

# “Ah, these declarations are useless..



## The Claim

These declarations are legally weak.

“It is quite remarkable that the Taoiseach has been sitting on his hands for five months... and now we have suggestions of declarations that are clearly not legally binding.”<sup>1</sup>

“Key issues such as maintaining our political strength, protecting neutrality, workers’ rights, public services and taxation can only be addressed in a new treaty which includes legally-binding protocols and not declarations of clarification which are not worth the paper they are written on.”<sup>2</sup>

Assurances or declarations from the European Union on concerns such as abortion or taxation cannot improve the Lisbon Treaty since such declarations will not be legally binding; the Irish people had not asked for declarations or modifications to the Treaty – they had simply voted No.<sup>3</sup>

“These so-called ‘legal guarantees’ on the Lisbon Treaty are nothing more than an exercise in creative manipulation designed to mislead the public.”<sup>4</sup>

## The Short Answer

**The declarations are legally binding. They have been agreed by 27 countries, have been lodged with the UN and are on the same automatic process that was used for the Danish in the early nineties.**

## The Long Answer

Under international law, whether or not a document is legally binding is determined by the intention of its parties. The agreement reached to clarify our concerns was agreed by the heads of the EU countries and is an international agreement. These guarantees have been lodged with the United Nations as a recognised document of international standing.

If the Lisbon Treaty comes into force, it will automatically be made into a Protocol to the EU Treaties. This is a standard procedure that was used before when the Danish wanted to opt-out of a certain area of the Maastricht Treaty. We are doing the exact same.

In fact, we had an issue with our neutrality regarding the Nice Treaty in 2001 but voted for the Treaty once we had a European Council Declaration, agreed in Seville. What Ireland got clarified this time around has even more legal weight than the Seville Declaration.

It is worth noting that we also secured the agreement that each country would keep their Commissioner if the Lisbon Treaty is ratified. This agreement took place in December 2008, while these guarantees were agreed in June 2009.



This European Movement Ireland fact sheet is part of a series of research conducted to clarify the issues in the Lisbon Treaty debate. European Movement Ireland is a pro-European non-profit organisation which does not advocate either side of the Lisbon Treaty Referendum, we advocate the facts.



## Current legal situation

Under international law, whether or not a document is legally binding is determined by the intention of its parties. Article 35 of the Vienna Convention of the Law of Treaties (1969) states that, "an obligation arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to be the means of establishing the obligation and the third State expressly accepts that obligation in writing." In other words, under international law, if a government or any other body signs an agreement which states that they are legally bound to that agreement, then they are obliged to uphold it. It should be noted that the word "treaty" denotes any sort of international agreement, and thus applies to treaties, protocols, decisions etc.<sup>5</sup>

As such, the guarantees agreed upon, signed by the Heads of the EU countries on 19 June 2009, are, by their nature, legally binding.

These international agreements, when signed by any member of the UN, are registered in the Treaty Section of the UN Secretariat in New York once they come into force, providing further backing for the document by international law.<sup>6</sup>

Additionally, the ECJ has adopted a principle of "harmonious interpretation" whereby it interprets the Treaties in accordance with international law and binding international agreements entered into by Member States, e.g. *Commission v Germany* (C-61/94); *Safety Hi-Tech v S&T Srl* (C-341-95); and *Poulsen* (C-286-90). The use of declarations as a means to guarantee specific provisions

has already been used in the past. A good example of this is the "interpretative declaration" issued by Heads of States and Governments at a meeting in Portugal in May 1993 on the interpretation of the Irish Protocol on abortion.<sup>7</sup>

The most obvious example is what happened with Denmark in the early nineties when they chose to opt out of certain sections of the Maastricht Treaty. In order to do that, they used the exact system we are using now for our legal guarantees.

The so-called "triple lock" mechanism was also the product of a declaration. At the Seville European Council in June 2002, the other 15 EU governments accepted an Irish declaration that spelled out the triple lock - UN mandate; cabinet approval; Dáil Éireann approval - on Irish participation in EU activities of a military nature. The triple lock was nothing new as the Government never deployed Irish defence forces without UN approval in order to maintain Ireland's military neutrality. Moreover, the declaration had no legal status, so this measure on the part of the Irish government must be understood primarily as a political signal to the Irish electorate. In response to the Irish declaration, the European Council issued a declaration of its own. It recognised the right of Ireland (and all other EU countries) to decide in accordance with their national constitutions and laws whether, and how, to participate in any activities under the European Security and Defence Policy.

