

OPAL Country Reports

The Irish Parliament and EU Affairs

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OPAL Country Report on the Irish Parliament¹

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I. General Position of Parliament in the Constitutional Balance of the Member State: Constitutional and institutional factors	
This section looks at the role of Parliament in the political system, to help us understand the relative power position of the legislature.	
1.1	What is the type of government in the political system of your member state? (i.e. parliamentary or semi-presidential)
	Parliamentary.
1.2	Is it a uni- or bicameral Parliament? If bicameral, is one house dominant or are both equally strong? Please briefly explain.
	<p>Ireland has a bicameral parliament. The membership of the lower House (<i>Dáil Éireann</i> or more simply the <i>Dáil</i>) which has 166 members, is directly elected by the electorate as a whole under the system of proportional representation by means of the single transferable vote (with elections at least once every five years). The membership of the upper House (<i>Seanad Éireann</i> or more simply the <i>Seanad</i>) consists of 60 members. 43 of these are elected by less than 1,000 (elected) local authority members from broad panels of candidates representing (broadly) culture, agriculture and fisheries, labour, industry and commerce and public administration (43 members) 6 are elected by graduates of (some) Irish universities Trinity College Dublin and the National University of Ireland universities). 11 are nominated by the <i>Taoiseach</i> (prime minister).</p> <p>The combination of (a) a remarkably narrowly legislatively-defined electorate which is itself dominated by political parties supplemented by (b) a large number of members directly nominated by the <i>Taoiseach</i> ensures that the <i>Dáil</i> – itself dominated in turn by the executive via the machine of tightly-exercised party political control - has kept for itself the upper hand in political life. The somewhat ironic result is that Government proposals in the present Programme for Government to hold a referendum to abolish the <i>Seanad</i> now enjoy a considerable measure of support</p>
1.3	Is the state federal, decentralized or unitary? If applicable, is it a form of asymmetrical federalism?
	Ireland is a unitary and indeed highly centralised state, with only a very weak system of local government.
1.4	Briefly describe the electoral system, if applicable, for each chamber.
	Please refer to 1.2 above.

¹ This country report provides some basic data that has been collected in the context of the research for a chapter to be published in C. Heffler, C. Neuhold, O. Rozenberg, J. Smith & W. Wessels (Eds.). (forthcoming in 2014). *The Palgrave Handbook of National Parliaments and the European Union*. London: Palgrave, Macmillan.

1.5	What (f)actors can prevent the parliament agreeing on EU legislation and/or treaty reform? (e.g. a constitutional court, or public referenda on questions of EU integration)
	<p>The Superior Courts (the High Court and Supreme Court) can and have injuncted the legislature and the executive from ratifying EU treaty changes which they decide are in violation of the Constitution: this occurred the Supreme Court issued an injunction preventing the State from ratifying the Single European Act in <i>Crotty v. An Taoiseach</i> [1987] IR 713. The Courts are not confined to blocking ratification. They can also injunct the incorporation of Treaty changes into Irish domestic law if this would involve an unconstitutionality.</p> <p>In order to forestall such findings, any major European Union Treaty is now invariably – sometimes <i>ex abundanti cautela</i> – facilitated by a popular referendum amending the Constitution so as to specifically authorise adherence to and incorporation into national law of the particular treaty in question. Since the <i>Crotty</i> ruling, Ireland has had a total of seven referendums on European-Union treaties and one referendum to facilitate a non-EU but still European-related treaty (the Fiscal Treaty, with a referendum being held on 31 May 2012 on a proposal to amend Article 29.4 so as to facilitate ratification of this). Of these eight referendums, six have been successful. On two occasions (the referendum on the Treaty of Nice in 2001 and the referendum on the Treaty of Lisbon in 2008) the electorate has withheld its consent, only to reverse its verdict in each case in a further popular vote held the next year, on the basis of political and/or legal commitments being made on the part of the Irish government and/or other member states.</p> <p>Apart from EU treaty reform, although it is possible for the implementation of EU legislation at national level to be invalidated for falling foul of national rules delineating the respective responsibilities of executive and legislature, this would be exceptional. Broad constitutional immunity is given to provisions of EU secondary legislation by the provision of Article 29.4.6° to the effect that no Constitutional provision prevents laws enacted, acts done or measures adopted by the EU from having the force of law in the State (or invalidates laws, acts of measures on the part of the Irish state ‘that are necessitated by the obligations of membership’ of the EU.</p>

2. General Position of Parliament in the Constitutional Balance of the Member State: Political Factors		
This section is about the basic political factors which might influence parliament’s strength in relation to the government.		
2.1	What is the type of government after the most recent elections e.g. single party, minority, coalition, oversized coalition government?	
	Coalition between the Fine Gael party (74 members of the Dáil) and the Labour party (at present – after some defections - 33 members of the Dáil)	
2.2	When were the most recent general elections and what were the results? Could you please give a short list of the parliamentary groups, their no. of seats in parliament and ideological position?	
	Latest election in the LOWER HOUSE:	The last elections to the Dáil took place on 25 February 2011
	Name of the party	No. and percentage of seats in parliament Ideological position (e.g. Communist, left liberal, socialist, liberal, right liberal, conservative, Christian democrat, extreme right, ethnic minority or regionalist party)

