

## THE ROLE OF THE OIREACHTAS POST LISBON

Joe Costello TD

### SECTION 1.

#### Introduction:

“People only accept change when they are faced with necessity, and only recognise necessity when a crisis is upon them”. Jean Monnet, one of the founding fathers of the European Union.

The two referenda on the Lisbon Treaty revealed much about Ireland’s democracy and much about Irish people’s relationship with Europe.

Involvement in both referenda was deep and passionate. People wanted to hear the Treaty proposals. They wanted to be informed and they wanted to express their views at the polls.

They wanted to engage as fully as possible in the democratic process and were highly critical when political leaders short changed them and took them for granted.

It was patently obvious that thirty-five years of EU membership had created no emotional bonds of attachment with Europe; that the Treaties binding the Member States were scarcely stronger than bilateral agreements; that the political structures and institutions so carefully fostered at EU level were totally removed from the experience of the ordinary citizen of the Member States.

Most citizens were unaware of the complex developments that had occurred from the Maastricht Treaty in 1992 onwards which added a political dimension to the European Economic Community which Ireland had joined in 1972.

Each Treaty developed and deepened the political dimension as part of the European Project while preserving the principle of subsidiarity, namely, that what can best be achieved by Member States remains the remit of those States.

#### Oireachtas Scrutiny of EU Affairs before Lisbon:

From the time Ireland joined the EU in 1973, a Joint Committee on Secondary Legislation was established to oversee the transposition of EU legislative proposals into Irish law.

In 1993, after Maastricht, this Joint Committee was renamed the Oireachtas Joint Committee on European Affairs to reflect the greater political integration contained in the Maastricht Treaty.

In 2002, when two referenda were required to approve the Treaty of Nice, it became apparent that the public were sceptical of the increased political integration and that the level of parliamentary scrutiny was inadequate.

The Labour Party proposed a new EU (Scrutiny) Bill to strengthen the watchdog role of Parliament. It was agreed by the Government and passed into legislation in 2002. A subcommittee of the Joint Committee on European Affairs was established as the new Scrutiny Subcommittee.

In 2007 the Scrutiny Subcommittee became a fully fledged Joint Committee on European Scrutiny alongside the Joint Committee on European Affairs.

At present EU draft legislative measures are dealt with by the Joint Committee on European Scrutiny in consultation with Government Departments and Government Ministers.

The Joint Committee on European Affairs debates and seeks to amend policy proposals from the Commission. It has the power to invite the Minister for Foreign Affairs to brief it on upcoming meetings of the General Affairs & External Affairs Councils but the Minister may disregard its opinions or recommendations.

The only structured time when EU matters are dealt with by the Dáil is an eighty minute session of statements and questions on the floor of the Dáil, the week following the return of the Taoiseach from the quarterly meeting of the European Council. There is no structured time in the Seanad for EU debates.

Virtually all EU legislation is transposed into Irish law by means of Statutory Instrument making Government Ministers sole legislators and effectively excluding the Dáil and Seanad from their primary legislative and watchdog functions.

The EU has the resources to process far more policies, directives and regulations than any National Parliament. Indeed with 736 MEP's, approximately 20 Policy Committees and hundreds of special staff, the European Parliament is itself constantly challenged to keep abreast of the "Brussels output".

Consequently, more legislative proposals are being drafted at EU level than at National level. Yet the EU proposals are never debated in either the Dáil or Seanad. This is the real democratic deficit. The Houses of the Oireachtas have designed a system that bypasses

Members of the Houses and delegates and relegates all things European to two Joint Committees to discuss, to scrutinise but to leave to the Cabinet Ministers to legislate.

The Lisbon Treaty seeks to address the democratic deficit in the EU by making the EU Institutions more transparent and by empowering the European Parliament. It further seeks to enhance the role of National Parliaments in European affairs by giving them new powers.

The Lisbon Treaty contains provisions which encourage the Parliaments of the Member States and entitle them to play a greater role in EU matters.

The Lisbon Treaty also presents TD's and Senators with an opportunity to look at the way the Oireachtas conducts its business and to locate the Lisbon provisions in a wider Parliamentary reform that more accurately reflects the important impact that the European Institutions have on Irish laws and on Irish society.

The Lisbon Treaty provides us with the catalyst to modernise, to bring issues that effect people's lives to the floor of the Dáil and Seanad and to give more power to the Oireachtas and to the elected members.

## SECTION 2.

### Enhanced role for National Parliaments in EU decision-making

The Lisbon Treaty gives National Parliaments of the Member States a direct input for the first time into the adoption of EU legislation. In effect, Lisbon makes National Parliaments the 'third chamber' in the EU legislative process. Once the Lisbon provisions come into effect, virtually no piece of EU legislation will be adopted without first, prior examination by National Parliaments; second, approval by the Council of Ministers; and third, approval by MEPs. This represents a level of scrutiny and democratic approval that exists in no other democratic entity or international organisation.

