

“Workers’ rights will be eroded with Lisbon....”

FALSE

The Claims

This affects unions and our right to collective action.

A right to collective action exists unless it harms the competitiveness of the target firm – as stated in ECJ’s Laval judgement. Kieran Allen remarked that “in other words, the ‘rights’ granted by the social chapter are figments.”¹

We’re going to lose jobs because we’ll lose control on immigration

Coir claims that the ECJ Laval judgement means that companies can bring migrant workers to Ireland and pay them no more than the minimum wage, meaning that “Irish workers could be forced to take a big cut in wages or see their jobs go elsewhere.”²

The EU is only obsessed with competition.

According to the CAEUC, competition leads to unemployment and poverty and the provisions in the Lisbon Treaty which protect competition law would cause “regional inequality, poverty and emigration [to] persist in the EU: for example the Border, midlands and west regions of Ireland.”³

The Short Answer

The EU has hugely improved workers’ rights in Ireland since the moment we joined, such as equal pay and maternity rights. The issues we have with workers rights have to be resolved nationally and are nothing to do with the Lisbon Treaty.

The Long Answer

Since joining the Union, the EU has introduced into Ireland over 450 pieces of legislation that protect workers’ rights, legislation that our government had not taken the initiative to implement itself. These include:

- Equal pay for equal work
- Equal treatment for men and women
- Protection of self-employed women during pregnancy and motherhood
- Improvements in the safety and health of workers
- The protection of young people at work
- Actions to combat unemployment amongst women

Many of the issues surrounding workers’ rights in Ireland have nothing to do with whether or not Lisbon is introduced - questions about the minimum wage, redundancy, dismissal and notice periods need to largely be dealt with by national law, but these issues are getting caught up in the discussion on the Lisbon Treaty.

What the Treaty does state is the following:

- Article 153 of the Treaty clearly guarantees the right of

association and the right to strike.

- Workers’ rights, including the **right to collective bargaining and action and the freedom of assembly and association are further guaranteed** through the Charter of Fundamental Rights, which must be adhered to when governments are applying EU law to their own countries. In other words, the Lisbon Treaty protects workers’ rights, sometimes even more so than the Irish constitution does.
- The Lisbon Treaty further states that **the EU does not have control over pay and does not dictate the volume of immigrants allowed into each state**, these remain matters for each individual country to decide on. Thus Ireland will not be forced to accept immigrants into its workforce if it judges that its economy is not prepared for such an influx.

Finally, issues concerning competition are separate to the Lisbon Treaty as the Treaty simply restates that the EU must have a fair and competitive market, something which all EU countries were well aware of when they joined.

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

Treaty law dealing with workers' rights

Workers' rights are covered by the chapter on social provisions in the Treaties. Specifically it is Article 137 which states that the EU can not harmonise the laws and regulations of the Member States regarding social provisions. Furthermore, this Article states that:

"4. The provisions adopted pursuant to this Article: shall not affect the right of Member States to define the fundamental principles of their social security systems and must not significantly affect the financial equilibrium thereof, shall not prevent any Member State from maintaining or introducing more stringent protective measures compatible with this Treaty.

5. The provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs."

Since joining the Union, the EU has introduced into Ireland over 450 pieces of legislation that protect workers' rights; legislation that our government had not taken the initiative to implement itself. These include:

- Equal pay for equal work
- Equal treatment for men and women
- Protection of self-employed women during pregnancy and motherhood
- Improvements in the safety and health of workers
- The protection of young people at work
- Actions to combat unemployment amongst women

Included in this factsheet is a list of some of the most important EU laws on workers' rights, to give an indication of the wealth of work done by the European Union in this area.

Relevant Rulings by the European Courts

During the last few years a couple of controversial judgements on workers' rights were issued by the ECJ. These rulings dealt with the issue of how to balance the protection of workers' rights and working conditions with the freedom of workers that comes with being in the European Union.

Below is a summary of the key issues in each of the cases, which you may hear being mentioned so you are aware what they are about. What must be stressed is that **these complex legal judgments raise issues that are not connected to the**

Lisbon Treaty and are issues that are a matter for domestic legislation and regulation.

- The Laval judgement addressed the question of whether it was legitimate for a Swedish trade union to use collective action to force a Latvian company to enter a collective agreement setting work and pay conditions that go beyond the core mandatory rules established in the Posting of Workers Directive 96/71.4
- The Viking case dealt with the question of whether it was legitimate for an international trade union to use collective action in order to force a ferry company to drop its plans to re-flag a ship from Finland to Estonia.
- The Rüffert case assessed whether public procurement rules in a German Land can compel a Polish company to pay higher wages than those set by the federal collective agreement that is universally applicable.
- The Luxembourg judgement addressed whether it is legitimate for a Member State to impose employment conditions on foreign service providers that go well beyond the core of mandatory rules on the grounds that they are necessary for public order, as well as the obligation to have a domiciled representative or to issue an ex ante declaration.⁵

Immigration & workers' rights

The two big enlargements in 2004 and 2007 brought another concern, mainly the increased flow of immigrants from Eastern Europe. However, there is a possibility for current EU countries not to open the labour market to nationals of any new EU country if the economy is not prepared to take a great flow of labour. **Ireland decided to apply those restrictions to the free movement of persons with the last accession, imposing a two-year work permit requirement on Romanian and Bulgarian nationals** when these two countries joined the EU in January 2007. This requirement was later extended by three extra years. The longest period of time during which such restrictions can apply is 7 years.

Such restrictions were not imposed by the Irish Government during the previous accession in 2004, because at that stage the 'Celtic Tiger' was in need of a new work force and therefore allowed full free movement of workers for the ten new Member States that joined at that time.

