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*Chair: Comparative Public Law*

***The Constitutional Implications of the Eurozone crisis in Ireland and Spain: Financial Recovery in Very Different Constitutional Settings***

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## Introduction

In the period between 2007 and 2012, the Eurozone was hit by a very serious financial and economic crisis. The causes of the crisis can be traced back to many different phenomena, like the 2007-2008 breakdown of the US' mortgage market, public debts' level over any prudential limit, a huge expansion of the banking sector in some European countries, overloading of non-performing loans, and rampant growth in the construction sectors. But what differentiated this crisis with previous economic recessions, was the serious level of public and private indebtedness which affected some Euro countries, so high to hamper the relationship of confidence between the financial market and the Eurozone. Five were the European countries most affected by the crisis, Greece, Portugal, Ireland, Spain, and Cyprus. Their sovereign debt crisis was so dramatic that independent national measures demonstrated not to be enough to combat it, and their entrance in a financial assistance programme was the measure of last resort they had to start a path of recovery.

In this thesis, I am going to analyse the case of Spain and Ireland, by following the so called *Most Similar Cases Logic*, conceptualized by John Stuart Mill in 1843. This logic postulates that « researchers should compare cases that have similar characteristics, or cases that matched on all variables or potential explanations that are not central to the study, but vary in the values on the key independent and dependent variables <sup>1</sup>». The two cases here selected perfectly fit this logic. In both countries, the primary cause of the sovereign crisis was not the excessive level of public debt, but the over-indebtedness of the private one. In fact, even though the size of their economies and their legal architectures cannot be compared, in the light of the crisis and its roots, many are the features which they share.

As anticipated, in both countries the crisis was provoked by the hyper-developed real estate and construction sectors. The shape of the private sector in Spain and Ireland triggered a mechanism which brought banks to excessively invest in these markets; additionally, both of them represented two of the fastest growing countries in the

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<sup>1</sup> Ran, H., The Question of Case Selection in Comparative Constitutional Law, American Journal of Comparative Law, Vol. 53, No. 1, 2006, p. 134

Eurozone. If Ireland was developing three times more than the Euro average, Spain followed it, by developing two times faster the average of all the other Eurozone member states. Another element in common was their very low level of public indebtedness, which respectively was for Ireland 23.9% of GDP, while for Spain 35.5%. Their public debt was in fact absolutely in respect of the limit of 60% of GDP. Behind this apparently nice picture, it was quite clear that their path of growth could not last overtime, so, when the crisis arrived, the consequences were so dramatic that both of them were obliged to ask for international assistance<sup>2</sup>. They entered the EU-IMF Assistance Programme, Ireland in 2011 and Spain in 2012. Ireland successfully concluded the Programme in December 2013, restoring the confidence of the other EU member states and international markets. Spain, exited the Programme in January 2014, successfully recapitalising the main deteriorated financial institutions coming back to its pre-crisis level of competitiveness<sup>3</sup>. Despite the common pre-crisis characteristics, and the successfulness of their financial assistance programmes, the legal patterns they undertook for implementing the agreed European measures were different.

Some differences emerge with respect to the implementation of the new Balanced Budget Rule at national level. In fact, while Spain introduced the Balanced Budget principle into the national Constitution, even though the Fiscal Compact had not been signed yet, in Ireland, just one constitutional amendment was adopted with the goal of ratifying the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. Additionally, while in Spain the submission of the TSCG at referendum did not take place, in Ireland instead, it occurred in respect of article 46 of the Irish Constitution.

Another significant difference has to do with the fact that in Spain the rules on Budgetary Stability were already present in 2002, but, just with the constitutional reform of 2011, the principle of Budgetary Stability gained constitutional level, while, in Ireland, these rules were introduced for the first time in 2012. As a result, a new paragraph was added

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<sup>2</sup> Ptak, P., Szymáńska, A., Debt development in Ireland and Spain: The same or different? Pre- and post-crisis analysis, *Journal of Economics and Management*, University of Economics in Katowice, Volume 26, 2016, p. 90

<sup>3</sup> European Commission, sources available at: [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-spain\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-spain_en) and [https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-ireland\\_en](https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-financial-assistance/which-eu-countries-have-received-assistance/financial-assistance-ireland_en)

to article 29 of the Irish Constitution. Despite these differences, both countries have implemented at national level all the instruments, and all the measures foreseen by the European Institutions to combat the crisis.

In this work, I will try to answer the following research questions like: To what extent the Euro-crisis law has been effective in mitigating the impact of the crisis in these two countries? To what extent the new European Economic Governance has impacted on the role of national Parliaments and national Courts? In which way the crisis has impacted on the unstable Spanish political system, and on the Irish Constitutional framework?

In order to answer the abovementioned questions, it is necessary to proceed gradually. The research, in fact, will be structured as follows: The first chapter will provide a brief introduction to the Irish and Spanish constitutional systems, delineating their main features and their settings. Secondly, the focus will shift on the eruption of the crisis, firstly in Spain and secondly in Ireland. Initially, the attention will be paid to the economic features considered to be the causes of the crisis affecting both of them. Then, the focus will move towards the immediate impact the crisis had on the two states and the early measures, adopted at national level, for contrasting the crisis.

The second chapter will specifically deal with the case of Spain. Here, all the tools adopted at supranational level to combat the Eurozone crisis will be analysed. The structure will be the following: at the beginning, the focus will be on the description of the two Early Emergency Funds, the EFSM and the EFSF and their path of implementation in Spain. Secondly, we will analyse how the Euro Plus Pact has been received in Spain. After we will specifically cope with the amendment procedure occurred in Spain for modifying article 135 of the Spanish Constitution with the aim of giving constitutional value to the Balanced Budget Rule, that is, the main novelty introduced by the Fiscal Compact. Moreover, in this chapter, the implementation of the Six Pack and Two Pack in Spain will be analysed as well, along with the ESM and the Memorandum of Understanding signed by Spain to get financial assistance by the Troika. In the end, the last sub-chapter will face with some cases law presented before the Constitutional Court as far as the new tools introduced by the EU and by intergovernmental agreements were concerned.

The third chapter instead, will specifically deal with the case of Ireland. Here, the structure will be the following: analysis of the Early Emerging Funding and of the Irish Memorandum of Understanding. Then, the main implications of the Euro Plus Pact, Six Pack and Two Pack for Ireland will be analysed. Subsequently, the focus will shift to the main changes occurred to the Irish Budgetary Process as a consequence of the crisis and, related to this, the case law *Collins V Minister for Finance & Others* will be analysed. This chapter, after that, will consider the main constitutional changes occurred in Ireland for the implementation of the Fiscal Compact. And in the end, a deep analysis of the consequences of the amendment of article 136 TFEU aimed at the ratification of the ESM will occur. Finally, exactly on this topic, the *Pringle Case* will be analysed.

In the last chapter, we will try to answer our research questions. Firstly, we will see if the new European Economic Governance has been effective or not in the two countries, particularly with respect to the objectives foreseen by their Post Programme Surveillance. Then, the focus will shift to the impact the new European Economic Governance has had on the role of the two national Parliaments and Constitutional or Supreme Courts. Particularly we will check whether the Euro-crisis law has enhanced or not a new role for both the Parliaments and the Courts and, if so, how. In the end, in the conclusion, I will also try to contextualize the objects of this thesis in the political and constitutional frameworks which were, and are, characterizing respectively the Spanish and the Irish cases. In fact, how we will see, the economic crisis has impacted not only on the economy but also on the institutional setting of the two countries, causing political turmoil in Spain while representing in Ireland a stimulus for a broader path of constitutional reform.

## Chapter 1: Constitutional Context

### 1.1: Spain and Ireland: a brief introduction to their constitutional systems

The 2008 financial crisis hit many Eurozone countries provoking changes in their constitutional systems, despite the limited use of constitutional amendments and the lack for declarations of the state of emergency<sup>4</sup>. Before analysing these changes, with regard to the Spanish and Irish legal systems, it is necessary to understand how these two democratic legal orders were constructed at the beginning.

#### 1.1.2: The Spanish constitutional system

In Spain, with the 1978 Constitution, the dictatorial regime imposed by Franco was dismantled and a democratic state was established. The final text of the Constitution was the result of a long-hard work needing the approval of all the most significant political forces. Spain, in fact, has changed many constitutions throughout the years, reason why the keyword for the elaboration of the 1978 text was compromise<sup>5</sup>. The drafting of the Constitution by the Constituent Assembly started after the elections in June 1977 of the latter and it continued for almost a year. Finally, on October 31, 1978, the text was approved by both the Chambers, the Cortes, and presented in December of the same year to the people in a referendum. The outcome was positive, 87.8 percent of the voters accepted the new Constitution<sup>6</sup>, which entered into force only after the signature of it by the King Juan Carlos I. The final text shows the complexity of its contents. In fact, it is the triumph of ambiguity and contradictions which emerged in the following months and years<sup>7</sup>.

As can be seen, the Cortes plays a fundamental role in the political life of the country. It is made up of two chambers, the Congress of Deputies, which has an average of 350 deputies, and the Senate, constituted by 208 representatives directly elected, and 57

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<sup>4</sup> Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, Cambridge: Cambridge University Press, 2017, p. 200

<sup>5</sup> Ferreres Comella, V., *The constitution of Spain: A contextual analysis*, Oxford and Portland Oregon, 2013, Chapter 1, Paragraph 7

<sup>6</sup> <http://countrystudies.us/spain/72.htm>

<sup>7</sup> *Ibidem*



members who are representatives at regional level<sup>8</sup>. As far as the number of deputies is concerned, according to article 68.1 of the Spanish Constitution, the number is not fixed and can fluctuate between three-hundred and four-hundred deputies<sup>9</sup>. The legislative power is mainly in the hands of the Congress of Deputies. The Senate can initiate legislation, but the Congress might overrule the veto advanced by the Senate, simply voting by majority. The superiority of the Congress over the Senate is also evident by the fact that when the two chambers are reunited, is the president of the Congress who presides the meeting<sup>10</sup>. The Congress of Deputies has the power to reject or to ratify decree laws adopted at governmental level. Moreover, to extend a state of alarm and to declare a state of exception, the authorization of the Congress of Deputies is needed. In addition, the Congress is the body which must propose to the king the name of the possible future Prime Minister, who will be appointed by the king.

The Senate has the primary function of representing the autonomous communities<sup>11</sup>. When a community fails to respect its duties, the government, with the Senate's approval, may decide to act in a way which obliges the community to comply with its obligations, as defined by article 155 of the Spanish Constitution<sup>12</sup>. Despite the existence of this article, its application has occurred for the first time just with the current Catalan question one year ago. Normally, each chamber meets separately, but many important functions are exercised jointly. When it happens, they come together as General Cortes with the objective of working on law proposals made by the government, or by one single chamber, or by the communities. The General Cortes' functions are extended as well to the approval or amendment of the proposal of state budget presented by the executive. After this brief overview on how the two main political bodies work, it is important to concentrate our attention on a more constitutional matter, or in theory, on the less politicized body ever, the Constitutional Court.

After the death of Francisco Franco, the need of transition for the Spanish government from a dictatorship to a democracy emerged and revealed the need for establishing a

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<sup>8</sup> Article 69 C.E

<sup>9</sup> Article 68.1 C.E

<sup>10</sup> See generally Gambino, S., *The Spanish Constitutional system*, Eleven International Publishing, 2018

<sup>11</sup> Harguindéguy, J. B., Coller, X., Cole, A., *The failed reforms of the Spanish Senate*, *Research Notes on Parliamentary Democracy*, 4/2017

<sup>12</sup> Article 155 C.E

system of constitutional protection of fundamental rights. If from one hand, there was interest in keeping alive some aspects of the Second Spanish Republic, based on an independent Court of Constitutional Guarantees, from the other hand, there was a wish of breaking with the past, by establishing a constitutional authority independent from the ordinary judicial system. This separate Constitutional body was built by following the model of Germany and Italy, which after the Second World War decided to reintroduce constitutional democracy taking inspiration from the North American Constitutionalism which gave an important contribution to the reconstruction of the Atlantic civilization.<sup>13</sup> This influence on the development of the Spanish Constitutional system has been remarked by Spanish scholars like Eduardo Garcia de Enterría<sup>14</sup>, who was a great supporter of the necessity of an independent Constitutional Court.

The Spanish Constitutional Court was defined by the Title IX of the 1978 Constitution as the constitutional body aimed at granting «the defense of the Fundamental Law through judicial proceedings heard by the Court»<sup>15</sup>. Like in most states observing the rule of law principle, the Constitutional Court is the final interpreter of the constitutional text. It is an independent body, outside the judicial branch, and just bound by the principles and the norms settled in the Constitution. This separation demonstrates how it was important at that time, to completely break with the past. The Constitutional Court could not be in the hands of judicial authorities where most of their members had been educated according to the legal dogmas of Franco's regime.<sup>16</sup> The enforcement of the Constitution occurs in the whole nation state, as defined by article 161 of the Constitution. The first meeting held on July 12, 1980, and chaired by King Juan Carlos, officially inaugurated the activity on the newly established institution. The Organic Law 2/1979 regulates the functioning of the Court. Going into depth, the abovementioned Organic Law regulates basically all aspects dealing with the Court, that is, its statute, its procedures, and conditions for

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<sup>13</sup> Guillen Lopez E., *Judicial Review in Spain: The Constitutional Court*, 41 *Loy. L.A. L. Rev.* 529, 2008, p. 530

<sup>14</sup> Enterría, a prestigious professor of public law, was President of the Board of Experts in the field of autonomies, which helped guide the first steps of the Spanish federal state in its early years.

<sup>15</sup> <http://www.tribunalconstitucional.es/en/jurisprudencia/InformacionRelevante/Folleto-divulgativo-EN.PDF>

<sup>16</sup> *Op. cit.*, Guillen Lopez E., *Judicial Review in Spain: The Constitutional Court*, p.532

acting.<sup>17</sup> Also with this regard, the previous Constitutional experience, that one during the Second Republic in 1931, has nothing to do with the one inaugurated in 1978.

The Court is made up of twelve judges. Among these twelve, four are appointed by the lower chamber of the Parliament, the Congress of Deputies, by a three-fifths majority; four are designated by the Senate, according to the same qualified majority, and as far as the last four are concerned, two of them are nominated by the government and the others two by the General Council of the Judiciary, in respect of article 159.1 of the Spanish Constitution<sup>18</sup>. The process of appointment shows how the legislative body is predominant in this procedure. This approach, consistent with the Kelsen's proposals<sup>19</sup>, reflects the scope of the Constitutional Court, that is, the analysis of laws and their constitutionality. The delicacy of the task justifies the predominance of the Cortes, in fact, it is coherent and logic that the body which drafts the laws is also responsible for the appointment of those magistrates who will interpret and review those laws. The President of the Court is one of the twelve magistrates just discussed. The President is an extraordinary figure who has the right to have the final say in case of a tie. Article 9 of the Ley Orgánica states how the President shall be elected, that is, by a majority vote of the judges of the Court.<sup>20</sup> The judges must respect some criteria to be nominated. They must have at least fifteen years of professional practice and they must be independent. The requirement of independence shall guarantee that they do not carry out the interests of those who have appointed them, but that they act in the name of the Constitution. They exercise their competence for a nine years non-renewable mandate, and to ensure the Court's ongoing work, every three years, three judges are replaced.<sup>21</sup> Recently, a proposal of amendment concerning the President's tenure has been presented. The aim is to extend his/her mandate until the renewal elections for the judges in order to guarantee the needed support to the President.<sup>22</sup>

The Court, as already said, is composed of two Chambers of six judges each. Usually, the two chambers cooperate when the appeals deal with the violation of basic rights and

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<sup>17</sup> Ley Orgánica del Tribunal Constitucional (L.O.T.C.)

<sup>18</sup> Article 159.1 C.E

<sup>19</sup> Kelsen, H., *Quién debe ser el Defensor de la constitución?*, 1931, Tecnos transcription, 1995, p. 30

<sup>20</sup> Article 9.2 L.O.T.C.

<sup>21</sup> Article 159.3 C.E; article 16.3 L.O.T.C.

<sup>22</sup> Guillen Lopez, E., *Op. cit.*, p.533

freedoms<sup>23</sup> or when the constitutionality of acts and statutes is at stake.<sup>24</sup> Each Chamber is then divided into two Sections. These Sections, usually execute their mission in the first stages of a procedure by verifying the admissibility of appeals, or by ruling on Amparo appeals.<sup>25</sup> In the Spanish Constitutional system, dissenting opinions are allowed.

Art 161 and 163 are at the core of the Constitutional Court's activity. In these two articles, the main functions of the Court are listed. The Spanish Constitution states that the Court is able to exercise its function of guarantor of the Constitution through two main judicial proceedings: the first one refers to appeals dealing with the constitutionality of new laws upon referral by regular courts, the second one has to do with questions of constitutionality of laws which are at issue in other trials upon referral again by courts.<sup>26</sup> But, who has to evaluate the constitutionality of laws entered into force before the adoption of the 1978 Constitution? In order to avoid confusion, the Court stated that the Court is responsible of this kind of laws whether they are in violation of the 1978 Constitution, while, in all the other cases, the competence is shared with ordinary judges even though the ultimate control is in the hands of the Constitutional Court.<sup>27</sup>

In addition to the abovementioned functions, any citizen can request protection against the violation of fundamental rights to the Court when the ordinary protection of these rights fails, in light of articles 14 and 30 of the Spanish Constitution.<sup>28</sup> This request cannot be accepted when the action is presented for the protection of social rights, with the exception of the right to education. Moreover, when conflicts of jurisdiction emerge between the autonomous communities and the state, the body who is entitled to solve the dispute is the Constitutional Court.<sup>29</sup> Article 161 (1) (c) in fact, recognises to the Court the capability to intervene by clarifying the existent division of powers among the independent regions.

In 1981, the Court was asked to play its first game. Its task was to persuade the past political class about the importance of the Constitution as a fundamental legal standard

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<sup>23</sup> Article 161.1 C.E.

<sup>24</sup> Article 159.1 C.E

<sup>25</sup> Ley Orgánica 2/1979

<sup>26</sup> Riordan, Danis P., The rights to a Fair Trial and to Examine Witnesses Under the Spanish Constitution and the European Convention on Human Rights, 26 *Hastings Const. L.Q.*, 1999, pp 373-383

<sup>27</sup> Arendt, H., *On Revolution*, Penguin Books, 1963, p. 215

<sup>28</sup> Article 53.2 C.E.

<sup>29</sup> Article 161 (1) (c) C.E

and to perceive the Constitutional Court as its main defender. During the first years after the dismantlement of the Franco's regime, there was the tendency to devalue the Constitution, by classifying it as a mere statement of principles in need of further legislation for its clarification.<sup>30</sup> Its role of Defender of Fundamental Rights had been completely undervalued, by the Supreme Court as well. The Constitutional Court, which obviously could not accept this labelling, promptly adopted a judgement in 1982, the judgement 15/1982<sup>31</sup> which was aimed at granting protection «to a citizen whose right to refuse military service as a conscientious objector had not been recognised because a civil service substitute for military service had not yet been put into law<sup>32</sup>». The judgement wanted to demonstrate how the protection of fundamental rights cannot be impeded by a delay in legislation. With this judgement the Court wanted to launch a message, that is, the supreme legal standard is the Constitution and the Constitutional Court is its final interpreter.

The presence of the Constitutional Court strengthens the idea of Spain as a democratic and social state, which supreme values, according to article 1 of the Constitution, are equality, pluralism, freedom, and justice. The Court is not only a pillar for the public powers, but for the citizens as well. It is the guarantor of the democratic values of the state, in fact, since its very first decisions it has presented the Constitution as a tool able to cover different political options. Its contribution to the construction of the autonomous state of Spain must be mentioned, although over the last few years and especially with the Catalan crisis, this role has been put into question<sup>33</sup>. In fact, it was not easier to define a decentralized model, like the Spanish one, considering that its founding fathers had intentionally left open this aspect. Consequently, the Court has justified the state's structure and operations on the ground of its history with the aim of constantly reducing ambiguities, specifying precepts and explicating the scope of each power. The Court plays another significant task, that is, granting the respect of the fundamental human rights. Cases-law in this field have identified the content of these rights, restricted their

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<sup>30</sup> Guillen Lopez, E., Op. cit, p.541

<sup>31</sup> STC, April 23, 1982, (No. 15)

<sup>32</sup> Guillen Lopez, E., Op. cit, p.542

<sup>33</sup> Mermel, K., The End of the State of Autonomies? An Analysis of the Controversy Surrounding the 2010 Spanish Constitutional Court Ruling on Catalonia's 2006 Statute of Autonomy, 2016

application according to other constitutional principles and ensured their protection both in the private sphere and between citizens and public authorities.<sup>34</sup>

Since the entrance of Spain into the European Union in 1986, during the second wave of enlargement<sup>35</sup>, the Spanish Constitutional Court has ruled on the newly born bond between this supranational body and the nation state. What the Court did immediately was to declare how the constitutional provisions could not be overridden by any EU law measures<sup>36</sup>. In 2004, the Court affirmed that there were no existing conflict between these two legal orders<sup>37</sup> at that time, but, it added that in cases of potential conflicts, the Constitutional Court, would arrogate the right to take up the EU laws as stated by articles 1-6 of the Treaty Establishing a Constitution for Europe.<sup>38</sup>

Constitutional Courts, like any other institution, may face some troubles periodically. In 1983, the impartiality of the Spanish Constitutional Court was challenged for the first time. What was questioned was a decree-law aimed at expropriating Rumasa, a holding company.<sup>39</sup> The expropriation had been proposed by the leader of the Socialist Party, Felipe Gonzalez, and the Conservative branch of the political body. They were both frightened by a hypothetical influence of the communist party on the economic policies. From a legal perspective, the main problem was about article 86 of the Constitution<sup>40</sup> whose content establishes that decree-laws should not affect the subject matter of Title I of the Constitution, that is, freedoms, rights, and duties.<sup>41</sup> In this case, the decree-law referred to an expropriation, so, a violation of property right.<sup>42</sup> At the beginning, the Court was puzzled and divided, so, the last word was left to the President who voted in favour of the Socialists. Article 86 basically forbids the adoption, through decree-law, of a general regulation dealing with the rights contained in the first Title of the Constitution, but, on the contrary, article 86 does not say anything about occasional actions which could

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<sup>34</sup> <http://www.tribunalconstitucional.es/en/jurisprudencia/InformacionRelevante/Folleto-divulgativo-EN.PDF>

<sup>35</sup> Treaty on the Accession of Spain and Portugal, art. 1, Nov. 15, 1985

<sup>36</sup> DTC, January 7, 1992, (No. 1)

<sup>37</sup> DTC, December 13, 2004, (No. 1)

<sup>38</sup> Balaguer Callejon, F., La constitucion Europea tras el Consejo Europeo de Bruselas y el Tratado de Lisboa, *Revista de derecho constitucional europeo*, July-Dec. 2007, p. 11

<sup>39</sup> STC, December 3, 1983 (No. 111)

<sup>40</sup> Article 86 C.E.

<sup>41</sup> Articles 10-55, 86 C.E.

<sup>42</sup> STC, December 3, 1983 (No. 111)

limit the same specific rights. In conclusion, what emerges from this brief overview of the Spanish Constitutional system is that its Court performs an indispensable function for the success of a constitutional government in Spain. Spain in fact, would not be detectable without the presence of its Court.

As far as the Constitutional Review of legislation in Spain is concerned, we can say that, following the amendment of article 135 C.E, which went to constitutionalize the principle of the financial equilibrium with the aim of contrasting the crisis, the procedure which until 2011 was valid just at national level, it was extended also to the regional and local legislation.

### **1.1.3: The Irish constitutional system**

Shifting the focus of attention to Ireland, before analysing the constitutional implications of the Eurozone crisis on the country, it is valuable to remark some features of its Constitutional system.