This enhanced role of National Parliaments is set out in Art.12 TEU and then elaborated in two additional Protocols, one on the role of National Parliaments and the other on the application of the principles of subsidiarity and proportionality. (see appendices)

#### 1) Protocol on the Role of National Parliaments

The Protocol on the Role of National Parliaments in the EU (Protocol 1), which is annexed to

the Treaty, firstly recognises that the manner in which national parliaments scrutinise their governments' activities within the EU is, of course, a matter for each Member State to determine. How each National Parliament goes about its business of exercising control over its Government should not be set down in an EU Treaty.

However, the desirability of encouraging greater parliamentary involvement in EU activities and of enhancing the ability of National Parliaments to contribute to European debates is also recognised. The arrangements set out in the Protocol apply to all component chambers of a national parliament.

Under the Protocol, all Commission Green and White Papers, its Annual Legislative Programme (usually released around October/November), and all draft legislation will be sent directly to national parliaments by the Commission, at the same time as they are being sent to the Council and to the European Parliament.

This requirement for direct and simultaneous transmission is new and is intended to better inform National Parliaments and to give national parliaments more time to consider Commission proposals.

The agendas for and outcomes of meetings of the Council of Ministers must also go directly to National Parliaments at the same time as they go to national governments. Except in cases of urgency, at least eight weeks must elapse between the forwarding to National Parliaments of a draft EU law and it being placed on a Council agenda for decision. There should normally be a 10 day gap between the publication of an agenda and the taking of a decision.

## 2) Protocol on Subsidiarity and Proportionality

The Protocol on the application of the principles of Subsidiarity and Proportionality (Protocol 2) further develops the role of national parliaments in relation to these principles.

The principle of subsidiarity is designed to ensure that the European Union acts only when this is necessary and appropriate.

Within eight weeks of the transmission to it of a draft EU law, any national parliament, or any chamber of a parliament, may send to all EU institutions a "reasoned opinion" stating why it considers that the draft does not comply with the principle of subsidiarity. Account must be taken of these reasoned opinions.

If within eight weeks, at least one third of national parliaments (or of chambers of national parliaments) issue such reasoned opinions, the draft proposals must be reviewed. It may thereafter be maintained, amended or withdrawn. In the case of proposals in the areas of judicial cooperation in criminal matters and police cooperation, the threshold is one quarter.

If a simple majority of national parliaments take the view that a proposal breaches the principle of subsidiarity, the proposal can be maintained, amended or withdrawn. If the Commission decides to maintain its proposals, it must submit its reasons to the Council and to the European Parliament, which will take a majority decision on how to proceed. The EP will act by a majority of votes cast and the Council by a majority of 55% of its members (i.e. at least 15 of the current 27 Member States).

The so-called "yellow card" system is a major development which will bring national parliaments directly into the EU decision-making process. The use which is made of this mechanism will depend on the capacity of national parliaments, individually and collectively, to prepare reasoned opinions within the timescale laid down (if they think them justified).

The application of the principle of subsidiarity is intended to take place primarily before the adoption of legislation. However, the Court of Justice is empowered to adjudicate on alleged infringements of this principle in laws adopted by the EU. Such actions may be brought by a Member State or notified by it on behalf of its national parliament or a chamber thereof.

### 3) National Parliaments and the Area of 'Freedom, Security and Justice'

In recognition of the particular sensitivity of freedom, security and justice matters, the Lisbon Treaty contains a number of specific provisions associating national parliaments more closely with the EU's activities in this area.

National Parliaments are to be kept informed of evaluations of the Member States' implementation of EU policies in the area of freedom, security and justice (Art.70 TFEU) They are also to be kept fully informed about the work of a standing committee established to promote and strengthen cooperation on internal security (Art.71 TFEU).

National parliaments will also be involved in the evaluation of the activities of Eurojust, which was established in 2002 to help Member States when they are dealing with the investigation

and prosecution of serious cross-border and organised crime (Art.85 TFEU), and Europol, which was set up in 1999 to assist the law enforcement authorities of the Member States in their fight against serious forms of organised crime (Art.88 TFEU).

#### 4) National Parliaments and Art. 352 measures

Art.352 (TFEU) provides the legal base for the unanimous adoption by the Council, after having consulted MEPs, of measures deemed necessary to attain one of the EU's stated aims where the treaties do not provide a clear legal base. A similar legal base exists in the existing treaties (Art.308 TEC) and has been used over recent years to adopt a wide range of measures, including the establishment of the Vienna-based European Agency for Fundamental Rights, to freeze funds belonging to persons indicted by the International Criminal Tribunal for ex-Yugoslavia, and to establish schemes such as the town-twinning programme and to designate 2011 as European Year of Volunteering.

Under the Lisbon Treaty, there is a new requirement on the Commission to specifically draw National Parliaments' attention to any proposals issued on this basis. If National Parliaments feel the EU is in danger of breaching the subsidiarity principle, they could use the Subsidiarity Protocol to activate a full review of the measure. In addition, MEPs would acquire the right to veto (but not amend) all such proposals.

#### 5) National Parliaments and future Enlargements

All future applications to join the EU will have to be formally notified to National Parliaments (Art.49 TEU), and the unanimous agreement of all Member States as well as the consent of the EP will still be required for future accessions.

