

“We’ll have no Commissioner...”



The Claim

We’re small and we’ll have no voice if we’re not at the table.

“The Lisbon Treaty removes any Irish voice from the EU Commission, the body which has the monopoly of proposing all EU laws, for five years out of every 15 (Article 17.5 TEU).”¹

We don’t even get to decide who we want at the table.

“Lisbon abolishes our right to decide who the Commissioner is when it comes to our turn to be on the Commission, replacing it by a right to make ‘suggestions’ only for the Commission President to decide (Article 17.7 TEU).”²

The Short Answer

Under Lisbon rules, we keep our Commissioner. Without Lisbon, we’ll lose it.

The Long Answer

Following talks with the other heads of EU states in June 2009, **Ireland has secured a legally binding guarantee that means we will keep our Commissioner.** And we’ll still be able to decide who is nominated from Ireland. Just try and stop us.

If we choose not to ratify the Lisbon Treaty, the EU will function under the rules of Nice. This states that the Commission must be smaller than the current number of EU member countries.



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 Commission

The European Commission is currently made up of 27 people - one from each EU country - who represent and uphold the interests of the EU as a whole. Their main role is to draft EU legislation and make sure that EU countries apply EU law correctly.

The main functions of the Commission

Known as the 'guardian of the Treaties', the main functions of the Commission are fourfold. It:

- *Initiates legislation.* It makes proposals for European laws, which are sent to the Council and European Parliament for amendment and approval.
- *Represents the EU on the international stage.* It negotiates trade and co-operation agreements with non-EU countries.
- *Makes sure EU countries apply the law they agreed to apply correctly.* It can institute proceedings against EU or businesses that fail to comply with EU law.
- *Acts as an executive body.* It manages policies and the annual budget.

The Eurocratic Oath

The job of the twenty-seven people who currently make up the Commission is to represent and uphold the interests of the EU as a whole. **Commissioners are committed to acting in the interests of the Union as a whole and not taking instruction from national governments** - this principle is clearly enshrined in Treaty law: "In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body."³

Election of the Irish Commissioner

The Government of each EU country currently nominates a Commissioner according to its own selection procedure. In Ireland, the Government appoints the Commissioner. Members of the Commission are appointed for a renewable term of 5 years.

The following have been the Commissioners sent from Ireland:

| Person | Responsibility | Years of service |
|-------------------|---|----------------------|
| Charlie McCreevy | Internal Market & Services | 2004-2009 |
| David Byrne | Health & Consumer Protection | 1999-2004 |
| Pádraig Flynn | Employment & Social Affairs | 1993-1999 |
| Ray McSharry | Agriculture | 1988-1992 |
| Peter Sutherland | Social Affairs & Competition | 1985-1988 |
| Michael O'Kennedy | Personnel, Administration & Statistics | 1981-1982 |
| Richard Burke | Taxation, Consumer Affairs, Transport, Personnel & Administration, Statistics & Official Publications | 1977-1981, 1982-1985 |
| Patrick Hillery | Vice-President & Social Affairs | 1973-1977 |

The Commission President

The position of Commission President is decided by the Taoiseach and his European Union counterparts:

"The Council, meeting in the composition of Heads of State or Government and acting by a qualified majority, shall nominate the person it intends to appoint as President of the Commission; the nomination shall be approved by the European Parliament.

*The Council, acting by a qualified majority and by common accord with the nominee for President, shall adopt the list of the other persons whom it intends to appoint as Members of the Commission, drawn up in accordance with the proposals made by each Member State."*⁴

The European Parliament must then vote to approve the appointment of the Commission as a body. After European Parliament approval, the President and the other Members of the Commission are formally appointed by the Council. This decision can be taken by a qualified majority, but because it is such an important appointment, the decision is usually by consensus and therefore taken unanimously.

Reducing the size of the Commission

With the size of the European Union increasing, discussions began about whether the size of the Commission should be limited in order to enable the Commission to act more efficiently. The consensus reached during the negotiations for the Nice Treaty was that the number of Commissioners should be reduced.

