

# Lisbon Treaty Ratification

Contrary to popular belief there are still other states except Ireland who have still not fully ratified the Lisbon Treaty. One country which is often said to have ratified the treaty but actually and surprisingly has not is Germany. Other countries yet to ratify the Treaty include Poland, the Czech Republic and of course Ireland.

## Germany

The German Bundestag (the German lower house) passed the Lisbon Treaty on the 24<sup>th</sup> April and the Bundesrat (Federal Council) 23<sup>rd</sup> May 2008. The Treaty has been championed by the German Chancellor Angela Merkel, and most sections of the media identify Germany as having ratified the treaty.<sup>1</sup> However Germany has not ratified the Lisbon Treaty and in July last year the President refused to sign it as there were and still are legal complaints pending against the treaty. The most prominent of these has been the complaint brought by Christian Social Union (CSU) MP Peter Gauweiler and the two complaints from The Left Party. On the 10<sup>th</sup> and 11<sup>th</sup> February 2009 the German Constitutional Court shall deliberate upon the constitutional complaints being brought against the Lisbon Treaty.

Paul Gauweiler has been a member of the Bundestag since 2002. Prior to this he was a member of the Bavarian regional parliament. He previously filed complaints against the EU Constitution.<sup>2</sup>

Gauweiler's complaint centres on the fact that the Lisbon Treaty impinges on German sovereignty, particularly the right of citizens to be represented by members of the Bundestag. An example given by Focus magazine states that "An environment minister who fails to pass a ban on certain light bulbs in the Bundestag, can nevertheless push the ban through via Brussels."<sup>3</sup> Gauweiler also claims that the treaty would de facto establish a European federal state, which would lack the necessary "Unionsvolk" (EU demos) in order to constitute and legitimise such a state. He also rejects Article 311 (3) of the amended TEU, as it would allow the EU to raise taxes, Article 48 (6), as it would allow for treaty changes without parliamentary control and Article 352, as it would allow the Union to extend its powers indefinitely.<sup>45</sup>

Assisting with the case has been Karl-Albrecht Schachtschneider, Professor of law at the University of Nuremberg-Erlangen. Schachtschneider has been part of many other cases

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<sup>1</sup> Q&A the Lisbon Treaty *BBC News* 14 January 2009

Available at: <http://news.bbc.co.uk/2/hi/europe/6901353.stm> [Accessed 30 January 2009]

<sup>2</sup> No Success for Peter Gauweiler's applications against the ratification of the EU Constitution *Federal Constitutional Court Press Release* 28 April 2005 Available at: <http://archiv.jura.uni-saarland.de/lawweb/pressreleases/euconstitution.html> [Accessed 30 January 2009]

<sup>3</sup> Karlsruhe prüft intensiver als erwartet *Focus* 16 January 2009

Available at: [http://www.focus.de/politik/deutschland/lissabon-vertrag-karlsruhe-prueft-intensiver-als-erwartet\\_aid\\_362782.html](http://www.focus.de/politik/deutschland/lissabon-vertrag-karlsruhe-prueft-intensiver-als-erwartet_aid_362782.html) [Accessed 30 January 2009]

<sup>4</sup> Kaczyński P. M., Kurpas, S. and ó Broin, P. (2008) Ratification of the Lisbon Treaty Ireland is not the Only Problem *European Policy Institutes Network Working Paper* 18. (September)

<sup>5</sup> Download a summary of the complaint at:

[http://www.erc2.org/fileadmin/user\\_upload/docs/summary\\_Vertr\\_Lissabon\\_Gutachten\\_Zusammenfassung.pdf](http://www.erc2.org/fileadmin/user_upload/docs/summary_Vertr_Lissabon_Gutachten_Zusammenfassung.pdf)

against EU treaties, most notably over the Maastricht Treaty in 1992 and the EU Constitution in 2005. The actual lawyer who will be trying the case on behalf of Gauweiler is Dietrich Murswiek.

