

“This is another loss of our national sovereignty...”

FALSE

The Claims

The supremacy of EU Law will erode Irish independence.

The National Platform has claimed that by making the EU's laws “superior to the Irish Constitution and laws in any case of conflict between the two” that “Lisbon would turn Ireland into a provincial or regional state within this new Union.”¹

The EU wants to build a superstate.

It has been said that the aim of the rejected EU Constitution was to establish a federal state and that “the Lisbon Treaty serves the very same purpose in a disguised form.”²

‘Free Europe’ has written that “the Lisbon Treaty is the constitutional culmination of the federalist project which has been the political dynamic of European integration ever since the Schumann Declaration of 1950 proclaimed the European Coal and Steel Community to be the first step in the federation of Europe.”³

The Short Answer

On the contrary. We give the EU the power to act in certain areas, and the evidence of 36 years of EU membership has shown that speaking with a voice of 500 million makes our country stronger.

The Long Answer

The perception that supremacy of EU law poses some sort of threat to Irish sovereignty is unfounded for two reasons.

Firstly, as in previous treaties, the Lisbon Treaty clearly states that EU law is supreme only in areas where we have given it the power to be so. EU law has been supreme over national law since we joined the EU, and the Irish Constitution has always recognised that this is the case. This supremacy is strictly limited to the areas which we have given the EU to deal with and enables us to deal with problems such as drug trafficking, food safety and safe supplies of energy.

Secondly, supremacy of EU law can hugely benefit Ireland - imagine an Irish economy where France could block our butter and lamb exports; EU laws on competition stop this sort of thing from happening and make sure that a marketplace for 500m people functions in a balanced way. Supremacy is not necessarily something to fear, it does work for us.

Speaking with a voice of 500 million people has made our voice stronger. We were the ones who led the EU to include climate change as a priority of the EU's environmental work – it is an international problem that needs international solutions and we were the ones that were able to get all other European countries to sign up to this. EU membership makes us stronger.

Furthermore, the Lisbon Treaty does not centralise power to create a federal Europe, as recently reconfirmed by the German Constitutional Court. The changes that the Treaty makes in the EU institutions are actually designed to give more say to our national parliaments and to EU citizens in the decision-making process. The German parliament has been told that it'll have to better equip itself to handle the new role for parliaments if the Lisbon Treaty does ever come into force. We in Ireland may want to think about doing something similar if we want our voice to be heard using the new more democratic system that will be in place if the Lisbon Treaty is passed.

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

The Irish Constitution declares the right of the Irish people to self-determination.⁴ The state is declared to be sovereign and independent.⁵

Article 29.4.10 of the Irish Constitution states under its section on International Relations that:

"No provision of this Constitution invalidates laws enacted, acts done or measures adopted by the State which are necessitated by the obligations of membership of the European Union or of the Communities, or prevents laws enacted, acts done or measures adopted by the European Union or by the Communities or by institutions thereof, or by bodies competent under the Treaties establishing the Communities, from having the force of law in the State."

The Irish Supreme Court has recognised the principle of supremacy as defined by the European Court of Justice in a number of cases such as: *Murphy v Bord Telecom Éireann* and *Nathan v Bailey Gibson Ltd*.

The legal system of the European Community is based on three fundamental principles:

Principle of conferral, means that EU law is only supreme where we have agreed it can be. The Treaties clearly state that the institutions have no inherent powers, but only those ones conferred upon them by the members of the Union. Legally, the principle of conferral is that "The Community shall act within the limits of the powers conferred upon it by this Treaty and of the objectives assigned to it therein."⁶

Principle of subsidiarity, which basically means that a problem should be solved at the most appropriate level in the EU system – for instance, if a certain type of food is found to be contaminated, it could be better that the EU takes care of it as the food may be present in all EU countries. Alternatively, it could be better for the country in question to take care of it, if it is found to be contained within their borders. In legal terms, the principle of subsidiarity is found in Article 5 of the Treaty Establishing the European Community

"the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community."

Principle of proportionality, which basically states that "Any action by the Community shall not go beyond what is necessary to achieve the objectives of this Treaty."⁷

The powers of the EU

The EU can only act in the areas that we as EU countries have given it the power to. This list of areas has grown over the years as we have voted through each Treaty. There are four different ways the EU has power.

Exclusive competence

There are six areas that are under the exclusive competence

of the EU, meaning that only the EU may make decisions and legislation on these matters. EU countries do not interfere with these competences, for it has granted the EU the power to decide in these areas.

Exclusive competence

- Customs union
- Competition law
- Monetary policy for those in the Eurozone
- A common position in international trade negotiations where relevant
- Concluding of some international agreements
- Conservation of marine biological resources

Shared competence

The majority of policy areas that the EU is involved in come under this heading. In these areas, both the member countries and the EU have the power to make laws but if the countries have agreed a law at the EU level then they don't draft conflicting national legislation.

