

Poland and the ratification of the Treaty of Lisbon

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According to the Preamble of the Treaty of Lisbon, its aim is “to complete the process started by the Treaty of Amsterdam and by the Treaty of Nice with a view to enhancing the efficiency and democratic legitimacy of the Union and to improving the coherence of its action.”¹ The Lisbon Treaty, also known as the EU Reform Treaty, is an international agreement signed in Lisbon on 13 December 2007 that would change the workings of the European Union. This Treaty is replacing the European Constitution, a project from 2001 which failed due to rejection by French and Dutch voters. Prominent changes prescribed by the Reform Treaty, include a „double majority” rule for Council decisions (55% of member states representing 65% of the EU’s population), strengthening national parliaments by giving them the right to raise objections against draft EU legislation (the so-called orange card to reinforce the principle of subsidiarity), reducing the number of Commissioners as well as the number of MEPs, creation of a permanent President of the European Council for a two-and-a-half year term instead of a six-month rotation, creation of a High Representative for Foreign Affairs and Security Policy, the possibility for a member state to withdraw from the EU, giving EU a single legal personality, and making the Charter of Fundamental Rights legally binding.²

In order to enter into legal force, the Treaty must be ratified by all the member states. Though the number of EU countries that have approved the Treaty by their Parliament is 26 of the total 27, as of June 2009, only 23 members have actually ratified the Treaty. There are also two consultative ratifications which need to be carried out in Gibraltar and Åland Islands, even if those votes do not affect the overall ratification process. The big defeat is the rejection of the Treaty by Irish voters on 12 June 2008, with 53.4% against the Treaty and 46.6% in favour, in a 53.1% turnout³. The

Irish government is preparing to have another referendum on the issue in autumn of 2009. The other three countries – the Czech Republic, Germany and Poland – did ratify the Treaty in their Parliaments, but the ratification is stalled while awaiting presidential signatures.

Germany approved the Treaty in the Parliament on 23 May 2008. The Federal President has signed the law allowing ratification but he refuses to ratify the Treaty until the Federal Constitutional Court rules on its compatibility with the German Constitution. In Poland, as in the Czech Republic, Presidents are waiting for the outcome of the second Irish referendum. According to the official website of the President of Poland, Lech Kaczyński, the actual ratification now lies within his sole jurisdiction⁴, pursuant to Article 133 of the Constitution⁵. However, according to the official website of the European Union, it is only the “ratification instrument” that remains to be signed⁶.

Hence, what are the most prominent issues concerning the ratification of the Lisbon Treaty in Poland? We will first present the Polish political and constitutional system (I), and this in order to better comprehend the way in which the Lisbon Treaty is handled in Poland (II).

I. The political and constitutional system in Poland

Poland is a parliamentary representative democracy. The Prime Minister is the head of government (which consists of a council of ministers) and of a multi-party system. The President is the head of state. Presidential elections occur every five years. Executive power is exercised by the government. Pursuant to Article 10, Par. 2 and Article 95 of the current Constitution of Poland, legislative power is exercised by the Sejm (the Lower House of Parliament), side by side with the Senate (the Upper House)⁷. Members of Parliament are elected by proportional representation, and

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¹ *Treaty of Lisbon, Amending the Treaty on European Union and the Treaty establishing the European Community*: http://www.lisbontreaty2008.ie/Lisbon_Treaty_English.pdf

² *A summary guide to the Treaty of Lisbon (EU Reform Treaty)*, National Forum on Europe, Dublin, Stationery Office, January 2008, www.forumoneurope.ie.

³ “Ireland rejects EU reform treaty”, *BBC News*, 13 June 2008: <http://news.bbc.co.uk/2/hi/europe/7453560.stm>.

⁴ „Jest podpis pod ustawą upoważniającą Prezydenta RP do ratyfikacji Traktatu”, 10 April 2008, www.prezydent.pl.

⁵ The Constitution of the Republic of Poland, of 2nd April, 1997 (Dz. U. No. 78, item 483), in English: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

⁶ “Treaty of Lisbon in your country”, Portal site of the European Union *EUROPA*: http://europa.eu/lisbon_treaty/countries/index_en.htm.

