

Plan B

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The official mantra following the No vote in Ireland seems to have become “let us continue with the ratification process”. This is a high-risk strategy since Ireland will continue to exercise veto power even if all other 26 member states ratify. The Irish electorate will know this and thus have little reason or incentive to vote differently in a second referendum. But if this second referendum in Ireland fails, the EU would have no fallback position.

However, a slight twist to the official line could turn the tables completely. Indeed, the solution to the ‘Irish crisis’ could be simple if the other countries are really determined to go ahead. At the forthcoming European Council meeting in Brussels, member countries could simply sign the consolidated text of the Treaties which results from the incorporation of the amendments of the Lisbon Treaty into the old Treaty.¹ This text has recently been officially published.

The Irish government could not put its signature to such a Treaty at this time, since its population has just voted against it, but it would be important not to give the impression that the other members are trying to exclude a country that has been a successful member of the EU for 35 years and has not shown signs of having turned Euro-sceptic in general.

Hence, the Irish government should be invited by the European Council to submit within a reasonable time period a set of protocols, or opt-outs, which would allow it to sign the treaty and have reasonable certainty that the next referendum would have a different outcome.

In the meantime, the consolidated text would thus be signed by 26 member states (perhaps 25 if the Czech government judges that ratification is difficult). This consolidated text represents a new coherent treaty and it could enter into force once it is ratified by all the 26 members that have signed it now.² Ratification of the consolidated text should be possible within a short period of time as no further

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¹ The EU’s fundamental law is the “Treaties”, i.e. the Treaty of Rome (officially, Treaty establishing the European Community) and the Maastricht Treaty (officially, Treaty on European Union) as modified by the many Treaties adopted since 1958. New treaties, like the Lisbon Treaty, are a list of amendments and deletions that apply to the existing Treaties – this is why they are so hard to read. A ‘consolidated text’, which is a re-writing of the treaties with all the amendments inserted, makes it much easier to understand what the law says.

² To minimise further risks, it would be desirable that the consolidated version be augmented by only one article, which would state that this (new) Treaty will enter into force (among those countries that ratified it) once it has been ratified by an overwhelming majority of the present members of the EU (e.g. 9/10 member states representing at least 90% of its total population of over 500 million). This step would not be necessary at this point, however, since all 26 have committed to ratifying the Lisbon Treaty and this change would represent an important departure from the present text, thus possibly delaying ratification.

referenda would be necessary and all 26 (25?) are committed to ratifying the Lisbon Treaty using parliamentary procedures (with 18 already having done so).

In those 18 countries in which the Lisbon Treaty has already been ratified, it should actually be possible to use an accelerated procedure to (re-)ratify the consolidated text, which after all contains exactly the same substance of the Lisbon Treaty, except that this substance, which has to be read with the previous treaties, has been consolidated into one text and thus legally constitutes a new Treaty. The only difference with the text already ratified would be that the new Treaty would have one (two?) signatory(ies) less. National parliaments in these 18 member countries could thus be invited to (re-) ratify the same substance once more using an accelerated procedure.

In those countries in which the ratification process is still ongoing, the government could inform its Parliament(s) that it is now able to present them with the consolidated text that results from the incorporation of the amending Treaty already under consideration. This should not delay ratification unduly.

Once all 26 have ratified the consolidated text, it would be ready to enter into force.³ Using fast-track (re-)ratification procedures, this might even be possible in time for the next elections of the European Parliament.

Once (re-)ratification has been completed in the 26, it would be entirely appropriate for the Irish government to call a second referendum. This referendum would then be about a different question: Does Ireland wish to join the EU(-26) with the Lisbon Treaty in force? At this point, another No would effectively mean that Ireland would leave the EU. Faced with this prospect, it is highly likely that Ireland would choose to remain in the EU even if this meant accepting the essence of the Lisbon Treaty (possibly with some additional protocols as a face-saving device).

To put the choice in such stark terms to the Irish electorate is entirely appropriate since the requirement of unanimity creates a giant external effect: a No vote imposes a high cost on all EU members. Hence the electorate in any one country, especially a small one, is entirely rational to vote no. They can thus punish at a low cost to themselves their own political class. The cost in terms of a badly functioning Union, however, is borne by 99% of the others. No political system can survive for long under such a misaligned incentive structure.

³ Technically all 26 would then renounce their membership of the 'old' EU, which they can do anytime since all international treaties can be denounced by its signatories.