

Address by John Bruton on the negative referendum (30 October 2008)

Caption: John Bruton, European Union Ambassador to the United States and former Irish Prime Minister, gives an address to the parliamentary Sub-Committee on the future of Ireland in the European Union in which he shares his reaction to the negative result of the referendum held in June 2008.

Source: House of the Oireachtas – Speech by Ambassador John Bruton to the Oireachtas Sub-Committee on Ireland's Future in the European Union. [ON-LINE]. [Dublin]: Office of the Houses of the Oireachtas, [01.10.2013]. 30 October 2008 at 3.00 pm, 17 p. <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/press/document267.doc>.

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URL: http://www.cvce.eu/obj/address_by_john_bruton_on_the_negative_referendum_30_october_2008-en-7237340e-1a34-4841-817d-0ff062f33d9c.html

Publication date: 19/12/2013

Speech by Ambassador John Bruton
to the Oireachtas Sub-Committee on Ireland's Future in the European Union
on 30 October 2008 at 3.00 pm

Let me start off by trying to deal with the effect Ireland's rejection of the Lisbon Treaty has had in the country in which I now represent the European Union – the United States of America.

Americans I met were just baffled by the decision. They could not understand it. They had been led to believe that Ireland's was the EU's biggest success story - a poor country transformed into a rich one by a combination of EU membership, American investment, and good long-term educational and fiscal thinking by successive Irish governments.

Now the success story was saying "No", not for the first but for the second time, to an EU Treaty. "What's up here? Is there something we do not know?". These were the sort of reactions of Americans, many of whom remember well the posters in Dublin airport, seeking investment in Ireland, highlighting the fact that we were "The Young Europeans".

Now, of course, if I got to explaining the realities to individual Americans, they listened. I explained that the Treaty was "not very readable", that Irish people were really very pro-European, that the EU continued to work well under existing Treaties and that, legally, a country was entirely within its rights in rejecting an EU Treaty – that is the way

the EU works. But I do not have to tell politicians like the ones in this room – when you are explaining, you are losing.

Will this affect investment in Ireland? That is an impossible question to answer.

Companies have a big array of choices for investment locations. They do a sort of risk matrix on all the possible locations. Increasingly, for sophisticated multinationals, one of the issues they consider are global regulatory risks – regulatory risks to patents, copyrights and trademarks, regulatory risks on safety procedures, on accounting, on corporate governance and the like.

They will ask themselves - is there a risk that new regulations might be made that could advantage or disadvantage their businesses, and are we proposing to invest in a country whose government has the influence necessary to help us manage those risks?

That is why the perception that Ireland was at the heart of EU policy-making was so helpful to investment in Ireland in the past. Not only was Ireland in the EU with guaranteed access to a huge market, but the Irish government was also very influential in the European Union and it had the clout, and the smarts, to know how to sort out any regulatory difficulties a company investing in Ireland might face. As I will explain, I believe that the perception that Ireland can proactively problem solve at EU level has now been diminished dramatically by the decision to throw out the Lisbon Treaty.

Of course, Ireland can sit on its existing legal rights as an EU member. They are not at risk. It still has its low corporate tax rate. It can keep that. But what about issues not covered by our existing rights?

Proactive problem-solving by Ireland through alliance building at EU level will become much more difficult in future.

Why? Put simply, if you are Europe's problem, it is hard to be Europe's leader.

Mr. Chairman, your terms of reference ask you to consider Ireland's future in the EU, including in relation to economic and financial matters, social policy, defence and foreign policy, in light of the Lisbon Referendum result. I think you should also look at the European Union's future, and the future of all its 26 other Member States, in light of the result.

This would make sense for two reasons – firstly, because – Lisbon or no Lisbon - Ireland's fate is inextricably linked to the fate of those 26 other Member States and secondly, because Ireland did undertake obligations towards all the other EU States when it freely chose to join the European Union.

Influence in the European Union is important to Ireland for lots of reasons that go far beyond net transfers of EU funds to Ireland, and access for Irish goods and services to European markets.

