

THE NICE TREATY: THE IRISH VOTE

**Brigid Laffan, Jean Monnet Professor of European Politics,
University College Dublin.**

Ireland was the only member state that had to submit the Nice Treaty to a popular referendum for constitutional reasons. This was the fifth referendum in Ireland on the EU since 1972. All of the others were passed by a comfortable, albeit declining, majority. On June 7th, the Irish electorate voted 'no' to the Nice Treaty by 53.87 % to 46.13 %, in an extremely low turn out of 34.8%. This was the lowest turnout ever for an EU referendum in Ireland. The vote on the Treaty of Amsterdam in 1998 recorded the highest 'no' vote (38%) prior to the Nice referendum. The objective of this analysis is to highlight the issues that were raised during the campaign, the conduct of the campaign, the reasons for the 'no' vote and the management of what might be called the 'Nice' fallout.

The Outcome

The outcome of the referendum was a major reversal for a Government that had negotiated the treaty, for the main opposition parties that had advocated a 'yes' vote and for the peak groups in civil society, notably the main business associations, farming organisations and the trade union congress. The 'no' to Nice was against the trend of previous Irish referenda on Europe. The outcome of the referendum has had a major impact on Ireland's relations with the EU, the other member states and the candidate countries. During successive EU Presidencies, Irish governments attempted to portray Ireland as a small *communautaire* member state. Ireland found its niche in the EU system as a constructive member of the club. Irish representatives appeared most comfortable if aligned with the emerging consensus in the Union. Ireland's previous status as reasonably *communautaire* has been replaced by a focus on the implications of the Irish 'no' for the Nice treaty and the enlargement process. Domestically, a debate has opened up about the future direction of the EU and

Ireland's position in the Union. This is an inevitable outcome of the referendum result. Although the 'no' was dramatic, it has been argued that the result does not imply a dramatic reversal of the attitude of the Irish electorate to Europe (Sinnott R. and Thomsen S., Irish Times, June 23, 2001) An analysis of the figures highlights the fact that the 15.6 % increase in the 'no' which led to the defeat of the referendum proposal, masks an actual decline of 2.6% in the absolute number of 'no' voters between 1998 to 2001. In contrast, the 'yes' vote declined by a massive 18.1 % between Amsterdam and Nice. In other words, this referendum was decided by those who did not vote because a significantly higher proportion of past 'yes' voters than 'no' voters stayed at home. (Sinnott and Thomsen, Irish Times, June 23 2001) Regardless of how the referendum proposal was defeated, the fact of a 'no' alters the context and agenda of Ireland's European policy. A relatively stable institutional and policy relationship has been cut loose from its moorings. The Government is faced with the challenge of re-establishing a European policy domestically and in the Union.

The Campaign

The conduct of referenda campaigns in Ireland are subject to what is know as the McKenna judgement, a Supreme Court judgement that imposed strict constraints on the use of public funds to promote one side of the argument in a referendum. Put simply, public monies cannot be used by the Government to promote a positive outcome in a Government sanctioned referendum. In response to the McKenna judgement, a Referendum Commission was established to provide the public with analysis and knowledge about the issues involved in a referendum proposal. The Commission interpreted this mandate in a manner that leads it to provide highly stylised arguments for both 'yes' and 'no' to any proposal. It robbed the debate of political deliberation and robust argument through which the claims of both sides could be subject to scrutiny. In addition, it meant that the major political parties would have to use their own money, rather than public money, to promote a 'yes'. Facing the prospect of an election in 2001/2002, the political parties were loath to use scarce financial resources on the Nice campaign as there is no state funding of political parties in Ireland.