#### 6) National Parliaments and more 'QMV' and 'Co-decision'.

Under the existing treaties, in a limited number of clearly prescribed areas, the European Council can unanimously decide to allow decisions previously taken by unanimity to be made by QMV, or to extend the co-decision procedure between the Council and the EP. It is

important to note that similar provisions are contained in the existing Treaties and have been activated in the recent past, e.g. in relation to some justice and home affairs issues in 2004.

Under the Lisbon Treaty however, any such move (e.g. concerning family law with a cross-border implications - Art.81.4 TFEU) by the European Council could now be blocked by any single National Parliament. In addition, National Parliaments must have at least six months notice of any intention on the part of the European Council to activate these provisions.

#### 7) National Parliaments and future revisions of the Treaties

Finally, future changes to the Treaties which involve the conferring of new competences on to the EU (or their removal as is now possible) would be prepared by a Convention in which National Parliaments would be strongly represented (Art.48 TEU).

### SECTION 3.

Implementation of the new powers of National Parliaments after the entry into force of the Lisbon Treaty: Reform of Dáil and Seanad

The following is an abbreviated list of these new powers:

- a) Receipt of information and draft legislative acts from the EU Institutions;
- b) Ensuring compliance with the principle of subsidiarity;
- c) Taking part in the evaluation mechanisms for the implementation of the EU policies in the area of freedom, security and justice;
- d) Involvement in the political monitoring of Europol and the evaluation of the activities of Eurojust;
- e) Participation in the request for filing an action for annulment before the Court of Justice of the European Union on grounds of a breach of the principle of subsidiarity;
- f) Participation in the inter-parliamentary co-operation between National Parliaments and with the European Parliament.
- g) Receipt of notification of applications for accession to the European Union and unanimous agreement for future accessions;
- h) Taking part in the revision procedures of the Treaties;

### The Oireachtas:

The purpose of the new powers contained in the Lisbon Treaty is to enable "National Parliaments contribute actively to the good functioning of the Union" (Art 12 TFEU). It is important to note that these new powers are given to National Parliaments, not to Governments or Committees.

It is the role of Parliament that is being enhanced. Therefore, in so far as practicable the powers should be exercised by the full National Parliaments of all 27 Member States. In designing new implementation mechanisms we should at all times seek to involve the Dáil and Seanad to the maximum.

- 1) Under Lisbon all Parliamentarians are now entitled to receive all documents produced by the Commission at the same time as the EU Institutions and the Irish Government receive them. These documents should be forwarded to the offices of the Ceann Comhairle of the Dáil and the Cathaoirleach of the Seanad simultaneously, who should in turn place them in the Oireachtas library. Every TD and Senator should be informed of the documents as they arrive.

This would enable individual TDs and Senators to exercise their own scrutiny of draft EU legislation or examine a draft EU policy that might interest them at a very early stage while there is time to make changes. They could contact the offices of the Ceann Comhairle or Cathaoirleach with their views or the JCEA or JCES or the appropriate Sectoral Committee.

What could also be considered is the production of an online Oireachtas service cataloguing EU documents. This could be based on or adapted from the current IPEX service ([www.ipex.eu/ipex/](http://www.ipex.eu/ipex/)), which has tracked all Commission documents since 2006, or the EP's OEIL service ([www.europarl.europa.eu/oeil/](http://www.europarl.europa.eu/oeil/)) or the Commission's EUR-LEX service (<http://eur-lex.europa.eu/en/index.htm>)

- 2) Using its resources effectively and prioritising what's important must be a key aim for the Oireachtas in its new role.

A way of filtering out what does not require detailed Oireachtas scrutiny and identifying what does must be devised. Such a list of key proposals could be produced by the Ceann Comhairle and the Chairs of the JCEA & JCES, working with specialist

Oireachtas staff and in conjunction with counterparts in other National Parliaments, possibly through COSAC, and in the European Parliament, which already performs this function.

Political parties, TDs, and Senators should be able to request the automatic scrutiny of any measures that they feel deserve further examination.

- 3) The Commission produces its Annual Work Programme in October or November for the following year. Again this draft Work Programme must now be circulated to all Parliaments and copies should be forwarded directly to each TD and Senator for examination and response before the EU Institutions finalise the Programme.
- 4) Indeed, the Commission would welcome input from the Parliaments of the 27 Member States at the time of preparing the Draft Work Programme. This is important for it would be much more desirable for a small country like Ireland to exert influence at the pre-Annual Work Programme stage than either to make recommendations at draft stage or to scrutinise the legislative process later on.

The week of the 9<sup>th</sup> May, Europe Day, could be the occasion for a weeklong debate in the Dáil and Seanad on Ireland's priorities for inclusion in the Draft EU Annual Work Programme. The public should be invited to submit ideas prior to the debates. The debate should review the national progress in implementing the current year's work programme and should focus, in particular, on identifying the major issues of concern to Ireland for inclusion in the following year's EU Draft Work Programme. The key issues identified by the Dáil and Seanad should then be forwarded to the Commission by the Ceann Comhairle and the Cathaoirleach on behalf of the Oireachtas.

#### The Joint Oireachtas Committees:

- 5) Inevitably, much of the work relating to the new powers conferred on National Parliaments will be carried out by the Members of the Joint Oireachtas Committees. At present the Joint Oireachtas Committee on European Affairs (JCEA) and the Joint Oireachtas Committee on European Scrutiny (JCES) are responsible for dealing with all EU matters coming before the Oireachtas.