Ireland's influence in the EU is inextricably linked to Ireland's continuing to contribute to the success of the EU. If Ireland is seen to be contributing to the EU's success, then Ireland's influence in the EU will increase. But if Ireland is visibly impeding the EU's progress, then Ireland's influence in the EU will reduce. It is a simple matter of human psychology.

Therefore, to be realistic about what Ireland might have lost by rejecting the Lisbon Treaty, one has to ask what the other Member States might have gained if the Lisbon Treaty came into effect.

In preparing my testimony, I have talked to as many people as I could from other EU Member States and have looked at the Treaty itself carefully to see what they have lost, by the blockage of the Treaty.

The European Union does much of its business through what is known as the "Community method" – where proposals are prepared by the Commission whose job is to look to the interests of all Member States, small as well as large, and come up with a single proposal that is fair to all of them.

Often bigger states are tempted to bypass the Community method, to cook up deals between themselves, “inter-governmentally” so to speak, and then instruct the Commission to prepare proposals on that basis. If that trend were to take hold, smaller Member States, like Ireland, would lose, and a few bigger states (I do not have to name them for you) would gain.

The Lisbon Treaty would have greatly strengthened the “Community method” by adding to its area of operation.

In the absence of the Lisbon Treaty, and in particular if leaders conclude that future EU Treaty amendments are too risky because of Ireland’s referendum requirement, the likelihood of future European business being done by intergovernmental deals between bigger states will become much greater. In structural terms, that will reduce Ireland’s influence in Europe, and the influence of all small and medium-sized states.

I believe that the biggest loss for the European Union that may arise from Ireland’s failure to ratify the Lisbon Treaty is in the loss of its provisions to fight cross-border crime and terrorism. Ironically, Ireland has now blocked these provisions for everybody else, even though we have opted out of them ourselves.

At the moment, decisions in this area have to be taken by unanimity among 27 countries. Measures, that are delayed by this unanimity rule, include the EU-US Extradition and

Mutual Legal Assistance Agreements, which were concluded in 2003 and are still not ratified by all 27 Member States. They also include the European Evidence Warrant for obtaining objects, documents and data for use in criminal proceedings. Also delayed is a draft Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

Why does this matter?

In modern Europe, virtually every crime has a cross-border or international dimension. The crime may be fuelled by a need to pay for illegal drugs that have been imported from another country. It may involve the use of a weapon or explosives imported from another country. The proceeds of the crime may be lodged in secret bank accounts in another country, or the crime itself may involve stealing from other countries.

Likewise, terrorism usually has a cross-border dimension. That's the way the world is. Borders do not matter much to criminals or their bankers anymore. But they do hold up police and prosecutors.

The Lisbon Treaty would have equipped the police, the prosecuting authorities and the legislators with a European framework that would have been sophisticated enough to battle on equal terms with increasingly sophisticated criminal and terrorist networks.

All this added up to a strong and popular case, and even a populist case, for the adoption of the Lisbon Treaty. I think most Irish people would have seen that point about crime. They would have seen it as a big argument for the Lisbon Treaty.

But that case was not made in Ireland because, for reasons I do not accept, both Ireland and Britain reserved to themselves rights to opt out of the obligations of this part of the Treaty. You can hardly make a strong case for something that you are opting out of.

Let me turn now to social issues.

Article 17 of the Lisbon Treaty says that the “Union respects and does not prejudice the status under national law of churches and religious associations or communities”. That article would have been helpful in preserving denominational education, and religious liberty throughout Europe.

The Charter of Fundamental Rights also places an important limitation on the European Court of Justice in interpreting EU law. It asserts that “human dignity is inviolable”, that “everyone has a right to life”, it prohibits “eugenic practices” and the “reproductive cloning of human beings”. It also clarifies that the right to marry shall be guaranteed “in accordance with the national laws governing the exercise of these rights”. I repeat “in accordance with the national laws”. That is all there in black and white.

Rather than take a defensive posture about the interpretation of the Charter, I believe that those who want to protect the right to life should use the Charter and Ireland’s membership in the European Union and the Council of Europe to promote pro-life values throughout the whole European Union. A life is as much worth protecting in Britain or in France, as in Ireland itself.