	Fine Gael	76 seats (including the speaker or <i>Ceann Comhairle</i> , one member expelled from parliamentary party for voting against Government) => 75 (45%)	Centre-right
	Labour Party	37 seats (subsequently one gained in bye-election, then four lost in defections) => 34 (20%)	Socialist
	Fianna Fáil	20 seats (one of whom has since died, the seat being subsequently lost in a bye-election to Labour) => 19 (11%)	Centrist
	Sinn Féin	14 seats (8%)	Nationalist and left-wing
	Socialist Party	2 seats (one lost subsequently to defection) => 1 (1%)	Hard left
	People Before Profit	2 seats (1%)	Hard left
	Workers and Unemployed Action Group	1 seat (1%)	Hard left
	Independents	14 (subsequently six others gained by defections from Labour and Socialist Party and expulsion from Fine Gael) => 20 (12%)	Varied
	Latest election in the UPPER HOUSE:	The last elections to the Seanad took place on 26 April 2011	
	Name of the party	No. and percentage of seats in parliament (if applicable)	Ideological position (if not mentioned above)
	Fine Gael	19 (increased by an independent member subsequently joining Fine Gael) => 20	See above
	Fianna Fáil	14	See above
	Labour Party	12	See above
	Sinn Féin	3	See above
	Independents (nominated by the Taoiseach (prime minister rather than	12 reduced by an independent member joining Fine Gael) => 11	Varied

	elected).		
2.3	How polarized was parliamentary debate over ratification of the Lisbon Treaty? Which parliamentary party groups supported and which opposed ratification?		
	<p>Parliamentary debate was not particularly polarised in debate over ratification. Not alone did the Government parties (then Fianna Fáil, the Green Party and the Progressive Democrats) support the Twenty-eighth Amendment of the Constitution Bill 2008 (which sought to amend the Constitution so as to facilitate ratification of the Lisbon Treaty. So too did the main Opposition parties (then Fine Gael and Labour). The main parliamentary opposition came from Sinn Féin, but opposition was so numerically slight that insufficient members of parliament opposed for the matter to be put to a vote. Notwithstanding such large-scale parliamentary support, the subsequent referendum was defeated in the very different arena in a referendum. rejected by voters (53.4% to 46.6%, on a turnout of 53.1%) in a referendum held on 12 June 2008. Among the factors which assisted in this defeat included the privately-financed large anti-Treaty campaign of Libertas (essentially a corporation representing the views of a single multi-millionaire), the judicially-required prohibition on Government financing of a particular view in a referendum campaign, the judicially-required balancing of airtime which provided a publicity bonanza for the 'no' side, weak campaigning by the major political parties and the poor performance of the neutral referendum commission designed to promote awareness and knowledge concerning the referendum.</p> <p>Following the securing of guarantees from other member states concerning concerns which had become prominent in the first referendum (which guarantees involved no changes to the Treaties however) and the political commitment to keep the membership of the Commission at one national per member state (a commitment which also involved no treaty change), the question of constitutionally facilitating ratification was subsequently before the people a second time in the form of the Twenty-eighth Amendment of the Constitution (Treaty of Lisbon) Bill 2009. Again the passage of this legislation received very broad support in parliament. On this occasion, the Bill was approved by the Irish electorate (67.1% to 32.9%, on a turnout of 59%) in a referendum held on 2 October 2009 which saw greater civil society participation.</p> <p>Political parties which campaigned for a yes vote included all the Government parties: Fianna Fáil and the Green Party as well as the Progressive Democrats in addition to the two largest Opposition parties, Fine Gael and Labour.</p> <p>The most prominent party to campaign for a 'no' vote was Sinn Féin.</p>		

3. New Provisions of the Lisbon Treaty on Direct Contact with EU Institutions

The Lisbon Treaty provides national parliaments with new opportunities for direct contact with the EU institutions. This section addresses the incorporation of the new Lisbon provisions into national law and concrete procedures. Questions 3.3 to 3.5 investigate in how far these procedures have been used.

