

# Submission 5

## **Ireland (and Europe) in Crisis: The Fiscal Compact, the referendum and the future of European Integration**

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This submission concerns itself with the social and political measures and conditions that are essential counterparts to the fiscal compact and associated treaties. It examines the economic situation in Europe and the prospects for Eurozone recovery attaching to the ratification of the Fiscal Compact. It shows that the missing link in the new economic architecture is the socio-economic domain: there is no sign of the development of a 'social compact' to accompany the deepening of integration within the Eurozone, despite the 'European model' having been built upon the combination of fiscal discipline and strong social and economic investments. We then outline a series of problems with the turn to technocratic administration in the fiscal compact and associated measures. This leads us to examine the 'crisis of legitimacy' within the sphere of European affairs and EU decision-making in Ireland and argue that the policy system needs to significantly enhance its capabilities to promote genuine deliberation on European issues. The centralisation of power in government needs to be counter-balanced by a greater contribution from the courts to the debate and by giving the Oireachtas significantly enhanced powers to hold the government to account in EU matters.

### **A European Model?**

Europe's crisis remains volatile. The peripheral countries continue to struggle with massive debt, banking remains flawed and fragile, austerity policies are being implemented across the region and growth is either negative or minimal across the entire eurozone. There is open disagreement in the core countries (and even within the German government itself) about whether to let Greece go bust and leave the euro. The chances of further tumultuous events remain high.

Despite the widespread criticism of European blundering and apparent indecisiveness, in practice the dominant policy response has been consistent since early in the crisis. The most immediate strategy has been to build a 'firewall' around the European financial system, by providing funding to Europe's banks but also by pushing the responsibility for banking debt firmly onto states and, therefore, citizens. It is not that Europe has been slow to develop a

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‘bank resolution scheme’ to manage the process of banks going bust – avoiding getting to a bank resolution process has been a goal of policy. Changes in financial sector regulation have focused on capital requirements rather than trading activity and some limited write downs of debts to private sector creditors (in Greece) have been combined with massive injections of cheap money into Europe’s banks in recent months.

This safeguarding of banking has been twinned with the promotion of a variety of austerity policies across Europe, in the interests of reducing state debts and deficits and reducing the threat posed to the euro by the rising costs of borrowing for governments (or ‘sovereigns’). Funds have been mobilised through the development of the European Stability Mechanism rescue funds. Alongside this a series of policy initiatives (including the ‘six pack’ and ‘two pack’ of new regulations and the ‘fiscal compact’ itself) have toughened budget rules, implemented deeper and more powerful EU Commission oversight of national budgets and economies, imposed automatic sanctions for violation of rules and increasingly sought to embed all of these as firmly as possible in national legislation and even constitutions.

This has been consolidated in recent months into a clear political project for the future of Europe, with a strong legal basis. The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union was adopted on 31<sup>st</sup> January 2012, without the United Kingdom and the Czech Republic – and potentially subject to a referendum in the Republic of Ireland, France and elsewhere. The fiscal compact is anchored in part in the ideologies of the dominant parties in France and Germany and may well shift if the French socialists or German social democrats return to government (with both parties expressing deep scepticism about the strategy). It is also, however, based on a profound uncertainty and fear about how Europe’s financial system might fare if the system of liabilities built up in the open capital markets of the 2000s unravel completely.

However, in recent speeches to her Christian Democratic Union party, Chancellor Angela Merkel has argued that such policies, combined with efforts to improve competitiveness, represent a strongly pro-European response to the crisis. She argues that such measures will rebuild trust in finances and between governments and will require greater strengthening of the centre in Europe and deeper political union.

**Rediscovering the European Model (I): Towards A Socio-Economic Compact**

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This approach has caused some frustration in the US and UK, 'liberal political economies' which have ironically taken what is apparently a more Keynesian approach to the crisis, making greater use of 'quantitative easing' (increasing the money supply) than in continental Europe. Nonetheless, Chancellor Merkel can make a strong case that fiscal discipline has been a central plank of the European model in the past – the continental and Nordic economies have always been less likely to run budget deficits than the liberal political economies.