The PDS (Party of Democratic Socialism - forerunner to Die Linke) has continually said no to EU treaties since the Maastricht Treaty due to the content of the treaties, the party is in favour of the EU in itself.<sup>6</sup> One complaint against the Lisbon Treaty has come from Die Linke MP Dieter Dehm and others; the second complaint is by the actual party itself.

Their arguments centre around four main topics; the Charter of Human Rights; the abolishment of the German social state; increased military spending; and that Germany may become involved in unlawful military missions outside the EU.<sup>78</sup>

More recently another complaint has been lodged with the German Constitutional Court. The case is being brought by Markus Kerber, a commercial lawyer, Dieter Spethmann, a former Chief Executive of Thyssen, former MEP Franz Ludwig Graf Stauffenberg and economist Joachim Starbatty. They have argued that the Lisbon Treaty:

“strengthens the current practice of dismembering the division of powers and mixing of competences . . . We argue that it is increasingly difficult to define the ‘European interest’ in an EU of 27, where, because of diffuse interests, the weight of the central principal agent, in this case in Brussels, automatically grows.”<sup>9</sup>

The case will not be heard on the dates given by the court on the other two cases, as the complainants have argued that they want their case proofed separately by the court. If the court accepts the case then it is likely to take several months before the court comes to a decision.<sup>10</sup>

In 2005 Gauweiler and Die Linke both filed cases against the EU Constitution stopping the German President from signing the document. However due to the French and Dutch no votes the court never gave a ruling. The new group to lodge a complaint has not previously done so before.

Other news on the EU and Germany and the Lisbon Treaty has centred on pro-European CSU has recently declared that there should be more “opinion” referenda on “fundamental” European questions.<sup>11</sup>

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<sup>6</sup> Zimmer, G., (2008) We Support the European Union *Die Linke*  
Available at: <http://die-linke.de/politik/aktuell/nachrichten/detail/browse/2/zurueck/selected-news/artikel/we-support-the-european-union/> [Accessed 30 January 2009]

<sup>7</sup> Elemente der Verfassungsklage gegen den Vertrag von Lissabon (2008) *Die Linke*

<sup>8</sup> Download a summary of the case at: [http://www.erc2.org/fileadmin/user\\_upload/docs/summary\\_Die\\_Linke.pdf](http://www.erc2.org/fileadmin/user_upload/docs/summary_Die_Linke.pdf)

<sup>9</sup> Further German challenge to Lisbon *Irish Times* 29 January 2009

Available at: <http://www.irishtimes.com/newspaper/world/2009/0129/1232923373249.html> [Accessed 30 January 2009]

<sup>10</sup> German court handed new complaint on EU treaty *EUObserver* 27 January 2009

Available at: <http://euobserver.com/18/27482> [Accessed 30 January 2009]

<sup>11</sup> Wandel oder Werbung? *Telepolis* 22 January 2009

Available at: <http://www.heise.de/tp/r4/artikel/29/29585/1.html> [Accessed 30 January 2009]

# Czech Republic

When the Czech Republic took over the EU presidency on 1<sup>st</sup> January 2009, it had still not ratified the Lisbon Treaty. It is the only EU member state where the Lisbon Treaty has not been passed through parliament. The current President of the Czech Republic Václav Klaus is an ardent Eurosceptic and has openly voiced his concerns about the EU; he declared the Lisbon Treaty “dead” after Ireland’s rejection of the document.<sup>12</sup> His former Civic Democratic Party (ODS) party – which he co-founded – are seen not as Eurosceptic but as being quite critical to the EU, but there are many Eurosceptics within the party. Party leader Mirek Topolánek had signed an agreement to join together with the British Conservative Party in the Movement for European Freedom which was seen as a spring board for a new political party group in the European Parliament.<sup>13</sup> The movement was meant to take a more critical stance on the EU.

