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Commentary

Lisbon mission accomplished? Not yet...

By Janis Emmanouilidis and Antonio Missiroli

The Irish 'Yes' to the Lisbon Treaty is good news for Europe. The fact that two-thirds of the Irish electorate voted in favour - and with a higher turnout than when the 'No' camp prevailed in June 2008 (58% versus 53%) - is an important step towards the Treaty's entry into force. A second Irish 'No' would have killed it off and conveyed to both European citizens and the wider world the image of a Union that cannot get its act together and deliver on what it agrees upon.

The Lisbon Treaty might not be perfect and, like the rules of a condominium, is certainly a boring and sometimes cryptic read. But it includes numerous innovations which can enhance the efficiency, transparency and legitimacy of the enlarged EU. This is why Ireland's "resounding Yes" to Lisbon - as European Commission President José Manuel Barroso described it - may be a long-awaited and much-needed turning point after almost a decade of failed institutional reforms: a necessary precondition for a much better Union, though obviously not a sufficient one.

Mission accomplished then? Not entirely, and not yet. Following the Irish 'Yes', 25 EU Member States have now successfully completed the ratification process. However, the Treaty's entry into force is still by no means certain, as ratification is still pending in two Member States: Poland and the Czech Republic.

In Poland, the Treaty was successfully passed in both houses of parliament - the Sejm and the Senate - in April 2008. However, President Lech Kaczyński has not yet signed the Polish Ratification Act, insisting that he would await the outcome of the second vote in Ireland. The chances are now therefore very high that he will no longer withhold his signature, as he has publicly declared that he would accept the decision of the Irish people: in fact, in the aftermath of the Irish 'Yes', the President declared that he will swiftly sign.

Czech-in problems

The situation is far more complex in Prague. Czech President Václav Klaus openly opposes the Lisbon Treaty and has persistently refused to sign it, despite the fact that both the lower Chamber (in February 2009) and the upper House (in May 2009) have approved the text, declaring that he would await the outcome of the ratification process in all other EU Member States. The Irish and (most likely) Polish decisions will increase the pressure on him to sign - although his reaction to external pressures remains unpredictable at this stage.

In fact, President Klaus can still rely on other pretexts to withhold his signature. For one, he needs to await the final verdict of the Constitutional Court. In November 2008, the Court rejected a first complaint against certain specific aspects of the Lisbon Treaty, ruling that it was in line with the Czech Constitution. On the eve of the second Irish referendum, however, a group of conservative Civic Democratic Party (ODS) senators close to the President filed a broader complaint against the new Treaty. The Court has announced that the case will be given priority, which means that it is geared up for a speedy deliberation, but it may still take weeks or even months to deliver a final verdict.

The Czech President's waiting game relies also on the political instability at home after the fall of Prime Minister Mirek Tópolanek's government in May 2009. Since then, the country has been run by a caretaker administration. Parliamentary elections are now due to take place by June 2010, after the Constitutional Court ruled the original planned October 2009 election date invalid. President Klaus could therefore argue that he must await the outcome of the elections before signing the Treaty.

If it is not ratified by all 27 Member States before the next UK elections (also due by June 2010), the Lisbon Treaty could face a more substantial risk. David Cameron, the leader of the British Conservatives - who are likely to win the election - has declared his intention to hold a referendum on the Treaty if it has not yet entered into force. A negative outcome to any such vote appears an almost foregone conclusion, and the fact that the Czech ODS party is now in the same group as the UK Tories - and President Kaczynski's Law and Justice Party (PiS) - in the European Parliament has triggered allegations of a tacit 'Eurosceptic plot' to postpone ratification until the Treaty can be sunk once and for all by the UK.

Between Nice and Lisbon: tips for the transition

It is quite bizarre, to say the least, that an international treaty which has now been ratified democratically by *all* 27 EU national parliaments and the citizens of the only country which has consulted them (albeit, admittedly, at the second attempt) can be held up by a single man whose constitutional powers do *not* allow him to withhold his signature - although the Czech Constitution does not set any deadline for him to put pen to paper.

Yet it is also difficult to imagine what pressures could be exerted - beyond moral suasion - to persuade him to sign, and to do so swiftly. While a broadly-based appeal to Prague's 'institutions' appears conceivable (but should be phrased with care), direct threats - of whatever kind - would inevitably damage the entire country's interests and could therefore backfire, offering President Klaus the opportunity to rally support against an alleged lack of respect for a small country's sovereign decision-making procedures.

At the same time, the Union cannot afford protracted uncertainty and stalemate over its legal basis, not least given the many urgent internal and external challenges it faces. Time is short: the EU must decide very soon on the composition of the next European Commission, as the current College's mandate expires on 31 October - as does that of Javier Solana, the current High Representative for Common Foreign and Security Policy. The size and shape of the former and the competences of the latter would be different depending on whether they are appointed on the basis of Nice or Lisbon.

Such a unique situation requires a combination of resolve and flexibility from all sides. While it is difficult to predict what may happen in Warsaw and especially Prague, the Swedish EU Presidency could begin working on a multi-pronged approach including four stages.

First, the forthcoming European Council on 29-30 October could extend the current Commission's mandate by up to two months, in order to buy some time and allow for the nomination of the new College.

The fact that President Barroso has been confirmed for another five-year term should make this easier, as the Commission would not simply be seen as a caretaker body - or, worse, a 'lame duck' - and could instead rely on the fresh legitimacy of its President-elect (who could have a 'transition team' of close aides laying the groundwork for the next College).

Secondly, the European Council could appoint Mr Solana's successor straight away and also decide that, as a consequence, his/her country will not have a Commissioner until the Lisbon Treaty enters into force. When that happens, the new High Representative would join the Commission as Vice-President and oversee the Union's 'foreign policy', in compliance with the Lisbon Treaty.

Such a mechanism would allow for the nomination and organisation of the new College, which would consist of the President and 25 Commissioners. It would thus be still in line with Nice (fewer Commissioners than Member States), but easily adaptable to Lisbon.

Thirdly, immediately after that, President Barroso could announce his new Commission (names and portfolios) and submit it to the European Parliament for the required hearings in the relevant committees, which could start in mid-to-late November.

In the meantime, and up until the December 2009 EU Summit, the European Council and the Parliament could remain in close contact in order to be able to agree quickly on switching to a Lisbon-based 'script' - including the final vote of confirmation on the entire Commission - if and when circumstances allow. This could be done either by written procedure (as happened

over President Barroso's appointment) or by convening a snap extraordinary Summit to set the date for the new Treaty's entry into force and adopt the required formal steps.

Only then will it be possible – in a fourth and final stage – to complete the 'double-hatting' of the HR/VP and appoint the semi-permanent President of the European Council. Depending on the Czech timetable, all this could end up on the agenda of the December EU Summit, which would also have to plan for the implementation of those aspects of the new Treaty which require further negotiations and decisions - both among the Member States and between the EU institutions.

Even if the Lisbon Treaty enters into force by early 2010, in fact, there still are grey areas to clarify and pending issues to address, from the residual/resilient role of the rotational EU Presidency to the status and shape of the European External Action Service. Even with Vaclav Klaus' signature on the Treaty, in other words, the transition phase will not be over. The forthcoming Spanish - and possibly also Belgian - Presidencies in 2010 already have their work cut out.

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