3.1	<p>Have there been any regulations adopted by your member state to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon? If so, please list the regulations in their appropriate categories:</p> <ul style="list-style-type: none"> a. Constitutional provisions b. Legal provisions - Statutory provisions c. Parliamentary Standing Orders d. Other (please specify) <p>Is this process complete or ongoing?</p>
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<p>Lower house</p>	<p>Rules have been adopted by Ireland to incorporate the new powers that are entrusted to the national parliaments by the Treaty of Lisbon</p> <p><u>a. Constitutional provisions</u></p> <p>The Irish Constitution was amended so as to facilitate the absorption of the provisions of the Lisbon Treaty generally via the amendment of Article 29.4 of the Constitution, the occasion being used however also to effect a general streamlining of the EU-related provisions in this measure with the insertion of new sub-sections 4° 6 °, 7 °, 8 ° and 9°. The provisions of most relevance are Article 29.4. 5°, Article 29.4.6° and 29.4.8°.</p> <p>Also of relevance for present purposes are Art 29.5.1°, Art 29.5.2°, Art 29.5.3° and Article 29.6 of the Irish Constitution.</p> <p><u>b. Legal provisions - Statutory provisions</u></p> <p>S. 7(1), s. 7(3), s. 7(4) of the European Union Act 2009.</p> <p>Also of interest for present purposes are sections 1 and 2 of the European Communities Act of 1972 (as substituted by sections 2 and 3 of the European Union Act 2009) and s. 1 of the European Communities (Amendment) Act 2012.</p> <p><u>c. Parliamentary Standing Orders</u></p> <p>Dáil Standing Orders 103, 104, 105, 106 and 107</p> <p><u>d. Other (please specify)</u></p> <p>-----</p> <p>The process of adoption of rules is regarded as complete.</p>
<p>Upper house</p>	<p><u>a. Constitutional provisions</u></p> <p>As above.</p> <p><u>b. Legal provisions - Statutory provisions</u></p> <p>As above.</p> <p><u>c. Parliamentary Standing Orders</u></p> <p>Seanad Standing Orders 99, 100, 101, 102 and 103</p> <p><u>d. Other (please specify)</u></p> <p>-----</p> <p>The process of adoption of rules is regarded as complete.</p>
<p>3.2</p>	<p>What exactly are the rules (i.e. parliamentary bodies involved, procedure, regional parliament 's involvement, cooperation in bicameral systems) for...</p>
<p>3.2 i</p>	<p>The "Political Dialogue" with the Commission</p>
<p>Lower house</p>	<p>No formal rules exist concerning the political dialogue with the Commission. In the current parliamentary session, the dialogue has been something of a dead letter to date, with the Commission having apparently received no submissions from the Oireachtas in 2011 bar a single reasoned opinion under the Early Warning Mechanism. The mainstreaming process means that sectoral committees are expected to bear more of the load in relation to the political dialogue - but there is no evidence of this happening to date. In the previous parliamentary sessions, Ireland has participated in the political dialogue, but at a fairly low rate. (See further 3.3 below for more detail in this regard.)</p>
<p>Upper house</p>	<p>See above.</p>

3.2 ii	The Early Warning Mechanism (EWM)
Lower house	<p>The relevant rules concerning the Early Warning Mechanism are found in S. 7(3) of the European Union Act 2009, and as well as - insofar as concerns the Dáil - in Dáil Standing Orders 103, 104 and 105. (The relevant Seanad standing orders are also dealt with in this section for the purposes of clarity.)</p> <p>S. 7 (3) of the 2009 Act provides that</p> <p style="padding-left: 40px;">“either House of the Oireachtas may, not later than 8 weeks after the transmission of a draft legislative act referred to in Article 6 of Protocol No. 2 to the Treaty on European Union and the Treaty on the Functioning of the European Union, send to the Presidents of the European Parliament, the Council and the European Commission a reasoned opinion in accordance with that Article if the House concerned passes a resolution in respect of the draft legislative act concerned authorising the House to so do.”</p> <p>More detailed provisions in this regard were set out in Dáil and Seanad Standing Orders - more specifically, Dáil Standing Orders 103, 104 and 105 and Seanad Standing Orders 99, 100 and 101.</p> <p>Dáil Standing Order 103 and Seanad Standing Order 99 provide that there should stand established following respectively the reassembly of the Dáil after a general election or the commencement of every Seanad, a select committee. The select committee in question is not named. But various provisions are made in relation to it. The select committees are required to come into existence quickly – the Dáil is to appoint thirteen members to its select committee not later than on the third sitting day following its reassembly, of whom five are to constitute a quorum. The smaller Seanad has to appoint six members to its equivalent select committee, of whom three are to constitute a quorum – and each Seanad too has to do this not later than the third sitting day following its commencement. Each House is required to define the functions to be performed by its select committee and the powers to be devolved on it (<i>i.e.</i>, above and beyond those set out in the Standing Orders themselves).</p> <p>Whether the select committee appointed by each House works separately from that appointed by the other House (or indeed separately from a committee appointed by the same House) is left to the select committees themselves. Hence under Dáil Standing Order 104(3) and Seanad Standing Order 100(3), the relevant select committee on which powers are conferred (<i>i.e.</i>, under Dáil Standing Orders 105, 106 or 107 or Seanad Standing Orders 101, 102 or 103) is to have the power to request of another select committee of <i>either</i> House on which such powers have been similarly conferred that a joint meeting of both committees be held to consider “a specific matter or matters of common activity”.</p> <p>Joint meetings are not mandatory however: Both Houses’ Standing Orders specify that such a select committee which has been joined with a select committee appointed by the other House to form a joint committee “may nevertheless decide to act as a Select Committee of [its own House] in respect of a specified matter or matters or for a specified time period for the purpose of exercising the said powers.” (See Dáil Standing Order 104(1); Seanad Standing Order 100(1).) To date the only reasoned opinion ever sent by the Oireachtas (that in relation to the proposal for a Common Consolidated Corporate Tax Base, which was sent in 2011) was drafted by a select committee of the Dáil, “the Select Committee on Standing Order 103”. This was set up as an interim measure because at the time it was set up, the Seanad was not yet able to contribute members to a Joint Committee by reason of the elections to that House being later in the year than those to the Dáil.</p> <p>The procedure in each House is for draft legislative acts forwarded to the House to be referred to “a Select Committee empowered under the Standing Order.” Which select committee this is to be is not identified any more precisely than this in the Standing Order. The select committee is empowered to form a reasoned opinion that a draft legislative act does not comply with the principle of subsidiarity. (See Standing Order 105(1) and (3)(a) and Seanad Standing Order 101(1) and (3)(a).)</p> <p>Under both Dáil Standing Order Order 105(3)(a) and Seanad Standing Order 101(3)(a), in</p>

