

The legal criteria for statehood are set out in article 1 of the Montevideo Convention. "The state as a person in international law should possess the following qualifications: a permanent population; a defined territory; a government and the capacity to enter into relations with the other states."

It is clear that the European Union already possesses the first two attributes. Under the Treaty of Lisbon it would fully acquire the final attribute, as it would have international legal personality, a president and foreign minister, and a diplomatic service.

The attribute of "government" is made up of many elements. Among them would be a citizenship of the European Union, which is defined and made legally binding in the Lisbon Treaty. It has a clearly defined external frontier, with free movement of citizens inside that frontier; and the Lisbon Treaty would provide it with a central immigration policy. It would have a fully developed executive (the president of the Council as head of state, with the Foreign Service and the Commission), a legislature (the European Parliament, in conjunction with the Council of Ministers), and a developed three-tier judicial system, with the European Court of Justice as supreme court, a lower Court of First Instance, and a developing further tier of specialist courts and judicial bodies. The European Union also has its own currency and would have a common economic policy, with legally binding guidelines on the member-states' conduct of macro-economic policy and on budget deficits. It has a common foreign and security policy, it is developing its own armed forces, and the Treaty of Lisbon would in effect provide it with a system of federal criminal law.

The European Union would become a classic federal state. Deleting the word "federal" from article I-1 of the EU Constitution and carrying the deletion into the Lisbon Treaty – as was insisted upon by

British and Irish representatives – will not change the situation. EU law is recognisable as a classic federal system of law. Sovereignty is exercised within certain fields by the European Union, to the exclusion of the authorities of the subordinate units of government, the member-states. Power at the federal level has been conferred or surrendered by the lower levels, as is normal in the classical federal states; but there is no provision for power, once surrendered, being devolved again. These federal laws would apply directly within all parts of the federal state and would override any local laws that conflict with them. The subordinate units of government – the national governments – could be punished with fines if they disobey the federal laws.

What is left of our independence, self-government and sovereignty would be extinguished if the Lisbon Treaty is accepted in a referendum by the Irish people.

> They decided that the document should be unreadable. If it is unreadable, it is not constitutional, that was the sort of perception. Where they got this perception from is a mystery to me. In order to make our citizens happy, to produce a document that they will never understand! But, there is some truth [in it]. – Giuliano Amato, former prime minister of Italy and vice-chairperson of the convention that drew up the EU Constitution, recorded by Open Europe, London Centre for European Reform, 12 July 2007.

Andrew Duff – a member of the British Liberal Democrats and one of the European Parliament's three representatives to the intergovernmental conference that drew up the Lisbon Treaty – told an audience in Brussels that the intergovernmental conference

> was a giant exercise to make obscure what has previously been straightforward. Certain issues were suppressed. We need to remind ourselves that the greater part of the 2004 treaty [the EU Constitution] has been satisfactorily salvaged, and will find itself in the amended treaty.

Footnotes

1 El País, 25 June 2007.

2 RTE news, 23 June 2007.

3 4 June 2003.

4 Gisela Stewart (representative of the British Parliament on the Convention) reported: "Not once in the 16 months that I was on the Convention did representatives question whether deeper integration is what the people of Europe want, whether it serves their interests or whether it provides the best basis for a sustainable structure for an expanding Union."

5 Irish Times, 30 June 2007.

6 Declaration 17.

7 Art. I-6.

8 Daily Mail Ireland, 25 June 2007.

9 Treaty on European Union, article 46a.

10 Treaty on European Union, article 3a (3).

11 Treaty on European Union, article 9c (4).

12 Not to be confused with the Court of Human Rights in Strasbourg under the auspices of the Council of Europe, with forty-six member-states. The Convention for the Protection of Human Rights and Fundamental Freedoms entered into force in September 1953. Taking as their starting point the Universal Declaration of Human Rights (1948), the framers of the convention sought to pursue the aims of the Council of Europe through the maintenance and further realisation of human rights and fundamental freedoms.

