



The Lisbon Treaty: the final four

Standard Note: SN/IA/4943

Last updated: 20 January 2009

Author: Vaughne Miller

Section International Affairs and Defence Section

This Note looks at progress in the ratification of the *Treaty of Lisbon* which was signed in December 2007. It updates Research paper 08/66, "The Treaty of Lisbon: an Uncertain Future" 30 July 2008, in this regard.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1 State of play3
2 Ireland3
3 Czech Republic.....4
4 Poland.....5
5 Germany6

1 State of play

- The envisaged implementation date for the Lisbon Treaty of January 2009 is unattainable.
- The situation in Ireland will be resolved one way or the other by a second referendum. The Czech Presidency is planning for the possibility of a second no-vote in Ireland.
- The Czech Parliament will not vote on Lisbon until February 2009 and it is not clear whether President Klaus will endorse it.
- The German Parliament has approved Lisbon, but the German Constitutional Court has not yet ruled on the Gauweiler complaint and the President has not yet endorsed the Treaty, so ratification is not complete.
- The Polish Parliament has approved the Treaty but President Kaczynski has not yet completed ratification by signing it.
- Sweden became the 23rd Member State to complete ratification of the Treaty on 20 November 2008, with a parliamentary vote of 243 votes in favour to 39 against with 13 abstentions and 54 absences. It was a long debate in which the opposition Left Party and the Green party tried to form a 48-vote blocking minority to postpone ratification for a year. However, this was overcome by the four parties in the centre-right government coalition and the main opposition party, the Social Democrats. The debate centred on Sweden's collective labour agreements between workers' groups and employers, and the sovereignty issue.

Recent developments in the non-ratifying States are discussed in more detail below.

2 Ireland

Ireland's particular situation, in the light of the negative referendum on Lisbon ratification in June 2008, is discussed in detail in Standard Note SN/IA/4921, "The Lisbon Treaty: the European Council and prospects for Irish ratification", 18 December 2008. To summarise, an agreement in the form of declarations was reached at the summit on 11-12 December, by which, in return for "legal guarantees" to remedy those matters of concern to the Irish electorate, the Irish Government would "seek ratification" of the Lisbon Treaty by the end of the Commission term (i.e. end October 2009). Ireland thereby effectively agreed to hold a second referendum on Lisbon in exchange for receiving concessions from the other EU Member States, with a view to implementation of Lisbon in 2010.

There is no guarantee that Ireland will be in a position to ratify if there is a second no-vote and the Czech EU Presidency, which began on 1 January 2009, is apparently "preparing a contingency plan for one of the most sensitive areas in the EU institutional set-up in case Ireland rejects Europe's new treaty for a second time later this year".¹ Reports also speculate that the EU's abandoning of a plan to harmonise the corporate tax base across the EU was in order not to unsettle Irish voters ahead of a second referendum on Lisbon.² An opinion poll by the *Sunday Telegraph/Quantum Research* in early January 2009 showed an

¹ *EUObserver* 8 January 2009 at <http://euobserver.com/9/27360/?rk=1>

² *Prague Post* 19 January 2009

upturn in support for the Lisbon Treaty following the December 2008 agreement on concessions, with 55% of the 500 people asked saying they would vote in favour of Lisbon in a second referendum with the concessions agreed last December, 37% saying they would vote against it and 15% undecided.

3 Czech Republic

The Czech Republic joined the EU on 1 May 2004 following a referendum in June 2003 in which over 77% of voters supported EU membership. Since then there has been opposition to the EU among the political elite who see the EU as a threat to Czech sovereignty. There is a strong eurosceptic element in the Civic Democratic Party (ODS), led by the eurosceptic Czech President, Vaclav Klaus.

The Lower House voted in favour of Lisbon after a first reading debate on 1 April 2008. However, that month a group of ODS Senators from the Upper House took questions about the Treaty to the Constitutional Court and the ratification process was suspended. Final approval requires a three-fifths majority in both chambers of parliament and the signature of the President. The opposition is expected to request trade-offs on other issues in return for its approval, including hosting a US radar as part of the controversial US missile defence system.

In October 2008, after a political defeat in regional elections, in which the opposition CSSD won in all 13 regions, the centre-right Prime Minister, Mirek Topolanek, vowed to push forward the ratification of Lisbon by the end of 2008, in advance of the Czech Republic taking over the EU Presidency.

The Constitutional Court ruled on 26 November 2008 that the elements of the Lisbon Treaty which had been referred to it were compatible with the Czech Constitution.³ The *EUObserver* commented:

In his closely watched verdict announced on Wednesday (26 November), Vojen Guttler, the presiding judge rapporteur, argued that the new reform treaty does not change the fundamental direction of the EU, nor does it harm the sovereignty of the member states.

He added that a new provision in the treaty that clears out the terms for countries that wish to leave the union is "the indisputable confirmation" of their sovereignty, while a transfer of powers to the EU level can only happen if it is approved by member states.⁴

Topolanek survived a leadership contest on 8 December 2008, which many interpreted as an endorsement of his pro-Lisbon mandate.⁵ However, any hopes of ratifying before the Czech Presidency of the EU were dashed when the Czech Government announced in December that it would postpone ratification until 3 February 2009.⁶ *EurActiv* commented on the reasons behind this decision:

The official reason given for the postponement of the vote was Topolanek's assertion that the treaty still needed to be examined by a number of

³ See <http://news.bbc.co.uk/1/hi/world/europe/7749724.stm> and <http://euobserver.com/9/27183/?rk=1>

⁴ 26 November 2008 at <http://euobserver.com/9/27183/?rk=1>

⁵ He beat the Mayor of Prague and Klaus ally, Pavel Bem, by 284 to 162 votes.