The first main decision undertaken by the Irish Founding Fathers of the 1937 Constitution was that one dealing with the perpetration of the legal system that characterized the “Celtic Tiger” during the British domination. In fact, the Acts of the British Parliament, the judges in charge, and the judicial system were maintained<sup>43</sup>. However, a significant element of break with the past is represented by the decision to impose a rigid Constitution and to introduce a system of judicial review. Moreover, in order to stress the gained independence from the British, the idea of parliamentary sovereignty was replaced with the one of popular sovereignty<sup>44</sup>. The power comes from the people, not from the Crown nor from the Parliament directly, and is in the hands of people. As far as the protection of fundamental rights is concerned, the Irish Constitution looks like the US one. Indeed, the US legal system is the sole to have influenced the Irish one.<sup>45</sup>

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<sup>43</sup> Doyle, O., *Constitutional Law: Text, Cases and Materials*, Clarus press, Dublin, 2008

<sup>44</sup> See Hamilton, J., *Judicial Activism in Irish Constitutional Law*, Report to the Conference on Judicial Activism and Restraint Theory and Practice of Constitutional Rights (Batumi, Georgia—13–14 July 2010) Strasbourg, Venice Commission, CDL-JU(2010)013, 7 July 2010, p. 2

<sup>45</sup> See Carolan, B., *Consideration of Foreign Judgments by the Irish Supreme Court: An Extra Constitutional Analysis of Several Select Cases*, 12 *Irish Journal of European Law*, 2005, pp. 115–16

«The Constitutional courts [actually the High Court and the Supreme Court] of Ireland employ the interpretive methods familiar to US lawyers. Ireland, as a former colony, jealously guards its sovereignty»<sup>46</sup>

The list of rights in the Irish Constitution is quite short. Article 40 has to do with the classic political and civil rights, article 41 deals with the rights of the family, article 42 with education, article 43 with private property, article 44 with religion, and finally, article 45 with non-justiciable directive principles of social policy.<sup>47</sup> Despite the existence of stated rights, in the footsteps of the US, the Irish Supreme Court, through case-law, has pinpointed a set of unstated rights with the aim of protecting citizens as much as possible. For instance, the right to marital privacy was recognized through the case *McGee v AG*<sup>48</sup>. This case was about a twenty-seven woman, whose second and third pregnancies were so complicated, that her doctor advised her that if she would become pregnant again, she would put in risk her own life. The doctor so instructed her to use a specific contraceptive, but Section 17 of the Criminal Law Amendment Act 1935, prohibited her to acquire the product. The Supreme Court, after this case, ruled that the decisions about the private life of married couples cannot be undermined.

The question of the protection of human rights has a lot to do with the type of the Constitution of the Country. Ireland has a rigid Constitution, this implies that the process of amendment of the Constitution is rigid as well. To amend the Constitution, the Bill must be voted by both the two Houses, the Dáil and the Senate. If the proposal of amendment passes, it will be submitted to the people through a Referendum. Just in case of a positive majority of votes, the Bill will enter into force.<sup>49</sup>

The Constitution of 1937, as already said, maintained the judicial system installed by the Courts of Justice Act 1924.<sup>50</sup> According to article 34.1 of the Constitution, the judicial functions are exercised just by Courts. In *State (Shanahan) v AG*<sup>51</sup>, the powers of the

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<sup>46</sup> Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, 2013, p. 102

<sup>47</sup> Op. Cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History* p.102

<sup>48</sup> *McGee v AG* (1974) IR 284

<sup>49</sup> Op. Cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History* p.103

<sup>50</sup> See Keane, R., (former Chief Justice), *The Irish Court System in the 21st Century: Planning for the Future*, 1 *Judicial Studies Institute Journal*, 2001, 1 ff

<sup>51</sup> *State (Shanahan) v AG* (1964) IR 239



Courts were defined. Among them there are: « the power to decide on a point of law or fact, on civil and/or criminal matters; the power to determine the rights of the parties; the power to require and obtain, even through the Executive branch, the attendance of witnesses; the power to make their decisions effective »<sup>52</sup>.

Ireland is a common law system and like in all common law systems, it is not rare to assist to a high degree of judicial activism that often can seriously reduce the parliamentary activity.<sup>53</sup> This is exactly the case of Ireland. We know that just five-six articles cover the matter of fundamental rights, and the scope and interpretation of most of them derive from decisions adopted by the courts. To enlarge, or any way re-interpret, the list of rights has for sure contributed also the institution of the referendum. Despite their activism, the courts are not able to solve problems which characterize the courts themselves, such as delays in solving disputes, which are results of both structural inefficiencies and underdeveloped information technology.<sup>54</sup>

What said about the Spanish Constitutional Court, when we highlighted that the Court is the final interpreter of the Constitution and that its presence gives the state a social and democratic character, is valid also for the Irish Supreme Court, which acts as a Constitutional judge. The Supreme Court is composed ex officio. There is a President, the Chief Justice of Ireland, seven judges, plus the President of the High Court. There is not a required fixed number of judges, but in some cases, it is specified that decisions cannot be taken if the quorum of five is not reached, as when there are cases of particular complexity. In all the remaining cases, three judges are enough to take a decision, also when the constitutionality of a law is in trouble.<sup>55</sup>

Until 1995, the appointment of judges was entirely in the hands of the Executive. The Executive was the sole body who could decide whether a judge could be eligible or not in the courts. After that, it provided the names to the President, who formally appointed the judges. This was stated in article 13.1 of the Irish Constitution. In 1995 finally, the

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<sup>52</sup> Op. Cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, p. 106

<sup>53</sup> See Hamilton, *Judicial Activism in Irish Constitutional Law*, 6 ff and Hardiman, A., *The Role of the Supreme Court in Our Democracy* in J. Mulholland (ed), *Political Choice & Democratic Freedom in Ireland. Forty Leading Irish Thinkers*, MacGill Summer School, 2004, p. 32

<sup>54</sup> Op. Cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, p. 106

<sup>55</sup> *Ibidem*, p. 110

Courts and Court Officers Act was adopted, and as a result, a new body was created with the aim of drawing up a list of possible judges to recommend to the Executive. This body is called Judicial Appointments Advisory Board, chaired by the Chief Justice of the Supreme Court.<sup>56</sup> In order to be eligible, judges have to respect some specific criteria. They must be legal practitioners for at least twelve years and they shall be independent. As far as their background is concerned, we can say that most of them, are graduated in Ireland but have spent months abroad to increase their knowledge, taking part in international guest lectures and conferences.<sup>57</sup>

To understand the Irish Constitutional system, it is not sufficient to pay attention to how it is composed, and how it is evolved throughout the years. What really matters is how it works, specifically, how the Supreme Court decides. The first thing to say about it is that when the Supreme Court has to do with the Constitutional Review of Legislation, there is the so called “One-Judgement Rule”, this is the sole adoptable via. This procedure has been introduced in a second moment, in 1941, so, it is not present in the original Constitutional text. According to this one-judgement rule, if the validity of a law must be detected, one judge is asked to write down a judgement, whose contents have to reflect the majority view of all the judges, and no other opinions on such question can be disclosed. In all the other constitutional decisions, concurring or dissenting opinions are allowed.<sup>58</sup>

Because of the international background characterizing the education of Irish judges, there are some cases in which emerges how the foreign jurisprudence has influenced national judge’s interpretative techniques. The first of these cases refer to the principle of “Reach Constitutional issues at last”, a principle deriving from the US, according to which whether a case can be solved at a lower level than a constitutional one, this path should be taken<sup>59</sup>. The application of this principle occurred with the *O’B v S* case, «where it was held that non marital/‘illegitimate’ children could be excluded by statute from intestacy without any violation of the Constitution (the statute in question - the Succession

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<sup>56</sup> Op. Cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, p. 106

<sup>57</sup> *Ibidem*, p. 111

<sup>58</sup> *Ibidem*, p. 113

<sup>59</sup> See Alford, R. P., *In Search of a Theory for Constitutional Comparativism*, 52 *UCLA Law Review*, 2005, pp. 639 ff

Act 1965 – was later amended by the Status of Children Act 1987 so as to include non-marital children within the rules governing intestacy)»<sup>60</sup>. As we see the modification did not occur at constitutional level, but at statute level. Another case of clear influence refers to the application of the US notion of “mootness”, accepted in *Condon v Minister of Labour*, «where an association of bank officials challenged the constitutionality of temporary legislation restricting the pay and conditions of service of bank employees»<sup>61</sup>. The Irish Court decided to abstain because the case could perfectly be solved at academic level. As already mentioned, clear American influence transpires as well from the decision of the Supreme Court to extend the number of fundamental rights according to the doctrine of “unenumerated rights”, on the footsteps of the US jurisprudence.<sup>62</sup>

To conclude with this brief overview on the Irish constitutional systems, something must be said on what characterizes like almost all common law systems like Ireland, that is, the use of Precedents on the ground of the *Stare Decisis* principle. The use of precedents consists in taking a decision by departing from a decision adopted previously in a similar constitutional case. It is not «a binding unalterable rule»<sup>63</sup>, however, to reverse it is not so easy, some compelling reasons must be provided. What is very peculiar of the Irish case, is the tendency of seeking solutions abroad, focussing particularly on countries like the UK, the US, Australia and Canada.<sup>64</sup> From 1937 to 2010, data shows that in at least 45% of the total number of constitutional cases, the Supreme Court has cited foreign precedents. The apex has been reached in the Sixties, while this tendency started to drop in the Eighties.<sup>65</sup> The reasons which led Ireland to an assiduous reference to foreign precedents are different, and not always so clear. For sure, the achievement of a significant number of precedents has favoured this drastic reduction in the last decades. When a new constitutional system is born, this kind of attitude of a Court can be justified with the fact that when a new Constitution is enacted, and there is not a pool of national case-law, it is quite normal to look abroad, trying to “steal” something from who has more experience than you. An example of this process of “emulation” occurred in *National*

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<sup>60</sup> Conway, G., *The right to marry and found a family: Ireland, Comparing Constitutional Adjudication*, 2006, p. 3

<sup>61</sup> *Ibidem*

<sup>62</sup> *Op.cit.* Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, p. 114

<sup>63</sup> *Ibidem*, p. 115

<sup>64</sup> *Ibidem*, p. 116

<sup>65</sup> *Ibidem*, p.117

*Union of Railwaymen and Others v Sullivan and Others*, a famous case of 1947 in which the Supreme Court cited twelve times foreign precedents, mainly from the UK and the US <sup>66</sup>. The use of precedents is a peculiarity of common law systems, and like all peculiarities, it is worthy of mention.

It is now possible to start to analyse the roots of the two crises, the Spanish and the Irish ones, focussing on how the crises have impacted on the political system of the two countries.

## **1.2: The eruption of the Eurozone crisis in Spain and its impact on the political system**

The year 2008 was both the 30<sup>th</sup> birthday of the Spanish Constitutional Monarchy and the beginning of a nightmare. After the death of Francisco Franco, Spain started to grow sharply in terms of GDP, investments and employment rate, but in 2008 the spell broke.

As a member of the European Union, Spain adopted the European single currency in 1999. Between 2000 and 2007, its economy was really booming, it was attracting for international investors who looked at Spain with admiration. Its level of unemployment was at its minimum since the transition to democracy, despite in the previous years, more than four million economic migrants had fled their country to reach Spain. The housing market was surprising, it represented the pillar of its apparently stunning economy, prices of houses increased by 127% between 1996 and 2007 and there was the perception of their sustainability.<sup>67</sup> Zapatero, prime minister of Spain at that time, was convinced to surpass France GDP too.<sup>68</sup> Unfortunately, the “Spanish economic miracle” was just a great illusion, and when the global financial crisis erupted in the US in 2007 with the collapse of the Lehman Brothers, Spain was one of the European Union countries to pay the highest bill.

Since the entrance of Spain into the European Union, the latter played a favourable role in the development of Spain. European investors, in fact, started to look with interest to

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<sup>66</sup> Op.cit. Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, p. 118

<sup>67</sup> European Commission, Occasional Paper 103: Macroeconomic imbalances- Spain, July 2012

<sup>68</sup> Corporate Europe Observatory, *Spain in crisis: the role of the EU*, available at: <https://corporateeurope.org/2012/03/spain-crisis-role-eu>

the Iberian Peninsula and did not hesitate to buy Spanish existing industries. Spain became the core of trade for the central countries of the EU. Its deficit, which inevitably went up, was reduced by the decision of the government to devalue the national currency four times in two years (1992-1994). After the entrance into the Eurozone, for sure, this instrument was no longer usable<sup>69</sup>. From this depiction already emerges how Spain was significantly dependent upon foreign investors, in fact, local producers were uncompetitive. The Spanish economy was allowed to increase thanks to foreign capital, tourism and huge spending on infrastructure. From 2000 the expansion of the construction sector was enviable. The housing sector was growing at the yearly speed of 5%. Between 1996 and 2009, there was an increase in the number of houses equal to 6.5 million. The 22% of national GDP between 2006 and 2007 was dependent on the sector of construction, with an increase of 7% since 1995<sup>70</sup>. Among the reasons which favored this insane growth of the construction sector, we can find the absence of strict control, due to a very permissive legislation and an infinite number of deregulation measures. In addition to this, like Italy, Spain was overloaded by non-performing loans, that is, banks made loans on the ground of parental ties, without checking the economic plans of their clients. From 2004 more than 500.000 buildings were constructed per year, and in 2005 the number was so huge that the combination of houses built in Germany, France, and the UK, did not reach the Spanish standard.<sup>71</sup> The level of unemployment fell drastically, and more than 1.8 million new jobs were created. In 2006 Spain had a fiscal surplus, equal to 2% of its GDP and people were happy, but in 2008, this happiness was bound to an end and the apparent prosperity of the country revealed its frailty.

When the financial crisis hit the US, it was clear it would have reached Europe as well because of the existing strong links between the American and the European markets<sup>72</sup>. The Spanish government and the financial sector were quite optimistic, aware of the “strength” of the country. But when the housing bubble burst, the situation became much clearer. The price of houses fell by 37%, Spain passed from fiscal surplus to fiscal deficit,

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<sup>69</sup> Corporate Europe Observatory, Spain in crisis: the role of the EU, available at: <https://corporateeurope.org/2012/03/spain-crisis-role-eu>

<sup>70</sup> European Commission, Occasional Papers 118, The Financial Sector Adjustment Programme for Spain, October 2012

<sup>71</sup> Corporate Europe Observatory, Spain in crisis: the role of the EU, available at: <https://corporateeurope.org/2012/03/spain-crisis-role-eu>

<sup>72</sup> Landler, M., The US Financial Crisis is spreading to Europe, The NY Times, September 30, 2008, available at: <https://www.nytimes.com/2008/10/01/business/worldbusiness/01global.html>

the rate of unemployment began to get bigger and bigger. Spain was on the route to default<sup>73</sup>. The EU, which obviously wanted to avoid such risk, invited Spain, along with the IMF, to adopt some adjustment programs, before to directly intervene.

Since April 2008, the Spanish government initiated to work in this direction by approving a series of reforms with the aim of tackling the deepening of the crisis. These measures were, in a second moment, combined in a single plan, called “Plan E”<sup>74</sup> that had the goal of stimulating the recovery of the country. This plan is based on four main principles that move from the interest to provide support to the small and medium-sized enterprises, to the employment promotion, from the support to the financial system, to structural reforms dealing with the most sensitive sectors, such as transportation, pension system, services<sup>75</sup>. Going into the depth, we can say that the Spanish government embraced several actions which theoretically could help the country to overcome the crisis. Among these measures, the most urgent were those concerning the labor market in all its aspects.

As far as the employment promotion is concerned, in order to increase labor-demand the costs of labor were cut and as a consequence:

- Employers’ social security contribution (SSC) were rebated with the aim of promoting the hiring of unemployed workers with family obligations by signing permanent and full-time contracts<sup>76</sup>;
- Employers’ social security contribution (SSC) were rebated for favoring the hiring of social excluded unemployed people<sup>77</sup>;
- Employers’ social security contribution (SSC) were rebated for inviting people to seek a job in strategic sectors such as research and development, and renewable energies<sup>78</sup>;
- Employers’ social security contribution (SSC) were rebated for promoting self-employment among under 30 people<sup>79</sup>;

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<sup>73</sup> Op. cit., European Commission, Occasional Papers 1182

<sup>74</sup> Royal Decree-Law 9/2008 of 28 November 2008 and Royal Decree-Law 13/2009 of 26 October 2009

<sup>75</sup> Wölfel, A. and J. S. Mora-Sanguinetti, Reforming the Labour Market in Spain, OECD Economics Department Working Papers, No. 845, OECD Publishing, 2011

<sup>76</sup> OECD, Labour Force Statistics (database), November 2010

<sup>77</sup> Ibidem

<sup>78</sup> OECD, Labour Force Statistics (database), November 2010

<sup>79</sup> Ibidem

- An increase in terms of benefits was promised to all those unemployed who opted for the capitalization of all the benefits accumulated during the unemployment people to start up an enterprise<sup>80</sup>;
- A hiring of almost 1500 case managers in Public Employment Services occurred to ameliorate the placement of workers in the sectors mostly hit by the crisis<sup>81</sup>.

These measures demonstrated not to be sufficient because *de facto* they led to increasing severance payments for workers on permanent contracts. As a result, the consequences in terms of unemployment and productivity were negative. In fact, in 2009, the percentage of workers employed with a temporary contract, 25% was enormous compared to the OECD average<sup>82</sup>. The Employment Protection Legislation demonstrated to be basically a failure, and this was mainly due to the costs of dismissal. In fact, those workers who had obtained a permanent contract, in case of justified dismissal were entitled to get a severance pay of twenty days' wage per each year of seniority. However, to distort this mechanism, making it unfavourable for firms, there was the possibility for permanent workers to make appeal to the court, claiming for the absence of justification of their dismissal, asking to the firms a severance pay equal to forty-five days' wage per year of seniority. In most of the cases, the courts expressed in favour of workers, judging the dismissal "unjustified". In addition, the costs of the judicial procedure were added to the firm costs, making the bill higher and higher. These important dismissal costs of permanent contracts discouraged firms to sign permanent contracts, increasing turnover among temporary workers and highlighting the inefficiency and the failure of the 2008 EPL<sup>83</sup>.

To repair the damages, the Spanish government went straight back to work and in 2010 launched a new package of reforms aimed at decreasing the costs of dismissal for permanent workers and at toning down the difference in dismissal costs between the two types of contract. The aim could be reached in four ways:

- First of all, the principal aim of the law was to facilitate the process of dismissal for the undertakings, by ensuring the firms to have dismissal more easily accepted.

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<sup>80</sup> Ibidem

<sup>81</sup> Ibidem

<sup>82</sup> Ibidem

<sup>83</sup> Op. Cit., Wölfl, A. and Mora-Sanguinetti, J. S., (2011), "Reforming the Labour Market in Spain"

If the governmental promise would come true, the severance payment would drop from forty-five days' wages to twenty days' wages<sup>84</sup>;

- Secondly, the base of application of the reduced severance payment of thirty-three days' wages was broadened also to cases of dismissal that the firms itself considered unjustified. The aim was to avoid the costs of litigation, which would be added to the costs of the firm<sup>85</sup>;
- Thirdly, there was the proposal to introduce a capital-funded component, on the footsteps of the Austrian model, to further diminish the one-time costs of dismissal<sup>86</sup>;
- Fourthly, the use of temporary contracts was made less profitable for employers. In order to restrict its usage, the government introduced specific measures to tackle its broad diffusion. For instance, if despite the law, the employer wanted to conclude a temporary contract, he/she had to be aware that the compensation at the end of the working period would move from eight days to twelve. Moreover, the maximum duration of a *contrato de obra y servicio* could not exceed a total of four years<sup>87</sup>.

Despite a conspicuous number of improvements with respect to the previous reform, this governmental intervention still showed some inefficiencies.

While the aim of the law was to facilitate businesses to have dismissal more easily accepted as justified, it was not clear why employers, upfront, should not attempt to go before the court. The court could interpret the dismissal justifiable and, if it would occur, the firm, by renouncing to this chance, would anyways lose more money than if it had gone before the court<sup>88</sup>.

Another element which allows us to say that the reform is not been fully efficient is that the higher severance payment of forty-five days' wages for unjustified dismissals continued to exist, alongside the thirty-three ones. For example, talking about the category of "young people" of that time, who were actively seeking for a job, they resulted

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<sup>84</sup> Law 35/2010 of 17 September 2010, mainly based on the Royal Decree-Law 10/2010 of 16 June 2010.

<sup>85</sup> Ibidem

<sup>86</sup> Ibidem

<sup>87</sup> Ibidem

<sup>88</sup> Op. cit., Wölfl, A. and Mora-Sanguinetti, J. S., (2011), "Reforming the Labour Market in Spain"



registered in the national Public Employment Service. The same was not valid for the school leavers of that time, who were not yet considered unemployed and so, they did not result registered as such. This implied that the latter could not be subject to the “thirty-three days contract”. What emerges is that the reform would be more useful if the forty-five days’ wage rule were totally substituted by the new thirty-three days’ wages rule<sup>89</sup>.

Moreover, despite the amelioration, in terms of costs, due to the broadening of application of the thirty-three rule, the costs of dismissal still remained very high.

In 2010 the package reform interested also the collective bargaining system. In Spain, collective bargaining takes place at sectoral or regional level. Its intermediate degree of centralisation is less favourable for workers if we compare it to a fully centralised model<sup>90</sup>. In fact, 90% of workers in Spain are covered by industry agreements which varies inevitably from one another. Just 10% of workers are covered by a collective agreement stipulated at company level<sup>91</sup>. This system is clearly unfavourable for those workers whose contracts are stipulated in a fully centralised system. Furthermore, the Spanish collective bargaining system is articulated in a system which allows overlapping between the different levels of negotiation, the industrial, the provincial and the company firm level.<sup>92</sup> This involves that lower levels can deviate from the higher ones, if for example, working condition, such as wage, is more protective of the worker at a higher level than at the lower one. Another reason why the bargaining system needed to be revised is that according to the principle of *statutory extension* «any collective agreement at higher than company level had to be applied to all companies and workers forming part of the same geographical or industry level, even if they had not participated in the bargaining process. Small and medium-sized enterprises were most affected by this»<sup>93</sup>. Moreover, before this reform, was very difficult for companies to opt out from the agreements. This possibility instead, is very favourable both for companies and for workers. In case of shocks, the company rather than fires people could simply lower wages, by continuing to grant workers a job, and additionally, companies could, at a first

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<sup>89</sup> Ibidem

<sup>90</sup> Bassanini, A. and R. Duval, *Employment Patterns in OECD Countries: Reassessing the Role of Policies and Institutions*, OECD Economics Department Working Papers, No. 486, OECD, Paris, 2006

<sup>91</sup> CCOO (Confederación Sindical de Comisiones Obreras), *Boletín del Observatorio de la Negociación Colectiva*, Colección Biblioteca Ciencias Sociales, No. 12, Ediciones Cinca, Madrid, 2010

<sup>92</sup> Op. cit., Wölfl, A. and Mora-Sanguinetti, J. S., (2011), “Reforming the Labour Market in Spain”

<sup>93</sup> Ibidem

stage, hire more people than what they really need, because if things turn sour the firm can easily lower the wages of its workforce, without protests<sup>94</sup>.

Because of all the abovementioned motives, it was clear how the labour reform proposed in 2010 had to be extended also to the collective bargaining system. The most urgent aspect to modify was the one concerning the *opting out* clause.

The law so, proposed to change the conditions under which a firm could opt out an agreement once it had entered into force, both for a low-level agreement and for a higher collective agreement. For instance, in the case of agreements concluded at regional or sectoral level, the undertakings could opt out *ex post*, avoiding the consent of their social partners, trade unions, and simply trying to find an agreement directly with the employees. Just in cases in which an agreement between the parties was not found, arbitration would become the solution<sup>95</sup>. Furthermore, the law suggested a greater internal flexibility at company level, also in terms of working time, by promoting the use of short-time work, by granting the company the same social security rebates to the employer also in case of short-time workers.

If these are the two main aspects covered by the reform, for sure, something more could have been done.

- As the statutory principle abrogation would have created problems at constitutional level, to repair the inefficiency caused by its existence, the employers should have enjoyed an opting in system. Just in case of their voluntary choice, the principle should have covered them. What is basically in question is the mandatory application of the principle;
- The system of collective bargaining could be relieved, by giving more room to the firms as far as the definition of wages is concerned.

Another aspect that was touched by the package reform dealt with the improvement in terms of employability of young people, in particular, school leavers, and unskilled people. The 2010 labour market reform, in fact, aimed at making training contracts more

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<sup>94</sup> Brändle, T. and W.D. Heinbach, Opening Clauses in Collective Bargaining Agreements: More Flexibility to Save Jobs?, Paper presented at the Annual Meeting of the European Public Choice Society, 8-11 April, Ismir, Turkey, 2010

<sup>95</sup> Op. cit., Wölfl, A. and Mora-Sanguinetti, J. S., (2011), "Reforming the Labour Market in Spain"

attracting for less qualified workers and low-skilled worker. In the reform was specified that employers could fix wages also below the minimum wage level in the first year of training. The goal was to educate and train the concerned people, giving them a good preparation for entering, in a second moment, the labour market<sup>96</sup>.

