

# **Evaluation of the Irish Referendum on *Lisbon Treaty*, June 2008**



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# I Introduction

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This report examines the process of the Irish referendum on the Treaty of Lisbon. The referendum was held on June 12, 2008 and was the only referendum on this treaty. The evaluation is based on the criteria set by the *Initiative and Referendum Institute Europe* (IRIE). These criteria are internationally recognized as standards to measure how free and fair a referendum process is conducted. This enables the reader to compare the Irish Lisbon referendum to other referendums and to identify the points that could be improved as well as those that are an example to other nations.

We at *Democracy International* and our European partners have already published a series of reports on the EU constitutional referenda of 2005: Juan Carlos Madronal of our Spanish partner *mas democracia* wrote a report on the Spanish Referendum, Arjen Nijeboer of *Referendum Platform* monitored the Dutch referendum and Arsène Richard and Ronald Pabst of *Democracy International* examined the French referendum.<sup>1</sup>

The original criteria have been slightly modified – after consultations with some of their developers<sup>2</sup> – to best suit the situation at hand. Some new criteria have been introduced to differentiate between the different levels of outside influence exercised. The most significant change has been made to the rating scheme, the number of possible ratings have been changed from three to four. The original criterion of “Fair or mostly fair”, has been split into two criteria to reflect the difference in a better way between situations which serve as a perfect example to other states, and those that are good but still could be improved.

Accordingly, the ratings are:

**Fair:** The basic preconditions for a free procedure are met.

**Fair tendencies:** Most of the basic preconditions for a fair procedure are met, those that are not met do not deter the fair and free process in a serious way. We detect no intention to favour one side over the other.

**Unfair Tendencies:** The basic preconditions for a fair procedure are not met. But we detect no intention to favour one side against the other.

**Unfair:** One side is disadvantaged by the actors in charge *or* the basic preconditions for a fair procedure are violated.

## CONTENT

<b>I INTRODUCTION .....</b>	<b>3</b>
<b>II SETTING.....</b>	<b>4</b>
<b>II.1 Background .....</b>	<b>4</b>
<b>II.2 Actors .....</b>	<b>4</b>
<b>II.3 Evaluation.....</b>	<b>7</b>
<b>III CONCLUSION .....</b>	<b>13</b>
<b>IV V. TABLE: OVERVIEW OF THE CRITERIA AND THE EVALUATION.....</b>	<b>15</b>
<b>V USEFUL LINKS .....</b>	<b>18</b>

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<sup>1</sup> The reports can be downloaded at <http://www.democracy-international.org/index.php?id=20>

<sup>2</sup> Bruno Kaufmann of the IRIE and Thomas Rupp of the ERC.

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## II Setting

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### II.1 Background

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Although the Republic of Ireland only gained full sovereignty in 1949, its process of separation from the United Kingdom began much earlier. One important step in that process was the creation of the Irish constitution, which was approved by plebiscite on July 1<sup>st</sup> 1937. During a transitional period from 1937 to 1941 the constitution could be amended by ordinary legislation. Since the expiry of that period, it has been possible to amend the Constitution only with the approval of the people at a referendum. Previous to the Lisbon referendum there have been 21 Constitutional amendments on foot of referenda; seven proposals have been rejected – not including Lisbon.

The first Europe related referendum was about Irish Accession to the European Communities in 1972. It was approved by 83.1 percent of the voters. The next EC related referendum took place in 1987 when Ireland signed the Single European Act. The *Fianna Fail* government didn't consider a referendum necessary to ratify the treaty. But after the social scientist and historian Raymond Crotty went to court against the government, the Supreme Court ruled in the *Crotty v. An Taoiseach* judgment that to sign the treaty requires a change of the Constitution and therefore there had to be a referendum.

All European treaties since the Single European Act were put to the Irish electorate in form of a referendum. The Treaty of Maastricht (1992) and the Treaty of Amsterdam (1998) both were approved by over 60 percent of the voters. But in 2001 the 24<sup>th</sup> Amendment Bill which would have allowed the ratification of the Treaty of Nice was rejected by the Irish voters. On a turnout of only 34.8 percent of the voters, 53.9 percent voted against it. The result was a huge shock to the political classes in Ireland and the European Union. Of the parties represented in the *Dail* (the Irish parliament), the government parties of *Fianna Fail* and the *Progressive Democrats* as well as the two biggest opposition parties *Fine Gael* and the *Labour Party* supported ratification; The *Green Party*, *Sinn Fein* and the *Socialist Party* were against it. Among the main issues concerning the treaty were the possible impact on Irish neutrality; the negative consequences it might have on the influence of smaller states in the union and a general discomfort with the arrogance and aloofness of European leadership.

Polls suggested that the majority of the Irish supported the treaty but that those in favour of it largely abstained from voting. After issuing a declaration that safeguarded Irish neutrality, the treaty was put to the electorate again on October 19, 2002 and this time approved by 62.9 percent of the voters. Turnout was at 49.5 percent.

Due to the ratification process being stopped after the French and Dutch No-Votes there was no Irish vote on the EU constitution. When the Treaty of Lisbon was signed by European heads of state on December 13, 2007, it was already clear that Ireland would have a referendum on that treaty.

### II.2 Actors

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*The Government:* The Government consists of members of *Fianna Fail*, the *Irish Greens* and the *Progressive Democrats*. All members of the Irish government support the treaty of Lisbon, and call for a Yes vote.

*Fianna Fail:* Centrist *Fianna Fail* is the biggest party in Ireland, considering membership as well as percentage of the votes. They strongly supported the Treaty of Lisbon, yet their campaign had a slow start. Under the previous prime minister Bertie Ahern members of the government had frequently called for an acceptance of the Lisbon Treaty, and have criticized the treaty's opponents, but there was not much of an organized campaign for Lisbon. At this stage the government campaign was run by the minister of state for Europe, Dick Roche.<sup>3</sup>

This changed with the new head of Government Brian Cowen who came to power on May 7, 2008. Cowen made the EU one of the key issues on his agenda and launched a larger campaign of his party *Fianna Fail*. The Taoiseach's (prime minister's) burdened his party's campaign first when he admitted he had not read the treaty and then by his heavy handed tactics in promoting the treaty, which were perceived as bullying by the public.<sup>4</sup>

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<sup>3</sup> <http://debates.oireachtas.ie/DDebate.aspx?F=SRJ20080429.xml&Node=H2&Page=3>,  
<http://www.erc2.org/198.0.html?&L=2>

<sup>4</sup> <http://www.finegaele.ie/news/index.cfm/type/details/nkey/35061>,  
<http://www.timesonline.co.uk/tol/news/world/europe/article4029556.ece>.