On the 24<sup>th</sup> April 2008 the Czech Senate sent the Lisbon Treaty to the Czech Constitutional Court. Seven articles from the Lisbon Treaty were chosen which were thought to be in contradiction with the Czech Constitution.<sup>14</sup> President Klaus at the request of the court presented a statement to it which also contained five questions which he felt needed to be asked before the treaty was ratified in the Czech Republic.<sup>15</sup> On the 26<sup>th</sup> November 2008 the court ruled that the seven articles were not in conflict with the Czech Constitution.<sup>16</sup> The fifteen judges were unanimous in their ruling and explanation. It was felt by Klaus that the ruling had been political rather than legal and at that time directly after the hearing he had expected parliamentarians to raise other questions concerning the treaty and present them to the constitutional court.<sup>17</sup> This could be done as only seven articles from the treaty were looked at and deemed to be compatible with the Czech Constitution not the whole treaty itself.

On 23<sup>rd</sup> January 2009 reports by Czech television suggested that senators from the ODS were planning to challenge the Lisbon Treaty once more in the constitutional court. However the chairwoman of the Senate Commission for the Constitution, Jirina Rippelova has said that a new challenge could not be launched until after the treaty has been passed by the two houses of the Czech Parliament.<sup>18</sup>

There is now much speculation about what will happen over the coming weeks and months. The Chamber of Deputies has postponed the discussion on the treaty twice already stating that

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<sup>12</sup> MEPs suspend debate on how to implement Lisbon Treaty *Irish Times* 24 June 2008  
Available at: <http://www.irishtimes.com/newspaper/world/2008/0624/1214257071894.html> [Accessed 30 January 2009]

<sup>13</sup> See Movement for European Freedom website <http://www.europeanreform.eu> [Accessed 2 February 2009]

<sup>14</sup> For details of the court case and its outcome you can view the results of the case in English here:  
[http://angl.concourt.cz/angl\\_verze/doc/pl-19-08.php](http://angl.concourt.cz/angl_verze/doc/pl-19-08.php) [Accessed 2 February 2009]

<sup>15</sup> See the reply to the constitutional court from Václav Klaus Available at:  
<http://www.klaus.cz/klaus2/asp/clanek.asp?id=fvoc2FzYaecj> [Accessed 25 January 2009]

<sup>16</sup> For details of the court case and its outcome you can view the results of the case in English here:  
[http://angl.concourt.cz/angl\\_verze/doc/pl-19-08.php](http://angl.concourt.cz/angl_verze/doc/pl-19-08.php) [Accessed 2 February 2009]

<sup>17</sup> Czech court clears way for parliament to ratify Lisbon Treaty *Irish Times* 27 November 2008  
Available at: <http://www.irishtimes.com/newspaper/world/2008/1127/1227739034185.html> [Accessed 2 February 2009]

<sup>18</sup> ODS senators plan another challenge to the Lisbon Treaty in court *Prague Daily Monitor* Available at:  
<http://praguemonitor.com/2009/01/23/ods-senators-plan-another-challenge-lisbon-treaty-court> [Accessed 2 February 2009]

the various committees concerned had not agreed upon their stance on the Lisbon Treaty.<sup>19</sup> A 3/5 majority is needed in both houses in order to pass the Treaty. This is not achievable without the ODS which has a majority in both the houses of parliament however the party is split over the Lisbon Treaty. The Communist Party of Bohemia and Moravia who are in opposition are also against the treaty. Then there of course is President Klaus who has said that he would not sign the treaty until Ireland had agreed to it.

