
“Draft Treaty on Stability, Coordination and Governance in the Economic and Monetary Union”



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Joint Committee on European Union Affairs

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The Eurozone Crisis, Democracy and the new Treaties: Outline

- Introduction
- Quality of Democracy: implications for citizens
 - Outcome of Crisis
 - Lisbon Referendums
- Exercise of and Limitations on Sovereignty
 - Elite Decision-making
 - Changes to Economic and Fiscal Powers
- Legal Issues and Legitimacy
 - Legality of the Treaties
 - Treaties' implications
- Conclusion
 - *Future Referendum in Ireland*
 - *Legitimacy of EU and European democracy*

The Crisis: Democracy and optimal political decision-making



“In our case, it was a decision taken by our own government and our own parliament, we had full control over that decision-making mechanism. **But fundamentally, this is not just a financial crisis, it is also a fundamental test of our democratic systems”**
Olafur R. Grimsson,
President of Iceland, 2010

Quality of democracy and the exercise of sovereignty in the national interest => optimal elite political decision-making to the benefit of a state’s citizens and economic recovery

The levels of sovereignty enjoyed by Ireland and Iceland in their response to the crisis represent another important variable in the success of dealing with the crisis

Failure of democracy and rule of law at the level of the EU and at the nation-state has normative, and economic and fiscal consequences arising from poor political decisions

“Lisbon I”: No information on the Treaty – whither democracy?

The Lisbon Treaty was rejected by a substantial margin of 53.4 percent against to 46.6 percent in favour on June 12th 2008 (turn out of 53.13 percent of the electorate)

Government strategy: *“the aim is to focus the campaign on overall benefits of the EU, rather than on the Treaty itself”* (Mulhall in Greene memo, *Daily Mail*, 14 April, 2008: 4)

Treaty itself *“is largely incomprehensible to the lay reader”*
“Most people would not have the time to study the text”

Sinnott, et. al. (2009) Attitudes and Behaviours in the Referendum on the Treaty of Lisbon, Report for Department of Foreign Affairs. Dublin: UCD Geary Institute (6 March)

Absolute values of coefficients explaining NO vote

Lack of objective knowledge, treaty 

Democracy International Evaluation of the Irish Referendum on Lisbon Treaty, June 2008, used standards to measure how free and fair a referendum process is conducted and found according to their categories: 14 fair and 13 Unfair/Tendencies in ‘Lisbon I’

Government: *“the first thing to learn about referendums – is to avoid them.”* (Roche, European Commission Eurobarometer conference in Brussels, 21st November 2008)

'Lisbon II': Funding. "Benefits", "Jobs", Treaty content misinformation

Lisbon Treaty Referendum I

Fianna Fail (incl MEPs)	€850,000
Fine Gael	€500,000
Labour	€200,000
Irish Alliance for Europe	€600,000
IBEC	€250,000
Yes Camp est.	€2.3m vs No Camp €1.2m

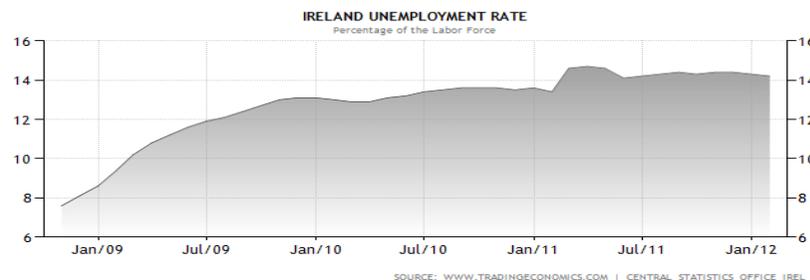
Lisbon Treaty Referendum II

Fianna Fail (incl MEPs)	€850,000
Labour	€200,000
Fine Gael	€400,000
Ireland for Europe	€650,000
RyanAir	€500,000
Intel	€500,000
We Belong	€250,000
IBEC	€150,000
Others	€100,000
Yes Camp est. to be at least	€3,575,000
European Commission	€1,750,000
Department of Foreign Affairs	€700,000
Referendum Commission	€4,181,000
Total est.	€10,206,000 vs No est. €780,000

Millions of euro spent on posters and a saturation of media campaigns bearing the slogans of



Research showed a dramatic increase in the number of people who believed voting 'yes' would "help the Irish economy", from 9% in 2008 to 38% in 2009 (FlashEB 284)



In March 2011 Intel closed a factory at its Leixlip campus with a loss of 100 jobs
\$½ bn refurbishment investment awaited

Future campaign message: Facts of membership “costs + benefits”

“Although European Union membership has been of great benefit to us, it has also been of benefit to others, and has **costs as well as benefits**. We are prone to be somewhat naive about this..... We opened up our markets and had to allow other countries more generous access to our fish stocks than we have ourselves. These are items on **both sides of the balance sheet**. *If we are to be realistic, we should not labour under the idea that we have some special debt or obligation to our partners or that we have been the beneficiary of positive discrimination. We have not.*” (Ahern, *Dáil Éireann* V. 463 C.1317, 28 March 1996)

Balance Sheet in Billions of Euro:

EU Funds received	72	(1973-2013)
IE Funds contribution	31	
IE Net Benefit	41	

(Yes campaign reported Angela Merkel as saying IE net benefit is €56 bn (2009))

IE Fisheries Commercial value	201	(1975-2010)
IE share	17	
EU Net Benefit	184	

EU Net Benefit = in excess of €140 bn



EUROPEAN UNION
STRUCTURAL FUNDS



Exercise of national sovereignty to safeguard interests: Elite Socialisation

Theory of elite socialization (Checkel, 2005) involves

- (1) a 'logic of consequentialism' that treats actors as rational, goal-oriented and purposeful; they engage in strategic interactions using their resources to maximize their utilities on the basis of given, fixed and ordered preferences
 - (2) a 'logic of appropriateness' that implies that social norms and institutions have formative effects in constituting identities and interests as well as regulating behaviour; actors are guided by collectively shared understandings of what is proper given a rule system
 - (3) Socialization in the adoption of EU rules 'implies that an agent switches from following a logic of consequences to a logic of appropriateness; this adoption is sustained over time and is quite independent from a particular structure of material incentives or sanctions' (Checkel, 2005: 804)
- Irish Governments in the past had instrumentally resisted EEC pressures, e.g.: 'There is no case to be made for sacrificing our vital interests solely for the sake of being regarded as "good Europeans"' (*Dáil Éireann*, 359: 1962)
 - The theory suggests there will be a change in identity and interests that gives priority to the promotion of solidarity within the EU over values of independence that had previously shaped national policy preferences

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fine gael →



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Sovereignty, legal issues and the proposed new Treaties: TSCG/EMU, ESM

1. New Treaty necessary, not just Treaty change (see German Constitutional Court, 2009)
2. This attempt by a group of state leaders to run with the proposed new competences in the Area of EMU **outside of the post-Lisbon EU framework entirely**, and outside of the **former 'Community Pillar'**, is anathema to previous democratic principles, decisions and processes, and signals the triumph of personal political ambition and political expediency over the EU's institutional order and legally defined competences
3. Under Article 3 TFEU, Monetary Policy for the Member States whose currency is the euro is an 'exclusive competence' of the EU. Therefore no third parties, such as a group of 25 states, are allowed to develop policy in this respect. They have no competence in the area of EU's exclusive competence. (This also arguably excludes the use of enhanced cooperation (Art. 20 TEU), referred to in preamble of TSCG in EMU)
4. The new 'non-EU' Treaties, in embodying a Fiscal Union, signal a fundamental change to the goals associated with EMU – from ensuring 'price stability' to 'safeguard the stability of Eurozone as a whole'
5. The type of agencies (e.g. ESM), decision-making procedures (e.g. Reversed Qualified majority), automatic sanctions and fines embodied in these new Treaties were never envisaged under the current Treaty's EMU provisions. Their introduction through the new Treaties **is incompatible** with the current Treaties. (This precludes TSCG's article 16 seeking the transfer of the law to the EU Treaties after a five year period)

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6. These new agencies and powers involve the creation of liability for all signatory states e.g. financial liability for debts of Eurozone members through ESM, and under excessive deficit conditions, power over revenue expenditure of participating states and powers in relation to structural economic reforms in other states (in support of the EC).
7. ESM - a new intergovernmental agency/body functioning as a Fiscal Transfer Union - creates new liabilities for signatory Eurozone members on their own revenues, i.e. contributions such as Ireland's 11 billion euro.
8. Current instruments (€440 bn EFSF/€60 bn EFSM) to be replaced by the ESM are established (Art. 122) contrary to the TFEU Art. 125 'no bailout clause' and are illegal:
 - In an interview with the Financial Times in May 2010, Pierre Lellouche, French Minister for European Affairs, said that they reflected an "*unprecedented*" defacto change to the current Treaties: "*It is an enormous change,*" Mr Lellouche said. "*It explains some of the reticence. It is expressly forbidden in the treaties by the famous no bail-out clause. De facto, we have changed the treaty*". He went on to liken the former to a mutual defence clause: "*The €440bn mechanism is nothing less than the importation of Nato's Article 5 mutual defence clause applied to the eurozone. When one member is under attack the others are obliged to come to its defence.*"
 - Christine Lagarde was quoted by the Wall Street Journal/Reuters (18th Dec. 2010) as saying: "*We violated all the rules because we wanted to close ranks and really rescue the euro zone...The Treaty of Lisbon was very straight-forward. No bailout.*"

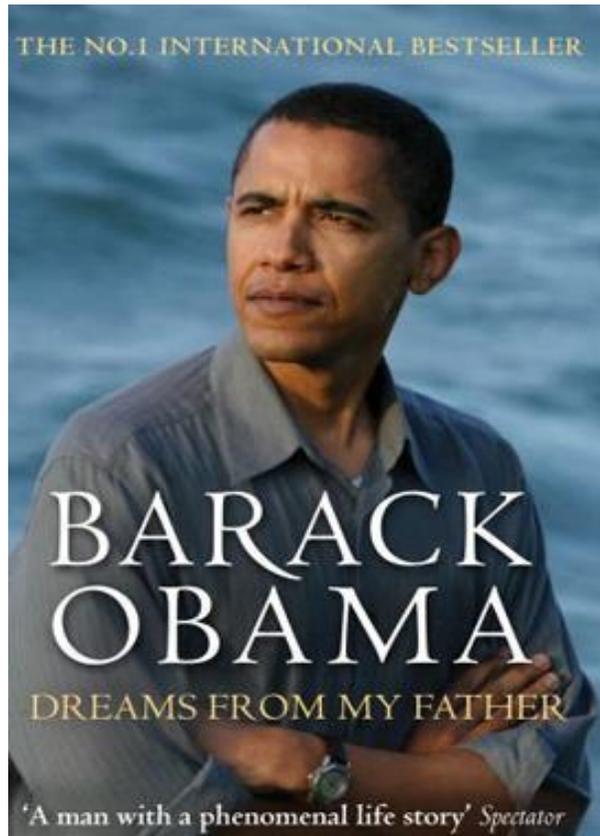
Whither European Union values of democracy and rule of law (Art 2 TEU)?

“Europe’s approach...We want to use the force of ideas and persuasion, not coercion. We have moved a long way from the ‘reasons of State’ and from the realpolitik that we ourselves invented. Our concept of power is **the power of rules**” (Prodi, European Commission, *Europe and Ethics* Speech, Vienna, 7 December 2002)

“The idealism behind the EU's foundation is vital to **defining who and what we are today**. ...We have carefully built a **zone of peace, democracy and the rule of law** of more than 500 million people” (Solana, EU High Rep. for the CFSP, The Hague, 23 November 2006)



The Eurozone Crisis, Democracy and the Treaties: Conclusion



“There was no shame in your confusion. Just as there had been no shame in your father’s before you. No shame in the fear, or in the fear of his father before him. There was only shame in the silence fear had produced. **It was the silence that betrayed us.**” (Obama, 2008: 429)