



## Lisbon Treaty

# Ireland's 'no': what next for Europe?

16 June

### ***Executive summary***

*The rejection of the Lisbon Treaty by Ireland has thrown the European Union into another constitutional crisis. The text – already ratified by 18 member states via parliamentary procedures – aims to make the EU more efficient and democratic, but Irish voters rejected ratification of the text by 53% to 47%, on a high turnout.*

*With other EU leaders promising that the ratification process will continue, the spotlight now falls on foreign ministers and EU leaders. Both the General Affairs Council and the European Council meet this week and will hold crisis talks on the way ahead. The issue seems set to dominate the forthcoming French presidency as the European Union seeks to find a solution.*

*At present, three main questions dominate the discussion on how the EU can extract itself from the problems posed by the Irish vote. Can the Irish be offered concessions and asked to vote again on the Treaty? Will the Treaty be abandoned, possibly in favour of introduction of its provisions by Council accords, inter-institutional agreements, or via an accession treaty with Croatia? Or will the other member states continue ratification to isolate Ireland – forcing another vote, or even a two-tier Europe?*

*At present, all options have difficulties – whether legal or political – and it seems likely that a renewed period of Euro-pragmatism will follow in the months and years to come.*

### **Irish voters have rejected the Lisbon Treaty, in a move that throws the European Union into another period of uncertainty and soul-searching.**

The Treaty – which was drawn up following the rejection of the Constitutional Treaty by French and Dutch voters in 2005 – promised to reform the Union's institutions, establish a permanent President of the European Council, and ensure that the EU could work more effectively and more democratically.

However, many people rightly saw the new text as a simply a rehash of the Constitutional Treaty with some of the more symbolic aspects removed – the intention being to make it more palatable to the public, dampen down opposition and remove the prospect of multiple public referenda.

The Treaty, which was signed in the Portuguese capital on 13 December 2007, has been ratified by 18 member states, exclusively via parliamentary procedures. Ireland is the only EU member state that is required by its constitution to hold a referendum on the approval of European Union treaties. Other countries –the United Kingdom in particular – resisted loud public demands for a plebiscite.

The ratification process now seems in doubt: EU foreign ministers meet on 16-17 June to discuss the way ahead, with the European Council meeting on 19-20 June. There is a choice for Europe's leaders: present the defeat simply as 'an Irish problem, to be solved in Ireland', or present it as 'a European problem'. The latter choice could derail (once again) a project that has been the focus of EU leaders' attention over the past few years.

## The vote

46.6 per cent of voters backed the Treaty, whilst 53.4 per cent opposed the Lisbon text. The turnout was estimated at 53.1 per cent – a high turnout for a referendum, and one that would normally help to swing the result to the 'Yes' camp. A 'no' result with such a turnout may signal a growing wariness in Ireland about deeper integration despite the country's traditional enthusiasm for EU membership and the significant financial benefits that it has accrued from being part of the bloc.

Secondly, it may be symptomatic of the growth of a 'gap' between EU citizens and their leaders (at both national and EU level). The 'democratic deficit' in the EU – ironically something that the Treaty would have helped address – seems to have been one of the causes of its rejection in Ireland.

A third reason is the campaign. The 'Yes' side has been heavily criticised for a lacklustre campaign, which organised too late, failed to counter the allegations from the 'No' campaign, and relied on calls for citizens to be 'good Europeans' by voting for the Treaty, rather than explaining and promoting its content. The 'No' side was well-organised, well-funded, free of establishment politicians and was based on emotional arguments that appealed to many voters (although the majority of these arguments completely misrepresented the provisions of the Lisbon Treaty).

## The referendum campaign

The referendum campaign was launched early this year, with leaflets explaining the Treaty being sent to 2.5m households across Ireland. Aside from the official information campaign, 'Yes' and 'No' coalitions were established.

The 'Yes' campaign brought together the main political parties – Fianna Fail and the Progressive Democrats, who govern in coalition, and the main opposition party, Fine Gael. The Labour Party also supported the Lisbon text. The Greens – the smallest member of the governing coalition – backed the Lisbon Treaty at a special party convention in January, but not in sufficient numbers to make it official party policy. As a result, its members participated in the campaign according to their personal views.

The 'No' campaign was mainly extra-parliamentary: Sinn Fein was the only party in the *Oireachtas* to oppose the Treaty. The Socialist Party, the Workers' Party and the Socialist Workers' Party also backed a 'no' vote – as did independents such as Kathy Sinnott MEP.

One of main opposition groups was Libertas, an organisation set up by a Galway businessman who called for greater democratic accountability and transparency in the EU. The group launched a €1.5m campaign against the Treaty based on opposition to the loss of Ireland's commissioner under the rotation system; a reduction in its voting weight; 'interference' in taxation and economic issues; Brussels control over foreign direct investment; the supremacy of EU law; and the possibility of amending the Treaty without unanimous agreement (and therefore a referendum in Ireland).

The 'No' campaign brought together an unlikely assortment of groups: ultra-conservative Catholics who claimed the Treaty will end Ireland's ability to outlaw abortion; communists and other far-left groups who said that the Treaty would lead to the privatisation of health and education; republicans who evoked the 1916 Easter uprising and Irish nationalism; and anti-war groups who alleged that the Treaty would end Ireland's neutrality and lead to conscription into an EU army.

The 'No' campaign was sharply criticised for the tone and content of some of its arguments, many of which have appealed to nationalism and emotion rather than being based on the text of the Lisbon agreement. The prime minister, Brian Cowen, said after the vote that he had led the campaign "*as best as I possibly could*". He added that the 'Yes' side had conducted "*a positive*

*campaign, an honest campaign,”* whereas anti-Treaty campaigners had promoted *“misrepresentation and worries”* about *“issues that clearly weren't in the Treaty at all.”*

## What's next?

For the second time in just over three years, the European Union has been thrown into turmoil by a referendum.

