



“This is just the failed Constitution in new clothes...”

The Claim

The Treaty of Lisbon is the same as the rejected constitution.

Valéry Giscard d'Estaing, former French President, has been quoted as saying that “the Treaty of Lisbon is the same as the rejected constitution. Only the format has been changed to avoid referendums.”¹

Open Europe have claimed that “the new treaty in its unconsolidated form contains only the ‘active ingredients’ – the changes which were proposed by the original Constitution. However, once it is turned back into consolidated text it becomes obvious that the ‘new’ treaty essentially edits the existing treaties to bring them into line with the rejected constitution.”²

The countries who voted against the Constitution don't have the opportunity to vote against the Lisbon Treaty, it's up to us to voice their rejection.

Michael O'Callaghan commented that “the Lisbon Treaty is a flawed proposal for an undemocratic Europe. Let's hope the citizens of Ireland reject it, for the sake of the 482 million other citizens of EU Member States who are being denied their right to do so.”³

The Short Answer

The Lisbon Treaty is not the Constitution. The Lisbon Treaty updates or amends the existing Treaties, the Constitution was a single document that would have replaced them.

The Long Answer

The Lisbon Treaty has many similarities to the Constitution in terms of content but is a fundamentally different document in terms of what it does to Treaty law.

The basic aim of the European Constitution was to ensure that the Union – which had enlarged to 27 countries over the years – would work more efficiently, transparently and democratically. The Lisbon Treaty does share this aim. This Constitution was approved by 18 countries, but after the rejection by France and the Netherlands, the process for approval for this document was stopped.

When the European leaders met, they agreed that the Union did still need to be reformed but acknowledged that the concept of a Constitution for the Union was a step too far. As they had agreed a range of common positions for the reform of the Union during the European Constitution negotiations, they took this document as a starting point.

After removing all the Constitutional elements – such as formal recognition of the flag and an anthem – as these had previously caused concerns for some people in Europe, and working on a

few other issues, the Lisbon Treaty was agreed and signed on 13 December 2007. (See our factsheet *A Brief History of the Lisbon Treaty* for more information on this.)

There is a vast amount of the content that is the same, but there are two fundamental differences.

- There are no ‘Constitutional’ elements in the Lisbon Treaty.
- The Lisbon Treaty adds to the current Treaties and amends them; the Constitution took all these Treaties, re-ordered them, revised them and would have replaced them.

The implication that the rest of Europe hasn't approved the Treaty because the Constitution was previously rejected is neither true nor relevant. Other countries have approved the Treaty according to their own methods, and it is not the responsibility of the Irish people to vote on behalf of other European citizens. We have referendums, others do not.

And the quote above attributed to Valerie Giscard d'Estaing is not what he said. Read overleaf to find out more on this.

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

In 2001, the countries of the EU recognised that we stood at a crossroads. A number of issues had come to the fore - the attacks of September 11 had called the stable world order we had enjoyed since the fall of the Berlin wall into question, the Union was also about to welcome ten new countries in as members, swelling our numbers from 15 to 25 and there was clear recognition that the EU system needed to become closer to the people they worked to support.

The revision of the existing Treaties was deemed necessary in order to ensure that the enlarged Union functions more democratically, more transparently and more efficiently. The current structures were designed to serve a Union with much fewer members. So in order to find how to solve these issues, wide ranging discussions took place over the course of three years between governments, opposition parties, interest groups and the European institutions. After over three years of negotiation, the European countries agreed to the European Constitution.

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After two years of reviewing what happened, it was revealed that the biggest concern was the 'constitution' notion, which appeared to cause misunderstandings and misgivings for citizens regarding the relationship between the Constitutional Treaty and the national constitutions.

The idea of replacing the Treaties with a Constitution was abandoned. European leaders still agreed that the system needed to be reformed but acknowledged that a Constitution was a step too far. As they had agreed a range of common positions for the reform of the Union during the European Constitution negotiations, they took this document, took out all the Constitutional elements, and put the agreed reforms into the usual format that we are used to with Maastricht, Amsterdam and Nice – the Treaty of Lisbon.

The Lisbon Treaty has reverted back into the more standard process that the European Union uses – an international Treaty that amends the original Treaties.

What Lisbon Introduces

The Lisbon Treaty is an international agreement with the same features as the previous European treaties. The main differences between the Constitution and Lisbon Treaty include the following:

- There are no European symbols in the Lisbon Treaty as outlined in the Constitution;
- The Lisbon Treaty amends the existing Treaties, as opposed to the Constitution which took all the Treaties, re-ordered them and put them into one single document;
- Ireland will have an opt-out or opt-in in the areas of police co-operation and criminal justice (this was not the case in the Constitutional Treaty);
- Of the two key European Treaties, the TEU will keep its present title, but the TEC will be renamed the '*Treaty on the Functioning of the European Union*' (TFEU) (the Constitution took these Treaties and merged them into one document);
- The text of the Charter of Fundamental Rights is not reproduced in the Lisbon Treaty, although the Treaty does give full legal affect to the Charter (the Constitution reproduced this Charter as a Chapter in the book);

What the Lisbon Treaty does introduce is:

1. **A new role for national parliaments to play in drafting European law.**
2. **A simple list which makes it clear what the EU can and cannot do.**
3. **More powers for the European Parliament.**
4. **A new President of the European Council**, who will help set the strategic direction of the European Union over a two and a half year term, rather than the current situation where the head of a European country does this job for six months while running their own country.
5. A **single position for the EU's foreign relations** which will help the role Europe will play on the international stage. Currently, there are two positions in two different institutions that share this work which results in a lot of bureaucracy.
6. An **External Action Service** which will enable us to get help abroad if we are in a country which does not have one of the 76 Irish embassies around the world.
7. A **new voting system** that simplifies the system while also protecting the small countries from ganging up on the larger countries and the bigger countries from bullying the smaller ones.
8. A guarantee that **we keep our Commissioner**, thanks to Ireland's post-referendum deliberations with our European partners.
9. An **ability for European citizens to directly get involved in European law making**, through the Citizens' Initiative.
10. Full legal recognition of the **Charter of Fundamental Rights**.

The quote ascribed to Valéry Giscard d'Estaing is not what he said. This quotation was taken from an interview in Le Monde but the next paragraph made clear that he believed that an approach to deceive the public would be "unworthy" and only confirm European citizens "in the idea that the construction of Europe is organised behind their backs by lawyers and diplomats".

¹ Valéry Giscard d'Estaing, former French President and President of the Constitutional Convention in several European newspapers, 27 October 2007.

² "The Lisbon Treaty and the European Constitution: A side-by-side comparison" Open Europe,

January 2008.

³ Michael O'Callaghan, reply to "No vote may end EU Membership – MEP", Irish Times, 31 May 2008. <http://www.irishseedsavers.ie/article.php?artid=44>