*The Green Party:* Unlike the other main parties in Ireland which presented a unified position on the treaty, the Greens were divided on the matter. On a special convention on January 19, 2008 the party's leadership tried to make support for the Lisbon Treaty the official party policy, but only 63 percent of the delegates supported that motion, narrowly missing the required two thirds majority. As a result the Greens didn't adopt any official party line on Lisbon, leaving it to the individual members to campaign for or against it. Most prominent among the supporters were the Green Ministers John Gormley and Eamon Ryan and member of the Seanad Deirdre de Burca. Most prominent opponent of the treaty was the former MEP Patricia McKenna, one of the most vocal leaders of the No-Campaign.

*The Progressive Democrats:* The free market liberals are the smallest party of the governing coalition and also the smallest party in the Dail, with only two seats in the parliament. Together with their most prominent hero from better times, former President of the European Parliament, Pat Cox, they campaigned for the Lisbon Treaty, but due to insufficient funds and a lack of high-profile leaders among the party's active politicians, they didn't manage to make much of an impression.

*The Opposition:* Most of the opposition parties supported the treaty and during the last weeks before the election, the three biggest Irish parties *Fianna Fail*, *Fine Gael* and the *Labour Party* ran a campaign for a Yes-Vote together.

*Fine Gael:* the centrist *Fine Gael* supported the Lisbon Treaty. Ireland's second biggest party is *Fianna Fail*'s main rivals in national elections. They supported the Lisbon Treaty, claiming that they are Ireland's most pro-European party. *Fine Gael* signed an uneasy truce with the government during the campaign. Starting its activity for the treaty months before *Fianna Fail*, FG's campaign was one of the most active ones in the Yes-Camp, but also one of the most controversial ones. Their youth wing published risqué posters that seemed to imply that the Lisbon Treaty would increase the size of women's breasts and men's genitals. Among the main party, conspiracy theories were brought up by spokeswoman Lucinda Creighton to discredit the No-Camp, claiming that the anti-Lisbon group *Libertas* was secretly funded by US military and intelligence circles.<sup>5</sup>

*Labour Party:* the social democratic party strongly supported the Lisbon treaty, with their spokesman on Europe TD Joe Costello and their MEP Proinsias De Rossa (vice-president of the European Socialist group PES) being most vocal in the campaign. They focussed on the Charter Of Human Rights and the benefits for workers they saw in it. They also maintained that the Reform Treaty makes the EU more democratic and efficient. There was significant opposition to the treaty within the party, especially from their youth wing, *Young Labour*.

*Sinn Fein:* The left-leaning republicans of *Sinn Fein* were the only party in parliament that opposed the Lisbon Treaty. They started their campaign already in February. Their main issues are the treaty's impact on workers' rights, Irish neutrality and the country's ability to stop policies that are not in its interests. Their spokeswoman on European affairs is the MEP Mary Lou McDonald.

*Other Parties:* Ireland has various small left wing parties not represented in the parliament. Those include the *Socialist Party* lead by former TD Joe Higgins and other parties like the *Socialist Workers' Party*, the *Workers' Party*, the *Communist Party*, and the *Irish Republican Socialist Party*. All these parties univocally called for a No-Vote and joined the *Campaign against the European Constitution* (CAEUC) .

*Other groups:* With only one of the parties in parliament opposing the Lisbon Treaty, most of the campaigning against it was done by a variety of non-governmental organizations.

#### Overview: Position regarding the Lisbon Treaty

Organisation	Position
<i>Parties</i>	
Fianna Fail	in favour
Green Party	internally divided
Progressive Democrats	in favour
Fine Gael	in favour
Labour Party	in favour
Sinn Fein	against
Kleinere Linksparteien	against
<i>Other Organisations:</i>	
CAEUC	against
Libertas	against
Coir	against
National Platform	against
Trade Unions	internally divided
Business Organisations	in favour
Farmers	Wechselhaft

<sup>5</sup> <http://archives.tcm.ie/irissexaminer/2008/05/01/story61722.asp>

*Libertas*: Founded by entrepreneur Declan Ganley in 2007, *Libertas* was the most affluent group of the No-Campaign. Unlike the other groups of the No-Side, whose most prominent spokespeople already campaigned against the Nice Treaty, *Libertas* is a new organisation. *Libertas* founder Declan Ganley said he is pro-European and also voted for every European treaty so far in previous referenda. But he considered The Lisbon Treaty “bad for business” because it endangers Ireland’s low tax policy. Because of his highly visible presence and his dynamic personality, Ganley was often considered the “leader of the no-campaign” by Irish and international press, even though his group wasn’t connected to the other groups with which it differed on an ideological basis.

*CAEUC*: The *Campaign against the European Constitution* is an umbrella group consisting of left wing parties and pacifist and civil rights NGOs. Most active spokespersons of the campaign were Joe Higgins, Roger Cole and Carol Fox of the *Peace and Neutrality Alliance* (PANA), Patricia McKenna of the *People’s Movement*, and Richard Boyd Barrett of the *People Before Profit Alliance*. The main objections of CAEUC against the treaty were: worker’s rights, privatisation, the militarisation of the EU and the threat to Irish neutrality, erosion of democracy and the weakness of the Charter of Human Rights.

*Coir*: The Catholic conservative group did a highly effective campaign including posters of a sometimes controversial nature. They claimed that the Lisbon Treaty threatened the Irish positions on abortion, gay marriage and prostitution. *Coir* shared an office with the *Youth Defence* anti abortion group of Justin Barrett, who was criticised for links to far right groups like the German NPD.<sup>6</sup> *Coir* distanced itself from YD and Barrett himself did not appear in the campaign against the treaty.

*Unions*: the first unions to come out with an opinion on Lisbon were the two large unions *UNITE* and *TEEU*, who both opposed the treaty. Yet, on May 21, 2008 the *Irish Congress of Trade Unions* (ICTU) voted to call for a Yes though. The vote was 14 to 5 in favour with 8 abstentions. Internally divided between supporters and opponents of the treaty the unions never campaigned much for the Lisbon Treaty. SIPTU, the country’s largest union decided after internal debate to stay neutral on the issue.

