

**Tithe an Oireachtais**  
**An Fochoiste um Thodhchaí na hÉireann san**  
**Aontas Eorpach**

Todhchaí na hÉireann san Aontas Eorpach:  
Dúshláin, saincheisteanna agus roghanna

Samhain 2008

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**Houses of the Oireachtas**  
**Sub-Committee on Ireland's Future in the**  
**European Union**

Ireland's future in the European Union: Challenges,  
Issues and Options

**November 2008**

## Foreword



On behalf of the Joint Committee on European Affairs I am pleased to present this report of the Sub-Committee on Ireland's future in the European Union. The Sub-Committee was established by the Houses of the Oireachtas following the Lisbon Treaty Referendum result in order to assess the implications of the result and the challenges facing Ireland within the EU, and consider Ireland's future in the Union.

The Joint Committee on European Affairs has closely followed and monitored developments within the European Union since November 1997 and prior to that its forerunner the Joint Committee on Secondary EC Legislation performed similar tasks. The current Committee has produced a number of reports on the future of the EU and the reform of its institutions. Most recently, it published two reports on the Lisbon Treaty which followed a country wide tour prior to the referendum aimed at holding a public debate on the merits of the Treaty. The Joint Committee, in the course of its work, noted the potential to improve public understanding of the EU and its institutions. The Sub-Committee's report proposes a number of measures in this area and makes recommendations to enhance the role of the Oireachtas and engage the public in EU issues.

I wish to pay tribute to the Chairman of the Sub-Committee, Senator Paschal Donohoe, the other members of the Sub-Committee and the staff of the Oireachtas for their commitment and dedication to the production of this report in an extremely tight schedule. The Report is impressive in its content and scope and I am confident it will contribute immensely to the public debate and the substance and perception of European issues and this country's role in the Europe of the future.

Bernard J Durkan TD  
Chairman  
27 November 2008

## The Joint Committee on European Affairs

Meeting of 27 November 2008

### Decisions taken by the Joint Committee

Report of the Sub-Committee on Ireland's future in the European Union:- Decisions taken by the Joint Committee at its meeting of 27 November 2008

At its meeting of the 27 November 2007 the Joint Committee on European Affairs met to consider the Report of the Sub-Committee on Ireland's future in the European Union. The Chairman of the Joint Committee, Deputy Bernard Durkan invited Senator Donohoe, Chairman of the Sub-Committee to present the report.

1. Having considered the report of the Sub-Committee the Joint Committee agreed that the report and appendices, as presented, should be laid before both Houses of the Oireachtas.
2. It was agreed to print and publish the report and to circulate copies to all witnesses that had participated in the hearings of the Sub-Committee and contributed to its work.
3. With regard to a wider circulation of the report it was agreed to circulate copies of the report to all individuals and groups who made submissions to the sub-Committee.
4. In addition copies will be made available to MEPs, all EU information centres around Ireland and the EU institutions.
5. It was agreed to put a Motion on the Order Paper seeking a debate in Dáil Éireann and to issue a letter to the parliamentary party whips strongly recommending that such a debate take place in the week beginning 1 December 2008, (prior to the European Council).
6. Finally it was agreed to forward a copy of the report to Oireachtas Office Holders, Committee Chairmen, all Ministers and Ministers of State and the Attorney General for their observations.

Bernard Durkan TD  
Chairman  
27 November 2008

## Sub – Committee on Ireland’s Future in the European Union

### List of Members

Deputies:

Thomas Byrne (FF)



Joe Costello (Lab)



Lucinda Creighton (FG)



Timmy Dooley (FF)



Beverley Flynn (FF)



Michael McGrath (FF)



Billy Timmins (FG)



Senators: Déirdre de Búrca (GP)



Pearse Doherty (SF)



Paschal Donohoe (FG)  
(Chairman)



Rónán Mullen (Ind)



Phil Prendergast (Lab)



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## **Foreword**

On behalf of my colleagues, I am pleased to present the report of the Sub-Committee on Ireland's Future in the European Union. Our report comes at a critical time in Ireland's membership of the Union. The decision of the people on 12 June 2008 not to approve a constitutional amendment to enable the ratification of the Lisbon Treaty has initiated a need to assess Ireland's future in Europe.

There is no doubt that Ireland's membership of the Union has greatly benefited our country. It has been a driving force for economic growth and social advancement in Ireland. These benefits have stemmed from Ireland's commitment, since joining in 1973, to the ideals and objectives of the European Union. Ireland is seen by other Member States as a constructive and progressive partner in shaping the economic and political development of Europe. It is my strong belief that Ireland's membership of the European Union has allowed the expression and flourishing of our political and economic sovereignty.

Ireland's policy of being a constructive member at the heart of the European Union to advance the interests of the country has been placed under the spotlight by the referendum result. A vital objective of this report, therefore, is to analyse the effect on the Irish national interest due to this vote. The report also seeks to address the key underlying factor informing people's attitude to the European Union: a feeling of disconnect and an accountability deficit with regard to many European institutions. The Oireachtas must assume its responsibilities and assert itself in this regard.

In doing this work our Sub-Committee has met over 110 witnesses from more than 40 different organisations. Their testimony was crucial in the preparation of this report and I wish to thank those who contributed. I also wish to thank UCD's Dublin European Institute for their discussion paper, which made an invaluable contribution to the Sub-Committee's work. I wish to pay particular tribute to my colleagues on the Sub-Committee as well as the Secretariat for their hard work and dedication.

It is not within the Sub-Committee's Orders of Reference to recommend a solution to the current situation which has developed since the Lisbon Treaty referendum result. The different roles of the Oireachtas and the Government are clear with regard to this. But I am certain that Ireland's best interest is

served by being at the heart of Europe. The challenge is to recognise, respect and act upon the wishes of the Irish people while keeping Ireland at the heart of Europe. Rising to this challenge will be a demanding test for Irish political leaders. However, we must do so, as the long term consequences of Ireland leaving the heart of Europe are simply disastrous.

The decision of the people in the recent referendum, the starting point for the work of the Sub-Committee, has created a dilemma for Ireland and the European Union. The wish for reform of the Union, the underlying purpose of the Lisbon Treaty, remains. Ireland's decision has cast a shadow over this wish for reform. Our European partners have committed themselves to working with Ireland in finding a common path forward. This report is a contribution to finding that path.

Senator Paschal Donohoe  
Chairman

## **Executive Summary**

1. The purpose of the Sub-Committee is to broadly consider Ireland's membership of the Union and to examine our future engagement with the EU. It was asked to analyse the challenges facing Ireland within the European Union following the Lisbon Treaty referendum result and to consider Ireland's future in the EU. The remit of the Sub-Committee was also to make recommendations on enhancing the role of the Oireachtas in EU affairs and to consider measures on improving public understanding of the EU and the fundamental importance of Ireland's membership.

### ***After Lisbon: The Challenges***

2. Irish sovereignty has flourished in the European Union, and Ireland's role as a fully committed and engaged Member State has been vital to the advancement of the country's national interests. It is imperative that Ireland's position at the heart of Europe be maintained.
3. We must recognise, respect and address the concerns of the Irish people. It is clear to the Sub-Committee that the people were voting to reject the Lisbon Treaty and not the European Union. The immediate challenge facing Ireland is to develop a way forward which allows Ireland to remain at the heart of Europe, while taking account of the concerns of the Irish people.
4. Ireland's standing and influence in the European Union have diminished following the people's decision not to ratify the Lisbon Treaty. In immediate terms, this inhibits Ireland's ability to promote and defend its national interests at a European level. This is likely to affect Ireland's ability to influence key upcoming policy discussions within the Union. These include, but are not limited to, the development of the EU's climate change package; the negotiations on the future shape of the EU budget beyond 2013 including provision of adequate resources for the Common Agricultural Policy; and responses to the global financial crisis.
5. It is legally possible for the Union to stand still and operate into the future on the basis of current treaties and institutional arrangements. However, given the overwhelming desire among Member States for reform of the Union's structures in a manner such as that envisaged in the Lisbon Treaty, this is considered unlikely. It is more likely that a mechanism will be developed by other Member States which allows them to proceed with a process of further integration which excludes Ireland. This would lead to a two-tier Europe with Ireland on the political and economic periphery. Such a scenario would have a devastating effect on Ireland's political influence, economic prospects and international standing.
6. Ireland's decision not to ratify the Lisbon Treaty has made the country's long-term position at the core of the European Union considerably less certain. Representatives of business interests have expressed the view

that any dilution of Ireland's relationship with the EU could seriously damage its competitiveness in attracting foreign direct investment. There is an assumption among the business community that problems surrounding the ratification of the Lisbon Treaty by Ireland will ultimately be overcome. This explains the lack of an immediate impact arising from the referendum result in relation to the attraction and maintaining of foreign investment.

7. Foreign investors have expressed some surprise about the result of the referendum. Some have called into question Ireland's future commitment to the European Union. There is now a sense of uncertainty about Ireland's future role in the EU. This uncertainty extends to questions such as Ireland's future access to European markets, its future influence over EU policies in areas such as indirect taxation, and its participation in the setting of common product standards for manufactured goods in the future.
8. Ireland has had an image globally as a country which had a significant voice in the European Union. This perception has now been diminished, thereby reducing Ireland's standing internationally. For example, the United Nations has come increasingly to rely on regional organisations such as the EU to provide resources for its work in the maintenance of international peace and security. As a result, the perception that Ireland is moving away from the core of Europe has the potential to affect its standing and credibility in its engagement with the United Nations.

### ***Ireland's Future in the EU: Issues and Options***

#### **Issues**

9. It is clear that maintaining control over direct taxation policy is vital to Ireland's national interests. With all issues considered, it is also clear to the Sub-Committee that Ireland's control over its direct taxation policy, including its corporate tax rate, will not be affected at any level, including by the Lisbon Treaty.
10. The continual development and consolidation of a social market economy by the EU is important. Ireland should continue to work with its EU partners in pursuing an integrated approach to economic, social and employment policies. This integrated policy approach should have at its centre the protection of worker's rights as well as sustainable economic growth.
11. The State's role in ensuring the provision of public services and the means by which these services are delivered should continue to be a matter for each individual Member State. It is important that the protections that currently exist at EU level, and which are enhanced under the Lisbon Treaty, should be adhered to and respected.
12. The right of each Member State to decide its own policies in areas of social and ethical sensitivity should continue to be respected. To this end, a policy of subsidiarity should be carefully observed when developing and interpreting EU law. It would be important for EU institutions to work strictly

within the competences which have been conferred on them under the EU Treaties.

13. It is clear that the Irish people have a great pride in the participation of the Irish Defence Forces in international peacekeeping. The Irish people have great pride in Ireland's traditional policy of military neutrality and therefore it needs to be protected. Any practical measure that demonstrates that this traditional policy is and will continue to be protected and respected should be considered.
14. While it seems that the purpose of the Commission is sometimes misunderstood, it does appear that having a Commissioner nominated by the Government is a matter of national sensitivity. While this Commissioner would not represent the Irish Government within the Commission, he or she can act as a conduit for the Commission in understanding any sensitivities which are particular to Ireland. This serves both the Commission and Ireland. Having a Commissioner all the time would also offer legitimacy to the proposals made by the Commission.
15. It became clear to the Sub-Committee that influence is the key to promoting and protecting Ireland's interests at the heart of the EU. The Sub-Committee notes the paradox that the current proposals for reform of the EU institutions may not affect Irish influence within the EU but by rejecting the Lisbon Treaty this influence could potentially be undermined. Ireland should work to retain this influence while recognising the need to bring greater efficiency to the institutions of the EU.

### **Options**

16. The Sub-Committee believes that ratification of the Lisbon Treaty by parliament alone is not a desirable option. Such a ratification procedure could be interpreted as an effort to circumvent the democratic will of the people. It is also not clear whether such an option is constitutionally possible. It could present significant, possibly insurmountable, legal difficulties.
17. The Sub-Committee has concerns about any options that may involve Ireland opting out of EU policy areas. In this respect, it would point to the Danish experience and the growing feeling there that its opt outs in the areas of Justice and Home affairs, the European Security and Defence Policy and the Euro has had a detrimental effect on Denmark's national interests. Opt outs are not cost free. They can potentially mean Ireland losing its right to shape and influence key policy areas. The implications of choosing such a course of action should be thoroughly examined.
18. The Sub-Committee has strong concerns about any option that could potentially lead to Ireland finding itself on an outer or second tier of the EU. The option of Ireland leaving the EU and negotiating a new relationship with the EU is also unthinkable. These scenarios would be catastrophic for Ireland's national interests, both economically and politically.

19. The Sub-Committee believes that a solution must be found that keeps Ireland at the heart of Europe while respecting the democratic will of the Irish people by arranging for these concerns to be accommodated by the other Member States.

### **Beyond Lisbon: Public Understanding of the EU & Ireland's Membership**

20. It is the view of the Sub-Committee that European matters do not play as prominent a role as they should in Irish politics, media or public discourse. The Sub-Committee has analysed the reasons for this lack of engagement. Measures have been identified which could be taken at local, national and European levels to improve public, political and media understanding and engagement on European issues.

21. It is vital that more be done to encourage citizens to observe and engage with the decision-making processes of the European Union. Further emphasis should be placed on the use by citizens of the European Parliament's petitions committee. Also, further efforts should be made to ensure that the Council of Ministers meets in public when legislating. It is notable that the need for public access to the Council has been recognised at a European level, and provisions to facilitate this access were included in the Lisbon Treaty.

22. European treaties should be accompanied by clear explanatory documents, approved by the Member States, setting out in clear and comprehensible terms the intentions of the governments framing the treaty and the effect of each of the treaty provisions. In particular, such a document should be prepared in circumstances where citizens of a Member State are asked to vote on ratification of a treaty in a referendum. This document should be widely distributed during referendum campaigns. The Sub-Committee considers this to be of vital importance.

23. Strong and prominent coverage by Irish media organisations of the institutions of the European Union is vital to promote public understanding of the work of the institutions. The Government should consider measures to promote such coverage, in particular by incentivising the posting of Irish journalists on a full- or part-time basis to Brussels.

24. Assuming the introduction of an Oireachtas Digital Channel, debates in the Dáil plenary and the work of the EU committees should get priority billing. The development of a dedicated digital television channel dealing with the operation of the EU institutions, and EU affairs generally, should be examined.

25. Modern European history, in particular the history of European integration since the 1950s, should be accorded a more prominent place on the Irish school curriculum. Further emphasis should also be placed on making students familiar with the European Union and the importance of Ireland's membership. Attention should also be paid to the operation of the EU institutions and how they relate to Ireland's national institutions of

government. Consideration might be given to the inclusion of European Studies as an examinable subject on the secondary school curriculum.

26. In order to promote engagement with Europe and with other Member States of the Union, the teaching of European languages should be introduced to the Irish primary school curriculum.
27. The Government should consider the establishment of a body, which would function independently, and build on the work of the National Forum on Europe, the Institute of International and European Affairs and the European Movement to assist public understanding of the European Union and act as an authoritative and impartial source of information about the Union's work and Ireland's place within it.
28. Consideration might also be given to the development of a cross-party foundation for the development of thought in relation to European issues, providing an opportunity for scholars and intellectuals from other Member States of the Union to contribute to Irish public life and to policy formation.

### ***Enhancing the role of the Oireachtas in EU Affairs***

29. The Sub-Committee recommends the implementation of a series of reforms to address the accountability deficit in EU decision making by enhancing the role of national parliaments. The Oireachtas needs scrutiny and oversight mechanisms which take account of our particular legal, political, social and economic characteristics. The core objective for the EU scrutiny system in Ireland is to influence Ministers and hold them to account; ensure that Oireachtas members are provided with all information available to the EU institutions and at the same time; and provide a source of information and analysis for the public.
30. A formal scrutiny reserve mechanism, in line with the model used in the UK Parliament, should be introduced. This will provide more influence for the Oireachtas in the negotiating positions adopted by Irish Ministers on draft EU legislation at Council meetings. The legal, resourcing, and logistical implications need to be examined further.
31. National Parliaments should have to be consulted formally about the European Commission's annual policy strategy and legislative work programmes before they are finalised. This proposal should be pursued with our partners in other national parliaments in the Conference of European Affairs Committees (COSAC).
32. There should be a more structured arrangement for Oireachtas Committees to meet with Ministers before Council meetings to consider the Government's negotiating positions on agenda items. Ministers should also report back in writing to the appropriate Oireachtas committee on the outcome of the discussions and on specific decisions made.

33. The European Affairs Committee should examine what measures could be put in place to enhance oversight of Statutory Instruments. The aim of such measures could include making sure that Ministers and Departments are strictly complying with EU decisions when bringing these decisions into effect in Ireland.
34. Regulatory Impact Assessments have to be prepared for significant EU Directives, regulations and secondary legislation as provided for in the Government's guidelines. The Sub-Committee is concerned by the low rate of compliance by Departments with the existing guidelines. The Government should ensure that compliance with the Guidelines is addressed. From now on, RIAs should be forwarded to Oireachtas Committees for consideration when significant EU laws are being considered.
35. If Statutory Instruments are being used to give effect to an EU law, the text of the instrument, or at least the heads of the instrument, should be circulated to all Oireachtas members. This would mirror the current practice of distributing all texts of draft primary legislation. This will bring more transparency to the process of giving effect to EU law and enable the members to highlight any potential problems at an early stage.
36. The Sub-Committee recommends that a new panel be constituted in Seanad Éireann for a minimum of 5 Senators to be nominated on the basis of experience in EU affairs. Senators elected from this panel would participate in the Oireachtas European Committees. They should also build relations with the Irish MEPs as well as directly with the EU institutions.
37. The Standing Orders and procedures of Dáil Éireann and Seanad Éireann should be amended where necessary to implement these recommendations. The main issues to be addressed include regular debates on EU legislative proposals and developments; enhanced powers for Oireachtas Committees; provision for participation by MEPs in some debates; and informal monthly meetings between Irish MEPs and the European Committees in the Oireachtas. These meetings between the Irish MEPs and the European Committees should take place in the week per month when the MEPs are dealing with constituency work and therefore more likely to be in Ireland.
38. As part of an improved communication strategy the Oireachtas should establish its own EU Information Office. There is a clear need for easy access to neutral information on the EU decision making process, and Ireland's role therein.
39. The current requirement in the triple lock for approval by a simple majority in Dáil Éireann should be strengthened. Dáil Éireann should be required to have a "super majority", where a two thirds majority is needed for any proposal to send Irish troops overseas on peacekeeping missions. This would provide a stronger parliamentary mandate for such decisions and

enhance the role of the Oireachtas in a key area of interest to the Irish people.

40. Some of the changes recommended above would involve amending existing Irish legislation. Some recommendations, in particular the changes proposed to the electoral system, would require changes to the Constitution. This would obviously involve a referendum. In general, the legal implications and constitutionality of the proposed recommendations will have to be examined carefully.
41. The Sub-Committee also acknowledges that the recommendations have considerable political implications. Difficult decisions will have to be made but the Sub-Committee believes that these decisions are necessary to tackle the accountability deficit that currently exists when it comes to the EU and Ireland's membership. These recommendations should help to facilitate and encourage greater political debate around EU issues. This in turn should lead to a higher level of public engagement in and understanding of the EU.



# Introduction



1. The starting point for the Sub-Committee was the Irish people's democratic decision on 12 June 2008 to reject a proposed constitutional amendment enabling ratification of the Lisbon Treaty by the Oireachtas. This decision has brought Ireland to a critical juncture in its membership of the European Union. The task of the Sub-Committee, in recognising the people's decision, is to analyse the implications of the referendum result for our country and to consider Ireland's future in the European Union.
2. Since joining the EEC in 1973, Ireland's development has been inextricably linked to the well-being of the Union. Membership of the EU has driven economic growth and the modernisation of Irish society. Successive governments have attached particular importance to the EU's objectives of driving economic and social progress, improving the living and working conditions of the Union's citizens and promoting social and regional cohesion.
3. The benefits of membership accrued through Ireland's commitment to the Community's fundamental ideal as enshrined in the Treaty of Rome: "*an ever closer union among the peoples of Europe*". Ireland joined the EEC, following the overwhelming support of the people in the referendum of 1972, fully aware of the political ideals and aims of the Community. As stated in the 1972 White Paper on accession, Ireland committed itself to "*participate fully in the work of shaping its future political development*". By not joining, it was realised that "*outside the Community, we would be isolated from the movement for closer economic and political cooperation in Europe*". Therefore, there has been a conscious decision to place our country at the heart of the European Union. This has been the guiding principle of Ireland's policy towards the European Community and the European Union for the past 35 years.

*"As a country small in extent, population and production, Ireland would not represent, in terms of statistics, any considerable addition to the Community. We do feel, however, that we have a contribution to make to the accomplishment of the Community's design for a new European society and would wish to be given an opportunity of bringing our national qualities and potentialities to the service of this ideal in a spirit of loyal and constructive cooperation."* – Taoiseach Seán Lemass, Statement to the EEC Council of Ministers, Brussels, 1962

*"There is in Ireland a general recognition that, although many economic and political questions remain to be answered and great changes will be inevitable if Ireland and other countries become members of the European Economic Community, the best prospects, indeed, possibly, the only guarantee of political and economic stability lies in the idea enshrined in the Treaty of Rome."* – Liam Cosgrave, Interparliamentary Union Conference, Rome, 1962

4. Ireland's decision not to amend the Irish Constitution to enable ratification of the Lisbon Treaty has created a dilemma at the heart of the EU. It is clearly the wish of the Member State governments to reform the Union and therefore to bring into effect the Lisbon Treaty, a treaty which has been

eight years in the making and represents a compromise between 27 sovereign states. It is clear that all the Member States want to work with Ireland in finding a solution to this dilemma. The European Council of 15-16 October 2008 agreed to return to considering this matter *“with a view to defining the elements of a solution and a common path to be followed”*.

5. The Lisbon Treaty is the product of prolonged and intensive negotiations between the Member States of the Union. It has its origins in the Laeken Declaration agreed by the Heads of State and Government in 2001. This declaration stressed the pressing need for the Union to become closer to its citizens and more responsive to their needs and expectations. It underlined the need for change so that the Member States could act more effectively and more democratically together in facing the challenges of an increasingly globalised world. The Lisbon Treaty is designed to be the fulfilment of this declaration, the objectives of which remain to be delivered.
6. The Member States believe that the Lisbon Treaty is required in order to provide a closer connection between the people of Europe and the EU institutions and to enhance democracy by strengthening the role of national parliaments and the European Parliament. They believe that it will benefit the people of Europe through reform of the institutions and decision making so that the Union can be more effective in dealing with the issues that are important to people’s everyday lives and by making the Charter of Fundamental Rights, designed to protect and promote people’s rights, part of EU law.
7. The purpose of the Sub-Committee is to consider broadly Ireland’s membership of the Union and to examine our future engagement with the EU. It is not the job of this Sub-Committee to produce a specific solution to the current impasse but to feed into the thinking on the issue. In fulfilling this purpose, the Sub-Committee was guided by its Orders of Reference as agreed by the Houses of the Oireachtas:
  - to analyse the challenges facing Ireland in the EU following the Lisbon Treaty referendum result;
  - to consider Ireland’s future in the EU including in relation to economic and financial matters, social policy, defence and foreign policy and our influence within the European institutions;
  - to make recommendations to enhance the role of the Houses of the Oireachtas in EU affairs; and
  - to consider measures to improve understanding of the EU and its fundamental importance for Ireland’s future.
8. The Sub-Committee divided its work into four modules:
  - I the role of the Oireachtas in EU affairs;

- II the challenges facing Ireland and the implications of the Lisbon Treaty referendum result;
  - III Ireland's future approach to key EU policy areas of concern to Ireland and, more generally, Ireland's future engagement in the EU;
  - IV public understanding of the EU and Ireland's membership of the Union.
9. These modules were addressed through gathering evidence from invited speakers, inviting submissions from the public and commissioning a discussion paper from academic experts. All the Sub-Committee's hearings were held in public in the interests of openness and in an effort to encourage a full and frank public debate on Ireland's future in the EU. Over the eight weeks of its work, the Sub-Committee spoke to 114 people and organisations, consisting of practitioners, experts, academics and commentators representing a broad range of opinion, and received 94 submissions from the public. On the basis of the contributions from invited speakers and the submissions from the public and from UCD's Dublin European Institute, the Sub-Committee has agreed this report.
10. Chapter One looks at the challenges facing Ireland within the EU and globally following the referendum result. It examines what it has meant for Ireland to be at the heart of the European Union. It sets out the immediate consequences and challenges facing the EU and Ireland. The short-term and medium-term implications for Ireland are also discussed. The long-term implications for Ireland are analysed in terms of Ireland's influence within the EU, its ability to influence the EU's foreign and external relations policies, its economic interests and the effect on Ireland's global standing and international position.
11. Chapter Two considers Ireland's future approach to EU policies in the areas of economic and financial matters, social issues, defence and foreign policy and to Ireland's influence within the EU institutions. Within these areas, it identifies six issues which are of most concern to Ireland in terms of its work within the EU. These are: taxation; workers' rights; public services; socio-ethical issues; defence and foreign policy, including Ireland's traditional policy of military neutrality; and influence, particularly the proposed institutional reforms in respect of the Commission and the Council of Ministers. Finally, it examines the options in terms of Ireland's future in the EU in the immediate aftermath of the Lisbon Treaty referendum result. A range of possible options and scenarios are outlined.
12. Chapter Three looks beyond the Lisbon Treaty and considers public understanding of the EU. It is clear that the primary factor informing people's attitudes towards the EU, including in the context of deciding on EU Treaties, is their level of understanding of and involvement with the EU. Therefore, the chapter examines the reasons for the level of public understanding of the EU and considers measures aimed at improving this understanding.

13. Chapter Four considers the role of national parliaments, and specifically the Oireachtas, in the European Union. It assesses the current role of the Oireachtas in EU affairs and identifies the areas where improvements could be made. Recommendations are made on how to enhance the role of the Oireachtas in EU affairs in order to ensure that the accountability deficit at the level of the EU is addressed and that the public become more engaged with EU issues.

# **Chapter 1**

## **After Lisbon: The Challenges**



*Analyse the challenges facing Ireland in the European Union following the Lisbon Treaty referendum result*

**The Sub-Committee examined the impact of the changed economic and political climate since the Lisbon Treaty referendum, and assessed the implications of the referendum result for Ireland in a number of areas, looking at both short-term impacts and potential long-term consequences.**

### **Our Place at the Heart of Europe: what it has meant for Ireland**

1. Ireland's membership of the European Union has transformed our nation. It has had a profound effect on our state, our government, our society and our economy. This transformation has been overwhelmingly positive. Irish membership of the EU has allowed the practical expression of our political and economic sovereignty.
2. The benefits Ireland derives from its place at the heart of the EU are immense. While it is acknowledged that membership of the EU has sometimes required Ireland, like all Member States, to make difficult choices, on balance the impact of membership has been overwhelmingly positive. The maintenance of our position at the heart of Europe has been a conscious objective of Ireland's policy throughout our membership of the Union. We find ourselves at the centre of the world's most significant economic bloc, with unrestricted access to its markets and the power to shape its policies and regulations. We are part of a political Union which promotes throughout the world ideals the Irish people hold in common with our partners across the continent – the values of freedom, democracy, human rights, respect for human dignity, equality and the rule of law. The Union amplifies Ireland's voice on the world stage, and gives us the ability to protect and promote our interests more effectively than would ever be possible were we to act alone.

*“The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” – Treaty of Lisbon*

### **The Effect of the European Union on the Irish Economy**

3. Membership of the EU has been central to Ireland's economic development. It is the fundamental basis for Ireland's remarkable economic success since the early 1990s. The Sub-Committee notes that when Ireland joined the EEC in 1973, our GDP per capita was 58 per cent of the European average, and 54 per cent of our exports went to the United Kingdom, with only 21 per cent going to the rest of Europe. By the end of 2007, Irish GDP per capita had reached 144 per cent of the EU average. Only 18 per cent of our exports now go to the UK, compared with 45 per

cent which go to the expanded European Union. Ireland's membership of the EU and participation in the Single European Market has been the most significant factor in ending our country's economic dependence on the United Kingdom.

4. Access to the Single European Market has greatly helped indigenous Irish companies to develop their export activities. Equally, it has helped Ireland to attract a vastly disproportionate share of foreign direct investment, particularly from US companies. Multinational companies have considered access to European markets as a key factor in making their investment decisions. Ireland, with only 1 per cent of the EU's population, attracted 25 per cent of all new US investment in Europe in the decade up to 2005. Since the establishment of the Single European Market in 1993, the stock of foreign investment in Ireland has increased by more than 400 per cent. The importance of these investments to the Irish economy is emphasised by the fact that the companies involved spend approximately €16 billion per annum in Ireland, have a payroll of approximately €6.7 billion, and last year paid about €3 billion to the exchequer in corporation tax. 85 per cent of goods manufactured in Ireland for export are the products of foreign direct investment companies. Membership of the EU has also given Irish enterprises access to multilingual and skilled workers from our European neighbours.
5. EU membership has been crucially important for Ireland's agricultural sector. Since 1973, Ireland has received more than €41 billion through the Common Agricultural Policy, supporting the livelihoods of thousands of farm families. The Sub-Committee was told, however, that there is frustration within the Irish fishing industry about the impact of the Common Fisheries Policy on coastal communities.
6. Membership of the EU allows Ireland to punch significantly above its weight in its foreign economic policy, and gives it a strong international influence on many economic issues, including when the rules which govern international trade are being shaped. Ireland exerts more influence as part of a united EU than would be possible as an individual small country acting alone.

### **The Effect of the European Union on Irish Society**

7. Membership of the EU has caused much positive social change in Ireland. Membership required Ireland to introduce the principle of equal pay for men and women for equal work. The EU has also been the driver of the introduction of increased parental leave and protections for fixed-term and part-time workers. The Working Time Directive introduced limits to the maximum working week for employees.
8. Support from the EU was vital in creating the conditions for the success of the Northern Ireland peace process, and assisting the work of communities in building lasting peace on our island. The EU's PEACE programmes played a key role in consolidating the peace and have allocated more than

€1.2 billion in EU funding to projects in Northern Ireland and border counties since 1994. The Single European Market helps to strengthen economic convergence between North and South and provides the basis for movement towards an all-Ireland economy.

### **Ireland's Relationship with the European Union and the World**

9. Ireland, from the very earliest days of its membership of the EEC, has sought as far as possible to be fully involved in Europe and to play a full and committed part in its work. Ireland has always accepted the fundamental concepts of the European project and has worked to achieve them. As a small Member State, the key to Ireland's success within the EU has been successful use of our influence and power. The source of much of this influence has been the goodwill of our European partners. The Union functions through negotiation and compromise, and Ireland has been influential within it. We have been seen by other Member States as a positive and constructive partner. This positive sentiment towards Ireland has allowed us to benefit accordingly.

*“Many ingredients have contributed to our success but none have been more important than goodwill. The goodwill of partners and EU institutions has been built up painstakingly through constructive engagement, several successful Irish Presidencies and respecting the concerns and aspirations of others.”* – Ambassador Bobby McDonagh, Permanent Representative of Ireland to the European Union

10. Ireland and its people have historically wielded very considerable influence in the EU and its institutions. Many more Irish people have been successful in reaching the top levels of the EU's political and organisational structures than its population alone would justify. It was pointed out to the Sub-Committee that of the five Secretaries-General of the European Commission since its foundation in 1957, two (the current office-holder and her predecessor) were Irish. Currently, three Directors-General at the Commission, three of twenty-seven Commission Chefs de Cabinet, and the Head of the Commission Delegation to the United States are Irish nationals.
11. Irish ministers and public servants representing the country at a European level have been consistently regarded as influential in shaping the direction of the Union. Six Irish presidencies of the EU since 1973 have enhanced the image of Ireland as a country which can play a significant leadership role in the development of the Union. Ireland's 1990 Presidency developed the approach to German reunification and guided the EU's first steps towards bringing central and eastern European states into the Union. In 1996, Ireland's Presidency made substantial progress on the negotiation of agreed revisions to the European Treaties which led to the Amsterdam Treaty of 1997. The 2004 Irish Presidency marked the historic moment when ten new mainly Eastern European states joined the EU, bringing democracy where previously there was totalitarianism. Moreover the 2004 Irish Presidency was successful in negotiating agreement among Member States on a set of institutional reforms for the EU, embodied in the Lisbon

Treaty, designed to adapt the Union's structures to manage further enlargement and meet the policy challenges of the years ahead.

12. Recently, the relationship between Ireland and the Union's new Member States in central and eastern Europe has been very strong. Ireland invested much time and expertise in helping these countries to prepare for EU membership. Ireland has been a role model for many of these new Member States. This is in part because Ireland is seen as a country which has benefited greatly from membership of the Union and has used its influence in Europe in a positive way to promote the interests of the nation and its people. Positive sentiment towards Ireland in other Member States was enhanced by the decision not to restrict the flow of migrants to Ireland from the new Member States which joined the Union in 2004. The day of welcomes for these Member States in 2004, when 27 Heads of State and Government from across Europe gathered at Áras an Úachtaráin to formally welcome ten new countries to the Union, could be considered the high-point of Ireland's membership of the EU and be seen to symbolise the pinnacle to date of its influence in Europe.

13. Ireland's influence in the EU has achieved tangible benefits for the country. The allocation of structural and cohesion funds was a matter for negotiation. Ireland gained significantly in that negotiation from its good reputation and from the goodwill of other Member States. Structural and cohesion funding from the Community and Union since 1973 has amounted to over €17 billion. Ireland enhanced its reputation by putting the funds received to good use in improving infrastructure, supporting regional development and enhancing competitiveness. The significant financial transfers to Ireland under the Common Agricultural Policy were the product of intense negotiation. The result was greatly influenced by goodwill towards Ireland among other Member States and its ability to build alliances within the Union. Ireland's influence in the Union helped to encourage significant political and economic support from the EU for the Northern Ireland peace process. In addition, positive sentiment towards Ireland following a well-conducted and successful Presidency of the European Union in 2004 helped to persuade other Member States to agree in 2005 to the recognition of Irish as the 21st official language of the EU.

## **The Consequences of the Referendum Result**

### **Ireland's Decision on the Lisbon Treaty: the Consequences for Europe**

14. The direct consequence of the referendum result is that the Treaty of Lisbon, agreed by the governments of all 27 EU Member States, will not come into effect. The Union will continue to operate on the basis of the Treaty of Nice. The next European Commission must have fewer members than there are Member States (meaning not all Member States will have the right to nominate a member to the 2009-2014 Commission. Ireland might not be among those countries nominating to that Commission). The changes to the European Parliament planned to give a more equitable distribution of seats on the basis of population will not now be introduced.

This means that eleven Member States will have fewer MEPs than they had expected after next year's European Parliament elections.

15. Following Ireland's decision not to ratify the Lisbon Treaty, long-awaited institutional reform is halted. Discussion of institutional reform has occupied much of the EU's time over the past decade. This has distracted the focus of the Union from its work in important policy areas and widened the division between the apparent concerns of the Union and those of its citizens. The Lisbon Treaty had been intended by Member States as a broadly acceptable compromise which would conclude this chapter in the Union's history.

### **Ireland's Decision on the Lisbon Treaty: Short- and Medium-Term Implications for Ireland**

16. Ireland's positive reputation in the European Union and its history of constructive engagement have given rise to significant goodwill among European partners. This goodwill has been a vital negotiating resource. Now, there is a general view that Ireland's image within the European Union has been affected in a negative way by the result of the Lisbon Treaty referendum. This has led to a perception that Ireland's ability to influence events in the EU has diminished.

*"Ireland's image in the European Union has been tarnished by the 'no' vote. I can see every day that it has reduced our ability to shape and influence events in the European Union." – Catherine Day, Secretary General of the European Commission*

*"The key issue for all of us and for politicians in particular is the issue of influence... There is certainly a perception that Ireland has less influence now; that its influence is beginning to diminish. Whether that is a temporary or a permanent phenomenon it is too early to say. It can be perceived; it can be felt and tasted in all those myriad ways in which politicians, such as the members of the Sub-Committee, would certainly sense these things better than us journalists. There is definitely a perception of shrinkage in terms of Irish influence." – Seán Whelan, RTÉ Europe Editor*

*"What we did has greatly weakened our influence among Member States. This matters because, as I stated, influence and the ability to build alliances and coalitions within the Council have been the key to our success in the Union." – Noel Dorr, former Secretary General, Department of Foreign Affairs*

17. The issue of the Lisbon Treaty now dominates other Member States' relationship with Ireland, and it is more difficult for Ireland to contribute positively to key policy discussions within the EU's institutions. While Ireland had previously been seen as a constructive Member State which could negotiate agreed positions and build compromises among its European partners, its position in relation to the Lisbon Treaty now overshadows Ireland's participation in the Union. This inhibits Ireland's ability to promote and defend its interests on a wide range of important policy issues within the EU.

*“Until earlier this year, people on meeting an Irish representative would mentally think of Ireland as a small constructive country which has been helpful to them and so they wished only to be helpful to us. Now, without any ill-will, when they see us they think of Lisbon. It is like a light bulb flashing over our heads.” – Ambassador Bobby McDonagh, Permanent Representative of Ireland to the European Union*

*“Other Member States tend to view us now only through the prism of the Lisbon Treaty. Whenever Ireland raises its flag at a meeting one can see all the other Member States remembering what happened in regard to the Lisbon Treaty and wondering what the Irish members will say.” – Catherine Day, Secretary General of the European Commission*

18. Ireland has a finite amount of negotiating power within the Union. Its decision not to ratify the Lisbon Treaty means that much of this capacity to negotiate and build alliances will have to be expended in seeking agreement on alternative ways forward for the Union. It may not be available to promote Ireland's national interests in important policy areas.

19. The Sub-Committee is of the opinion that it is too early to make a definitive assessment of the short-term consequences of this loss of influence. Any loss of influence is likely to be subtle in its effect and to become significant over time, rather than having clear and immediate consequences on definite issues. However, some practical consequences have been suggested to us.

20. A speaker at the Sub-Committee suggested that the European Commission's policy towards recent Irish banking difficulties was affected by the Lisbon Treaty referendum result.

*“Ireland has also suffered a significant economic blow as a result of its failure to pass the Lisbon treaty.*

*“The extension of the bank guarantee to the non-Irish banks on competition grounds was spurious. Already Irish banks were facing competition from Northern Rock, which had a full British government guarantee. Since the introduction of the Irish guarantee the UK government has become the largest shareholder in Ulster Bank. All of these changes, which were fully justified because of the financial crisis, affected competition. Yet the EU Commission did not seek to intervene.*

*“The EU Commission would most likely not have got involved in the Irish case were it not for the fact that the UK, Germany and France were already aggrieved at Ireland's position on Lisbon. The extension of the guarantee to non-Irish banks potentially increases Ireland's contingent liabilities by 40 billion Euro. While unlikely to be called, this guarantee has a significant price in increasing risk, and hence the cost of borrowing for the State. It also increases uncertainty about the Irish economy, with potentially adverse effects on investment.” – Professor John FitzGerald, ESRI*

21. It was suggested that the absence of Irish nationals from certain committees recently established by the EU to address significant policy questions was in part attributable to a decline in Ireland's standing in the

Union on foot of the referendum. The names of prominent Irish figures had been mentioned in connection with the Reflection Group on the Future of the European Union. This is the group established to consider the Union's approach to significant challenges over the next ten to twenty years. When the composition of the group was agreed by the European Council in October no Irish person was included. It was also noted that the European high-level group on cross-border financial supervision, set up by the European Commission in October in response to the banking crisis, included no member from Ireland - this despite having a member from the UK, which is outside the Euro area.

*“I can give the Deputy examples in so far as Ireland's influence is concerned. Recently a committee was set up to examine the future of the European Union after Lisbon. Its members included a number of leaders and it was chaired by the former socialist Prime Minister of Spain, Felipe González. No Irish person was included on that committee. More recently, a committee has been established to examine the very topical matter of cross-border banking supervision in the European Union. No Irish person has been included in that committee either. That is real loss of influence, and I believe it is directly related to the decision the Irish people took.” – John Bruton, European Commission Ambassador to the US*

22. This loss of influence by Ireland is likely to have consequences for its ability to shape the economic plans being developed by the EU in response to the current financial crisis. Ireland has a very open economy, of which the financial services sector forms a significant part. Financial institutions employ almost 60,000 people in Ireland, with over 450 international financial services companies operating here, including half the world's top 50 banks. Most financial institutions based here have significant operations across international borders. This means that new measures regulating international financial services will have immediate and direct effects on the Irish economy. For example, it is in Ireland's interests that a pan-European supervisory culture for financial institutions develops in a way that safeguards Ireland's interests, and the interests of financial institutions based in Ireland. At an international level, Irish influence in the EU facilitates input into the discussions of the G20 group of finance ministers, which is shaping the world's response to the financial crisis. Any weakening of our influence may pose serious challenges for Ireland. Ireland's economy will not recover from its current recession until the broader EU economy does, and as a consequence its success is of vital importance to this country.

23. The Sub-Committee noted that a significant package of measures to deal with climate change issues is due to be decided on by the end of 2008, and that the measures could cost Ireland up to €1 billion per annum in the years up to 2020. Effective Irish influence will be important to ensure that the package agreed takes account of Ireland's national interests, particularly in relation to the agricultural sector, but also in setting appropriate emissions targets for industry that are fair to all Member States. In broader terms, Ireland's ability to influence the EU's position on climate change gives us a

significant voice in international efforts to address the problem, which any decline in Ireland's standing in the Union will tend to reduce.

24. Of further concern in relation to the agricultural sector is the level of Ireland's influence over the EU's Common Agricultural Policy, in the context of the forthcoming negotiations on the future shape of the EU budget beyond 2013. It is important to Ireland's national interest that our agricultural sector not be disadvantaged in these negotiations. Ireland is acknowledged to have benefited considerably from the Common Agricultural Policy in the past, and any weakness in Ireland's negotiating position could invite changes that disproportionately disadvantage Irish farmers. In addition to the Common Agricultural Policy, Ireland's agricultural and food sectors are significantly affected by EU policies on climate change and emissions, sustainable consumption and waste, animal health, food safety and consumer information. While the World Trade Organisation's Doha round negotiations are currently suspended, the possibility of resumption remains open, and Ireland's influence may be important in facilitating an agreement that safeguards the interests of the country's agricultural sector.

25. The Sub-Committee notes fears that a continuation of the current uncertainty in relation to the EU's way forward has the potential to significantly diminish Ireland's influence. The view was advanced that if European leaders perceive that future treaty reforms are too complex or sensitive given the requirement for a referendum in Ireland, the likelihood of business being done on an intergovernmental basis between large Member States would increase. This might diminish the influence in Europe of Ireland and other small Member States. Ireland could then be left out of the mainstream of Europe, which would be seriously damaging to its vital national interests.

### **Ireland's Decision on the Lisbon Treaty: Long-Term Implications for Ireland**

26. It is vital to consider the long-term consequences that Ireland could face if a satisfactory resolution to the current situation cannot be found. Other Member States, while sympathetic to Ireland's position and willing to take reasonable steps to accommodate its concerns, are committed to the implementation of the Lisbon Treaty, and regard it as the best possible compromise that equips the EU to face the challenges of the future. As of November 2008, twenty-four Member States have approved the Lisbon Treaty for ratification;<sup>1</sup> it is likely that by the end of 2008, twenty-six Member States will have ratified the Treaty, with Ireland the only exception. The desire for reform of the Union's structures will stay on the EU's agenda, because reforms are considered necessary by Member States. Ireland's future position in Europe will be determined not just by the choices of the Irish Government and people, but by the individual and collective decisions of its partners in the Union.

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<sup>1</sup> Ireland, Poland and the Czech Republic have not yet approved ratification of the Lisbon Treaty.

27. It is legally possible for the Union to stand still and operate into the future on the basis of current treaties and institutional arrangements. However, given the overwhelming desire among Member States for reform of the Union's structures in a manner such as that envisaged in the Lisbon Treaty, this is considered unlikely. It is more likely that a mechanism will be developed by other Member States which allows them to proceed with a process of further integration which excludes Ireland. This would lead to a two-tier Europe with Ireland on the political and economic periphery. Such a scenario would have a devastating effect on Ireland's political influence, economic prospects and international standing.

*"I think the other Member States are keen to accommodate Ireland in terms of providing reassurances, but I do not see any willingness to reopen the treaty or go through a process of re-ratification. It has not been easy in some Member States to get to the current stage. The prospect of opening up the treaty and changing it does not seem to me to be feasible at all. It is a question of Ireland working out what it wants to ask the other Member States. There is enormous goodwill to try to find accommodations for Ireland, but that goodwill does not extend to changing the treaty."* – Catherine Day, Secretary General of the European Commission

*"I would see [renegotiation] as a very difficult option... To go back and reopen the whole package would be a little unrealistic."* – Alexander Stubb, Foreign Minister of Finland

*"My personal impression is that it is unrealistic to believe Member States want to engage in renegotiation. They do not want to reopen the negotiations. My personal impression is that they have already spent too much time dealing with institutional issues. That is probably what Irish Ministers are hearing during their welcome contacts with representatives of other Member States. Members of the Sub-Committee may think that it is possible to restart and reopen negotiations, but my impression is that the door is closed."* – Margot Wallström, Vice-President of the European Commission

### *Ireland's Influence within the European Union*

28. Ireland's deliberate approach of positioning ourselves at the heart of the EU has served the country well throughout our membership of the Union. Should Ireland move to the margins of the European Union, either by withdrawal from core involvement in major EU policy areas or through other Member States proceeding with further integration in which Ireland is not included, serious consequences for Ireland's influence within the Union are likely. Ireland would no longer be regarded as a fully committed partner in the European project. The core of the Union would set the agenda for the EU's work and define its broad policy direction. The jurisprudence of the European Court of Justice will follow the direction defined by the core of the Union. If Ireland does not play an active part in the framing of EU law, the law will develop without us and Ireland will not be in a position to shape it.

### *Ireland's Ability to Influence the EU's Foreign and External Relations Policies*

29. The Sub-Committee noted Ireland's long tradition and the public's pride in the Irish Defence Forces' participation in international peacekeeping. Ireland continues to be deeply committed to peacekeeping which forms an integral part of Ireland's foreign policy in terms of its support for the United Nations. This support for the United Nations translates into Ireland's participation in the European Security and Defence Policy. Along with the other five neutral and non-aligned Member States, Ireland holds much influence over the other 22 Member States who are also members of NATO. The objectives of EU missions are not aggressive but crisis management and conflict resolution, usually under a UN mandate. The vast majority of such missions to date have been civilian rather than military, and included members of the Garda Síochána, the diplomatic service and the judiciary. Ireland's participation in such operations is governed by the 'Triple Lock' whereby the mission must have a UN mandate and be authorised by a Government decision, and Dáil Éireann must give its approval.
30. The Sub-Committee heard that the result of the referendum had given rise to some uncertainty about Ireland's future commitment to elements of the EU's Common Foreign and Security Policy. In particular, this has the potential to reduce Ireland's influence over the development of European Security and Defence Policy. The Sub-Committee notes that Ireland's influence in this area stems from the fact that unanimity is required and therefore Ireland has a veto over all decisions. This would not change under the Lisbon Treaty. There are concerns among sections of the public, however, that Ireland's participation in the European Security and Defence Policy is gradually undermining Ireland's traditional policy of military neutrality (this is discussed further in Chapter Two).
31. Any reduction in Ireland's standing within the EU may hinder its ability to influence common positions adopted by the EU Member States in international organisations and multilateral fora. Thus, the effectiveness of a significant channel for our interests and values to be promoted at a global level may be inhibited.

### *Ireland's Economic Interests*

32. Foreign direct investment is of vital importance to the Irish economy. 152,000 people are employed in Ireland by foreign enterprises, and in total approximately 300,000 Irish jobs depend on foreign investment. Foreign-owned companies account for 85 per cent of manufactured goods exported from Ireland. Our position at the core of an integrated Europe has been the central factor in attracting this foreign investment.
33. There is an assumption among the business community that problems surrounding the ratification of the Lisbon Treaty by Ireland will ultimately be overcome. This explains the lack of an immediate impact arising from the referendum result in relation to the attraction of foreign investment to

Ireland or the business conditions for foreign-owned enterprises currently operating here. It is unlikely that any potential impact would be visible in the short term. If a perception develops among multi-national companies that the issues surrounding ratification of the Lisbon Treaty will not be overcome, this will have a significant effect on the very marginal decisions made by foreign enterprises in relation to overseas investment.

34. Ireland's decision not to ratify the Lisbon Treaty has made its long-term position at the core of the European Union considerably less certain. Representatives of business interests have expressed the view that any dilution of Ireland's relationship with the EU could seriously damage its competitiveness in attracting foreign direct investment.

*"The 'no' vote has sent a strongly negative signal of intent not only to our European counterparts but also to the many multinational companies which locate in Ireland because of the access our location and our participation in EU affairs give to Europe's 460 million consumers."* – Paul Rellis, Managing Director, Microsoft Ireland and President, American Chamber of Commerce in Ireland

*"No immediate effect is evident at this stage but there is no doubt that if over time the Lisbon issue does not reach a satisfactory conclusion it could have a negative impact on foreign direct investment."* – Barry O'Leary, Chief Executive Officer, IDA Ireland

*"The single market is as important to us as the air we breathe. We export 80 per cent of everything we produce and need access to markets. Our being part of an EU second tier or an also-ran group of countries could not really be considered as a viable option."* – Frank Ryan, Chief Executive Officer, Enterprise Ireland

*"In terms of foreign direct investment, Ireland was seen as being strongly linked into Europe. Something that sends a detachment in the opposite direction, one cannot help thinking, would have a negative effect in this regard."* – Professor Frances Ruane, ESRI

35. Foreign investors have expressed some surprise about the result of the referendum. Some have called into question Ireland's future commitment to the European Union. There is now a sense of uncertainty about Ireland's future role in the EU. This uncertainty extends to questions such as Ireland's future access to European markets, its future influence over EU policies in areas such as indirect taxation, and its participation in the setting of common product standards for manufactured goods in the future.

36. Certainty in relation to future business conditions is an important factor influencing the investment of mobile capital. It was pointed out that many investment decisions made by multi-national companies involved the commitment of significant resources in the long term. Companies will choose to make their investments in locations where there is no question over future conditions.

37. Uncertainty arising from Ireland's decision on the Lisbon Treaty, whatever its justification, may be exploited by other countries competing for foreign

direct investment. This is a particular concern in relation to competing states with lower cost bases for business than Ireland. States competing with Ireland for foreign direct investment sought to exploit Ireland's decision not to ratify the Nice Treaty at the 2001 referendum in this manner.

38. The perception that Ireland was at the heart of EU policy making was very useful to Ireland in attracting foreign investment in the past. Investors were confident that Ireland was not only sympathetic in domestic law to business concerns, but had significant influence in Europe which could be mobilised to promote the interests of business in the formulation of EU laws and regulations. Any perceived diminution of Irish influence in Europe has the potential to eliminate this advantage.
39. There is broad agreement that any arrangement which results in the development of a two-tier Europe with Ireland at the periphery would be seriously injurious to Ireland's ability to attract foreign investment, and detrimental to the interests of indigenous industry.
40. Of significant concern is the effect over the longer term that a progressive exclusion of Ireland from the European mainstream could have on the ability of Irish banks to raise funds on the international money markets. This could result in a considerably increased cost of borrowing in Ireland, and seriously inhibit the growth of our economy.

*"A marginalisation of Ireland as a result of the 'no' vote will make the work of protecting and developing the Irish financial system more difficult. With a massive increase in the net foreign liability of the banking system in recent years, anything which calls into question Ireland's place in the EU and the Euro area could have a high cost." – Professor John FitzGerald, ESRI*

41. Ireland's ability to maintain its corporation tax rate was discussed. Business representatives and tax experts informed the Sub-Committee that they were satisfied that the maintenance of Ireland's tax rates was not threatened by the provisions of the Lisbon Treaty.

#### *Ireland's Global Standing and International Position*

42. Ireland has had an image globally as a country which had a significant voice in the European Union. This perception has now been diminished, thereby reducing Ireland's standing internationally. For example, the United Nations has come increasingly to rely on regional organisations such as the EU to provide resources for its work in the maintenance of international peace and security. As a result, the perception that Ireland is moving away from the core of Europe has the potential to affect its standing and credibility in its engagement with the United Nations.
43. States seeking to join the European Union are concerned that Ireland's decision not to ratify the Lisbon Treaty has made further enlargement of the Union less likely in the short term, while current institutional arrangements remain in place. This is not because of a legal impediment to enlargement

under the current rules, but rather because a number of Member States have made clear their view that further enlargement is not practical without reform of the Union's structures. This is a particular concern on the part of Croatia, which had hoped to become a Member State of the EU in 2010. This may result in a lessening of Ireland's ability to build alliances with new Member States, which it has done successfully in the aftermath of previous enlargements of the Union.

## **Conclusions**

44. Irish sovereignty has flourished in the European Union, and its role as a fully committed and engaged Member State has been vital to the advancement of the country's national interests. It is imperative that Ireland's position at the heart of Europe be maintained.
45. We must recognise, respect and address the concerns of the Irish people. While it is difficult to fully understand all the concerns, it is clear to the Sub-Committee that the people were voting to reject ratification of the Lisbon Treaty and not the European Union. The immediate challenge facing Ireland is to develop a way forward which allows Ireland to remain at the heart of Europe, while taking account of the concerns of the Irish people.
46. There are 26 other Member States of the EU. Each of these Member States has its own views - some common, some different - on how to move forward with the desired reforms under the Lisbon Treaty. The challenge for Ireland is to work with its EU partners in finding a common way forward that is acceptable to all.
47. Ireland's standing and influence in the European Union have diminished following its decision not to ratify the Lisbon Treaty. In immediate terms, this inhibits Ireland's ability to promote and defend its national interests at a European level. This is likely to affect Ireland's ability to influence key upcoming policy discussions within the Union. These include, but are not limited to, the development of the EU's climate change package; the negotiations on the future shape of the EU budget beyond 2013 including provision of adequate resources for the Common Agricultural Policy; and responses to the global financial crisis.
48. There is now considerable uncertainty surrounding the specific position of Ireland in the European Union in the future. The continuation of this uncertainty has the potential to affect the country's national interests very significantly in the long term. In particular, Ireland's economic interests its attractiveness as a location for foreign direct investment are likely to be affected.
49. Globally, a perception that Ireland has separated itself from the mainstream of the EU has the potential to significantly affect its influence with major powers and at international fora such as the United Nations. The view that Ireland is delaying institutional reforms necessary for the expansion of the EU is likely to affect its relationship with candidate countries.



## **Chapter 2**

# **Ireland's Future in the EU: Issues & Options**



***Consider Ireland's future in the EU including in relation to economic and financial matters, social policy, defence and foreign policy and our influence within the European Institutions***

The Sub-Committee considered Ireland's future policy approach within the EU in the four areas referred to in its Orders of Reference in order to gain an understanding of all the possible issues of concern. With these issues in mind, the Sub-Committee also examined the options available to Ireland in terms of its future engagement with the EU and the implications of these options.

1. The delivery of this term of reference has been divided into two sections. The first section addresses Ireland's future policy approach within the EU in respect of a number of policy areas. These policy areas are economic and financial policy, social policy, defence and foreign policy and Ireland's influence within the EU institutions. The second section considers the options open to Ireland in terms of its future within the EU. There are a number of options and possibilities open to Ireland in terms of dealing with the current situation, each having potential implications for Ireland's future in the EU.

**Ireland's Future Policy Approach**

2. Through its consideration of the four policy areas defined by the Sub-Committee's terms of reference, six distinct issues have emerged which the Sub-Committee believes are of most concern to Ireland in terms of its future in the EU. These issues are also the main areas of concern which certainly contributed to the Lisbon Treaty referendum result. The issues are: taxation; workers' rights; public services; socio-ethical issues; foreign and defence policy, including the protection of Ireland's traditional policy of military neutrality; and Ireland's influence within the EU.

**Taxation**

3. The Sub-Committee discussed in detail the potential impact of developments in the EU on Ireland's ability to control its direct taxation policy, in particular its corporate tax rate. Ireland's low corporate tax rate of 12.5 per cent, together with our membership of EU's single market, has been a key factor in attracting large amounts of foreign direct investment to Ireland. This has contributed immensely to Ireland's economic and social progress.
4. The Irish Taxation Institute, in its evidence to the Sub-Committee, was very clear. The Lisbon Treaty would not affect Ireland's sovereignty in relation to direct taxation policy.

*“The terms of the Lisbon Treaty presented no threat to our ability to control our own destiny regarding our corporation tax rates. Ireland’s veto on tax changes is intact and copperfastened” - Irish Taxation Institute*

In terms of the changes to Article 48 of the Treaty on European Union relating to a simplified procedure for amending treaties, the Irish Taxation Institute confirmed that any decision to move from unanimity to Qualified Majority Voting with regard to taxation measures would need to be taken unanimously by all Member States, thus protecting Ireland’s veto. In addition, on being notified that the European Council is considering a change from unanimity to Qualified Majority Voting, any single national parliament can object within six months, thus also holding a veto over such a decision. The Institute also confirmed that the long-standing consideration by the Commission of a Common Consolidated Corporate Tax Base (CCCTB) and the Lisbon Treaty were entirely separate issues and should not be linked. Therefore, ratification of the Lisbon Treaty could not have led to the automatic introduction of the CCCTB. The CCCTB would seek to consolidate the income of corporations operating in the EU on which Member States can apply tax. This is very different to the concept of tax harmonisation which means one rate of tax across the EU. Ireland has a veto over proposals such as the CCCTB and this will not change. The Irish Taxation Institute clearly stated that Ireland’s 12.5 per cent corporation tax rate and other direct taxation measures were safe and that the Government would retain control over direct taxation policy.

5. It is clear that maintaining control over direct taxation policy is vital to Ireland’s national interests. With all issues considered, it is also clear to the Sub-Committee that Ireland’s control over its direct taxation policy, including its corporation tax rate, will not be affected at any level, including by the Lisbon Treaty.

### Workers’ Rights

6. The Sub-Committee considered the concerns of many, including the Trade Union Movement, that policies at the EU level impacted negatively on the protection of workers’ rights. This concern was based on the belief that there is a neo-liberal tendency within the current Commission which influences the legislation and policy that it proposes. It also stems from recent judgments of the European Court of Justice which, it was argued, appear to privilege the single market’s four freedoms (i.e. free movement of capital, goods, services and people) over the rights of workers.
7. The EU has been a source of positive social legislation for Ireland. The vast majority of positive legislation in Ireland on worker’s rights, beginning with the equal pay legislation, was enacted on the basis of EU directives. Therefore, it is important to be at the heart of Europe when it comes to the issue of workers’ rights. It is also accepted that the Charter of Fundamental Rights is essential to the cause of progressing a social Europe which protects the rights of workers. The Charter would be given legal effect by

the Lisbon Treaty and is addressed to the institutions of the Union as well as the Member States when they are applying EU law. The content of the Charter, agreed by the European Council in 2000, draws on the European Convention on Human Rights, the Council of Europe's Social Charter and constitutional traditions common to the Member States. Article 52.3 and Article 53 of the Charter make clear that when there is a conflict between the Charter of Fundamental Rights on the one hand and the European Convention on Human Rights and international law on the other, the European Convention on Human Rights and international law take precedence. The Charter's Article 28 asserting the legal right to collective bargaining is an example of its importance. In addition, the Lisbon Treaty specifically endorses the social market economy.

*“Being at the heart of the European Union is central from our point of view. I cannot conceive of any significant item of workers’ rights legislation in the last 35 years that has not emanated from the Union, starting with the equal pay legislation.”* – Blair Horan, General Secretary, Civil Public and Services Union

8. Following the European Court of Justice judgments, clarification is required from the EU, and in particular the European Commission, on the application of the principles contained in the Posting of Workers Directive. One suggestion put to the Sub-Committee is that the EU could agree to revisit the Posting of Workers Directive, in order to resolve any difficulties. It is clear that the entry into force of a legally binding Charter of Fundamental Rights is a key component for many in achieving the correct balance between economic and social policies within the EU.
9. It was also proposed to the Sub-Committee that the concerns about workers’ rights could be responded to through the introduction of a social progress clause or protocol to a future EU treaty. This would require that treaty provisions be interpreted as respecting fundamental rights, especially trade union rights to freedom of association, collective bargaining and collective action. This would guarantee that when a conflict between fundamental market freedoms and workers’ rights occurs, the rights of workers would be given priority in the interest of facilitating the development of the social market economy. It would also establish the rights of workers and their representatives to take collective action to improve their working and living conditions above minimum standards. Those who have proposed the development of an EU social progress clause, which include the European Trade Union Confederation and the Irish Congress of Trade Unions, accept that it would be extremely difficult to reopen the compromise contained in the Lisbon Treaty. They are instead seeking a commitment from the EU Member States to include such a clause in a future EU treaty.
10. An alternative to the proposed social progress clause has also been suggested to the Sub-Committee. This proposal would involve the wider use of the so called ‘Monti clause’ in EU directives with relevance to workers’ rights. A similar clause was used in the Services Directive. The clause stipulates that the directive in question respects the exercise of

fundamental rights applicable in the Member States and recognised in the Charter of Fundamental Rights. Those fundamental rights include the right to collective action and bargaining in accordance with national law and practices which respect Community law.

*“This regulation may not be interpreted as affecting in any way the exercise of fundamental rights as recognised in Member States, including the right or freedom to strike. These rights may also include the right or freedom to take other actions covered by the specific industrial relations systems in Member States.” – the ‘Monti clause’ (first used in 1998 in the Council Regulation on the free movement of goods)*

11. The continual development and consolidation of a social market economy by the EU is important. Ireland should continue to work with its EU partners in pursuing an integrated approach to economic, social and employment policies. This integrated policy approach should have at its centre the protection of workers’ rights as well as sustainable economic growth.

### Public Services

12. Concerns were expressed to the Sub-Committee that the Lisbon Treaty could adversely affect the ability of the Member States to provide public services. These concerns also related to interpretations of the provisions of the Lisbon Treaty in respect of international trade or the common commercial policy.

13. The Sub-Committee noted that the Lisbon Treaty contains at least four major provisions that relate to public services. First, it carries over the existing treaty provisions stating that the EU is neutral on the question of public versus private ownership. Second, in Article 16 it contains a new legal base providing for the adoption of EU legislation to enable public services to fulfil the tasks entrusted to them by public authorities. Third, it contains a new protocol setting down guidelines for future EU initiatives, which explicitly recognises the Member States’ prerogatives in this matter. Fourth, it gives legal effect to the Charter of Fundamental Rights, which among other things, states the citizen’s right to access public services.

14. With regard to trade policy and public services, the Lisbon Treaty contains a new clause stating that nothing done at EU level in the trade field will affect the delimitation of responsibilities between the EU and Member States or lead to the harmonisation of national laws where this is excluded by the Treaties. Examples of such delimitations and the exclusion of harmonisation include the Lisbon Treaty’s articles on education and public health.

15. There is also further protection due to the fact that the requirement for unanimity is retained for trade agreements referring to social, educational and health services where these risk “disturbing the national organisation of such services and risk prejudicing the responsibility of Member States to deliver them.” Finally, the Lisbon Treaty clearly stipulates that the EU will act unanimously when an agreement covers a field for which unanimity is

required for the adoption of an internal EU act. There needs to be greater clarity in this area. It has been proposed to the Sub-Committee that a political declaration could be agreed by the Member States offering this clarification. This declaration could make clear that all Member States must currently mandate and approve a trade deal between the EU and a third country, including the World Trade Organisation, for it to come into effect and that this would not change under the Lisbon Treaty. The declaration could also point out that under the terms of the Lisbon Treaty, all trade agreements would also require the approval of the European Parliament, a change which considerably extends the powers of the European Parliament in the area of trade.

16. The state's role in ensuring the provision of public services and the means by which these services are delivered should continue to be a matter for each individual Member State. It is important that the protections that currently exist at EU level, and which would be enhanced under the Lisbon Treaty, should be adhered to and respected.

### Socio-ethical Issues

17. The Sub-Committee discussed extensively the concerns of some about the potential impact of EU law on Ireland's position on sensitive socio-ethical issues such as abortion and the place of the family in society. These concerns as expressed to the Sub-Committee stem from policy decisions at EU level and the interpretation of EU law by the European Court of Justice. Some have argued that this signifies a "creeping" by the EU into areas where it has no competence under the Treaties. A concern was also expressed that the Union does not fully take into account Europe's Christian heritage when developing legislation and policies.