This distinction between the sectoral Joint Committees which are presumed to deal with 'national' issues and the JCEA and JCES which are responsible for 'European' issues is now an entirely artificial one. Virtually no topic considered by any of the Oireachtas' sectoral committees is untouched by developments at EU level (Title I of the Treaty on the Functioning of the EU provides clarification of the EU's exclusive, shared and supporting competences).

The case for such a division of responsibilities between the JCEA/JCES and the other sectoral Committees is even less justifiable now, post-Lisbon. There is a danger that the onus of implementing the Oireachtas' new powers under the Treaty will remain with the two European committees. If this were to be the case it is unlikely that the Oireachtas would be able to achieve the role envisaged for National Parliaments under the Treaty.

Greater emphasis should therefore be placed on deepening the involvement of the sectoral Joint Committees in European affairs. These Joint Committees should become the automatic 'port of call' for all European Commission proposals, similar to the way in which the European Parliament's sectoral committees deal with EU affairs at present.

The role of the JCEA and the JCES could be similar to the role of the EP's Constitutional Affairs Committee, which examines how the EU works. They can perform the same service for the Oireachtas. But also they must retain a co-ordinating role to manage and co-ordinate the work of the sectoral Committees.

- 6) The EU workload is divided into two categories - policy discussion documents such as Green and White Papers together with the Annual Work Programme and, secondly, draft legislative proposals.
  - a) The Joint Oireachtas Committee on European Affairs would normally deal with policy issues. Under Lisbon the sectoral Committees should be centrally involved so that the burden of the extra workload is shared. Some policy documents can be dealt with through formal deliberations of the sectoral Committees themselves and by inviting the

witness submissions of stakeholders and other interested bodies where appropriate.

To assist in its enhanced scrutiny of EU affairs, greater emphasis should be placed on inviting interested parties to appear before Oireachtas committees, e.g. European Commission officials, department officials taking part in Council working groups, Government Ministers attending Council, MEPS (Irish and from other Member States), and Irish and Brussels-based representatives of the social partners and NGOs.

- b) Secondly, smaller sub-committees of the Sectoral Committees can be appointed to carry out the same function as the full Committees where relevant.
- c) Thirdly, individual Members who have a particular interest can volunteer to become Rapporteurs, carry out an in depth study and present a report to the Joint Committee. This is done occasionally at present by some of the Committees as a way of expediting the business of the Committees. It should become a central part of the work of all the Joint Committees. The Rapporteur mechanism would be particularly relevant to the Joint Committee on Justice, Equality, Defence and Women's Rights because of the extensive new powers of scrutiny bestowed on the Oireachtas in relation to the area of freedom, security and justice. The political monitoring of Europol and evaluation of the activities of Eurojust come within the remit of the Oireachtas for the first time. Moreover, the opt-in clause which Ireland and Britain negotiated in relation to all decisions in the area of freedom, security and justice will require early scrutiny and early decisions to ensure that Ireland can participate fully in the development of justice policies where it chooses to opt in.
- d) When EU policy documents and the draft Annual Work Programme have been scrutinised and amended by the Sectoral Committees of the Oireachtas, their Sub-Committees and Rapporteurs, they should be forwarded to the Joint Committee on European Affairs for final approval. They should then be lodged with the Ceann Comhairle and the Cathaoirleach and should be forwarded

to the Whips Office for tabling on the floor of both Houses for plenary debate and decision before forwarding to Brussels.

- 7) At present, draft legislative measures emanating from the EU are scrutinised by the Joint Oireachtas Committee on European Scrutiny. Earlier input by the Oireachtas as outlined above into draft EU policies and the Commission's Draft Work Programme should ensure that TDs and Senators will already be familiar with major legislative initiatives by the time they arrive on the desk of the Scrutiny Committee. However, there are a vast array of regulations and directives produced by the EU Institutions. Measures similar to those proposed above for expediting the work of the Joint Committee on European Affairs through sharing the burden of examining policy issues will be required for the examination of draft legislative proposals. The sectoral Joint Committees should play the same central role in relation to scrutiny of legislative proposals. Otherwise the Joint Committee on European Scrutiny could get bogged down by the sheer quantity of documentation and work.

Upholding the Principle of Subsidiarity:

- 8) The Joint Oireachtas Committee on European Scrutiny will play a central role in the most significant new power conferred on the Dáil and Seanad by the Lisbon Treaty. This is the power to ensure that the policies of the EU comply with the principle of subsidiarity. The EU may only develop policies in areas in which it has competences under the Treaties. The EU may not intrude in areas that are the preserve of the Member States. The National Parliament of each Member State, under the Lisbon Treaty, is the watchdog and policeman of the principle of subsidiarity.

Under the Lisbon Treaty each legislative measure produced by the Commission will be issued to each of the National Parliaments when drafted. Each Parliament will have eight weeks to examine for breach of subsidiarity. If a third of Parliaments (or a quarter in the case of Justice and Home Affairs) find the measure to be in breach of the principle of subsidiarity and they table their submissions within eight weeks of receiving the measure, the Commission may have to amend or withdraw the measure as a result.