*Business Organizations*: The employers’ organization IBEC and most of Ireland’s regional chambers of commerce supported the Lisbon treaty. They said that the Lisbon Treaty helps to further Ireland’s growth. The Reform Treaty was not uncontested in the business community though. Some business leaders, like the president-elect of the *Irish Chambers of Commerce* Dr Chris Coughlan and aviation entrepreneur Ulick McEvaddy, were opposed to the treaty.

*The Farmers*: The IFA (Irish Farmers’ Association) voted to support the Treaty of Lisbon in early 2008. Yet they changed their stance in late April 2008 after EU Commissioner Peter Mandelson agreed to cuts in agrarian subventions during WTO talks. The group’s spokesman Pdraig Walshe said the IFA would not call for a Yes vote unless the government made it clear that they’d veto any WTO deal that cuts subventions. After a long period of hesitation, Taoiseach Brian Cowen finally made that promise on June 3, shortly before the referendum. Even though the IFA supported the Lisbon Treaty afterwards, it was too late to sway public opinion. Ironically, it has been argued, that the Lisbon Treaty would have deprived Ireland of the veto rights Cowen promised to exercise.<sup>7</sup>

*National Platform*: The leader and founder of the National Platform EU Research & Information Centre is left-wing liberal academic Anthony Coughlan. Coughlan has been very active as a civil rights activist and EU critic in past years. The Sunday Business Post described him as the “person providing the intellectual backbone for the alternative position on the European Union” since 1971. He was the driving force behind three landmark court cases that improved democracy in Ireland. These were: The Crotty judgement of 1987, in which the Supreme Court decided that new EU treaties have to be approved in a referendum; the McKenna ruling of 1995 after which the Referendum Commission was constituted and the Coughlan ruling of 2000 in which it was decided that airtime and public resources have to be split equally among both sides of the argument in a referendum.<sup>8</sup> In the 2008 campaign Coughlan didn’t stand in the spotlight as much as in previous referendum campaigns, but he still had some important appearances in the media and gave judicial advice to the No-Camp.

<sup>6</sup> <http://www.irishtimes.com/newspaper/frontpage/2002/1011/1033174049213.html>,  
<http://sport.timesonline.co.uk/tol/news/world/ireland/article4027897.ece>

<sup>7</sup> <http://www.irishtimes.com/newspaper/breaking/2008/0603/breaking19.htm>,  
<http://archives.tcm.ie/irishtimes/2008/04/29/story61525.asp>,  
<http://www.irishtimes.com/newspaper/ireland/2008/0523/1211461652349.html>.

<sup>8</sup> <http://archives.tcm.ie/businesspost/2002/08/18/story864231628.asp>



## II.3 Evaluation

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The Irish voters rejected the Lisbon treaty on a relatively high turn out of 53.13 percent of the electorate. 53.4 percent of the voters voted against the treaty, 46.6 percent for it. Only 10 out of 43 constituencies voted 'Yes'. Five of the ten constituencies voting for the treaty were part of Dublin.<sup>9</sup>

### Summary Results:<sup>10</sup>

Electorate:	3,051,278
Total Poll:	1,621,037
Percentage Poll:	53.13%
Invalid Papers:	6,171
Valid Poll:	1,614,866
Votes in favour:	752,451
Votes against:	862,415
Percentage in favour:	46.6%
Percentage again:	53.4%

### II.3.1 Legal Basis

#### Criterion 1.1 Origin of the referendum: trigger function by citizens or by state: Fair

The Irish referendum on Lisbon was a mandatory referendum required by Article 46 of the Constitution of Ireland:

“Every proposal for an amendment of this Constitution shall be initiated in Dáil Éireann as a Bill, and shall upon having been passed or deemed to have been passed by both Houses of the Oireachtas, be submitted by Referendum to the decision of the people in accordance with the law for the time being in force relating to the Referendum.”

The ruling of *Crotty v. An Taoiseach* of 1987 made it clear that major changes to existing European treaties require a change of the constitution and therefore have to be approved in a referendum. It is still disputed though if this applied to the Lisbon Treaty too and some critics have claimed the government should have tried to ratify the treaty without amending the constitution and leave it to the Supreme Court to decide if this was constitutional.

#### Criterion 1.2 Character of the decision: binding or only consultative? Fair

The referendum is binding. If an act is approved it becomes an amendment to the Irish constitution.

The only way to reverse the decision is to hold a new referendum on the same matter. There is no time limit before a new referendum can be held. The problems arising from this situation will be dealt with under Criterion 2.6 and Criterion 4.5.

#### Criterion 1.3 Special majority requirements: Fair

There are no quorums or other special requirements. An act becomes an amendment if it is approved by the majority of voters.

#### Criterion 1.4 Accuracy and seriousness of voters list: Who is and was able to vote? Fair

Every citizen of the Republic of Ireland aged 18 or older who is an ordinary resident of the state is entitled to vote in a referendum. The name must be in the Register of Electors. Every adult resident of Ireland is entitled to be included in the register but only Irish nationals may vote in a referendum or a presidential election.

<sup>9</sup> <http://www.referendum.ie/current/index.asp?ballotid=78>,  
<http://www.irishtimes.com/newspaper/ireland/2008/0614/1213369844532.html>.

<sup>10</sup> <http://www.referendum.ie/current/index.asp?ballotid=78>.

### **Criterion 1.5 Secrecy of ballot: Fair**

The voting is secret. Only persons who are not able to read the ballot or write in their vote are allowed to get assistance by an electoral officer or a person in their company.

### **Criterion 1.6 Counting procedures: Fair**

The votes are counted on the day after the referendum. All votes are counted at designated count centres in the individual constituencies. The counting is observed by persons appointed by members of the Oireachtas and by bodies approved by the Referendum Commission. According to observers, the count was fair and without complications.<sup>11</sup>

### **Criterion 1.7 Appeal against the procedure and the result: Fair**

An appeal is possible by means of a Referendum Petition to the High Court. This petition must be handed in within seven days after formal publication of the results.

### **Criterion 1.8 Voting: how, where, e-voting? Unfair Tendencies**

Generally, voters vote at their local polling station. Irish nationals outside the country are excluded from voting. The only exceptions are members of the diplomatic service and their spouses and members of the military or police who are employed abroad.

The postal vote is only available for a limited number of voters in the country. This includes full-time students registered at home who are living elsewhere in the state, and voters who are unable to vote at a polling station due to illness or disability. Persons not belonging to a group explicitly mentioned in the electoral laws as eligible for postal voting don't get the right to vote by mail.