However, in these Christian Democratic and Social Democratic economies, this fiscal rectitude has historically been part of a much broader social and economic compact – the other elements of which are missing in the current European fiscal compact.

A crucial element in those models was a focus not on austerity but on prudent egalitarian productive investment (the less widely recognised side of Keynes' economics). Where the bailout programmes have emphasised competitiveness through cost cutting and weakening social protections, the European model was based on quality production, worker participation and strong social protections and investments.

The compact then is an attempt to manage Europe through the short term crisis by imposing discipline on government finances, betting that the process of 'deleveraging' of debts will be easier to manage through states and citizens than through a restructuring of the financial system. The additional social and economic measures that were crucial to the success of such fiscally disciplined economies as Germany and the Nordics are not part of the promised road to recovery of the European project.

There are significant problems with this strategy. The most obvious is the threat to the euro through the pressure on government finances and the unwillingness of private lenders to finance government borrowing in the European periphery. The fiscal rules in place in the 2000s have already notably failed to prevent the current crisis. Four years into the crisis, the pro-cyclical austerity policies seem almost certain to continue to deepen recession and delay recovery. In the medium to long term, the fiscal rules in the new treaty lock out counter-cyclical measures and go a long way to making Keynesian economic management illegal.

The compact then is a bet that austerity and technocracy can outlast these economic, political and legitimisation problems long enough to allow the eurozone economy to begin to grow once more. The rules may become the first block in Chancellor Merkel's 'bridge to the future',

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becoming the basis of new relations of trust across Europe. But the other elements that might make such an outcome more likely are missing, or suppressed. In such circumstances, it is not surprising that the peripheral countries fear that the fiscal compact will simply quarantine the healthier economies in Europe from the difficulties across the eurozone as a whole.

There are real dilemmas here – uneven development in the European Union is a serious problem and interacts disastrously with liberal capital markets and state deficits. But it is striking how small a role has been given to European institutions such as the structural funds programme or the European Investment Bank in promoting an investment-led recovery. Indeed, it seems likely that structural funds will go unspent in the current period. The marketisation of continental European banking has fuelled a turn away from productive investment and the funds provided to European banks are still as likely to be used for financial trading as for productive lending. The trillion or more in liquidity provided to banks comes with few strings attached in terms of the banks' role in recovery. Policy decisions that could provide national governments with fiscal space to generate economic recovery, including rescheduling debt repayments, are largely ignored. Cross-national investments in vital infrastructure for the knowledge economy could be encouraged further. Institutional changes in terms of financial regulation, promotion of active labour market policies and industrial upgrading – vital to recovery across the periphery – could be advanced. A politics of rule-making and rectitude, necessary in many respects, must be accompanied by a politics of society-building and recovery.

It may well be that the prospect of a fiscal compact and early moves in that direction will provide enough stability in the banking, bond and stock markets, and the eurozone economy to avoid a disastrous short term meltdown. In the not so long run, however, the European approach will need to go well beyond the fiscal compact to generate growth, employment and become a motor of recovery in the world economy.

### **Rediscovering the European Model (II): Governance and Democracy**

As noted above, European policies and institutions exist that could be mobilised. The problem lies in the ability of politics in Europe to generate what sociologist Art Stinchcombe calls a 'solid enough future' that could be the basis for recovery. The tensions between core and periphery are clear. The violent confrontations in Greece are only the most visible sign of serious damage to the image of the EU, especially outside the continental 'core'. But the tensions within the core itself are also significant – the French project of Europeanisation as a

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model of projecting influence on a global stage is potentially significantly at odds with the German projection of its model of a competitive exporting economy onto the European Union as a whole. Within Germany itself, the political tensions are also serious – while their once investment-oriented banks partied in international capital markets in the 2000s, German workers and citizens saw some of the lowest increases in living standards across the EU. Little wonder their appetite for funding European recovery is poor.

However, the politics of the compact appears unlikely to live up to the demands of revitalising the European model. The compact is based largely on increasingly naked inter-governmental inequalities in power and intensified technocratic domination – neither wildly popular with Europe’s citizens. Recent decades have seen a significant shift in the relations between governments and bureaucracies within Europe. From 1985 to 1994 the European Commission under Jacques Delors was arguably the central actor in the European Union and widely seen as a champion of the smaller states. Indeed, eurobarometer surveys show that it is the citizens of the smaller member states that most trust the EU.

However, the Commission bureaucracy has been marginalised in the past decade by the growing assertiveness of the major powers within the Union. In the aftermath of the crisis, the Commission is now being brought back in but as the disciplinary arm of an inter-governmental set of rules. More broadly, agencies such as the European Central Bank are playing a key role, officially outside the control of European citizens. In Italy technocrats are directly installed in government while Greece, Ireland and Portugal are all under direct technocratic oversight through bailout programmes.

Eurobarometer surveys show that the percentage of people in Ireland, Italy, Portugal and Spain who ‘tend to trust the EU’ fell from 57% before the crisis in April 2008 to 42% in May 2011. A vote based on the fear of being left out of the EU will inevitably go along with an erosion of trust in its institutions and should not provide any comfort to those who seek to secure the future of Europe.

The legitimacy of technocratic domination rests upon expertise and objectivity. However, there is significant scope in applying this expertise – schedules of repayment can be changed and definitions of obligations to creditors can be created, contested and changed. Furthermore, the fiscal rules themselves build into law economic concepts and explanations

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that are in practice both contested and extremely difficult to operationalise, even within international accounting and statistical norms. ‘The rules’ cannot substitute for political construction of social compacts.

Where the successful European economies were characterised by a diverse network of governance institutions, centralisation and technocracy are the dominant modes of governance in the fiscal compact. Rather than promoting the ‘European model’ anew the compact promotes a single piece of the cluster of policies and institutions as the key policy for securing Europe’s future.

### **Enhancing Ireland’s Capacity to Engage with Europe (I): Bringing the Judiciary Back In**

The referendum debate is clearly at risk of developing into a rather predictable political ‘face off’. It is noteworthy that most of the antecedent debate focused on the relative costs and benefits of ratifying the treaty directly via the people or indirectly through the Oireachtas, which effectively means through a decision of government.

This shows how ‘thin’ our institutions of political debate and deliberation are in practice. The new focus on European issues offers an opportunity to deepen Ireland’s institutional engagement with European debates and policies. This deepening would also strengthen the quality of our democracy at a time when European governance is becoming more technocratic. We suggest an enhanced role for the judiciary and the Oireachtas in deliberating on European policies.

The Supreme Court has been singularly absent from Ireland’s engagement with European integration for most of the last quarter century. Unlike many member states of the EU we have had no national judicial consideration of the relationship between national sovereignty and EU supranationalism. And in the light of the far reaching consequences of ratifying the Fiscal Treaty this is an intervention that was badly needed. Significant uncertainties regarding the legal implications of a Yes or a No vote remain.

As the guardian of the Irish Constitution the Supreme Court has played an important role in maintaining the balance of power between our domestic political institutions and ensured that no one institution could garner for itself powers which the constitution did not bestow. The European integration process has presented the most formidable challenge to that ordering of

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the domestic political architecture: vectors of so-called ‘Europeanization’ have helped to re-configure the domestic political landscape in quite specific ways, and, as the ‘European’ layer of governance in Ireland has effectively overlaid the ‘domestic’, the practical institutional effect of such patterns of Europeanization has been to ‘hollow out’ the constitutionally prescribed functions of the Oireachtas. Because over time more and more policy areas have ‘migrated’ from the national to the European or supranational level the decision-making input and authority of purely domestic actors has been continually eroded. If the Irish people say ‘yes’ to the Fiscal Compact that pattern is likely to continue.

It is ironic that the absence of the Supreme Court from Ireland’s European journey stems largely from one of its own judgments, the celebrated Crotty case of 1987. The most important effect of the judgment was that subsequent to its delivery Irish governments interpreted the Court’s position to mean that all future changes to EU treaties had to be decided by popular referendum. The Supreme Court has had virtually nothing to say about the cumulative transfers of sovereignty to Brussels and the trajectory of ever deeper integration pursued by the EU via the treaties of Maastricht, Amsterdam, Nice and Lisbon.

There were two reasons in particular to support a referral of the Fiscal Compact to the Supreme Court. The first is the nature of the Fiscal Compact itself and the fundamental change it portends in the management of the Irish economy. The Fiscal Compact does not merely constitute an organic or benign evolutionary development in Ireland’s economic relationship with Brussels. If passed into law it would provide for a permanent and deeply penetrative oversight of Irish fiscal policy by EU authorities, embedding this external economic control in domestic legislation and specifying automatic sanctions for transgression which could condemn this country to lengthy periods of economic stagnation. The fiscal compact is the latest (and may yet prove the most significant) in a series of EU supranational economic bargains that can only be understood as a form of advanced ‘Europeanization’ of the domestic legislative landscape.

Some commentators such as legal expert Dr. Gavin Barrett of UCD and economist Professor Philip Lane of Trinity College have argued that the Fiscal Compact represents ‘much ado about nothing’ i.e only a legal formalization of the instruments the EU has already put in place (such as the so-called ‘six pack’ measures) to toughen up fiscal and budgetary rules within the Eurozone. Whilst it remains to be seen how constraining a ratified Fiscal Compact

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will prove for member state governments as they seek to conduct their own fiscal policies in the future, there is at the very least an inherent danger that the quasi-automaticity of many of the measures included in the Compact will significantly tie the hands of government and continue the trajectory of austerity well into the future, denying the domestic economy the vital oxygen provided by a return to more or less normal levels of economic growth.

A Supreme Court judgment on the fiscal compact would have thrown light on these evolving supranational fiscal arrangements and determined whether they were compatible with the principles of sovereignty enshrined in Bunreacht na hÉireann. As importantly a Supreme Court hearing might also have helped define the parameters and deeper long term significance of Ireland's constitutional relationship with the EU. In particular the Court might have clarified the responsibilities of and relative balance of power between our domestic political institutions with regard to European affairs. It will be important that we obtain a judicial judgment on these constitutional issues when the opportunity next presents itself.

### **Enhancing Ireland's Capacity to Engage with Europe (II): Enhancing Parliamentary Democracy**

This is especially crucial because of the current overwhelming imbalance in power between the government and the Oireachtas. Here we should take note of the practice in other jurisdictions where both the courts and national parliaments play a much more prominent part in EU decision-making. The Danish government is constitutionally obliged to take instruction from the European affairs committee of its national parliament, the *Folketinget* when it negotiates with EU partners. Thus Danish MPs have an input into EU policy which their Irish counterparts in the Oireachtas can only dream about.

The balance of power between the institutions of state is also much more nuanced in Germany where the Constitutional Court has been a visible and increasingly assertive actor within the domestic processing of EU affairs. Most recently, in September 2011, the Court ruled on three lawsuits brought by prominent lawyers and economists against Germany's participation in the EU bailout of Greece. Although the court rejected the substantive claim of the litigants it also handed them a partial victory by insisting that the Bundestag be given a greater role in any future bailouts and, more generally, in German decision-making on EU issues. In the Court's view the Bundestag had lost control over its constitutionally mandated

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right to determine budget policy and thus control how German taxpayers' money was spent. The Court's decision means that the German government will now have to ask the *Bundestag* budget committee before it agrees to any future bailout decisions at EU level.

The German case demonstrates a clear attempt to claw back power from the EU to the national level of decision-making, something that might seem counter-intuitive against the current shadow of deep recession across the continent. But it also highlights the extent to which national parliaments have become 'victims' of the European integration process. Within individual member states this has manifested itself in the control of EU policy-making by a narrow stratum of executive and bureaucratic actors and the marginalization of national parliaments as arenas of oversight and scrutiny of governmental activity at EU level.

Parliaments are central institutions in modern European systems of government. They elect and control the government, approve legislation, and represent the most important checks on the power of untrammelled executive authority, especially when they exercise functions of oversight and scrutiny. Yet such constitutional perspective is arguably increasingly divorced from reality in both the Irish and international contexts. National parliaments are almost without exception portrayed in the EU literature, for example, as reactive institutions, as 'victims' of the European integration process for one thing, and the broader global context in which foreign policy decision-making has evolved (O'Brennan and Raunio, 2007). Within the Irish political system the government's dominance over the legislature is clearly apparent.

In theory at least the Houses of the Oireachtas exercise an important role in relation to foreign policy; in engaging in plenary debate and providing institutional approval for international treaties and legislation, and in discussing issues of external relations in parliamentary committees and seeking to hold senior office holders to account on foreign policy. Articles 29.5 and 29.6 of *Bunreacht na hEireann* explicitly set out the power of parliament in the field of international relations. Every international agreement to which the state becomes a party other than those of a technical or administrative character, must be laid before the Dail, and the state cannot be bound by any agreement involving a charge on public funds unless the terms of that agreement have been approved by the Dail. No international agreement may become part of domestic law of the state without the approval of the Oireachtas (*White Paper*, 1996: 332). Thus a reading of the formal powers enjoyed by the Oireachtas suggests

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there exists an opportunity structure for TDs and senators to participate actively and purposively in foreign affairs.

The formal institutional division of labour, however, is misleading. In this, as in other areas of policy-making, executive privileges outweigh and prevail over constitutionally-ordained parliamentary prerogatives. Michael Gallagher's recent (2010: 198-229) evaluation of the performance of the Oireachtas noted that with regard to the Dáil it was only a slight exaggeration "to say that all legislation passed by the Dáil emanates from the government, and that all legislation proposed by the government is passed by the Dáil." This work goes on to describe Dáil debates as "dialogues of the deaf" with little incentive for opposition parties to engage constructively, and concludes that the "Dáil cannot be seen as an active participant in the process of making laws, let alone broader policy" while noting that the Seanad is "by far the weaker of the two houses." (Ibid. 210).

The reason for the relative weakness of the Irish parliament is obviously a debate that goes well beyond European integration. There is little agreement, even among specialists, as to which are the most significant explanatory factors. Issues which are commonly pointed to include the relatively clientelist nature of Irish politics and the strong party discipline pertaining within Irish political parties. Both of these act as structural dis-incentives toward active parliamentary engagement with foreign policy issues including EU policy-making. What we can say is that, in a comparative context, Ireland represents a readily identifiable case of a foreign policy system dominated by government actors and one where parliament signally fails to fulfil its constitutional mandate of holding the government to account.

Ireland's membership of the EU has re-enforced existing tendencies toward governmental control and EU policy-making in particular has been overseen by a combination of the departments of Foreign Affairs, Finance and An Taoiseach, assisted by a highly effective civil service. There has been little or no room for the Oireachtas to assert itself, whether in the early stages of policy initiation or the later stages of implementation.

Understanding the role of the Oireachtas (and of individual members of parliament) in EU decision-making seems particularly compelling in the light of the rejection of EU-related referendums in 2001 and 2008 and the impending prospect of a referendum on the Fiscal Compact. Although it is frequently alleged that the failure of earlier referendums can be

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attributed to a so-called ‘democratic deficit’ at EU level, there exists a much more important domestic, i.e. *purely Irish* democratic deficit in that the political representatives charged with the responsibility of holding executive authority to account seem disengaged from the European integration process and unable or unwilling to properly scrutinise Irish governmental action in the EU sphere. Members of the Oireachtas did not campaign forcefully for the Lisbon Treaty in 2008 and many of them appeared distinctly uncomfortable when making public appearances or media interviews.

The impression given was of a parliament which was uninformed, unimportant, remote from the policy-making process and essentially voiceless: ‘communicating Europe’ had become a thankless and unwelcome (if indeed fitfully periodic) task for mainstream political representatives rooted in a robustly localist political culture and who themselves have both little opportunity to influence EU policy-making and little to gain from engaging seriously with EU affairs. This is no small matter of concern as we set out on a fifth EU referendum campaign in just over a decade and one that will unfold against a backdrop of unprecedented economic uncertainty.

The ‘European’ layer of governance in Ireland has, over time, become a domestic layer as the boundaries of what previously were thought of as discrete national and supranational areas of competence have gradually dissolved. ‘Europeanization’, in different forms and via a multitude of routes, has played a decisive part in shaping Irish foreign policy over almost four decades of membership.