	<p>forming this reasoned opinion the select committee is required to consult with such other committees and stakeholders as it sees fit. This opened up a role, even if a lesser one, for sectoral committees, in the subsidiarity process, as well as the possibility of consulting 'stakeholders'.</p> <p>Where the select committee is of the opinion that a draft legislative act does not comply with the principle of subsidiarity, it is required to submit a reasoned opinion to this effect by way of a report which has to be laid before the relevant House. (See Order 105(3)(b) of the Dáil Standing Orders and Order 101(3)(b) of the Seanad Standing Orders, respectively.) In keeping with the approach adopted in the 2009 Act, no provision is made for a report where the committee is of the opinion that a draft legislative act is <i>not</i> in breach of the principle of subsidiarity.</p> <p>Once such a report is laid, the committee chairman is required to table a motion on it 'forthwith' under s. 7(3) of the European Union Act 2009 and this motion is required to be given priority on the House Order Paper. (The degree of urgency required for dealing with such motions is clearly driven by the eight week deadline under the Subsidiarity Protocol for transmitting reasoned opinions by national parliaments or chambers.)</p> <p>Where the House agrees the motion, the Ceann Comhairle (in the case of the Dáil) or the Cathaoirleach (in the case of the Seanad) has to cause a copy of the consequent resolution, together with a copy of the select committee's report to be sent to the Presidents of the European Parliament, the Council and the Commission. (See Order 105(3)(c) of the Dáil Standing Orders and Order 101(3)(d) of the Seanad Standing Orders, respectively.)</p>
Upper house	<p>Beyond what is noted in the previous answer, note that the relevant rules are found in S. 7(3) of the European Union Act 2009 (set out above) as well as in Seanad Standing Orders 99, 100 and 101.</p>
3.2 iii	<p>The "Passarelle clause"</p>
Lower house	<p>The relevant rules are found in Article 29.4.8° of the Constitution, s. 7(1) and s. 7(2) of the European Union Act 2009, Orders 106 and 107 of the Dáil Standing Orders. (The relevant Seanad standing orders are also dealt with in this section for the purposes of clarity.)</p> <p>European Council Decisions Which Apply Qualified Majority Voting to Decision-Making at Council Level</p> <p>The Irish response to the foregoing changes at Lisbon comes at several levels. Article 29.4.8° (inserted in the Constitution by the Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Act 2009) provides, <i>inter alia</i>, that</p> <p style="padding-left: 40px;">"the State may agree to the decisions...</p> <p style="padding-left: 80px;">i under the Treaty on European Union and the Treaty on the Functioning of the European Union authorising the Council of the European Union to act other than by unanimity...</p> <p style="padding-left: 40px;">but the agreement to any such decision...shall be subject to the prior approval of both Houses of the Oireachtas."</p> <p>This establishes therefore - above and beyond what is to be found in Article 48.7 TEU - that <i>mere lack of opposition</i> on the part of the Irish parliament to such a proposed such decision may suffice to facilitate it for the purposes of <i>European Union</i> law, but it does not suffice for the purposes of domestic <i>Irish</i> constitutional law. As far as the latter is concerned, <i>semble</i> that without positive acts of prior approval of both Houses of the Oireachtas, any Irish agreement to</p>

such a decision will be unconstitutional.

In one way Article 29.4.8° of the Irish Constitution is distinguishable from these comparator situations because it also confers on the Oireachtas the right to have its positive approval required even when the Treaties have anticipated the deployment of a *passerelle* without specifying any role *at all* for national parliaments – which is the case under Treaty articles inserted at Lisbon such as Article 31.3 of the Treaty on European Union, and Article 312.2 of the Treaty on the Functioning of the European Union.

Curiously, however neither the provisions of the European Union Act 2009 nor those of the Standing Orders of both Houses relative to Public Business reflect in any way this requirement of prior approval of both Houses of the Oireachtas which has been written into the Constitution. Instead, both reflect the position (more permissive of Treaty amendments) set out in Art. 48.7 TEU that all that is necessary for the purposes of the simplified revision procedure is that no opposition be expressed to the introduction of qualified majority voting being proposed.

Hence s. 7(1)(a) of the European Union Act 2009 provides that “either House of the Oireachtas may, not later than 6 months after receiving a notification under the third subparagraph of Article 48.7 of the Treaty on European Union, pass a resolution opposing the adoption of the decision to which the notification relates.”

Thus no mention is made of the possibility of a resolution *approving* the adoption of such a decision, which is what Article 29.4.8° of the Constitution seems to envisage. As if to highlight this lacuna, s. 7(1)(b) stipulates merely that “a resolution referred to in paragraph (a) shall constitute an opposition to the decision concerned for the purposes of the third subparagraph of Article 48.7 of the Treaty on European Union, and the European Council shall be informed accordingly thereof.” No mention is made of the possibility of a resolution constituting prior approval of a decision for the purposes of Article 29.4.8° of the Constitution.

This puzzling lack of attention to the provisions of the Constitution is also found in the Standing Orders of both Houses relative to Public Business where it is stipulated that each House can empower a select committee to consider such notifications under the Article 48.7 TEU general *passerelle* to qualified majority voting “as applied by section 7(1) of the European Union Act 2009” as might be referred to the committee from time to time by the House. (See Order 106(1)(a) of the Dáil Standing Orders and Order 102(1)(a) of the Seanad Standing Orders, respectively). It is only where the committee is *opposed* to the decision to which the notification refers, that it is stipulated that it should lay a report to this effect before the relevant House.