This led to the second referendum on the Treaty of Nice and the Twenty-sixth Amendment of the Constitution of Ireland.

## What Lisbon introduces

Firstly, it is important to note that the decision for us to keep our Commissioner if Lisbon is passed was decided in December 2008. The full text of this decision is included at the end for reference.

The 'Irish Guarantees', agreed upon by the 27 Heads of State on 19 June 2009, consist of three parts<sup>8</sup>:

1. **A Decision of the Heads of State or Government of the 28 Member States of the EU, meeting within the European Council, on the concerns of the Irish people on the Treaty of Lisbon.**
2. **Solemn Declaration of the Council on workers' rights, social policy and other issues.**
3. **National Declaration by Ireland.**

The first part of the Guarantees - the Decision - which addresses Irish concerns about security and defence, taxation, and the right to life, family and education, is a legally-binding agreement in public international law. Since the European Council comprises the Heads of State or Government of the Union's Member States along with the President of the European Commission, it acts at intergovernmental level and decisions taken there bind States at an international level. Under Article 31 of the Vienna Convention on the Law of Treaties, **the Member States and EU institutions (including the**

**ECJ) are obliged to interpret the Lisbon Treaty in line with the Guarantees.** Member States have also agreed to include the provisions of the Decision as a protocol which will come into effect on the next accession treaty (most likely the accession of Croatia). **Adding these Guarantees to the Treaties in the form of a protocol is simply an additional security measure. Once the Lisbon Treaty is ratified, the agreements as they stand will be legally binding.**

The Solemn Declaration on workers' rights is not technically legally-binding but this is only due to the fact that the EU has limited powers to legislate in this area. Workers' rights is an issue largely left up to the individual countries to handle and therefore it would be impossible for the Council to make a legally-binding declaration on an area which they do not fully control. This Declaration is a restatement of EU policies as outlined by the Lisbon Treaty and other previous treaties.

Likewise, the National Declaration by Ireland is simply a political declaration, re-affirming the "triple lock" mechanism which is already recognised by the Lisbon Treaty. It also mentions the agreement made in December 2008 by the Council that, upon ratification of the Lisbon Treaty, a decision would be taken to the effect that the Commission would continue to include one national from each country. This decision is already legally binding; the National Declaration by Ireland simply references it.

<sup>1</sup> Padraig McLaughlin, Morning Ireland, RTE, 11 December 2008.

<sup>2</sup> Mary Lou McDonald, "Renegotiate Lisbon instead of rerunning it", The Irish Times, Tuesday 2 December 2008. <http://www.irishtimes.com/newspaper/opinion/2008/1202/1227910464232.html>

<sup>3</sup> Coir spokesman Richard Greene, <http://www.lisbonvote.com/>

<sup>4</sup> Former MEP and chairperson of the People's Movement Patricia McKenna. <http://www.teameurope.info>

<sup>5</sup> Article 7(2)(a) of the Vienna Convention.

<sup>6</sup> Article 102 of the Charter of the United Nations.

<sup>7</sup> "Ireland's future after Lisbon: Issues, Options, Implications", Institute of International and European Affairs, Dublin, November 2008.

<sup>8</sup> For text of these Guarantees, see reference below.

<sup>9</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/ec/108622.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/108622.pdf)

## RETENTION OF OUR COMMISSIONER

Having carefully noted the concerns of the Irish people as set out by the Taoiseach, the European Council, at its meeting of 11-12 December 2008, agreed that, provided that the Treaty of Lisbon enters into force, a decision would be taken, in accordance with the necessary legal procedures, to the effect that the Commission shall continue to include one national of each Member State.

## RIGHT TO LIFE, FAMILY AND EDUCATION

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

## TAXATION

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

## SECURITY AND DEFENCE

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

It will be for Member States – including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality – to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

Nothing in this Section affects or prejudices the position or policy of any other Member State in security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structure co-operation or the European Defence Agency.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation."