



Executive summary

Ireland have been facing some of the same challenges as when the Danes rejected the Maastricht Treaty in 1992. A solution to the ratification crisis that could satisfy both the Irish people and the remaining member states needed to be found. A way of addressing the concern of the citizens needed to be identified. There are a number of interesting similarities between the two cases, and hence, also lessons to be learned for both Ireland and Denmark

December 2008

The Irish Opt Outs from the Lisbon Treaty? Lessons of the Danish Experience

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INTRODUCTION

The European Union (EU) appears to have taken a first step in finding a solution to the current crisis of the rejection of the Lisbon Treaty and has granted concessions to Ireland at the European Council meeting on 11 and 12 December 2008. This means that Ireland will hold a second referendum before October 2009. The challenge for the European Council was to find a solution that was acceptable to both the Irish People and the remaining member states. This leaves Ireland in a similar situation as when Denmark rejected the Maastricht Treaty in 1992 and needed to address the concerns of the citizens in a second referendum.

Denmark found a new basis for a second vote by negotiating four opt-outs of certain provisions of the Maastricht Treaty. Today the Danish opt-outs have completely different consequences than when formulated and are considered to limit Danish freedom of action in the EU more than protect Danish autonomy. Although 16 years have passed since Denmark found its way out of its ratification crisis, there are a number of interesting similarities between the two cases, and hence, also lessons to be learned for both Ireland and Denmark.

Why Denmark got four opt-outs

The Danes rejected the Maastricht Treaty in a referendum on 2 June 1992 with a tiny majority of 50.7%. The overall reasons behind the Danish 'no' vote were concerns about ceding sovereignty and creating a 'United States of Europe'. Denmark was soon to find out that a re-negotiation of the treaty was not an option, and a new basis for a second referendum was needed in order to find a

way out of the ratification crisis. This scenario started a debate on the negotiation of a special status for Denmark in the EU.

The solution to the ratification crisis did not originate from the government, but from three opposition parties. The Social Democrats and the Social Liberals, in favour of a 'yes', and the Socialist People's Party, who had recommended a 'no', drafted the so-called 'national compromise' during autumn 1992. The national compromise was based on a proposal of the latter who, before the referendum, had prepared a strategy in case of a rejection of the treaty. The national compromise suggested four opt-outs from the areas of euro, defence policy, Union citizenship, and Justice and Home Affairs. The national compromise was adopted by all eight political parties in the Parliament except one, the Progress Party, and the agreement was named "Denmark in Europe". The national compromise made one party in Parliament, the Socialist People's Party, switch from a 'no' to a 'yes' on the Maastricht Treaty.

Denmark in Europe laid grounds for the further negotiations with the other 11 member states prior to the European Council meeting in Edinburgh on 11 and 12 December 1992. The result of the negotiations was a decision by Heads of State and Government on the four opt-outs from the areas mentioned above. *Denmark in Europe* had broader ambitions concerning issues of democracy, openness and transparency than what was agreed in Edinburgh. The Edinburgh agreement reflects that the Danish 'no' was seen as an isolated Danish problem, and therefore no changes were made to the treaty. The Danish wish to enable acceding member

states to negotiate opt-outs to the Maastricht Treaty was not fulfilled. Moreover, the agreement also stated that Denmark would not prevent closer cooperation among the Member States in the areas concerning the four opt-outs.

Denmark was able to ratify the Maastricht Treaty including the Edinburgh agreement after a second referendum on 18 May 1993. Subsequently, the Treaty and the Danish opt-outs came into force in November 1993.

The Irish solution to the ‘No’

The Irish rejected the Lisbon Treaty in a referendum on 12 June 2008 with a majority of 53.4%. This left the Irish government in a political crisis during the resulting period of reflection. The main priority for the government was to reach an in-depth understanding of the referendum result in order to find the best way forward. The Irish government therefore commissioned a major research project, the Millward Brown report, analysing the outcome of the referendum as a supplement to the post-referendum Eurobarometer survey by the European Commission. Furthermore, the Irish Institute of International and European Affairs published a report in November identifying scenarios, options and implications for Ireland’s future after Lisbon. Both the Irish government and parliament also consulted Denmark to understand the Danish experience from 1992 and to seek advice on how to resolve its own ratification crisis.

A sub-committee of the Irish Parliament, the Houses of the Oireachtas, was established with the task of producing a report on Ireland’s future in the EU taking into account the mentioned research. The

sub-committee needed to address the issues which motivated the ‘no’ vote in order to find a way out of the ratification dilemma. Six issues of concern to the voters were identified in the report. They were taxation, worker’s rights, public services, socio-ethical issues, military neutrality and Irish influence in the EU. Moreover, a number of different scenarios for Ireland and its future positioning in the EU were considered; to seek a protocol, to make a declaration which is appended to the Lisbon Treaty, to secure opt-outs, or finally - not to ratify the Lisbon Treaty. The report concluded that the protocol solution is problematic as it is legally binding and requires separate ratification of each member state. Many member states have already experienced difficult ratification processes and are not likely to agree to re-ratification. The Common Security and Defence Policy (CSDP) was put forward as a possible opt-out area in order to deal with the neutrality concern. The report also expressed a strong concern about not seeking ratification as this would leave Ireland in a second tier of the EU and have catastrophic consequences for Irish interests. Finally, the report rejected a suggestion that Ireland could ratify the Lisbon Treaty through its parliament and stated their willingness to proceed with a second referendum. The sub-committee also saw no legal obstacles to holding another referendum.

WHAT HAS IRELAND LEARNT FROM DENMARK?

It is clear that Ireland has learnt a number of lessons from the Danish referenda experiences. These lessons include, firstly, the need to accurately understand and address the concerns of those voting ‘no’

or abstaining from voting in the referendum. Secondly, the Danish and earlier Irish experiences are instructive on how to rethink and hold second referenda, as in 1993 (Denmark) and 2002 (Ireland). Thirdly, the need to ensure that accurate information is available to voters, with the Irish parliament suggesting the establishment of an EU information service, copying the success of the Danish parliament's EU information centre (Folketinget's EU-oplysning) established in 1994. Fourthly, the Irish have learnt much from Denmark on the possibilities of European Council declarations becoming subsequent treaty protocols, as was the case when the Edinburgh Agreement became the basis for protocols in the Amsterdam Treaty.

Finally, Ireland has also learnt the longer-term problems of treaty opt outs from Denmark. The sub-committee of the Irish parliament noted that the Danish opt outs leave Denmark outside the decision making process in key policy areas of the Union and have had a detrimental effect on Denmark's national interests. These lessons are particularly important in the only area where the Irish have considered following the Danish lead through a defence policy opt out.

The Irish parliament's report argues against a defence opt out for three reasons, all related to the way the Danish opt outs are considered to limit Danish freedom of action more than protect Danish autonomy. The report's first argument is that opting out from the CSDP would be counterproductive and detrimental to Irish foreign policy interests as Ireland would lose its veto and its capacity to influence CSDP and the EU's Common Foreign and Security Policy. Secondly, the report argues that a

defence policy opt out would work against undertaking peacekeeping missions, and that Ireland could not take part in UN peacekeeping or humanitarian missions that were EU-led (such as in Congo or Chad). Thirdly, the report argued that introducing operational restrictions would mean Ireland opting out of most missions and would lead to Ireland losing the capacity to influence the shape of EU missions (as well as a significant loss of political influence on the future evolution of CSDP).

WHERE DO IRELAND AND THE EU GO NOW?

Following the Brussels European Council on 11th and 12th December, the Irish government is likely to seek cross-party consensus with the Fine Gael and Labour parties. Most other member states were open to the Irish desire to retain a nationally-nominated Commissioner, but were equally concerned to reach clarity on the Irish position by the June 2009 European Council meeting. This means it is possible for Ireland to hold a second referendum in October while the current Barroso Commission stays in place an additional two months until the end of 2009. The intention of all member states would then be for the Lisbon Treaty to enter into force on 1 January 2010.

Any Irish cross-party consensus is likely to follow the Danish lead in seeking to make binding declarations on neutrality; the right to life, education and the family; and taxation at the European Council meeting, similar to the Danish declaration on Union citizenship. As discussed, the Irish will seek to avoid following the Danish model of opt outs on defence. But what Ireland seeks from the other member states is assurance that the Commission

will continue to include one national of each member state.

The unasked question is what Ireland and the EU will do if a second referenda also result in a no? The likely outcome of a 2010 UK general election will current result in a Conservative government already committed to a referendum on the Lisbon Treaty. Any such referendum is likely to result in a UK 'no' to the treaty, given the hegemony of anti-European media in England. Thus, an Irish 'no' is likely to lead to a joint Irish-UK rejection of the Lisbon Treaty and the retention of the Nice Treaty amendments, including the loss of an Irish-nominated Commissioner.

The lessons for Denmark of the Irish referendum are two-fold. Firstly, there is

considerable concern expressed by Irish policy analysts and the Sub-Committee of the Irish Parliament about the potential costs of following Denmark's opt out model. Secondly, a second Irish 'no', together with an anti-European UK government is likely to lead to the EU being amended by other means. These other means might include the use of 'enhanced cooperation' involving closer cooperation amongst smaller groups of member states (such as EMU and the Social Chapter inside the EU; and the Schengen and Prüm Treaties outside the EU). The three most likely arenas for such closer cooperation are defence and security policy, the Eurogroup, and police and judicial cooperation, all areas from which Denmark has opted out.

Statement of the Concerns of the Irish people on the Treaty of Lisbon as set out by the Taoiseach

1. Ensuring that Ireland's requirements regarding maintenance of its traditional policy of neutrality are met;
2. Ensuring that the terms of the Lisbon Treaty will not affect the continued application of the provisions of the Irish Constitution in relation to the right to life, education and the family;
3. Ensuring that in the area of taxation the Treaty of Lisbon makes no change of any kind to the extent or operation of the Union's competences;
4. Confirming that the Union attaches high importance to:
 - * social progress and the protection of workers' rights;
 - * public services, as an indispensable instrument of social and regional cohesion;
 - * the responsibility of member states for the delivery of education and health services;
 - * the essential role and wide discretion of national, regional and local governments in providing, commissioning and organising non-economic services of general interest which is not affected by any provision of the Treaty of Lisbon, including those relating to the common commercial policy.

(Annex II to the Presidency's Conclusions of the Brussels European Council, 12 December 2008)

FURTHER READING

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