*"This country has something important to offer the social dimension of Europe. The EU expects us to sustain the Christian tradition that is shared by the various Christian traditions on this island, and which contributed immensely to the values on which the EU was founded. A rediscovery of these values, giving renewed priority to the question of a Europe of values, may help reconnect some citizens with the broader project of the European Union."* – Most Rev. Dr Seán Brady, Archbishop of Armagh & Primate of All Ireland

18. It should be borne in mind that the EU has no formal competences in relation to sensitive moral and ethical issues or family law. These competences firmly rest with the individual Member States and their national parliaments. In general terms, the Member States work on the basis of subsidiarity whereby Member States respect each others' positions on moral and ethical issues. However, some have argued that subsidiarity is not always strictly observed by the institutions of the EU and that these concerns must be addressed.
19. Some pointed to the Lisbon Treaty as a means of allaying some of the concerns in the broad area of socio-ethical issues. For instance, the preamble of the Treaty refers to Europe drawing its inspiration from its

religious heritage. The Treaty also includes a new article which states that the EU respects and does not prejudice the status under national law of churches and religious associations or communities in the Member States. This article also establishes a formal mechanism for dialogue between the EU and religious and humanist organisations and communities.

20. The Charter of Fundamental Rights includes a range of articles protecting the right to life, protecting the right of parents to educate their children in accordance with their religious convictions, protecting religious freedom and stating that the family will enjoy legal, economic and social protection. It was noted that many of the issues raised as concerns remained the competences of the Member States and that it is at the domestic level in Ireland that the debate should take place and legislation should be considered.
21. Notwithstanding these provisions of the Lisbon Treaty, proposals were made to the Sub-Committee which some believe could help to allay the concerns around socio-ethical issues. One proposal was to seek a declaration clarifying for the Irish people that the Protocol on Article 40.3.3 of the Irish Constitution (on the right to life of the unborn) continues to apply to the EU institutions and their actions as they affect Ireland.

*“Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in Ireland of Article 40.3.3. of the Constitution of Ireland.” – Protocol on Article 40.3.3 of the Constitution of Ireland, EU Treaties*

22. Another proposal suggested to the Sub-Committee was to amend the Irish Constitution in order to establish a type of ‘constitutional filter’ to guard against any unintentional or potential impact of EU law on fundamental rights as enshrined in the Constitution. In response to this proposal, the Sub-Committee noted concerns in relation to the possible implications for Community law. It was argued that the introduction of a constitutional filter by Ireland would involve a legislative rejection of the long-standing primacy of EU law in the areas of competence conferred on the Union by the Treaties. Such a proposal could serve to undermine the nature of EU law and deprive it of its character. The uniformity of the EU’s legal order could also be affected. In these circumstances, other Member States would be likely to have fundamental problems when it comes to the practice of this amendment. What is required is respect for fundamental rights at EU level. The Charter of Fundamental Rights was to fulfil this purpose.

*“As the bishops said in their statement on the Lisbon Treaty referendum, one of the strengths of and hopes for the European project is precisely that we share what I would describe as a Christian humanism but certainly a humanist tradition that values the dignity of the individual, democracy and freedom, including the freedom of religion.” – Reverend Timothy Bartlett, Advisor, Catholic Bishops’ Conference*

23. The right of each Member State to decide its own policies in areas of social and ethical sensitivity should continue to be respected. To this end, a policy of subsidiarity should be carefully observed when developing and interpreting EU law. It would be important for EU institutions to work strictly within the competences which have been conferred on them under the EU Treaties.

#### Defence and Foreign Policy

24. The EU's Common Foreign and Security Policy, and in particular its European Security and Defence Policy, has been a consistent area of concern in terms of its potential impact on Ireland's traditional policy of military neutrality. It was argued before the Sub-Committee that provisions of the Lisbon Treaty relating to the progressive establishment of a common EU defence, a mutual assistance clause and the enhancement of Member States' military capabilities were steadily undermining Ireland's tradition of military neutrality. Fears over the establishment of an EU army and conscription were an extreme manifestation of these concerns. It should be noted that no EU treaty, including the Lisbon Treaty, has ever referred to conscription or a European army. More generally, there are concerns about the future direction of the Common Foreign and Security Policy and the European Security and Defence Policy in terms of their objectives and instruments.

25. In respect of the objectives of the European Security and Defence Policy, it was explained to the Sub-Committee that it is in practice a crisis management policy, to prevent conflict and to re-build societies emerging from war. To undertake this work, the European Security and Defence Policy uses a mix of civilian and military resources. The United Nations has increasingly come to rely on the EU to undertake peacekeeping missions on its behalf. The EU is not a military alliance and decisions on defence matters remain sovereign decisions of the individual Member States. Moreover, the EU does not have a defence budget. Neither can the EU institutions tell Member States how much money they should spend on defence. The EU does not have its own army nor can it conscript any EU citizen. Each Member State retains full sovereignty over their armed forces and can choose to contribute (or not) to each military operation as they see fit. Each Member State has a veto over every single operation under the European Security and Defence Policy.

*“We do not consider that our EU membership and commitment in the Lisbon Treaty present problems regarding our military non-alliance . . . areas such as battlegroups, capabilities, CFSP, the solidarity clause, mutual assistance and common defence do not contradict the basic line of traditionally neutral states like Finland, Ireland, Sweden and Austria. We can all live within this context . . . every Member State can decide every time in which operations it wishes to participate. It is up to the discretion of the Member State and its parliament to take that decision. No one forces anyone to participate in a military operation.” – Alexander Stubb, Foreign Minister of Finland*

26. In terms of the specific provisions of the Lisbon Treaty, it was explained to the Sub-Committee that the mutual assistance clause includes significant caveats. It states that the specific character of the defence policy of certain Member States, neutral states of which there are six, shall not be affected by this provision. The provision, rather than being functional, is a political commitment to show solidarity in the unlikely event of an attack.
27. It was explained to the Sub-Committee that Member States' commitment to improve military capabilities was a reflection of the reality that the EU requires better resources to undertake its crisis management and peacekeeping missions – to allow Ireland's defence forces to be better equipped and better trained to carry out such missions. This was also the justification behind the establishment of the European Defence Agency.
28. Notwithstanding the existing safeguards and assurances in terms of Ireland's traditional policy of military neutrality, including Ireland's veto, constitutional guarantee, the triple lock and the Seville Declarations, a number of proposals were put to the Sub-Committee on how these protections could be further enhanced.

First, it was stated that the current protections need to be better communicated and perhaps the Seville Declarations of 2002 need to be revisited.

Second, a proposal was put to the Sub-Committee that Ireland should seek an opt-out from the European Security and Defence Policy or certain aspects of the policy. In response to this proposal, it has been argued that this would be counterproductive and actually detrimental to Ireland's foreign policy interests. If Ireland opted out, Ireland would lose its veto and its capacity to influence the European Security and Defence Policy, an integral part of Common Foreign and Security Policy. An opt out would work against Ireland's foreign policy as the European Security and Defence Policy is about undertaking missions, such as peacekeeping, that are in line with Ireland's foreign policy objectives. For instance, Ireland can offer so much more to the United Nations when Ireland is fully engaged in the European Security and Defence Policy. In addition, opting out would mean that the Irish Defence Forces could not take part in United Nations peacekeeping missions that were EU-led. Our Defence Forces would also no longer benefit from joint staff work, training and actual operations which currently define much of their professional profile.

29. Another proposal was to set limits to what kind of European Security and Defence operations Ireland could participate in – to restrict ourselves to peacekeeping, humanitarian aid missions and conflict resolution. This may be difficult to work in practice as many missions are mixed and tasks such as military advice which seeks to establish stable security sectors in post conflict countries, is a key component of conflict prevention. The result may be that Ireland would find itself opting out of most missions and therefore losing the capacity to influence the shape of these missions. It could mean a *de facto* opt out from the entire European Security and Defence Policy.

30. It is clear that the Irish people have a great pride in the participation of the Irish Defence Forces in international peacekeeping. The Irish people have great pride in Ireland's traditional policy of military neutrality and therefore it needs to be protected. Any practical measure that demonstrates that this traditional policy is and will continue to be protected and respected should be considered.

### Influence

31. The Sub-Committee discussed in detail concerns held by some that by ratifying the Lisbon Treaty, Irish influence within the EU institutions would be reduced. It appears to the Sub-Committee that these concerns, whether real or perceived, are predicated on the proposed changes under the Lisbon Treaty to the European Commission and the voting weights within the Council of Ministers.

32. If the Lisbon Treaty were to enter into force, the size of the European Commission would be reduced from 2014 onwards. This would see the number of Commissioners equal to two-thirds of the Member States. A system of strict equal rotation between the number of Member States would be established. In effect, each Member State would be able to nominate a Commissioner for ten out of every fifteen years. The purpose of the reduction was to increase the efficiency of the Commission in a Union that had enlarged rapidly in the past decade from 15 to 27 Member States and that could enlarge further. However, the belief was expressed strongly to the Sub-Committee that such a system would mean that Ireland would not have a Commissioner at the table all the time and therefore our influence would be reduced.

33. It is important, in the context of this debate, to recall the purpose of the Commission. The Commission upholds the interests of the European Community. It must act as a neutral body, free from political influence and propose legislation that reflects the interests of the Union as a whole. This is to the advantage of small Member States like Ireland. A European Commissioner is forbidden to take instructions from or promote the interests of an individual Member State. The Commission does not take the decisions – this is a matter for the Council of Ministers, on which the governments are represented, and the European Parliament.

34. It should also be borne in mind that under the current arrangements laid down by the Nice Treaty, the Member States are legally obliged to reduce the number of Commissioners by November 2009. This reduction should be based on the principle of equality between Member States. However, while the Lisbon Treaty sets out how the reduction can be achieved, it also contains another clause which does not appear in the Nice Treaty stating that the European Council can decide, acting unanimously, to alter the number of Commissioners. Therefore, it may be possible for the European Council, working under the Lisbon Treaty, to decide to maintain the concept of one commissioner per Member State.

35. While it seems that the purpose of the Commission is sometimes misunderstood, it does appear that having a Commissioner nominated by the Government is a matter of national sensitivity. While this Commissioner would not represent the Irish Government within the Commission, he or she can act as a conduit for the Commission in understanding any sensitivities which are particular to Ireland. This serves both the Commission and Ireland. Having a Commissioner all the time would also offer legitimacy to the proposals made by the Commission.

*“What you lose in efficiency, you gain in legitimacy.”* - Margot Wallström, Vice-President of the European Commission

36. With regard to the changes to the voting weights in the Council of Ministers, the nature of decision making within the Council must be understood. Votes are very rare and decisions are taken more often than not on the basis of consensus. The Member States are very keen not to alienate or isolate another Member State but reach a decision that is acceptable to all. In this respect, influence and goodwill with the other Member States are the keys to achieving decisions that protect Ireland’s interests.

37. It has also been argued that technically the switch from Qualified Majority Voting to Double Majority Voting, set to take place in 2014 if the Lisbon Treaty enters into force, would not reduce Ireland’s voting weight but would make no tangible difference and could in fact increase our influence. Under the existing system of Qualified Majority Voting, each Member State is assigned a number of votes weighted according to a scale which groups together Member States of similar population size. Currently Ireland has seven votes out of three hundred and forty five. Two hundred and fifty five votes are required to adopt a decision under Qualified Majority Voting. The Double Majority Vote means that 55 per cent of Member States comprising at least 15 countries and representing at least 65 per cent of the EU population is required to pass decisions. The 65 per cent population requirement is designed to protect the Member States with large populations and the 55 per cent of Member States requirement is designed to protect smaller states. What voting power Ireland loses under the population-based criterion, it gains under the principle of one vote per country. Under this principle Ireland would have the same voting weight as Germany or the UK.

38. There can also be a blocking minority which must include at least four states. This is designed to reassure small Member States that big Member States will not be able to block votes because of their population. The Sub-Committee again notes that it is not our voting power that gets results for Ireland, it is our influence. It is not about votes but about being at the table with our good standing and influence intact.

39. It became clear to the Sub-Committee that influence is the key to promoting and protecting Ireland’s interests at the heart of the EU. The Sub-Committee notes the paradox that the current proposals for reform of the

EU institutions may not affect Irish influence within the EU but by rejecting the Lisbon Treaty this influence could potentially be undermined. Ireland should work to retain this influence while recognising the need to bring greater efficiency to the institutions of the EU.

### **Ireland's Future within the EU: Options<sup>2</sup>**

40. There are two basic options available to Ireland in terms of its future within the EU: ratification and non-ratification of the Lisbon Treaty. Within these basic options there are a number of other options and scenarios.

In terms of ratification there are three distinct options:

- (i) a renewed attempt at ratification of the Lisbon Treaty by referendum with variations;
- (ii) ratification of the Lisbon Treaty by the Oireachtas;
- (iii) a referendum on membership of the EU.

In terms of non-ratification there are three scenarios:

- (a) maintenance of the *status quo* (continue under the Nice Treaty arrangements);
- (b) renegotiation of the Lisbon Treaty;
- (c) the other Member States find an alternative way forward.

There are a range of potential implications to each of the options and scenarios that need to be considered.

#### **Ratification**

- (i) *Renewed attempt at ratification of the Lisbon Treaty*

41. No legal obstacle appears to exist to having a referendum either on precisely the same issue as that dealt with on 12 June or some variation thereof. Constitutionally it is a matter for the Oireachtas to determine whether such a referendum would be placed before the people. If a decision is made to hold another referendum, it would be expected that the Government would make an attempt to respond at both domestic and EU level to the range of concerns expressed during the referendum campaign, such as those outlined earlier in this chapter.

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<sup>2</sup> This section of the Sub-Committee's Report draws from *Ireland's Future in Europe: Scenarios and Implications* by UCD's Dublin European Institute (Gavin Barrett, Brigid Laffan, Rodney Thom, Daniel C. Thomas, Ben Tonra) which was commissioned by the Sub-Committee.

42. It may be possible to supplement the provisions of the Lisbon Treaty with declarations, decisions and protocols.
43. Protocols have the same status as treaty provisions and therefore their introduction represents a kind of mini renegotiation of the Treaty rather than a wholesale renegotiation. However, there are difficulties to a protocol-based approach. As protocols have the same status as treaty provisions, each Member State would probably have to re-ratify the treaty. This would likely be strongly resisted by those Member States where the initial ratification process was a difficult one to begin with. Such an approach might also be rejected where such protocols would generate comparable demands in other Member States for unique treatment, thus leading to a wider unravelling of the Lisbon Treaty.
44. Declarations are formal statements by one or more of the Member States of their intentions or understanding in signing, and subsequently ratifying, a treaty. Declarations can range from simple statements of political intent to legally binding interpretations of Treaty provisions. Ireland secured a declaration for the Nice Treaty dealing with the protection of Ireland's traditional policy of military neutrality. In the case of the Lisbon Treaty, a declaration by Ireland as well as by all Member States could be used as a way of clarifying some aspects of the Treaty and removing misunderstandings in regard to its provisions.
45. A declaration could be the instrument used to deal with the issue of the Commissioner. A declaration from all the Member States as well as an Irish declaration, each reinforcing the other, could be agreed that would commit the Member States to trigger the clause in the Lisbon Treaty allowing for the retention of the right of every Member State, including Ireland, to nominate a Commissioner. This option is not without its difficulties and may prove to be politically unachievable. It presupposes a willingness on the part of the other Member States to abandon the decision to reduce the size of the Commission in the interests of solving the predicament created by the referendum result. Member States may be reluctant to pick out one aspect of a Treaty which they view as a carefully balanced package of reforms.
46. Decisions were first used after the Danish rejection of the Maastricht Treaty in 1992. They were agreed by the Heads of State and Government of the EU and the Danish Government and were regarded by many as having the same status as an international agreement or 'mini-treaty'. They did not require the Member States to re-ratify the Maastricht Treaty but secured opt outs for Denmark in the areas of the Euro, Justice and Home Affairs and European Security and Defence Policy. They were later formalised by a protocol to the Amsterdam Treaty in 1997. In the present context, protocols and legally binding decisions are likely to be alternatives to each other, rather than both being agreed.
47. Actions could also be taken at the domestic level by changes to domestic practices, national legislation or the Constitution. Such reforms could

include those involving a greater role for the Oireachtas in EU affairs as discussed in Chapter 4.