⁷ Official site of the Senate of the Republic of Poland, basic information, in English: <http://www.senat.gov.pl/>.

currently four parties are represented: PO (Civic Platform – the party of the current Prime Minister), PiS (Law and Justice – the presidential party), LiD (Left and Democrats) and PSL (Polish People's Party). Parliamentary elections occur at least every four years.

The ratification of international agreements lies within the jurisdiction of the President of Poland (Art. 133). In certain matters, pursuant to Article 89, Par. 1, ratification as well as renunciation, requires Sejm's consent to be granted by a statute (*"ustawa"*) passed in accordance with the ordinary legislative procedure. The Lisbon Treaty represents such an agreement. Consent for ratification of an agreement of this kind may be granted by the legislature in the form of a statute through parliamentary procedure or directly by the Nation in a referendum. The choice of one of these procedures is made by the Sejm, which adopts a resolution (*"uchwała"*) on the matter by an absolute majority vote taken in the presence of at least half of the statutory number of deputies (Art. 90, Par. 4).⁸

Within the framework of the parliamentary procedure, a statute granting consent for the ratification of the Treaty would have to be passed by a qualified majority vote of two-thirds in both houses of Parliament (Article 90, Par. 2). After the statute is passed, the Sejm Marshal submits it to the President, who has 21 days to sign the bill if he has no reservations about it (Art. 122, Par. 2). He then arranges for the law to be published in the Journal of Laws (*"Dziennik Ustaw"*). The bill comes into force 14 days after its publication. There are different rules concerning the granting of consent for the ratification of an international agreement, due to the fact that the Republic surrenders jurisdiction in certain matters to international institutions.

Alternatively, instead of a parliamentary procedure, it is possible to hold a nationwide referendum which will grant the President the consent for ratification of the Treaty (Art. 90, Par. 3). Pursuant to Article 125, Par. 2, it is the Sejm or – with the Senate's consent – the President of the Republic, who has the legal opportunity to call a referendum. The participation of more than half of the citizens having the right to vote is required (Art. 125, Par. 3). However, the Constitution does not state the level of support of the voters required when ratifying an international agreement. This matter is settled by the Nationwide Referendum

Act 2003⁹: the President receives consent for ratification if the majority of valid votes were cast in favour of it, whereas he does not receive consent if the majority of valid votes were cast against (Art. 73 and Art. 74 of the 2003 Act). Finally, Article 63, Par. 1 of the 2003 Act, includes an indirect initiative right by which a petition signed by at least 500,000 registered voters is referred to the legislature. The Sejm then decides whether to submit the question to popular referendum.

II. The ratification process of the Lisbon Treaty in Poland

At the very beginning, the assumption was that Poland will opt for the referendum procedure. Even in December 2007, the Polish Commissioner for Civil Rights Protection, Janusz Kochanowski, appealed in a letter to hold a referendum on the matter of ratification of the Lisbon Treaty. He pointed out that the Parliament alone could decide on the ratification "insofar as citizens were already acquainted with the contents of the Treaty [...] nevertheless there was no debate during the negotiations, nor after the signing"¹⁰. MEPs Witold Tomczak or Urszula Krupa, members of the Independence/Democracy Group, urged gathering signatures to petition for a referendum on the ratification of the Treaty¹⁰. However, members of the majority coalition (PO and PSL) argued that Poland has a newly elected Parliament (early elections took place in October 2007) and calling a referendum would be unnecessary and even irresponsible, because of the possibility of a low turnout, which would make the referendum invalid¹¹ (in the history of Polish referendums only one – the 2003 referendum on EU accession – of the total of four exceeded the 50% turnout). As Poland had already decided through a nationwide referendum to support EU integration and to accept all consequences, including legal ones, the referendum on the Reform Treaty was not held.

On 28 February 2008, the Sejm adopted the resolution on the procedure which will be adopted in order to ratify the Reform Treaty¹² (according to Art. 90, par.

⁸ "Referendum on Poland's accession to the European Union", judgment of the Constitutional Tribunal, 27th May 2003, K 11/03: http://www.ecln.net/documents/Decisions-Poland/2003_pol_accession_referendum.pdf.

⁹ Bill of 14 March 2003 on nationwide referendum (Dz. U. No 57, item 507): <http://isip.sejm.gov.pl/servlet/Search?todo=file&id=WDU20030570507&type=1&name=D20030507L.pdf>.