The last point the 2010 labour reform wanted to improve deals with the system of public employment. How does this system work? In order to receive benefits, those who are registered in the system must actively look for a job. Despite this rule, in 2010, was shown how a lack of stiff control enabled more people than the entitled to enjoy these benefits. With the reform, there was the proposal to introduce sanctions and to be more rigid.

- Firstly, it was pointed out that the entitlement to unemployment benefits started since the registration had been done. The retroactivity of the rule was suppressed;
- Secondly, it was stressed the importance of making job interviews since the time of registration. Any delay of more than two weeks for having the interview was not tolerated;
- Thirdly, the interviews had to be associated with a job profiling system that could help to easily understand those really needing aid to find a job, and those more able to find alone a placement;
- Fourthly, the reform was aimed at increasing the number of direct interviews between job seeker and employer. In this way, the worker would be more incentivised to make application, furthermore, a clearer picture of tendencies among job seekers would emerge<sup>97</sup>.

To conclude the discourse on Spain, the pension reform of 2011 is worthy of mention as well. Since 2011 in fact, the pension system has been one of the aspects on which the Spanish government has more legislated. The Spanish pension system can be defined as one of the pillars of the Spanish welfare state, which is characterized by the presence of two different kinds of benefits, the non-contributory and the contributory ones. With the term non-contributory, we refer to a system of minimum benefits that specific categories of people are entitled to be provided by the state. With the term contributory instead, we

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<sup>96</sup> OECD, *Jobs for Youth: Spain*, OECD Publishing, Paris, 2007

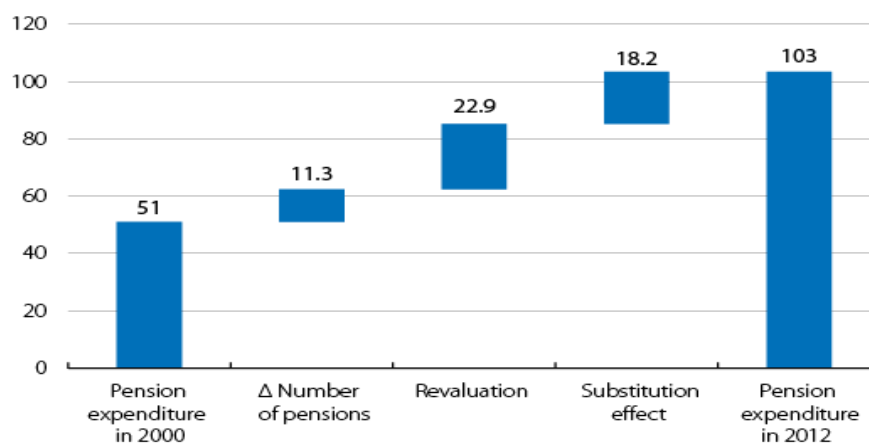
<sup>97</sup> Duell, N. and P. Tergeist, *Activation Policies in Switzerland*, OECD Social, Employment and Migration Working Papers, No. 112, OECD, Paris, 2010

refer to different types of pension benefits that those who respect criteria like age and past contributions, are entitled to obtain. Clearly, the contributory retirement pension is the heaviest part of the system, representing in 2007 over 65% of the total expenditure of all the contributory pension system. During the crisis, it was clear the need to redefine its structure and organisation. In order to assure the sustainability of the pension system, the Spanish government understood the urgency of intervention in this field. Two options could be embraced, or increase the revenue through taxation, or decrease the expenditures in terms of social security, trying to minimise the impact on contributors. Moreover, Spain's ageing population represented a further element of pressure on the Social Security system. Finally, the violence of the 2008 economic crisis did not leave alternative, as the labour market as well had strongly reduced its revenue, and all this fostered the government's decision of reforming the pension system<sup>98</sup>. Because of the crisis, the contributions of the social security system were reduced by at least 7 billion euros in the period 2008- 2012.

Unfortunately, in the same period, the trend of expenditure on contributory pensions had the opposite direction. There was an increase equal to 18.8 million euros, which fast emptied the state's pockets.

### **Breakdown of the increase in nominal pension expenditure**

*Change between 2000 and 2012 (billion euros)*



*Source: "la Caixa" Research, based on data from Spain's Social Security and Statistics Institute (INE).*

<sup>98</sup> La Caixa Research, The challenge of the pension system, November 2013, pp. 36-37, available at: <http://www.caixabankresearch.com/documents/10180/55430/36-37%2BDossiers%2B3%2BING.pdf>

The graph in question<sup>99</sup> shows that a factor which favoured the decision of the government to modify the pension system was the risen in number of pensioners, which increased by 20% in the period 2000-2010, by favouring the doubling of pension expenditures. Moreover, in order to counterbalance inflation, and allow people to maintain their purchasing power unvaried, the level of pensions was constantly enhanced. Finally, a further factor which contributed to the increasing expenditures for the social security system, was the substantial difference, in terms of pensions, between the old and the new pensioners, having the latter a much higher contribution <sup>100</sup>. With the Act 27/2011, the pension reform took place. Three main aspects must be detected:

- First of all, we have to say that the reform was the result of a negotiation between the government and the social partners. This element should have given a great legitimacy to the reform, but this did not occur. The reform was so unpopular that when the right came to the power in 2013, it unilaterally amended it;
- Secondly, the two main provisions of the reform are worthy of analysis, that is, the pensionable age and the calculation of contribution period. As far as the former is concerned, the statutory retirement age was increased up to 67, but some exceptions remained, in fact, those who have paid contributions for at least 38.5 years, could still retire at 65<sup>101</sup>. In addition, to those who wanted to go in pension before, was recognized the possibility to retire at 63 but with at least 33 years of contribution, and aware of reduced benefits<sup>102</sup>. As far as the contribution period is concerned, the period of reference was extended from fifteen to twenty-five, with the aim of finding a more precise proportionality between benefits to receive and contributions already paid;
- Finally, the most important thing to say is that the reform did not enter into force immediately. A gradual implementation had been foreseen, also to give workers

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<sup>99</sup> Graph taken from the database of “Spain’s Social Security and Statistics Infrastructure”

<sup>100</sup> Op. cit., La Caixa Research, The challenge of the pension system, November 2013, pp. 36-37, available at: <http://www.caixabankresearch.com/documents/10180/55430/36-37%2BDossiers%2B3%2BING.pdf>

<sup>101</sup> OECD, Pensions at a Glance 2011: Retirement-Income Systems in OECD and G20 Countries, OECD Publishing, 2011

<sup>102</sup> Ibidem

as more time as possible to decide whether opt for full pension or restricted benefits<sup>103</sup>.

In the end, it is possible to say that the 2011 reform had the goal to establish a sustainable pension system in the long term, by posing people at a crossroad, 67 retirement age for a full pension, or 63 for reduced benefits. After having described the roots, the evolving and the impact of the eruption of the Eurozone crisis in Spain, it is now time to shift to the case of Ireland.

### **1.3: The “Celtic Tiger” hit by the Eurozone crisis**

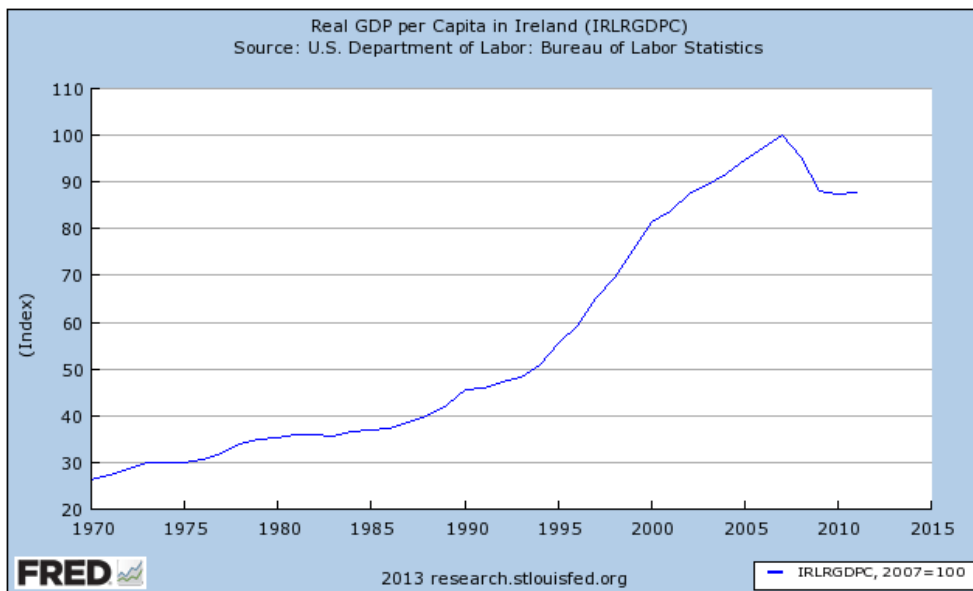
The Irish economy is one of the smallest open European economies, and when the crisis hit the country, the contraction in the economic activity was enormous. To worsen the situation there was the absence of immediate efficient national policy responses, which caused the protraction of the crisis.

When Ireland became independent, there was the state’s tendency to remain as far as possible from the economy. Interventionist economic policies arrived just after the 1932 elections, when the government understood the importance of stimulating national firms to reduce their tariff barriers to attract international investments. Despite this small attempt to favourite the industrialisation of the country, the 50s were a dark decade, marked by significant emigration flows, high unemployment rate and absence of economic growth. In order to converge with the other western European economies, that in the 50s had experienced a flourishing economic growth, the Irish government realized a U-turn. In the 60s, the protectionist barriers were removed, investments in the key sectors of the economy, such as education and public service, rapidly brought the economy to exit the last decades’ stagnation. In 1977, the government decided to reorganize its fiscal policy adopting expansionary policies. However, the goal of the plan was missed, because being Britain its main economic partner, when that country opted for a deflationary fiscal policy, Ireland was consequently touched by this decision. When the European Monetary System (ESM) was established, in 1979, Ireland immediately joined it, interrupting its economic link with Great Britain and its currency,

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<sup>103</sup> Suárez Corujo, B. El sistema público de pensiones: crisis, reforma y sostenibilidad, Thomson Reuters-Lex Nova, Valladolid, 2014, pp. 192-197

making the 80s a “transformation decade”. Since 1987, neo-liberal policies have been adopted, low corporate tax and skilled labour force started to represent the pillars of the Irish economy at that time. Therefore, Ireland became a pole of attraction for multinational manufacturing investors, and all of this contributed to the growth of the country in terms of GDP, employment, and tax revenue.



As we can see from the abovementioned graph<sup>104</sup>, Irish GDP per capita was increasing as never before. What Ireland was enjoying in the 90s corresponded to the past European Golden Age<sup>105</sup>.

As far as employment is concerned, we can say that the opposite tendency of unemployment rate characterizing the first years of the 80s, started to slowly drop. Three main analysis allow us to say how the pattern of employment has been changed in Ireland.

- Firstly, it is possible to say that the share of population employed in Ireland reached the level experienced in almost all the European countries and the OECD. In fact, if in 1989, the population employed in Ireland was around 31%, in less than five years, it scrambled up 45%<sup>106</sup>;

<sup>104</sup> US Department of Labour: Bureau of Labour Statistics

<sup>105</sup> Honohan, P., and Brendan M. W., Catching Up with the Leaders: The Irish Hare, Brookings Papers on Economic Activity, 33, 2002, pp. 1-78

<sup>106</sup> OECD Labour Force Database, 2010

- Secondly, if from one hand, the proportion of employed workforce rose up sharply, from the other hand, the unemployment rate fell drastically;
- Thirdly, the workforce itself increased sensitively, and a decisive element which contributed to this new situation was the increase in terms of female participation; In the period 1990-2000, the female workforce rate grew by more than 12%, passing from 44% to 56%<sup>107</sup>.

The growth in employment was accompanied by a growth in productivity. More workforce. in fact, means more production. The production was mainly concentrated in the construction activity, specifically in the residential property sector, as happened in Spain. Unfortunately, between 2000 and 2001, Ireland lost the focus. Instead of using its high level of productivity for improving people living conditions, it was just interested in increasing as much as possible its economy. In light of this, because of the high inflation rate and the procyclical policies, the European Commission proposed the launch of the first “early warning”, a tool provided by the Stability and Growth Pact Treaty, against Ireland in 2001. This proposal was later approved by the ECOFIN. Ireland was blamed of stressing excessively its economy, in an already positive moment for it<sup>108</sup>.

Ireland had fallen into the trap of economic growth. It was strongly convinced that higher the economic growth of the country, higher the happiness of the population. As a consequence, just the policies that could help the country to improve economically were adopted. The construction sector was perceived as the one to invest in. But, the growth in housing was hiding the frailty of the state. The level of housing construction was clearly unsustainable, more than 800.000 private houses had been constructed between 1991 and 2008. «The property bubble produced over-priced housing, the product of foolish lending, irrational borrowing and unrealistic profit expectations»<sup>109</sup>. For sure, this rapid growth in construction found its supporters in three main factors, that is, very low interest rates which permitted the Irish banks to lend money to many firms, the presence of tax incentives for all those who would have invested in the construction sector, huge house prices. In addition, the Irish policymakers thought that lowering taxation would be a

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<sup>107</sup> Ibidem

<sup>108</sup> Creaton, S., Early-Warning system is now being prepared, The Irish Times, May 1, 2001, available at: <https://www.irishtimes.com/business/early-warning-system-is-now-being-prepared-1.305465>

<sup>109</sup> Healy, S., What Would Real Recovery Look Like? Securing Economic Development, Social Equity and Sustainability, Dublin, Social Justice Ireland, 2013, p.21



successful choice. The reasoning was that by giving back people what they had given the state, was a better strategy than investing the revenues obtained through taxation in infrastructure or services. In reality, the sole ones to take advantage of this situation were the wealthiest people. It is clear how the Irish government had made wrong conclusions on the safeness of its country. It had assumed that:

- The economic growth of the country was the factor influencing the happiness and the wellness of the population;
- The redistribution of the welfare would be automatic;
- The achievement of the infrastructure level of the other European countries could be reached despite the lowest level of taxation in the EU;
- The differences in standard of living between the poorest ones and the wealthiest ones were not important because if a country grows, then the benefits of the growth are redistributed, and the poor improve their lives;
- Reducing taxes would have positive consequences, leading to an increase in tax revenues.

On the ground of these false and hasty conclusions, the policies undertaken by the government were absolutely a failure.

Among these, we can clearly recognize the failure to:

- Introduce a property tax and eliminate specific tax exemption which demonstrated to be inefficient;
- Stress the importance of introducing tax equity by, for example, establishing specific bodies like the “Refundable Tax Credits”<sup>110</sup>;
- Improve national infrastructure and services;
- Design a just health service;
- Supervise the banking and financial sectors.

Because of all these elements, when the crisis arrived in August 2007, the country was unprepared for such an event and policymakers were not immediately able to provide effective responses to the crisis. In the Irish mindset, the possibilities of “bank runs” or

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<sup>110</sup> Op. cit., Healy, S., What Would Real Recovery Look Like? Securing Economic Development, p. 24

national insolvency were neither contemplated. Moreover, national leaders considered Ireland a safe place also because most of its greatness was due to the domestic markets, like the construction one. A bolt from the blue arrived when Irish banks started to ask for money from the state, as the international market had closed its door. The situation precipitated when in 2008 the Irish government decided to socialise the banking sector debt among taxpayers, and finally, by 2009 the government, at the behest of the European Union, was obliged to nationalise one of its greatest bank, the Anglo-Irish bank because of its enormous insolvency, and to recapitalise other two national banks using a specific tool, the National Pension Reserve Fund.<sup>111</sup> Despite the decision to nationalise a bank, Irish policymakers did not hesitate to express their hostility towards this kind of measures, and in fact, between 2009 and 2010, the government allowed to privates to take care of insolvent banks. The situation was completely out of control, the construction sector was in free fall, credit restrictions caused a deeper fall in tax revenues, and the rate of unemployment did not stop to rise.

Before to analyse how Ireland was able to exit the crisis, it is important to detect the five correlated dimensions of the Irish crisis.

The Irish crisis indeed can be considered as a Five-Part crisis. This entitlement is due to the five dimensions hit by the crisis.

- The first dimension hit was the banking one. Irish taxpayers were used rescunge the most important failing banks in Ireland because of inefficient and incompetent leaders and institution, which had the task to manage the Irish financial system;
- Secondly, we can say that the Irish crisis was a public finance crisis. The country was lending money far more than it was collecting in taxes;
- For sure, it was an economic crisis which caused many job losses and put at risk the competitiveness of the country in the international market;
- It was also a social crisis, as the crisis eroded all the existing social infrastructure and services, by making longer the period of expected unemployment;
- Finally, it was a reputational crisis. Ireland in fact, entered into the circle of those states regulated by an ineffective financial system, losing credibility at

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<sup>111</sup> Ibidem, p.25

international level. Moreover, to worsen the Irish reputation there was also the incapability demonstrated by the leaders, to provide immediate and coherent policy responses.

With respect to the last point, we cannot say that Ireland did not try to do something, but what done resulted inadequate, implying in 2010 the intervention of the Troika. Before analysing how the Troika suggested Ireland how to address the crisis, we must mention the National Reform Program (NRP) 2008-2010 adopted by the Irish government, a first attempt to buck up the country.

Whether in 2007 the national GDP growth was at 6%, in 2008 it contracted by -1.3% and in 2009 by a further -0.8%.<sup>112</sup> It was clear the urgent need for reforms. The government so, in 2008 decided to adopt a banking guarantee scheme with the aim of re-stabilising the situation, in line with the European plan approved by the Council in 2008. The specific goal of the plan was to keep, in the long term, the sustainability of the financial system for allowing the recovery of the country. Moreover, in this way, the government thought to create the most favourable environment for calming the international markets<sup>113</sup>. Only through this banking guarantee scheme, institutions could be able to find the needed funds for implementing reforms. The Credit Institutions Act 2008, provided the legislative basis for this guarantee, and the Credit Institution Scheme, defined the terms of the legislation approved at national level and confirmed by the European Council. Furthermore, in 2009 the so called “Budget 2009”<sup>114</sup> was announced to bring again stability and order in the public finances, to guarantee the transparency in the public spending of the country, to protect the frailest sections of the society and finally, to double the productivity and the competitiveness in the international context. Moreover, the document defined a series of measures aimed at supporting start-up and aimed at ensuring a return to competitiveness for the countries. Among these measures we can mention;

- The increase of 5% of the tax credit for a company on qualifying research and development, by passing from a 20% to 25%<sup>115</sup>;

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<sup>112</sup> Irish National Reform Program 2008-2010, 2008

<sup>113</sup> Op. cit., Irish National Reform Program 2008-2010

<sup>114</sup> <http://www.budget.gov.ie/>

<sup>115</sup> Ibidem

- An extension from three to seven categories as far as tax incentives for companies is concerned;
- Exemption for the starts-up, which have commenced in 2009 their activity, from paying taxes for the first three years of their activity.

Ireland took also other actions to sustain competitiveness, jobs, and growth, and so, it started to:

- Stress the importance of investments in sensitive sectors, like the productive infrastructure one, in order to limit costs;
- Invest much more in education, to provide as much as possible high skilled workers able to respond to the need of firms;
- Keep the economy flexible and capable to adapt to different scenarios;
- Work with social partners constantly, as to be sure that all those working for making Ireland great again, were aware of the everyday challenges the crisis was posing the country<sup>116</sup>.

Despite these firsts attempts, the government failed to solve the crisis at domestic level, and like happened in Spain, national leaders were forced to ask the intervention of the European Union and the International Monetary Fund. We will see in the next chapter, how this external intervention will pose challenges at national level.

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<sup>116</sup> Op. cit., Irish National Reform Program 2008-2010

## **Chapter 2: Spain and the intervention of the European Union and of the Troika**

### **2.1 Early Emergency Funding: the EFSM and the EFSF**

Before 2010, when the European institutions all agreed to create the EFSM and the EFSF, bilateral agreements had been already concluded with Latvia, Hungary, Romania, and Greece with the aim of providing to these countries financial assistance.

The European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF) are the result of the stormy weekend of May 7-9, 2010. On May 9, these two temporary emergency funds got the approval of all the Euro Area member states. The EFSM from one hand, binding for all the 27 member states, is based on article 122.2 TFEU, according to which, « where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken »<sup>117</sup>. The EFSF, on the other hand, was purposely created just for the then 17 Eurozone member states. It was signed two weeks later the EFSM, on June 7, 2010, and it entered into force on June 24, 2010<sup>118</sup>. When these two temporary funds were created, the rotating presidency of the Council of the European Union was held by Spain. This fact facilitated an agreement between the then governing party, the Partido Socialista Obrero Español, and the other Spanish parties, in terms of Spanish priorities to set, and also in terms of full support to the Government for reaching them. Consequently, it is not surprising that when the EFSM and the EFSF were discussed in the Spanish Parliament they did not face particular legal difficulty<sup>119</sup>.

According to the Spanish legal system, the positions assumed by the Spanish representatives in the EU discussions and decisions on the European agenda must be

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<sup>117</sup> Article 122.2 TFEU

<sup>118</sup> Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 19

<sup>119</sup> *Diario de Sesiones del Congreso de los Diputados* No. 131 of 15 December 2009

presented, at national level, before a parliamentary committee<sup>120</sup>. In addition, in case of ratification of international treaties, the Congress and the Senate are called to express their consent. As far as the EFSM and the EFSF are concerned, little information exists about how the creation of these two instruments have been negotiated<sup>121</sup>. The sole statement about them came from the Spanish President Zapatero at the Congress, one month before the adoption of the two tools, when the President affirmed «that member states are taking the steps needed at the national level in order to contribute towards a support mechanism. (...) This is the position that the Spanish government defended from the first moment, because it is the only one truly consistent with a monetary union»<sup>122</sup>. Rajoy in fact, leader of the opposition party at that time, confirmed how Spain could not further aggravate its debt, fully supporting the creation of these mechanisms of assistance also for calming the turbulent markets.

When the EFSM and the EFSF were approved, Zapatero promptly went before the Congress informing national representatives of what just decided. He announced the participation of Spain to the EFSM, reporting to the country the amount of money mobilised, that is, 750.000 million<sup>123</sup>. Rajoy stressed how was important at that time of crisis, to make understand to the international partners how Europe was solid and compact, and these two instruments were perfect signals of firmness.

The EFSF is deemed as an international agreement, therefore needing national ratification. In light of this, once the Foreign Affairs Parliamentary Commission produced its report on it, the text was subsequently set forth before the Congress and the Senate. Both chambers approved the implementation of this tool, even though, in the Congress, Gaspar Llamazares, member of the left-wing party Izquierda Unida<sup>124</sup>, expressed his doubts about it, publicly preannouncing his intention to vote against its implementation. In the end, with a majority of 343 votes in favour, 2 against and 4 abstentions at the Congress, the tool was recognised as able to produce its effects<sup>125</sup>. The voting procedure

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<sup>120</sup> This Commission is called Comisión Mixta para la Unión Europea and it has been created and described by article 1 of the Law 24/2009

<sup>121</sup> Diario de Sesiones del Congreso de los Diputados No. 107 of 11 March 2010

<sup>122</sup> Diario de Sesiones del Congreso de los Diputados No. 156, of 21 April 2010

<sup>123</sup> Diario de Sesiones del Congreso de los Diputados No. 162, of 12 May 2010

<sup>124</sup> Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014 p. 20

<sup>125</sup> Diario de Sesiones del Congreso de los Diputados, No. 176, of 22 June 2010, p.55

in case of international agreements occurs just whether there is not unanimity on it, this is the reason why the Senate was not requested to vote the EFSM, as it unanimously authorised the international agreement<sup>126</sup>.

Once the agreement on the EFSF got the authorization, its text was published in the Official State Bulletin on 11 July 2013<sup>127</sup>. As a consequence of the EFSF, a national Royal Decree was adopted. The 9/2010 Royal Decree gives authorization to the government to guarantee, for a total of 53.000 million, the implicated financial obligations coming from the operations regarding with the EFSF until December 31, 2013,<sup>128</sup>. It is worthy of attention the legal instrument used by the Spanish government to give application to the EFSF, that is, the Royal Decree.