There is no doubt that the 'no' side, not only won the referendum, but conducted the most effective campaign. There were far more 'no' posters than 'yes' posters throughout the country. The 'no' forces consisted of a myriad of groups who were opposed to different aspects of the EU. They shared little in common but their desire to defeat the Government and to secure a 'no' to an EU treaty. The 'no' forces included on the right, conservative catholic forces and Sinn Fein, and on the left the Green party, pacifists and third world activists. The two political parties with representation in the Irish parliament, the Green party and Sinn Fein, who opposed the Nice treaty had between them three deputies from a total of 166. The 'no' campaign had simple clear messages such as 'You will lose: power, money and influence' and 'No to Nice: No: to NATO'. The 'no' campaign won the battle of language. They repeatedly used words like 'superstate' and 'militarisation' in an unchallenged manner. Their strategy was to exploit fear and uncertainty. The 'no' campaign began where it left off following the Amsterdam campaign. This time, however, unlike previous referenda, it was supported by highly respectable establishment figures including a former Attorney General, who was concerned with the lack of parliamentary scrutiny of Ireland's EU policy and with the growing legislative role of the Union.

In contrast, the 'Yes' campaign lacked vision and conviction. Moreover, it clearly failed in its responsibility to mobilise the 'yes' vote that had been available in previous referenda. There was public resentment of the speed with which the referendum was held given that ratification was required until the end of 2002. In addition, the time allocated to the campaign of just over three weeks was regarded as far too short for the kind of opinion formation that was necessary. The performance of the Government was particularly lacklustre as it appeared to take the outcome for granted. The Foreign Minister and the Prime Minister engaged in public debate but other Government ministers were notable by their low visibility on the campaign trail. The main opposition parties, although they supported the treaty, failed to campaign. The absence of a cadre of 'Europeanised' parliamentarians was clearly highlighted, as was the lack of conviction of the pro-EU elements of civil society. The 'yes' supporters were successfully portrayed as part of a tired establishment out of touch with the public. In the aftermath the media interpreted the result as an uneasy electorate giving the establishment a bloody nose.

The Issues

The short duration of the campaign meant that there was more "grand-standing" about the major issues rather than a process of democratic deliberation. Six themes dominated the campaign; sovereignty, large state dominance, democratic accountability, neutrality, enlargement and abortion. Issues relating to sovereignty and large state dominance were two inter-related themes. In the past, the Irish electorate had been willing to transfer and pool sovereignty at an EU level on major economic projects such as the Euro. During this campaign, there was a growing concern about autonomy and sovereignty. An Irish Times/MRBI poll had tracked responses to two questions on independence. These were:

‘Ireland should do all it can to unite fully with the European Union’

or

‘Ireland should do all it can to protect its independence from the European Union’

In 1996 when this question was first asked, 55% opted for the first statement and 32% for the second. By 1998 support for the first statement had slipped to 46% and by the beginning of the Nice campaign, pro-independence sentiment had grown by 15%. (Sinnott R., June 9, 2001) This mood was captured by John Rodgers, a former Attorney General (chief legal advisor to the Government), who concluded an opinion piece in the Irish Times with the words:

It is not my purpose to suggest that the consequences of the Nice Treaty are apocalyptic. But it is clear that the capacity of an Irish citizen to influence decisions which will intimately affect his/her life will be significantly reduced by the impact of the Nice Treaty. (Rodgers J., Irish Times, May 19, 2001)

His intervention was regarded as very influential. Concerns about sovereignty related to issues of representation in the Union’s institutions and decision-making processes. Three issues in particular were raised. First, the loss of an automatic right to a Commissioner when the EU enlarges to 27 was portrayed as a serious diminution of Ireland’s presence in the Union’s institutional system. The fact that the larger states will lose their second Commissioner and that they conceded ‘equal rotation’ was not taken on board. The issue was effectively portrayed as the loss of ‘our man/woman in

Brussels'. Second, the re-weighting of votes in favour of the large states, as compensation for the loss of the second Commissioner, was highlighted as increasing large state dominance of the EU by the big four and particularly the France-German axis. Third, the constitutional changes concerning the provisions on enhanced co-operation were depicted as the development of a two-tier EU in which Ireland would be in the lower tier. The introduction of QMV in relation to flexibility was seen as breaking the essential equality of states in the founding EU treaties. The 'no' campaign attempted to turn the EU into Ireland's 'other', a system of governance that was imposed on Ireland rather than one fashioned with Irish participation in its institutional structures and policy processes.