48. Protocols or decisions could involve Ireland deciding to opt out of certain provisions of the Lisbon Treaty. It should be borne in mind, however, that opt outs are not cost free. By opting out of certain provisions, Ireland would lose its capacity to influence the relevant policy area and in areas such as European Security and Defence Policy, Ireland would lose its veto. The Danish precedent offers an insight into the real effects of opt outs. After the defeat of the Maastricht Treaty by referendum in 1992, Denmark secured four opt outs from the following areas: European Security and Defence Policy, the Justice and Home affairs area, EU citizenship and the Euro. When before the Sub-Committee, the Danish Parliament's European Affairs Committee noted that opt outs would not necessarily be the best way to proceed as they leave Denmark outside the decision making process in key policy areas of the Union.

*"I believe they [other Member States] look on this position [Danish opt outs] as self-deprivation and as a problem we have taken upon ourselves . . . Everybody looks on us as being weird or as the odd man out, but not in a negative way"*  
Svend Auken, Chairman of the European Affairs Committee of the Danish Parliament

While the EU has moved on, the Danish opt outs have remained constant meaning that today the opt outs have completely different consequences for Denmark. Danish opt outs are considered to limit Danish freedom of action more than protect Danish autonomy. For these reasons, the Danish government is in fact considering holding a referendum to scrap the Danish opt outs.

(ii) *Ratification of the Lisbon Treaty by the Oireachtas*

49. It is not clear whether ratification of the Lisbon Treaty by the Oireachtas is in fact legally possible. This option is shrouded in uncertainty. It is impossible to discuss definitively in the absence of a Supreme Court ruling dealing with the constitutionality of the Lisbon Treaty. There are also clear political considerations as an attempt to ratify the Treaty by parliament alone could be interpreted as circumventing the democratic decision of the people. However, it could be envisaged that a parliamentary vote might be held on those aspects of the Treaty which do not appear to require a Constitutional referendum in this State and yet are considered highly important to other Member States. Such a provision could be the fairer distribution of seats in the European Parliament. This process would involve taking elements of the Lisbon Treaty without renegotiation, agreeing them as a new mini-treaty and ratifying them.
50. An advantage of this option is that it would prove the State's bona fides vis-à-vis our EU partners. On the other hand, it could be seen by some as a deliberate attempt to circumvent the expressed will of the people and could

provoke a legal challenge. In any case, it is not entirely clear that any such offer would be of interest to our EU partners, given that its acceptance would require the signature and ratification of a mini-treaty. This is likely to cause difficulty among the other Member States which - given that concessions were made to some of them to accept the institutional arrangements – might refuse to ratify a Treaty involving revised institutional arrangements without these concessions. The Lisbon Treaty is viewed as a package and unpicking this package could result in its complete collapse, which other Member States are not willing to let happen.

(iii) *Referendum on membership of the EU*

51. Another possible option would involve the Government organising a referendum on support for the Lisbon Treaty-version of the EU with the explicit commitment that in the event of a 'no' vote, the Government would then negotiate Ireland's withdrawal from the Union and pursue either membership of the European Economic Area or some other special relationship with the Union. This would be a high-stakes strategy that could conceivably lead to Ireland leaving the EU. It would also not be reflective of the Millward Brown IMS survey which shows that a majority of Irish people wish for Ireland to stay at the heart of the EU.
52. This option raises the prospect of Ireland leaving the Union and becoming a member of the European Economic Area along with Norway, Liechtenstein and Iceland. This would have far reaching consequences for Ireland. It would mean an end to Ireland's participation in the Common Agricultural Policy and to any right to receive Regional, Social and Structural funds. Continuing participation in the euro would remain to be resolved. Full access to the internal EU market would be maintained but the right to participate in decision-making on directives and regulations would be ended. Ireland would become the taker rather than the maker of internal market and related legislation. Given that changes in EU law could have a negative impact on the economic welfare or social values of European Economic Area states, the significance of this lack of voice should not be under-estimated. In addition, even with no voice at the table, Ireland would still be expected to contribute funding to the EU's cohesion policies. This could cost the exchequer up to €200 million per annum.
53. This option would also have an impact on Ireland's ability to attract foreign direct investment. Investors make decisions to invest in Ireland based on certainty and low risk. While in the European Economic Area access to the internal market would be preserved, investors are likely to see this as a very negative development. Ireland would not have the capacity to influence regulations on the Internal Market which could have a negative impact on the way multinationals or even Irish companies do their business. These companies would have every incentive to relocate to another Member State which is a full member of the EU.
54. It should also be borne in mind that Ireland's economy is very different from that of Norway, Liechtenstein or Iceland and cannot be compared. Norway

has vast quantities of natural resources, Liechtenstein is dependent on Switzerland (a non-EU Member State) and Iceland has shown no interest in EU membership but this may change in the aftermath of the island's recent economic collapse.

### Non-ratification

55. This option assumes that the Government may arrive at a final decision that Ireland is unable to ratify the Lisbon Treaty. If this occurs, the other Member States will be confronted for the first time in the history of the Union with the non ratification of a Treaty which the vast majority of Member States want to see adopted. How the other Member States would react to this collectively is unclear.

#### *(a) Maintain the status-quo*

56. The Member States may decide to abandon the Lisbon Treaty completely and carry on with the existing Treaties as the basis for the actions of the Union. Abandoning the Treaty would reflect the legal reality that it can only enter into force if it is ratified by all the Member States. Abandoning the Treaty, however, would not solve the institutional problems of the Union which many Member States feel need to be addressed, a perception that has been reinforced by the conflict in the Caucasus, the resurgence of Russia as well as the world economic and financial crisis. It would also raise the prospect of a block to further EU enlargement. A number of Member States have stated categorically that further enlargement cannot proceed without the Lisbon Treaty. This could have serious consequences for the Western Balkans as the prospect of EU membership is a big factor in encouraging reform in these countries and underpinning their stability.

57. There is no doubt that Ireland would be seen as the cause of this uncertainty and the block to enlargement for countries like Croatia. The good standing and influence which Ireland has built up and enjoyed throughout its membership of the Union, and which has played a huge part in its ability to negotiate successfully within the EU, would be severely damaged. It is also difficult to see how the other Member States would be prepared to retract the difficult compromises reached on the Lisbon Treaty over a protracted period of time.

#### *(b) Renegotiation of the Lisbon Treaty*

58. At present, there is no indication from any Government that they might be willing to recommence negotiations on the existing Treaties or renegotiate the Lisbon Treaty. Eight years of negotiation rest behind the Lisbon Treaty; it represents a complex compromise. There is a real concern on the part of other Member States that re-opening negotiations again would unravel the hard fought package of reforms secured in the Lisbon Treaty.

59. There is a strong desire among the Member States to move on from institutional wrangling or 'navel gazing' and instead deal with the real issues

affecting citizens' lives. Furthermore, even if there was a willingness to renegotiate, there is no reason to expect it would result in a treaty different from the Lisbon Treaty or a better deal for Ireland. The negotiators, the issues to be addressed, the constellation of interests involved and the range of politically possible compromises are all largely the same now as they were when the Lisbon Treaty was agreed. Finally, any new Treaty would have to be ratified in all Member States and would probably mean another referendum in Ireland.

60. One group has suggested to the Sub-Committee that the Lisbon Treaty, and a Treaty based approach *per se*, should be abandoned and the Member States should negotiate a constitution for the EU of no more than 25 pages. Such a constitution would include provisions for a directly elected Commission and President of the European Council. The Sub-Committee considered the possible implications of such a proposal.

*"We say Europe needs a constitution or a fundamental treaty. It should be no more than 25 pages"* –Declan Ganley, Libertas

61. It was argued that a document of only 25 pages in length, which would characterise the operational policies of an international organisation as complex as the EU, would give tremendous scope to the European Court of Justice to interpret in order to fill in the gaps left by such a constitution. One of the reasons the Lisbon Treaty and the EU Treaties in general are inevitably complex is in order to hinder judicial activism. The benefit of a detailed document laying out the rules of the EU and which is legally precise is that the European Court of Justice cannot become judicially active and lead to the creation of law by supranational judges. The idea of a directly elected Commission and President would clearly indicate a move towards a federal Europe as opposed to the current unique system of a mix of supranational and intergovernmental decision making which is known as the 'Community Method'.

(c) *The other Member States seek an alternative way forward*

62. It is a possibility that the other 26 Member States may define the current impasse on the Lisbon Treaty as a problem pertaining only to this country and thus decide to look at solutions which involve them proceeding further with European integration on the basis of the Lisbon Treaty and leaving Ireland behind to catch up if and when it wishes to do so. There are a number of possible legal mechanisms for doing so, such as denouncing the current Treaties and setting up a new EU without Ireland, but they are quite convoluted. More importantly, a decision of the other Member States to proceed without Ireland would also break with a core principle of the EU – solidarity – which could have unforeseen consequences for the Union.

63. However, what is of most concern to us is how such a decision by the other 26 Member States would impact on Ireland. One possibility is that Ireland

could have no choice but to leave the EU and perhaps become a member of the European Economic Area. The implications of this are discussed in paragraphs 52-54. The other possibility is the development of a restructured EU in which some states build institutions for deepened integration while other remain in a 'second tier'. This possibility has become known as a 'two-tier' or 'two-speed' Europe. Assuming that Ireland decides not to ratify the Lisbon Treaty, it is inevitable that Ireland would find itself in the 'second tier' or the 'slow lane'.

64. If Ireland were to be part of the second tier of a 'two-tier' Europe, the economic consequences would be serious. Ireland's full engagement with the EU has been an important badge of state identity and how Ireland positions itself in the world. It would send a potentially dangerous signal to many multi-national corporations located in Ireland and be a hindrance to our capacity to attract further investment. It would weaken Ireland's influence in the European system and undermine our ability to mould the dynamic integration of Europe in a manner that suits Irish interests and values.

*"The idea of a two speed European Union would frighten me at the best of times. In the current environment and given the challenges we face, it would be catastrophic and to be avoided at all costs"* - Dr. Alan Aherne, Economist, NUI Galway

## **Conclusions**

65. The Sub-Committee believes that ratification of the Lisbon Treaty by parliament alone is not a desirable option. Such a ratification procedure could be interpreted as an effort to circumvent the democratic will of the people. It is also not clear whether such an option is constitutionally possible. It could present significant, possibly insurmountable, legal difficulties.
66. The Sub-Committee has concerns about any options that may involve Ireland opting out of EU policy areas. In this respect, it would point to the Danish experience and the growing feeling there that its opt outs in the areas of Justice and Home Affairs, the European Security and Defence Policy and the Euro have had a detrimental effect on Denmark's national interests. Opt outs are not cost free. They could potentially mean Ireland losing its right to shape and influence key policy areas. The implications of choosing such a course of action should be thoroughly examined.
67. The Sub-Committee has strong concerns about any option that could potentially lead to Ireland finding itself on an outer or second tier of the EU. The option of Ireland leaving the EU and negotiating a new relationship with the EU is also unthinkable. These scenarios would be catastrophic for Ireland's national interests, both economically and politically.
68. Specifically, an option that could lead to Ireland being part of a second tier or even leaving the EU and joining the European Economic Area:

- could reduce or even eliminate Ireland's capacity to influence key EU policy areas such the Common Agricultural Policy, energy security and climate change;
- could mean that Ireland would no longer have access to the Common Agricultural Policy, structural funds and cohesion funds;
- could mean Ireland becoming a taker and not a maker of internal market legislation but still be expected to contribute funding to the running of the internal market;
- could have a serious negative impact on Ireland's ability to attract and retain foreign investment as it would be seen to be outside the core and unable to influence decisions affecting business conditions.

69. The Sub-Committee believes that a solution must be found that keeps Ireland at the heart of Europe while respecting the democratic will of the Irish people by arranging for these concerns to be accommodated by the other Member States.

## **Chapter 3**

### **Beyond Lisbon: Public Understanding of the EU and Ireland's Membership**



***Consider measures to improve public understanding of the EU and its fundamental importance for Ireland's future***

The Sub-Committee examined the factors affecting public understanding of the European Union in Ireland, and considered the role that various institutions at European, national and local level could play in enhancing public engagement in European matters.

1. Irish people have a strongly favourable view of the European Union. 73 per cent of Irish people hold the view that membership of the EU is a good thing. This is the second highest percentage among EU Member States. Nevertheless, research shows that Ireland lags behind other EU Member States in terms of people's knowledge of the EU and the operation of its institutions. Given the significance of the European Union for Ireland, it is important that Irish people have a good understanding of how the Union works. Moreover because of our constitutional requirement to put European Treaties to a referendum the Irish electorate are frequently required to make an informed choice about policy options and institutional changes in the EU.
2. It is the view of the Sub-Committee that European matters do not play as prominent a role as they should in Irish politics, media or public discourse. The Sub-Committee has analysed the reasons for this lack of engagement. The role of national and European institutions, politicians, civil society and media in developing understanding and encouraging engagement with the EU. Measures have been identified which could be taken at local, national and European levels to improve public, political and media understanding and engagement on European issues.
3. Evidence was presented to the Sub-Committee which suggests that a citizen's level of understanding of the European Union has a significant effect on the policy choices that citizen makes about the Union, and indeed on whether that citizen chooses to exercise his or her vote in a referendum on a European issue. For example, in the June 2008 referendum on ratification of the Lisbon Treaty, an individual's level of knowledge about the Union affected both the choice of whether to vote or to abstain, and the choice of whether to vote 'yes' or 'no'. Clearly, therefore, the level of public understanding of the functioning of the European Union is a matter of considerable significance for Ireland.

**Factors affecting the current level of public, media and political engagement with the EU**

*Issues at a European Level*

4. The European Union is a very diverse entity, bringing together 27 states with distinct cultures and traditions and using 23 official languages in its

work. With this diversity comes complexity, which poses a challenge for public understanding of the EU and its institutions.

*“...the citizens of Europe must feel that this is their project. We must call on them to be part of this and give them a sense of ownership, make them stakeholders, as the cliché says. How can we do this? It is difficult and challenging because Europe is an abstract and obscure thing to hundreds of millions of working people.” – Declan Ganley, Libertas*

5. Europe is most successful at engaging its citizens when it deals with issues people are aware of and see as relevant to them. This has been demonstrated in areas such as the Union’s recent work on mobile phone roaming charges and the rights of airline passengers. However, much of the work of the Union over the past decade has been dominated by institutional questions. While this work is crucially important for the Union, it appears somewhat remote from the citizen. This has affected the Union’s ability to connect in a meaningful way with the people of Europe.
6. The European institutions are designed to operate in a way which safeguards the national interests of 27 Member States while facilitating decision-making. Inevitably, this means that the operation of the institutions is complex, as are the regulations which govern that operation. The workings of the Union are also significantly different from those of national governments or legislatures in Member States. This creates a challenge for public understanding of the EU institutions.
7. It was suggested that the familiarity of the public with their own national political systems can lead them to expect that the structure of these systems is replicated at a European level. This may lead, for example, to an identification of the European Commission with a national level cabinet, whereas the role of the Commission is entirely different and not comparable to any body in the national political structures of most countries.
8. The current EU structures do not provide for recognised high profile leaders to represent the EU as an entity. The leadership the Union has owes its position to internal state positions and office-holding in each state. As a result voters identify leaders when they represent the Union through their leadership positions in the Member States, not for their position in the EU. The European Commission has a role which is not directly comparable to any institution within the Member States. This lack of prominent, personality-driven leadership hinders public understanding of the work of the Union.
9. The EU has failed to grasp that information about the Union is not understood where the ordinary citizen does not understand the context behind the information. Simply explaining how things happen is inadequate if there is no explanation of why things happen also. The right of European citizens to access information about the Union is correctly emphasised. There is no lack of information about the Union available to citizens. In some ways the problem is that there is so much information, but no context

to the information. People need to be able to understand the meaning of the information, and its relevance, and that is often difficult at present because so much of the information is written from an insider's perspective, presuming a background public knowledge that does not exist. Information on its own, if not in a form people can understand, will not facilitate public understanding and engagement with Europe.