The Royal Decree is a norm, with the same legal value as any other legislative norm, which can be adopted just in particular situations of extraordinary nature. With the aim of avoiding an erroneous use of this tool, its usage is limited in this way<sup>129</sup>:

- The Royal Decree can be used just when the government itself declares the absolute need for this mean because of the urgency of the events<sup>130</sup>;
- It can be used just if its adoption does not affect the most sensitive spheres of law, that is, states' institution, respect of fundamental rights, configuration of the Spanish structural system<sup>131</sup>;
- In order to produce its effects, the Royal Decree must be passed by and must receive the approval of the Congress of Deputies, not later than thirty days after its governmental adoption. During these thirty days, the Congress does not have the authority to amend the text of the Decree. As far as this last explanation is concerned, the aim is to avoid parliamentary discussion and reduce the times of the process<sup>132</sup>.

Applying the theory to the practice, at that time, the government considered the Royal Decree as the best tool possible to calm down the uncertainty which was dominating and

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<sup>126</sup> Diario de Sesiones del Senado, No. 86, of 6 July 2010, pp. 4634-2635

<sup>127</sup> Boletín Oficial del Estado No. 164, of 11 July 2011

<sup>128</sup> Diario de Sesiones del Congreso de los Diputados No. 172, of 10 June 2010

<sup>129</sup> Boletín Oficial del Estado No. 175, of 22 July 2011

<sup>130</sup> Article 86 C.E.

<sup>131</sup> Ibidem

<sup>132</sup> Ibidem

smothering the financial market. Basically, the adoption of this Royal Decree gave implementation to the EFSF avoiding any delay, because of the lack of debate at parliamentary level, in accordance with rules dealing with this kind of instrument.

According to article 1.1 of the EFSF agreement, the eurozone member states, in order to grant a full implementation of it, have to accomplish all the needed national procedures which shall ensure the immediate entrance into force of the agreement. Spain followed a specific path to do it.

- First of all, the Council of Ministers, in its meeting of June 4, 2010, gave its accordance for the signature of the Framework Agreement. Moreover, it expressed positively for the ratification of it<sup>133</sup>.
- In a second moment, once got the consent of the Council, the document was sent to the Spanish Parliament on June 10<sup>134</sup>. The Parliament urgently forwarded the Agreement to the Foreign Affairs Committee. After that, the Agreement was finally published in the Official Journal of the Cortes Generales<sup>135</sup>.
- Furthermore, on the ground of article 94.1 of the Spanish Constitution<sup>136</sup>, the text was presented before both the Senate and the Congress<sup>137</sup>, getting a great consent from both of them.

Because of the adoption of the EFSF, was requested to all the Eurozone Member States to issue a series of guarantees. To respect this duty, Spain decided to amend article 54.1 and 54.2 of the Law 26/2009 on the state budget for 2010<sup>138</sup>. The government decided to move in this direction because of the need to raise the number of guarantees the government had to grant to. The new article 54.1 states that the maximum amount of securities Spain cannot overcome is equal to 95.900 million euro. Previously, the securities could not exceed 42.000 million<sup>139</sup>. Moreover, the new article adds that, among

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<sup>133</sup> Referencia del Consejo de Ministros of 4 June 2010

<sup>134</sup> Boletín Oficial de las Cortes Generales, Congreso de los Diputados, Serie C, No. 237-1, of 16 June 2010

<sup>135</sup> Boletín Oficial de las Cortes Generales, Serie A, No. 317, of 16 June 2010

<sup>136</sup> Article 94.1 CE states that “the giving of the consent of the State to enter any commitment by means of treaty or agreement shall require prior authorization of the Cortes Generales”

<sup>137</sup> Boletín Oficial de las Cortes Generales, Senado, Serie IV, No. 190 (a), of 28 June 2010

<sup>138</sup> Boletín Oficial del Estado No. 309, of 24 December 2009

<sup>139</sup> Ibidem



these millions, 53.900 would be addressed for securing the obligations related to the EFSF.

As far as the application of the EFSF in Spain is concerned we can argue that the Spanish Parliament played a key role which moved towards two interconnected directions, the ratification of the EFSF, that is, an international agreement, and the consequent modification of the national legislation due to the need of higher guarantees issued by Spain.

As far as the ratification is concerned, we need to make a step back to the already mentioned article 94 CE. In the article is stated that « the giving of the consent of the State to enter any commitment by means of treaty or agreement shall require prior authorization of the Cortes Generales <sup>140</sup>». This authorization must be given in all cases financial liabilities of the Public Treasury are involved in. We are basically just describing the case of the EFSF. The Spanish Treasury, in fact, to contribute 53.900 million in guarantees, was forced to issue national bonds for more of what it could, according to the 2010 Budget Law<sup>141</sup>. On April 21, 2010, Zapatero, directly went before the Congress to make request for an as fast as possible authorisation of the Agreement. The Congress and the Senate took rapidly a decision, authorising the EFSF. Once the Agreement entered into force, the Parliament did not influence its functioning. As the Agreement, at national level, is deemed as ordinary EU legislation, just the European institutions are informed on it<sup>142</sup>.

As far as the modification of the Spanish legislation is concerned, the role of the Parliament is quite clear. Because of the need to raise the guarantees by the state, the Budget Law of 2010 had to be reformed<sup>143</sup>. This reform occurred through Royal Decree, as already discussed in the previous paragraphs. For sure, thanks to the great support obtained in the Parliament, the application of the EFSF did not face any obstacle in its application.

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<sup>140</sup> Article 94 CE

<sup>141</sup> Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 23

<sup>142</sup> The Spanish case is different from the Irish one. In the latter, the Parliament was totally excluded from any decision concerning aid packages, or the conditions characterizing the Memorandum of Understanding

<sup>143</sup> Boletín Oficial del Estado No. 311 of 23 Dec 2010

Before shifting to the next argument, the table below will retrace the chronological order of the events occurred respectively at EU level and national level:

EU Level	National Level
	April 21, 2010: Zapatero informed the Congress that the EU institutions were working on the adoption of two temporary funds
May 7-9, 2010: adoption of the EFSF and the EFSM	
	May 12, 2010: Zapatero informed the Congress that the EFSF had been adopted
	May 28, 2010: adoption of the Royal Decree 9/10 allowing the authorization for the government to guarantee certain financing transactions under the EFSF
June 7, 2010: signature of the EFSF Framework Agreement by the European Institutions	
	June 28, 2010: authorization of the Congress on the EFSF
	July 6, 2010: authorization of the Senate on the EFSF
	July 11, 2010: publication of the EFSF Agreement in the Official State Bulletin

## 2.2 The Euro Plus Pact, the amendment of article 135 CE and the Fiscal Compact

Since many EU countries hit by the financial crisis were not improving, despite the numerous reforms undertaken, the European institutions started launching a series of packages aimed at fostering competitiveness and employment, strengthening the financial stability of member states and granting the feasibility of public finances<sup>144</sup>. The first instrument used by the European Union with this goal was the Euro Plus Pact.

As far as the Euro Plus Pact is concerned, on March 24/25, 2011, the Heads of Government of the Eurozone, plus those of Bulgaria, Denmark, Latvia, Lithuania, Poland and Romania, agreed on the entering into force of the Euro Plus Pact, also known as the “Pact for Competitiveness”<sup>145</sup>. This Pact was conceived as a non-binding political agreement, even though it was considered as the best tool for augmenting the fiscal discipline, along with the economic one, with the European member states. The main idea of the pact was to induce member states to adopt reforms falling under the sphere of national competences. The Pact was the result of a Franco-German initiative, who strongly wished a more stringent approach of member states towards the economic imbalances affecting Europe<sup>146</sup>. The goal indeed was to « achieve a new quality of economic policy coordination <sup>147</sup>».

Unfortunately, the Pact was not exempted from criticism. In fact, many have criticised how the Pact basically missed the focus. Rather than analysing the differences in competitiveness among Eurozone member states, firstly, the Pact had to pay attention on the capital movements, the first factor responsible of the superheating of the labour market. This is the reason why, the pact was perceived as something depicting a problem without detecting the causes, that is as « the messenger of economic imbalances rather than the underlying causes<sup>148</sup> ».

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<sup>144</sup> Hubert, G., Karsten, S., The Euro Plus Pact: Cost, Competitiveness and External Capital Flows in the EU countries, Working Paper No. 1650, The Competitiveness Research Network, March 2014, p. 4

<sup>145</sup> Wessels, W., The European Council, Palgrave Macmillian, 2011, p. 193

<sup>146</sup> EPSC, The Euro Plus Pact: How integration into the EU Framework can give new momentum for structural reforms in the Euro area, European Political Strategy Centre, Issue 3/2015, May 2015

<sup>147</sup> European Council Conclusions, The Euro Plus Pact. Stronger Economic Policy Coordination for Competitiveness and Convergence. Annex I to European Council Conclusions, 24-25 March 2011

<sup>148</sup> Op. cit., Hubert G., Karsten S., The Euro Plus Pact: Cost Competitiveness and External Capital Flows in the EU Countries

The basic idea of the Pact was, as already said, to encourage European countries to embrace a path of structural reforms. In fact, because of the interdependence resulting from the Union, if you implement a reform in a specific state, then you would not only reinforce that country, but also the euro area as a whole<sup>149</sup>. It is clear that the policy reforms were up to the single state, with the supervision of the Commission, but these commitments were to be inserted in the National Reform Programmes and Stability Programmes, in order to receive the needed assessment by the Council, the Commission and the Eurogroup<sup>150</sup>.

Going in the depth with the case of Spain, just a month before the adoption of the Pact, the Spanish Minister for Foreign Affairs Trinidad Jiménez García Herrera, went before the Parliamentary Committee for the EU, by claiming the total support that Spain was intended to provide to the Euro Plus Pact. The Minister for Foreign Affairs, member of the Partido Socialista Obrero Español got the endorsement of the Partido Popular, which, to explicit its support to the Minister, instructed a member of the party, Moscoso del Prado Hernández, to explicit the position assumed by his party, stressing how was important for Spain to fix at European level some rules able to boost the competitiveness of the country, under the guide of France and Germany. Different was the perspective of Moscoso Del Prado, member of the Partido Socialista Obrero Español, who expressed his doubts as far as the cut of salaries was concerned. According to him indeed, competitiveness could be fostered without intervening on salaries. The discussion in the Parliamentary Committee for the EU was very short and on March 30, 2011, the Euro Plus Pact was approved.

When Zapatero expressed all his support for the Pact, declaring confidence on it for improving his country, one of the main concerns emerging in the Parliament was about the unpopularity of the reforms, and about the reaction of Spanish citizens. The main fear was that this stringent reform could damage the image of Spain as the one of a real Welfare State. So, the Spanish leaders wanted basically to clearly send the message that those who took decisions were the European as a whole, not Spain by itself<sup>151</sup>. The foreseen setback in terms of social rights and labour due to the Pact, such as cuts in

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<sup>149</sup> Op. cit., The Euro Plus Pact: How integration into the EU Framework can give new momentum for structural reforms in the Euro area

<sup>150</sup> Ibidem

<sup>151</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 33

salaries and decreasing purchasing power, represented the major aspect of discussion exactly because of the above described situation.

Before the adoption of the Euro Plus Pact, the Spanish government had already taken some measures to tackle the crisis, such as the pension reform, the reform concerning the age of retirement, an increase in VAT, and lastly, a significant labour reform obviously linked to salaries as well.

In July 2011, after the approval of the Euro Plus Pact, the Spanish government ordered to modify the existing Law of Budgetary Stability. When on March 30, 2011, Zapatero went before the Parliament to illustrate the Euro Plus Pact he also disclosed how to translate this Pact into legislation. When his explanation moved towards “Sustainability of Public Finances”, he did not hesitate to express the governmental decision to emanate a new rule to limit public expenditure in relation with nominal GDP growth<sup>152</sup>, announcing that this new rule would be applicable just to the central and local administration, keeping outside the Autonomous Communities. A Royal Decree was appositely foreseen for introducing the abovementioned modification in the Law of Budgetary stability<sup>153</sup>. On July 1, the Royal Decree 8/2011 was adopted. In article 7 is stated that the public institution cannot spend more than the «rate of growth in the medium term of reference of the Spanish economy<sup>154</sup> ». The aim was to strengthen the member states’ budget stability by reducing the possibilities of further indebtedness<sup>155</sup>. Article 8 explains that whether the revenues obtained through the implementation of the new Law were more than the expectations, these incomes would be used to reduce the amount of public debt. In case of non-compliance with the new rules, article 10 lists immediate remedies that the responsible administration had to apply in order to return to levels of expenditure in respect of what defined by article 7.

Since the adoption of the 1978 Constitution, just one amendment, the one on the European citizenship<sup>156</sup>, had been passed before August 22, 2011, when suddenly, the President

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<sup>152</sup> Diario de Sesiones del Congreso de los Diputados, No. 236 of 30 May 2011 at p. 7

<sup>153</sup> Boletín Oficial del Estado No. 161, of 7 July 2011

<sup>154</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 33

<sup>155</sup> Bellod Redondo, J. F., Techo de gasto y estabilidad presupuestaria, in Presupuesto y Gasto Público 65/2011, p. 101

<sup>156</sup> The European Citizenship has been ruled through the introduction of a new paragraph to article 13. Article 13.2 deals with the European Citizenship

Zapatero affirmed that both the parties, the majority and the opposition of the government, had agreed on amending the constitutional text to limit public debt and deficit, precisely referring to article 135 of the Constitution.<sup>157</sup> It is important to note that when he went before the Congress to announce his intention to support the Euro Plus Pact, he did not make any reference to the need of constitutional amendment. The Euro Plus Pact indeed, just invited the participating member states to translate the new fiscal rules into national legislation of imponent nature. This statement so did not exclude framework law as national mean for implementing the new measures. However, we can say that the prompt decision of Zapatero to amend the Constitution was due to the letter of the ECB which he received a month before, in which the President was invited to « take audacious measures that guarantee the sustainability of public finances »<sup>158</sup>.

According to the Spanish Constitution, different amendment procedures can be enacted depending on the subject matter<sup>159</sup>. The “Aggravated Procedure”, described by article 168 CE, requires not only that both the Chambers express positively with a majority of two-thirds on it, but it also require that the amendment passes through Referendum a through a prior dissolution of the Parliament. This kind of procedure is applied just to three specific sections of the Constitution, that is, the Preliminary Title, provisions dealing with Fundamental Rights and Freedoms, and provisions about the Crown<sup>160</sup>. To all the other sections of the Constitution, the “Simplified Procedure” is applied. The Simplified Procedure is deeply delineated in article 167 CE According to this procedure, the initiative of reform shall come from at least two parties, and the text shall be approved by at least the three-fifths majority. The referendum, in this case, occurs only if one tenth of the members of the Parliament makes request of it.

In order to amend article 135 CE the Simplified Procedure was used, but, despite of this, the Constitution does not specify which of the many parliamentary procedures should be

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<sup>157</sup> Gutiérrez Calvo, V., Reforma exprés sin referéndum, El País, Madris, 23 August 2011, available at: [https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715\\_080054.html](https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html)

<sup>158</sup> Letter of the BCE to the President Zapatero, sent on August 5, 2011, available at: <http://www.ecb.europa.eu/pub/pdf/other/2011-08-05-letter-from-trichet-and-fernandez-ordonez-to-zapateroen.pdf>

<sup>159</sup> Articles 167-168 CE

<sup>160</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., Constitutional Change Through Euro-Crisis Law, p. 20

carried out in order to amend the Constitution by using the simplified process<sup>161</sup>. The legislation defining how the Congress and the Senate work, foresees particular “abbreviated legislative procedures” with the aim of simplifying the adoption of ordinary laws. What appeared strange so, was not only the decision of proposing such a remarkable constitutional amendment two month before new elections<sup>162</sup>, but also the fact that two of these “abbreviated legislative procedures” were used at the same time: the “single reading procedure” and the “urgency procedure”<sup>163</sup>. On the basis of the “single reading procedure”, the proposal of constitutional amendment was presented before the Houses of the Parliament, although the report usually adopted by a specific Parliamentary Committee in plenary stage was not presented<sup>164</sup>. In addition, this procedure implies also that the debate and the voting of this proposal are limited to the whole proposal, eliminating so the possibility to table amendments<sup>165</sup>. In fact, when the reform procedure began, despite twenty-four amendments were presented at the Congress and twenty-nine at the Senate, all of them were ruled inadmissible. The sole thing which was allowed to modify had to do with a grammatical mistake<sup>166</sup>. In respect of the “urgency procedure” instead, the timing for the approval of the proposal was halved at fifteen days as far as the Congress of Deputies is concerned, while, in the case of the Senate, it was reduced to twenty days. Because of what just explained, it is now clear how the government managed to amend the constitution in a such short period after the announcement of Zapatero. Moreover, if the Socialist Party and the Popular Party, since the moment of the announcement had agreed on the proposal of amendment, the other parties did not have enough time to realize what was occurring and were not enough strong to make their voices heard<sup>167</sup>. What is more doubtful is the reason why the urgency mechanism has

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<sup>161</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, p. 207

<sup>162</sup> Álvarez Conde, E., *La reforma del artículo 135 CE*, *Revista Española de Derecho Constitucional*, 2011, pp. 159-210

<sup>163</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, p. 207

<sup>164</sup> Parliamentary Commissions are specific groups which, on the ground of the competences of their components, write reports on the legislative proposals that the Spanish Government has to discuss.

<sup>165</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, p. 208

<sup>166</sup> Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 35

<sup>167</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, p. 208

been allowed for this reform<sup>168</sup>. In support of the parliamentary decision to recognize an urgency in intervening, there are those who sustain the idea that this amendment was mainly aimed at calming down the markets before the 2011 elections<sup>169</sup>.

Just thirty-two days after, on 27 September 2011, the proposal became law, reason why, this reform got the name of “express amendment”<sup>170</sup>.

The most important goal of the new Article 135 was to submit the public administration to observe what defined at European level in the Stability and Growth Pact, with respect to the budgetary stability. The intention was to avoid the overcoming of what permitted in terms of structural deficit, that is, 0.4% of national GDP<sup>171</sup>. To deepen the strictness of the rule it was subsequently decided that the maximum level of 0.4% could be reached just whether the deficit would be the result of structural reforms, that is, reforms which have an impact on growth and that create jobs in the country<sup>172</sup>. Furthermore, it was added that the limit of 0.4% could be achieved just when the structural reforms enacted would have an impact on the budget only in the long-term<sup>173</sup>. The idea of fixing in the constitution the limits to the national debt was raised during the July 21, 2011 European Summit. In that same occasion the second bail out for Greece had been approved, this is the reason why the European leaders stressed a lot the importance of introducing fiscal discipline in national Constitutions<sup>174</sup>.

Article 135 is one of the pillars of the Seventh Part of the Constitution, where, clearly, it is included. Title VII has to do with all those articles, from 128 to 136, concerning with “Economy and Finance”, going into depth, they tell more about the organization and redistribution of wealth among the population<sup>175</sup>. If Article 135 pays attention on the importance and the need of budgetary stability, the remaining articles are focused on

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<sup>168</sup> Conde, A. et al, La reforma del artículo 135 CE, Revista Española de Derecho Constitucional ISSN: 0211-5743, núm. 93, septiembre-diciembre 2011, pp. 159-210

<sup>169</sup> Ridaura Martínez, M., La reforma del Artículo 135 de la Constitución: Pueden los Mercados Quebrar el Consenso Constitucional?, UNED, Teoría y Realidad Constitucional, No 29, 2012, p. 254

<sup>170</sup> [https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715\\_080054.html](https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html)

<sup>171</sup> Stability and Growth Pact

<sup>172</sup> [https://ec.europa.eu/info/business-economy-euro/growth-and-investment/structural-reforms/structural-reforms-economic-growth\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/structural-reforms/structural-reforms-economic-growth_en)

<sup>173</sup> Op. cit, Estrada-Cañameres, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 15

<sup>174</sup> Ibidem

<sup>175</sup> Spanish Constitution, Part VII, Economy and Finance:  
[http://www.lamocloa.gob.es/IDIOMAS/9/Espana/LeyFundamental/titulo\\_septimo.htm](http://www.lamocloa.gob.es/IDIOMAS/9/Espana/LeyFundamental/titulo_septimo.htm)



correlated aspects. Article 128 regulates the subordination of the Tax Office to the public interest<sup>176</sup>. Article 129 highlights the existent relation between public and private sector in fields like Social Security<sup>177</sup>. Article 130 concentrates on modernization and enlargement of the economic sphere<sup>178</sup>, while article 131 regulates the procedures dealing with the planning of the economic activity<sup>179</sup>. Article 132 specifies whether a certain good belongs to the state or to the Autonomous Communities<sup>180</sup>, article 133 allows for the creation of new Tax Offices<sup>181</sup>, article 134 defines how the state's expenditures must receive formal consent through the approval of the Official Budget<sup>182</sup>, and finally, article 136 states that all the economic and financial activities of the state will be scrutinized by the Court of Audit<sup>183</sup>.

Coming back to article 135, as expressly declared in the Preamble of the Constitutional Amendment Act, the article was amended to conquer again, after the financial crisis, the loyalty and the trust of international investors. Furthermore, Spain had also the duty to respect the commitments made when it entered the European Monetary Union. These commitments in fact imply, first of all, to grant fiscal stability to avoid the spreading of possible fiscal problems to the other members. Moreover, in accordance with the abovementioned commitments, fiscal stability must be reached in order to respect the first article of the Spanish Constitution, which refers to the duty of the government to establish and keep a valuable Welfare State<sup>184</sup>.

The new article 135 starts by declaring how the public administration shall behave, that is, in conformity with the principle of budgetary stability (135.1). The second paragraph, underlines how both the State and the Autonomous Communities must respect the limits imposed at European level in terms of Structural Deficit. These limits are promptly included in an Organic Law, but they will come into force just in 2020 (135.2). The third paragraph describes the procedure the national and regional governments have to respect

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<sup>176</sup> Article 128 CE

<sup>177</sup> Article 129 CE

<sup>178</sup> Article 130 CE

<sup>179</sup> Article 131 CE

<sup>180</sup> Article 132 CE

<sup>181</sup> Article 133 CE

<sup>182</sup> Article 134 CE

<sup>183</sup> Article 136 CE

<sup>184</sup> See generally García Roca, J.; Martínez Lago, M. A.: Estabilidad presupuestaria y consagración del freno constitucional al endeudamiento, Aranzadi-Thomson Reuters, 2013

to issue the Public Debt, or if they intend to contract loans. In both cases, the state and the regions must be authorized by law (135.3). In the fourth paragraph, all the reasons which justify the overcoming of the limits in terms of public deficit and public debt are listed. Among them there are: natural disasters, economic recession or extraordinary emergency situations (135.4). In the fifth paragraph is announced that what affirmed in the article must be developed at national level through an Organic law (135.5). And finally, in the last paragraph, it is recognized that the regions shall take autonomously the appropriate measures for the correct implementation of the new rules on deficit and debt (135.6).

By analysing these rules, it comes immediately evident, how flexibility, once again, re-affirms itself as a priority of the European Union's legislation. In fact, as abovementioned, article 135.4 recognizes a series of situations which allows the limits not to be respected. This opt-out provision excludes the full credibility of the European rules themselves<sup>185</sup>. The circumstance referring to natural disasters appears redundant, as already deeply discussed in article 116 of the Spanish Constitution. This article in fact recognizes to the government the possibility to limit or at least suspend certain duties in specific situations, like in case of natural disasters<sup>186</sup>. The limit imposed by article 135.2 actually refers to the structural deficit, and not to the non- cyclically adjusted deficit, this implies that the structural deficit already embraces possible adjustment measures for cyclical deviations. Basically, what is important to understand is that a recession should not justify any excessive structural spending<sup>187</sup>. Finally, the circumstance referring to « extraordinary emergency situations that are either beyond the control of the State or significantly impair the financial situation or the economic or social sustainability of the State<sup>188</sup> » is a statement where everything can be fit in, completely dependent upon the discretion of the political leaders<sup>189</sup>.

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<sup>185</sup> Abad, J. M., Hernández Galante, J., Spanish Constitutional Reform: What is seen and not seen, CEPS Policy Brief, No. 253, September 2011, p. 3

<sup>186</sup> Article 116 CE

<sup>187</sup> Op. cit., Abad, J. M., Hernández Galante, J., Spanish Constitutional Reform: What is seen and not seen, p.3

<sup>188</sup> Article 135.4 CE

<sup>189</sup> Op. cit., Abad, J. M., Hernández Galante, J., Spanish Constitutional Reform: What is seen and not seen, p.4

This reform for sure, has also achieved important accomplishments, such as, the extension of the rules about deficit and debt also to the autonomous regions (135.6). Unfortunately, the fact that this new rule will be fully applicable just since 2020 (a gradual path of implementation was foreseen) makes the entire reform quite ephemeral <sup>190</sup>. On the contrary, we should remark that Spain was one of the few countries already having at national level specific fiscal rules, but without having constitutional value. Before the reform of article 135 CE in fact, the discipline concerning the balanced budget rule was based on article 134 CE, which does not expressly foresee the duty of balanced budget, the Ley General de Estabilidad Presupuestaria approved by the Royal Decree 2/2007, and finally the Ley Orgánica 5/2001 partially reformed by the Ley Orgánica 3/2006<sup>191</sup>. As already said, article 135.5 declared the need of an Organic Law which allows the implementation of the reform. This Organic Law was adopted on April 27, 2012.

