

Inching towards a Second Irish Referendum

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The Treaty of Lisbon was not the most contentious issue at the December European Council, which was dominated by measures aimed at tackling the economic crisis and climate change. Concerning the treaty, the European decision-making machinery has done what it can do best: cooling down a hot political debate and carefully building a consensus. Since the Irish no-vote on 12 June 2008, governments have made every effort to avoid public debate about the possible way forward, while everybody knew what the parameters of a solution must be to eventually get the Treaty of Lisbon ratified:

- The Irish would have to hold a second referendum before the next European Commission is supposed to take office.
- The Irish would have to be offered some concessions that would address the major concerns had surfaced in the referendum debate.
- These concessions could not be so substantial that the other member states would then be required to re-ratify the text.

Following several months of discreet discussions and public silence, the European Summit has now determined what concessions will be made to the Irish. If the Treaty of Lisbon enters into force (a necessary pre-condition of which is its ratification in Ireland), the European Council will take a decision that the College of Commissioners will continue to comprise one member per country beyond the year 2014. Additionally, Ireland will receive “necessary legal guarantees” on three points:

- the Treaty of Lisbon will not extend EU competences on fiscal matters;
- the Treaty of Lisbon will not affect the security and defence policy of member states, including Ireland’s traditional policy of neutrality; and
- the provisions of the Irish Constitution concerning the right to life, on education and on family will not be affected by the treaty’s provisions on Justice and Home Affairs or by the fact that the EU’s Charter of Fundamental Rights receives legal status.

It is still unclear, however, what legal form these “necessary legal guarantees” will actually take. Since the current text of the Treaty of Lisbon already grants the guarantees in substance, the exercise will mostly consist of making them more visible in a Protocol on Ireland. Such a protocol could be signed and then ratified by all member states with the next (probably Croatian) accession treaty to the EU. Since Croatia will only join the EU after a second Irish referendum, now most likely to take place in the autumn of 2009, the protocol could also be deposited with the Secretariat of the United Nations, as was the case with the Edinburgh Agreement on the Danish opt-outs to the Treaty of Maastricht in 1992.

These legal aspects, however, will hardly interest the wider public in Ireland. Their main question will be: *How does the new deal differ from the one that we rejected in the last referendum?* It will be the difficult task for the Irish ‘yes’-camp to take the offensive and sell the concessions they have obtained. And while European leaders may be relieved to have found agreement on the way forward, they may soon find out that preserving the practice of appointing one Commissioner per member state and guaranteeing a number of provisions that the Treaty of Lisbon already grants may just not be enough to change Irish public opinion...

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