*“It is often said that there is an information deficit in the European Union. I do not accept this, as there is as much information as anybody wants. Instead, there is a comprehension deficit as to what the Union is about. This may be understandable in that it is a unique experiment which is sometimes difficult to get across.”* – Brendan Halligan, Chairman, Institute of International and European Affairs.

10. The treaties which govern the functioning of the European Union are complex legal documents, and as such are somewhat inaccessible to citizens. It is clear to the Sub-Committee that the Union pays insufficient attention to the presentation of its legal instruments, in particular its treaties, in a manner which facilitates wide understanding of their provisions.

11. In their work, the European institutions have a tendency to use language that is not easily intelligible to citizens. While care is undoubtedly taken at a European level to combat the tendency to use such technical language in communication with citizens, the language does permeate the Union's work. The impenetrability of such language means that messages communicated in this way can pass over the heads of citizens, journalists and elected representatives, and can alienate people from the work of the Union.

#### *Issues within National Political Systems*

12. There is a general sense across the EU that European issues are depoliticised at a national level. In general, issues dealt with at a European level tend not to be areas of disagreement between major political parties. This may be because parties have a common desire to protect the national interest in policy discussions within the Union. Nevertheless, even when direct elections take place to the European Parliament, the focus across the Union tends to be on the national political affiliations of the candidates. Little attention is paid by the political system, media or public to any broader political trends across the Union reflected in the election campaign or the results.

*“When there are elections to the European Parliament, what do we talk about? I do not mean only the media, but all of us. We talk about how Irish politicians are doing because it is actually an Irish election, rather than how the right is doing in Poland or how the Social Democrats are doing in Scandinavia.”* – Michael Good, Managing Editor of Radio News, RTÉ

13. Added to this is a trend for public figures across the Union to apportion blame to the EU institutions for any measures emanating from Europe that are perceived to have a negative effect, but to take credit at a national level

for measures that have a positive effect. This can undermine public understanding of the balance of the Union's work. For instance, there were negative comments on the role of the EU in relation to matters such as water changes for schools, rights for temporary agency workers and support for the fishing industry. In these cases, it was suggested, the matters complained about were in fact due to the actions and decisions of national government rather than the European Union. However, blame for negative impacts on Ireland was attributed to the EU in the minds of the public.

14. Parliaments across Europe tend to focus on national political issues, and their role in holding national governments to account for their actions as lawmakers within the Council of Ministers receives insufficient emphasis. This results in limited political attention being focussed on EU matters.
15. The focus of Irish political leaders and officials in interacting with the European Union has conventionally been on representing Ireland's interests within the EU system. The view was expressed to the Sub-Committee that their role in representing or explaining the Union to the Irish people has been given insufficient emphasis.
16. It was also suggested to the Sub-Committee that a lack of historical awareness in Ireland inhibits general understanding of the European project, and of the historical context within which the European Union operates. There is a lack of sufficient emphasis on the modern history of Europe, and in particular the history of European integration, on the school curriculum in Ireland. Additionally, the position of European languages within the education system is not as prominent as might be desirable. Teaching of modern European languages has an important role to play in facilitating communication across the Union and developing public understanding of cultural aspects of the EU.

#### *Issues related to National and International Media*

17. It was explained to the Sub-Committee that outside of the context of a referendum on a European issue, European news tends to be low on the agenda of the news media. It has been suggested that the lack of attention paid to Europe by the news media follows from a lack of attention paid to European issues within the national political system. This translates into a lack of prominence for European issues in public discourse. Nevertheless, the Sub-Committee noted that the Irish media gives a relatively high prominence to European matters when compared to the media in some other Member States.

*“My firm belief is that media follow politics... Whatever goes on in politics will be picked up and reflected by the media. The most important place for disseminating messages in Ireland is the Dáil bar, followed closely by the Law Library and watering holes around that area. These two gossip factories are the places in which the media feed on the information presented to them. If politicians are not talking about Europe then the media are not talking about Europe. They will take their cue from those such*

*as the members of this committee - the elected representatives. If there was more talk about Europe in the Dáil bar that would be reflected in the media coverage.” – Seán Whelan, RTÉ Europe Editor*

18. The media, and in particular commercial media organisations, have a wide variety of news stories which can be presented to the public, and must choose items for publication or broadcast that interest the public. National news drives the work of national media organisations, and local news that of local media organisations. There is a perception that European Union matters rank low in terms of the level of interest on the part of the public. This tends to relegate European news to less prominent positions or less accessible broadcasting slots.

19. Poor communication between the institutions of the European Union and sections of the Irish media inhibits the ability of the media to report on European issues.

*"I will start with communication with the European Union, the European Commission and the European Parliament. As editor and deputy editor, communication between the Irish Mirror and the European Union is absolutely zilch... We do not receive correspondence, literature or e-mails from the European Union telling us what decisions have been made on any issue... Officials forget that 60 per cent of the population read tabloid newspapers..." - John Kierans, Editor, Irish Daily Mirror*

This factor is particularly important in the case of Irish media organisations that do not have their own staff based in Brussels and interacting with the EU institutions on a daily basis. Such organisations are normally reliant on news agencies to supply European news. These agencies principally cater to English-language media markets other than Ireland, with a corresponding focus in their reportage.

*"All we ever hear about is the barmy decisions. Newspapers refer to barmy bureaucrats, the reason for which is that the only news stories concerning the European Union we receive are sent to us by two news agencies... They tend to file barmy stories such as that on bent bananas." - John Kierans, Editor, Irish Daily Mirror*

20. The news media form the principal channel through which the public learn about European issues. Studies following the Lisbon Treaty referendum showed that television news, national radio news and newspaper articles, alongside discussion with family and friends, were the sources of information about the referendum rated as very valuable or somewhat valuable by more than half of those surveyed.

21. Of interest is the fact that in the context of the Lisbon Treaty referendum, only 12 per cent of those surveyed considered the internet to be a valuable source of information. Considering the extent to which the dissemination of information through the internet has become a factor in political life in the

United States, it is clear that there is scope for the use of the internet to enhance public understanding of EU matters to be developed.

22. Public service broadcasters have a clear responsibility to inform the public's understanding of EU issues. In this context, it was noted that the development of new broadcasting technologies, in particular digital terrestrial television, has the potential to provide a useful channel through which the work of European institutions, and of national institutions which interact with the EU, can be made visible to the public.

## **The Role of Institutions in encouraging Engagement with Europe**

### ***The Role of the European Institutions***

23. The European Commission takes the lead among the EU institutions in developing communications strategies and interacting with both the media and the public. This leadership by the Commission can lead to a public perception that the Commission is the most significant and powerful of the European institutions. In fact the decision-making and legislative power resides with the Council and Parliament. We were told of a perception among journalists that the Commission, while facilitating a constant flow of information to the media, has a tendency to control this information tightly. It can be insufficiently conscious of the stories that have real news value and of the demands on journalists in respect of deadlines.
24. In contrast, it was observed that the European Parliament is favoured by journalists as a source of news stories. Its work is more personality-focussed and contains more political conflict and disagreement. The media profile of the Council of Ministers, in reality the most powerful of the EU institutions, is considered relatively poor. This may contribute to a public perception that the democratic voice of the people within the Union, expressed through their governments, is not as strong as it should be.

*“We believe in representative democracy, that is where we are coming from. That there are faceless bureaucrats or elites is such a load of nonsense. Every item of legislation can be changed or dumped by governments. It is governments which run the European Union but it took me quite a while to understand this. It is not readily recognisable, and one is not told.” – Ann Cahill, Europe Correspondent, Irish Examiner.*

25. It is acknowledged within the European institutions that communication with the public cannot function on a 'top-down' basis from Brussels. In order to encourage citizens of the EU to engage with the Union, and facilitate a sense of ownership, it is necessary for political and educational institutions at a national and local level to play a role. In particular, the promotion of engagement with the EU needs to be driven by local and national public representatives, and not left to the Union's institutions.

*"The last point mentioned was about improving public understanding of the EU. This should not be a propaganda-type understanding, in which there is no criticism whatsoever. This has been a major fault to date." - Patricia McKenna, former MEP*

### ***The Role of National Parliaments and Elected Representatives***

26. The role of national parliaments in holding to account national government representatives who participate in EU law making through the Council of Ministers is an important mechanism through which public engagement with the European Union can be promoted. The national political agenda tends to define the agenda of the media in the area of current affairs. Enhancing the oversight function of national parliaments in EU law making is likely to increase the focus on European matters within national political systems. This will result in greater attention being paid to EU affairs by the media in Member States. Strong and well-functioning parliamentary oversight of a government's role in EU institutions also enhances the flow of information to the national media on EU matters. The perception was noted that the best-informed journalists in Brussels are from Denmark, where a particularly strong system of parliamentary oversight of EU matters exists.
27. In order to better develop public understanding of the process of EU law making, national parliaments should involve themselves in the law making process from the earliest possible time, ideally from the proposal stage. This would help to facilitate early public engagement with the process, and allow public views on proposed EU laws to be fed into the decision-making process at an appropriately early stage.
28. In relation to institutional matters within the European Union, and particularly treaty revisions, public representatives have a significant role to play in communicating and explaining proposed changes to the public. The complexity of the Union's structures means that few citizens will have the opportunity to develop a comprehensive understanding of their operation. Elected representatives and leaders of civil society have a responsibility to carefully consider institutional matters and explain key issues to the public. Engagement in relation to European matters by political representatives on the doorsteps of citizens is vital to the promotion of wide public understanding of the functioning of the European Union.

### ***The Role of the Education System***

29. Enhancement of public understanding of, and engagement with, the European Union can be achieved through civic education programmes. These may be integrated into school curricula, or targeted more widely within society. In particular, an enhanced emphasis on European matters in Civic, Social and Political Education programmes at secondary school level has the potential to improve the level of basic understanding among young people of the way the European Union works. There is also significant potential for the Oireachtas to engage with the Irish education system,

particularly at primary level, to promote engagement with European matters.

## **Specific Measures to improve Public, Political and Media Engagement with the EU**

### ***Measures at European Level***

30. It is vital that more be done to encourage citizens to observe and engage with the decision-making processes of the European Union. Further emphasis should be placed on the use by citizens of the European Parliament's petitions committee. Also, further efforts should be made to ensure that the Council of Ministers meets in public when legislating. It is notable that the need for public access to the Council has been recognised at a European level, and provisions to facilitate this access were included in the Lisbon Treaty.
31. European treaties should be accompanied by clear explanatory documents, approved by the Member States, setting out in clear and comprehensible terms the intentions of the governments framing the treaty and the effect of each of the treaty provisions. In particular, such a document should be prepared in circumstances where citizens of a Member State are asked to vote on ratification of a treaty in a referendum. This document should be widely distributed during referendum campaigns. The Sub-Committee considers this to be of vital importance.

### ***Measures at National Level***

32. Strong and prominent coverage by Irish media organisations of the institutions of the European Union is vital to promote public understanding of the work of the institutions. The Government should consider measures to promote such coverage, in particular by incentivising the posting of Irish journalists on a full- or part-time basis to Brussels. In particular support should be given to the media not represented in Brussels at present to encourage them to pool their resources and provide collective journalistic representation. This could include shared office facilities and support staff. Consideration might also be given to the development of traineeship schemes for trainee journalists in the European institutions.
33. Assuming the introduction of an Oireachtas Digital Channel, debates in the Dáil plenary and the work of the EU committees should get priority billing. The development of a dedicated digital television channel dealing with the operation of the EU institutions, and EU affairs generally, should be examined.
34. Modern European history, in particular the history of European integration since the 1950s, should be accorded a more prominent place on the Irish school curriculum. Further emphasis should also be placed on making students familiar with the European Union and the importance of Ireland's membership. Attention should also be paid to the operation of the EU

institutions and how they relate to Ireland's national institutions of government. Consideration might be given to the inclusion of European Studies as an examinable subject on the secondary school curriculum.

35. In order to promote engagement with Europe and with other Member States of the Union, the teaching of European languages should be introduced to the Irish primary school curriculum.
36. The Government should consider the establishment of a body, which would function independently, and build on the work of the National Forum on Europe, the Institute of International and European Affairs and the European Movement to assist public understanding of the European Union and act as an authoritative and impartial source of information about the Union's work and Ireland's place within it. This body should be mandated to provide such information to the public in a clear and accessible fashion, with an emphasis on simplified presentation of EU decision making and the way in which Ireland's voice is heard in Europe. This proposal could also be accommodated by reviewing the role of the National Forum on Europe and extending its remit to include a clear communications responsibility.
37. Consideration might also be given to the development of a cross-party foundation for the development of thought in relation to European issues, providing an opportunity for scholars and intellectuals from other Member States of the Union to contribute to Irish public life and to policy formation.
38. The Houses of the Oireachtas should play a leading role in Ireland's engagement with the European Union. Strengthening the role of the Oireachtas in EU affairs, and increasing the prominence given to EU matters in the work of the Oireachtas, would enhance the position of European issues within the political system. This would in turn influence the attention paid to such issues by the media and the public. Specific measures to enhance the role of the Oireachtas in this area are considered in chapter four.



## **Chapter 4**

# **Enhancing the role of the Oireachtas in EU Affairs**



***Make recommendations to enhance the role of the Oireachtas in EU affairs***

*The Sub-Committee examined the current role of the Oireachtas in EU affairs and compared it with other Member States. Based on this analysis, the Sub-Committee has made a number of recommendations to strengthen the role of the Oireachtas in EU affairs.*

1. The Irish parliament consists of two Houses, Dáil Éireann and Seanad Éireann, and is known as the Oireachtas. It has two principal functions on behalf of the public - to decide on new Irish laws and to hold the Government to account for its policies and decisions. Under the Irish Constitution the Government is accountable to Dáil Éireann. The Oireachtas is the legislative body. The Government is responsible for external affairs (i.e. foreign policy). Up to 1973 the Oireachtas was the only body that could consider and pass new Irish legislation.
2. In joining the EU, each Member State agreed to share responsibility for legislation and policy in certain defined areas. By definition, this reduces the legislative powers of national parliaments to some extent. Member States decide to act together, or pool their sovereignty, in the realisation that more can be achieved and more benefits can flow from acting collectively in certain defined areas instead of acting alone. Examples of such decisions are the Common Agricultural Policy, the creation of the single market, the Euro currency, and the protection of the environment.
3. Outside the areas where the 27 Member States have agreed to share responsibility, the Oireachtas remains the only law making body. Ireland retains full control over sensitive national issues like criminal justice, defence and foreign policy (including the traditional policy of military neutrality) and direct taxation.
4. Each country is represented at European level by its government and the citizens of that country are represented by their MEPs in the European Parliament. The national parliaments do not have a direct role in collective decisions by the governments or legislative decisions of the European Parliament. National Parliaments have the specific role of holding their governments to account for decisions it takes at the EU.
5. The interaction between the National Government and the EU institutions in law-making is not mediated or communicated in any meaningful way to the Irish public. It is distant and removed from the everyday local and national life of the citizens. This has led to a legitimacy and accountability deficit at the EU level. In that respect, the Lisbon Treaty contains provisions that would enhance the role that national parliaments can play in the EU decision making process. Notwithstanding this, the Oireachtas must do more, within its own powers and resources, to tackle this accountability deficit.

### Making new laws at EU level

6. Most new laws at EU level are proposed by the European Commission. They are considered by the Council of Ministers and the European Parliament. Each Member State decides its own negotiating position and can obviously take into account its own parliament's views before it agrees to a new EU law. In effect, this means that the Oireachtas has an opportunity to assess and influence the government's negotiating position on draft EU laws before they are made.
7. The Oireachtas can enact new laws at national level in Dáil Éireann and Seanad Éireann to give effect to EU acts, or a Minister can implement some measures by secondary legislation. There is an important oversight role for the Oireachtas in these matters, particularly where a proposed EU law could have significant or negative implications for Ireland. Once a new EU law is agreed to by the governments it is then too late to seek changes. EU laws cannot be amended afterwards at national level so there is no second chance to influence or shape the final law.