The most serious problem considering postal voting was that this time there were only two days to register for it. This was not enough. According to Leo Varadkar of the large opposition party *Fine Gael*, 50,000 voters were disenfranchised, because they weren't able to register in time. Fine Gael supported the treaty, but criticised the government's strategy to promote it.<sup>12</sup>

### **Criterion 1.9 Fairness of the question: Fair**

The Question was simple and not misleading; there are no indications that any voters were unable to understand it.

## II.3.2 Timing

### **Criterion 2.1 Who sets the date: Unfair Tendencies**

According to law the date is set by the Minister of the environment, heritage and local government. The date has to be set between thirty and ninety days before the referendum. But long before the date was formally set, it was already pronounced by then prime minister Bertie Ahern. In early April he announced June 12 as a possible date for the vote. Even though the legal basis for setting the date is fair there are unfair tendencies in how it was handled. The process of setting the date was not transparent and misused for tactical reasons (see more below).

### **Criterion 2.2 Date chosen: same as other votes or elections? Special events before or after? Unfair Tendencies**

The referendum took place on Thursday, June 12, 2008. In Ireland it is possible to hold more than one referendum on one day, and this has already been done more than once in the past. The last time this was done was on June 7, 2001 when the first Nice referendum, a constitutional ban of the death penalty and the acceptance of the ICC (International Criminal Court) all were voted on at the same time.

While the ban on the death penalty and becoming party to the ICC both were approved by clear majorities of over 60 percent of the votes, the Treaty of Nice was rejected by 53.9 percent of the votes. Although three questions were put to the voters at the same time, turnout was remarkably low, at only 34.8 percent of the electorate.

Since then referendums have been held separately, even though that isn't required by law. There were considerations to hold the Lisbon referendum together with a planned referendum on children's rights. But this plan was cancelled because of timing issues.

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<sup>11</sup> Including Thomas Rupp of the European Referendum Campaign, who observed the counting in Dublin Central.

<sup>12</sup> <http://www.rte.ie/news/2008/0519/eul Lisbon.html>



Prime minister Bertie Ahern stepped back a month before the referendum (May 6), in a move to influence public opinion. According to a leaked e-mail published by the *Daily Mail* on April 14, 2008, the government also seemed to have considered changing the date to confuse the No campaign. The authenticity of the e-mail has neither been approved nor denied by government officials.<sup>13</sup>

**Criterion 2.3 Time between announcement and voting day: for information and public debate: Unfair**

When the Lisbon Treaty was signed in December 2007, it was already clear, that Ireland would have to put the treaty to the people to decide upon it. It was also considered very likely that this vote would be held in mid 2008. Therefore there was about half a year time for parties and interest groups to plan their campaign.

Official campaigning according to the election laws of Ireland is only possible after the date of the referendum is officially set. In this case this happened at the latest possible date, exactly thirty days before the referendum, due to tactical games around the date. This didn't leave much time for campaigning.

Ironically the plan of the government to get an advantage by keeping the time for campaigning as short as possible seems to have backfired and turned to an advantage for the No-side. Not only was the government severely criticised by media and NGOs for the confusion they created around the date; it also led to a government campaign that started later than the campaigns of many groups on the No-Side, like *Libertas*, *PANA* and the *People's Movement*.

**Criterion 2.4 Time for voting: one day or more? Weekend, weekdays? Fair Tendencies**

According to Irish law the vote must be held on one day. The only exceptions are outlying islands, where it is up to the local return officer to decide if they want to hold the vote earlier. In this case five islands off the coast of County Donegal already voted on Monday, June 10, and seven other western islands voted on Tuesday, June 11. The decision to was criticised by many of the islanders who preferred to vote together with the mainland.

The date was a weekday in this case, a Thursday, and one of the main exam days at Irish schools. The polling stations were open from 7 am to 10 pm.

**Criterion 2.5 Effect on other countries: Unfair**

There was no domino effect because Ireland was the only country to hold a referendum on the Lisbon Treaty. But the effect on the EU as a whole is huge. As all national parliaments in the EU were determined to ratify the treaty, Ireland was the only country where ratification seemed to be at risk. This put a huge amount of pressure on the Irish electorate and on Irish politicians.

It is unfair that the citizens of the other EU countries didn't get a vote on the Lisbon Treaty, which put the voters of a small country into the position of being the only ones having the right to decide on a treaty that determines the future of Europe as a whole.

This is unfair, but that's not the fault of Irish officials. The other countries failed in not allowing their electorate to decide on the EU Reform Treaty, even in countries like Austria or the United Kingdom, where many citizens felt entitled to a referendum for legitimate reasons.

**Criterion 2.6 Time period before another vote may be held on the same subject: Unfair Tendencies**

There is no designated time period between two referenda. But due to the process necessary to amend the constitution there would have to be some time between two referendums. The amendment would have to be reintroduced to the houses of parliament as a bill. And a new date for a referendum would have to be set.

This still makes it possible to hold a second referendum on the same matter as the one that was previously rejected within a few months. In case of the Treaty of Nice, there was a period of sixteen months between the two referenda. The second time it was put to vote, provisions safeguarding Ireland's military neutrality were added to the constitutional amendment. The treaty itself remained unchanged though.

At this moment (August 2008) there is enormous pressure from EU officials and governments on the Irish government to call for a second referendum on the Lisbon treaty. There is no consent about how to ensure the approval of the Irish voters this time. One suggestion is that of adding "sweeteners" to the treaty, including declarations about Ireland's continuous neutrality or the safeguarding of its veto on tax policy; or to keep a commissioner for each country in the EU. Another idea that had been suggested by various politicians and commentators outside of Ireland is to let the Irish vote about the same text, but link the vote about the Lisbon Treaty to a vote if Ireland wants to stay in the EU, with an rejection of the Lisbon Treaty resulting in Ireland's exit from the EU. A political blackmail of that kind is not only highly anti-democratic but most likely incompatible with Irish and EU law.

