

*eurofacts*  
*Historical Fact Sheet No 3*

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# The Lisbon Treaty is Dead

*Irish voters rejected the Lisbon Treaty on 12th June 2008.  
In a debate in the House of Lords on 18th June, Lord Neill of Bladen, a former  
Warden of All Souls and Vice-Chancellor of Oxford University, a  
highly-respected lawyer, explained why the Lisbon Treaty is dead.*

**Edited by *eurofacts***

**Lord Neill of Bladen:**

My Lords..... The Foreign Secretary said in his Statement the other day: *“The rules of the treaty and of the EU are clear. All 27 member states must ratify the treaty for it to come into force ... There is no question of ignoring the Irish vote or of bulldozing Irish opinion. Ireland clearly cannot be bound by changes that it has not ratified”*. [Official Report, Commons, 16/6/08; col. 704.]

He is completely correct in what he said. I hope that I shall be forgiven for reminding your Lordships of some of the relevant legal provisions, as I do not think that we spent any instant of time on them. You have to go to the treaty of Lisbon in its unreadable form, which is in Command Paper 7294 — the hunks and not the rewritten version that we have all been working from, which the Government kindly produced. If you toil your way through to page 156 of the treaty as printed, you come to the final provisions. The key provision for today is Article 6:

*“This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic ... This Treaty*

*shall enter into force on 1 January 2009, provided that all the instruments of ratification have been deposited, or, failing that, on the first day of the month following the deposit of the instrument of ratification by the last signatory State to take this step”*.

Those provisions require ratification of this treaty — not some other amended or altered version — by all 27 member states. The treaty will not enter into force until the last of the 27 has deposited the instrument of ratification with Italy. That event, we know, will never happen.

Ireland has duly followed its constitutional requirements and a referendum was held. I have looked at the Constitution of Ireland. Articles 46 and 47 deal with proposals for an amendment of the constitution, which have to be,

*“submitted by Referendum to the decision of the people in accordance with the law for the time being in force”*.

That law is the next article, which simply says that a proposal for amendment of the constitution should be,

*“submitted by Referendum to the decision of the people”*.

The proposal will be held to have

been approved if a majority cast their votes in favour at such a referendum. I am shortening it, but that is the gist.

That event has not happened. The opposite has happened. The people have refused it; they have rejected it. For the sake of accuracy, I should record that there are two referendum Acts in Ireland — those of 1994 and 1996. As far as I can tell from a textbook summary, they add nothing of relevance to the present debate.

What are the facts as they are today? The best source for me was the *Irish Times*, 18th June 2008. On page 8, we are told that the Taoiseach, Mr Brian Cowen, said in the Dail yesterday:

*“In my discussions with my colleagues”* — he is talking about discussions that will take place tomorrow —

*“I will be stressing that the people have spoken and that the Government accepts the result”*.

The Labour leader, Eamon Gilmore, spoke in a similar vein. The *Irish Times* quoted him as saying that it was important that everyone accepted and respected the decision made last Thursday. The Fine Gael leader, Enda Kenny, joined in, emphasising his disappointment with the result but adding that the decision must be accepted and respected.

Meanwhile, the first page of the *Irish*

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*Times* carried the headline,  
“EU may offer concessions and opt-outs to win new treaty vote”.

We read from the reporter:

“France and Germany are quietly hoping the Government will consider holding another referendum in the spring before the next European elections on the basis of several opt-outs from core EU policies or declarations explaining how the Lisbon Treaty does not affect Irish tax or abortion laws. British diplomats are more cautious, believing a second failed referendum could provoke an EU crisis”.

One understands from that that the discussion has moved on from the text of the Lisbon treaty to some improved version that the Irish — and, we must add, the other 26 member states — will be content with. That will be a new treaty and will lead to a new Bill coming to this House and to the House of Commons for approval.

We must be prepared to face the facts — the legal facts and the facts of the world — which are that the Lisbon treaty is dead and that there is no possibility of the treaty in its existing form ever coming into operation. Ireland, by its own due process, has rejected it. All the political parties in Ireland accept that result. It is inconceivable that the text, without a change, will ever be put before the Irish people again in a referendum. It is possible that there will be something different in a few months’ time, but the [British] Government are planning to ratify a dead treaty. I say “dead”, because the treaty itself so dictates by insisting on unanimous ratification. Nothing in existing law on the Lisbon treaty says that there is some way in which you can deal with it now with less than a 27-member vote.

The other thing that we need to think about and to which the Government have given no consideration, so far as I can see, is the effect on the Bill, [approving the Lisbon Treaty] of which

we are being asked to give a Third Reading, of the Lisbon treaty never coming into effect. I will take your Lordships to that, but I can summarise in advance by saying that the absence of a Lisbon treaty strikes a lethal blow at the Bill as it is...

....Clause 4 is headed, “Increase of powers of European Parliament”. It states:

“The Treaty of Lisbon is approved for the purposes of ... the European Parliamentary Elections Act 2002”.

That is a dead duck. It does not apply at all. There will never be a Treaty of Lisbon. We go on to Clause 5, which is headed, “Amendment of founding treaties”. It tells us in subsection (1):

“A treaty which satisfies the following conditions may not be ratified unless approved by Act of Parliament”.

Then there are two conditions, of which the second is:

“Condition 2 is that the Treaty results from the application of Article 48(2) to (5) of the Treaty on European Union (as amended by the Treaty of Lisbon)”.

That condition can never be satisfied, so Clause 5 can never operate.

Clause 6, which is headed, “Parliamentary control of decisions”, gives a whole list of provisions that will need parliamentary approval. All make reference either to the Treaty of European Union, covered in paragraphs (a), (b) and (c) of subsection (1), or to the Treaty on the functioning of the European Union, covered in paragraphs (d) to (i). Those treaties are defined as the Lisbon Treaty in subsection (4). The effect of that is that no provision other than Clause 1 - and possibly the clause on commencement - will ever come into force, or bite on anything, if there is no Treaty of Lisbon. For Parliament to be asked to give a Third Reading to a Bill

that has nil effect, and submit it for Royal Assent, seems entirely wrong.

Your Lordships may say - and I see the smiles of some noble Lords facing me - that there has been a big win for the proponents of the treaty. So it is. Everybody in the House knows that every vote has been won by the Government and their allies and lost by the Conservatives. We all know that. We know that the Bill is in a position where, if we were asked to put up our hands, a majority would be in favour. I have not the slightest objection to any parliamentary procedure that could be devised for taking the opinion of Parliament on approving the terms of the Lisbon Treaty. However, we ought not to be asked to go through what is now a charade of Third Reading of a Bill that, as I have demonstrated, can never achieve its intended result.

It would be different if someone were prepared to stand up and say,

“Don’t you worry, it’ll all be put to the Irish population again and they’re going to vote it through, so there is some real substance here”.

...There should not be a ratification or a Third Reading of a Bill that is so crippled by a shot that has gone through it. On whether we should help our Irish friends, I do not know which way they are turning. They are shot to pieces. They say very nicely in a very nice accent to all the other member states,

“You carry on with ratification”.

But earlier I heard people saying, “This Parliament is sovereign. We take our own decisions here”.

It is a total irrelevance. The view expressed by the Irish on what other member states should do does not weigh with me in the slightest. We are in London in the Westminster Parliament. We make our own decisions..

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