



Ireland and the EU Post-Lisbon

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This is a critical juncture in Ireland's relations with the EU. The decisions that will be taken by the Irish Government, parliament, potentially the courts, and the Irish electorate are likely to have a lasting impact on Ireland's relations with the EU and its member states.

Ireland in the Union

There is a tension and juxtaposition between how Ireland has positioned itself and is perceived in the Union (the Brussels game) and how the Irish public perceive EU membership (the domestic game). From the outset, Ireland positioned itself as a state committed to EU integration in contrast to the UK in particular. The titles 'good European' and 'model pupil' were assigned to Ireland in the discourse on EU membership at least until the first referendum on the Nice Treaty. At home, public opinion while committed to EU membership and aware of the benefits lacked basic knowledge about the EU, saw it in instrumental terms (8 billion euro) and was weakly Europeanised. This is also true of the political class. Irish politics does not reward activity such as scrutiny of European directives or engagement in European affairs. Hence politicians with a deep knowledge of the EU are limited to those who have ministerial experience in the key ministries that deal with Brussels, opposition spokespeople, parliamentary committee chairs and the MEPs. Party to party relations, particularly for Fianna Fáil, are marginal. There is thus a gap between how Ireland positions itself in the EU in its own interests and how the Irish public perceive EU membership (Laffan and O'Mahony, 2008). Just how much 'Europe' does the Irish electorate want and how much will it endorse is an unanswered question. One of the consequences of the settlement in Northern Ireland is that Ireland and the Irish have become closer to the UK again and this relationship is

not balanced by strong ties to the other member states. Ireland is geographically isolated from other small states with no natural partners or allies in the Council. Moreover, the UK print media has considerable penetration of the Irish market and the UK tabloid press and some broadsheets are unremittingly critical of the EU. This has had a considerable impact on the portrayal of the EU in Ireland and on the tone in which the EU is discussed. With a public that does not know much about the EU, it is all too easy to see the EU as the 'other', a Leviathan prepared to squeeze small state sovereignty, a source of irritating regulation and unaccountable governance. The National Forum, established after the Nice I referendum, went some way towards educating Irish politicians on EU governance but singularly failed to make the bridge to the general public who are called on to make political decisions based on inadequate knowledge.

The Lisbon Treaty Referendum

On the 12th of June 2008, 53.4 per cent of the Irish electorate voted to reject the Lisbon Treaty. All but 10 electoral constituencies registered a majority no; 862,415 voted no, 752,451 voted in favour with a turnout of 53.1 per cent. This was the second time in eight years that the Irish electorate rejected a European treaty. Ireland's national consensus on Europe, a stable feature of domestic politics for over 35 years, was undermined. The referendum and result brought the interconnection between politics within Ireland and the politics of the EU arena sharply into focus. A decision of the Irish electorate had implications, not just for Ireland, but for twenty-six other states and European institutions.

Opponents of the treaty were drawn from the right of the political spectrum, notably Libertas and C6ir (Catholic right), and the left, Sinn F6in, the Socialist

Workers Party, the Peace and Neutrality Alliance, the Peoples' Movement and People before Profit. Some of these groups were active in previous European referendums; Libertas, led by a high earning business entrepreneur Declan Ganley, was the new element in the no campaign. An array of uneasy bedfellows from both ends of the political spectrum managed to capture the political centre and overcome the combined forces of the major political parties and key interest organizations. The farming organizations, particularly the Irish Farmers Association and the trade union movement were split which sent mixed messages to their members. The no campaign was in train long before the yes campaign got off the ground and outperformed and outspent the yes campaign for the duration of the referendum.