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<sup>13</sup> <http://www.free-europe.org/blog/?itemid=437>

### II.3.3 Financial rules

#### Criterion 3.1 Spending limits: Unfair Tendencies

There were no limits on campaign spending. This put an advantage to well-funded campaigns of affluent organizations like political parties. The three biggest parties *Fianna Fail*, *Fine Gael* and the *Labour Party* were able to invest a much larger amount into the campaign than most organizations of the No-Side. *Fianna Fail* was said to have invested at least €600,000, *Fine Gael* €500,000, and *Labour* €200,000. The total spending of the Yes Camp was estimated at least €2.3m. The group that spend the most on the campaign though was – according to newspaper reports – the anti-Lisbon think tank *Libertas*, which is reported to have raised €1.3 mil for their campaign.<sup>14</sup>

#### Criterion 3.2 Disclosure: Unfair Tendencies

The disclosure of campaign financing is mandatory. It is problematic though that these rules can be circumvented legally and easily. This lack of transparency only became an issue after the group *Libertas* was able to spend more than any of the political parties involved in the campaign, without having to fully disclose it's funding. *The Sunday Business Post* concludes that:

“It is hard not to conclude that political finance laws were designed to provide enough disclosure to satisfy the public and enough leeway to enable the private funding of politics to continue as before. Our laws on political funding were inadequate long before *Libertas* arrived.”<sup>15</sup>

#### Criterion 3.3 Affirmative Action to help under-funded campaigns: Unfair Tendencies

There is no public funding for groups in a referendum campaign. This is a severe disadvantage for less affluent groups. Airtime on public stations has to split evenly between both sides of the argument though, which helps groups with low funds which wouldn't be able to buy a great amount of airtime. In practice this rule was followed, *RTE* took great care to give both camps the equal amount of airtime, but it was often perceived by observers that members of the No-Camp were treated less respectful by the hosts than the representatives of the No-Side.<sup>16</sup>

The host of the show *Nightly News* on the most important private TV station *TV3* is Vincent Browne, the most prominent critic of the treaty among Ireland's journalists.

#### Criterion 3.4 Transparency in use of taxpayers' money: Fair Tendencies

The budget of the Referendum Commission is public, and government spending on the campaign gets monitored by the press. The use of taxpayers' money for the Yes campaign by the government is unfair though, as the No side didn't have access to public funds.

#### Criterion 3.5 Donations: Fair Tendencies

The rules for donations in Ireland seem strict and stringent at first glance. Out of state donations are not allowed, the maximum sum any individual is allowed to donate to a party or campaigning group is at €6,348.69. All donations exceeding €126.97 have to be declared. This is controlled by the *Standards in Public Office Commission*. These rules apply to all registered groups involved in a referendum campaign, not just political parties.

Considering the large amount of undeclared donations that some groups, mainly the big political parties and *Libertas* have received, it becomes obvious that this system isn't perfect and still leaves considerable leeway to be circumvented.

<sup>14</sup> <http://www.voteno.ie/html/press.htm#spending>;  
<http://www.irishtimes.com/newspaper/ireland/2008/0527/1211830431907.html>;  
<http://www.irishtimes.com/newspaper/ireland/2008/0526/1211740436266.html>

<sup>15</sup> <http://archives.tcm.ie/businesspost/2008/06/29/story34044.asp>

<sup>16</sup> This observation was made by Thomas Rupp (Democracy International) and Claudia Haydt (Informationstelle Militarisierung) independently of each other.

### II.3.4 Campaign Rules

#### **Criterion 4.1 Managed by referendum commission or other: Unfair Tendencies**

Since 1998 a Referendum Commission is appointed for each referendum. This became necessary after the McKenna judgement of 1995. Patricia McKenna, at that time MEP for the Irish *Green Party*, went to the Supreme Court against the practice of the government to spend taxpayers' money only to support one side of the argument in referendum campaigns.

Her victory in this case led to the passing of the Referendum Act of 1998. This act described the tasks of the Referendum Commission as to put out the arguments for and against referendum proposals, and to foster and promote debate about the matters decided in the referendum. In 2001, after the rejection of the Treaty of Nice in the first referendum, the tasks of the Referendum Commission were reduced. Since the Electoral Act of 2001 it is only responsible for explaining the subject matter of the referendum and encouraging the citizens to vote.

The role of the Referendum Commission in the Lisbon referendum was frequently criticised. Various spokespeople of the No-Side, including Joe Higgins of the *Socialist Party* and Naoise Nunn of *Libertas* questioned the commission's independence. One of the issues was the fact that the Commission was advised by external consultants who had links to the Yes-Side, including a former chief press officer of *Fianna Fail*, Olivia Buckley, leading the commission's press staff.<sup>17</sup>

#### **Criterion 4.2 International Interference: Unfair**

Due to the singular character of the Irish referendum, international interference was strong. It took place in form of interference by foreign governments – mainly on the Yes-side, and by foreign non-governmental organisations – often on the No-Side.

##### Foreign governments

There was strong pressure put on the Irish voters especially by members of the French government, amounting even to threatening the Irish with serious consequences if they reject the Lisbon Treaty. One incident that caused great dismay in Ireland was an interview with French foreign minister Bernhard Kouchner in which he said that in case of a 'No' the Irish would be the first to suffer the consequences, he further said "[i]t would be very, very awkward if we were not able to count on the Irish, who have often counted on Europe."<sup>18</sup>

See more on EU government interference under Criterion 4.5

##### Non Governmental Organisations

On the days immediately before the Lisbon referendum the streets of Dublin were filled with foreign activists, including members of groups like *ATTAC* that campaigned for a No as well as members of pro-Lisbon groups like the *European Federalists*. Further examples of interference by NGOs were campaigns like the campaign "Irish Friends Vote No For Me" supported by various European NGOs including *ATTAC* Germany, Austria and France. Another Austrian group "Rettet Österreich" – supported by the popular tabloid *Kronenzeitung* – encouraged Austrians to send letters to Irish voters, politely asking them to vote No in the referendum.

Many groups in EU countries outside Ireland considered the Irish referendum a 'proxy vote' for the countries that were denied referendum on Lisbon.

#### **4.3 Role of media: focused on polls or debate: Fair Tendencies**

Two of Ireland's most important newspapers, the *Irish Times* and the *Sunday Business Post* ran frequent polls, with often widely differing results. On an overall scale the media was not primarily focussed on polls but left enough room for debate.

The public TV station *RTE* broadcasted debates with members from different organizations from both sides of the argument. They were obliged by the *Coughlan Ruling* of 2001 to give each side the same amount of airtime. The *Irish Times* (IT), Ireland's biggest newspaper had the most extensive coverage of the pre-referendum debate. Even though it was on the Yes-Side, the IT gave ample room to the opponents of the treaty to present their views, including articles by Anthony Coughlan; Roger Cole and Patricia McKenna. But the paper also published various articles on *Libertas* trying to investigate the sources of their funds and generally was more critical of *Libertas* and its founder Declan Ganley than other major papers. The *Irish Times'* massive criticism of *Libertas*, especially in the days just before the referendum, can be considered as an attempt to discredit the No-camp.