Another very important loss as a result of the possible eventual non-ratification of the Lisbon Treaty would be that the European Union will not get greater legal capacity to act in the area of energy policy (Article 194).

Irish voters today are deeply concerned about high and volatile oil prices and the impact that these prices are having on the prices of other necessities, including food. The Lisbon Treaty would have equipped the European Union with a better legal base, to enable it to move forward more aggressively in promoting energy supply security in Europe and solidarity between European countries. No EU Member State should be the subject of

blackmail because it is unduly dependent on a particular non-EU energy source, or indeed is an island with few energy resources of its own.

The Lisbon Treaty would also have equipped the EU with greater powers (Article 168.5) to deal with cross-border health threats.

We are all aware of the risk that a drug resistant strain of influenza could spread from animals to humans. Millions of people's lives would then be at risk. In a Europe, in which people routinely pass from one country to another, individual Member States will not be able on their own to cope with a global health threat such as this. Some of the actions that will have to be taken to prevent the spread of serious new strains of influenza and other dangerous diseases from one country to another may have to be quite severe. If such measures are to be taken at the EU level, and are to work, it is important that there be a sound legal basis for them. Likewise we need authority to pool resources in developing storing and sharing 'flu vaccines. The Lisbon Treaty would have given the EU a legal basis to do these things.

A further reason for disappointment in other European Member States at the non-ratification of Lisbon by Ireland, is that they were hoping to gain from Article 222 of the Lisbon Treaty – the solidarity clause – which binds all members to help any Member

State which has been the victim of a manmade or natural disaster. Perhaps Ireland feels it might never need this, but Ireland's decision prevents it coming into force for other Member States.

Another factor that people in other parts of Europe will be reflecting on is the impact of the rejection of the Lisbon Treaty on the stability of the euro.

In the recent weeks, being in the euro has been very advantageous indeed to Ireland.

I remember in 1993, before we joined the euro, how external events led to a sudden run against the punt, driving interest rates sky high. That event was very severe. Whatever its current difficulties, Ireland (unlike Iceland) has been spared that experience in recent weeks, for one good reason – because we are in the euro.

But the euro can only prosper as a currency if it is based on a consistent economic and fiscal policy within its boundaries, that is backed up by an authoritative Commission that can keep Member States pursuing mutually consistent policies. If the defeat of Lisbon leads to a turning away from internal discipline within the Euro-group, and towards

nationalistic economic policy-making by Member States, the euro itself will be undermined.

The Lisbon Treaty would have involved another step forward in the democratization of the European Union – something that other Member States were looking forward to.

Even as it stands, the European Union is a unique historical achievement, it is the only multi-state democracy in the world. The European Parliament is the world's only directly-elected multi-national parliament. It makes legislation that is binding in all the countries whose directly elected representatives sit in the Parliament. In other international organizations, the decision-making is exclusively inter-governmental or diplomatic, rather than democratic.

The Lisbon Treaty would have brought this democratic trend further. It would have allowed the European Parliament greater decision-making powers in a range of new areas, including the Common Agricultural Policy and cross-border crime. Denying the Parliament those powers has not, I believe, enhanced Ireland's influence in the Parliament.

As this Committee knows well, the national parliaments of the 27 Member States were also to get a bigger input under the Lisbon Treaty. They would have been consulted on whether a newly proposed EU law was on a subject that ought to be dealt with at European level, or ought to be left to the Member States or local government. They were also to have a say in whether the proposed EU legislation was proportional to the problem it was trying to solve. (The turf cutting issue comes to mind.)

The involvement of the 27 national parliaments in this advance vetting of all future EU legislation would have alerted public opinion in the 27 States to EU proposals in good time. This would have enhanced the debate about the proposals. It would have given national parliaments, and national electorates, a sense of “ownership” of EU laws. It would also have helped avoid disproportionate regulations being made at European level – like some that became controversial during the referendum campaign. Those who wanted to stop that sort of thing in future should have voted for the Lisbon Treaty, not against it!

Some have argued that, until the Lisbon Treaty is ratified, no further enlargement of the EU can take place. In legal terms, this is simply not required. Legally the Nice Treaty can be adjusted by accession Treaties to accommodate any number of new members without fundamentally changing the rest of the Treaty. But some Member States have decided that they will not agree to further enlargement unless Lisbon is ratified. That is a political

choice that they are absolutely entitled to make. Each existing Member has a veto on every enlargement to bring in a new Member.