What Lisbon introduces

Provisions on social policy remain the same. Article 153 on social policy is identical to the present Article 137 of the EC Treaty.

Article 153.3 states that the right to pay, the right of association, the right to strike and the use of lockout remain the responsibility of national governments.

The Treaty of Lisbon adds a so-called 'social clause' which must be taken into account when drafting and implementing all EU legislation. It refers to a highly competitive social market economy, full employment, the promotion of social justice, the combating of social exclusion, equality between women and men and the protection of the rights of the child.⁶ Important to mention also is the so-called 'consistency clause' in Article 7 which obliges the Union to "ensure the consistency between its policies and activities, taking all of its objectives into account and in accordance with the principle of conferral of powers". This means in real terms that any European law that is contrary to these objectives can be declared void by the ECJ.

The Charter of Fundamental Rights as a legally binding document will reaffirm some of the workers' rights, especially the right to collective bargaining and action⁷ and the freedom of assembly and association⁸, freedom to choose an occupation and the right to engage in work, as well as protection in the event of unjustified dismissal. The Charter applies whenever

Member States are implementing EU law - in the field of workers' rights there is no question that the Charter will have application as the EU already has vast legislation covering this issue. The Lisbon Treaty guarantees that these social rights have binding legal force since they must be guaranteed by national and community judges. Principles laid down in the Charter cannot be infringed in the promulgation of EU legislation and they can also be used as an aid to interpretation of EU law.

The Lisbon Treaty regulates the Common Immigration Policy in Article 79, specifically the efficient management of immigration flow, fair treatment of legal third country residents, measures to combat illegal immigration and people-trafficking. However, **the right of Member States to determine volumes of admission is re-stated.** Immigration is also moved to Qualified Majority Voting (QMV).

Member States can decide to some extent to introduce labour restrictions 'justified on grounds of public policy, public security or public health.'⁹

During its meeting in December 2008, the European Council confirmed the high importance of social progress and the protection of workers' rights.¹⁰ These Conclusions were reaffirmed alongside the "Irish Guarantees" given at the June 2009 Council. The text of this commitment is written below.

¹ Kieran Allen, "Neo-liberal treaty with social window dressing" in Social Aspects of the Lisbon Treaty, EAPN Ireland Review, April 2008.

² C6ir, <http://www.lisbonvote.com/>

³ CAEUC - No to the Lisbon Treaty, "Lisbon Treaty - Vote NO". <http://www.caeuc.org/files/CAEUCpamphlet4Feb08.pdf>

⁴ C-341/05.

⁵ Viking C-438/05, Ruffert C-346/06. Luxembourg C-319/06.

⁶ Article 2 TFEU, as amended by the Lisbon Treaty.

⁷ Article 28 of the Charter of Fundamental Rights.

⁸ Article 12 of the Charter of Fundamental Rights.

⁹ Article 48 TFEU, as amended by the Lisbon Treaty.

¹⁰ The Presidency Conclusions of the Brussels European Council, 11 and 12 December, 2008.

For reference: Examples of EU legislation on workers rights

Regulation (EEC) No 1365/75 of the Council of 26 May 1975 on the creation of a European Foundation for **the improvement of living and working conditions**. (OJ L 139, 30.5.1975, p. 1–4)

Council Directive 76/207/EEC of 9 February 1976 on the implementation of **the principle of equal treatment for men and women** as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40–42)

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework **for equal treatment in employment and occupation** (OJ L 303, 2.12.2000, p. 16–22)

Council Directive 86/613/EEC of 11 December 1986 on the application of the principle of equal treatment between men and women engaged in an activity, including agriculture, in a self-employed capacity, and on **the protection of self-employed women during pregnancy and motherhood** (OJ L 359, 19.12.1986, p. 56–58)

Council Directive 97/80/EC of 15 December 1997 on **the burden of proof in cases of discrimination based on sex** (OJ L 14, 20.1.1998, p. 6–8)

Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on **the minimum level of training** of seafarers (OJ L 136, 18.5.2001, p. 17–41)

Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the **organisation of working time**. (OJ L 299, 18.11.2003, p. 9–19)

Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on **temporary agency work** (OJ L 327, 5.12.2008, p. 9–14)

66/464/EEC: Commission Recommendation of 7 July 1966 addressed to Member States and concerning **medical control of workers** exposed to particular risks (OJ 151, 17.8.1966, p. 2753–2764)

Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the **safety and health of workers at work** (OJ L 183, 29.6.1989, p. 1–8)

Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in **the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding** (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) (OJ L 348, 28.11.1992, p. 1–8)

Council Directive 94/33/EC of 22 June 1994 on **the protection of young people at work** (OJ L 216, 20.8.1994, p. 12–20)

Council Regulation (EC) No 2062/94 of 18 July 1994 establishing a **European Agency for Safety and Health at Work** (OJ L 216, 20.8.1994, p. 1–8)

Resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council, of 16 December 1991 concerning a Community action programme on the accessibility of transport **to persons with reduced mobility** (OJ C 18, 24.1.1992, p. 1–1)

Council Resolution of 7 June 1984 **on action to combat unemployment amongst women** (OJ C 161, 21.6.1984, p. 4–6)

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on **the protection of employees in the event of the insolvency of their employer** (Codified version) (Text with EEA relevance) (OJ L 283, 28.10.2008, p. 36–42)

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to **collective redundancies** (OJ L 225, 12.8.1998, p. 16–21)

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event **of transfers of undertakings, businesses or parts of undertakings or businesses** (OJ L 82, 22.3.2001, p. 16–20)

Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families **moving within the Community** (OJ L 149, 5.7.1971, p. 2–50)