



EUROPEAN COUNCIL

**Brussels, 7 May 2012
(OR. en)**

EUCO 81/12

**CO EUR 6
POLGEN 77
INST 321**

LEGAL ACTS

Subject: EUROPEAN COUNCIL DECISION on the examination by a conference of representatives of the governments of the Member States of the amendment to the Treaties proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and not to convene a Convention

EUROPEAN COUNCIL DECISION

of

on the examination by a conference of representatives of the governments
of the Member States of the amendment to the Treaties
proposed by the Irish Government in the form of a Protocol
on the concerns of the Irish people on the Treaty of Lisbon,
to be annexed to the Treaty on European Union
and to the Treaty on the Functioning of the European Union,
and not to convene a Convention

THE EUROPEAN COUNCIL,

Having regard to the Treaty on European Union, and in particular Article 48(3) thereof,

Having regard to the proposal for the amendment of the Treaties submitted to the Council by the Irish Government on 20 July 2011 and submitted to the European Council by the Council on 12 October 2011,

Having regard to the consent of the European Parliament not to convene a Convention¹,

¹ Consent of 18 April 2012 (not yet published in the Official Journal).

Having regard to the opinion of the European Parliament¹,

After notification of the proposal to the national parliaments,

Having regard to the opinion of the European Commission²,

¹ Opinion of 18 April 2012 (not yet published in the Official Journal).

² Opinion of 4 May 2012 (not yet published in the Official Journal).

Whereas:

- (1) On 18-19 June 2009, the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, adopted a Decision on the concerns of the Irish people on the Treaty of Lisbon and declared that, at the time of the conclusion of the next accession Treaty, they would set out the provisions of that Decision in a protocol to be annexed, in accordance with their respective constitutional requirements, to the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU).
- (2) On 20 July 2011, the Irish Government submitted, in accordance with the first sentence of Article 48(2) TEU, a proposal for the amendment of the Treaties in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon.
- (3) On 12 October 2011, in accordance with the third sentence of Article 48(2) TEU, the proposal of the Irish Government was submitted by the Council to the European Council. It was also notified to the national parliaments.
- (4) At its meeting on 23 October 2011, the European Council decided, in accordance with the first subparagraph of Article 48(3) TEU, to consult the European Parliament and the Commission on the proposed amendments. It also decided, in accordance with the second subparagraph of Article 48(3) TEU, to request the consent of the European Parliament not to convene a Convention given that, in its view, the convening of such Convention was not justified by the extent of the proposed amendments.

- (5) On 18 April 2012, the European Parliament adopted a favourable opinion on the proposed amendments. It also gave its consent not to convene a Convention on account of this not being justified by the extent of the proposed amendments. On 4 May 2012, the Commission adopted a favourable opinion on the proposed amendments.
- (6) Therefore, it is appropriate that, in accordance with the second subparagraph of Article 48(3) TEU, the European Council decide that a conference of representatives of the governments of the Member States should examine the amendments proposed by the Irish Government, define the terms of reference of the conference and decide not to convene a Convention,

HAS ADOPTED THIS DECISION:

Article 1

The European Council hereby decides that a conference of representatives of the governments of the Member States shall examine the amendments proposed by the Irish Government in the form of a Protocol on the concerns of the Irish people on the Treaty of Lisbon, to be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, in the wording as annexed to this Decision, which will constitute the terms of reference of the said conference. In view of the extent of the proposed amendments, a Convention under Article 48(3) of the Treaty on European Union shall not be convened.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the European Council
The President

DRAFT
PROTOCOL
ON THE CONCERNS OF THE IRISH PEOPLE
ON THE TREATY OF LISBON

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

hereinafter referred to as "THE HIGH CONTRACTING PARTIES",

RECALLING the Decision of the Heads of State or Government of the 27 Member States of the European Union, meeting within the European Council, on 18-19 June 2009, on the concerns of the Irish people on the Treaty of Lisbon;