The discussion of sovereignty and autonomy was brought more sharply into focus by the continuing dispute between the Irish Minister for Finance, the Commission and Eco-Fin. Ireland was the first country to be reprimanded under the economic policy guidelines for its budgetary policy. This was regarded as external interference in Ireland's internal affairs and one that was unwarranted by the performance of the Irish economy. In the latter half of the 1990s, the Irish economy was one of the best performing economies in terms of employment creation and growth. Its budgetary position, characterised by a large budget surplus, was very favourable. However, the Commission and the Eco-Fin Council were concerned about growing inflation in the Irish economy. The Irish view was that inflation was largely caused by the weakness of the Euro and that tax reductions were necessary to keep wage inflation under control. In the ensuing conflict between the Finance Minister and the Commission/Eco-Fin, the growing supranational influence on national budgetary policy and strategy was brought into sharp relief.

The discussion on sovereignty and independence was merged with a concern for democratic accountability in the EU and the weakness of Irish parliamentary scrutiny of EC related secondary legislation. There were calls for the strengthening of systems of parliamentary scrutiny in response to the growing role of the Union. Traditionally the Irish parliament is a 'talking parliament' modelled on Westminster rather than a 'working parliament' in the continental mode. The wider discussion on democracy focused on the gap between the state elite's in Europe, who are comfortable with the EU system of governance, and the mass public, who are weakly connected to what is

happening in Brussels. There are low levels of knowledge among the Irish public of how the EU works with the result that the electorate does not 'feel at home' with its institutions and processes.

The development of the Rapid Reaction Force (RRF) and the commitment of Irish troops to the force received considerable attention. A recurrent theme was the so-called 'militarisation' of the EU. The Prime Minister had promised a referendum on membership of the Partnership for Peace (PfP) when in opposition and had reneged on this promise when in Government. This meant that Government pronouncements on the evolving security structures and policies of the EU were met with suspicion and some hostility. Participation in the RRF was portrayed as a threat to Ireland's non-membership of a military alliances and neutrality. The RRF was portrayed as a covert part of NATO, which would lead Irish troops to being deployed in conflict situations as peacemakers rather than peace keepers. Government assurances that the deployment of Irish troops in any ESDP operation would be determined by the Irish Government were not acknowledged. Although the Government argued that Irish troops would not be deployed without a UN mandate, its credibility was dented by its earlier position on PfP. In assessing Irish responses to security three important factors must be kept in mind. First, Ireland's geographical position allows its people to debate external security without any perception of threat. Second, there is substantial popular support for peacekeeping under the auspices of the UN rather than by regional alliances. Third, there is a significant body of third world activists in Ireland whose direct experience of working in developing countries makes them suspicious of and hostile to the European armaments industry.

The discussion on enlargement during the campaign was skewed. Those advocating a 'no' did not want to be seen to oppose enlargement and they argued successfully that Nice was unnecessary for enlargement. Under the terms of Amsterdam, five countries could join and then the broader institutional issues could be re-opened. A major focus of the 'yes' campaign was enlargement but it was portrayed as a moral duty to the poorer countries in East Central Europe. The longer-term material benefits to Ireland of an enlarged Union were completely downplayed. Although those advocating a 'no' did not oppose enlargement, some of the 'no' voters voted against because of fears of immigration and the potential far-reaching reform of the CAP. Framers either did not

come out to vote or voted against. The introduction of the question of abortion by the pro-life movement was predicated on the view that the Charter on Fundamental Rights might become part of a treaty and this in turn would lead to the introduction of legalised abortion in Ireland by the backdoor. This view was supported by one Irish MEP, a former singer called Dana, who was involved in the pro-life movement in the United States. In the absence of an exit poll, it is difficult to establish the impact of these various issues on voting behaviour.