Once this report was laid by the committee, the Chairman is required to “forthwith table a motion thereon” under section 7(1) of the Act, which is to be given priority on the Order Paper. (See Order 106(2)(c) of the Dáil Standing Orders and Order 102(2)(c) of the Seanad Standing Orders, respectively.) The urgency *here* seems to be provided by the fact that Article 48.7 of the Treaty on European Union envisages a period of only six months from the date of notification of the initiative for national parliaments to make known their opposition to an initiative to switch away from unanimity voting.

Where the House approves the motion (*i.e.*, of opposition to the decision), then the Ceann Comhairle (in the case of the Dáil) or the Cathaoirleach (in the case of the Seanad) is required to cause a copy of the consequent resolution to be sent to the President of the European Council or the Council as appropriate, together with a copy of the report to which the resolution referred. (See Order 106(3) of the Dáil Standing Orders and Order 102(3) of the Seanad Standing Orders, respectively)

All that is required where the committee is *not* opposed to the decision to which the notification referred, however – something which might be expected to be the more normal situation – is that it send a message to this effect to the other House. (See Order 106(2)(d) of

the Dáil Standing Orders and Order 102(2)(d) of the Seanad Standing Orders).

The only other innovation of note for present purposes in the Orders of each House consisted of the stipulation that in considering such notifications, the relevant select committee is required to “consult with such other committees and such stakeholders as it considers appropriate.” (See Order 106(2)(a) of the Dáil Standing Orders and Order 102(2)(a) of the Seanad Standing Orders, respectively.)

European Council (or Council Decisions) Which Apply Co-Decision (‘the Ordinary Legislative Procedure’) to Decision-Making at Council Level

Insofar as concerns the relevant provisions of the Treaties, a role for each national parliament is specifically envisaged by Article 48.7 TEU and 81.3 TFEU (although not Article 153.2 TFEU and not Article 192.2 TFEU) as a matter of European Union law. Again, where a role is envisaged, the details of how it is to be exercised are left to national law and practice. Again, in Ireland’s case, these details have been filled in by Constitutional and statutory provisions, and by the terms of the Standing Orders of each House Relative to Public Business.

More specifically, the Irish response (or rather responses) to all of these *passerelle* provisions is to be found in Article 29.4.8° of the Constitution (as amended to facilitate ratification of the Lisbon Treaty), in the European Union Act 2009 and in the Standing Orders of both Houses relative to Public Business as amended since November 2010. Neither the statutory provisions nor the amended provisions of the Houses’ Standing Orders appear to take any account of the provisions of the Constitution.

Article 29.4.8° of the Constitution provides that

“the State may agree to the decisions...

...ii under those treaties authorising the adoption of the ordinary legislative procedure...

but the agreement to any such decision...shall be subject to the prior approval of both Houses of the Oireachtas.”

Once again, this establishes that mere lack of opposition on the part of the Irish parliament to any such proposed decision may well suffice to facilitate the taking of the decision for the purposes of European Union law (more specifically, Article 48.7 TEU), but it will not suffice for the purposes of the Irish Constitution: without *positive* acts of prior approval of both Houses of the Oireachtas, any Irish agreement to such a decision will be unconstitutional.

Article 29.4.8° of the Constitution confers an equal right (and indeed requirement) of intervention on the part of the Oireachtas even when the Treaties have provided for the deployment of a *passerelle* without specifying *any* role for national parliaments – which is the case under Treaty articles certain articles of the Treaties of pre-Lisbon Treaty origin such as Article 153(2) TFEU (according to which the ordinary legislative procedure can be applied by the Council to certain decisions in the social policy field) and Article 192(2) TFEU (according to which the ordinary legislative procedure (co-decision) can be applied by the Council to certain decisions in the environmental field).

However, regrettably, no mention of or facilitation of the provisions of Article 29.4.8° of the Constitution concerning *passerelles* to the ordinary legislative procedure is to be seen either in the provisions of the European Union Act 2009 or in the Standing Orders of both Houses relative to Public Business as amended since November 2010

Further, not only do these various provisions confine their attention to Treaty provisions, but they further confine them solely to those Treaty provisions which set out a role for national parliaments. Thus both the 2009 Act and the Standing Orders of the Houses as amended since November and December 2010 refer only to *two* of the four Treaty *passerelles* to the ordinary