It would be inappropriate for a Committee of the Oireachtas to make such an important determination. Rather, the Joint Committee on European Scrutiny should arising from its own deliberations or those of a Sectoral Committee or other mechanism, establish a view or opinion that the principle has been breached and should then forward a reasoned opinion to the Dáil and Seanad. Both Houses should then debate the issues and make their determinations. If both Houses agree that a breach occurred, then the Ceann Comhairle and the Cathaoirleach on behalf of the Oireachtas, should forward the decision to the Commission.

- 9) Because effective action to protect against breaches of subsidiarity can only be taken on the basis of a collective decision of nine States (seven in the case of Justice and Home Affairs), there will be need for a streamlined liaison system to facilitate the swift communication of information between Member States.

A user friendly website will be required for the early and swift exchange of information and views. The current IPEX service could be adapted for the purpose.

Video conferencing would be an essential mechanism to link key figures in the Scrutiny Committees of Member States at short notice. Each Member State would require similar suites of equipment, with trained personnel.

- 10) The Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) is the body representing the Joint Committees on EU Affairs and EU Scrutiny. It is ideally placed to co-ordinate the work of Member States. The role and responsibility of COSAC as an informal forum for the exchange of views between the chairs and members of the Joint Committees should be transformed into a more formal structure with responsibility for facilitating the Member States in liaising with each other, in agreeing a collective opinion on a suspected breach of subsidiarity and in ensuring that the required amount of support is in place.
- 11) An eight week window of opportunity is all that is available for detecting a breach of subsidiarity, consulting with other EU Member States and taking joint action. That will require the putting in place of an early warning system at COSAC level so that the responsibility for detecting a breach of subsidiarity

does not rest solely with the Parliaments and individual Committees of the Member States.

Also, it will require a streamlined system that will trigger a rapid response when a breach of subsidiarity is detected either by the COSAC early warning system or by the Parliaments of the Member States.

- 12) Clearly, the issue of resources is a key one. The new parliamentary powers under Lisbon cannot be implemented without significant additional resources in the Oireachtas and in the Parliaments of all the Member States.

The additional work will be undertaken by Member States which have very unequal resources at present.

- a) To ensure state of the art systems and standardisation of systems that are accessible to all 27 Member States, the Commission together with the European Council should assist in ensuring that each State is provided with the funding to install the necessary facilities. Similarly, COSAC requires upgraded facilities to co-ordinate its links with each Member State. The Governments of the 27 Member States should be tasked with ensuring that the resources, the facilities, the equipment, the training and the personnel are all in place and adequate for the National Parliaments to fulfil their collective duties arising from the Lisbon Treaty.
- b) Each Joint Committee should have immediate access to policy and legal advisors as required.
- c) The Library and Research Service should be resourced and should be available as required to Joint Committees, Sub-Committees and Rapporteurs involved in EU scrutiny.

#### Transposing EU Legislative Measures:

- 13) The circle must be closed. When all the scrutiny is done, when the legislative proposals have been examined, amended and agreed, then each Member State must transpose the EU legislative measures into domestic legislation.

At present the vast majority of such proposals are deemed to constitute secondary legislation and are transposed by the relevant Dáil Minister through the mechanism of Statutory Instruments. This legislative process lacks democracy and transparency. It involves no debate and is not subject to amendment by either House of the Oireachtas on the final character of the legislation. The checks and balances of parliamentary democracy are missing when a Minister can introduce a significant body of EU legislative proposals that are legally binding on the citizenry without reference to the Oireachtas.

This situation can no longer be tolerated. The role of the Minister in the enactment of EU derived law is excessive and must be curtailed. The parliamentary treatment granted to home produced draft legislation must be extended to draft legislation initiated within the EU Institutions.

At present Regulatory Impact Assessments are prepared for Ministers on all EU Directives and significant regulations when considering the transposition of legislative proposals.

These Assessments should be forwarded automatically to the Sectoral Oireachtas Committees for consideration when significant EU laws are being considered.

The Sectoral Committees should advise the Minister and the JCEA as to their opinion on whether the transposition should take place by Statutory Instrument or by primary legislation.

Where Statutory Instrument is recommended the text of the Instrument should be circulated to the relevant Sectoral Committee, the JCEA and to all Oireachtas members to enable final scrutiny and to guard against "gold plating" i.e. the gilding of EU legislative measures by individual Ministers.

Where primary legislation is recommended the full Oireachtas plenary process should be followed.

The Seanad is well placed to deal with the initial stages of transposition of EU legislation. Most domestic Bills are introduced in the Dáil, subjected to

searching debate, amended in Committee and transmitted to the Seanad for checking, rounding off and completion.

The Seanad can perform the same central role for legislative proposals coming from the EU Commission and the fine-tuning at the end of the process can be performed by the Dáil.

To strengthen the role and expertise of the Seanad in the transposition of EU legislative proposals a new Seanad Vocational Panel of 5 members should be established as recommended by the Sub-Committee on Ireland's Future in the European Union.

