



THE RATIFICATION AND IMPLEMENTATION OF THE TREATY OF LISBON – WHAT IS AT STAKE ?

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The Treaty of Lisbon signed on 13 December 2007 is intended to enter into force on 1 January 2009, provided of course that it has been ratified by all EU member states by the end of the year. Given the traumatic experience with the failed process for the ratification of the European Constitution and the crisis it caused for the European Union, the ratification of the new Treaty acquires critical political importance for the cohesion, unity and even survivability of the European Union as coherent entity of 27 member states. Likely failure to ratify the Treaty of Lisbon could unleash uncontrollable dynamics that could put at real risk the unity of the Union, with far-reaching, irreversible consequences.

The ratification of the new Treaty should inevitably therefore be the overriding priority and concern of the European Union for the current year.

On the assumption that the ratification process is successfully completed and the new Treaty enters into force as planned, on 1 January 2009, the question of its implementation and effective functioning arises. Preparatory work needs to be carried out during the current year, and formal decisions and actual implementation must be pursued next year under the supervision and guidance of the Council presidencies.

But while ensuring the smooth implementation and functioning of the Treaty is something that should concern all the three member states of the new Troika presidency (France, Czech Republic, Sweden), ratification should hopefully concern only France (and the preceding presidency, Slovenia) – assuming, that is, everything goes as planned. On the whole, it seems that the Trio Presidency will be responsible chiefly for managing the early but critical stages of Treaty implementation, by translating Treaty provisions into actual policies and political reality. A truly challenging task.

RATIFICATION OF THE TREATY

The ratification process is, from a formal, legal point of view, the constitutional responsibility of the member states alone. However, the Council presidencies should have a well-thought strategy for, at best, facilitating or, at least, not adversely affecting the smooth unfolding of the process. This applies especially to France, as it is the Presidency in the second semester of the year that will hopefully manage the closing stages of the ratification process. This strategy should be based on three main points:



■ Managing the Council policy agenda in such a manner as to avoid giving rise to controversies in problematic member states – controversies which might hinder ratification by creating confusion and misunderstandings which gratuitously provide (rhetorical) ammunition to the opponents of the Treaty. In particular, careful handling of the mid-term review of the EU budget and policies is needed while the ratification process is still in progress (the awful experience with the Bolkestein directive and the Constitution should be avoided). Careful management of the policy agenda might have a certain short-term cost but this will be worth paying in order to secure smooth ratification.

■ Refraining from actions, statements, declarations liable to be construed as interference on the part of the EU institutions in the domestic ratification process. Nothing can be more damaging in certain member states than this. Instead, it seems that it will be helpful if the presidencies can continue to sustain the narrative about the “Europe of results” at the service of the European citizens. This applies of course not only to the Council Presidencies but also to other EU institutions, notably the European Commission.

■ This should not however prevent the Council Presidencies from closely monitoring the ratification process and discreetly “drawing the attention” of the delaying or problematic member states to the need to meet the target date for ratification. In this respect, the role of France, as the Council Presidency in the second half of the year, could be crucial in pushing member states towards completing ratification. And from that point of view it is important that France has itself proceeded to ratify the Treaty very early in the process.

IMPLEMENTATION OF THE TREATY OF LISBON

According to the conclusion of the European Council (December 2007):

“The European Council will take stock of progress on necessary preparatory work when appropriate so as to ensure the full functioning of the Treaty as soon as it enters into force. It underlines the comprehensive nature of this exercise and the consequent need for a single framework as well as political guidance at the highest level. Technical work will start in Brussels in January on the basis of a work programme which will be presented under the authority of the incoming President of the European Council.”

With the European Council providing political guidance, the Council and Coreper (as the “single framework”) will need to advance the preparatory work for the implementation of the Treaty. This places a heavy burden upon the Council Presidencies and especially the Trio Presidency starting on 1 July 2008. They will have to oversee the completion of the preparatory work (to be commenced under the Slovenian Presidency), the adoption of the formal decisions required after the entry into force of the Treaty, as well as – and more importantly – to handle the process of turning Treaty provisions into actual political reality and policies.