The decision of the Irish electorate has implications for Ireland's relations with the EU, Ireland's partners in Europe and for the future of the EU itself. Just what those implications are will emerge over time. Following the referendum, the Irish Government, with a new Prime Minister, had to begin immediately to chart a road-map for Ireland in the EU in a post-Lisbon environment. Shocked at its failure to carry the electorate, the Government needed time to understand and absorb the consequences of the referendum defeat. The other member states, particularly those that had already ratified the Lisbon Treaty and in most cases also the Constitutional Treaty, were not prepared to say that the Lisbon Treaty was dead. It became clear that other member states would proceed with ratification of the treaty, albeit with some complications in a number of member states. The Irish Government found itself in an isolated position with an electorate that was uneasy about just what kind of EU it wanted and would sign up for. The situation facing the Irish Government is very different to the post-Nice I situation for a number of reasons. First, turnout in the Lisbon referendum was much higher than in Nice I and the no vote grew significantly as a proportion of the overall electorate (from 18% to 28%). Second, there was a national election between Nice I and II which enabled the then Government to put its post-Nice road-map to the people. The General Election provided

legitimacy for the second referendum. Third, neither France nor the Netherlands re-ran their referendums on the European Constitution. This is a major issue in domestic Irish politics as it is argued that an Irish no does not have the same political weight as rejections from two of the founding member states. Fourth, the economic climate is deteriorating in Ireland at a rapid rate and as a consequence the Government's standing with the electorate has deteriorated sharply.

The Government has to manage the twin challenges of domestic and EU politics. It opted to commission extensive research into the attitudes of the electorate. The research offers insights into the voters thinking on the Lisbon Treaty and on Ireland's relationship with the Union (Milward Brown IMS, Post Lisbon Treaty Referendum Research Findings, September 2008). The research distinguished between hard yes and no voters and soft yes and no voters.

TABLE I: PERCENTAGE HARD AND SOFT VOTERS: LISBON TREATY

CERTAIN	SOME DOUBTS	SOME DOUBTS	CERTAIN
HARD YES	SOFT YES	SOFT NO	HARD NO
36%	10%	13%	41%

As can be seen in Table I, it confirmed that no voters were predominantly found among women (56% no), young people aged between 25 and 34 (59% no) and skilled and unskilled workers (63% and 65% voted no). Those who voted no highlighted issues such as the erosion of Irish neutrality, abortion and conscription to a European army. The loss of a Commissioner was also cited as a concern by no voters. Although those who voted no did not cite immigration directly as a reason for voting no, no voters were far more likely to argue that Ireland was not a better place to live since immigration increased. This was particularly prevalent among skilled and

unskilled workers. Those who voted yes were motivated by a broad commitment to the EU rather than a specific commitment to the Lisbon Treaty. Yes voters were also more likely to take their cue from the Government and the main political parties. The research confirmed that the electorate was confused by the debate and found it difficult to understand key elements of the treaty. Forty two percent of those who voted felt that they were only vaguely aware of what was in the treaty or knew nothing at all. Moreover, 65 % of soft no voters offered the lack of understanding of the treaty as the main reason for voting no. Lack of knowledge was cited by 46% of those who abstained as the reason for staying at home. The knowledge deficit extended to the institutions of the Union and its decision making processes.

The research report was followed by the establishment of a cross-party sub-committee of the European Affairs Committee of the national parliament whose task it is to further explore the political dimensions of the challenge facing Ireland in the EU. The Committee known as the ‘Sub-Committee on Ireland’s future in the European Union’ was given the following terms of reference:

- analyse the challenges facing Ireland in the European Union (EU) following the Lisbon Treaty Referendum result;
- consider Ireland’s future in the EU including in relation to economic and financial matters, social policy, defence and foreign policy and our influence within the European Institutions;
- make recommendations to enhance the role of the Houses of the Oireachtas in EU affairs;
- consider measures to improve public understanding of the EU and its fundamental importance for Ireland’s future.

The aim of the committee was to prepare a report by November 28, 2009 and present it to the European Affairs Committee of the Oireachtas. The conclusions of the committee report are discussed below. The National

Economic and Social Council (NESC), a think-tank involving the social partners, public servants and a number of independent members, was also asked by the Government to undertake an analysis of Ireland’s relationship with the EU. The Government is trying to re-frame the domestic debate in terms of Ireland’s relations with the EU and not just the Lisbon Treaty.

A Road-Map?