<sup>17</sup> <http://www.libertas.org/content/view/299/127/>

<sup>18</sup> <http://www.spiegel.de/international/europe/0,1518,559639,00.html>

The other major papers, especially the SBP and the *Irish Examiner* were also leaning towards the Yes-Side, but they had members of their staff who were critical of the Lisbon Treaty. For the *Irish Examiner* this was Kevin Myers who criticised the Treaty because he feared it would result in more immigration and loss of national sovereignty, for the *Sunday Business Post* it was Vincent Browne, one of the country's best known journalists who was an outspoken critic of the treaty because it would give more powers to the elites and reduce the rights of workers.

Even though they gave critics of the treaty a chance to voice their opinions, the general tone of the Irish media, was clearly pro-treaty, which sometimes lead to unfair measures. One example of this was the frequent linking of the No-Campaign to the French nationalist Le Pen. In January 2008, Le Pen had been invited to Ireland by the Law Society of University College Dublin to take part in a debate about the Lisbon Treaty. Although the visit was cancelled, the French right-wing extremist was still frequently mentioned in newspapers in connection to the Irish anti-Lisbon campaign – clearly an attempt to discredit the No-camp.

Even though the traditional Irish newspapers favoured the Yes-side, British owned newspapers in Ireland balanced the situation by vocally advocating a No-Vote, especially the *Irish Sun* and the *Irish Daily Mail*.

#### **Criterion 4.4 Role of the Government: Unfair Tendencies**

All members of the *Fianna Fail*, *PD*, and *Green* government were for ratification of the Lisbon treaty. A pro-treaty website of the foreign ministry was funded by taxpayers' money. The government didn't run any unified campaign on Lisbon. *Fianna Fail* and the *Progressive Democrats* ran their own campaigns; the *Green Party* did not campaign as a party.

The attempts by *Fianna Fail* government officials like Bertie Ahern, Brian Cowen, and Dick Roche to discredit the No-Camp and not take their arguments serious, hindered a fair debate about the matter of the referendum. The government is not required to be neutral and thus it was within their rights to advocate for the treaty. But the way this was done and the contempt shown for the other side of the argument raise serious questions.

#### **Criterion 4.5 Role of EU: Unfair**

The EU had a legitimate interest in the outcome of this referendum and it is understandable that they offered support to the Yes-side. This happened in form of visits by leading EU-officials in the weeks ahead of the referendum: EU Commission President Jose Manuel Barroso, EU Parliament President Hans-Gert Pöttering, and EU Commission Vice-President Margot Wallström. These visits were a priceless gift to the Yes-campaign, paid for by the taxpayers of the European Union. The EU also supported the Yes-campaign by distributing information about the treaty and holding events that promoted the Lisbon Treaty.

More concerning than these unbalancing, but basically legitimate forms of interference was the pressure put on Ireland by EU officials before and after the vote. This included a threat by Barroso that Ireland will have to 'pay a price' if it voted 'the wrong way' just before the vote and escalated further after the referendum.

Intending to put pressure upon Ireland, the EU pressed for the ratification in the other European countries to go on. Ireland was advised to either approve the treaty in a second referendum or leave the EU. There were various calls for isolation of the country. The conduct of the EU in this matter was highly unfair and raises serious concerns about the respect for democracy of leading EU politicians.

#### **Criterion 4.6 Role of Political Parties: Fair Tendencies**

Of the six parties represented in the Irish parliament only one, *Sinn Fein* was against the treaty. Another party, the *Greens*, did not campaign for or against the party due to internal divide. The four other parties and their politicians were the leading forces of the Yes-Campaign. The Yes Campaign started late and failed to reach the voters, only 9 percent of voters said they have been contacted in person by members of the Yes Camp, in contrast to general elections where 76 percent of Irish voters said they have been contacted in person by a campaigning politician or a party worker.<sup>19</sup>

When it came to internal debate, each party handled the issue differently. The *Greens* refrained from officially campaigning even though the majority of the party officials were in favour of a Yes-Vote, but they failed to achieve the necessary two thirds majority. *Labour Party* also allowed dissenters within the party ranks to state their point of view, but did not divert from the party's pro-Lisbon stance. The ruling party, *Fianna Fail*, suppressed debate within their own ranks. Taoiseach Brian Cowen threatened all *Fianna Fail* members that didn't support the treaty with expulsion.

<sup>19</sup> <http://archives.tcm.ie/businesspost/2008/06/29/story34065.asp>.

There also was a tendency among leading politicians to portray the No-side as extremist and insane people, “headbangers” (*Fine Gael* leader Enda Kenny) and “loo-lahs” (Bertie Ahern).<sup>20</sup> According to unproven claims by members of *Fine Gael*, the anti-Lisbon campaigners of *Libertas* were funded by circles within the US secret services and military which were against political integration in Europe and feared a strong EU as a potential rival to NATO.<sup>21</sup>

#### Criterion 4.7 Role of Civil Society: Fair Tendencies

The debate ran through all levels and groups of society. Despite attempts by politicians and parts of the media to discredit the no side as radicals, there was support for both sides of the argument in all parts of civil society.

The Lisbon Treaty was a matter of controversy within the trade unions of Ireland, with two of them speaking out early against the Lisbon Treaty (*Unite* and *TEEU*) and others not being able to find a unified position on the treaty. The matter remained controversial even after the majority of the unions organized in ICTU voted to support the treaty.

The debate was not one between “pro-Europeans” and “anti-Europeans”. The vast majority of the Irish support their country’s membership of the EU; this includes those who voted against the treaty. According to a poll, 98 percent of the Yes voters and 80 percent of the No voters support EU membership.

The general public was largely undecided for a long time; a high percentage of citizens interviewed for surveys said they did not understand the treaty. According to polls done before and after the vote this also was the most important reason for rejection of the treaty.<sup>22</sup>

On the internet, discussion about the treaty was very active, especially on the forum politics.ie and blogs like <http://www.irishelection.com/> and <http://www.politicsinireland.com/>. Both sides of the argument had their say on the net and in some cases the contributions on blogs even were picked up – unaccredited - by the Irish press. This indirect influence of the bloggers might have been bigger than their direct influence. Ireland is a country with relatively low internet density compared to other Western European countries. According to a recent survey, only 49.6 percent of the Irish use the internet.<sup>23</sup>

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### III Conclusion

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Of all the 27 countries of the European Union, Ireland was the only one to grant its citizens the right to decide upon the acceptance or rejection of the Lisbon Treaty. This gave the Irish voters a very special role which could be seen as a boon or a bane. On the one hand it gave the Irish the opportunity to vote on the future of the whole EU, on the other hand it put a lot of pressure and responsibility on this small island nation; a pressure that often seriously marred the fairness of the referendum.

