

# “Lisbon will bring in abortion...”



## The Claim

Our position on this is not secure as abortion could be established as a fundamental right and override our Protocol.

Richard Greene of Coir has claimed that “the European Court of Justice can use the Charter [of Fundamental Rights] to overrule the conflicting protocol and impose abortion on the Irish people.”<sup>1</sup>

There is also the claim that “there is a possibility for the European Court of Justice to establish abortion as a fundamental right, Protocol 35 of the Lisbon Treaty notwithstanding.”<sup>2</sup>

The primacy of EU law is a threat to Irish ability to legislate in sensitive areas.

Kathy Sinnott has argued that the Lisbon Treaty means signing a ‘blank cheque’ which leaves Ireland open to “various risks in relation to abortion”, as already happened in the Grogan case.<sup>3</sup>

There is a possibility of introducing the ‘one child family’ policy.

Some people claim that the Lisbon Treaty clearly states it will take full control over the study and control of human reproduction.<sup>4</sup>

## The Short Answer

Abortion is not introduced in the Lisbon Treaty.

## The Long Answer

The EU does not have authority to deal in the area of abortion. In our 36 years of membership, not one single piece of EU law has sought to change our position or the position of all five EU countries that have restrictive measures on abortion.

The Maastricht Treaty protocol on abortion is reproduced word for word in the Lisbon Treaty. This protocol specifically mentions the exact article in the Irish Constitution that deals with abortion and states that nothing in EU law affects this article. Thus no EU Treaty can affect the right to the life of the unborn in Ireland, or in any other EU country. The Lisbon Treaty does not change this.

As abortion is a highly sensitive matter for this country that came to light again in the June 2008 vote on the Lisbon Treaty, Ireland asked and got a further guarantee from our EU partners in June 2009 that re-states that the Lisbon Treaty will not introduce abortion in Ireland, and that it continues to be a matter for the Irish people to decide themselves.

**The European Courts do not have the authority to establish abortion as fundamental right**, as they quite simply do not possess the power to do so. Though the Lisbon Treaty gives the EU courts (ECJ) the power to make decisions on the basis of the Charter of Fundamental Rights, this will not extend into changing national policy on the right to life. This area remains under complete control of the Irish people.

The Catholic Church has confirmed that our position on abortion will not be affected by the Lisbon Treaty. Archbishop Diarmuid Martin acknowledged that Catholics could vote for the Treaty “in good conscience.”<sup>5</sup>

Regarding the primacy of EU law, it is important to assert the simple fact that EU is supreme but only in areas where we have given it the power to be so. As 28% of Irish law is EU-related there is a wealth of areas where the EU does not have power. Abortion is one of these. For more information about supremacy of law, please see our factsheet that deals with the myth: “*This is another loss of our national sovereignty...*”



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 Constitution of Ireland guarantees the right to life for unborn children in Article 40.3.3. This states:

*"The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."*<sup>6</sup>

In Ireland, we have had three referendums on this Article resulting in the following legal situation in Ireland regarding abortion – there is the right to travel, the right to receive information and the right to have an abortion where the mother's life is at risk, including the risk of suicide. Therefore abortion is not legalised in this country but is allowed only in very limited and strict conditions.

**As the issue of abortion is a particularly sensitive issue for our country, at the EU level we requested that a Protocol be annexed to the European Treaties that set our position in stone.** Protocol 17, otherwise known as the Maastricht Protocol<sup>7</sup> states:

*"Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, 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."*<sup>7</sup>

The EU can act only within the limits of the powers conferred upon it by the EU countries, and only in the areas where they allow it to act. This is clearly stated in Article 5 of the TEU, as amended by the Lisbon Treaty. The legalisation of abortion is not included in these areas as it is an area where the EU has not been given the power to legislate.

There have been, however, some cases taken in the European Court of Justice (ECJ) in which the right to abortion has been discussed. One of the best known cases is the Grogan case<sup>8</sup>, where the ECJ was asked whether the publication by Irish students of information concerning the availability of legal abortion services in the United Kingdom was unlawful. The main issue of this case was recognised by the ECJ as the right to provide services. That was the reason why the ECJ decided to answer the question asked by the national court even though one of the issues in the case concerned abortion.

What was stated in the Grogan case ruling was that "medical termination of pregnancy, performed in accordance with the law of the State in which it is carried out, constitutes a service." The Society for the Protection of Unborn Children Ireland Ltd. (SPUC) was the plaintiff in the main proceedings and maintained that the provision of abortion cannot be regarded as a service, on the grounds that it is immoral and involves the destruction of the life of human being. The Court's answer to this argument was that "it is not for the Court to substitute its assessment for that of the legislature in those Member States where the activities in question are practised legally." This statement by the ECJ confirms that the EU recognises that abortion is an area that is absolutely within a country's discretion and that **the ECJ does not want to interfere with the authority of any EU country in this sensitive area.**

It also must be noted that the ECJ only rules in the area of moral, ethical issues if there is a connection with the competencies conferred upon the EU by the member countries, for example the free movement of persons or services. As stated above, because the EU recognises that abortion is an area for each EU country to decide on, the ECJ has never ruled on the right of EU countries to legalise abortion.

## What Lisbon Introduces

**The Lisbon Treaty does not extend the competencies of the EU to include abortion.** Protocol 17 is carried forward to the Treaty of Lisbon. There is no change in its wording or application.

The Charter of Fundamental Rights is a new addition in the Treaty of Lisbon. This means that the ECJ will be able to adjudicate on the basis of Charter of Fundamental Rights, but only within the EU's areas of authority.

After our June vote in 2008 which highlighted that abortion was a concern, the Irish Government requested from our EU partners **another guarantee reasserting the fact that our Maastricht Protocol will not be affected.** The following language was successfully agreed:

*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."*<sup>9</sup>

**The claim that the Lisbon Treaty could enforce a 'one child family' policy or that it would allow the EU to take full control over the study and control of human reproduction has no foundation.**

<sup>1</sup> Greene, Richard. "Yes vote on Lisbon could open door for abortion." Irish Times 14 Jul. 2009.

<sup>2</sup> Legal analysis of selected provisions of Lisbon Treaty for Irish referendum by The European Centre for Law and Justice, [http://www.ecj.org/PDF/080609\\_ECJ\\_Lisbon\\_Treaty\\_analysis\\_final.pdf](http://www.ecj.org/PDF/080609_ECJ_Lisbon_Treaty_analysis_final.pdf). Note that this is a renumbering of the Protocol 17 contained in the Maastricht Treaty.

<sup>3</sup> Kathy Sinnott MEP: Bishops' Pastoral Letter and the Lisbon Treaty, 6 June 2008, available at: <http://www.euractiv.com/en/future-eu/abortion-euthanasia-lisbon-treaty-ireland/article-173257>

<sup>4</sup> Éire go Brách leaflet, available at <http://eiregobrach.ie/Reasons%20for%20NO%20Vote.htm>

<sup>5</sup> <http://www.independent.ie/national-news/lisbon-treaty/ayes-vote-is-not-a-vote-for-abortion-says-archbishop-1391962.html>

<sup>6</sup> [http://www.taoiseach.gov.ie/attached\\_files/html%20files/Constitution%20of%20Ireland%20\(Eng\).htm](http://www.taoiseach.gov.ie/attached_files/html%20files/Constitution%20of%20Ireland%20(Eng).htm)

<sup>7</sup> Protocol (No 7) annexed to the Treaty on European Union and to the Treaties establishing the European Communities (1992).

<sup>8</sup> C-159/90, The Society for the Protection of Unborn Children Ireland Ltd v Stephen Grogan and others.

<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)