The Lisbon Treaty cannot become part of the EU’s constitutional framework unless it is ratified by all member states. The question therefore is in what circumstances and how could the treaty be ratified in Ireland. If there are no circumstances that would enable the Irish Government to ask the Irish electorate to re-visit the issue, the EU will continue to operate under Nice rules with the possibility of modifications to the existing treaties in the form of protocols and future accession treaties. The representatives of the no campaign in Ireland regard the treaty as dead and have repeatedly argued this since the referendum. They suggest that the only way forward is a re-negotiated treaty at some stage in the future offering Ireland a better deal. Just what that better deal might be is unclear. The Government is far less sanguine. It is conscious that this treaty was negotiated over a 7 year period and that there is no appetite among the other member states to re-open the document. The Government is also convinced that there is no better deal available to Ireland. The European Constitution was finalised during the Irish Presidency in 2004 under the chairmanship of a Prime Minister who is regarded as one of Ireland’s most experienced and finest negotiators. In addition, the Irish Government, if not the Irish electorate, are very conscious of the ‘two level game’ that EU politics represents. The Irish decision has affected in a very tangible manner the number of seats that will be available in 12 member states for the EP elections in 2009.

The Case Against Revisiting the Issue

Ireland held a referendum to alter the Irish Constitution in order to enable the state to ratify the Treaty of Lisbon. That proposition was not supported by a majority of the Irish electorate. The research on the reasons behind the vote point to an array of motivations that animated individual voters in the ballot box. There is no straight forward way to tackle the diverse concerns of the voters. Regardless of the reasons, the outcome was a majority against the proposition put to the people. If the outcome had been a yes there would be no question of re-visiting the vote so the argument goes that a no is a no. Moreover, neither the French nor Dutch electorates were asked to re-visit their decisions in 2005. Hence those advocating another referendum must address the legitimacy issue head-on. The Irish electorate has re-visited issues in referendums a number of times, most notably, referendums on the electoral system, divorce, abortion and the Nice Treaty. If the Government is to go back to the people, it must have a new proposition and a cogent set of arguments as to why it wants the electorate to address treaty reform in the EU again. Why might it be motivated to do so?

The Case for Ratification

No Irish Government wants to find itself in an isolated situation in the EU. Ireland had positioned itself in the Union as a state that engages fully with the system and there is considerable concern in Governmental circles and among a significant section of the electorate that Ireland has weakened its overall standing in the Union and that Ireland's influence in the Union has been damaged. Ireland had made a success of EU membership and as such was seen as a model for the new member states given Ireland's relative economic under-development in 1973. In the longer term there are genuine fears of a fragmented or two-tier Union in which Ireland would find itself in an outer or second tier. There is no desire in Dublin to re-open the institutional questions in Lisbon and to force the Union to continue to navel gaze with a focus on how its does its business rather than how its responds to major challenges such as financial market regulation, climate

change, security and economic governance. Lisbon was regarded as the last institutional treaty for the foreseeable future. The turmoil in the financial markets means that the Lisbon Treaty is a side-show at present. However, unless Lisbon is ratified, institutional issues will remain on the table. The prospect of Balkan enlargements is also connected to Lisbon. The French and German Governments have made it clear that Lisbon is a requirement for Balkan enlargement, particularly beyond Croatia. The Government is also concerned about timing and the link between the 'Irish Question' and the electoral cycle in the United Kingdom. The British Conservative party is running way ahead of the incumbent Labour Government in the UK. It is probable that the next UK Government will pursue a very pronounced Euro-sceptical posture which will make it very difficult if not impossible for the Union to achieve treaty reform while they are in power. Unintentionally and unwittingly, Ireland could find itself drawn into the dynamic of EU politics in its neighbouring island with very serious consequences for its long-term position in the Union. That the European policies of Sinn Féin could bring Ireland back into a close but unfavourable relationship with the UK is just one of the accidents of history waiting to happen. For reasons of Ireland's long term relationship with the Union and the dynamics of electoral cycles, it is in the interests of the Irish Government that it addresses Ireland's Lisbon dilemma prior to the next UK election.

What is to be done?