While writing this report there has been news about the possibility of the Czech Republic holding a referendum on the Lisbon Treaty. Leader of the opposition Social Democrats (CSSD) Jiří Paroubek has conceded that a referendum on the Lisbon treaty could be held in the Czech Republic. It is believed that the Czech people would approve the treaty thus silencing the Eurosceptic fractions in parliament.<sup>20</sup>

## Poland

After the election of the new centre-right Polish Prime Minister Donald Tusk on the 21<sup>st</sup> October 2007, the EU breathed a huge sigh of relief as they believe that the then Reform Treaty would pass easily through the Polish parliament.<sup>21</sup> The previous Prime Minister Jarosław Kaczyński and his party were thought to be “anti-European”.<sup>22</sup> With them out of the way the Lisbon Treaty should have sailed through, however the Law and Justice (PiS) party of Jarosław Kaczyński held a blocking majority.<sup>23</sup>

The position of the PiS’s leaders over ratifying the Lisbon Treaty has changed several times. After the signing of the Lisbon Treaty President Lech Kaczyński (twin brother of the former Prime Minister Jarosław Kaczyński) called the signing of the Lisbon Treaty “a joint achievement. According to Lech Kaczyński, it is a compromise between supporters of the European Union and those who want to sustain national sovereignty within the EU.”<sup>24</sup> The PiS were also in power during the negotiations of the treaty. However at the beginning of 2008 the Eurosceptic fractions within the PiS began demanding measures be added to the Polish ratification law to protect Polish interests. There were also calls for a new preamble to be added to the treaty like that in the previous EU constitution.<sup>25</sup>

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<sup>19</sup> Czech lower house not to deal with EU treaty next week *české noviny* 27 January 2009 Available at: <http://www.ceskenoviny.cz/news/zpravy/czech-lower-house-not-to-deal-with-eu-treaty-next-week/357118> [Accessed 2 February 2009]

<sup>20</sup> Czech opposition thinking of Lisbon referendum *české noviny* Available at: <http://www.ceskenoviny.cz/news/zpravy/czech-opposition-thinking-of-lisbon-referendum-press/358077> [Accessed 20 January 2009]

<sup>21</sup> New era for EU-Polish relations *Spiegel Online* Available at: <http://www.spiegel.de/international/europe/0,1518,521499,00.html> [Accessed 20 January 2009]

<sup>22</sup> New era for EU-Polish relations *Spiegel Online* Available at: <http://www.spiegel.de/international/europe/0,1518,521499,00.html> [Accessed 20 January 2009]

<sup>23</sup> Poland's PM vows to overcome opposition to ratification of new EU treaty *International Herald Tribune* 18 March 2008 Available at: <http://www.ihf.com/articles/ap/2008/03/18/europe/EU-POL-Poland-EU-Treaty.php> [Accessed 20 January 2009]

<sup>24</sup> President Kaczynski: May 2008 be as good as the last two years *thenews.pl* Available at: <http://www.polskieradio.pl/thenews/politics/?id=72430> [Accessed 20 January]

<sup>25</sup> Lisbon Treaty harmful to Poland, says opposition *thenews.pl* 13 March 2008 Available at: <http://www.polskieradio.pl/thenews/foreign-affairs/?id=77929> [Accessed 20 January 2009]

The PiS finally came to an agreement and the Lisbon Treaty passed through the Sejm (Polish lower house) on 1<sup>st</sup> April and the Senate on the 2<sup>nd</sup> April 2008. It was agreed that the Lisbon Treaty was allowed to pass through the parliament, but the President would wait to sign it until internal matters were cleared.<sup>26</sup>

After the Irish no vote President Kaczyński refused to sign the treaty stating "For the moment, the question of the treaty is pointless,"<sup>27</sup> He then performed a complete U-turn after a meeting with French President (who held the EU presidency at the time) Nicolas Sarkozy in July 2008.<sup>28</sup> More recently Kaczyński has stated that he will not sign the Lisbon Treaty unless Ireland gets the green light from its people.<sup>29</sup> In response to this the Sejm's Committee for Foreign Affairs has prepared a resolution to push the President into signing the treaty. The resolution is supported by the Civic Platform (PO), Polish People's Party (PSL) and the Left.<sup>30</sup>

## Ireland

On 12<sup>th</sup> June 2008 the Irish people rejected the Lisbon Treaty. 46.4% voted for the treaty and 53.6% against, with a turnout of 53%. Ireland is the only member state where a referendum is required to ratify European treaties.