A unicameral system would be simply incapable of coping with the doubling of legislation which the EU entails. A bicameral system is ideally suited to deal with the EU corpus of legislation and thereby, to share the burden of work between the Dáil and Seanad.

Where appropriate, of course, the legislative process could start in the Dáil rather than in the Seanad.

#### Oireachtas Accountability:

14) Finally, it must be remembered that the Oireachtas has to exercise two principal functions on behalf of the public. As well as enacting legislation, the Oireachtas must hold the Government to account.

Clearly, the Lisbon Treaty, in Art 10 TEU, expects that the Heads of Governments of the Member States will be held accountable by their National Parliament:

"Member States are represented in the European Council by their Heads of State of Government and in the Council by their Governments, themselves democratically accountable to their National Parliaments or to their citizens"

Likewise, the Irish Constitution states in Article 28 (4) 1 "The Government shall be responsible to Dáil Éireann".

Most new EU policies and laws are still proposed by the European Commission. They will still be considered by the Council of Ministers, the European Parliament and the

European Council of Heads of State, even after the Lisbon Treaty. At present each Member State decides its own negotiating position after consultation with its National Parliament, to a greater or lesser degree.

In the case of Ireland, the Minister for Foreign Affairs meets the Joint Committee on European Affairs monthly in the week prior to the meeting of the EU Council of Ministers, to discuss agenda items and the Minister reports back at the following monthly meeting. But the Minister may disregard the views of the Committee Members if he/she chooses.

Likewise, the Taoiseach attends European Council meetings and reports back the following week to the Dáil for an eighty minute debate. However, the Taoiseach never seeks the advice or opinion of the Oireachtas or of the Joint Committee on European Affairs prior to European Council meetings.

Major decisions are made at Council meetings by Ministers and at the European Council meetings by Heads of State which have absolutely no input from the Oireachtas or its Committees.

It is a serious matter that the Oireachtas is not exercising its Constitutional role of holding the Government accountable in any meaningful way in matters European. For example, the Government committed €1.3 billion of taxpayer's money as part of a package of financial supports for Greece without any reference to Parliament until well after the decision was taken.

In the first instance all Ministers should be obliged to appear before their respective Joint Committees or before the Joint Committee on EU Affairs prior to travelling to Brussels for meetings of the Council where decisions may be made so that they can fulfil their watchdog role on behalf of the Oireachtas and ensure accountability.

The United Kingdom has developed a successful Scrutiny Reserve mechanism, whereby Government may not agree to EU proposals in the Council of Ministers until the parliamentary scrutiny process has been completed. While most documents only require a basic scrutiny, some require an in depth examination when they are of significant national importance.

The Scrutiny Reserve system would ensure the necessary oversight and accountability. It would ensure meaningful discussion with the Government on the issues involved and at the same time would not rigidly tie the hands of the Irish Government in their negotiations with their counterparts in other Member States.

Similarly, the Taoiseach should have to address the Oireachtas prior to attending Council meetings. He should detail the significant issues where decisions might be taken and Ireland's position on each, and allow for a debate in Parliament on the content of the issues and the merits of the Government's position.

The President of the Council, Herman Van Rompuy, has made it clear that he would like to see the quarterly Summit Meetings of Heads of State replaced by monthly meetings. In times of crisis urgent decisions and more frequent meetings are required, resulting in ever more decisions being taken at EU level that impact on domestic matters.

Moreover, the new co-decision making powers of the European Parliament will require greater interaction with the EU Council. Therefore it is all the more important that the Taoiseach has the benefit of the views of the Members of the Oireachtas before the European Council adopts its collective position for negotiations with the European Parliament on an important and controversial issue.

#### Addressing the Democratic Deficit:

15) The main reasons for deepening the role of National Parliaments in EU affairs was to reduce the democratic deficit by heightening awareness of the EU amongst the public and their elected representatives.

It is important, therefore, to involve and engage the public where possible.

- a) It is important that the Oireachtas link up with the offices of the Commission and European Parliament in Ireland to maximise their joint remit to communicate Europe to the Irish people.

The Oireachtas should provide an Oireachtas Information Office which would make available useful materials, documents and electronic goods and services to inform the 50,000 people who visit the Houses of the Oireachtas annually.

The Commission and European Parliament offices could organise outreach programmes, meetings and competitions, particularly in schools throughout the country to which TDs and Senators could be invited to provide an input.

- b) The National Broadcaster and the media in general must be encouraged to increase coverage of EU matters which will now be discussed at the Sectoral Joint Committees and in the Dáil and Seanad to a much greater degree and in a more relevant way than heretofore.
- c) Finally, the Oireachtas in plenary debates and in Sectoral Committee scrutiny can engage the public by using electronic communication to encourage them to participate. This would be particularly relevant in dealing with the big issues of Subsidiarity, the Draft Annual Work Programme and Green and White Papers.
- d) The new EU Citizen's Initiative has the potential to assist each and every citizen to place directly on the agenda of the EU matters of deep concern to them.

The Oireachtas and the representatives of the Commission and European Parliament should be proactive in offering advice and providing assistance to encourage this new EU mechanism in peoples' democracy.

- e) Indeed, a similar Citizen's Initiative should be provided for Irish citizens to entitle them to make a direct input into the Agenda of the Oireachtas.