### Scrutiny of EU legislation

8. When Ireland joined the EEC, the Oireachtas passed the European Communities Act of 1973. It provided that EU acts shall be binding on the State and shall have effect in domestic law. It also provided that Ministers can use secondary legislation to convert some EU acts into Irish law. (Secondary legislation is put in place by a Minister, not by the Oireachtas, but on the basis of the prior authorisation of the Oireachtas contained in the *European Communities Act, 1973*). Secondary legislation can be annulled by a motion being passed in Dáil or Seanad Éireann within one year. An Oireachtas Joint Committee on Secondary Legislation was also provided for to oversee the secondary legislation used to bring EU law into effect in Ireland, but was later subsumed into a new Oireachtas Joint Committee on European Affairs which was established in 1997 and took over responsibility for this area.
9. One of the decisions taken in 2002 after the Nice Treaty referendum was to implement a new EU (Scrutiny) Act 2002. This put the scrutiny of draft EU laws on a statutory basis and was a major improvement. It placed a statutory obligation on Government Departments to send new EU legislative measures to the Oireachtas along with an explanatory note. Ministers are required to have regard to any subsequent reports by the Oireachtas.
10. The Government must also provide two reports to the Houses each year on EU developments. The Act has facilitated the development of a formal system of legislative scrutiny. Up to 2007 a sub-committee of the existing Joint Committee on European Affairs carried out the scrutiny role. In 2007, in recognition of the importance of draft EU measures, the Oireachtas set up a new Joint Committee on European Scrutiny.

*“One of the most important functions of national parliaments is providing public information and deliberation on EU issues and holding governments publicly to account for EU policies.” - Dr Gavin Barrett, UCD*

### Weaknesses of current procedures

11. The Sub-Committee has identified some specific weaknesses in the way the Oireachtas can hold the government to account for its role in EU law making. The following four areas need to be addressed:
- the lack of influence of the Oireachtas in the EU decision making process;
  - procedures giving effect to EU law in Ireland;
  - the way EU business is handled in the Oireachtas; and
  - sensitive policy areas, including workers’ rights and socio-ethical issues.

### The lack of influence of the Oireachtas in the EU decision making process

12. At present, the Oireachtas scrutinises EU proposals after they have been formally published by the EU. This is a reactive approach, and it lacks any mechanism to enable the Oireachtas to have any influence on the content of EU proposals. The Oireachtas should be in a position to identify and highlight any negative consequences for Ireland from draft EU laws. This could then be addressed with the Government before any deal is agreed at Council level. There is no second chance to amend EU legislation once it is finalised. Effective scrutiny is based on parliament having the right information at the right time and all information available to EU institutions should be made available to National Parliaments as of right and at the same time.

### Giving effect to EU laws

13. The Government decides whether EU acts should be brought into domestic law, or transposed, by way of primary or secondary legislation. Primary legislation goes through both Dáil and Seanad Éireann and can be amended, modified or opposed. It can also be referred to an Oireachtas Committee for detailed consideration. The Oireachtas has a far more limited role if secondary legislation is used.
14. The Sub-Committee notes that the sheer volume of EU measures means it would be unrealistic to use primary legislation in every case. However, secondary legislation has become the norm for transposing most EU laws. This increases the need for sufficient transparency to ensure that important changes in the law are flagged in advance and can be considered by the Oireachtas. The use of statutory instruments, with the lack of accompanying parliamentary scrutiny, has been the subject of judicial scrutiny. Ministers should be obliged to inform the Scrutiny Committee of the measures they propose to enact by statutory instrument and the reasons for doing so.

*The consequences of what occurred is that over time the Oireachtas is being pushed into the background. .. we would like to see a more active role adopted by the Oireachtas whereby it would be more accountable for the transposing of European legislation into Irish law. Progressively over the past 35 years, it is my experience that the Oireachtas has withdrawn from an active direct role in this regard. Given the growing influence of European legislation on virtually every aspect of Irish society, the Oireachtas must increase substantially its direct involvement and oversight in terms of legislation. – Mr Ciaran Dolan, ICMSA*

15. The transposition of some EU laws has been controversial (e.g. the Habitats Directive, criminal sanctions for fishery offences, restrictions on turf cutting, school water charges). Some representative groups, including the farming sector, also outlined their concerns to the Sub-Committee about the regular use of secondary legislation to give effect to far reaching proposals. There were concerns about a lack of political and democratic oversight to prevent unnecessary red tape and adopt a more pragmatic approach in implementing EU legislation in Ireland.
16. There is also a perception that Ireland implements or enforces its EU obligations more rigorously than some other Member States. This can be heightened by a perception of over-regulation and unnecessary bureaucracy. Additional concerns are that secondary legislation can be used to add additional measures not needed to bring in an EU act. This further increases the burdens being placed on businesses and individuals. Such difficulties might be avoided or at least better dealt with by greater parliamentary debate and fine-tuning at the transposition stage.
17. The 2005 Government Guidelines on best practice in transposition of EU directives provide that Regulatory Impact Assessments (RIAs) should be undertaken by Departments for 'significant' EU directives, regulations, and secondary legislation. RIAs are regarded as a valuable tool to improve the quality of regulation. They are also intended to improve the quality of debate and scrutiny. The Sub-Committee is concerned by the low rate of compliance with the existing guidelines as shown in a 2008 Operational Review.

#### *The way EU business is handled in the Oireachtas*

18. Scrutiny of EU proposals does not feature prominently in the overall work of the Oireachtas. There is a lack of debates in Dáil and Seanad Éireann on EU related business. National and local issues dominate in parliament, which in turn impacts on what is subsequently reported by the media. There is also an over-reliance on the Committees within the Oireachtas to deal with EU related matters. The media's coverage of Oireachtas Committees is very limited which reinforces the existing information deficit.
19. There are also practical constraints on Oireachtas Members. Members have to juggle a range of competing demands for their attention. Multi-seat constituencies and the demands of constituents for 'their' TDs to be seen

locally can act as disincentives to active committee participation. Local politics matters more to most Irish people than any well meaning discussions on how to improve the institutional structure of the EU.

20. In addition, parliaments in Member States are in an unequal relationship with governments who have vastly superior access to legal, administrative and specialist services. Given the range of issues and volume of information pertaining to EU matters, it is important that parliaments seek to prioritise issues which they believe are of most importance to the people they represent.

*“The core problem is that outside the confines of the territorial nation states executives are, only to a very limited extent, held to account for their action or inaction. National parliaments, in particular, have not kept up with what their national executives are doing or not doing. They have stayed put within their own neatly nationally fenced-off compartments. The executive, however, has leaped over the fence and developed into a strongly interwoven complex administrative network, beyond the horizons of many, perhaps all, national parliaments.” – Professor Deirdre Curtin*

#### Sensitive policy areas

21. There is a particular need to ensure effective parliamentary oversight of any proposed EU actions impacting upon sensitive national issues. Taxation laws, justice measures, workers’ rights, socio-ethical issues and defence policy are examples. Weaknesses in the parliament’s influence can undermine its role in the first place. The Sub-Committee believes that the role of the Oireachtas in some sensitive policy areas should be strengthened.
22. Specific concerns were expressed to the Sub-Committee in relation to the protection of Ireland’s traditional policy of military neutrality. The committing of Irish troops abroad to participate in humanitarian or crisis management tasks undertaken by the EU is based on the triple lock. This requires a combination of UN authorisation, a Government decision and approval by Dáil Éireann. The requirement for Dáil Éireann approval is currently by simple majority. The Government would normally be expected to have a majority within Dáil Éireann which means that the triple lock may involve only two requirements in reality. The Sub-Committee considers that Dáil Éireann approval should reflect not only the will of the Government Members of Parliament but also of Opposition Members of Parliament and that a two-thirds majority for Dáil Éireann approval would be more appropriate.

#### Lessons from Abroad

23. The Sub-Committee looked at the systems used in other Member States. They may be broadly divided into two models: Document-based and

Council-based. The Sub-Committee identified the British, Danish and German systems as among the best. The Sub-Committee was pleased to be assisted at its hearings by delegations from all three parliaments.

24. The *Document-based* model focuses on new proposals from the EU. The system primarily looks at draft legal instruments before they are agreed by the Council. It is often accompanied by a scrutiny reserve which provides that governments should not agree to proposals in the Council until the parliamentary scrutiny process has been completed. In general, most documents receive a basic scrutiny, but detailed consideration is reserved for those of significant national importance.
25. The UK has operated this system since 1973 through Committees in both Houses of Parliament. It is supported by a scrutiny reserve which was agreed by resolutions in both Houses. In Germany, the scrutiny system is underpinned by constitutional provisions and a co-operation agreement between the Government and the Bundestag. This obliges the Government to use the Bundestag's opinion as the basis for its negotiations.

*“Similarly, our committee has been used to the benefit of the United Kingdom. Ministers have attended the Council and won back positions they had been willing to give up in the Council consensus because of the strength of pressure from our committee. They have written to me to thank our committee because it strengthened the hand of the United Kingdom to such an extent that our scrutiny reserve made the other governments give in and allow the United Kingdom to win its position” –*  
Mr Michael Connarty MP, Chairman of House of Commons Scrutiny Committee

26. The *Council based* model focuses on the EU decision-making process, usually by concentrating on the government's position at Council meetings. In some countries the European affairs committee itself is empowered or required to give a mandate to the national government before a minister can give agreement to proposed legislation in Council meetings. The mandate may be legally or politically binding to a greater or lesser extent. In most national parliaments using this system, the mandates given to governments are politically binding and are reported to be generally observed by governments.

### Analysis

27. The two main options available to adjust our EU scrutiny system are a parliamentary mandate or a scrutiny reserve. A parliamentary mandate, which falls under the Council based model, means that the relevant Government Minister must seek a mandate from the national parliament before he/she can agree to the adoption of specific measures at a Council meeting. A scrutiny reserve system, which falls under the document based system, means that Ministers should not normally agree to the adoption of EU legislation in the Council without giving Parliament an opportunity to scrutinise that legislation. If the Parliament decides that an EU legislative

proposal requires further scrutiny given its legal or political importance, then a security reserve is placed on the proposal and the Government cannot agree to the proposal at the Council until the parliament has completed its scrutiny procedure.

28. The use of a mandate has worked well in Denmark. Denmark has had minority governments and a mandate can be used to secure the formal co-operation of Ministers. One of the main criticisms of mandates is that they can be too rigid in practice. While they look good formally it would appear that they are used sparingly in practice.
29. A mandate system would not be easily aligned with the Irish political system of majority government. The electoral system in Ireland has meant that majority governments have become the norm. This has led to the development of a strong executive which enjoys a majority in the Oireachtas. There is, therefore, less incentive for the Government to seek the approval of the Oireachtas in areas in which it has the power to decide under the constitution, such as policies at the EU level. If a mandate system was to be introduced, it would in practice have little effect as the Government would always secure its preferred mandate given that it has a majority in the Oireachtas.
30. The Chairman of the Scrutiny Committee in the UK House of Commons told the Sub-Committee that the scrutiny reserve has worked well for them. It is provided for by parliamentary resolutions rather than legislation. The Irish system has similar features to the UK and the Sub-Committee notes that a 2005 Committee Report concluded that a mandate system was not suitable for the UK. Realistically it may be difficult to introduce a mandating system in Ireland, given that the constitutional responsibility for external policy is vested in the government.

### **Recommendations**

31. The Sub-Committee recommends the implementation of a series of reforms to address the accountability deficit in EU decision making by enhancing the role of national parliaments. The Oireachtas needs scrutiny and oversight mechanisms which take account of our particular legal, political, social and economic characteristics. The core objective for the EU scrutiny system in Ireland is to influence Ministers and hold them to account, ensure that Oireachtas members are provided with all information available to the EU institutions and at the same time, and provide a source of information and analysis for the public.

#### ***The lack of influence of the Oireachtas in the EU decision making process***

32. A formal scrutiny reserve mechanism, in line with the model used in the UK Parliament, should be introduced. This will provide more influence for the Oireachtas in the negotiating positions adopted by Irish Ministers on draft EU legislation at Council meetings. The legal, resourcing, and logistical implications need to be examined further.

33. National Parliaments should have to be consulted formally about the European Commission's annual policy strategy and legislative work programmes before they are finalised. This proposal should be pursued with our partners in other national parliaments in the Conference of European Affairs Committees (COSAC).
34. There should be a more structured arrangement for Oireachtas Committees to meet with Ministers before Council meetings to consider the Government's negotiating positions on agenda items. Ministers should also report back in writing to the appropriate Oireachtas Committee on the outcome of the discussions and on specific decisions made.
35. There should be more focus by Oireachtas Committees on non legislative documents by the EU institutions. This includes scrutiny of Green and White Papers as well as of the various Opinions and Reports by the non-institutional bodies of the EU. The Oireachtas Working Group of Committee Chairmen should also be asked to prepare a report on how EU business can be mainstreamed across all Oireachtas Committees.

#### *Giving EU laws effect*

36. A number of significant concerns were raised in the Sub-Committee's hearings about how EU directives are brought into Irish law. These need to be addressed with more robust arrangements for the oversight of Statutory Instruments. This may also require amendments to the European Communities Acts 1972 to 2007.
37. The Joint Committee on European Affairs should examine what measures could be put in place to enhance oversight of Statutory Instruments. The aim of such measures could include making sure that Ministers and Departments are strictly complying with EU decisions when bringing these decisions into effect in Ireland. This should include a comparative review of the system in the UK where both Houses have a Committee to focus on secondary legislation.
38. Regulatory Impact Assessments have to be prepared for significant EU Directives, regulations and secondary legislation as provided for in the Government's guidelines. The Sub-Committee is concerned by the low rate of compliance by Departments with the existing guidelines. The Government should ensure that compliance with the Guidelines is addressed. From now on, RIAs should be forwarded to Oireachtas Committees for consideration when significant EU laws are being considered.
39. If Statutory Instruments are being used to give effect to an EU law, the text of the instrument, or at least the heads of the instrument, should be circulated to all Oireachtas members. This would mirror the current practice of distributing all texts of draft primary legislation. This will bring more

transparency to the process of giving effect to EU law and enable the members to highlight any potential problems at an early stage.

### *The way EU business is handled in the Oireachtas*

40. It is widely acknowledged that the current political system in Ireland focuses Members on local issues to the detriment of their national role as legislators. The Oireachtas must encourage members to take a far greater role in EU affairs. Members should be able to specialise and develop expertise in EU affairs. This needs a change in the political culture in Ireland. There is a clear need for the Oireachtas to improve its performance in relation to the importance of and the requirements of EU membership. We need to find ways to bring our membership of the EU into national politics.

### *Electoral changes*

41. The Sub-Committee recommends that a new panel be constituted in the Seanad for a minimum of 5 Senators to be nominated on the basis of experience in EU affairs. Senators elected from this panel would participate in the Oireachtas European Committees. They should also build relations with the Irish MEPs as well as directly with the EU institutions.

### *Procedural changes*

42. The Standing Orders and procedures of Dáil and Seanad Éireann should be amended where necessary to implement the recommendations in this Chapter. The main issues to be addressed include regular debates on EU legislative proposals and developments; enhanced powers for Oireachtas Committees; provision for participation by MEPs in some debates; and informal monthly meetings between Irish MEPs and the European Committees in the Oireachtas. These meetings between the Irish MEPs and the European Committees should take place in the week per month when the MEPs are dealing with constituency work and therefore more likely to be in Ireland.

43. As part of an improved communication strategy the Oireachtas should establish its own EU Information Office. There is a clear need for easy access to neutral information on the EU decision making process, and Ireland's role therein.

### *Sensitive Policy Areas*

44. The current requirement in the triple lock for approval by a simple majority in Dáil Éireann should be strengthened. Dáil Éireann should be required to have a "super majority", where a two thirds majority is needed for any proposal to send Irish troops overseas on peacekeeping missions. This would provide a stronger parliamentary mandate for such decisions and enhance the role of the Oireachtas in a key area of interest to the Irish people.

## **Conclusion**

45. Some of the changes recommended above would involve amending existing Irish legislation. Some recommendations, in particular the changes proposed to the electoral system, would require changes to the Constitution. This would obviously involve a referendum. In general, the legal implications and constitutionality of the proposed recommendations will have to be examined carefully.
46. The Sub-Committee also acknowledges that the recommendations have considerable political implications. Difficult decisions will have to be made but the Sub-Committee believes that these decisions are necessary to tackle the accountability deficit that currently exists when it comes to the EU and Ireland's membership. These recommendations should help to facilitate and encourage greater political debate around EU issues. This in turn should lead to a higher level of public engagement in and understanding of the EU.

# Annexes

