



# Policy Brief

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## The EU Reform Treaty: easier signed than ratified?

*By Sara Hagemann*

### Background

Three weeks after Portugal took over the EU Presidency, it has already met its first major challenge in managing the institutional reform process, by submitting a full draft text of the new Reform Treaty to Member States at the Intergovernmental Conference (IGC) on 23-24 July.

Lisbon now has just three months to meet its aim of steering the negotiations to a successful conclusion at the 18-19 October informal EU summit, with a view to completing the process of ratifying the new treaty ahead of the June 2009 European elections. So is everything likely to go according to plan?

#### Potential stumbling blocks

There are two main reasons why the treaty so carefully formulated in the IGC mandate agreed at the June 2007 summit may run into problems.

The first has to do with the fact that at the end of the summit, EU leaders only agreed the

mandate verbally – it was not put down on paper until the German Presidency's final summit conclusions were circulated a few hours *after* the end of the marathon negotiations.

And although the mandate contains a detailed explanation of the changes that will be made to the existing treaties (the TEU and the TEC) – on the basis of the original text of the ill-fated Constitution – the IGC is sovereign in deciding on the content, form and path of the new Reform Treaty.

The claim that the text is already 'closed and sealed' could therefore be challenged once lawyers, officials and politicians in the Member States have had a chance to scrutinise the details of the treaty text presented on 23 July.

It is against this backdrop that Portuguese Prime Minister José Socrates, who is chairing the IGC negotiations, will be keeping one eye firmly on the Polish government in the coming weeks. Warsaw argued in the aftermath of the June summit

that a 'gentleman's agreement' on voting rules it had allegedly secured at the Council had been omitted from the mandate text – a claim which most of those involved in the summit talks strenuously denied.

Although the text circulated on July 23 makes no reference to the disputed point, the Poles appear to have backed down over this, but EU officials are still waiting nervously for final confirmation that the issue is now closed. Most governments are so anxious to put this issue behind them that the Poles will be under immense pressure not to make any further demands which risk re-opening the whole package and dragging out negotiations beyond mid-October.

Other controversial issues could also be raised once the full draft text has been scrutinised and it will therefore require – once again – a carefully orchestrated process to bring the treaty reform process to a conclusion, bearing in mind the principle that nothing is agreed until everything is agreed.

The second major obstacle is linked not to the intergovernmental negotiations themselves, but rather to what comes afterwards.

A new round of ratifications at the national level is required and although most EU governments are determined to avoid referenda this time if they can, this may not be possible in all cases. Meeting the high thresholds in some Member

States for ratifying the treaty through national parliaments could also prove more challenging than has been assumed so far.

This observation may be regarded as rather pessimistic – and possibly even unhelpful – by some in Brussels. These factors cannot, however, be ignored. EU leaders need to be aware of the potential hurdles and traps which lie on the

road ahead, and the steps that may have to be taken in order to avoid them.

Merely praising the treaty text or the diplomatic skills of the German Presidency in getting the EU to this point will not mobilise the necessary majorities in favour of the treaty in either national parliaments and/or the wider public.

## State of play

So what are the requirements for ratifying the Reform Treaty, assuming EU leaders sign the final text later this year?

The table at the end of this Policy Brief lists the thresholds for approval in each national parliament and assesses whether they are likely to be met, on the basis of the current political situation in each country. It also indicates which Member States will – or might – hold a referendum on the treaty.

### Parliamentary requirements

Most countries that successfully ratified the draft Constitutional Treaty will only have to secure a simple or absolute majority of votes in their national parliaments to do so again.

However, not all of these countries have yet had these requirements confirmed by their legal/constitutional councils (where these exist). In some cases, a definitive ruling will not be made until the final text has been agreed and scrutinised by national lawyers.

It nevertheless seems safe to say that Germany, Italy, Greece, Hungary, Sweden, Lithuania, Latvia, Slovenia, Estonia, Cyprus and Malta will adopt the treaty text by simple or absolute majority. In all these cases, this looks likely to be relatively plain sailing, as it does in the EU's

newest Member States, Bulgaria and Romania, which ratified the Constitutional Treaty before they joined the club.