In conclusion, the Lisbon Treaty significantly enhances the role of the Oireachtas. Its provisions cannot be implemented without reforming the present ordering and conduct of business of in the Dáil and Seanad. The role of the EU in our lives can no longer be cynically swept out of sight and out of mind to suit the political whim of Irish Governments. The EU can no longer be treated as a separate entity blamed when something goes wrong and not given the credit when it delivers. The first step is to factor EU matters into the daily business of the Oireachtas on a formal and structured basis. The Lisbon Treaty provides us with the wherewithal to engage meaningfully with the European Union for the future.

ENDS

Appendices: THE ROLE OF THE OIREACHTAS POST LISBON

#### Article 12

National Parliaments contribute actively to the good functioning of the Union:

- (a) through being informed by the institutions of the Union and having draft legislative acts of the Union forwarded to them in accordance with the Protocol on the role of national Parliaments in the European Union;
- (b) by seeing to it that the principle of subsidiarity is respected in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- (c) by taking part, within the framework of the area of freedom, security and justice, in the evaluation mechanisms for the implementation of the Union policies in that area, in accordance with Article 70 of the Treaty on the Functioning of the European Union, and through being involved in the political monitoring of Europol and the evaluation of Eurojust's activities in accordance with Articles 88 and 85 of that Treaty;
- (d) by taking part in the revision procedures of the Treaties, in accordance with Article 48 of this Treaty;
- (e) by being notified of applications for accession to the Union, in accordance with Article 49 of this Treaty;
- (f) by taking part in the inter-parliamentary cooperation between national Parliaments and with the European Parliament, in accordance with the Protocol on the role of national Parliaments in the European Union.

PROTOCOL (No 1)  
**ON THE ROLE OF NATIONAL PARLIAMENTS IN THE EUROPEAN  
UNION**

THE HIGH CONTRACTING PARTIES,

RECALLING that the way in which national Parliaments scrutinise their governments in relation to the activities of the Union is a matter for the particular constitutional organisation and practice of each Member State,

DESIRING to encourage greater involvement of national Parliaments in the activities of the European Union and to enhance their ability to express their views on draft legislative acts of the Union as well as on other matters which may be of particular interest to them,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community:

TITLE I

INFORMATION FOR NATIONAL PARLIAMENTS

Article 1

Commission consultation documents (green and white papers and communications) shall be forwarded directly by the Commission to national Parliaments upon publication. The Commission shall also forward the annual legislative programme as well as any other instrument of legislative planning or policy to national Parliaments, at the same time as to the European Parliament and the Council.

Article 2

Draft legislative acts sent to the European Parliament and to the Council shall be forwarded to national Parliaments.

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European

Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

Draft legislative acts originating from the Commission shall be forwarded to national Parliaments directly by the Commission, at the same time as to the European Parliament and the Council.

Draft legislative acts originating from the European Parliament shall be forwarded to national Parliaments directly by the European Parliament.

Draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank shall be forwarded to national Parliaments by the Council.

### Article 3

National Parliaments may send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity, in accordance with the procedure laid down in the Protocol on the application of the principles of subsidiarity and proportionality.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the reasoned opinion or opinions to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the reasoned opinion or opinions to the institution or body concerned.

### Article 4

An eight-week period shall elapse between a draft legislative act being made available to national Parliaments in the official languages of the Union and the date when it is placed on a provisional agenda for the Council for its adoption or for adoption of a position under a legislative procedure. Exceptions shall be possible in cases of urgency, the reasons for which shall be stated in the act or position of the Council. Save in urgent cases for which due reasons have been given, no agreement may be reached on a draft legislative act during those eight weeks. Save in urgent cases for which due reasons have been given, a ten-day period shall elapse between the placing of a draft legislative act on the provisional agenda for the Council and the adoption of a position.

Article 5

The agendas for and the outcome of meetings of the Council, including the minutes of meetings where the Council is deliberating on draft legislative acts, shall be forwarded directly to national Parliaments, at the same time as to Member States' governments.

Article 6

When the European Council intends to make use of the first or second subparagraphs of Article 48(7) of the Treaty on European Union, national Parliaments shall be informed of the initiative of the European Council at least six months before any decision is adopted.

Article 7

The Court of Auditors shall forward its annual report to national Parliaments, for information, at the same time as to the European Parliament and to the Council.

Article 8

Where the national Parliamentary system is not unicameral, Articles 1 to 7 shall apply to the component chambers.

TITLE II

INTERPARLIAMENTARY COOPERATION

Article 9

The European Parliament and national Parliaments shall together determine the organisation and promotion of effective and regular interparliamentary cooperation within the Union.

## Article 10

A conference of Parliamentary Committees for Union Affairs may submit any contribution it deems appropriate for the attention of the European Parliament, the Council and the Commission. That conference shall in addition promote the exchange of information and best practice between national Parliaments and the European Parliament, including their special committees. It may also organise interparliamentary conferences on specific topics, in particular to debate matters of common foreign and security policy, including common security and defence policy. Contributions from the conference shall not bind national Parliaments and shall not prejudge their positions.