Three main principles should guide the presidencies in their task of managing the various stages of the implementation process:

First, “tight coordinated action” to ensure efficiency and continuity in the process. As the European Council conclusions provide for, there must be a “single framework” (namely Council/COREPER/European Council in association or consultation with other EU institutions whenever that is required) for tackling all the issues pertaining to implementation.

Second, respect for the essential institutional balances. This is important because the new Treaty contains a number of really novel institutional arrangements (i.e. President of the European Council, High Representative for CFSP/Vice-President of the Commission, European External Action Service) capable of upsetting fundamental institutional balances and symmetry if not handled properly.

Third, respect of interstate balances especially in terms of demographic, geographic and “accession criteria” (between “old” and “new” member states), particularly in the process of applying the Treaty provisions for the full-time President of the European Council, the President of the Commission and the High Representative.

Both fundamental interinstitutional and interstate balances need not be altered in any significant way.

The Slovenian Council Presidency, in a “note on the preparatory work on the entry into force of the Treaty” circulated in January 2008, has listed 33 items that must be tackled by successive presidencies before and after the coming into force of the Treaty. These items can be grouped into two broad categories:

- Items of mainly procedural, technocratic nature for the implementation of specific provisions of Treaty. The negotiation of these items is not likely to cause any acute political controversy nor is their enforcement likely to affect in any significant way the institutional symmetry, beyond helping to enhance procedural effectiveness in policy making.

- Items of heavy political nature which either flow from concrete provisions of the Treaty or arise as a consequence of the entry into force of the new Treaty. Because these items have the potential to significantly affect institutional architecture and symmetry, they are likely to provoke sharp political controversies in their negotiations.

In our view, the following eight items fall within the second category and as such they should form the core priority list for the new Troika Presidency (France, Czech Republic, Sweden):

- The election of the permanent President of the European Council (and the relevant decisions over support structures for the President).



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- The activation of the new mechanism for the election of the President of the European Commission by the European Parliament, “taking into account the elections to the European Parliament and after having held the appropriate consultations”.

- The nomination of the High Representative (HR) for the Common Foreign and Security Policy (CFSP).

- The establishment of the European External Action Service: a truly difficult task involving the striking of sensitive balances between institutions (Council/Commission) as well as member states (large/small, north/south), yet without compromising the Service’s main objective – namely to enhance the effectiveness, coherence and visibility of the Union’s external action.

- The establishment of the list of different configurations of the Council (other than the General Affairs Council and the Foreign Affairs Council) and the definition of the role and functions of particular Councils, in particular the GAC.

- The adoption of the decision for the exercise of the (team) presidency of Council configurations (other than that of the Council of Foreign Affairs).

- The activation of the provisions for “permanent structured cooperation” in the context of defence, within the Union framework.

- The adoption of the detailed arrangements for the activation of the mutual assistance clause in the area of defence as well as the “solidarity clause”.

Two other items of great institutional and political importance, namely the composition and the rotation of the members of the European Commission and the new QMV formula of double majority, will be dealt with at a much later stage, since the relevant Treaty provisions will not come into force until 2014.

No doubt the most critical decision, with the potential to determine the future institutional morphology of the EU – in particular, by shaping the triangular relationship President of the European Council/President of the Commission/High Representative – is that of the election of the permanent President of the European Council. France, as the Presidency most likely to be involved in the process if everything goes according to plan, should seek to make sure that the new President will be a truly European figure of undisputed respect and stature among member states. The person chosen should be able to generate consensus, to work constructively with the President of the European Commission and the High Representative for CFSP and provide political impetus to European unification. An alternative strategy could of course be to delay the appointments both of the President of the European Council and that of the HR until the second semester of 2009 (after the election of the new European Parliament), and to include them in a “package”



along with the Presidents of the European Parliament and the European Commission. This strategy could ensure a greater degree of political balance.

Regarding the Presidencies of the Czech Republic and Sweden, three areas of the Treaty can be identified as of high priority in the implementation process (besides continuing the overall implementation process):

- The new provisions in the area of freedom, security and justice (Title IV of the Treaty of Lisbon)
- The provisions on “the Common Security and Defence Policy”, especially the clauses concerning the establishment of “permanent structured cooperation”
- The practical implementation of the External Action Service.