That leaves 14 countries where the situation is more complex: France, the UK, Poland, Spain, the Netherlands, Belgium, the Czech Republic, Austria, Slovakia, Denmark, Finland, Ireland, Luxembourg and Portugal itself.

Of these, six will need to meet a higher threshold to get parliamentary approval for the treaty, while eight either have a legal requirement to hold a referendum or may yet decide to do so for internal political reasons.

### The two-thirds 'club'

There are few concerns about two of the Member States - Austria and Finland - in the group which require a two-thirds majority in parliament to ratify the treaty, as there are no signs currently that this threshold cannot be met easily in both countries.

Other Member States may be more problematic. For example, the Polish government has yet to give a clear indication of what rules will be applied. There are two options: a simple majority in both chambers if no constitutional amendments are deemed necessary; or a two-thirds majority if they are. The political climate in the Polish parliament is

somewhat unpredictable, but the pro-EU inclination of the opposition parties (as compared to the current government coalition) may prove crucial to securing the necessary votes.

Belgium also has a two-thirds majority threshold, with the additional requirement that at least two-thirds of members are present in both parliamentary chambers and the regional assemblies also give their approval. The result is a seven-chamber process that is likely to be quite protracted, even if it is not further complicated by tensions between the different communities.

### The three-fifths 'club'

Moving yet another step up the 'threshold ladder', there are three Member States where a three-fifths majority will be required: France, the Czech Republic and Slovakia.

In France, President Nicolas Sarkozy may run into unexpected problems because of a wrinkle in the newly amended (2004) French Constitution, which includes direct references to the expectation that there would be an EU Constitutional Treaty.

The text of the French Constitution may therefore have to be revisited and amended accordingly. This

would require a two-thirds majority in “Congress”, which encompasses both chambers and delegates from regional councils.

Mr Sarkozy’s UMP and its coalition allies will therefore need some support from the left-wing opposition to win the necessary majority, which may help explain the President’s *ouverture* to personalities from the left following his election victory. But the French government has so far sounded firm in its intention not to call another referendum.

Slovakia also has a three-fifths majority requirement, but this is unlikely to cause any real problems. The same cannot be so easily said of the Czech Republic, where again the three-fifths thresholds has to be met in both the House and the Senate. The current Czech government is mildly Eurosceptic (although marginally less so than the President), but, once again, the opposition may prove decisive in securing the necessary votes.

However, at this stage, neither the Poles nor the Czechs – who had committed themselves to holding a referendum on the Constitutional Treaty – have completely ruled out holding a popular vote on its replacement.

### **Referendum or not?**

A key negotiating card played successfully by some governments over the last six months has been to present their ‘red lines’ in Brussels as essential to avoid a new round of referenda.

However, some of them are now facing renewed and increasing demands for a popular vote on the new treaty – and if one bows to this pressure, it could trigger a ‘domino effect’ in others, as happened in 2004-05.

Ireland is the only EU Member State legally bound to hold a referendum. The countries which are seriously considering the option or will come

under intense pressure to do so are the UK, the Netherlands, the Czech Republic, Portugal, Denmark – and, for other reasons, Spain and Luxembourg.

The Irish government appears convinced that winning the referendum will not be all that difficult, as long as politicians avoid a repeat of the mistakes they made over the Nice Treaty, make strenuous efforts to campaign for a Yes and provide the public with the information people need to make up their minds. The only unknown is the country’s economic situation: were it to worsen, this could put the outcome into question – which is one reason why Irish politicians favour a swift deal and ratification process.

Portugal had committed itself to a referendum on the Constitutional Treaty and recent disagreements within the parliament over whether the Reform Treaty will indeed be comparable to the ‘Constitution’ may yet make it difficult to resist calls for a popular vote on its replacement, although the government is doing its best to play down this possibility.

In the UK, new Prime Minister Gordon Brown is determined not to put the Reform Treaty to a referendum, claiming the UK successfully defended all its ‘red lines’ at the June summit. However, the Conservative opposition and the Eurosceptic media have already called for one, and the Liberal Democrats have not yet made up their minds on the new treaty.