	<p>legislative procedure: the Art.48.7 TEU (generalised) <i>passerelle</i> and the Art. 81.3 TFEU (family law) <i>passerelle</i>. No reference is made to the Art. 153.2 TFEU (social policy) <i>passerelle</i> or the Art. 192.2 TFEU (environmental policy) <i>passerelle</i>, the implementation of which is therefore regulated at national level solely by the relevant portions of Article 29.4.8° of the Constitution.</p> <p>S. 7(1) of the 2009 Act makes specific provision regarding the Art. 48.7 generalised <i>passerelle</i>, stipulating that either House of the Oireachtas may, not later than six months after receiving a notification under the relevant subparagraph of Article 48.7 TEU, pass a resolution <i>opposing</i> the adoption of the decision notified. S. 7(1) further provides that such a resolution is to constitute an opposition to the decision concerned for the purposes of Article 48.7 TEU, and the European Council is required to be informed of it. S. 7(1) makes no mention at all of the giving of prior approval to the State's agreement to the deployment of this <i>passerelle</i> (as required by Article 29.4.8° of the Constitution).</p> <p>S. 7(2) makes specific – and very similar – provision for the Art. 81.3 TFEU (family law) <i>passerelle</i>. It stipulates that either House of the Oireachtas may, not later than six months after receiving a notification under Article 81.3 TFEU, pass a resolution opposing the adoption of the notified decision. Furthermore, such a resolution is to constitute an opposition to the decision concerned for the purposes of Article 81.3 TFEU, and the Council is to be informed accordingly thereof.</p> <p>Separate but very similar provision was also made in the Standing Orders of the Houses regarding the Article 48.7 TEU (generalised) <i>passerelle</i> to the ordinary legislative procedure and the Art. 81.3 TFEU (family law) <i>passerelle</i>.</p> <p>In the case of the Article 48.7 TEU (generalised) <i>passerelle</i>, the Standing Orders provide that each House is enabled to empower a select committee to consider notifications under this provision “as applied by section 7(1) of the European Union Act 2009”.² In other words the idea is that a select committee of each House is given responsibility for considering notifications under Article 48.7 TEU of European Council decisions allowing the Council to adopt acts using the ordinary legislative procedure when these notifications are referred to it by the House under section 7(1) of the 2009 Act.</p> <p>In considering such notifications, the select committee is required to consult with such other Sub-Committees and stakeholders as it considers appropriate. Where opposed to the decision to which the notification referred (and not otherwise), the committee is required to lay a report to this effect before the House. Once this is done, the committee chairman is to table a motion on the report “forthwith”, which is required to be given priority on the Order Paper. The rapidity of this procedure is of course a reflection of the six month deadline stipulated in the Treaty on European Union for making known national parliamentary opposition to use of the generalised <i>passerelle</i> to the ordinary legislative procedure.</p> <p>The Ceann Comhairle (speaker) in the case of the Dáil, or the Cathaoirleach (chairperson) in the case of the Seanad is required to cause a copy of all consequent resolutions to the President of the European Council or the Council as appropriate, together with a copy of the select committee report to which the resolution referred. (See Order 106(3) of the Dáil Standing Orders and Order 102(3) of the Seanad Standing Orders, respectively.) This, of course, would only be where the House approves the motion of opposition.</p> <p>Where the select committee is <i>not</i> opposed to the decision to which the notification referred, however – in other words has no objection to the switch to the ordinary legislative procedure proposed at European level – the matter never goes before the full House. All that is required – and the fact that this is all that is required can be said to build a bias into the system in favour of non-opposition to switches to the ordinary legislative procedure proposed at European level – is simply that the select committee send a message to this effect to the other House. (See</p>
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² See Order 106(1)(a) of the Dáil Standing Orders and Order 102(1)(a) of the Seanad Standing Orders.

	<p>Order 106(2)(d) of the Dáil Standing Orders and Order 102(2)(d) of the Seanad Standing Orders, respectively.)</p> <p>No requirement to notify the Government is imposed.</p> <p>In case of the Art. 81.3 TFEU (family law) <i>passerelle</i>, the procedure is precisely the same as that just outlined in relation to Article 48.7 TEU.</p> <p>It remains to examine the domestic Irish response to Articles 82.2 and Article 83.1 TFEU. Article 82.2 TFEU authorises decisions to be made by the Council identifying aspects of criminal procedure: once thus identified, directives concerning these aspects may be adopted by the ordinary legislative procedure. Rather similarly, Article 83.1 TFEU permits decisions by the Council identifying areas of crime coming within that section: once this is done, directives can be adopted in accordance with the ordinary legislative procedure, in order to establish minimum rules concerning the definition of criminal offences and sanctions in the areas in question.</p> <p>Art. 29.4.8° of the Constitution, inserted in its present form by the Twenty-Eighth Amendment of the Constitution (Treaty of Lisbon) Act 2009 provides that</p> <p>“The State may agree to the decisions, regulations or other acts—</p> <p style="padding-left: 40px;">iii under subparagraph (d) of Article 82.2 [and] the third subparagraph of Article 83.1 ...of the Treaty on the Functioning of the European Union, relating to the area of freedom, security and justice,</p> <p style="padding-left: 40px;">but the agreement to any such decision, regulation or act shall be subject to the prior approval of both Houses of the Oireachtas.”</p> <p>The prior approval of each House of the Oireachtas thus has to be granted before the Irish Minister in the Council of the European Union can give his or her consent to any such decision. No further guidance is provided by statute, Standing Orders or resolution of the House as to how this is to be done. Practice in fulfilling similar requirements under the pre-Lisbon Treaty amendment Constitutional rules is simply for each House to pass a resolution giving the approval of the House to measure in question - in the vast bulk of cases, without so much as even one word of debate thereon.</p>
Upper house	<p>The relevant rules are found in Article 29.4.8° of the Constitution, s. 7(1) and 7(2) of the European Union Act 2009, and Order 102 of the Seanad Standing Orders</p>
3.2 iv	<p>The action of annulment before ECJ on breach with the subsidiarity principle (What quota of MPs is needed to enforce the action of annulment?)</p>
Lower house	<p>The relevant rules are found in s. 7(4) of the European Union Act 2009 and Order 107 of the Dáil Standing Orders. (The relevant Seanad standing orders are also dealt with in this section for the purposes of clarity.)</p> <p>Under s. 7(4) of the European Union Act 2009,</p> <p>“where either House of the Oireachtas is of opinion that an act of an institution of the European Union infringes the principle of subsidiarity provided for in the treaties governing the European Union and wishes that proceedings seeking a review of the act concerned be brought in the Court of Justice of the European Union...it shall so notify the Minister in writing for the purposes of Article 8 of Protocol No. 2 to that treaty and the Treaty on European Union and the Minister shall, as soon as may be after being so notified, arrange for such proceedings to be brought.”</p> <p>Such proceedings are - under both Article 8 of Protocol No. 2 and under s. 7(4) of the European Union Act 2009 - brought under Article 263 of the Treaty on the Functioning of the</p>