The reactions to the result of the Irish referendum from the EU political elite were of sheer contempt. The Irish were made to feel like they were ungrateful. Quoted in the Irish times Axel Schäfer, SPD Leader in the Bundestag Committee on EU Affairs said, "We think it is a real cheek that the country that has benefited most from the EU should do this. There is no other Europe than this treaty."<sup>31</sup>

All twenty-seven member states need to ratify a treaty before it comes into force. Therefore as shown above with the Czech and Polish Presidents some proclaimed the treaty dead as the Irish people rejected it. Yet despite the no the Commission President José Manuel Barroso said in reference to those countries which had not ratified "the commission believes the remaining ratifications should continue to take their course. I believe the treaty is alive."<sup>32</sup>

After the initial shock of the referendum result EU leaders went on to state that they wished to respect the Irish vote but the Irish didn't know what they were voting for. Vice President of the Commission and Commissioner for Institutional Relations and Communication Strategy Margot Wallström stated on her blog a few days after the referendum:

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<sup>26</sup> Kaczyński P. M., Kurpas, S. and ó Broin, P. (2008) Ratification of the Lisbon Treaty Ireland is not the Only Problem *European Policy Institutes Network Working Paper* 18. (September)

<sup>27</sup> Poland in new blow to EU Treaty *BBC News* 1 July 2008 Available at: <http://news.bbc.co.uk/2/hi/europe/7482660.stm> [Accessed 20 January 2009]

<sup>28</sup> Lisbon: Kaczynski to convince the Czechs, Sarkozy the Irish *polskieradio.pl* 16 July 2009 <http://www.polskieradio.pl/zagranica/news/artykul87103.html> [Accessed 20 January 2009]

<sup>29</sup> Polish President won't sign Lisbon Before Irish referendum *EUObserver* 21 January 2009 Available at: <http://euobserver.com/18/27446> [Accessed 20 January 2009]

<sup>30</sup> Mr President, sign the treaty! *Gazeta Wyborcza* 23 January 2009 [http://wyborcza.pl/1,86871,6194395,Mr\\_President\\_Sign\\_the\\_Treaty\\_.html](http://wyborcza.pl/1,86871,6194395,Mr_President_Sign_the_Treaty_.html) [Accessed 2 February 2009]

<sup>31</sup> Crisis for EU as Lisbon Treaty is decisively rejected by voters *Irish Times* 14 June 2008 Available at: <http://www.irishtimes.com/newspaper/frontpage/2008/0614/1213369845918.html> [Accessed 20 January 2009]

<sup>32</sup> Ireland delivers stunning blow to Europe's leaders *Guardian* 14 June 2008 Available at: <http://www.guardian.co.uk/world/2008/jun/14/eu.ireland1> [Accessed 20 January 2009]

“First let me say that I respectfully the no vote from Ireland. The turnout was relatively high and the issues were discussed and debated. I have no complaints, although I am of course disappointed.”<sup>33</sup>

Later in an interview with Gavin Esler on the BBC’s Newsnight program Wallström stated:

“[ MW] If we are serious about democracy we have to understand why the Irish people voted no. That must be the first stage. That is what the Irish and what we will contribute . . . . [GE] Presumably they voted no because they don’t like the Treaty . . . [MW] Well, you don’t know that!”<sup>34</sup>

As shown above it was deemed that the Irish did not fully understand what they were voting for. A poll carried out by Eurobarometer straight after the referendum suggested that this, as well as issues including the loss of Irish identity, safeguarding Irish neutrality, loss of a Commissioner and the protection of the Irish tax system were reasons for the Irish no.

