



*EU Environmental Policy Briefing**

Ratification of the Lisbon Treaty – The State of Play

3 October 2008

The Irish referendum on 12 June 2008 has created great uncertainty about the future of the Lisbon Treaty. It is highly uncertain now whether the Treaty will be ratified before the European Parliament elections in June 2009 or even whether the Treaty will be ratified at all.

A week after the Irish no vote, the European Council meeting of 19-20 June 2008 did everything to avoid decisions by other Member States to suspend ratification, as had been the case with the Constitutional Treaty, and agreed to give the Irish government time to ‘analyse the situation’ and ‘actively consult, both internally and with the other Member States’ in order to find a ‘common way forward’¹. The EU leaders assumed that after this reflection period the 26 other Member States would have completed ratification by 15 October and hence that the appropriate decisions to solve the ‘Irish problem’ would be taken during the European Council in October.

Despite the fact that the ratification process continued in the remaining countries, it is clear that ratification in the 26 Member States will not be achieved by 15 October. Sweden refused to speed up ratification in the Riksdag, which is scheduled to vote on the Treaty on 20 November. But most importantly, stumbling blocks of a legal and political nature have appeared in some other Member States, most notably in Poland, the Czech Republic and Germany².

In the Czech Republic and Poland problems of a political nature remain as their presidents are committed eurosceptics. Czech president Vaclav Klaus declared the Treaty ‘dead’ after the Irish no vote, while Polish president Lech Kaczynski has also adopted a hard-line attitude and is now threatening not to sign the Treaty.

In addition, legal challenges are pending in the Czech Republic and Germany. In Germany both the *Bundestag* and the *Bundesrat* voted with huge majorities in favour of the Lisbon Treaty, as was the case in 2005 with the Constitutional Treaty. But, as in 2005, individual members of parliament (MPs) – and this time also the new parliamentary group *Die Linke* – subsequently called the Federal Constitutional Court to declare the ratification law unconstitutional. As a result of injunctions made by

* This work was funded by the statutory nature and landscape conservation agencies in the UK, as part of a contractual arrangement with IEEP to provide intelligence on EU environment policy and other policies which impact on the environment. It reflects the independent views of IEEP and not necessarily the views of the funding bodies. For further information contact Emma Watkins at ewatkins@ieep.eu

these MPs, the Court asked the Federal President Horst Köhler to delay signing the ratification law. The President subsequently agreed to that request. Although it is very unlikely that Germany will not be able to ratify the Treaty in the end as a result of the Court's verdict, the problem remains that this situation undermines the strategy of the German government to isolate the 'Irish case' and put pressure on Poland and the Czech Republic to pursue ratification².

In the Czech Republic the ratification process has been suspended in both the Senate and the Chamber of Deputies, after the decision of the Senate to refer the question of ratification to the Constitutional Court. In addition major political hurdles will have to be overcome once the legal challenges have been dealt with. The Treaty needs to be accepted by three fifths of the members of both parliamentary chambers. In particular the vote in the highly eurosceptic Senate might be problematic. Finally there is the ultimate obstacle for ratification in the person of Vaclav Klaus, the Czech President whose signature is required to conclude the ratification process².

What's Next?

All these developments make it very unlikely that EU leaders will be able to stick to their initial idea of taking the appropriate decisions at their October summit to solve the Irish problem. Furthermore the Irish Prime Minister, Brian Cowen, has indicated he would present at the European Council on 15-16 October the in-depth survey commissioned by the Irish government analysing the reasons why people voted the way they did and to present the interim conclusions which he has drawn from it, but he also made clear that the Irish government will not offer any 'roadmap' or any 'privileged solution' at the summit. Until now Mr Cowen has not committed his government to any particular course of action, although the possibility of a second referendum has not been discounted. In addition, French President Nicolas Sarkozy stated recently that the French Presidency's objective was to reach an agreement at the European Council in December on a common approach ahead of the 2009 European Parliament elections.

In the wake of the Irish no vote numerous scenarios have been debated. The major ones are: abandoning the Lisbon Treaty and continuing with the Nice Treaty; reopening negotiations on a new Treaty; increased efforts on flexible integration; temporarily withdrawal of Ireland from the EU; and continuing the ratification process followed by a second Irish referendum on the Lisbon Treaty. De facto the European Council has chosen to continue the ratification process thereby implicitly putting pressure on Ireland to hold a second referendum or at least to come up with an alternative way to ratify the Lisbon Treaty. Although the Irish government has not made a final decision on how to proceed, some Irish politicians have already stated publicly, though speaking in a personal capacity, that a second referendum seemed inevitable and would be the least bad option, although another *modus operandi* of the ratification process has also been proposed and discussed.

Even if the Irish government were to opt for a second referendum, it seems very unlikely that this will take place before the end of the year as the Irish government seems to be very reluctant to come up with a proposal only a few months after the initial rejection. In addition, the current financial crisis makes it even more unlikely that a referendum will be held in the near future. The Luxembourg Prime Minister Jean-Claude Juncker for instance stated on 17 September at a conference organised by

the European Policy Centre (EPC) that organising a referendum given the current financial and political climate would be a very dangerous road to take. As a result it would be impossible in his view for the Lisbon Treaty to enter into force before the elections in June, as he considers it to be unrealistic that all 27 Member States would have ratified the document by February. This statement made him the first high-level politician publicly to state that it may be impossible to adopt the Treaty next year.

On the other hand, former Belgium Prime Minister Jean-Luc Dehaene and member of the European Parliament Committee on Constitutional Affairs pleaded on 30 September at an EPC briefing to hold a second referendum in Ireland in time for European Parliament elections to be held under the new Lisbon rules. Failure to ratify the Lisbon Treaty before the elections would create in his view a huge problem for the EU as this would imply the need for the EU to fall back on the Nice Treaty. This would mean, amongst other things, that the number of MEPs would have to be reduced even further (from 785 to 732 instead of 751); the distribution of seats would have to be changed; and the size of the Commission would have to be reduced in 2009 instead of 2014. However, in Mr Dehaene's opinion the political climate in which the European Parliament elections will take place will pose an even bigger threat to the survival of the Lisbon Treaty, as populist eurosceptic parties would seek to transform the elections into a 'disguised referendum' on the Lisbon Treaty.

References

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Kristof Geeraerts
kgeeraerts@ieep.eu

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