The abovementioned Organic Law 2/2012 on Budgetary Stability and Economic Sustainability is actually the law which gives enforcement to the provisions of the new article 135. Firstly, it is important to say what organic law means. According to the 1978 Spanish Constitution, an Organic Law, Ley Orgánica, is a law between an ordinary law and a constitutional law. It must obtain an absolute majority by the Congress in order to be adopted<sup>192</sup> and it can be used just in a reserved domain. Before 1978, the tool of the Organic Law was unused in Spain. With the introduction of this instrument in the 1958 French Constitution, Spain took inspiration from the French case, and decided to extend its pool of tools. Basically, this Organic Law has implemented the directives of article 135 with three different aims. Firstly, to ensure the financial sustainability of the governmental activities by putting in place a specific early-warning system for detecting hypothetical imbalances in the public budgets. Secondly, boosting the relationship of trust with the European Union by foreseeing coercive measures in case of lack of compliance. And finally, to assure the economic stability of Spain by publishing monthly and quarterly

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<sup>190</sup> Ibidem

<sup>191</sup> On the balanced budget policies already in place before the amendment of article 135 CE see: Martínez Lago, M. A., *Algunas notas sobre la reforma de las leyes de estabilidad presupuestaria*, in *Quincena Fiscal*, 2005, pp. 9 ss, and Ausín, C., *El control externo del sector público y su contribución a la mejora de la gestión pública*, in AA. VV., *Pluralismo territorial y articulación del control externo de las cuentas públicas*, Lex Nova, Valladolid, 2008, pp. 167 ss

<sup>192</sup> Article 81 CE

reports on national budgets<sup>193</sup>. In September of the same year, the Organic Law was quietly amended to fully implement the European directives. The amendments were about the introduction of five further provisions, the most significant one recognizing the autonomous communities additional funding mechanism to tackle the difficulties they met in entering the financial market<sup>194</sup>. In the paragraph 2.5 we will deeply analyse whether some cases dealing with the Constitutional amendment of article 135 CE were presented or not before the Court.

The last point to analyse here has to do with the Fiscal Compact, part of the TSGG. The Fiscal Compact was signed up on March 2, 2012, for entering officially into force on January 1, 2013. The Fiscal Compact is also known as the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, and its negotiations started at the meeting of the European Council held on December 9, 2011. Since this date, just two more times the Instrument was discussed about, that is, on February 8 and 14, 2012<sup>195</sup>.

On February 8, in plenary session of the Congress, the Spanish President Rajoy highlighted the most important novelties the instrument was envisioned to introduce and that would be fundamental for setting robust bases for the Eurozone, and for granting a healthy recovery of the country. Moreover, the greatest novelty who really satisfied Rajoy was the obligation up to all the member states to introduce in their national legislations the balanced budget rule, like Spain did in 2011<sup>196</sup>.

On February 14 instead, again in plenary session of the Congress, Pedro Saura García, member of the Partido Socialista Obrero Español, suggested the need to adapt the already amended article 135 CE to the Fiscal Compact, considering that Spain was imposing rules much more stringent than those proposed at EU level<sup>197</sup>.

Once the Treaty was signed, the Spanish President Rajoy presented his proposal of ratification before the Congress of Deputies on May 21, 2012. The procedure for the

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<sup>193</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 17

<sup>194</sup> Law 4/2012, 28 September, amending the Organic Law 2/2012 27 April

<sup>195</sup> See the *Diario de Sesiones* of the Congreso de los Diputados of 8th and 14th February 2012

<sup>196</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 73

<sup>197</sup> *Ibidem*

ratification was the one indicated by article 93 CE, highlighting the urgency of the ratification to the Congress. The Comisión de Asuntos Externales was asked to fix a deadline for tabling amendments, and due to the urgency, a month later the proposal of ratification, on June 21 the text was voted. With 331 votes in favour in the Congress, and without amendments' proposal approved<sup>198</sup>, the text was passed. The same occurred in the Senate on July 18, and also in this case, with no amendments' proposal approved<sup>199</sup>, the text was passed with 240 votes in favour. On July 25, the King Juan Carlos I, approved the Organic Law 3/2012 on the Fiscal Compact<sup>200</sup>, and on August 9 he presented the ratification instrument of the Treaty<sup>201</sup>. On January 1, 2013, the Fiscal Compact started to produce its effects in Spain.

One of the most controversial aspects concerning the Fiscal Compact was about the introduction of the Balanced Budget Rule in the national systems as foreseen by article 3.2 of the Fiscal Compact's text. Spain with the reform of the article 135 CE, described further back, was already in respect of this principle, while the remaining countries had to start a path for complying with this provision<sup>202</sup>.

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<sup>198</sup> See the five amendments presented to the Fiscal Compact in the Congreso and the 21st of June Diario de Sesiones of the Congreso in (respectively):

[http://www.congreso.es/public\\_oficiales/L10/CONG/BOCG/A/A\\_010-07.PDF#page=1](http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/A_010-07.PDF#page=1)

[http://www.congreso.es/public\\_oficiales/L10/CONG/DS/PL/PL\\_043.PDF](http://www.congreso.es/public_oficiales/L10/CONG/DS/PL/PL_043.PDF)

<sup>199</sup> See the amendments presented and the 18th of July Diario de Sesiones of the Senado in (respectively):

[http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG\\_D\\_10\\_80\\_631.PDF](http://www.senado.es/legis10/publicaciones/pdf/senado/bocg/BOCG_D_10_80_631.PDF)

[http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS\\_P\\_10\\_27.PDF](http://www.senado.es/legis10/publicaciones/pdf/senado/ds/DS_P_10_27.PDF)

<sup>200</sup> See the Ley Orgánica 3/2012 on the Fiscal Compact as sanctioned by the Spanish King in:

<http://www.boe.es/boe/dias/2012/07/26/pdfs/BOE-A-2012-9981.pdf>

<sup>201</sup> See the Ratification Instrument of the Fiscal Compact, 9 August 2012, by the Spanish King in:

<http://www.boe.es/boe/dias/2013/02/02/pdfs/BOE-A-2013-1118.pdf>

<sup>202</sup> See the report adopted by the European Commission on the implementation of the Fiscal Compact adopted on February 2017, available at: [https://ec.europa.eu/info/sites/info/files/1\\_en\\_act\\_part1\\_v3\\_0.pdf](https://ec.europa.eu/info/sites/info/files/1_en_act_part1_v3_0.pdf)

### 2.3 The implications of the Six Pack and the Two Pack for Spain

The Six Pack is a package of six measures, as the name suggests, focused on the fiscal and macro-economic targets of coordination. It is composed of five regulations and one directive, which, as a whole, were adopted in November 2011, after a year of work, and that finally entered into force on December 13, 2011<sup>203</sup>. Some of the measures are addressed just to the Eurozone member states, while the remaining to all the EU member states. These measures are in support of the Stability and Growth Pact (SGP), adding to it new aspects, such as a further Macroeconomic Imbalances Procedure, a new voting system in the Council and new sanctions for the Eurozone member states missing the compliance with the new rules<sup>204</sup>.

Although the Six Pack did not enter into force prior December 2011, discussions have been started a year before, in Spain as well<sup>205</sup>. On October 2010 in fact, the Spanish Secretary of State for the EU, López Garrido, went before the Joint Committee for European Union Affairs for explaining the positions that the Spanish government was intended to take as far as the Six Pack was concerned<sup>206</sup>. In this occasion, Garrido announced the task that Spain had to follow, that is, the redaction of a report on economic governance. This report subsequently would be examined, and after that, Spain would be asked to strengthen its fiscal discipline. As far as the system of sanctioning in case of non-compliance is concerned, Garrido did not express a preference, differently from Germany and France. Germany was in favour of an automatic sanctioning system, while France preferred to move towards a softer position, remanding to a decision of the Council<sup>207</sup>. On the contrary, he clearly expressed his position about the consequences deriving from the non-compliance. Garrido in fact, promptly stated the contrariness of the Spanish government about the suspension of the voting rights in the Council, considering this

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<sup>203</sup> The European Commission with the MEMO 11/89 communicated on December 12/2011 to the EU member states the entry into force of a new package of measures, the Six Pack, MEMO available at: [http://europa.eu/rapid/press-release\\_MEMO-11-898\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-898_en.htm)

<sup>204</sup> The package was composed of: The Regulation 1175/2011 amending Regulation 1466/97, the Regulation 1177/2011 amending Regulation 1467/97, the Regulation 1173/2011 and finally the Directive 2011/85/EU, all deal with fiscal policy. The remaining Regulation 1176/2011 and Regulation 1174/2011 they have to do with Macroeconomic Imbalances.

<sup>205</sup> Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea No. 151

<sup>206</sup> Diario de Sesiones de las Cortes Generales, Comisiones Mixtas para la Unión Europea No. 56 of 6 Dec 2010

<sup>207</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p.37

implication as a violation of the national sovereignty<sup>208</sup>. Despite this, Garrido and the whole Spanish government agreed on the urgency and the necessity of this reform.

On December 9, 2010, the Spanish Parliamentary Commission started its work, firstly analysing whether the regulations included in the package respected two of the main principles present at EU level: the principle of subsidiarity and the principle of subsidiarity<sup>209</sup>. Any aspect of inconformity with these two principles was found and a few days later President Zapatero went before the Congress for informing it about the advances in terms of economic and fiscal discipline that were taking place. After this brief general introduction, it is now important to analyse specifically the directive and the five regulations part of the Six Pack for understanding which repercussions, if any, they caused at the Spanish national level.

The Directive 2011/85/EU is the sole directive making part of the Six Pack, in fact, the other five legislative acts were regulations. This directive started to produce its effects in December 2011, actually a month after the election as Prime Minister of Rajoy, leader of the Partido Popular. The directive basically deals with the requirements for the budgetary frameworks of the Member States, and to comply with these requirements different means were used.

The main legal instrument for implementing the directive was the Organic Law 2/2010 on Budgetary Stability and Financial Sustainability<sup>210</sup>. This Organic Law, replaced the precedent Law on Budgetary Stability of 2001<sup>211</sup>, with the main aim of facilitating recovery for allowing the compliance of Spain with the EU targets<sup>212</sup>. This Organic Law has introduced new significant novelties, such as:

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<sup>208</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 37

<sup>209</sup> Ibidem

<sup>210</sup> Boletín Oficial del Estado No. 103, of 30 April 2012

<sup>211</sup> General Law on Budgetary Stability 18/2001, Boletín Oficial del Estado No. 198 of 13 Dec 2001 and Law 5/2001 complementing the General Law on Budgetary Stability 18/2001, Boletín Oficial del Estado No. 299, of 14 Dec 2001

<sup>212</sup> Preamble of the Organic Law 2/2012 on Budgetary Stability, Boletín Oficial del Estado No. 103, of 30 April 2012

- An increasing number of surveillance mechanisms, at all level of governance, for instance, through the creation of the Independent Authority for fiscal Responsibility<sup>213</sup>;
- More specific measures to undertake in case of non-compliance with the EU targets, in terms of budgetary objectives<sup>214</sup>;
- More stringent rules whether the non-compliant aspects persist to exist. An example of a more stringent rule could be the appropriation of the system of regional taxation by the central government<sup>215</sup>;
- The creation of personal bail-out programs for all those regions needing financial assistance<sup>216</sup>.

Another instrument which played a significant role in the implementation of the Directive was the Ministerial Order HAP/2105/2012. This Ministerial Order basically establishes the deadlines the sub-national administrations have to respect for providing the information about their economic and financial conditions. Autonomous Communities, monthly, have to present to the central government a report indicating their budget and their capacity funding<sup>217</sup>. In addition, every year, regions have to make forecasts on:

- Their hypothetical state of indebtedness;
- Their spending limits;
- The general lines for their budget on the ground of the European legislation. This report must be presented before October 31.

The last law here described is the Law 27/2013. This law basically renders the autonomy of local government dependent upon the respect of budgetary stability and financial sustainability<sup>218</sup>. Budgetary stability, with this directive, has represented a significant limit to the activities of local government.

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<sup>213</sup> Op. cit, Estrada-Cañameres, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 38

<sup>214</sup> Ibidem

<sup>215</sup> Ibidem

<sup>216</sup> Ibidem

<sup>217</sup> This is consistent with Art. 3.2 (a) of Directive 2011/85, in which cash-based fiscal data is to be provided “monthly for central government, state government and social security sub-sectors”.

<sup>218</sup> Article 1.1 of the Law 27/2013 of rationalisation and sustainability of the Local Administration. Boletín Oficial del Estado, No. 312 of 30 Dec 2013



Besides what just explained, further Royal Decrees and Organic Laws were adopted for allowing a one hundred percent implementation of the Directive. But, rather than describing them, it is more useful to deeply analyse the Organic Law 2/2012.

The second chapter of the Directive is about “Accounting and Statistics”. Article 6 of the Organic Law, specifically, recognizes up to all the public administrations the duty to submit all the needed data and information for allowing the assessment of their financial health.<sup>219</sup> The Ministry of Finance is the responsible for collecting this information among the different public administrations. Article 3.2 (a), of the Organic law instead, defines the deadlines to respect for furnishing this data and information. This aspect is meticulously treated by the Ministerial Order HAP/2105/2012 as already said.

The third chapter of the Directive is about “Forecasts”. Article 15 of the Organic Law states that the goals as far as the budgetary stability is concerned must respect the limits fixed in the forecasts. These forecasts are about «GDP growth, output gap, and the output growth reference rate and the cyclical deficit <sup>220</sup>». Differently from the previous Organic Law of 2001, the Organic Law 2/2012 includes the calculations of the cyclical deficit not only for all the public administrations but also for different subsectors<sup>221</sup>.

The fourth chapter refers to the “Numerical fiscal rules”. In order to efficiently respect the limits of public deficit and public debt imposed by the EU, the Spanish government adopted more serious and stringent fiscal rules.

As far as the Debt, the Deficit and the Spending are concerned, the Organic Law 2/2012 developed the principles on budgetary stability defined through the already mentioned amendment of article 135 of the Spanish Constitution<sup>222</sup>. The Organic Law prevents the Public Administration from falling into a situation of structural deficit, with the exception of specific situations of emergency, such as natural disasters or serious economic recessions. The level of Debt for the Public Administrations cannot exceed the 60% of

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<sup>219</sup> Boletín Oficial del Estado No. 103, of 30 April 2012

<sup>220</sup> Op. cit, Estrada-Cañameres, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p.39

<sup>221</sup> Ibidem

<sup>222</sup> To be more precise, it is correct to stress how the rules on Budgetary Stability were already present in 2002, but, just with the constitutional reform of 2011, the principle of Budgetary Stability gained constitutional level.

GDP. Furthermore, through this Organic Law, all the limits concerning with Deficit, Debt and Spending were rendered applicable also to regions.

As far as a system of surveillance is concerned, according to the Directive 85/2011, a specific body for controlling the respect of the fiscal rules had to be created. The “Independent Authority for Fiscal Responsibility” was set up<sup>223</sup>.

For sure, a scheme of preventive and corrective measures was installed. The preventive measures basically consist in denying further indebtedness to the level of government whose public debt for more than 95% of the limits imposed by the Organic Law 2/2012<sup>224</sup>. Instead, when we refer to corrective measures we mean all those measures that are applied when there is a constant lack of compliance by the central government with the prefixed budgetary objectives. If this situation occurs, the central government is asked to draft an Economic and Financial Plan aimed at addressing the administration on the right route. This plan then must be passed by the Parliament<sup>225</sup>. If the subjects in breaking of the rules are the regions, the regions are prevented to enter into more debt. Just the central government could potentially overthrow this rule<sup>226</sup>. Alternatively, regions can pursue the same legislative *iter* of the central government in case of non-compliance, that is, to present an Economic and Financial Plan in need of the approval by the Council of Fiscal and Financial Policy<sup>227</sup> after having presented a report to the Independent Authority for Fiscal Responsibility.

Lastly, sanctions as well are foreseen. Whether regions do not respect their duties, by failing to present the requested financial plan or to observe it, the central government can also decide to take over the regional taxation competences<sup>228</sup>.

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<sup>223</sup> Boletín Oficial del Estado No. 274, of 14 Nov 2013

<sup>224</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p.40

<sup>225</sup> Ibidem

<sup>226</sup> Boletín Oficial del Estado No. 299, of 14 Dec 2001

<sup>227</sup> This body exists since 1980. It has been created with the aim of coordinating the regional finances and the central government ones.

<sup>228</sup> Organic Law 2/2012 on Budgetary Stability, Boletín Oficial del Estado No. 103, of 30 April 2012

While chapter 5 of the Directive, that one about the Medium-Term Budgetary Frameworks, has not introduced meaningful novelties with respect to the Law 18/2001 of Budgetary Stability<sup>229</sup>, chapter 6 is much more interesting to analyse.

The sixth chapter has to do with “Transparency”, recognized as one of the pillars of the Law on Budgetary Stability 2/2012. It is asked to all Public Administration to provide general information about their budgets before the concerned document is approved. The goal is simple: to obey to the requirements coming from the EU legislation<sup>230</sup>. Furthermore, to stress the importance of the principle of Transparency, a new law in 2013 was adopted. Law 19/2013 highlights the duty up to local administrations, regions and central government, to facilitate budgetary, statistical and financial information. After this technical description, it is important to understand whether Spain encountered difficulties in the implementation, at national level, of this Directive.

According to the Spanish Constitution, regions and municipalities should enjoy the right to collect their own taxes<sup>231</sup>. This is the reason why, when the new Budgetary rules were introduced, the possibility, in case of non-compliance, to lose this competence, was perceived by regions and municipalities as in constitutional violation<sup>232</sup>. Moreover, according to the new rules, regions would be prevented to use the surplus for compensating public debt<sup>233</sup>, and they would see limited their spending ceilings. This fact, reduced drastically their budgetary autonomy, considering that spending ceilings have always had great importance for covering expenses like education, healthcare and social assistance<sup>234</sup>.

After this detailed analysis of the Directive 2011/85, it is now time to move to the five Regulations forming the Six Pack. For backlash against the new legislation on budgetary frameworks see paragraph 2.5.

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<sup>229</sup> Boletín Oficial del Estado No. 299, of 14 Dec 2001

<sup>230</sup> Preamble of the Organic Law 2/2012 on Budgetary Stability (my own translation), Boletín Oficial del Estado No. 103, of 30 April 2012

<sup>231</sup> Article 197 CE

<sup>232</sup> Medina Guerrero, M., El estado autonómico en tiempos de disciplina fiscal , Revista Española de Derecho Constitucional No. 98, May- August 2013

<sup>233</sup> Articles 12 and 32 of the Organic Law 2/2012 on Budgetary Stability, Boletín Oficial del Estado No. 103, of 30 April 2012

<sup>234</sup> Albertí Rovira, E., El impacto de la crisis financiera en el Estado autonómico español, Revista Española de Estudios Constitucionales No. 98, May- August 2013

The discussion at national level for the adoption of the draft Regulation 1176/2011 on the prevention and correction of macroeconomic imbalances occurred on December 9, 2010<sup>235</sup>. The exponent of the Partido Popular Socialista, Moscoso del Prado Hernández, in his report on the draft regulation, stated that, according to him, the Regulation was in compliance, and in respect of, the principles of subsidiarity and proportionality. He also added that for really stabilizing the European economy, an improvement in the economic and monetary union was needed.

Spain was deemed to be as one of the European countries more in need of an “In-depth review”<sup>236</sup>, and this mainly because, after the housing bubble and the credit boom, Spain was dealing with enormous domestic and external imbalances, which for sure had to be resolved<sup>237</sup>. The imbalances due to the housing bubble spread across many other sectors, hitting the labour market and the public finances as well. Workers lost their job, public debt rose sharply because of lower tax revenue in the construction sector, banks were halted and made unable to lend money. Although the policy responses from the Spanish government did not delay to be implemented, the European report on Spain called for «policies aimed at increasing competitiveness and enlarging the export base of the Spanish economy, strengthening competition in product and service markets, further restructuring of the banking sector with a strong focus on trouble asset disposal, completing the adjustment of the housing sector and enhancing the scope of reforms in the labour market.<sup>238</sup>»

The Regulation 1174/2011 is about the actions foreseen by the EU to correct excessive macroeconomic imbalances among the eurozone member states. Basically, the regulation is the continuation of the Regulation 1176/2011, and it predicts a series of sanctions or other tools, like fines, to utilize in case of macroeconomic imbalances for satisfying EIP Council’s recommendations<sup>239</sup>.

The Regulation 1175/2011 is on the strengthening of the budgetary surveillance positions, and it goes to amend the Council Regulation 1466/97. The first article of the Regulation

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<sup>235</sup> Boletín Oficial del Estado, Comisiones Mixtas para la Unión Europea No. 160, of 9 Dec 2010

<sup>236</sup> First Alert Mechanism Report available at [http://europa.eu/rapid/press-release\\_MEMO-12-104\\_en.htm](http://europa.eu/rapid/press-release_MEMO-12-104_en.htm)

<sup>237</sup> [http://ec.europa.eu/europe2020/pdf/nd/idr2012\\_spain\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/idr2012_spain_en.pdf)

<sup>238</sup> European Commission, Economic and Financial Affairs, European Economy, Occasional Papers: [http://ec.europa.eu/economy\\_finance/publications/occasional\\_paper/2013/op134\\_en.htm](http://ec.europa.eu/economy_finance/publications/occasional_paper/2013/op134_en.htm)

<sup>239</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0008:0011:EN:PDF>

points out all the rules to apply as far as the content, the examination and monitoring of the stability and convergence programmes are concerned. The goal is to limit as much as possible the excessive deficit of member states, moreover, to boost the cooperation of states for their economic policies, in the view of an urgent need of growth and employment<sup>240</sup>. As a consequence of the Regulation, more stringent rules on the Budgetary Stability were adopted.

The law 18/2001 on Budgetary Stability, in 2012 was replaced by the already discussed Organic Law 2/2012. This new law did not introduce so many changes in terms of rules to follow for the drafting of the Medium Term Objective. The law 18/2011 in fact, already envisaged a medium term objective as far as the budgetary positions were concerned<sup>241</sup>. Like in 2001 indeed, the MTO has to be elaborated by the Council of Ministers, on the ground of the proposal of the Ministry for Finance, and subsequently to the reception of a detailed report prepared by the Financial Council of the Regions (CFFPR) and the National Commission for Local Administration (NCLA). Despite this setting was respected and maintained, some changes occurred.

- Article 15 of the new Organic Law 2/2012 stresses that, since the entrance into force of the law, any opinion or recommendations on the MTO issued by the EU will have valence and will be taken into account.
- More stringent conditions went to replace the existing ones regarding the way in which the Parliament should approve the MTO. Differently from the 2001 Law, whether one of the two chambers rejects the text, the Congress can no longer approve the text by simple majority. Indeed, the government is called to present a new MTO within a month<sup>242</sup>.
- New rules were also introduced if regions fail to comply with their MTO. According to article 15, if a region does not respect its MTO, it can no longer issue credits and has to create, in the Spanish Central Bank, a specific fund equal to 0.2% of its GDP as a way of guarantee. Moreover, the taxation competences will be passed to the central Government. If a region refuses to accept these

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<sup>240</sup> [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2011.306.01.0012.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2011.306.01.0012.01.ENG)

<sup>241</sup> Boletín Oficial del Estado No. 298 of 13 Dec 2001

<sup>242</sup> Article 15 of the Organic Law 2/2012 on Budgetary Stability (Boletín Oficial del Estado No. 103, of 30 April 2012)

consequences, article 26 recognized to the government the possibility to execute by force the regional taxation competences<sup>243</sup>.

