

SPEECH BY REFERENDUM COMMISSION CHAIRMAN, MR JUSTICE IARFHLAITH O'NEILL.

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The Referendum Act 1998 confers two functions on the Referendum Commission in relation to the forthcoming referendum. The first is to issue a statement or statements explaining what is in the Lisbon Treaty and the proposal to amend the Constitution. The second is to encourage the people to go out and vote.

To carry out the first of these functions, the Commission has published an information booklet. Over 2 million copies of this have been sent to every voting household in the country. In this booklet the Commission has set out in clear and simple terms the changes which will occur if there is a majority yes vote in the referendum on the treaty. On the Commission's website [www.lisbontreaty2008.ie] there is additional information which it was not possible to include in the booklet.

The Commission has distilled in to the booklet the main changes which will occur if there is a Yes vote in the referendum. The Commission has described only the actual changes which will happen. It is not the function of the Commission to attempt to explain the political consequences of these changes or to speculate on the future political direction of the EU which may flow from or may be influenced by the changes in the Treaty.

The Commission's role is to explain what is in the Treaty and in the proposal to amend the Constitution and no more. It cannot comment on the variety of political contentions which are peripheral to the Treaty. Neither is it the function of the Commission to supervise the debate in the referendum campaign. In a democratic society both sides are entitled to assert their respective positions and make such arguments as they see fit whether concerning the content of the Treaty and the proposed amendment of the Constitution or the political results of the proposed changes, and the Commission has no role in that debate.

In order to discharge its duty to explain the Treaty and proposed amendment to the Constitution, the Commission did intimate at the outset of its public information campaign, that it was reserving its position on whether it would in the course of the referendum campaign, issue a further statement or statements to clarify issues that might arise.

We have listened closely to the intensive debates in recent weeks and we believe there may be some confusion on a number of issues. We are only one week out from polling day and we believe it is now appropriate to highlight the details around these issues.

The issues are

1. The Veto on WTO Agreements
2. The effect of the Treaty on Ireland's constitutional law on abortion
3. How Qualified Majority Voting would work under the Lisbon Treaty
4. Areas in which the EU can act and;
5. Changes from unanimity to qualified Majority Voting

1. The veto on WTO agreements

Decisions on agreements with one or more non-EU countries or international organisations are generally made by Qualified Majority Voting (QMV). However if that agreement includes an element on which unanimity is required for an internal EU decision, then the decision on the entire agreement must be made unanimously.

This will remain the rule if the Lisbon Treaty is ratified.

However the ratification of the Lisbon Treaty would mean some policy areas where unanimity is currently required, would in future be decided by Qualified Majority Voting.

After the Lisbon Treaty is ratified, the agreements on which unanimity will still be required will include:

- Agreements in the fields of trade in services and the commercial aspects of intellectual property, as well as foreign direct investment, where such agreements include provisions for which unanimity is required for the adoption of internal rules;
- Agreements in the field of trade in cultural and audiovisual services, where these agreements risk prejudicing the Union's cultural and linguistic diversity;
- Agreements in the field of trade in social, education and health services, where these agreements risk seriously disturbing the national organisation of such services and prejudicing the responsibility of Member States to deliver them.

World trade agreements up to this have always included some of the above elements.

2. The effect of the Treaty on Ireland's Constitutional Law on Abortion

In regard to abortion, Protocol No. 35 to the Treaty of Lisbon on Article 40.3.3 of the Constitution of Ireland states that nothing in the Treaties or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3 of the Constitution of Ireland.

Protocols have full legal force – they have the same legal status as an Article of the Treaties. This Protocol is EU law and it explicitly excludes Article 40.3.3 of the Irish Constitution from any other EU law. This means Ireland's constitutional position on abortion would not be affected by the ratification of the Lisbon Treaty.

3. How Qualified Majority Voting would work under Lisbon

The present voting system in the Council and the proposed new system are not directly comparable in a general way.

The current weighting system for votes within the Council reflects the populations of the Member States but it is somewhat weighted in favour of the smaller states. A Qualified Majority Vote at present requires 74% of the total weighted votes.

The proposed new voting system is strictly proportional to population but requires that decisions must meet two conditions:

- 55% of the total number of Member States must agree (for examples while there are 27 Member States in the EU, 15 of them must agree)
- Those member states supporting the decision must represent 65% of the EU population.

In addition, at least four Member States must be opposed to a decision in order for it to be blocked. This ensures that decisions cannot be blocked by just 3 of the larger Member States acting together, even if the population criterion is met.