¹⁰ „Parlament zdecyduje o ratyfikacji Traktatu Lizbońskiego”, *Wprost*, 28 February 2008: <http://www.wprost.pl/ar/124600/Parlament-zdecyduje-o-ratyfikacji-Traktatu-Lizbonskiego/>.

¹¹ „Politycy krytycznie o apelu RPO o referendum ws. Traktatu”, *EuroPap*, 24 December 2007, www.euro.pap.pl.

¹² *Sejm Chronicle*, nr 9 (645), VI term, 29 February 2008, http://www.sejm.gov.pl/wydarzenia/kronika/6kad/kronika009_6.pdf.

4). The contents of the resolution, which states that the Treaty will be ratified by the Parliament, was proposed by the Presidium of the Sejm (internal organ of the Chamber formed by the Marshal and the four Vice marshals) who voted unanimously on the matter. The resolution was backed by 357 deputies, 55 were against, and 7 abstained. The absolute majority needed to adopt the resolution, according to Article 120, was 210 votes (the vote was attended by 419 members).¹² Deputies against this resolution were members of the PiS who had discretion on this matter due to an ongoing discussion in the party (the voting discipline was called off).

Following the parliamentary procedure, the Sejm adopted on 1 April 2008 the statute proposed by the government, authorising *ipso facto* the President to ratify the Treaty of Lisbon¹³ (Art. 90). For the first time in the Sejm's history, both the Prime Minister, Donald Tusk, and the President, Lech Kaczyński, urged deputies to vote in favour. And so, 384 deputies voted in favour, 56 against and 12 abstained (in both cases only PiS deputies). The two-thirds majority needed was 302 votes¹⁴. Pursuant to Article 121, when a statute is passed, the Sejm Marshal submits the law for consideration to the Senate. As a result, the Senate granted its consent on 2 April, with 74 senators voting in favour, 17 against and 6 abstaining¹⁵. After the law was passed, the Sejm Marshal, Bronisław Komorowski, submitted it to the President.

In addition to this last statute, the Sejm adopted a treaty-accompanying resolution concerning the ratification of the Lisbon Treaty. It underlines resolutions of the Protocol No 7, so-called "British Protocol," and the Ioannina compromise and guarantees that Poland will not relinquish from it.¹⁶

The Ioannina compromise – the result of an informal meeting of foreign ministers of EU states in Greece in 1994 – established that if members of the Council representing between 23 votes (the old blocking minority threshold) and 26 votes (the new threshold) opposed the making of a Council-qualified majority decision, the Council will do everything in its power, within a reasonable time frame, to reach a satisfac-

tory solution that can be adopted by at least 68 votes out of 87.¹⁷ Though the Treaty of Nice, following the re-weighting of votes in the Council of Ministers, put an end to the Ioannina compromise, the subject came up again during the negotiations about Reform Treaty in June 2007 in Brussels. In the end, after threats of launching treaty talks without Polish approval, they finally agreed that the current voting system will continue until 2014. In 2014, a new version of the Ioannina mechanism should take effect, which would allow small minorities of EU states to call for re-examination of decisions they do not accept.¹⁸

The Charter of Fundamental Rights was signed on 13 December 2007 by EU members. Though the Charter is more of a political declaration, it has already influenced judgements of the European Court of Justice.¹⁹ Yet the Charter was signed in Poland together with an opting-out protocol, the "British protocol," concerning special arrangements agreed upon between the United Kingdom and Poland. The protocol states that the Charter does not extend the ability of the European Court of Justice to find that Polish laws are inconsistent with fundamental rights, thus making its provisions unenforceable and inapplicable under Polish law. The official motivation to do so was the fear that the European Union could impose its moral standards on the Polish law. The main concern raised by PiS was the broadly formulated principle of non-discrimination with regard to sexual minorities and relationships between homosexual partners (art. 9 and 21 of the Charter²⁰). It could enable homosexual partners' claims to equal access to adoption or legal recognition of relationships. Another issue central to PiS was the potential change on women's freedom to make decisions about their sexual health and family life. Politicians feared that women might be able to rely on this right to claim unlimited right to abortion, which is inconsistent with Polish law that severely limits access to abortion.²¹

In accordance with the 2008 treaty-accompanying resolution, any renouncement of the "British Protocol"

¹⁷ Portal site of the European Union, *EUROPA Glossary*: http://europa.eu/scadplus/glossary/ioannina_compromise_en.htm.