The Government, for the reasons outlined above, would like to ensure that Lisbon, or most of Lisbon, would become part of the EU's constitutional framework. It is unable to achieve this in time for the 2009 European elections with the result that these elections will take place under the term so the Nice treaty. This is unpalatable for many member states because it disadvantages at least 12 states in terms of the number of seats but a shift in the Irish position appears impossible before June 2009. The earliest that a second referendum could take place in October 2009 and only then if the Government has a new proposition to put to the people. Just what that

proposition might be has yet to be assessed in any great detail but the Government, it appears to me, has two options:

- Lisbon Minus
- Lisbon with Bells.

‘Lisbon Minus’

The first option is an option that is being canvassed in the media. It would involve dividing the ratification process into stages by determining just what provisions of Lisbon constitutionally require the assent of the people. This would require ratifying the treaty by parliamentary means, in the first instance. If this route is followed, the President could then refer the act of ratification to the Supreme Court to determine if any part of the treaty is repugnant to the Irish constitution. If the President did not refer the bill, a citizen would almost certainly challenge the act in the courts which would serve the same purpose. The 1987 Crotty judgement of the Supreme Court on the Single European Act would then be re-visited by the Court. A referendum would then have to be held on those provisions, if any, that required the assent of the people. Legal opinion suggests that only limited areas of the Treaty might require a referendum. The feasibility of this strategy is difficult to judge because of the legal and political complexities that it implies.

Lisbon with Bells

The second scenario involves agreement between Ireland and the other member states on assurances, opt-outs, declarations, protocols or a European Council decision that responds to the issues raised in the referendum campaign. The Danish 1992 agreement is being carefully scrutinised by the Irish authorities. The areas that are amenable to change short of a renegotiation of the treaty are the size of the Commission, assurances on taxation, defence and abortion. Just what formula would be acceptable to Ireland’s partners and would alter the question sufficiently to enable the

Government go back to the people would be the subject of intense negotiations among the member states and domestically. The prospect of an opt-out from the security and defence dimension is possible which would have major implications for Ireland’s traditional role in peace keeping.

The Irish Government is not in a position to provide a definitive road map to the other member states and may be unable to do so by the December 2008 European Council. This will have the knock-on effect of creating uncertainty about the appointment of the next Commission in November 2009. If in the judgement of the Irish Government, the domestic circumstances do not exist to re-visit the issue in 2009, the option facing the Union is to find other means to implement those provisions in the Treaty that are regarded as a priority. This might take the form of protocols to the existing treaties, requiring national parliamentary ratification, the use of forthcoming accession treaties and inter-institutional agreements. Member state Governments, including the Irish Government, would prefer to avoid this option but the Union may have no choice depending on developments in Ireland.

An Emerging Road Map?

The report on Ireland’s future in the European Union agreed by the sub-committee of the European Affairs Committee of the Irish Parliament establishes the broad contours of how Ireland will respond to the challenges posed by the referendum defeat. The report articulates in a very clear manner its view that Ireland’s role as a ‘fully committed and engaged Member State’ has been vital to Ireland’s national interest and that remaining fully engaged and committed in future is also vital (Oireachtas, 2008, p.3). The report acknowledges that the referendum defeat has diminished Ireland’s standing and influence in the EU and has made the country’s long term position in the Union less secure. The report argues that a solution must

be found that keeps Ireland fully engaged in the EU while at the same time addressing the concerns of the Irish people. Four concerns are identified:

- taxation;
- sensitive ethical;
- defence and security and
- the Commission (Oireachtas, 2008, p.4-5).

The report does not favour parliamentary ratification which means that 'Lisbon with Bells' is emerging as the most likely option. The Irish Government is in intensive negotiations on a package for discussion at the December 2008 European Council. It is likely that the Council Conclusions will re-affirm a commitment to the ratification of the Lisbon Treaty by the end of 2009 which in essence means a second referendum. The most likely timing is the latter half of 2009 given the appointment of the new Commission. A deteriorating economy ensures that the stakes could not be higher for Ireland's future in the EU. The Irish electorate will have to decide if they wish to be nearer Rome or Reykjavik.

References

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