Europeanization was defined originally by Robert Ladrech (1994: 32) as ‘an incremental process reorienting the direction and shape of politics to the degree that EC [European Community] political and economic dynamics become part of the organizational logic of national politics and policy-making.’ ‘Europeanization’ is hence primarily a top-down concept, employed for analysing the impact of European integration on developments at the national level... The EU creates new exit, veto, and informational opportunities for domestic actors and therefore changes the national opportunity structure for exerting political influence. The idea is thus simple: states are not homogeneous, monolithic entities and the process of European integration may empower certain groups or institutions while reducing the power of others.

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Academic studies have demonstrated that Europeanization has re-enforced the existing dominance of decision-making by executive actors, leading to a phenomenon known as ‘deparliamentarization’. National parliaments are almost without exception portrayed in the literature as reactive institutions, as ‘victims’ of the European integration process, rather than purposive independent actors (O’Brennan and Raunio 2007). According to the ‘deparliamentarization’ thesis, the development of European integration has led to an erosion (or further erosion) of parliamentary control over executive office-holders. This argument is based both on EU constitutional rules and on the political dynamics of the policy process at EU level. Constitutionally, the issue is relatively straightforward. Powers which previously were under the jurisdiction of national legislatures have been shifted upwards to the European level and the European Council has become a more powerful actor than ever envisaged: a marked trend toward ‘intergovernmentalism’ within the EU has rewarded executive actors at the expense of domestic parliaments and national agency.

Research on the impact of the EU on national politics has also provided strong support to the deparliamentarization thesis. Rometsch and Wessels (1996) uncovered certain similarities between the member states: the strengthening of the position of the prime minister, the central role of executive authority coupled with decentralization and flexibility in decision-making, the bureaucratization of public policy-making, high administrative coordination in national EU policy, and, significantly, low involvement of national parliaments. The follow-up volume edited by Wessels, Maurer and Mittag (2003) largely confirmed these findings. Despite some improvement, they concluded on a pessimistic note that ‘continuous deficits in parliaments’ ability to play the multi-level game reduce the influence of national deputies. The involvement of parliaments in the EU policy-cycle remains weak and largely reactive.’ (Ibid.: 433) Summing up the role of national parliaments in this policy coordination, Kassim (2000: 258) observed that parliaments have ‘very little ability to scrutinize Union proposals, still less to influence their content, and are able only in very exceptional cases to direct the actions of their respective governments.’ Country-specific accounts of Europeanization largely confirm the findings of these comparative projects (O’Brennan and Raunio 2007). The protracted economic crisis which unfolded after 2008 further cemented the authority of governments as the central actors within the Eurozone in particular.

The Irish case seems to wholly confirm these findings: patterns of Europeanisation leading to a strengthening of the executive and a reduced role for the Oireachtas in EU affairs. More

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recently, in keeping with the trend toward 're-enforced intergovernmentalism' as the defining mode of interaction at EU level, the Department of an Taoiseach has taken on a much more prominent role, confirmed by the transfer of administrative responsibility for European affairs to that department in June 2011, with a second secretary general appointed. Clearly this important change will take time to bed down and new patterns may emerge in both the inter-departmental constellation and the relationship between government and parliament as a result. What seems clear, however, is that the re-configuration represents the latest stage in a series which have considerably boosted the power of the Department of An Taoiseach in EU affairs.

The Oireachtas first established a system of Community legislation scrutiny in 1973 and this work was later subsumed by the first Joint Committee on Foreign Affairs in 1993. However, in March 1995 the Oireachtas set up a separate Joint Committee on European Affairs (JCEA) which subsumed the JCSLEC. The most important subsequent changes occurred after the Nice Referendum defeat in 2001, which some see as a watershed moment in Ireland's relationship with the European Union (O'Brennan, 2004, 2009, 2010). The European Union (Scrutiny) Act of 2002 laid down the legislative basis for parliamentary scrutiny of EU legislative proposals in the Houses of the Oireachtas. Under the Act the Government is legally obliged to lay copies of all EU legislative proposals before both Houses of the Oireachtas together with a statement of the Minister outlining the content, purpose and likely implications for Ireland of the proposed measure.