¹⁸ "EU leaders scrape treaty deal at 11th hour", *EUobserver*, 23 June 2007: <http://euobserver.com/?aid=24343>.

¹⁹ "Q&A: Charter of Fundamental Rights", *BBC News*, 16 July 2007, <http://news.bbc.co.uk/2/hi/europe/6225580.stm>.

²⁰ Charter of Fundamental Rights of the European Union (2000/C 364/01): http://www.europarl.europa.eu/charter/pdf/text_en.pdf.

²¹ "EU-Poland: Opt-out Protocol to the Charter of Fundamental Rights", *Statewatch*, 20 December 2007, <http://www.statewatch.org/news/2008/jan/01eu-poland.htm>.

¹³ Statute on ratification of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed in Lisbon on 13 December 2007, Dz.U. Nr 62, poz. 388.

¹⁴ *Sejm Chronicle*, nr 12 (648), VI term, 15 April 2008, http://www.sejm.gov.pl/wydarzenia/kronika/6kad/kronika012_6.pdf.

¹⁵ 8th session of the Senate, description of the session in the *Diariusz*: <http://www.senat.gov.pl/k7/ue/index.htm>.

¹⁶ *Sejm Chronicle*, nr 12 (648), VI term, 15 April 2008.

or the Ioannina compromise would require a statute supported by both houses of the Parliament by a two-thirds majority vote in the presence of at least half of the statutory number of deputies and senators, or expressed by a consent in a referendum.²²

Although the Polish Parliament ratified the Treaty in April, and accepted the "British Protocol," it still needs the signature of the President. Lech Kaczyński did sign the bill which allows him to ratify the Treaty (adhering to Art. 122, Par.2). Though the President declared at several occasions that "Poland will not be an obstacle for the Lisbon Treaty,"²³ he has also cited that it would be pointless to give his final signature before a solution to the Irish no vote is found. However, the Prime Minister pointed out that if the President will continue to postpone his signing, Poland, when being the last to ratify the Treaty, can find itself in a disadvantageous position for future EU negotiations²⁴. These difficulties are compounded by a domestic dispute between the two major political parties, PO and PiS, and especially between the Prime Minister and the President. The problem is knowing which of them should represent Poland in the EU, a matter on which the Constitution is not clear. Already during the debate on the treaty-accompanying resolution former Prime Minister, Jarosław Kaczyński, tried to warn that PiS would vote yes only if the Prime Minister guaranteed the crucial point of the Jurata deal, which amends the 2004 law on the relationship between the EU and the Polish cabinet and parliament²⁵. What might nevertheless be stretched out is the fact that the Lisbon Treaty is no longer a matter reserved exclusively for politics. Support for Poland's EU membership among Poles remains at the same level as half a year ago (65%) and is much higher than the average for the 27 European countries overall (53%)²⁶. The Chancellor Angela Merkel once said that "as politicians we have to react to the fact that many people do not feel that they can relate to the

EU". Maybe it is time to react to the fact that many people actually do feel they can relate to the EU?

²² *Sejm Chronicle*, nr 12 (648), VI term, 15 April 2008.

²³ „Kaczyński nie przeszkodzi eurokonstytucji”, *Dziennik*, 6 May 2009: http://www.dziennik.pl/polityka/article374453/Kaczynski_nie_przeszkodzi_eurokonstytucji.html.

²⁴ „Premier: prezydent nie podpisuje Traktatu ze względu na ugrupowanie, z którym jest związany”, *Gazeta Wyborcza*, 30 April 2009: http://wiadomosci.gazeta.pl/Wiadomosci/1,81048,6560432,Premier__prezydent_nie_podpisuje_Traktatu_ze_wzgledu.html.

²⁵ „Sejm Endorses Lisbon Treaty”, *Gazeta Wyborcza*, 02 April 2008, <http://wyborcza.pl/1,76842,5079868.html>.

²⁶ *Standard Eurobarometer 70, public opinion in the European Union. "Executive Summary: Poland"*, coordinated by Directorate-General Communication ; produced by the European Commission Delegation in Poland, Autumn 2008, http://ec.europa.eu/public_opinion.