The Protocol on the enlargement of the European Union attached to the Nice Treaty states that:

"When the Union consists of 27 Member States, Article 213.1 of the Treaty establishing the European Community shall be replaced by the following:

"1. The Members of the Commission shall be chosen on the grounds of their general competence and their independence shall be beyond doubt.

The number of Members of the Commission shall be less than the number of Member States. The Members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.

The number of Members of the Commission shall be set by the Council, acting unanimously.

This amendment shall apply as from the date on which the first Commission following the date of accession of the twenty-seventh Member State of the Union takes up its duties."

The new rules come into force in 2009

As it stated above, the number of Commission Members shall be less than the number of countries in the EU⁵ once the Union consists of 27 members. As Romania and Bulgaria joined in 2007, we now have 27 members so this now applies.

However, the present Commission's term of office commenced in

November 2004 and runs until 31 October 2009. Therefore, as the current Commission is due to finish its term in a few months, this reduced Commission system is now set to be implemented in November 2009.

The current Treaty law states that the members of the Commission shall be chosen according to a rotation system based on the principle of equality, the implementing arrangements for which shall be adopted by the Council, acting unanimously.

What Lisbon Introduces

Lisbon allows us the possibility of keeping our Commissioner...

The Lisbon Treaty contains a clause which does not appear in the Nice Treaty, stating that the European Council can decide, acting unanimously, to alter the number of Commissioners. And in fact, Article 17.5 of the Treaty on European Union, as amended by Lisbon, states:

"As from 1 November 2014⁶, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number."

...and since the Irish referendum, this possibility has become a reality.

Since the first Lisbon vote, there have been further developments in this area. Other countries have supported Ireland's concern regarding the planned reduction in the size of the Commission, especially smaller states that rely more on the Commission's status as guardian of the Treaties.

The European Council in December 2008 therefore decided that **each EU country will retain the right to nominate a Commissioner** if the Lisbon Treaty is ratified. Quoting from the Council Conclusions:

"The European Council agrees that provided the Treaty of Lisbon enters into force, a decision will 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."⁷

According to Ireland's Minister for Foreign Affairs, Micheál Martin TD, "Ireland has now secured an important agreement which responds directly to various public concerns. We now have a clear choice to make regarding Irish membership of the European Commission. If the Lisbon Treaty enters into force, the Commission to be appointed later this year and all future Commissions will have an Irish member. **This concession to Ireland deals with a key reservation that Irish people had about the Lisbon Treaty last year.**"⁸

However, if the new Lisbon Treaty doesn't enter into force, then the Nice Treaty will provide the legal basis for the Commission, where, as stated above, the Commission will be smaller than the number of countries in the EU.

We still decide who we want

Nothing in the Lisbon Treaty refers to the abolition of the right of countries to nominate their Commissioner. This will remain as an integral part of the Commission selection procedure.

¹ The National Platform, <http://nationalplatform.wordpress.com/2008/06/03/lisbon-treaty-where-is-this-all-going>

² The National Platform, <http://www.lisbontreaty2008.info/wordpress>.

³ Article 213.2 of the Treaty establishing the European Community.

⁴ Article 214.2 of the Treaty establishing the European Community.

⁵ It should be noted that Nice is silent on the exact number of the "reduced" Commission. Commissioners could be either 26 or 10, but they have to be less than the number of Member States.

⁶ Article 17.4 TEU, as amended by Lisbon Treaty, points out that the next Commission "appointed between the date of entry into force of the Treaty of Lisbon and 31 October 2014 shall consist of one national of each State."

⁷ Brussels European Council, 11 and 12 December 2008 – Presidency Conclusions.

⁸ Minister for Foreign Affairs, Micheál Martin, T.D., 10th March 2009, commenting on report by Professor Richard Sinnott and a team from the UCD Geary Institute on voting behaviour in the Lisbon Treaty referendum.