In the latter half of the 1990s, the context of Ireland's relationship with the EU changed with growing prosperity (Laffan 2001). Traditionally, Ireland's profile in the EU was that of a small relatively peripheral member state, a major net beneficiary of the Union budget, protectionist on agriculture, an outlier on security and poor relative to the majority of member states in the Union. Ireland's status as a peripheral poor state was replaced by a growing confidence fostered by economic catch-up. The centrality of the EU to Ireland's modernisation had delivered its promise and perceptions of the importance of the EU to Ireland altered. The Government and opinion formers did not engage in a necessary domestic debate about a re-positioning of Ireland in the EU and the kind of EU that the Irish wished to foster. Nor did the Government alert the Irish electorate to the growing significance of political and polity issues in this phase of integration.

Uncertainty about Ireland's place in the EU system was apparent among Government ministers in the lead-up to the referendum. In July 2000, the deputy Prime Minister, Mary Harney, in an address to the American Bar Association ended by saying 'I believe in a Europe of independent states, not a United States of Europe'. (Harney M., 21 July 2000) Notwithstanding this rhetorical statement, the key to the minister's speech was her unease about the prospect of 'key economic decisions being taken at Brussels level' and the possibility that Ireland would be subject to excessive regulation. (Harney, 21 July, 2000) The July speech was followed by an opinion piece in the Irish Times in September 2000 in which she posed a number of questions about the prospect of a European government, a United States of Europe, and all major social and economic decisions taken by qualified majority voting. Again the tone of the article was that of support for an enlarged and liberal Europe but rejection of excessive integration. In sum, the minister said, 'we believe the future of the EU lies not in a United States of Europe, but in a Union of independent sovereign states'.

(Harney, M., September 20, 2000) The latter statement is reminiscent of De Gaulle's 'L' Europe des patris' or Margaret Thatcher's celebrated Brugge speech in 1988. The Minister Arts, Culture, Gaeltacht and the Islands, Sile de Valera, in an address in Boston College in September 2000 adopted a Eurosceptical tone. She made reference to the fact that 'directives and regulations agreed in Brussels can often seriously impinge on our identity, culture and traditions' without being specific about which directives. She called for a more vigilant, questioning attitude towards the European Union and for more diligence in protecting Irish interests. (de Valera S., 18 September, 2000) It is unclear if these statements reflected the policy of the Irish Government rather than the views of two ministers. Both speeches pointed to the fact that the Government was not singing from the same hymn-sheet on Europe. Neither speech would have been made in the era of substantial budgetary transfers from Brussels nor during the negotiations of the Agenda 2000 financial package negotiations that concluded in March 1999.

The Nice Fall-Out

The dramatic result of the referendum has created a 'critical juncture' in Ireland's relations with the EU. The Government must manage a very difficult domestic and external environment and will have to do so in the context of a national election that must be held before June 2002. The three weeks after the referendum were characterised by intense media attention on Europe and the consequences of the 'no' vote. The Government's response has been multifaceted. At the Gothenberg European Council, the other member states underlined their domestic commitment to ratify the Nice treaty and highlighted the importance of the treaty for enlargement. The Irish Government did not ask for nor would it have been given the option of re-negotiating the treaty. In an effort to limit the damage to Ireland's relations with the candidate countries, the Prime Minister and the Foreign Minister engaged in an intensive series of meetings with the applicants and an announcement was made concerning the opening of Irish embassies in all of the candidate countries.