Therefore armed with the ammunition that the Irish people did not actually vote against the Lisbon Treaty there were calls for a second referendum. An internal EU briefing paper entitled “The Solution to the Irish Problem” proposed that the Irish would not lose their Commissioner, and that they would have a number of declarations on tax, neutrality and abortion. It then reportedly goes on to say that, “The second Irish referendum could take place, on this new basis, during autumn 2009, pushing back the coming into force of the Treaty of Lisbon until 2010.”<sup>35</sup>

Ireland’s commitment to ratify the treaty was confirmed during the December 2008 summit in Brussels.<sup>36</sup> However there have been warnings from actors within the no campaign in Ireland that the Irish people should not be presented with the same treaty twice as they have already said no and this vote should be respected. To truly respect the vote then Ireland should not have to vote again at all. If there is to be another vote then Ireland should be given protocols which are legally binding and not just a set of declarations. Declarations do not affect the content of the Treaty or the interpretation of the treaty by the European Court of Justice.<sup>37</sup>

If the Irish people were to vote on a new text, then this would mean that the treaty is not the same Lisbon Treaty, but a new treaty, and therefore ratification in all member states would need to happen again. It is doubtful that the Irish people will have a new text and in fact they will be made to vote on an identical text as EU leaders do not want countries to go through the ratification process again amid fears of further referenda. Therefore it has been suggested that the Irish opt-outs could become legal via the Croatian Accession Treaty when Croatia joins

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<sup>33</sup> See the blog of Margot Wallström at: <http://blogs.ec.europa.eu/wallstrom/irish-referendum-result/> [Accessed 2 February 2009]

<sup>34</sup> Appleton, J., (2008) *EU Phrasebook 27 Ways to Say No Doesn’t Really Mean No* Manifesto Club

<sup>35</sup> EU officials expect Ireland to hold second Lisbon Treaty referendum *Telegraph* 10 September 2008 Available at:

<http://www.telegraph.co.uk/news/worldnews/europe/ireland/2778154/EU-officals-expect-Ireland-to-hold-second-Lisbon-Treaty-referendum.html> [Accessed 20 January 2009]

<sup>36</sup> Eleventh-hours deals mark EU summit *BBC News* 13 June 2008 Available at:

<http://news.bbc.co.uk/2/hi/europe/7781024.stm> [Accessed 21 January 2009]

<sup>37</sup> In a paper presented at the Humber Summer School Joe Noonan from the People’s Movement a prominent within the no campaign against the Lisbon Treaty outline future issues faced by Ireland and the Lisbon Treaty. The paper is available at: <http://www.people.ie/contreaty/noonan2.pdf> [Accessed 2 February 2009]

the EU, or even if Iceland decides to join the EU. The exact date of which is unknown, but many expect this will be in 2011.<sup>38</sup>

There are some who believe that there might not even be a second referendum. The EU will not hold another referendum that it thinks it might lose. Ireland would then be given a referendum on certain parts of the treaty but the main bulk of the treaty would be ratified by the Irish Parliament.<sup>39</sup> However the vast majority of the media as well as both sides of the referendum debate look set to be preparing for another battle over the Lisbon Treaty in autumn 2009.

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<sup>38</sup> EU to play Iceland card to prop up Lisbon Treaty *EurActiv* 30 January 2009 Available at: <http://www.euractiv.com/en/enlargement/eu-play-iceland-card-prop-lisbon-treaty/article-179020> [Accessed 2 February 2009]

<sup>39</sup> In his blog in the Telegraph newspaper's online site Daniel Hannan queries whether there will be another referendum on Lisbon while referring to a communiqué sent during the December 2008 summit meeting. Available at: [http://blogs.telegraph.co.uk/daniel\\_hannan/blog/2008/12/11/irish\\_europhiles\\_will\\_hold\\_a\\_second\\_referendum\\_but\\_only\\_if\\_theyre\\_certain\\_of\\_winning](http://blogs.telegraph.co.uk/daniel_hannan/blog/2008/12/11/irish_europhiles_will_hold_a_second_referendum_but_only_if_theyre_certain_of_winning) [Accessed 2 February 2009]

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