	<p>European Union.</p> <p>The further details of this process are spelled out by the Standing Orders of Dáil Éireann and Seanad Éireann relative to public business.</p> <p>The Dáil and Seanad Standing Orders respectively provide that each House can empower a select committee to consider whether any act of a European Union institution infringes the subsidiarity principle. (See Order 107(1) of the Dáil Standing Orders and Order 103(1) of the Seanad Standing Orders, respectively.)</p> <p>In so considering, the select committee is required to consult with other such committees and stakeholders as it sees fit. (See Order 107(2)(a) of the Dáil Standing Orders and Order 103(2)(a) of the Seanad Standing Orders, respectively.)</p> <p>Where the select committee is of the opinion that an act of a European Union institution infringed the principle of subsidiarity and wishes that proceedings seeking a review of the act concerned be brought to the Court of Justice of the European Union, the select committee is to lay a report to this effect before the relevant House. (See Order 107(2)(b) of the Dáil Standing Orders and Order 103(2)(b) of the Seanad Standing Orders), Once this is done the Chairman of the committee is required ‘forthwith’ to table a motion under s. 7(4) of the 2009 Act (presumably a motion to notify the Minister). This motion is required to be given priority on the House Order Paper. (See Order 107(2)(c) of the Dáil Standing Orders and Order 103(2)(c) of the Seanad Standing Orders, respectively). The urgency here seems to be injected by Article 263(6) TFEU - part of the general Treaty provision on judicial review, which provides that review proceedings before the Court of Justice of the European Union must generally be brought within two months of the publication of the measure.³</p> <p>Once the House approves the motion, the Ceann Comhairle or the Cathaoirleach of the Seanad as the case may be, is required to send a copy of the consequent resolution to the relevant minister. (See Order 107(3) of the Dáil Standing Orders and Order 103(3) of the Seanad Standing Orders, respectively).</p> <p>The Dáil and Seanad operate by simple majority in approving such motions.</p>
Upper house	Beyond what is noted in the previous answer, note that the relevant rules are found in s. 7(4) of the European Union Act 2009 and Order 103 of the Seanad Standing Orders, respectively.)
3.2 v	Accession of new member states to the EU
Lower house	<p>The relevant rules are found in Art 29.5.1^o, Art 29.5.2^o, Art 29.5.3^o and Article 29.6 of the Irish Constitution, sections 1 and 2 of the European Communities Act of 1972 (as substituted by sections 2 and 3 of the European Union Act 2009).</p> <p>In Ireland, unlike in many other countries, Parliament as such has no formal role in ratification of treaties <i>per se</i>, including accession treaties. However, three important constitutional rules must be borne in mind.</p> <p>First, under Art 29.5.1^o of the Irish Constitution, every international agreement to which the State becomes a party is required to be laid before Dáil Éireann (the lower House) - a technical procedure which involves no debate.</p> <p>Further, and more significantly under Art 29.5.2^o of the Irish Constitution, the State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann. Article 29.5.3^o provides that these rules are not to apply to agreements or conventions of a technical and administrative character. In other words, if the terms of a treaty impose a charge on public funds - which an</p>

³ See Article 263 paragraph 6 TFEU.