According to the Regulation, in order to guarantee the asked economic policy cooperation among member states, the Council is entitled to use the European Semester for checking how national governments are working for that. The European Semester, following the new Organic Law 2/2012 foresees a specific budgetary timeline:

- According to article 13 of the already mentioned HAP, regions have the duty to present their hypothetical level of indebtedness before March 31. Before April 1, the Ministry for Finance has to present his plan for Budgetary Stability for the upcoming three years to the CFFPR and the NCLA, who, in the following fifteen days have to express their opinion in merit. At the end of this process, the Council of Minister should have all the elements for setting the objectives of budgetary stability within the firsts six months of the year. Once the proposal is drafted, the Congress and the Senate, in the case of Spain, shall vote for it. If one of the two chambers is disappointed about the text, the Parliament, within a month, has to submit a new proposal<sup>244</sup>.
- Once the proposal gets the needed consent, before August 1, the Ministry for Finance shall inform the CFFPR about the limits of non-financial spending decided as far as the state budget is concerned<sup>245</sup>.

The new real novelty about the State Budget, due to the European Semester is with respect to the Independent Authority for Fiscal Responsibility, which has the duty to detect whether the draft budget respects or not the objectives of budgetary stability, spending ceilings and public debt within the first half of October<sup>246</sup>. The Authority exercises the same function as far as the regional and local drafts are concerned<sup>247</sup>. Furthermore, by April 15, the Authority has to inform the governments about the level of compliance and implementation with the pre-fixed objectives of the central, regional and local

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<sup>243</sup> Boletín Oficial del Estado No. 103, of 30 April 2012

<sup>244</sup> Article 15 of the Organic Law 2/2012 on Budgetary Stability (Boletín Oficial del Estado No. 103 of 30 April 2012)

<sup>245</sup> Article 30 of the Organic Law 2/2012 on Budgetary Stability (Boletín Oficial del Estado No. 103 of 30 April 2012)

<sup>246</sup> Boletín Oficial del Estado No. 103 of 30 April 2012

<sup>247</sup> Ibidem

administrations. Moreover, on a monthly basis for regions and every three months for local governments, they have to present a report on the realisation of their budgets<sup>248</sup>.

When the new rules coming from the European Semester were discussed in the Spanish Parliament, most of the MPs seemed to agree and accept the implied transformations. Moscoso del Prado, from Partido Socialista, stated his satisfaction for the more rigid system of supervision<sup>249</sup>, Becerril, from Partido Popular, recognized a high value to this new instrument able to make everything more predictable and of thrust for member states. Maybe the sole difficulties coming from the introduction of the European Semester would be for the reduced route of manoeuvre for regions and local administrations, but basically, any of them presented legal actions against it<sup>250</sup>. The MTO, according to the new Organic Law 2/2012 must be inserted in the National Stability Programme.

The last two Regulations are the Regulation 1177/2011 on the Excessive Deficit Procedure and the Regulation 1173/2011 on the effective enforcement of budgetary stability. The former explains what the objective of the EDP is, that is, to avoid excessive government deficits, and, if necessary, to correct the problem. On this regulation, Miguel Arias Cañete recognized the EDP as adequate and justified for protecting the European Monetary Union. Moreover, it was also in respect of the subsidiarity principle, which allows the EU to establish common standards valid for all the member states. The latter is just for the eurozone members and sets out a block of measure, including sanctions, for guaranteeing the effective enforcement of the budgetary surveillance. Juan Manuel Albendea Pabón, representative of the Partido Popular, recognized that the Regulation was in respect of both the principle of subsidiarity than proportionality. He added moreover that the uniform sanction mechanism foreseen by the Regulation was the sole available tool for a full implementation of the Stability and Growth Pact<sup>251</sup>.

The Two Pack is the package of reforms following the Six Pack, which was coined in November 2011 by the European Commission, which proposed the adoption of these two regulations for further fostering the coordination and the surveillance of the budgetary

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<sup>248</sup> Boletín Oficial del Estado No. 240 of 5 October 2012

<sup>249</sup> Diario de Sesiones de las Cortes Generales, Comisión Mixta para la Unión Europea, Boletín Oficial del Estado No. 160 of 9 Dec 2010

<sup>250</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 52

<sup>251</sup> Ibidem, p. 53

processes interesting the entire Eurozone<sup>252</sup>. On May 21, 2013, the Two Pack was adopted and a week later it started to produce its effects when the Fiscal Compact was already in place. These two regulations must be read along with the SGP, in the sense that they were drafted in light of the SGP's objectives. The Two Pack does not add significant novelties to the SGP. Basically, it is aimed at making more efficient the European Semester, and the preventive and corrective characteristics of the SGP. The first Regulation, the Regulation 473/2013, is compulsory for all the Eurozone member states, while the second one, the Regulation 472/2013 will just be whether a state is getting macroeconomic financial assistance or if it has an ongoing Excessive Imbalance Procedure<sup>253</sup>.

The regulation 473/2013 goes to add to the previous SGP an extra monitor requirement to all those member states not in EDP or in EIP. These states have the duty to present their fiscal budget's draft for the coming year before the European Commission by October 15, waiting for the opinion of the European Commission before the voting procedure at national level<sup>254</sup>.

The regulation 472/2013 is addressed specifically to all those Eurozone member states in financial difficulty. These states will be under a specific surveillance system. They are asked, on a quarterly basis, to submit reports to the European Commission, which in turn, sends warnings to the national parliaments failing to comply with the fixed targets or deadlines<sup>255</sup>. The last thing to say about the Two Pack is that it enhanced the soundness of the national budgets by imposing the EU member states to draft their budgets by taking into account independent macroeconomic forecasts. Furthermore, in order to guarantee the compliance by the states with their national fiscal rules, it appoints specific national independent bodies with this aim<sup>256</sup>.

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<sup>252</sup> <http://leg16.camera.it/465?area=8&tema=747&Le+modifiche+al+Patto+di+stabilit%C3%A0+%28six+pack+e+two+pack%29>

<sup>253</sup> Economic Governance: Commission proposes two new Regulations to further strengthen budgetary surveillance in the Euro area (MEMO/11/822)

<sup>254</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-196\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-196_en.htm)

<sup>255</sup> Ibidem

<sup>256</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 52



## 2.4 The ESM and the Spanish Memorandum of Understanding

After the EFSF and the EFSM, it was time to create a permanent emergency fund for the European countries in need. On July 11, 2011 the European Stability Mechanism Treaty was signed, for being renegotiated and re-signed on February 2, 2012.

On March 30, 2011, Zapatero, President of the Spanish government at that time, went before the Congress for explaining what was going on at European level. As far as the economic governance is concerned, Zapatero stressed three main facts:

- The revision of the Stability and Growth Pact;
- The adoption of the Euro Plus Pact;
- The amendment of article 136 TFEU aimed at allowing the establishment of the ESM. It was in fact added a new paragraph stating that «The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality<sup>257</sup>».

At the same meeting, two significant positions were taken by Erkoreka Gervasio, member of the Partido Nacionalista Vasco, and Ana María Oramas González-Moro. The former expressed full support to the ESM but made two criticisms to the European Economic Governance by stating that the EU, throughout the years, had adopted so many instruments that to understand the entire system had become very complicated, and secondly, that the EU takes actions only after crises have already hit a country. Making the example of the ESM, he declared that the decision to create this fund arrived just after the Irish Bailout. He invited so the EU to think about the creation of an instrument able to avoid future crises. The latter instead openly criticised the ESM, by stating that the

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<sup>257</sup> On March 25, 2011, the decision to amend article 136 TFEU was taken by the European Council, which consequently opted for the addition of a new paragraph to the already existing Article 136 TFEU. The article 136.3 TFEU was approved according to the simplified revision procedure, as indicated by article 48.6 TFEU, and in respect of the national constitutional requirements of member states. The amendment has entered into force just on May 1, 2013. For a deeper analysis, see Chapter 3.

system is not based on shared responsibility, and this is since money are not lent but they are loaned with interest rates<sup>258</sup>.

Once the final text of the ESM was signed, Rajoy, the newly appointed President of the Spanish government, went before the Congress to inform it of the activities undertaken at EU level<sup>259</sup>. Rajoy expressed his complete support to the mechanism, recognizing the innate characteristic of the ESM of ensuring liquidity to the MSs for allowing them to respect their fiscal duties.

After the Treaty on the ESM was signed, on February 2, 2012, the Spanish Parliament was called to express its vote as far as the ratification was concerned. The procedure to follow was the one described by article 94.1 that foresees the authorisation by a simple majority of both the Chambers<sup>260</sup>. The Board of the Congress requested the intervention of the Comisión de Asuntos Exteriores, the External Affairs Commission, which fixed some deadlines for proposals of amendment of the Treaty and adopted its report on the Treaty<sup>261</sup>. With 292 votes in favour, the Treaty was passed in the Congress. On May 21, the Board of the Senate moved in the same direction of the Board of the Congress, and with 234 votes in favour, the treaty passed as well in the Senate. Lastly, in compliance with the Constitution, King Felipe VI was called to express his consent for making enter the state into this international obligation system. On June 21, 2012, the King passed the Treaty which officially entered into force on September 27, 2012<sup>262</sup>.

The process of ratification was not so easy as could appear, in fact, it encountered some obstacles. Some veto proposals were presented both in the Congress and in the Senate. As far as the Congress is concerned, the first veto proposal was by Irene Lozano Domingo, member of the Unión Progreso y Democracia, who thought that with the ESM, Spain would continue to lose its national sovereignty by transferring competences to another international body. Because of the deterioration of national powers, according to

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<sup>258</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 64

<sup>259</sup> Diario de Sesiones of the Congreso de los Diputados, February 8, 2012

<sup>260</sup> Article 94.1 CE

<sup>261</sup> See the document by the Board of the Congreso in:  
[http://www.congreso.es/public\\_oficiales/L10/CONG/BOCG/C/C\\_008-01.PDF](http://www.congreso.es/public_oficiales/L10/CONG/BOCG/C/C_008-01.PDF)

<sup>262</sup> No referendum was held in Spain for the entering into force of the Treaty as defined by article 91 CE. Source: Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 71

her, was necessary to adopt an Organic Law on merit, following article 93 of the Spanish Constitution<sup>263</sup>. She also stressed that the ESM was not EU law and that furthermore represented a threat to the interests of the peninsula, since the voting rights were made dependent upon all the MSs. Another veto proposal was presented by Alfred Bosch I Pascual, member of the Grupo Mixto, according to which the ESM should apply not only to the national sovereign debt but also to that one of Autonomous Communities. Despite these veto proposal, the Text was passed by the Congress<sup>264</sup>.

As far as the Senate is concerned, the most valuable intervention was that one of Joan Lerma Blasco, of Grupo Socialista. According to him, because of the consequences linked to the ratification of the Treaty a more detailed parliamentary assembly would be necessary. Moreover, he also declared that the creation of the ESM would be unnecessary whether the ECB would take in charge this kind of functions. As occurred in the Congress, despite the veto proposals, the text was passed<sup>265</sup>. It is now very interesting to understand which role was played by the national Parliament in the application of the ESM Treaty.

Basically, the Parliament was called to control how the Government acted with regard to the ESM.<sup>266</sup> The Parliament could make a request to the Government to be informed about the state of functioning of the ESM, otherwise, the Government by itself could unilaterally opt for explaining to the Parliament how the ESM was working. Making an example, we can refer to the written question presented by María de los Angeles Marra Domínguez, member of Grupo Socialista in the Senate on February 8, 2013. This written question was for the Government and it was about a request of opinion as far as the diminishing role played by Spain in the EU decision was concerned<sup>267</sup>. To answer the question, the Government underlined that a Spaniard had been appointed as a Deputy Director General of the ESM, to demonstrate how the allusion coming from the question was without a kernel of truth.

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<sup>263</sup> Article 93 CE

<sup>264</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 67

<sup>265</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 68

<sup>266</sup> According to Title V of the Spanish Constitution, the Government is politically accountable to the Cortes Generales

<sup>267</sup> See the written question presented by María de los Ángeles Marra Domínguez on 8 February 2013 in: <http://www.senado.es/web/expedientdocblobServlet?legis=10&id=26109>

Other significant questions came from Jesus Alique López, member of Grupo Socialista in the Senate, who, on February 11, 2013, made two written questions.

In the first one he wanted to make clarification on how the first part of Spain's financial assistance programme had produced its effects in the past;

In the second one, he was interested in understanding how to apply the financial programme in the immediate future<sup>268</sup>.

Ten days later the Government supplied its responses by explaining how the process granting to Spain financial assistance had worked<sup>269</sup>. After this general introduction, it described the two parts characterizing the programme and added its personal evaluation.

To answer the first written question, the government reminded that in December 2012 Spain had received funds, for a total amount of 39, 468 million euros, for recapitalizing the first group of banks in respect of the MoU and secondly for financing the Fondo de Reestructuración Ordenada Bancaria. And referring to the second part of the Programme it stated that in February 2013 other funds had been disbursed for Spain. The Government, in its assessment of the ESM, highlighted the great importance of the mechanism for making Spain great again, granting a flow of credit for all the sectors of the state<sup>270</sup>.

In order to implement the ESM nationally, some changes in legislation were needed. With the Royal Decree 21/2012 a mechanism for allowing the sending of information about the recapitalisation plan of the financial sector from Spain to the ESM was established<sup>271</sup>. With the Law 9/2012 was also established that all the payments made for buying the recapitalisation instruments should be made in cash or through securities. The latter represents the national sovereign debt<sup>272</sup>. The last change was made with the Law 17/2012

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<sup>268</sup> See the written question presented by María de los Ángeles Marra Domínguez on 8 February 2013 in: <http://www.senado.es/web/expedientdocblobServlet?legis=10&id=26109>

<sup>269</sup> See the written response of the Government to the two questions presented by Jesús Alique López on 11 February 2013 (to be found in the same document; one response for the two questions) in: <http://www.senado.es/web/expedientdocblobServlet?legis=10&id=35693>

<sup>270</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 70

<sup>271</sup> See the Real Decreto-Ley 21/2012, de 13 de Julio, de medidas de liquidez de las administraciones públicas y en el ámbito financiero (liquidity measures of the public administration and in the financial sector) in: [http://www.congreso.es/public\\_oficiales/L10/CONG/BOCG/D/D\\_135.PDF](http://www.congreso.es/public_oficiales/L10/CONG/BOCG/D/D_135.PDF)

<sup>272</sup> See the Ley 9/2012, de 14 de noviembre, de reestructuración y resolución de entidades de crédito (restructuring and resolution of credit institutions) in: <http://www.boe.es/boe/dias/2012/11/15/pdfs/BOE-A-2012-14062.pdf>

which underlined that any decision aimed at creating sovereign debt should anyway make reference to the collective action clauses stated by article 12.3 of the ESM Treaty<sup>273</sup>.

While at European level new Treaties were concluded for giving a better shape to the European system, Spain decided to ask for financial assistance, especially to restructure and recapitalise the damaged banking sector. The official request arrived on June 25, 2012. Once the request arrived at the European Commission, the latter, along with the IMF and the ECB, came together for assessing whether the country had the right credentials for getting this financial assistance. The assessment is based on the so called “Debt Sustainability Analysis” (DSA), and it is aimed at verifying the financing needs as well as the sustainability of the debt of the country which makes request of financial assistance<sup>274</sup>. The evaluation was positive and at the summit of June 29, 2012, the Heads of State of all the Eurozone member states highlighted that the financial assistance would be under the rules of the ESM, once this instrument would be completely operational<sup>275</sup>.

Spain was one of the major countries suffering the financial crisis. Its banking sector, because of the construction bubble and the burst of the real estate and the consequent economic recession, was deeply affected. National authorities, before the bailout was concurred, had already taken some measures to address problems in that sector. Among these measures we find the cleaning-up of the balance sheets, the restructuring of the saving bank sectors and so on<sup>276</sup>. Unfortunately, the national measures were not enough, and Spain was forced to ask for external assistance. On June 25, 2012, Spain officially made request for Financial Assistance under the rules of the Financial Assistance for Recapitalisation of Financial Institutions by the EFSF. With the signature of the MoU on July 23, the programme officially started. It had a length of 18 months and it foresaw to launch a 100 billion euro bail-out programme, provided by the EFSF and the ESM. The main goal of the programme was to strengthen the solidity of the banking sector, making so possible its re-access to the market. In exchange for financial assistance, some measures were requested to Spain.

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<sup>273</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 70

<sup>274</sup> The Debt Sustainability Analysis is codified in article 13 ESM Treaty

<sup>275</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-07-20-spain-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf)

<sup>276</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-07-20-spain-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf), p. 3

A key component for achieving the goal was to guarantee the transparency of the assets. This was functional for eliminating any possible doubt about the quality of the Spanish banking sector<sup>277</sup>;

Once the transparency was granted, it was possible to make it easier the process for a gradual reduction of exposure of the national banks to the real estate sector. In this way, a restructuring of the market-based funding was facilitated<sup>278</sup>;

Thirdly, it was asked to Spain to improve the crisis management mechanism to limit, as much as possible, the risk of a new future crisis<sup>279</sup>.

Spain was also asked to identify the singular needs of each bank by using specific tools, that is, an asset quality review of each bank plus a stress test based on that asset quality review. On the ground of the stress test, Spain was asked to draw up individual plans for favouring the recapitalization, the restructuring and resolutions of the banks' problems<sup>280</sup>.

Spain was also requested to transfer the segregation of the impaired assets of that banks to SAREB<sup>281</sup>.

As far as the recapitalization of the banks is concerned, it occurred according to the following steps:

In July 2012, the first tranche of loans took place. It was about 30 billion euro shelled out by the ESFS. The use of this fund by the Spanish Government was dependent upon a reasoned and quantified request of the Banco de España in need of approval from the European Commission and the Euro Working Group, along with the ECB<sup>282</sup>.

By the second half of September 2012, the stress tests for more than 90% of the Spanish banks occurred<sup>283</sup>;

On the basis of this stress test and of the individual plans for recapitalisation, the banks were divided into different groups. In the Group 0, all those banks no longer in need of

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<sup>277</sup> Ibidem

<sup>278</sup> Ibidem

<sup>279</sup> Ibidem

<sup>280</sup> Ibidem

<sup>281</sup> Ibidem

<sup>282</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-07-20-spain-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf)

<sup>283</sup> Ibidem

any other action were positioned. In Group 1 there were all the banks already property of the Fund for Orderly Bank Restructuring (FROB). In Group 2 were included the banks that, resulting from the stress test, were deemed unable to meet capital shortfalls by themselves, without involving state aids. Finally, Group 3 was composed of banks able to meet capital shortfalls also without the help of the state<sup>284</sup>.

By early October, the banks falling in Group 1,2 and 3 were asked to present their recapitalisation plans, specifying the path they wanted to follow for filling their capital shortfalls<sup>285</sup>.

As far as the Group 1 was concerned, the Spanish authorities started to work on the restructuring and recapitalisation plans from July 2012 together with the European Commission<sup>286</sup>.

As far as the Group 2 was concerned the Commission and the Spanish authorities started to work on the plans from October 2012<sup>287</sup>.

An important element to consider is that no aid will be provided to Spain until the approval of the restructuring and recapitalisation plan by the European Commission<sup>288</sup>;

With respect to the Group 3, works started not before December 2012<sup>289</sup>.

After this brief description of the main step concerning the Financial Assistance Programme, it is urgent to analyse the national political debate during the negotiations on the programme and its MoU.

During the discussions, at European level, between the Spanish government and the European institutions, on June 20, 2012, the Grupo Socialista made a formal request to the government for knowing more about the negotiations. According to this party, during the negotiations, the Government should not forget to stress the importance of some aspects:

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<sup>284</sup> Ibidem

<sup>285</sup> Ibidem

<sup>286</sup> Ibidem

<sup>287</sup> Ibidem

<sup>288</sup> Ibidem

<sup>289</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-07-20-spain-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf)

- To assure that the bail-out should not be on the shoulders of the workers class<sup>290</sup>;
- To fix specific pillars, like the one referring to the fact that the public resources used for the bail-out would go back to the state coffers<sup>291</sup>;
- To guarantee that the financial assistance provided to the banks would allow liquidity to families and companies<sup>292</sup>;
- To guarantee that people in difficulties to repay their mortgages would be helped by the programme for that goal<sup>293</sup>;
- To guarantee full transparency<sup>294</sup>.

All these requests arrived because at a meeting held on May 28, the Government excluded the possibility of a bail-out for changing partially idea on June 9, by declaring that Spain would receive a very favourable loan, for then announcing on June 18 the damaging character of the bail-out because of the contamination of the private debt with the public one. A week later arrived the request for the Financial Assistance Programme<sup>295</sup>. Because of all these changes of mind, it was particularly stressed the need for transparency. People, the main contributors of the bail-out, had in fact the right to be informed.

When the MoU on Financial Sector Policy Conditionality and the Financial Assistance Facility Agreement were signed, respectively, on July 23 and 24, 2012, they were signed as international agreements under Spanish law, and were published on December 10 in the Boletín Oficial del Estado<sup>296</sup>. According to article 96 of the Spanish Constitution, in fact, international treaties, to enter into force, prior must be published in the Boletín<sup>297</sup>. The procedure for the incorporation of the treaty into the legal order is dependent upon the subject matter dealt with, in respect of articles 93 and 94<sup>298</sup>. In the specific case of the treaties of the MOU and of the Financial Assistance Facility Agreement the procedure to follow was the one described by article 94, which foresaw the duty for the Government

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<sup>290</sup> Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 83

<sup>291</sup> Ibidem

<sup>292</sup> Ibidem

<sup>293</sup> Ibidem

<sup>294</sup> Ibidem

<sup>295</sup> Ibidem

<sup>296</sup> See these agreements, as published in the BOE, in: <http://www.boe.es/boe/dias/2012/12/10/pdfs/BOE-A-2012-14946.pdf>

<sup>297</sup> Article 96 CE

<sup>298</sup> Articles 93-94 CE



to inform the Parliament just after the conclusion of the works on the Treaty. This, in fact, explains the criticisms and the requests, described above, coming from the Parliament<sup>299</sup>.

As far as the adjustment requirements asked for obtaining the assistance are concerned, while the MoU mainly referred to the conditionality concerning with the banking sector, the requests linked with the Financial Assistance Facility Agreement had to do with the specific processes of the assistance programme.

The three main conditions coming from the MoU referred to, as already said:

- The banking sector, such as the routes to follow for the recapitalization and the restructuring of the banks<sup>300</sup>;
- The environment which should be created for allowing the full operationality of the banking sector, like the guidelines provided by the EU for permitting to the Spanish Central Bank of being autonomous<sup>301</sup>;
- The macroeconomic imbalances<sup>302</sup>.

The MoU does not say only about conditionality, in fact, it also refers to the final goals that the Financial Assistance Programme would like to realize, that is, « to increase the long-term resilience of the banking sector as a whole, thus, restoring its market access<sup>303</sup>»; the singular points to implement according to the Programme<sup>304</sup>; and in the end, the system of supervision of the Programme by the European Commission<sup>305</sup>.

The Financial Assistance Facility Agreement instead defined the path to follow for giving full operationalisation to the Programme. When Spain signed the MoU, it gave the EU its word that it would start a package of reforms touching the principal sectors of the society. Basically, the reforms interested the labour system, the public administration, the fiscal consolidation and the education system. The reforms we will go to analyse refer to the labour system and the public administration.

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<sup>299</sup> Op. cit, Estrada-Cañameres, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 85

<sup>300</sup> Ibidem

<sup>301</sup> Ibidem

<sup>302</sup> Ibidem

<sup>303</sup> Op. cit, Estrada-Cañameres, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 85

<sup>304</sup> Ibidem

<sup>305</sup> Ibidem

The labour market reform was enacted in February 2012, when the Parliament adopted the Real Decreto Ley 3/2012. This reform went to re-organize the entire labour market system, touching the aspects dealing with its regulation, the collective bargaining rules, and the collective redundancies procedures. The aim of the reform in terms of collective bargaining rules was to achieve competitiveness again, by reducing the differences between labour costs and productivity. Moreover, it guaranteed greater internal flexibility for workers, so that when a company is in a period of recession the firing of workers is not the only available solution. According to the new labour market regulation, collective bargaining had to be fixed at company level, in order to be more respectful of the real need of a firm. In addition, when a collective agreement is concluded at company level, it is easier for the company to opt out from the agreement for facilitating the internal flexibility of workers. This is possible for instance, by modifying working conditions whether significant reasons exist. In the rare case in which no collective agreement has been concluded, the employer instead of opting out from the agreement can directly refer to the arbitration of a public tripartite body, the Comisión Consultiva Nacional de Convenios Colectivos (CCNCC), whose decisions are difficult to counterbalance by any judge<sup>306</sup>. In the end, with the new legislation was added the possibility to length the collective agreement up to one year after its expiration date. The goal is to give the right incentives to social partners for concluding a new collective agreement<sup>307</sup>.