If Mr Brown is forced to bow to the pressure for a referendum, the result would almost certainly be a resounding ‘No’. However, if he stands firm, a simple majority in both houses of parliament will suffice.

In the Netherlands, the government has delegated the decision on whether to hold another referendum to the State Council, a constitutional body tasked with evaluating the impact of the new treaty. Its

members belong to a generation that is still strongly pro-EU, but the left-wing Socialist Party is increasingly raising its voice to push for a popular vote and thus creating problems for the Labour Party (PvdA), which is part of the ruling coalition.

Denmark is often mentioned as a candidate for a referendum because of its history of ratifying EU treaties by popular vote. However, Anders Fogh Rasmussen’s government went to the June summit with a clear mandate from most of the major parties, and the nine points which would almost certainly have triggered a referendum in Denmark have been accommodated in the draft Reform Treaty.

That said, the Danish government may find it hard to resist calls for a popular vote if other EU countries decide to hold one. And even if it manages to avoid this, it may still have to pass a very high threshold – securing a five-sixths majority – to get the treaty ratified by the parliament, unless an independent legal council rules that it does not entail further transfers of powers to the EU, in which case, a simple majority would suffice.

In the Czech Republic, the government now sees a referendum as too great a risk and fears it could disrupt preparations for the country’s EU Presidency in the crucial first half of 2009. So, while whatever the Poles decide could have an impact on the Czech Republic, mainstream political leaders will certainly try to stick to a purely parliamentary path.

Finally, Spain and Luxembourg, which both secured comfortable majorities in their referenda on the Constitutional Treaty, have a special problem, in that those votes – although purely ‘consultative’ – may have to be superseded by new ones. However, both governments appear to prefer a quick parliamentary ratification and, either way, there seems to be no risk of failure.

## Prospects

Virtually all those involved in the lengthy and tortuous process of crafting and drafting, first, the Constitutional Treaty and, now, the Reform Treaty are anxious to see this issue put to bed as quickly as possible.

This is entirely understandable, but it does not mean that they can afford to relax now that the most difficult issues appear to have been resolved. Quite the opposite.

As is clear from the above, robust efforts will be needed during the last phase of the institutional reform process in order to translate the deal reached on paper into an enforceable treaty.

Success or failure in the ratification process will largely depend on two factors.

First, much could depend on which country is first to ratify the new treaty – and whether any other Member State apart from Ireland decides to call a referendum at an early stage in the process. If that happens, it will be increasingly difficult for those governments which find themselves in the ‘grey area’ to avoid having one.

Second, the outcome of the ratification process will depend on governments recognising that in most cases, support for the treaty – either among the citizens or in national parliaments – cannot be taken for granted.

### Sharing ‘ownership’

In this respect, the way in which the June summit agreement was

reached could have consequences for the process which lies ahead.

There is no doubt that the June mandate was a clear and carefully formulated document which allowed almost all Member States to present a few ‘trophies’ to their home audiences and declare themselves as ‘winners’, despite their sometimes contradictory demands.

However, generally speaking, EU governments have made few attempts so far to include other actors in their ‘winning teams’ and, as a result, will be largely on their own in their efforts to sell the Reform Treaty text to their populations and/or parliaments.

Given the lack of efforts to launch multi-stakeholder debates on the negotiations in the Member States, interest groups with a direct or indirect social and economic stake in the EU have not been offered ‘ownership’ of the emerging deal and are therefore likely to play only a minor role, if any, in the ensuing ratification phase.

Furthermore, Eurosceptic parties in some Member States will almost certainly try to use both the way in which the new text has been negotiated, and its intricate and cumbersome provisions, to stir up opposition to ‘Europe’ and, of course, their own national governments.

Even if governments manage to resist their calls for a referendum on the treaty itself, all this may well have an impact the next time the public gets the chance to vote

on EU issues – in the 2009 European Parliament elections.

It would indeed be very bad and very sad if those elections were turned into an *ex post facto* plebiscite against the EU and its new treaty, even if the ratification process had just been successfully completed.