To date, Ireland has once rejected the Nice Treaty, and is now delaying, and perhaps entirely blocking, the Lisbon Treaty too. These two Treaties had both been agreed by all the other Members – by all their democratically elected governments – and of course they were agreed Ireland’s democratically elected government too.

I think the Committee should consider whether it is in Ireland’s long-term national interest to put itself in the position of having a wide-ranging, but undefined, Irish constitutional roadblock to the adoption of future EU Treaties.

At the moment, there is no clarity as to when a referendum is needed in Ireland on an EU Treaty.

For example, the successive enlargements of the EU from 9 to 27 members have not, for reasons that have not been explained, been deemed by the Government to necessitate referenda here, even though these enlargements clearly changed the European Union.

But relatively small extensions of the legal competence of the EU, alterations of its objectives in modest ways, and extensions of qualified majority voting, have always been deemed by the Irish Government to necessitate a referendum.

I think it would be fairer to everybody if Irish law on this was explicitly clarified. It should set out when a referendum is necessary on an EU Treaty in Irish law, and when it is not.

If that was done, everybody negotiating EU Treaties in future would know where they stood.

My suggestion is that this could be done by the Oireachtas passing an amendment to the European Communities' Bill of 1972, specifying what sort of provision in an EU Treaty provision would trigger a referendum and what would not, and then after it has been passed by the Oireachtas seeking to have it referred to the Supreme Court under Article 26 to determine if it is constitutional or not.

In that way, the institutions of the Irish State – the Oireachtas and the Courts – would be defining the country's relationship with the European Union in a manner that would be fair to everybody – at home and abroad.

Future EU negotiators, from Ireland and from every other EU Member State, would then be able to assess intelligently the benefits, the costs, and the risks of inserting particular provisions in EU Treaties and to decide, if those provisions required a referendum in Ireland, if they would be sufficiently attractive and easy to explain to have a good chance of getting a “Yes” in a referendum.

Before I conclude, I would like to address the question of opt outs.

Denmark, as the Committee is aware, has had a number of opt outs from EU Treaties, and its Government was contemplating getting rid of them because it felt they reduced Denmark's influence. For example, the Danish Institute for International Studies concluded as follows in regard to the Danish opt out on defence:

“Since no country can be forced to provide troops for EU operations, and all participating countries have the possibilities to veto developments within the area of security and defence policy, the Danish opt out is judged to limit (their underlining) Danish freedom more than protect Danish autonomy.”

I think that speaks for itself.

Wars and terrorist attacks happen. They are an historic reality.

The question Ireland has to decide is whether it can better protect itself from wars and terrorism by being on the inside track of the EU, and a full participant in Common Security and Defence Policy with a veto, or remaining on the outside, where inevitably it will have less influence on what others do, and no veto over it.

My own strong view is that the former course is the better one.

Mr. Chairman, to sum up, Ireland's no to Lisbon has meant a "no" to opportunity, and "yes" to an uncharted future. Without a Lisbon Treaty in place, we are faced with:

- a more uncertain investment climate;
- an inability to fully fight cross-border crime and terrorism;
- a missed opportunity to make the EU more democratic;
- a reduced ability to maximize energy supply security;
- a missed opportunity to promote pro-life values in Europe;
- a risk of undermining the Euro; and
- a reduced ability to properly tackle global health threats.

We have passed up these opportunities and taken on these added risks and uncertainties at a vulnerable time. As we all know, Ireland entered recession during the first half of 2008 – the first eurozone country to do so since the credit crunch began a year ago. Earlier this month, the Economic and Social Research Institute (ESRI) forecast that this will continue at least until the end of 2009.

A Lisbon Treaty would by no means have saved us from these hard times. But it would have provided us with political certainty, and inclusion in Europe, at a time when both are most needed.

Just as it is too easy to forget the virtues of uniting with our fellow European countries when times are good, it should also be as easy to see the need for uniting with our fellow Europeans when times are bad.