Paradoxically the concentration on explaining the Irish vote externally in the week following the referendum, made the domestic management of the issue more difficult. Although the Government repeatedly said that it would respect the outcome of the

referendum, the determination of the other states to ratify the treaty was interpreted as pressure on Ireland to hold another referendum to secure the 'right' outcome! Put simply, the electorate had no right to say 'no'. The Government clearly wants to create the conditions in which it can have a second referendum but has not in fact come out and said directly that a second poll will be held. In the aftermath of the referendum, it became clear that there was a three way division in the Irish Cabinet on Europe. The Prime Minister and the Foreign Minister adopt a position that is in tune with Ireland's past approach to the EU. The Finance Minister, the Deputy Prime Minister and the Attorney General support a now-liberal economic regime for Europe and are opposed to dramatic changes in the Union's institutional and constitutional framework. The third tendency is represented by a Minister and Minister for State who are grandchildren of Eamon de Valera, the founder of Fianna Fáil, the largest party in the state. Their position resonates with the rhetoric of traditional nationalism rather than the neo-liberalism of other members of the Cabinet.

The Nice treaty cannot come into force without ratification by Ireland. The Government has announced the establishment of a Forum on Europe that will deal with three issues— the Nice treaty, the reasons for the 'no' vote, and the debate on the future of the Union. The Forum will be established in autumn 2001. Its composition, method of functioning and duration have not been decided. The advocates of a 'no' to Nice are looking for equality of representation on the Forum rather than representation based on parliamentary strength. The Government is clearly hoping that the Forum will allow for an in-depth debate on the treaty that might lead to the emergence of a road-map on how to handle next phase in Ireland's management of the Nice fallout. Of course, the Forum may serve to exacerbate conflict and difference about Ireland's European policy and its future trajectory. It may become an arena for the reassertion of well known positions rather than a process of robust argument and deliberation.

The Government will not hold a second referendum prior to the next election nor will it hold it on the same day as the general election. If it were to do so, it would at least be assured of a much higher turn-out than for the June 2001 poll. The most likely time for a second referendum, if one is to be held, is the early autumn 2002. By then the other member states will have ratified the treaty and the Irish electorate will be faced with the choice of returning a second 'no' vote which would ensure that the treaty falls or changing its verdict to a 'yes'. It is far too early to predict the likely outcome of a second referendum. The Government may seek a protocol or declaration from the

other member states that would enable it to return to the Irish electorate with an altered question. The most likely area for such a protocol or declaration is the Union's security policy.

Conclusions

Depending on how the Nice fallout is handled domestically and in Europe, the 'no' could have a very positive impact on Ireland's relationship with the Union. It could force the Irish to engage in a much needed debate on Europe, particularly on the political rather than the material dimensions of the European project. It has certainly shaken the complacency of the political class who are unlikely to take the electorate for granted again. It will force Irish Government to work for its European policy and to be more accountable to the Irish parliament. The mass public will have to address difficult issues concerning the relationship between small states and the EU. Sovereignty, democracy and politics may begin at home but they no longer end there. The impact of the Irish 'no' on the EU and on the dynamic of integration is difficult to forecast. The 'no' has drawn renewed attention to the problem of popular consent to major EU developments. The weak link between the mass electorate and the EU as a system of governance was again brought into sharp relief. That said, the overwhelming impression created by representatives of the other member states and EU institutions is that the EU system goes on. Enlargement is such an important project for the EU, a constitutional solution will be found regardless of the outcome in Ireland. The impression of the EU continuing on its journey despite the outcome of a national referendum feeds back into the domestic debate in Ireland.

References

De Valera, S., Minister for the Arts, Culture, Gaeltacht and the Islands, address to Boston College, 18 September 2000.

Harney M., (July 2000), Tanaiste, address to a Meeting of the American Bar Association, Dublin, 21 July .

Harney M., (September 2000), Tanaiste, Opinion Piece in the Irish Times, September 20.

Laffan B., (2001), *Organising for a Changing Europe: Irish Central Government in the European Union*, Dublin: Trinity College, Policy Institute Blue Paper, no. 7.