The referendum fostered the debate on the Lisbon Treaty, stirring up public interest in a way unparalleled in the rest of the EU – except for maybe the UK and Austria, where citizens were denied a referendum they felt entitled to. During the five weeks between the resignation of former Taoiseach Ahern on May 6 and the referendum on June 12, the major Irish newspapers were full of articles about the referendum and the campaigns of the proponents and opponents of the treaty, giving both sides ample space to advocate their positions.<sup>24</sup> On the internet the debate was carried on by numerous blogs and forums, as well as by the official websites of the campaigning parties and organizations. In the streets of Ireland posters urging for a Yes or a No vote were omnipresent; street campaigns for the referendum saw the heads of major parties and NGOs tour the country on a daily basis.

But while the huge attention given to the referendum was generally something very positive, it also had its drawbacks. Two of the most important ones among them are the often unfair and misleading arguments used to influence the voters and the huge pressure put upon the Irish by not only their government but also from outside the state. Officials of the European Union visited Ireland to canvass the Yes-Vote, a priceless boost for the proponents of the treaty at the expense of EU taxpayers. After he came to power on the May 6, the new Taoiseach Brian Cowen intensified the previously low energy government campaign, using bullying tactics to

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<sup>20</sup> <http://archives.tcm.ie/businesspost/2008/03/09/story31094.asp>,

<http://www.independent.ie/national-news/charming-chancellor-steers-clear-of-headbangers-1348153.html>

<sup>21</sup> <http://archives.tcm.ie/irishexaminer/2008/05/01/story61722.asp>

<sup>22</sup> [http://ec.europa.eu/public\\_opinion/flash/fl\\_245\\_en.pdf](http://ec.europa.eu/public_opinion/flash/fl_245_en.pdf)

<sup>23</sup> <http://www.internetworldstats.com/eu/ie.htm>.

<sup>24</sup> The *Irish Times* regularly devoted two of its pages plus opinion and letters to the Lisbon Treaty and the debate about it.



press for a Yes vote, including threatening those inside his party that dissent from the Pro-Lisbon party line would result in expulsion.

Another rather unsavoury tactic employed by the Yes-Campaign was to portray the No-Side as hooligans, lunatics and extremists. These arguments were not only used by politicians but also by the media. Although the media strived to appear fair and impartial, and frequently gave the No-Side the opportunity to present their views, too, a general bias towards the Yes-Side was all too obvious. This bias of the traditional media towards the Yes-Camp weighs even more, as the internet, which offered all groups the opportunity to present themselves in their own words, is not widely available to the Irish population. Contrary to the claims of the Yes-Camp, the opponents of the Lisbon treaty are not only found on the fringes of society. The divide between the two camps ran right through the centre. Most unions and business organisations adopted their position not without ferocious internal debate, many not being able to adopt an official position of Yes or No. Neither side was able to gain the required majority.

The refusal of the European Union to accept the result of the referendum and the continuing pressure put on the Irish voters and the Irish government by representatives of the Union and its member countries overshadow the democratic process of the vote. This conduct undermines the democratic legitimacy of the European Union, and makes it even harder for the European project to win the confidence of its 497 million citizens.

Referendums on European Union matters can only be truly free and fair if the citizens of all states of the Union get their chance to vote in simultaneous referenda held in all member states. The Irish example shows that a referendum can foster political debate and increase political awareness. In an EU that claims that it is committed to democracy, the ruling elites should not be afraid to let the people decide.



## IVV. Table: Overview of the Criteria and the Evaluation

**Key:** F= Fair, FT= Fair Tendency, UT = Unfair Tendency, U = Unfair

<b>1. Legal Basis</b>		
<i>1.1 Origin of the referendum: trigger function by citizens or by state</i>	F	Required by constitution. Each change of the constitution by the parliament has to be approved by the people in a referendum.
<i>1.2 Character of the decision: binding or only consultative?</i>	F	The referendum is binding, the result becomes law.
<i>1.3 Special majority requirements</i>	F	Fair: Approval or veto by majority.
<i>1.4 Accuracy and seriousness of voters list: Who is and was able to vote?</i>	F	Fair: Every citizen of Ireland over 18 who is ordinarily resident in the State. Name must be in register of electors. If missing from register it's possible to apply for inclusion until 15 days before closing day.
<i>1.5 Secrecy of ballot</i>	F	Voting is secret, only disabled or illiterate people may get assistance from person of their choice.
<i>1.6 Counting procedures</i>	F	Counting procedure under surveillance by persons appointed by parliament and by bodies approved by Referendum Commission.
<i>1.7 Appeal against the procedure and the result</i>	F	Appeal possible by referendum petition to High Court.
<i>1.8 Voting: how, where, e-voting?</i>	UT	Generally voters vote at their local polling station. No e-voting, Irish nationals living outside the country are excluded from vote unless they are members of police, military or civil servants employed abroad. Postal voting available for voter registered inside Ireland who are prevented from voting at their local polling station (ill and disabled people, students etc.). Not fair: This time there were only two days to register for postal voting. According to opposition party Fine Gael: 50.000 voters disenfranchised, because they weren't able to register in time.
<i>1.9 Fairness of the question</i>	F	Fair: Question simple, not misleading.
<b>2. Timing</b>		
<i>2.1 Who sets the date</i>	UT	Not fair: Process of setting the date not transparent. According to law it's the Minister of Environment, Heritage & Local Government who sets the date (in fact it was unofficially set in early April by then prime minister Bertie Ahern).
<i>2.2 Date chosen: same as other votes or elections? Special events before or after?</i>	UT	Fair: No other elections on same day. Separate referendums may be held on same day, but not in this case. Not fair: Prime minister Bertie Ahern stepped back a month before the referendum (May 6), in a move to influence public opinion. Government seemed to have considered to change date to confuse the no campaign (not done after an e-mail from the foreign minister to a British official was leaked).