⁶ The German Presidency started on 1 January 2007 without Germany having ratified the EU Constitutional Treaty, following a decision by the German Constitutional Court.

parliamentary committees. Moreover, he claimed that before putting Lisbon to vote, he needed to discuss the treaty and other aspects of cross-party cooperation with the leader of the Czech opposition.

In reality, it is believed the Czech PM is buying time in order to unify the warring factions of his own party, following the dramatic resignation from the ODS of anti-Lisbon Czech President and party chairman Vaclav Klaus on Saturday. As a result of Klaus' defection and Topolanek's victory over Klaus' ally, Prague Mayor Pavel Bem, it is believed many ODS deputies currently feel considerable antipathy toward the Czech PM and might have used a vote on Lisbon to punish their party leader.⁷

On 5 December 2008 President Václav Klaus met members of the Conference of the Presidents of the European Parliament at Prague Castle. Coverage of the meeting suggests there was aggression and animosity, much of which centred on Mr Klaus's earlier meeting with Declan Ganley in November 2008.⁸ On 6 December, after Prime Minister Topolanek had urged ODS members at the party congress to support the Lisbon Treaty, President Klaus announced he was severing links with the ODS, as he could no longer identify with the policies of the current leadership. Commentators pointed largely to their differences over the EU and the Lisbon Treaty. In January 2009 the Commission President José Manuel Barroso met President Klaus in Prague.

The Irish anti-Lisbon *Libertas* leader, Declan Ganley, failed to enlist the support of the Czech anti-Lisbon campaign in a bid to join forces under the *Libertas* banner. Petr Mach, an economist and associate of President Klaus, founded the Free Citizens' Party (Strana Svobodnych Obcanu) on 12 January. Mach wants to focus his party on national rather than EU politics. Although it will campaign in the EP elections, its main aim is to become a force in Czech politics and challenge the ruling Civic Democrat Party (ODS). Mr Ganley insisted he would try nevertheless to set up a *Libertas* branch in the Czech Republic.⁹

Mr Topolanek presented the Czech Presidency Programme to the EP on 14 January 2009. He made a joke about Lisbon that was not well received by MEPs, saying "The Lisbon Treaty is in fact an average one. It is a little bit worse than [the Treaty of] Nice and little bit better than the future treaty".¹⁰

The Czech Presidency has begun to prepare a contingency plan in the event that the outcome of the second Irish referendum is negative. The Czech Plan B includes an initiative to reduce the size of the Commission in line with the Nice Treaty requirement.¹¹

4 Poland

In September 2008 the Polish Government said that political rather than procedural factors would determine the timing of ratification of Lisbon. Changes to the Competence Law,

⁷ 10 December 2008 at <http://www.euractiv.com/en/future-eu/czechs-postpone-lisbon-treaty-vote-2009/article-177927>

⁸ See <http://eureferendum.blogspot.com/2008/12/which-ones-democrat.html> and an account of their meeting in the *Irish Times* at <http://www.irishtimes.com/newspaper/opinion/2008/1113/1226408581963.html>

⁹ *EUObserver* 12 January 2009 at <http://euobserver.com/9/27385/?rk=1>

¹⁰ *EurActiv* 15 January 2009 at <http://www.euractiv.com/en/opinion/czech-premier-lisbon-treaty-blunder/article-178517>

¹¹ *Irish Times* 8 January 2009 at <http://www.irishtimes.com/newspaper/world/2009/0108/1230936761694.html>

concerning the roles of the various State organs in EU policy-making, were ready to go to the Lower House, the Sejm, for approval. However President Kaczynski wanted to wait for clarity on the Irish situation. The press and members of the Government called on President Kaczynski to sign the instrument of ratification without delay and there was much speculation about a ratification agreement between the President and Prime Minister and Poland's hosting of the US missile shield. Mr Kaczynski insists that Poland will not prevent ratification of Lisbon but is waiting for a decision by Ireland before he signs it.¹²

Declan Ganley (see above), who is an admirer of President Kaczynski, hopes to set up a branch of *Libertas* in Poland. After meetings with small far-right parties in early January, he plans to put forward Polish *Libertas* candidates for the EP elections in June.

5 Germany

Both the *Bundestag* and the *Bundesrat* approved Lisbon with the required two-thirds majority in spring 2008. However, President Köhler needs to sign it into force and he has withheld his endorsement pending the outcome of the Constitutional Court's verdict on complaints brought by Peter Gauweiler, a centre-right politician from the Christian Social Union (CSU). The Court is to hold a hearing on the Lisbon complaints on 11 and 12 February 2009.¹³

¹² RTE News 10 January 2009 at <http://www.rte.ie/news/2009/0110/libertas.html>

¹³ See Constitutional Court press release, 16 January 2009 at <http://www.bundesverfassungsgericht.de/pressemitteilungen/bvg09-002>