Substantial changes occurred as well in the dismissal legislation. The reform transformed the conditions for a fair dismissal, improving the work done with the reform of 2010. According to the new legislation in fact, whether a company is affected by a persistent decline in revenues or income, for at least three years, the dismissal of workers is considered justified. But the real novelty, in this case, is that the firm has any duty to present a proof demonstrating its situation of decline and that the dismissal is the sole possible way<sup>308</sup>. On the contrary, whether a dismissal is deemed unjustified, with the new

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<sup>306</sup> Gomez-Abelleira, F., The Spanish Labour Reform and the Courts: Employment Adjustment and the Search for Legal Certainty, Spanish Labour Law and Employment Relations Journal, Vol. 1, No. 1-2, April-November 2012, pp. 31-46

<sup>307</sup> OECD, The 2012 Labour market reform in Spain: a preliminary assessment, December 2013, p.13

<sup>308</sup> Op. cit., OECD, The 2012 Labour market reform in Spain: a preliminary assessment, p.13

legislation the monetary compensation is reduced up to 33 days' wage per year of seniority, 12 days fewer than with the reform of 2010<sup>309</sup>.

As far as collective dismissal is concerned, the reform went to eliminate the need for the administrative approval for the collective redundancies. Instead, it maintained the already existing rule concerning the duty of "good-faith negotiations" with the workers' trade unions, before informing the worker of the collective redundancy procedure<sup>310</sup>. Once the collective redundancy procedure has taken place, the employer should prepare a special training or relocation plan, so to allow him/her to find a new job, especially whether the fired workers are over 50. This contribution of the firm should occur not only among those firms that in the period preceding the recession were making profits but also among those firms which in the two years following the collective redundancies were starting again to make profits<sup>311</sup>. The enlargement of application of this new rule was legally recognized by the Real Decree Ley 5/2013.

A new aspect introduced by the reform of 2012 had to do with the full-time permanent contract for small firms, that is, firms with less than 50 workers. A new type of contract, in fact, was created. It is called Contrato de Apoyo a Emprendedores. This contract basically recognizes an extended trial period of one year to all those firms which have not made recourse to the collective dismissals in the half of a year precedent to the date of starting of the contract. This specific contract is very convenient for firms as it includes many hiring incentives and fiscal rebates. It must be highlighted that this type of contract is valid only for small firms. Finally, something new was done also about fixed term contracts. Indeed, it was recognised an increased flexibility to this kind of contract and to the so called Contrato de Formación y Aprendizaje<sup>312</sup>.

The main aspects and characteristic of the new Labour Legislation have been just described, now we can pass to, and shortly describe, the second reform which occurred once the MoU was signed, that is, the one concerning with the Public Administration.

In October 2012, it was clear the need of intervention by the Spanish government to the Public Administration organization. On this ground, the government opted for the

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<sup>309</sup> Ibidem

<sup>310</sup> Ibidem

<sup>311</sup> Ibidem

<sup>312</sup> Ibidem, p.14

creation of the Commission on the Reform of the Administration (CORA), who was asked to work mainly on four main directions:

- Elimination of eventual overlapping in the public administrations at all levels<sup>313</sup>;
- Cuts in terms of administrative burdens. They represented an impediment for a full economic activity of firms<sup>314</sup>;
- Internal reorganization of public administrations so to allow a complete functioning and efficiency of their activities<sup>315</sup>;
- Improvement of the total public sector's framework, with an idea of merging or elimination of superfluous bodies<sup>316</sup>.

On the ground of these objectives, the CORA created a specific body, the Office for the implementation of the reform in the public administration, OPERA, for preparing the path to undertake to realize the plan of reform.

In conclusion, we can say that Spain, today, is a country in constant growth and the words of the OECD Secretary General Angel Gurría gave a clear idea of what Spain started to represent at international level. In 2014, he recognized how the austerity path undertaken since 2012 had been successful, bringing back the economy to increase, the banking sector to stabilize and the labour market to work again<sup>317</sup>. Rajoy concluded by declaring: «Spain has passed from being a country on the brink of bankruptcy to a model of recovery that provides an example to other countries in the EU<sup>318</sup>».

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<sup>313</sup> IESE, Commission of the reform of the public administration, available at: <http://www.spanishreforms.com/-/commission-on-the-reform-of-the-public-administration-cora>

<sup>314</sup> Ibidem

<sup>315</sup> Ibidem

<sup>316</sup> Ibidem

<sup>317</sup> Khan, M., Spanish economy on the road to recovery, say OECD, The Telegraph, September 2014, available at: <https://www.telegraph.co.uk/finance/11081215/Spanish-economy-on-the-road-to-recovery-say-OECD.html>

<sup>318</sup> <https://www.ft.com/content/74f9e24e-77de-11e5-933d-efcdc3c11c89>

## 2.5 Constitutional adjudication

Before passing to analyse Ireland, it is curious to understand whether the Euro-crisis law legislation has caused any legal action before the Spanish Constitutional Court as far as the Balanced Budget Rule, social rights and regional autonomy are concerned.

As one might have predicted, backlashes against the new legislation on budgetary frameworks were not long in coming. The first legal action issued before the Constitutional Court was a “Recurso de Amparo”, a specific process which occurs whenever a fundamental right is violated. The action was against the resolution which allowed the amendment of article 135 CE, and it was led by the Izquierda Unida. According to this party, in fact, this new article was in violation of fundamental rights<sup>319</sup>. Izquierda Unida sustains that the submission of the funding for the administration justice to the priority payment of the public debt can jeopardise an effective judicial protection<sup>320</sup>. So, since this reform could potentially represent a risk, what the party contested was the way in which the reform had been passed. The simplified procedure, according to the party was not enough, the ordinary procedure would have been much better<sup>321</sup>. The Constitutional Court rejected the instances of the party, by declaring its inadmissibility<sup>322</sup>.

The second protest was about the Organic Law 2/2012 on Budgetary Stability. The government of Canary Islands<sup>323</sup> presented to the Constitutional Court its position by declaring how the regional competences, through the law, had been deteriorated in favour of the central government, on the ground of article 16 of the Law. This resolution is still pending up to the Court.

The third contestation was about the Law 27/2013. This instance was presented before the Court by different regions, from Andalusia and Catalonia to Asturias and Canarias, not forgetting the Parliaments of Navarra and Extremadura<sup>324</sup>. According to these regions, the new law on Rationalisation and Sustainability of the Local Administrations was

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<sup>319</sup> Op. cit, Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 46

<sup>320</sup> *Ibidem*

<sup>321</sup> According to article 168 CE, the ordinary revision, differently from the simplified procedure, implies the dissolution of the Spanish Parliament, and the call of new elections. On the ground of this, it would be the new Parliament to ratify the constitutional reform and to subject it to referendum.

<sup>322</sup> The resolution is available at <http://www.cepc.gob.es/docs/dossieres-tematicos/texto.pdf?sfvrsn=0>

<sup>323</sup> Boletín Oficial del Estado No. 59 of 9 March 2013

<sup>324</sup> Boletín Oficial del Estado No. 132, of 31 May 2014

jeopardising the competencies that regions should enjoy on these matters. The action of unconstitutionality was presented also by fifty MPs, for defending the same competencies which also local authorities should enjoy on the ground of articles 137, 140, 142 of the Spanish Constitution<sup>325</sup>. In this case, the claim was accepted, and the Court admitted the action of unconstitutionality in May 2014<sup>326</sup>.

Furthermore, about 3000 municipalities presented their legal action before the Court by arguing that the Balanced Budget Rule breached their own competencies. Law 2/2012 in fact, went to reorganize the system of local services. For instance, according to the Law the management of local services, whether the municipality counts less than 20000 inhabitants, can be transferred from the municipal level to the council of the province. Additionally, according to the Law 2/2012, the actions of unconstitutionality can be presented just whether to make appeal are at least 1160 municipalities representing one-sixth of the total Spanish population. Considering that about 850 municipalities of the claimant ones were from Catalonia, it becomes clear that all the criteria for presenting actions of unconstitutionality had been fulfilled. This request was admitted by the Spanish Constitutional Court on September 10, 2014<sup>327</sup>.

As far as the social rights are concerned we can say that the Spanish Constitutional Court has not dealt with or resolved many cases about social rights<sup>328</sup>, additionally, on the few cases decided, the Court has made reference to the case law developed before the financial crisis, using a great self-restraint<sup>329</sup>. This huge self-restraint emerged with the case Auto 113/2011. This case had to do with a very sensitive issue, the one concerning with mortgage eviction, which unfortunately hit many Spanish families during the financial crisis. According to the Spanish legislation on this matter, if a contractual term in mortgage is considered illegal, the individual has the right to receive compensation, but the procedure to follow must be separated from the one to take whether the owner is forced to move out. In fact, the change in ownership of a building occurs whenever a

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<sup>325</sup> Articles 137, 140, 142 CE

<sup>326</sup> Op. Cit., Boletín Oficial del Estado No. 132, of 31 May 2014

<sup>327</sup> Tribunal Constitucional, Providencia of 11 September 2014:

[http://www.tribunalconstitucional.es/es/salaPrensa/Documents/NP\\_2014\\_068/P%204292-2014.pdf](http://www.tribunalconstitucional.es/es/salaPrensa/Documents/NP_2014_068/P%204292-2014.pdf)

<sup>328</sup> Ruiz Robledo, A., *The Spanish Constitution in the Turmoil of the Global Financial Crisis*, in X. Contiades (ed.), *Constitutions in the Global Financial Crisis. A Comparative Analysis*, Farnham, Ashgate, 2013, p. 141 ff.

<sup>329</sup> Fasone, C., *Constitutional Courts facing the Euro Crisis. Italy, Portugal and Spain in a Comparative perspective*, European University Institute, Working Paper MWP 2014725, 2015, p. 20

mortgage is not paid, and so, in this case is not important to detect whether the mortgage contract is valid or not. The analysis of the validity is just something additional, and so in need of a different procedure. The judge who presented the preliminary reference for constitutionality found a violation of article 9.3 CE and more important, a violation of the right to an adequate housing as affirmed by article 47 CE. The Constitutional Court, differently, declared the reference inadmissible because of its too generic and abstract character. These characteristics did not allow the Court to understand whether these provisions could be really meaningful for the resolution of the proceeding. Moreover, the proposal of the judge to create a new system going to substitute the existing one on mortgages, represented an invasion of competences by the judge with respect to the Parliament<sup>330</sup>.

However, the Justice Eugeni Gay Montalvo invited the Court to re-evaluate the case in light of the social right at stake. The Court, in fact, decided without considering the impact of the crisis, forgetting that, anyway, the legislation on mortgages had to comply with the constitutional principles and values. The Court was invited by the Justice, not to make reference to the case law on mortgage of 30 years ago, but to look at the problem with new eyes<sup>331</sup>. Despite this invitation, the reticent approach of the Court was confirmed with the case Auto 136/2014. This case was about the possible retroactivity of the removal of the Christmas allowance recognized to the personnel of the public sector<sup>332</sup>. If this situation would occur, this would have meant a violation of article 9.3 of the Spanish Constitution. Once the preliminary reference of constitutionality was presented by the Tribunal Superior de Justicia de Asturias before the Constitutional Court, the Court considered the reference inadmissible, because the proceeding requirements for the admissibility were missed.

Basically, we can say that this approach adopted by the Court reflected also the constitutional modification occurred during the crisis, like the amendment of article 135 CE and the introduction of the Balanced Budget Rule in the constitutional text.

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<sup>330</sup> Fasone, C., Constitutional Courts facing the Euro Crisis. Italy, Portugal and Spain in a Comparative perspective, European University Institute, Working Paper MWP 2014725, p. 21

<sup>331</sup> Díez Sánchez, L., Deconstitutionalisation of Social Rights and the Quest for Efficiency, EUI Working Paper in C. Kilpatrick & B. de Witte, 2014, p. 118

<sup>332</sup> Article 2 of the Real Decreto-ley 20/2012, de 13 de julio, de medidas para garantizar la estabilidad presupuestaria y de fomento de la competitividad

There are two cases which are worthy of mention, and both of them have to do with conflicts of competences between state and regions. In these two cases, *Auto* 239/2012 and *Auto* 114/2014, the Court was asked to decide whether to continue or not the period of suspension of the Basque and Navarra's regional laws which were contrasted by the national legislation on the ground of the violation of the existing framework legislation, which, on the contrary, grants access to the public health service. This national request came on the ground of the right recognized to the government whenever a regional law can have significant financial implications<sup>333</sup>. With the two regional legislation basically, everyone could have access to the free public health care, paying, through their own budgets, the difference for the national excluded categories. Here two different positions emerge. From one hand, it is true that the regional legislation's implications went to impair the financial sustainability of the national healthcare system, but, from the other hand, through these regional legislation, the right to access to a free public health service was recognized to everybody. In the end, the Court decided for the removal of the suspension of the regional legislation, by declaring that mere economic calculations cannot overshadow the right of any citizen to the healthcare system. Priority to social rights was so recognized<sup>334</sup>.

As far as the regional autonomy is concerned, we can say that the financial crisis has contributed to a drastic reduction in terms of regional power. Once the Organic Law 2/2012 on Budgetary Stability started to produce its effect, the situation for regions worsened even more. Article 16 of the Law recognizes to the national government the power to fix the regional budgetary stability's goal, the level of debt and expenditure, de facto denying regional fiscal autonomy. But, we should say that the tendency to the re-centralization of competences in Spain, like in Italy, started at least ten years before the Eurozone crisis<sup>335</sup>, which basically we can say, just strengthened a mechanism already existing<sup>336</sup> and that already enjoyed the consent of the national Constitutional Court<sup>337</sup>. The reduction of the regional competencies in the field of budgetary powers was

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<sup>333</sup> Op. cit., Fasone, C., Constitutional Courts facing the Euro Crisis. Italy, Portugal and Spain in a Comparative perspective, p. 22

<sup>334</sup> Ibidem, p. 23

<sup>335</sup> Ruiz Almendral, V., The Spanish Legal Framework for Curbing the Public Debt and the Deficit, *European Constitutional Law Review*, vol. 9, no. 2, 2013, p. 201

<sup>336</sup> Ibidem

<sup>337</sup> An example is provided by the decision of the Court to reject, in 2002, the budget act proposed by the Basque Autonomous Community, through the decision 3/2003



permitted by the Spanish Constitutional, and it occurred through the adoption of ordinary and organic state legislation. If in the case of the state legislation, the constitutionality of the acts was neither questioned by the Court, on the contrary, the constitutionality of the regional acts was always questioned, and in the majority of the cases, the Court hit these pieces of regional legislation<sup>338</sup>.

In the decision 134/2011, the parliament of Catalonia argued before the Spanish Constitutional Court that the Law 18/2001 and the Organic Law 5/2011, amendments included, were violating the principle of financial autonomy which Catalonia should enjoy. These Laws violated this principle as they introduced the principle of balanced budget rule, eliminating any possibility of manoeuvre for the Community. The Catalan Parliament was aware that the State was entitled of exclusive competences on the rules concerning with the coordination of the economic planning, in respect of article 149.1.13 CE<sup>339</sup>, in fact, what it criticised was the fact that the Spanish State had acted beyond its competencies, imposing a too stringent discipline to the Autonomous Communities in the field of fiscal policy, especially, in comparison with the obligations foreseen by the EU Law. Despite the explanation provided by the Catalan Parliament, the Court dismissed the legal action referring to a previous decision, the decision 62/2001, with which the Court recognized to the State the power to impose to all the level of the administration, Autonomous Communities included, the duty to be in compliance with the Balanced Budget Rule<sup>340</sup>.

The last example which allows us to understand the pattern of re-centralisation followed by the Constitutional Court through its decisions is supplied by the adoption of the State Law 27/2013 on the rationalisation and sustainability of local administrations. According to the local governments, this law basically denies the fundamental right of local administrations, that is, the right to self-government, granted by article 137 CE, and the right to fiscal autonomy. The Constitutional Court declared admissible the actions of the Communities, but, basically, because of the timing of Court's processes, the application

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<sup>338</sup> For instance, in the decision 3/2003 the Spanish Constitutional Court declared the unconstitutionality of the 2002 Budget Act presented by the Basque community.

<sup>339</sup> Op. cit., Ferreres Comella, V., *The Constitution of Spain. A Contextual Analysis*, Oxford and Portland/Or, Hart Publishing, 2013, p. 173-17

<sup>340</sup> Op. cit., Fasone, C., *Constitutional Courts facing the Euro Crisis. Italy, Portugal and Spain in a Comparative perspective*, p. 36

of the law will continue to exist at least for a little while. The eurozone crisis has also impaired the regional powers in terms of social policies<sup>341</sup>. The state legislation, in fact, has taken over the regional competences on this subject matter, surpassing the initial idea according to which the state's legislations should establish just the basic principles of social policies. In conclusion, we can say that with the financial crisis, the process of re-centralisation of determined regional competences has been fasted, at the expense of the Autonomous Communities<sup>342</sup>.

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<sup>341</sup> Op. cit., Albertí Rovira, E., El impacto de la crisis financiera en el Estado autonómico español

<sup>342</sup> Sáenz Royo, E., Estado social y descentralización política. Una perspectiva constitucional comparada de Estados Unidos, Alemania y España, Madrid, Civitas, 2003, pp. 229-235

## **Chapter 3: Ireland and the intervention of the European Union and of the Troika**

### **3.1 The system of Early Emergency Funding and the Irish Memorandum of Understanding**

While in the first chapter we described the national measures undertaken by the Irish government to escape the crisis, here we will examine what happened after, when the national reforms demonstrated not to be enough.

In 2008 in fact, when the national government announced to guarantee the deposits of the six greatest Irish banks to calm down the market, the situation appeared to improve. But soon, the financial and economic situation continued to worsen, leading the country to bankruptcy. The spending cuts and tax increases did not manage to improve the budgetary situation. After the launch of the financial assistance package to Greece, in May 2010, the Irish yields on bonds increased. The Irish government perfectly understood that it was time to give a strong signal, and in November 2010, it announced a four-year economic plan, starting in 2011 and ending in 2014, in which different goals were set up<sup>343</sup>. After this move, it became absolutely clear the need of intervention from the EU. The European Central Bank furthermore was particularly interested in helping Ireland because its exposure into the Irish banking sector due to the existent provision of emergency liquidity asset, so, was strongly concerned of an Irish default. The ECB pressed a lot the Irish government to make request for financial assistance programme, arriving to make use of media to exercise pressure<sup>344</sup>.

Finally, on November 18, 2010, the Governor of the ECB, Patrick Honohan announced that in agreement with the European Commission, and the International Monetary Fund, the ECB would be prompt to negotiate with Ireland a financial assistance programme. The aim was clear: to avoid a further deterioration of the Irish banking and financial sectors. Because of the National Recovery Plan started in November 2010, the

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<sup>343</sup> Department of Finance, National Recovery Plan 2011-2014 (Dublin, 25 November 2010)

<sup>344</sup> Donovan, D., and E. Murphy, A., *The Fall of the Celtic Tiger: Ireland and the Euro Debt Crisis*, OUP 2013, p. 237

negotiations for the EU/IMF Programme were very eased, as the Plan had already created the basis for the aid programme<sup>345</sup>.

In 2010 the European institutions established the system of Early Emergency Funding which was appositely created by the European institutions to support European countries, like Ireland, in financial difficulty.

The decision to accept an economic adjustment programme for Ireland was taken in November 2010, as just said, when a joint financing package of 85 billion euros was agreed for the period 2010-2013. Almost a half of the package was provided by the EFSM and the EFSF, which respectively, supplied 22.5 and 17.7 billion euros to Ireland. The IMF as well contributed to the programme by providing 22.5 billion euros while the remaining part was provided through bilateral loans from UK, Denmark, and Sweden and by the Irish state too.

When we talk about Early Emergency Funding we refer to the already described EFSF and EFSM. Surpassing the phase of description, we can immediately pose our attention on the different stages which the funds had to overcome to enter into force in Ireland.

According to article 1.1 of the EFSF Framework Agreement, it is stated that the EFSF would enter into force just when a certain number of Eurozone member states would have concluded the needed procedures which would allow their national laws to assure the realization of their obligations. On the ground of what stated by this article, it is interesting to discover more about the procedure undertaken by Ireland and its Parliament<sup>346</sup>.

While the power to commit the state into international agreements is in the hands of the government as defined by article 29.4 of the Irish Constitution<sup>347</sup>, article 29.5.1 affirms that « the State shall not be bound by any international agreement involving a charge upon the public funds, unless the terms of the agreement shall have been approved by Dáil Éireann, the lower house <sup>348</sup>». In addition, article 29.6 recognizes to the Parliament the power to introduce international agreements into the national domestic law<sup>349</sup>. Being the

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<sup>345</sup> See generally Ibidem, chapter 11

<sup>346</sup> Article 1.1 EFSF Framework Agreement

<sup>347</sup> Article 29.4 Irish Constitution

<sup>348</sup> See generally Hogan, G. W., Whyte, G. F., JM Kelly: The Irish Constitution, LexisNexis Butterworths, 2003, 545 ff

<sup>349</sup> Article 29.1 Irish Constitution

EFSF Framework Agreement an international agreement, in order to produce its effects in Ireland, it was supported by a national piece of legislation recognizing its full implementation, the European Financial Stability Facility Act 2010.

This Act consigns the power to issue guarantees in name of the EFSF to the Ministry for Finance, and, in addition, states that all the funds Ireland will receive or will spend for the achievement of the EFSF will arrive from, or will dispense to, the Central Fund. The same Minister for Finance is asked to constantly inform the Dáil as far as the degree of implementation of the EFSF is concerned. The ESFF Framework Agreement has been attached to the European Financial Stability Facility Act 2010<sup>350</sup>.

The Act was discussed in the Lower House on June 24, 2010, after being presented by the government a week before. The Senate, a month later, On July 1, discussed on it and passed the Bill which finally entered into force, after the signature of the President, a week later. Just one year after its entry into force, the Act was submitted to amendment. This amendment was favourable for Ireland as the amount drew down by the Central Fund was increased up to 12.5 billion<sup>351</sup>.

As already said, in order to get financial assistance, Eurozone member states were asked to provide some guarantees under the EFSF, and in the case of Ireland, the main role in this extent was played by the Minister for Finance who was in charge of issuing guarantees up to the state for an amount of 7 billion euro. According to the EFSF in fact, each state would give a guarantee whose value corresponded to the 120% of the total amount of the financial assistance received. A debate so arose in the Lower House, and a question was presented to the Minister for Finance. He was questioned whether this clause would increase Ireland's overall liability<sup>352</sup>. The Minister promptly answered that the Irish potential liability of 7 billion would not be affected. Despite his reassuring words, dissatisfaction spread into the Senate when an independent Senator stated: « I worry when the Minister of State says, apropos of nothing, that the Government will guarantee another large sum of €7 billion in this case on top of what we guaranteed to

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<sup>350</sup> Coutts, S., Constitutional change through Euro crisis law: Ireland, European University Institute, 2014, p. 17

<sup>351</sup> Ibidem

<sup>352</sup> Dáil Debates, 24 June 2010, Vol 713 No 3

Greece<sup>353</sup>». Despite what just said, Ireland did not cope with any difficulty neither for the implementation of the EFSF nor for the issuance of guarantees. There was in fact quite a full uniformity also among the opposition parties in looking at the EFSF as the best tool possible for securing the Eurozone. The sole party to oppose the EFSF and the EFSF 2010 Act was the Sinn Féin party, which stressed the need for a broader European stimulus strategy for exiting the crisis<sup>354</sup>.

As far as the implementation of the EFSF was concerned, according to s 5 of the 2010 Act, the Minister for Finance is empowered to present a report each half of a year before the Lower House, to inform it about the state of the realization of the EFSF's objectives. Basically, Ireland did not face any kind of obstacle for the enforcement of the Program.

During the negotiation for the approval of the temporary emergency funds, Ireland was contributing to the first bail-out programme of Greece. It contributed by providing 1.3 billion euro, 1.64% of the total<sup>355</sup>. Ireland, despite the crisis it was coping with, understood the importance of participating in this aid package in name of the principle of solidarity. Additionally, we can say that to participate in the aid package was convenient to Ireland as well. Ireland, in fact, was living a period of financial instability and its decision to participate could be perceived as something generous by the other Eurozone member states<sup>356</sup>.

When Ireland accepted the financial assistance programme, it signed a Memorandum of Understanding as well.

Even if, from a technical point of view, it would not be necessary, the Lower House was asked to approve the Irish Memorandum of Understanding on December 15, 2010. In respect of the Irish legal system, the IMF did not contest the Irish decision, by accepting to delay the process pending the approval of the Irish Parliament<sup>357</sup>.