Whilst these innovations should be considered positively, Gavin Barrett (2008) maintains a note of caution, and suggests that while the various measures brought in through the European Union (Scrutiny) Act, 2002 were a clear improvement on the previous experience and are 'undoubtedly welcome, their effectiveness in securing executive accountability remains open to doubt'. There is a vast difference between 'making recommendations' to ministers and having the power to change or at least substantially influence government policy.

At the European level the Lisbon Treaty introduced changes to the role of national parliaments which have the potential to significantly enhance the part played by the Oireachtas and other parliaments in EU affairs. Much of the discussion about the Lisbon Treaty's protocols on national parliaments and subsidiarity revolved around the potential for

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increasing the politicization and parliamentarization of EU politics. These measures included the following:

-National parliaments are to receive all Commission documents, all instruments of legislative planning and all draft legislative acts that are sent to the European Parliament and the Council as well as agendas and minutes of Council meetings (Article 1 and article 2 of the Protocol on the role of national parliaments).

-Under the mechanism commonly referred to as the 'early warning system' (EWS), any chamber of a national parliament may, within eight weeks from the date of transmission of a legislative act in the official languages of the Union, send to the presidents of the EP, Commission and the Council a reasoned opinion stating why it considers the draft in question does not comply with the principle of subsidiarity. Each national parliament has two votes and in the case of bicameral parliaments, each of the chambers has one vote. Where reasoned opinions on non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to national parliaments, the draft must be reviewed (also called the 'yellow card' procedure). The institution that has put forward the proposal may maintain, amend or withdraw the draft and has to justify the decision. If, under the ordinary legislative procedure, the reasoned opinions represent at least a simple majority of the votes, the Commission has to issue a reasoned opinion if it decides to maintain the proposal (the so-called 'orange card' procedure). In that case, if, by a majority of 55 per cent of the members of the Council or a simple majority of the votes cast in the EP, the legislator is of the opinion that the proposal does not comply with the principle of subsidiarity, the draft shall be given no further consideration.

-Member states can now bring actions for annulment on grounds of a breach of the subsidiarity principle before the European Court of Justice on behalf of their national parliaments.

-National parliaments are now to be involved in the revision procedures of the Treaties and receive notification of applications for accession to the European Union.

-Finally, there are also new provisions that encourage the deepening of inter-parliamentary cooperation between national parliaments and the European Parliament.

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The powers conferred by the Lisbon Treaty on national parliaments may indeed be rather narrowly circumscribed and they in part depend on the support of other institutions. Nevertheless, national parliaments have obtained for the first time a formal role in EU policymaking. That is certainly significant and the Oireachtas should now be examining strategies for insinuating itself better into Ireland's decision-making machinery. Whilst the Lisbon Treaty has only been in force since December 2009 there are already signs that some national parliaments (or chambers thereof) are taking a proactive stand. In particular some parliaments which – like the Oireachtas – have been viewed as weak performers on the EU scene, seem now to be seizing the opportunity to develop a role for themselves. We can cite the UK House of Lords, for example, or the Czech Senate and the Upper Houses of Austria, Belgium, France and Germany.

The Oireachtas should now be arguing for much more enhanced powers of oversight, scrutiny and control over Irish EU decision-making. The planned Constitutional Convention offers an important vehicle for securing such an enhanced role and the European Affairs Committee in particular should be asserting in the strongest possible terms the case for increasing its own powers.

### **Conclusion**

If the Fiscal Compact is ratified by the people there will be a very clear argument to be made: the fiscal compact alone is not enough. If a yes vote is to be anything more than a vote out of fear, then additional measures are necessary. The deepening of the commitment of the member states of the Eurozone to a set of common rules and binding fiscal provisions should necessarily be accompanied by a social compact that generates the investments and social solidarity required to re-generate the European project and by measures to enhance democratic oversight at a time of increasing technocracy – including review of the overall constitutional implications of Europeanisation and a significant strengthening of the role of national parliaments across the EU.

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