2.3 <i>Time between announcement and voting day: for information and public debate</i>	U	Fair: After the Lisbon Treaty was agreed upon in October 2007 it was clear that there would have to be a referendum in Ireland. Enough time for debate between draft of bill and referendum. Not fair: the date was unofficially announced in early May but unofficially set only a month before the referendum. This left only a month time for official campaigning. Tactical games around date.
2.4 <i>Time for voting: one day or more? Weekend, weekdays?</i>	FT	Must be on one day, may be weekend or weekday. On a weekday in this case.
2.5 <i>Effect on other countries</i>	U	No domino effect because no other country holds referendum on Lisbon treaty. But huge effect for EU as whole. No Campaign often considered Lisbon referendum to be the last national referendum on EU treaties. May have great historic importance. Unfair because other countries don't get a vote (not the Irish's fault).
2.6 <i>Time period before another vote may be held on the same subject</i>	UT	No official time limit but process takes time. (Introduction and ratification of bill).
<b>3. Financial rules</b>		
3.1 <i>Spending limits</i>	UT	No spending limits = advantage for government and for rich groups.
3.2 <i>Disclosure</i>	UT	Fair: Mandatory, Not Fair: Financing often unclear. E.g.: Libertas started expensive campaign in 2007 but claims they had no expenses during that year.
3.3 <i>Affirmative Action to help under-funded campaigns</i>	UT	Not fair: No monetary support for under-funded campaigns. Fair: Public resources have to split evenly between both sides.
3.4 <i>Transparency in use of taxpayers' money</i>	FT	Fair: Budget of Referendum Commission public. Government spending on campaign: documented by press. Not fair: Government uses taxpayers' money for yes campaign.
3.5 <i>Donations</i>	FT	Fair: Out of state donations not allowed. Donation limit: €6,348.69. All donations above €126.97 must be made public (Controlled by Standards in Public Office Commission). Rules apply to every group campaigning not just political parties. Limits for donations to campaigns, have to be made public. It is illegal in Ireland to receive donations from outside the State for campaigning purposes in referendums, once the referendum date has been fixed. Not fair: It seems possible for both sides to get around some of these rules.
<b>4. Campaign Rules</b>		

<p>4.1 <i>Managed by referendum commission or other</i></p>	<p>UT</p>	<p>Referendum Commission since 1998 (McKenna judgement of 1995, lead to Referendum act of 1998). New Referendum Commission for each referendum. Not Fair: Duty used to include to presents arguments of both sides but reduced role since 2001 (after the first Nice Referendum in which Ireland voted NO). Role now: inform public, and encourage voting. Neutrality disputed.</p>
<p>4.2 <i>International Interference</i></p>	<p>U</p>	<p>Not fair: Strong international interference. Visit by German chancellor Merkel and other high ranking politicians, international pressure on Ireland to ratify treaty. But also strong interference for No-side: British Media, Austrian NGOs etc.. Other EU-countries see Irish referendum as a proxy vote (especially Austria and UK).</p>
<p>4.3 <i>Role of media: focused on polls or debate</i></p>	<p>FT</p>	<p>Frequent polls, but room for debate in media. Most media in favour of Lisbon treaty, but tried to appear unbiased, both sides get extensive features in media. Airtime has to be equally divided between both camps. Not fair: Media linked No-Campaigners to Le Pen against (bias, fabrication), sometimes tried to portray opposition to treaty as extremists (critics of that few get a voice too though).</p>
<p>4.4 <i>Role of the Government</i></p>	<p>UT</p>	<p>All members for yes. Foreign ministry ran pro-treaty website. Larger campaign launched after Brian Cowen became Taoiseach on May 6.</p>
<p>4.5 <i>Role of EU</i></p>	<p>U</p>	<p>Not Fair: Commission helped pro-campaign with “information”, not clear how much EU-money is used to support the Yes-campaign. The EU stalled decisions that could be unpopular with the Irish. Visits by high ranking EU officials Barroso, Pöttering, Wallström). EU issued threats against Ireland should they reject the treaty.</p>
<p>4.6 <i>Role of Political Parties</i></p>	<p>FT</p>	<p>Most parliamentary parties for treaty, only Sinn Fein against it. Smaller leftist parties are all against treaty. Fair: Green Party and Labour Party allowed dissenters in their own ranks. Not Fair: Internal debate in Fianna Fail suppressed, dissenters threatened with expulsion.</p>
<p>4.7 <i>Role of Civil Society</i></p>	<p>FT</p>	<p>Debate ran through all groups of society. For example: Some unions for, some against, some undecided. General public confused, unsure, high percentage undecided. Treaty hard to understand for most. Internet: Active bloggers (considerable influence on media), but only low internet density (50%). Not Fair: Often connected with other issues: hospitals, WTO negotiations.</p>

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## V Useful Links

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### Institutions

Referendum Commission: <http://www.refcom.ie>

Government: [www.irlgov.ie](http://www.irlgov.ie)

Oireachtas (parliament): <http://www.oireachtas.ie>

Standards in Public Office Commission: <http://www.sipo.gov.ie/en>

### Legal matters

The Irish Constitution: <http://www.taoiseach.gov.ie/index.asp?docID=243>

Irish Laws: <http://www.irishstatutebook.ie/>

The Lisbon Treaty: [http://europa.eu/lisbon\\_treaty/index\\_en.htm](http://europa.eu/lisbon_treaty/index_en.htm)

### Organisations

Fianna Fail: <http://www.fiannafail.ie/>

Fine Gael: <http://www.finegael.ie/>

Green Party: <http://www.greenparty.ie/>

Labour Party: <http://www.labour.ie/>

Progressive Democrats: <http://www.progressivedemocrats.ie/>

Sinn Fein: <http://sinnfein.ie/>

Socialist Party: <http://www.socialistparty.net>

CAEUC: <http://www.caeuc.org/>

Coir: <http://www.lisbonvote.com/>

European Referendum Campaign: [erc2.org](http://erc2.org)

IBEC: <http://www.ibec.ie>

ICTU: <http://www.ictu.ie/>

IFA: <http://www.ifa.ie/>

Libertas: <http://www.libertas.org/>

National Platform: <http://www.nationalplatform.org/wordpress/>

People Before Profit: <http://www.people-before-profit.org/>

People's Movement: <http://www.people.ie>

### Media

RTE <http://www.rte.ie/>

TV3: <http://www.tv3.ie>

Irish Times: <http://www.irishtimes.com/>

Sunday Business Post: <http://www.sbpost.ie>

Irish Independent: <http://www.independent.ie/>

Irish Examiner <http://irishexaminer.ie>