This is why it is essential for governments and political leaders across Europe to make a serious effort to engage relevant interest groups and the wider public in the debate in an attempt to give them ownership of the reforms.

This cannot wait until after the IGC is over and the new treaty has been signed by the leaders of the EU’s 27 Member States. That debate needs to begin now both to counter criticisms that the entire deal is being ‘stitched up’ behind closed doors and to make the case for the reforms the new treaty will contain.

If all goes according to plan, the ratification process will begin a few short months from now. Leaving it until then to launch a wider debate would be too little, too late, with potentially serious consequences. There is no time to lose.

■ The EPC will monitor and debate progress in the IGC negotiations and the subsequent ratification process in its EU Governance Forum, and is establishing a Rapid Reaction Group to enable it to respond promptly to key developments.

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# The ratification process 'at a glance'

| Country      | Parliamentary/chamber threshold  | Referendum?                                      | Majority assured in parliament/chambers? | Majority likely in referendum? *                                   |
|--------------|--|--|--|--|
| Austria      | 2/3 in both chambers   | No   | Yes                                      |  |
| Belgium      | Simple majority in both chambers if no constitutional amendment required<br>If amendment necessary, a 2/3 majority is required in both chambers, with at least 2/3 of members present as well as ratification by regional assemblies | No   | Yes                                      |  |
| Bulgaria     | Simple majority  | No   | Yes                                      |  |
| Cyprus       | Absolute majority in parliament; President and Council of Ministers can veto parliament's decision   | No   | Yes                                      |  |
| Czech Rep.   | Simple majority if no transfers of powers, or else 3/5 of votes in both parliament and senate  | Unclear  | Unclear                                  | Yes  |
| Denmark      | 5/6 majority if powers transferred, simple majority if not   | Unclear  | Unclear                                  | Unclear  |
| Estonia      | Simple majority  | No   | Yes                                      |  |
| Finland      | 2/3 majority in parliament   | No   | Yes                                      |  |
| France       | Simple majority in both chambers, unless a constitutional amendment is required<br>In that case, a referendum is necessary unless both chambers approve a request by the President and approve the amendment by a 3/5 majority       | No   | Yes                                      | Unclear  |
| Germany      | Simple majority approval in Bundestag & Bundesrat  | No   | Yes                                      |  |
| Greece       | Simple majority in parliament  | No   | Yes                                      |  |
| Hungary      | Majority of votes in parliament, with at least half of its members present   | No   | Yes                                      |  |
| Ireland      | Simple majority  | Yes  | Yes                                      | Likely   |
| Italy        | Simple majority in both chambers   | No   | Yes                                      |  |
| Latvia       | Simple majority in two readings  | No   | Yes                                      |  |
| Lithuania    | Simple majority  | No   | Yes                                      |  |
| Luxembourg   | Simple majority  | Unclear  | Yes                                      |  |
| Malta        | Undecided, procedure varies according to what constitutional amendments are required   | No   | Yes                                      |  |
| Netherlands  | Simple majority in both chambers   | Unclear  | Yes                                      | Unclear  |
| Poland       | 2/3 majority in both chambers if defined as a transfer of powers, otherwise simple majority  | Unclear  | Yes                                      | Likely   |
| Portugal     | Simple majority of votes in parliament   | Unclear  | Yes                                      | Yes  |
| Romania      | Simple majority  | No   | Yes                                      |  |
| Slovakia     | 3/5 of members of parliament   | No   | Yes                                      |  |
| Slovenia     | Simple majority  | No   | Yes                                      |  |
| Spain        | Absolute majority  | Unclear  | Yes                                      |  |
| Sweden       | Majority in parliament depending on competences involved   | No   | Yes                                      |  |
| UK           | Simple majority in both houses   | Unclear  | Unclear                                  | No   |
| <b>Total</b> |  | <b>1 Yes</b><br><b>8 Unclear</b><br><b>18 No</b> | <b>24 Yes</b><br><b>3 Unclear</b>        | <b>2 Yes</b><br><b>3 Unclear</b><br><b>2 Likely</b><br><b>1 No</b> |

\* Based on national experts' estimations