Shared competence

- The internal market
- Social policies (certain aspects, mostly to do with employment rights)
- Economic, territorial & social cohesion
- Agriculture & fisheries
- Environment
- Consumer protection
- Transport & trans-European networks
- Area of freedom, security & justice
- Common safety concerns in public health matters
- Energy
- Security & justice

Supporting competence

These are areas mainly for the EU countries. The Union can take some actions to support the countries but there cannot be any harmonization of laws in these areas.

The EU can support the European Union countries in these areas, but this is completely led by the countries themselves and only concern elements of these issues that deal with 'crossing a national border'. For human health, think of the fact that when you're travelling abroad, you have the right to get health service. For education, think of the Erasmus programme – the state of our primary and secondary schools is our concern, and not something that the EU is involved with. In fact, the Maastricht Treaty has expressly excluded any harmonisation of law in certain areas, such as education, vocational training, culture and public health.

Supporting competence

- Protection & improvement of human health
- Industry & culture
- Tourism
- Education, vocational training & youth
- Civil protection, such as against natural disasters
- Administration co-operation between national authorities

Coordinating activities

These are areas where the countries completely lead, but where the Union's role is more than just supporting the countries – hence the 'coordinating' title – however it does not legislate in these areas.

Coordinating competence

The co-ordination of economic & employment policies
Research, technological development & space
Common Foreign & Security Policy
Development co-operation & humanitarian aid

For us, and us alone

Below are example of areas that are the sole responsibility of each individual country.

Ireland's responsibility

Abortion
Our neutrality
Direct taxation
National citizenship
Anything that we have not given the EU the authority to do

What Lisbon Introduces

No major new powers to the EU with the Lisbon Treaty, but one new priority in its work. There are no new major powers given to the EU in this Treaty – this document is largely about reforming the system, rather than new powers.

The possible exception is the area of combating climate change. This was an area where Ireland led the discussions and specifically asked that this area be included in the work of the EU. So within the area of environment, which the EU has dealt with for last number of years, the Article has been amended to include five important words:

*"Union policy on the environment shall contribute to pursuit of the following objective. ...promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change."*⁸

This means that when the EU is dealing with environmental matters, it has to prioritise how we as a Union are going to deal with climate change in that work.

There are eight policy areas which the EU has dealt with previously but now they have their own separate Treaty article for the first time. These are: tourism; energy; civil protection; humanitarian assistance; intellectual property rights; space policy; sport; and administrative co-operation.

For the first time, a clear list of what the EU can and cannot do. What the Lisbon Treaty does do is create a list for the first time which outlines for everyone to read what the EU can and cannot do. These are not new powers, rather this brings clarity if we want to read where the line is between the role of the EU and our work as a sovereign country.

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¹ The National Platform, http://www.lisbontreaty2008.info/wordpress/?page_id=68

² <http://www.indymedia.ie/article/87518>

³ <http://www.freeeurope.org>

⁴ Article 1 Bunreacht na hÉireann.

⁵ Article 5 Bunreacht na hÉireann.

⁶ Article 5.1 of the Treaty Establishing the European Community.

⁷ Article 5.3 of the Treaty Establishing the European Community.

⁸ Article 191 TFEU, as amended by the Lisbon Treaty.

⁹ <http://www.bundesverfassungsgericht.de/en/press/bvg09-072en.html>

New role for our parliament in drafting European law. The Lisbon Treaty gives national parliaments a much more active role in drafting European law. It gives the Dáil and the Seanad the opportunity to vet EU proposals before their application, and, if a third of national parliaments object to the proposal, it must be revised. With this concept, the Lisbon Treaty actually decentralises the power of the EU, and brings EU affairs much closer to home.

Interestingly, the German Constitutional Court stated that the German Parliament needed to make sure it was ready to take on such an important job. We wonder if we in Ireland are ready for this role and if our Oireachtas is equipped for this new role in drafting EU law.

Further clarity on the principles of conferral, subsidiarity and proportionality. As mentioned in the previous section, these are the three principles that the EU is founded on. These are placed in even greater prominence in Treaty law with this document.

The reformulated Article 5 of the Treaty states at paragraph one:

"The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality."

Furthermore, the new Article 4 explicitly says

"In accordance with Article 5, competences not conferred upon the Union in the Treaties remain with the Member States."

The German Constitutional Court has confirmed that the EU is not a federal structure. In deciding that the Lisbon Treaty was fully compatible with German Constitutional Law, the German Constitutional Court confirmed that the EU is not a federal state and cannot be one. "In Germany, accession to a European federal state would require the creation of a new constitution, which would go along with the declared waiver of the sovereign statehood safeguarded by the Basic Law. There is no such act here. The European Union continues to constitute a union of rule founded on international law, a union which is permanently supported by the intention of the sovereign Member States."⁹ This is a system where the countries give the powers to the EU and it can only act accordingly.