European leaders will be highly reluctant to follow the pattern of 2005, which entailed member states suspending ratification (especially the UK and Poland), a 'period of reflection', and the death of the Constitutional Treaty. The leaders of France, Germany and the UK – as well as the President of the European Commission, José Manuel Barroso, have indicated that ratification should continue, and that all countries should have their say.

The Eurosceptic Czech government may be the 'wild card' in this process – and could halt the ratification process; the Czech deputy prime minister has said that the Treaty will now face difficulties in the Senate, and the country's president (who has no formal role in ratification bar signing the final act) has said that Lisbon is dead. However, the visit of Nicolas Sarkozy to Prague on 16 June seems intended to ensure that the Czech Republic continues its ratification.

Officially, there is no 'Plan B': this text itself is a second best text after the failure of the Constitutional Treaty. Yet for many EU leaders, the way out seems to be to continue with ratification, giving all countries the opportunity to approve the text, and bring about a '26 versus one' situation, where Ireland can be put under intolerable pressure to hold a second vote – possibly linking the whole question of EU membership to the Lisbon Treaty. Some senior politicians – including the British foreign secretary, David Miliband – have said that the Irish must not be "bullied"; however, this would be the inevitable consequence of Ireland being the only country not to ratify the text.

For the moment, it seems likely that the 'no' vote will be presented as 'an Irish problem' to be solved in Dublin. Mr Cowen is certain to come under strong pressure to sort out the problem when he attends his first European Council meeting on 19-20 June.

The longer-term solution is less clear, but one thing is certain: the priorities of the French presidency, which begins on 1 July, will be altered, and the Lisbon post-mortem will take centre stage.

This post-mortem seems likely to evoke some fundamental questions: firstly, **can the Treaty be modified and put before the Irish again (as the Nice Treaty was following its rejection in 2001)?** Some issues – such as foreign policy – seemed particularly sensitive during the campaign. However, it could be argued that they were not in the Treaty in the first place (despite the claims of the 'No' camp), and therefore no further concession can be given.

In addition, the idea of being 'asked to vote until the right answer is given' has been ridiculed after the 2001 referenda – especially since France and the Netherlands were not asked to vote again in 2005. Furthermore, there was no clear, single reason for a 'no' vote – without which it is difficult to develop opt-outs and concessions. As stated above, any 'second vote' may need to call into question the whole idea of EU membership as well as the Lisbon Treaty.

Secondly, **can the EU function without a new treaty?** The provisions of the existing Nice Treaty – whilst less streamlined than those proposed by the new text – seem sufficient to allow the EU to continue to work for the time being. However, the constitutional innovations (a standing President of the European Council, a High Representative for Foreign and Security Policy, reforms to voting, and others) would be lost. The extension of co-decision to areas such as agricultural

policy would also fall, as would changes to a number of other policies, including health, energy, climate change and immigration.

However, these provisions – especially constitutional changes designed to improve efficiency and democratic accountability – were the main reasons for the text in the first place. Losing them would be a blow to the EU's reform attempts and member states will be loath to consign many years of work to the dustbin having invested so much in the Constitution project and the Lisbon relaunch.

Therefore one of the more likely options would seem to be an attempt to salvage as much of the Lisbon text as possible and use a series of 'mini-treaties' or inter-institutional agreements to bring forward changes in the functioning of the Union. Such agreements are unlikely to present fundamental changes to any country's relationship with the EU – and therefore should avoid the need for referenda. It has been estimated by some that around 85 per cent of the Lisbon Treaty's provisions can be introduced in such a way, and elements that could return include plans for EU embassies or an external action service, as neither requires treaty changes.

There is also the option of including elements of the Treaty in future accession treaties. It is likely that the EU can 'hold on' (in institutional terms) under the current rules until Croatia joins the Union, probably in 2010. At this point, institutional changes (such as the creation of a President of the European Council) or deeper integration (such as changes to voting on justice and home affairs issues) could possibly be reintroduced.

The inter-institutional agreement would be less transparent than the treaty method and would surely mark an end of engagement with citizens on such issues. But in the end, this may be the best and only solution to ending the constitutional reform process and renewing the EU's focus on 'citizen-focused' policies, such as the environment and consumer protection.

Thirdly, **should one country be able to block the entire process?** Ireland is a country of 3.5m people (only half of whom voted) – yet the vote affects 27 countries, and nearly half a billion citizens. It seems unlikely that Ireland – a 'small' country that does not participate in all of the EU's projects – will be accorded treatment as France and the Netherlands were as founding, fully-engaged members of the bloc.

Such thinking forms the basis of a more drastic option: pressing on with Lisbon ratification even if it leads to a 'two-tier' Europe. In reality, there is already a 'multi-speed' Europe, in terms of the euro, the Schengen free movement area and European defence. However, this move would be different: instead of opt-outs and derogations under one legal framework, 26 members (and 99 per cent of the EU population) would be affected by one legal framework (the Lisbon Treaty) and one member by another framework (the Nice Treaty).

It would be a very difficult situation to manage: Council voting, the allocation of seats in the European Parliament, and other institutional provisions would be a mess, and would require complex legal arrangements. The effect would be to press the Irish to conform to the new reality or to leave, bringing back the notion of a 'second vote' in Ireland – possibly a 'make-or-break' referendum on membership of the Union.

In any case, it seems that the federalist dream is all but over – at least on a 27-member state basis – and Euro-pragmatism is bound to continue.

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