4. Areas in which the EU can act

The Treaty of Lisbon proposes to list the areas in which:

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

The Lisbon Treaty provides for no new exclusive competences. There would be some additions to the areas in which the EU exercises joint competence with Member States. These would be energy, space and climate change (as an element of environment). These are marked with an asterisk (*).

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

The following are the three categories.

EU exclusive competence

The EU is exclusively responsible for

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

Joint competence of EU and member states

The EU and the member states are jointly responsible for:

- Internal market;
- Social policy with regard to specific aspects defined in the treaty;
- Economic, social and territorial cohesion;
- Agriculture and fisheries except for the conservation of the biological resources of the sea;
- Environment (the Treaty includes specific reference to climate change*);
- Consumer Protection;
- Transport;
- Transeuropean Networks;
- Energy*;
- Area of freedom, security and justice;
- Joint security issues with regard to aspects of public health
- Research, technological development
- Space*;
- Development cooperation and humanitarian aid.

Member states exclusive competence but EU may provide support and co-ordination

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

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

Specific arrangements

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

5. Changing from unanimity to Qualified Majority Voting

The number of areas over which an individual member state of the EU can exercise a veto will be reduced if the Treaty of Lisbon is ratified.

There follows a list of the main areas over which member states currently do not have a veto, and a list of the areas over which the Lisbon Treaty will remove the national veto.

Areas over which there is currently not a national veto

Appointment of the EU Commissioners

Decision implementing a decision defining an EU action or proposition in the area of the Common Foreign and Security Policy

Procedural questions under the Common Foreign and Security Policy
Regulations relating to general principles and limits of the right to access to documents of EU institutions, offices or agencies

Rules relating to the protection of individuals with regard to the processing of personal data

Prohibition of discrimination on grounds of nationality; EU incentive measures to support action taken by the Member States in the fight against discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation

Provisions with a view to facilitating the exercise of the right to move and reside freely within the territory of the EU

Customs co-operation

Agriculture and fisheries

Freedom of movement for workers

Provisions relating to the aggregation of periods for the right to, and amount of, social benefit for migrant workers (Unanimity is required on provisions regarding payment of benefits to persons resident in the Member States)

Freedom of establishment

Mutual recognition of diplomas, certificates and other evidence of formal qualifications

Coordination of national provisions concerning the taking-up and pursuit of activities as self-employed persons

Directives relative to the liberalisation of a specific service

Free movement of capital

Some aspects of asylum and immigration policies and judicial co-operation in certain matters

Many provisions on sea and air transport

Competition rules necessary for the functioning of the internal market

Measures relating to the approximation of national provisions concerning the establishment and functioning of the internal market

Most monetary policy measures

Incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment

Measures designed to encourage cooperation between Member States in the field of social policy

Vocational training

Public Health

Consumer protection

Trans-European networks in the areas of transport, telecommunications and energy infrastructures

Structural Funds

Research

Environment policy

Development cooperation policy

Conclusion of international agreements (except for association agreements or economic, financial and technical cooperation agreements or if the field covered by the agreement requires unanimity)

Areas over which the Lisbon Treaty will remove the national veto and introduce QMV instead

Election of the President of the European Council by the European Council
Configurations of the Council of Ministers (other than the Foreign Affairs Council)

Appointment of the High Representative of the Union for Foreign Affairs and Security Policy by the European Council

Conclusion of a withdrawal agreement with a Member State wishing to leave the EU

Determination of the procedures and conditions required for a citizens' initiative for legislation

Arrangements for how Member States evaluate the implementation of EU policies in the areas of freedom, security and justice*

Administrative cooperation within the area of freedom, security and justice after consulting the European Parliament*

Measures concerning border checks*

Measures concerning an asylum system*

Measures concerning an immigration policy*

Measures concerning judicial cooperation in criminal matters and aspects of police co-operation*

Regulations concerning Europol's structure, operation, field of action and tasks*

Establishment of certain measures concerning transport

Measures concerning the creation of European intellectual property rights to provide uniform intellectual property rights protection throughout the EU

Amendment of some articles of the Statute of the European System of Central Banks Measures necessary for use of the euro

Promotion of certain sporting issues

Incentive measures in the cultural field

Measures necessary to draw up a European Space Policy

Measures relating to energy policy

Some aspects of the common commercial policy

Measures for drawing up a framework for humanitarian aid

Decision defining the European Defence Agency's statute, seat and operational rules

Implementation of the solidarity clause in the event of a Member State suffering a terrorist attack or a disaster

Amendment of some of the provisions of the Court of Justice's Statute and establishment of specialist courts

Arrangements for the control of implementing powers

**** Areas marked with an asterisk * are those to which Ireland may opt-in or opt-out.***