	<p>accession treaty will - and the treaty is not of a technical and administrative character - which it is not, then Dáil approval of those terms is required prior to ratification.</p> <p>Thirdly, however, under Art 29.6 of the Irish Constitution - a provision which demonstrates the non-monist nature of the Irish legal system - no international agreement shall be part of the domestic law of the Irish State save as may be determined by the Oireachtas (parliament). Hence, if legislation is required to enable Ireland to implement its obligations under an accession treaty - which it will be then obviously, the Oireachtas will have a role. Implementation legislation in respect of accession treaties is generally passed before Ireland ratifies the treaty in question.</p> <p>The manner in which accession treaties are implemented in Irish law takes a standard format. It may be explained as follows, using the most recent accession treaty signed - that of Croatia, in December, 2011.</p> <p>Section 2 of the European Communities Act of 1972 (as substituted by s. 3 of the European Union Act 2009) provides that inter alia, "(a) the treaties governing the European Union" and "(b) acts adopted by the institutions of the European Union" are to be binding on the State and to be part of the domestic law thereof under the conditions laid down in the treaties governing the European Union. What is meant by "treaties governing the European Union" is then set out in s. 1 of the 1972 Act (as amended by s. 2 of the European Union Act 2009). The list consisted of (a) the Treaty on European Union, (b) the Treaty on the Functioning of the European Union (other than provisions relating to the common foreign and security policy) (c) the Lisbon Treaty, and (d) the treaties governing the European Communities.</p> <p>S. 1 of the European Communities (Amendment) Act 2012 has now provided that the existing definition of "treaties governing the European Union" in s. 1 of the 1972 Act is to be amended inter alia by adding the words "as amended by, inter alia, the Treaty concerning the accession of the Republic of Croatia to the European Union, done at Brussels on the 9th day of December 2011". In this manner the Croatian Accession Treaty has been made part of Irish domestic law. The adoption of this legislation involved, like the adoption of any legislation, the approval of both the lower and the upper House of the Irish parliament.</p>
Upper house	See above.
3.3	How actively does the parliament engage in the political dialogue and "early warning mechanism" with the Commission?
Lower house	<p>As regards the early warning mechanism, to date only one reasoned opinion appears ever to have been sent by the Oireachtas - that in relation to the proposal for a Common Consolidated Corporate Tax Base, which was sent in 2011.</p> <p>As regards the political dialogue, the 2011 Annual Report from the Commission on Relations between the European Commission and National Parliaments (COM(2012) 375 final, Brussels, 10 July 2012) records only one contribution - by the Dáil - to the Political Dialogue Process in the entire year. In reality this was a contribution to the subsidiarity review process, not the political dialogue.</p> <p>Overall, compared with many other European Union member states, there is a relatively low degree of engagement in the process of political dialogue.</p> <p>According to Commission-published figures, between the beginning of the Barroso initiative in 2006 and 2010, the Oireachtas sent a total of seventeen opinions to the European Commission. This corresponds to an average of just over five opinions a year, although there have been peaks and troughs. 2008 saw a record seven contributions made. 2006 saw none at all. (It is also clear that, notwithstanding the impression given by Commission statistics, several of the seventeen opinions sent to the Commission from 2006 to 2010 were not contributions to the political dialogue, properly so called. Some were merely opinions on whether the principle of subsidiarity had been breached at EU level by particular draft pieces of legislation selected in a series of exercises organised by COSAC.)</p>

Upper house	See above.
3.4	Has parliament ever threatened to bring a legislative act to the ECJ because of subsidiarity concerns?
Lower house	No. First, there is probably very little awareness among Oireachtas members, most of whom have no particular expertise or experience of European Union law, of the existence of this possibility (notwithstanding the existence of a parliamentary legal advisor). Nor would this be seen as a step which would have much political salience in terms of its resonance with the electorate. Deference to the executive would be likely to be shown by parliamentarians in relation to taking such a step. Furthermore, the tight exercise of party political control would make this an unlikely prospect in any case if the Government was opposed to the bringing of such litigation.
Upper house	No. Similar considerations apply here to those which apply in relation to the Lower House.
3.5	If applicable to your member state, how does parliament proceed on the ratification of: a. Treaty Establishing the European Stability Mechanism, signed 2 Feb 2012 b. Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, signed 2 March 2012
Lower house	<p>In Ireland, unlike in many other countries, Parliament as such has no formal role in ratification of treaties <i>per se</i>. However, three important constitutional rules must be borne in mind.</p> <p>First, under Art 29.5.1° of the Irish Constitution, every international agreement to which the State becomes a party is required to be laid before Dáil Éireann (the lower House) - a technical procedure which involves no debate.</p> <p>Further, and more significantly under Art 29.5.2° of the Irish Constitution, the State shall not be bound by any international agreement involving a charge upon public funds unless the terms of the agreement shall have been approved by Dáil Éireann. Article 29.5.3° provides that these rules are not to apply to agreements or conventions of a technical and administrative character. In other words, if the terms of a treaty impose a charge on public funds and the treaty is not of a technical and administrative character then prior Dáil approval of those terms is required prior to ratification.</p> <p>Thirdly, however, under Art 29.6 of the Irish Constitution - a provision which demonstrates the non-monist nature of the Irish legal system - no international agreement shall be part of the domestic law of the Irish State save as may be determined by the Oireachtas (parliament). Hence, if legislation is required to enable Ireland to implement its obligations under a treaty then obviously the Oireachtas will have a role. In practice, if any implementing legislation is required, it is generally passed before Ireland ratifies the treaty in question.</p> <ul style="list-style-type: none"> • In the case of the Treaty Establishing the European Stability Mechanism, the relevant implementing legislation is the European Stability Mechanism Act 2012, which is regarded as not only implementing <i>via</i> the Oireachtas of the relevant provisions of the Treaty but also as constituting Dáil approval of the expenditure provided for in the Treaty up to the ceilings currently provided. (If it is ever decided to raise these ceilings, then prior parliamentary approval for this will thus be constitutionally necessary - as it seems, it would be in Germany). • At the time of writing, Ireland has not ratified the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. However, the Fiscal Responsibility Bill 2012 will implement relevant provisions of the Treaty and constitute any Dáil approval required.
Upper house	Beyond the foregoing, it need only be added that the requirements of Article 29.5.1° of the Irish Constitution and Art 29.5.2° of the Irish Constitution have no application to the Seanad, which

thus plays a lesser role in relation to Treaties (other than agreements or conventions of a technical and administrative character) than does the Dáil.

However, as one of the Houses of the Oireachtas, it does have a role under Art 29.6 of the Irish Constitution, under which, as has been seen, no international agreement shall be part of the domestic law of the Irish State save as may be determined by the Oireachtas. Hence Seanad approval was required for the European Stability Mechanism Act 2012, insofar as this involved Oireachtas implementation of the Treaty Establishing the European Stability Mechanism, and will be required to adopt the Fiscal Responsibility Bill 2012 insofar as it is sought *via* this measure to implement into domestic law the relevant provisions of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.