

# “This Passerelle Clause will just mean creeping federalism...”



## The Claim

Lisbon gives more power to the faceless euro elite through the passerelle clause.

Michael O’Callaghan of GM-free Ireland wrote that “the Lisbon Treaty will copper-fasten the growing power of unaccountable transnational corporations to make unelected EC bureaucrats decide policy in almost every major issue of collective concern, for decades if not centuries to come.”<sup>1</sup>

According to Mary Lou McDonald of Sinn Féin, the new ‘passerelle’, or escalator clauses, are of huge concern. She writes that “these will allow for decision making in the Council to be altered from unanimity to QMV in common foreign and security policy matters and in the area of judicial co-operation in criminal matters, without recourse to national parliaments or referendums.”<sup>2</sup>

## The Short Answer

Passerelles don’t happen unless our Taoiseach says it’s okay, our government says it’s okay and our Dáil and Seanad say it’s okay. It also needs all other European countries to do the same.

## The Long Answer

The Lisbon Treaty does not create creeping federalism. In fact, the German Constitutional Court when judging on the specific constitutionality of the Lisbon Treaty, categorically stated that the Lisbon Treaty does not transform the EU into a federal state.

A passerelle is the ability for the European Council, basically our Taoiseach and his counterparts that meet a number of times a year, to agree to move one area of the EU’s authority from unanimity to QMV. We have passerelles in the system so that the European Union and its member countries to respond with more flexibility to possible future problems without requiring an entirely new Treaty to change how the matter is decided on – by unanimity or QMV.

There are a couple of important points to make about the passerelle:

- A decision to invoke a passerelle requires all-country consent. Therefore, if we don’t want something to move to QMV, it won’t happen.
- Under Lisbon, it will now also require the consent of the European Parliament and our Dáil and Seanad.
- Passerelles are only about moving from unanimity to QMV. They cannot be used to extend the powers of the Union, or take away any powers from any EU country.
- Passerelles cannot be used in the area of military or defence.

The claim that the passerelle clause can be used to sidestep national parliaments is objectively incorrect. Firstly, national parliaments, such as the Dáil in Ireland, have to be consulted (see overleaf). Also as stated, no new competences can be given to the EU by the operation of this clause. And finally, anything that requires a constitutional referendum in Ireland will always require a referendum.

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 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. The EU has four different types of 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.<sup>3</sup>

#### 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 are only regarding 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, where the Union's role is more than just supporting the countries – hence the 'co-ordinating' title – however it does not lead legislation in these areas.

#### Co-ordinating 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**

### Decision-making and voting systems

How the EU comes to an agreement on these areas depends on the policy matter in question. The areas which may be decided by QMV and those that require unanimity are set in stone in the Treaties. To change this would require ratification in accordance with EU countries' respective constitutional requirements.

**In the particularly sensitive areas for the EU, such as common foreign and security policy, taxation, asylum and immigration policy, Council decisions must be unanimous.**

On most issues, however, the Council can take decisions by 'qualified majority voting' (QMV). This means that votes in the Council are weighted in accordance with the size of population, though adjusted so that small countries are relatively over-represented in voting. It should be noted that while there is a QMV voting system in place, agreement is usually found through consensus rather than invoking a strict voting procedure to pass a law. A prime example is when you look at the number of laws passed in 2008. Out of the 426 pieces of law that could have been taken by QMV, only 37 were.

Number of acts passed in 2008	Opportunities to use QMV	Actual use of QMV
504	426 (84.5%)	37 (8.2%)

### The passerelle clause

A passerelle is the ability for the European Council, basically our Taoiseach and his counterparts that meet a number of times a year, to agree to move one area of the EU's authority from unanimity to QMV. These are limited to certain areas, require every country's agreement and cannot extend the Union's authority in an area – all they can do is move how a decision is made (unanimity to QMV).

Under current EU law, we have possible passerelles in:

- police and judicial co-operation
- immigration and asylum
- social policy and the environment

The passerelle has only ever been invoked once. In 2004, our Taoiseach and the other members of the European Council used the passerelle clause to move to QMV on asylum and immigration.

**It is important to note that the passerelle cannot be used in relation to decisions with military implications or in the area of defence – unanimity here is sacrosanct.** Also, the passerelle can be invoked only in relation to matters in which the EU already has power to act – it cannot be used to extend the areas the EU deals with or the level of authority it has in an area.

## What Lisbon introduces

All in all, there are few areas mentioned in the Lisbon Treaty where the EU would be acting for the first time.

There are eight policy areas for which specific articles have been included 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, there is a clear list of what the EU can and cannot do. What the Lisbon Treaty does not 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.

### 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 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  
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### 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 competence

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

### Ireland's responsibility

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

### The Passerelle Clause

In relation to the passerelle, a clause in the Lisbon Treaty<sup>4</sup> provides that the Council may decide to move some decisions from a unanimous decision to QMV. In the Lisbon Treaty, there are areas where a passerelle has been specifically noted as possibly being used. This adds to the list already existing in EU law. These are:

- CFSP, but not in anything military of any kind;
- Judicial co-operation, specially in the area of family law where the EU has power to act;
- Further extension of the area of environment;
- Agreeing the multiannual budget;
- Areas of social policy and employment law where the EU has power to act;
- Enhanced co-operation.

In order for the passerelle to apply, three important steps need to be taken:

1. The proposal has to get the consent of the European Parliament. Unusually, it has to get a majority of all the Parliament's members and not just a majority of those who are present in the parliament chamber on voting day.
2. Any proposal to use this provision must be notified to national parliaments and if any national parliament makes known its opposition within 6 months, the proposal will not be adopted. In Ireland, any proposal needs to pass through both the Dáil and the Seanad.
3. Every country in the European Council needs to vote in favour of it. Therefore, **Ireland has a veto for anything we don't want to move to QMV.**

<sup>1</sup> "Ireland threatened with expulsion from EU if we reject Lisbon Treaty" <http://www.irishseedsavers.ie/article.php?artid=442>

<sup>2</sup> Mary Lou McDonald, opinion piece in the Irish Times, 13 December 2007. <http://www.no2lisbon.ie/en/topic/6>

<sup>3</sup> [http://ec.europa.eu/ireland/about\\_the\\_eu/competences/index\\_en.htm](http://ec.europa.eu/ireland/about_the_eu/competences/index_en.htm)

<sup>4</sup> Article 48.7 TEU as amended by the Lisbon treaty.