## PROTOCOL (No 2)

**ON THE APPLICATION OF THE PRINCIPLES OF SUBSIDIARITY  
AND PROPORTIONALITY**

THE HIGH CONTRACTING PARTIES,

WISHING to ensure that decisions are taken as closely as possible to the citizens of the Union,

RESOLVED to establish the conditions for the application of the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union, and to establish a system for monitoring the application of those principles,

HAVE AGREED UPON the following provisions, which shall be annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union:

## Article 1

Each institution shall ensure constant respect for the principles of subsidiarity and proportionality, as laid down in Article 5 of the Treaty on European Union.

## Article 2

Before proposing legislative acts, the Commission shall consult widely. Such consultations shall, where appropriate, take into account the regional and local dimension of the action

envisaged. In cases of exceptional urgency, the Commission shall not conduct such consultations. It shall give reasons for its decision in its proposal.

### Article 3

For the purposes of this Protocol, "draft legislative acts" shall mean proposals from the Commission, initiatives from a group of Member States, initiatives from the European Parliament, requests from the Court of Justice, recommendations from the European Central Bank and requests from the European Investment Bank for the adoption of a legislative act.

### Article 4

The Commission shall forward its draft legislative acts and its amended drafts to national Parliaments at the same time as to the Union legislator.

The European Parliament shall forward its draft legislative acts and its amended drafts to national Parliaments.

The Council shall forward draft legislative acts originating from a group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank and amended drafts to national Parliaments.

Upon adoption, legislative resolutions of the European Parliament and positions of the Council shall be forwarded by them to national Parliaments.

### Article 5

Draft legislative acts shall be justified with regard to the principles of subsidiarity and proportionality. Any draft legislative act should contain a detailed statement making it possible to appraise compliance with the principles of subsidiarity and proportionality. This statement should contain some assessment of the proposal's financial impact and, in the case of a directive, of its implications for the rules to be put in place by Member States, including, where necessary, the regional legislation. The reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators. Draft legislative acts shall take account of the need for any burden, whether financial or administrative, falling upon the Union, national governments, regional or local authorities, economic operators and citizens, to be minimised and commensurate with the objective to be achieved.

#### Article 6

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.

If the draft legislative act originates from a group of Member States, the President of the Council shall forward the opinion to the governments of those Member States.

If the draft legislative act originates from the Court of Justice, the European Central Bank or the European Investment Bank, the President of the Council shall forward the opinion to the institution or body concerned.

#### Article 7

1. The European Parliament, the Council and the Commission, and, where appropriate, the group of Member States, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, shall take account of the reasoned opinions issued by national Parliaments or by a chamber of a national Parliament.

Each national Parliament shall have two votes, shared out on the basis of the national Parliamentary system. In the case of a bicameral Parliamentary system, each of the two chambers shall have one vote.

2. Where reasoned opinions on a draft legislative act's non-compliance with the principle of subsidiarity represent at least one third of all the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the draft must be reviewed. This threshold shall be a quarter in the case of a draft legislative act submitted on the basis of Article 76 of the Treaty on the Functioning of the European Union on the area of freedom, security and justice.

After such review, the Commission or, where appropriate, the group of Member States, the European Parliament, the Court of Justice, the European Central Bank or the European Investment Bank, if the draft legislative act originates from them, may decide to maintain, amend or withdraw the draft. Reasons must be given for this decision.

3. Furthermore, under the ordinary legislative procedure, where reasoned opinions on the non-compliance of a proposal for a legislative act with the principle of subsidiarity represent at least a simple majority of the votes allocated to the national Parliaments in accordance with the second subparagraph of paragraph 1, the proposal must be reviewed. After such review, the Commission may decide to maintain, amend or withdraw the proposal.

If it chooses to maintain the proposal, the Commission will have, in a reasoned opinion, to justify why it considers that the proposal complies with the principle of subsidiarity. This reasoned opinion, as well as the reasoned opinions of the national Parliaments, will have to be submitted to the Union legislator, for consideration in the procedure:

- (a) before concluding the first reading, the legislator (the European Parliament and the Council) shall consider whether the legislative proposal is compatible with the principle of subsidiarity, taking particular account of the reasons expressed and shared by the majority of national Parliaments as well as the reasoned opinion of the Commission;
- (b) if, by a majority of 55 % of the members of the Council or a majority of the votes cast in the European Parliament, the legislator is of the opinion that the proposal is not compatible with the principle of subsidiarity, the legislative proposal shall not be given further consideration.

#### Article 8

The Court of Justice of the European Union shall have jurisdiction in actions on grounds of infringement of the principle of subsidiarity by a legislative act, brought in accordance with the rules laid down in Article 263 of the Treaty on the Functioning of the European Union by

Member States, or notified by them in accordance with their legal order on behalf of their national Parliament or a chamber thereof.

In accordance with the rules laid down in the said Article, the Committee of the Regions may also bring such actions against legislative acts for the adoption of which the Treaty on the Functioning of the European Union provides that it be consulted.

#### Article 9

The Commission shall submit each year to the European Council, the European Parliament, the Council and national Parliaments a report on the application of Article 5 of the Treaty on European Union. This annual report shall also be forwarded to the Economic and Social Committee and the Committee of the Regions.