RECALLING the declaration of the Heads of State or Government, meeting within the European Council, on 18-19 June 2009, that they would, at the time of the conclusion of the next Accession Treaty, set out the provisions of that Decision in a Protocol to be attached, in accordance with their respective constitutional requirements, to the Treaty on European Union and the Treaty on the Functioning of the European Union;

NOTING the signature by the High Contracting Parties of the Treaty between the High Contracting Parties and the Republic of Croatia concerning the accession of the Republic of Croatia to the European Union;

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

TITLE I

RIGHT TO LIFE, FAMILY AND EDUCATION

ARTICLE 1

Nothing in the Treaty of Lisbon attributing legal status to the Charter of Fundamental Rights of the European Union, or in the provisions of that Treaty in the area of Freedom, Security and Justice affects in any way the scope and applicability of the protection of the right to life in Article 40.3.1, 40.3.2 and 40.3.3, the protection of the family in Article 41 and the protection of the rights in respect of education in Articles 42 and 44.2.4 and 44.2.5 provided by the Constitution of Ireland.

TITLE II

TAXATION

ARTICLE 2

Nothing in the Treaty of Lisbon makes any change of any kind, for any Member State, to the extent or operation of the competence of the European Union in relation to taxation.

TITLE III

SECURITY AND DEFENCE

ARTICLE 3

The Union's action on the international scene is guided by the principles of democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

The Union's common security and defence policy is an integral part of the common foreign and security policy and provides the Union with an operational capacity to undertake missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter.

It does not prejudice the security and defence policy of each Member State, including Ireland, or the obligations of any Member State.

The Treaty of Lisbon does not affect or prejudice Ireland's traditional policy of military neutrality.

It will be for Member States - including Ireland, acting in a spirit of solidarity and without prejudice to its traditional policy of military neutrality - to determine the nature of aid or assistance to be provided to a Member State which is the object of a terrorist attack or the victim of armed aggression on its territory.

Any decision to move to a common defence will require a unanimous decision of the European Council. It would be a matter for the Member States, including Ireland, to decide, in accordance with the provisions of the Treaty of Lisbon and with their respective constitutional requirements, whether or not to adopt a common defence.

Nothing in this Title affects or prejudices the position or policy of any other Member State on security and defence.

It is also a matter for each Member State to decide, in accordance with the provisions of the Treaty of Lisbon and any domestic legal requirements, whether to participate in permanent structured cooperation or the European Defence Agency.

The Treaty of Lisbon does not provide for the creation of a European army or for conscription to any military formation.

It does not affect the right of Ireland or any other Member State to determine the nature and volume of its defence and security expenditure and the nature of its defence capabilities.

It will be a matter for Ireland or any other Member State, to decide, in accordance with any domestic legal requirements, whether or not to participate in any military operation.

TITLE IV

FINAL PROVISIONS

ARTICLE 4

This Protocol shall be ratified by the High Contracting Parties, and by the Republic of Croatia, in the event that this Protocol has not entered into force by the date of accession of the Republic of Croatia to the European Union, in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the Government of the Italian Republic.

This Protocol shall enter into force if possible on 30 June 2013, 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 Member State to take this step.

ARTICLE 5

1. This Protocol, drawn up in a single original in the Bulgarian, Czech, Danish, Dutch, English, Estonian, Finnish, French, German, Greek, Hungarian, Irish, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovenian, Spanish and Swedish languages, each text being equally authentic, shall be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the other signatory States.
2. Once the Republic of Croatia has become bound by this Protocol pursuant to Article 2 of the Act concerning the conditions of accession of the Republic of Croatia¹, the Croatian text of this Protocol, which shall be equally authentic to the texts referred to in paragraph 1, shall also be deposited in the archives of the Government of the Italian Republic, which shall transmit a certified copy to each of the governments of the Member States.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Protocol.

Done at ... this day of in the year

¹ Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community (OJ L 112, 24.4.2012, p. 21).