13 Treaty on European Union, article 4 (3).

14 Treaty on European Union, article 9d (2).

15 Treaty on European Union, article 9d (4).

16 Treaty on European Union, article 9d (7).

17 Treaty on the Functioning of the European Union, article 3.

18 Treaty on the Functioning of the European Union, article 4.

19 Treaty on the Functioning of the European Union, article 2.

20 Treaty on the Functioning of the European Union, article 2a (4).

21 Treaty on the Functioning of the European Union, article 2e.

22 Treaty on the Functioning of the European Union, article 48 (7).

23 Treaty on the Functioning of the European Union, article 308.

24 The amendments inserted by the Treaty of Lisbon in article 269 of the Treaty Establishing the European Community are shown in bold type. The complete article is now article 269 of the Treaty on the Functioning of the European Union.

25 Treaty on the Functioning of the European Union, article 13c (3).

26 Where majority voting applies.

27 Outlining the objectives of the union.

28 Protocol 6.

29 Treaty on the Functioning of the European Union, article 188c.

30 Treaty on European Union, article 10A.

31 Treaty on the Functioning of the European Union, article 188b.

32 Treaty on the Functioning of the European Union, article 87.

33 Treaty on the Functioning of the European Union, article 245a.

34 Treaty on the Functioning of the European Union, article 114.

35 Treaty on the Functioning of the European Union, article 104.

36 Treaty on European Union, article 9b.

37 At a meeting in Brussels between Giscard and government representatives, 4 June 2003.

38 Treaty on European Union, article 9e (1).

39 Treaty on European Union, article 13a (2).

40 Treaty on European Union, article 19a.

41 Treaty on European Union, article 19b (3).

42 Treaty on the Functioning of the European Union, article 65.

43 Treaty on European Union, article 28a.

44 Treaty on European Union, article 28b.

45 '..... in accordance with Article 51 of the United Nations Charter' This is the self defence clause. The article makes no mention of a UN mandate

46 In a letter to the chairperson of the Foreign Affairs Committee of the European Parliament on 9 January 2008. Note: Previous EU treaties had already incorporated most of the WEU's provisions.

47 This vaguer formulation replaces the term "victim of terrorist attack," used in the rejected constitution.

48 Treaty on the Functioning of the European Union, article 188R.

49 Declaration 37.

50 Treaty on European Union, article 27.

51 http://www.eda.europa.eu/genericitem.aspx?area=News&id=287, the European Defence Agency website provides comparative tables. The website also outlines headline goals and projected spending in many areas of procurement.

52 Treaty on European Union, article 28d.

53 EDA Bulletin January 2008 - http://www.eda.europa.eu/Defence R&T 2% of total defence expenditure (2006: 1.2%), European collaborative R&T 20% of defence R&T expenditure (2006: 10%), Equipment Procurement 20% of total defence expenditure (2006: 19%), European Collaborative Equip.Proc. 35% of equipment procurement (2006: 21%)

54 Treaty on European Union, article 28b.

55 Treaty on European Union, article 28e, and Protocol on Permanent Structured Cooperation.

56 Treaty on European Union, article 6.

57 Charter of Fundamental Rights, article 52 (1).

58 Charter of Fundamental Rights, article 53.

59 Charter of Fundamental Rights, article 2.

60 Outlined in the Treaty on European Union, article 3.

61 Treaty on European Union, article 6.

62 Treaty on the Functioning of the European Union, article 69 (a).

63 Treaty on the Functioning of the European Union, article 69 (d).

64 Treaty on the Functioning of the European Union, article 69 (e).

65 Treaty on the Functioning of the European Union, article 69 (i).

66 Protocol 20 (4a).

67 Treaty on European Union, article 8b.

68 Treaty on the Functioning of the European Union, article 174.

69 Treaty on the Functioning of the European Union, article 176a.

70 Treaty on the Functioning of the European Union, article 87.

71 Treaty on European Union, article 35.

72 Treaty on the Functioning of the European Union, 188n (3).

The Vice President of the European Commission, Margot Wallstrom has said that:' It means the leaders will have to think again if there is a No vote... the leaders will have to sit down and say well what do we do now, what steps to take...' (Interview with Matt Cooper 28/2/08).

Some other publications

- Campaign Against the EU Constitution (www.caeuc.org) *Lisbon Treaty: Vote No.*
- Peace and Neutrality Alliance (www.pana.ie), *Irish Independence or European Superstate?*
- Afri (www.afri.ie) *The Lisbon Treaty, The European Military project, Europe's Role in the World and the implications for Irish voters*"

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