Different motives were provided in order to justify the need of approval for the MoU. Among them, the argument proposed by some deputies of the Fine Gael stood out. According to them in fact, this had been a move to give time to the opponents of the

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<sup>353</sup> Senator Shane Ross, Seanad Debates, 1 July 2010, Vol 203 No 13, 907

<sup>354</sup> Dáil Debates, 24 June 2010, Vol 713 No 3

<sup>355</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 19

<sup>356</sup> Ibidem

<sup>357</sup> See Statement by IMF on Ireland (Press Release No 10/482, 10 December 2010)

government to provide an alternative to the Aid programme. One member of the Fianna Fáil party instead, argued that the approval by the Irish Parliament would be necessary for maintaining the role of the Dáil at the core of the Irish politics<sup>358</sup>.

The then Minister for Finance, Brian Lenihan, underlined the importance of the Programme for a sustainable recovery and growth of Ireland. The Programme would be crucial for allowing the banking sector to well function again. He continued by saying that Ireland had already taken the first steps towards its revival thanks to the National Programme, but he added that Ireland by itself could not implement all the needed means to its savings, the intervention of the EU was really a godsend. The National Plan remained anyway a good starting point, and in fact, it was embedded in the EU/IMF financial assistance programme<sup>359</sup>. Despite the general agreement on the programme, the then opposition party Fine Gael criticised a bit the assumptions dealing with the GDP growth. According to him in fact, more emphasis should be given to job creation plans, the main element for granting growth. Finally, the financial assistance programme, or better, its MoU, was approved by the Lower House, and the package was launched.

The Memorandum for Understanding was firstly published on December 1, 2010, for being soon after revised on December 16. On December 7 in fact, the assistance programme had officially received approval by the Council of Ministers<sup>360</sup>. The package amounted to 85 billion euro, distributed respectively between the European Union, the IMF and the Irish resources in the following terms: 45 billion euro from the EU, 22.5 billion euro from the IMF and finally, 17.5 billion euro from the National Pension Reserve Fund.

The Programme basically indicated four main goals:

- A complete reduction and reorganisation of the banking sector, with the aim of reconstructing a climate of trust and confidence towards Ireland<sup>361</sup>;

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<sup>358</sup> Dáil Debates, 15 December 2010, Vol 725 No 2, p. 328

<sup>359</sup> See comments by Minister for Finance, Brian Lenihan, *ibidem*, pp. 312-313

<sup>360</sup> Council Implementing Decision 2011/77 of 7 December 2010 on granting Union financial assistance to Ireland [2011] OJ L 30/54

<sup>361</sup> Irish Memorandum of Understanding

- To create a sustainable path for fiscal reforms able to consolidate the Irish fiscal system<sup>362</sup>;
- The adoption of a series of measures to ease renewed growth<sup>363</sup>;
- To achieve the fixed goals in terms of policy thanks to significant aids provided by external actors<sup>364</sup>.

When the plan was launched, immediately, the Troika clarified some bullet points. The first thing to do referred to the banking sector. The path to follow was simple: reduce substantially the entire financial sector, identify and label the ill-parts of the system, and bringing it back to a healthy status.

The banks so were asked to present to their national authorities their proposal of deleveraging by the end of February 2011. These plans for sure had to be prepared on the ground of targets decided by the ECB, in accordance with the European Commission and the IMF. The restructuring of the banking sector was furthermore favoured by the decision to raise capital standards, obviously just after strict assessments and stress tests<sup>365</sup>.

As far as the question of the burden sharing was concerned, according to the MoU, two main elements had to be considered: the contribution of the State to the programme, and the sustainability of the banking sector whether the programme would not be enacted. On the ground of these premises, the Troika decided to force the government to adopt a piece of legislation granting three elements: the introduction of a special manager just after the consent of the ECB, the recognition of grant powers to the ECB, giving it the possibility to transfer elsewhere liabilities and assets, the government should commit itself in establishing bridge banks. This piece of legislation was presented before the Lower House by the end of February 2011. Moreover, the Troika committed itself to improve banking supervision, having like model the best OECD practice, and committed itself as well in

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<sup>362</sup> Ibidem

<sup>363</sup> Ibidem

<sup>364</sup> Ibidem

<sup>365</sup> Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, December 3, 2010



reforming the personal insolvency regime of those responsible of the collapse of the unhealthy banking sector<sup>366</sup>.

Along with the restructuring of the banking sector, the fiscal consolidation as well represented one of the objectives that could not be missed. In order to achieve this goal, a National Recovery Plan 2011-2014 was adopted. It was a four years plan approved in November 2010 by the national government with the aim of reducing in the long term the debt-to-GDP ratio.

When the financial assistance programme was signed, Ireland was requested to start a path of reforms in the main sectors of the society. The Irish MoU in fact, stressed the importance of structural reforms to be effective. The first reform we will analyse refers to the pension system. Pension reform has been at the core of the fiscal consolidation attempts by the Irish government to overcome the crisis. Different measures were implemented like cuts in pensions, increase of the retirement age, criteria for having access to governmental support<sup>367</sup>.

The first block of reforms concerning the pension system occurred between the end of 2010 and the firsts months of 2011. The main novelties had to do with the civil servant's pensions. With this reform, in fact, was decided to reduce the pensions above 12.000 euros by 0.4%. Another significant reform of the same period referred to the reduction of tax incentives which up to that point were very high for voluntary retirement savings<sup>368</sup>.

But the apex of the pension reforms was reached just in June 2011 with the Social Welfare and Pensions Act. With this Act different novelties were introduced. To the already increased retirement age, further steps were done, like the introduction of disincentives for an early retirement in the public sector, or like the abolition of the immunity for lower income workers to contribute<sup>369</sup>. It appears clear how austerity in the pension reform had prevailed.

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<sup>366</sup> Letter of Intent, Memorandum of Economic and Financial Policies, and Technical Memorandum of Understanding, December 3, 2010

<sup>367</sup> Natali D. and Zaidi A., Synthesis Report on the impact of the crisis on pensions in payment and current retirement patterns, unpublished paper, Brussels, European Social Policy Network (ESPN), 2015

<sup>368</sup> Natali D. and Stamati F., Reforming pensions in Europe: a comparative country analysis, Working Paper 2013.08, Brussels, ETUI, 2013, p.27

<sup>369</sup> Ibidem

Another significant reform interested the labour market, which was basically hit by two different radical changes. Firstly, there was a review in terms of minimum wages, and secondly, there was an important reform of the active labour market policies (ALMP)<sup>370</sup>.

According to the Irish Economic Adjustment Programme, the fiscal consolidation should be enriched by the introduction of social benefits. The aim was to avoid that unemployment benefits could mislead bringing to the so-called poverty traps<sup>371</sup>. According to this programme, the working and training condition should be improved as well, for instance, by reducing the overlapping of tasks between the different departments entitled to administrate the various benefits<sup>372</sup>.

As far as the ALMP were concerned, one of the most successful strategies undertaken in name of ALMP is the Pathways to Work strategy, launched in February 2012. One of the first steps to do was the creation of a unique reference point for unemployed workers, the INTREO offices. Thanks to this strategy some steps forward have been done. In 2013 in fact, on the ground of the Pathways to Work strategy, more incentives were provided to all those firms prone to hire long-term unemployed workers and new training opportunities were made available<sup>373</sup>.

In the Irish Memorandum of Understanding, some reforms regarding the public sect were listed too. Among them, we find for instance the reform about the reduction, in terms of numbers, of the public employees. This reform appeared very curious considering that Ireland appeared already as one of the European countries with the lower number of public employees<sup>374</sup>. Anyways, the reduction was approved, and the exact number of cuts was incorporated in the National Recovery Plan 2011-2014. The total amount corresponded to 37.500 staff reduction, obtained thanks to the early retirements, thanks to the decision of not replacing the departing staff, and in the end, because of the stringent rules imposed on public sector hiring<sup>375</sup>.

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<sup>370</sup> Agostini, C., Lisi, V., Natali, D., Sabato, S., *Balancing protection and investment: structural reforms in five countries*, ETUI, Brussels, 2016, p. 84

<sup>371</sup> Doherty M., *Can the patient survive the cure? Irish labour law in the austerity era*, *European Labour Law Journal*, 5 (1), 2014, pp. 81–94

<sup>372</sup> *Op. cit.*, Agostini, C., Lisi, V., Natali, D., Sabato, S., *Balancing protection and investment: structural reforms in five countries*, p. 85

<sup>373</sup> *Ibidem*, pp.85-86

<sup>374</sup> Glassner V., *The public sector in the crisis*, Working Paper 2010.07, Brussels, ETU, 2010, pp. 7-8

<sup>375</sup> *Op. cit.*, Doherty M. (2014) *Can the patient survive the cure? Irish labour law in the austerity era*, p. 89

The last reform of the public sector occurred with the signature of the Haddington Road Agreement in 2013. This Agreement foresees further cuts and freezes in terms of pay but has to do also with changes in the public sector working conditions. As far as the latter reform was concerned, it basically aimed at increasing working time and at making greater use of redeployment<sup>376</sup>.

### **3.2 The implications of the Euro Plus Pact, the Six Pack and the Two Pack.**

After the adoption of the EFSF and EFSF, on March 2011, the European institutions decided to pay their attention to the creation of a specific Pact for the Eurozone member states. As already said for Spain, the first tool for boosting competitiveness which was endorsed by the EU institutions was the Euro Plus Pact, already deeply explained in the previous chapter. Here, we will analyse the process of enforcement which occurred in Ireland after the signature of the Pact.

We can start by saying that the Government did not cope with any problem as far as the negotiation on the Pact was concerned. On the contrary, the Irish Government, since the beginning showed itself to be in favour of the Pact. The Prime Minister, during the European Summit held on March 24, 2011 declared: that «clearly, Ireland will support measures that can contribute to a restoration of confidence in the markets, foster economic growth and job creation and help Europe move beyond the economic crisis<sup>377</sup>». Ireland, in fact, was very interested in restoring its image at European level, and the support to this Pact could contribute to the goal. There was basically a general confidence in the Pact, with the exception of the then opposition party, Sinn Féin, who was worried about a possible further deterioration of the national sovereignty<sup>378</sup>.

The four main goals of the Pact were to increase competitiveness, to boost employment, to keep the public finances stable, finally, to grant a financial sustainability. On the ground of these four goals, Ireland adopted different policies.

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<sup>376</sup> Ibidem, p. 90

<sup>377</sup> An Taoiseach Enda Kenny Dáil Debates, 22 March 2011, Vol 728 No 3, p. 190

<sup>378</sup> Ibidem, p.192

- As far as the first goal was concerned, Ireland adopted the Industrial Relations Amendment 2012, aimed at inserting wage agreements, in the concerned procedure<sup>379</sup>. In addition, Ireland decided to sell state assets, and with the revenues to invest in the economy.
- As far as the second goal was concerned, the one dealing with employment, Ireland contributed to the achievement of this goal by making available 20.900 work positions, and by creating a Micro Finance Fund of 100 million euro, to lend money to the less developed enterprises. Some legal changes occurred as well. In fact, the social insurance payment up to the employer was reduced for lower income jobs, at least for the first and a half year<sup>380</sup>;
- As far as the third goal was concerned, a specific body was installed, the Fiscal Advisory Council, which will find official recognition in the Fiscal Responsibility Act 2012. Furthermore, the pension age was increased. The retirement age passed from 65 to 68. This procedure will be fully implemented just in 2028. A Comprehensive Expenditure Report 2012-2014 was drafted as well, for granting transparency<sup>381</sup>.
- As far as the last goal was concerned, the focus was on the Allied Irish Banks and Bank of Ireland which were downsized<sup>382</sup>.

In the same year an important package of reform was discussed and agreed, the Six Pack, which, as said in the previous chapter, entered into force on December 2011. Since the first discussions on the package reform, Ireland showed its confidence on it, by considering a mutual surveillance on the economic and budgetary policies of member states<sup>383</sup>. The Six Pack was perceived in Ireland as the pill to cure the illness of the country, as something which could address the root causes which brought Ireland to the crisis. Additionally, Ireland demonstrated to be in favour as well of the role played by the European Commission, preferring it to an intergovernmental route<sup>384</sup>.

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<sup>379</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 31

<sup>380</sup> Ibidem

<sup>381</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 31

<sup>382</sup> Ibidem

<sup>383</sup> An Taoiseach Enda Kenny, Dáil Debates, 2 November 2011, Vol 745 No 2, 221

<sup>384</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 38

As understandable, the Six Pack consisted of six different measures, precisely, one directive and five regulations.

The Directive 2011/85/EU was about the requirements for the budgetary frameworks of the member states. We can say that since 2013, Ireland is meeting some of these requirements. For instance, according to the Directive, member states are asked to publish financial statistics and auditing arrangements. Ireland in 2013 in fact, considered the possibility to send the financial information concerning with Local Authority to the European Commission, every four months.

The Department of Finance is in charge of drafting the financial forecasting, while the ex-post assessment of the forecasts is in the hands of the Irish Fiscal Advisory Council, established in June 2011, but officially recognized with the Fiscal Responsibility Act 2012. This Act is composed of two fiscal rules basically:

- A budgetary rule which implies to keep the budgetary position or in surplus, or, at least, in balance<sup>385</sup>. The same rule sets also another possibility, that is, to grant that balance, on an annual basis, converges towards the MTO, in respect of the Regulation 1467/97/EC<sup>386</sup>.
- A debt rule according to which, whether the debt exceed the limit of 60% of GDP, the Excessive Deficit Regulation is applied<sup>387</sup>.

Now, it is important to understand what occurred when the implementation process of the Directive started in Ireland. We can start by saying that the sole meaningful act which was adopted was the Fiscal Responsibility Act 2012. This Act, along with other statutory instruments, was seen by the Department of Finance as the tool for implementing the Directive.

The Bill, after months of discussion, was signed on November 27, 2012, with great support both in the major and opposition party. The goal of restructuring a credible figure of Ireland all around the world could be achieved through this package reform<sup>388</sup>. What was very good of the Act, according to the majority of the parliament's members, was the

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<sup>385</sup> Fiscal Responsibility Act 2012, s 3(2). The Fiscal Responsibility Act will be deeply explained later on.

<sup>386</sup> Ibidem, s 3(3)

<sup>387</sup> Ibidem, s 4

<sup>388</sup> Dáil Debates, 10 October 2012, Vol 778 No 1, p.90

fact that whether from one hand, some limitations in terms of economic choices would influence the policies undertaken by the government, from the other hand policy choices concerning with expenditures and taxation would remain dependent upon national law, not causing a restriction of national sovereignty<sup>389</sup>.

The bill was opposed just from few parties, Sinn Féin included, which sustained the idea according to which, through this reform, further elements of austerity would continue to influence national policies also after the end of the financial assistance programme. Basically, the watchdog role would pass from the Troika to the European Institutions, particularly if Ireland would breach the rules imposed by the Stability and Growth Pact<sup>390</sup>.

Coming back to the Directive itself, article 6.1 of the Directive foresaw the establishment of a new body, the Irish Fiscal Advisory Council. It was officially created in June 2011 but received official recognition just with the Fiscal Responsibility Act 2012<sup>391</sup>. It consists of five members, the Irish nationality is not required, for a four years term. It is an independent body with a personal budget of 800.000 euro. Its members can be removed before the expiration of the contract just for exceptional cases, like incapacity or misbehaviours. Additionally, the anticipated firing should be approved by the Lower House. The main function of the body is to publish reports on the respect of the economic forecasts drafted by the Government, of the budgetary policies and, in the end, of the respect of the EU fiscal rules<sup>392</sup>.

As far as the Regulation 1176/2011 was concerned, the focus was on the prevention and correction of macroeconomic imbalances, and no significant discussions took place in the national parliament on it. What characterized Ireland was just a unique surveillance procedure, and its exclusion from the alert mechanism for 2012/2013<sup>393</sup>.

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<sup>389</sup> Dáil Debates, 9 October 2012, Vol 777 No 4, p. 540

<sup>390</sup> European Commission, Interim Progress Report on the implementation of Council Directive 2011/85/EU on requirements for Budgetary Frameworks of the Member States, European Economy, Occasional Papers 128, February 2013, 2013, pp. 45-46

<sup>391</sup> Fiscal Responsibility Act 2012, pt 3

<sup>392</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 36

<sup>393</sup> Alert Mechanism Report: Report prepared in accordance with Articles 3 and 4 of the Regulation on the prevention and correction of macro-economic imbalances COM (2012) 68 final, 19 and Results of in-depth reviews under Regulation (EU) 1176/2011 on the prevention and correction of macroeconomic imbalances COM (2013)

As far as the Regulation 1175/2011 was concerned, the attention was paid to the strengthening of the budgetary surveillance. Ireland, in order to accommodate the amended Medium Term Budgetary Objective Procedure, had to take some measures, like the decision to include the new MTBO in the Stability Programme Update (SPU) and to present it, on an annual basis on April, before the Lower House. According to the new guidelines emerged with the introduction of the European Semester, the SPU shall be presented and discussed in the Lower House every year at the presence of the Minister for Finance and the Joint Committee on Finance, Public Expenditure and Reform<sup>394</sup>.

As far as the MTBO was concerned, Ireland's MTBO is defined in the fifth section of the Fiscal Responsibility Act 2012 and incorporated in its Stability Programme.

With respect to the Regulation 1173/2011, and 1177/2011, respectively one on the effective enforcement of the budgetary surveillance, and on the Excessive Deficit Procedure, Ireland did not cope with any particular difficulty in their implementation.<sup>395</sup>

The Regulation 1174/2011 finally, is about the actions foreseen by the EU to correct excessive macroeconomic imbalances among the eurozone member states. Basically, the regulation is the continuation of the Regulation 1176/2011, and it predicts a series of sanctions or other tools, like fines, to utilize in case of macroeconomic imbalances for satisfying EIP Council's recommendations<sup>396</sup>.

After having posed the attention on two of the greatest reforms enacted by the EU for saving the Eurozone from the financial crisis, another package of measures cannot be entirely left out, the Two Pack.

The Two Pack, is the package of reforms following the Six Pack, which was coined in November 2011 by the European Commission, which proposed the adoption of these two regulations for further fostering the coordination and the surveillance of the budgetary processes interesting the entire Eurozone<sup>397</sup>. On May 21, 2013, the Two Pack was adopted and a week later it started to produce its effects, when the Fiscal Compact was already in place. These two regulations must be read along with the SGP, in the sense that they were

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<sup>394</sup> Department of Finance, Irish Stability Programme April 2013 Update (2013)

<sup>395</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 38

<sup>396</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:306:0008:0011:EN:PDF>

<sup>397</sup> <http://leg16.camera.it/465?area=8&tema=747&Le+modifiche+al+Patto+di+stabilit%C3%A0+%28six+pack+e+two+pack%29>

drafted in light of the SGP's objectives. The Two Pack does not add significant novelties to the SGP. Basically, it is aimed at making more efficient the European Semester, and the preventive and corrective characteristics of the SGP.

The first Regulation, the Regulation 473/2013, is compulsory for all the Eurozone member states, while the second one, the Regulation 472/2013 will just be whether a state is getting macroeconomic financial assistance or if it has an ongoing Excessive Imbalance Procedure<sup>398</sup>.

- The regulation 473/2013 goes to add to the previous SGP an extra monitor requirement to all those member states not in EDP or in EIP. These states have the duty to present their fiscal budget's draft for the coming year before the European Commission by October 15, waiting for the opinion of the European Commission before the voting procedure at national level<sup>399</sup>.
- The regulation 472/2013 is addressed specifically to all those Eurozone member states in financial difficulty. These states will be under a specific surveillance system. They are asked, on a quarterly basis, to submit reports to the European Commission, which in turn, sends warnings to the national parliaments failing to comply with the fixed targets or deadlines<sup>400</sup>.

The last thing to say about the Two Pack is that it enhanced the soundness of the national budgets by imposing the EU member states to draft their budgets by taking into account independent macroeconomic forecasts. Furthermore, in order to guarantee the compliance by the states with their national fiscal rules, it appoints specific national independent bodies with this aim.

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<sup>398</sup> Economic Governance: Commission proposes two new Regulations to further strengthen budgetary surveillance in the Euro area (MEMO/11/822)

<sup>399</sup> [http://europa.eu/rapid/press-release\\_MEMO-13-196\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-196_en.htm)

<sup>400</sup> Ibidem



### **3.3: Changes to the Irish Budgetary Process: the case law *Collins V Minister for Finance & Others***

In this third sub-chapter we will go to analyse the main changes occurred to the Irish Budgetary Process, starting to analyse the main characteristics of the pre-2011 Budgetary Process, the 2011 Budgetary Process Reform, and lastly, the novelties introduced in 2016.

The Irish Budgetary Process is characterized by its high degree of informality<sup>401</sup>. The Government, along with the Department of Finance, were those who until 2016 basically took decisions on this subject matter, not involving significantly the Parliament in the realization of the work. The Senate had just the power to provide recommendations on it<sup>402</sup>. Before analysing the changes of the Budgetary Process occurred in 2011 and 2016, we shall pay our attention to the one operating until 2011.

By June or July of each year, the Irish government was asked to study the report known as Budgetary Strategy Memorandum (BSM), prepared by the Department of Finance as a tool for the development of the draft for the following year's budget<sup>403</sup>;

Between July and September, each singular department made its own request as far as the economic resources for the realization of the BSM were concerned<sup>404</sup>;

By the end of September, Department of Finance was asked to make public the documents about the previous four years Eurostat's figures, and the document about its forecasts for the upcoming year<sup>405</sup>;

Between September and November, the various departments were asked to negotiate on the Budget for the following year as well as to decide a common estimate of expenditures<sup>406</sup>;

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<sup>401</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 6

<sup>402</sup> Article 21 Irish Constitution

<sup>403</sup> Reforming Ireland's Budgetary Framework – A Discussion Document, Department of Finance, March 2011, pp. 1-2

<sup>404</sup> Ibidem

<sup>405</sup> Ibidem

<sup>406</sup> Reforming Ireland's Budgetary Framework – A Discussion Document, Department of Finance, March 2011, pp. 1-2

Between October and November, the Government had the duty to publish a sort of outlook which gave some indications about the national prospects in terms of macro-economic growth and also in terms of soundness of public finances<sup>407</sup>;

On the Saturday before the approval of the budget by the Dáil, the White Paper on Receipts and Expenditure was made public<sup>408</sup>;

In December, the Minister of Finance made his public speech on Budget for listing all the budget measures the Government committed itself to follow<sup>409</sup>.

Since January the Department of Finance, on a monthly basis, published reports on the state of national expenditures, tax revenues and debt servicing<sup>410</sup>.

What just described was the Budgetary Process which occurred in Ireland prior the series of reforms enacted by the EU and not only, like the National Recovery Plan 2011-2014<sup>411</sup>, the MoU that Ireland signed for obtaining financial assistance, the Six Pack and lastly, the Fiscal Compact along with the Two Pack. In March 2011, the first request for reforming the Budgetary Process arrived from the Department of Finance, and it was aimed basically at, firstly, publishing the Stability Programme within the first months of the year, so to allow a previous discussion on it by the most relevant Parliamentary committees and the Irish Fiscal Advisory Council, for finally sending all the documents to the EU by April, in accordance with the European Semester<sup>412</sup>. Secondly, it was aimed at stressing the value of the systems based on multi-annual planning, particularly highlighting the importance of the MTO, deemed an anchor as far as budgetary policy are concerned<sup>413</sup>.

On the ground of these two goals, currently, the Stability Programme Update is published in April, rather than being part of the Budget Speech. Making reference to the Stability Programme adopted by Ireland in 2012, we can say that the Programme was sent to the

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<sup>407</sup> Reforming Ireland's Budgetary Framework – A Discussion Document, Department of Finance, March 2011, pp. 1-2

<sup>408</sup> Ibidem

<sup>409</sup> Reidy, T., The Budget Process, The Irish Politics Forum, 7 December 2010

<sup>410</sup> Reforming Ireland's Budgetary Framework – A Discussion Document, Department of Finance, March 2011, pp. 1-2

<sup>411</sup> National Recovery Plan 2011-2014, pp. 59-60

<sup>412</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 6

<sup>413</sup> Ibidem

Joint Commission on Finance and Public Expenditure in the morning of April 30 for being finally approved in the afternoon of the same day<sup>414</sup>. This Committee is in charge of assessing the work done by the Department of Finance and the one of Public Expenditure and Reform by having the main function to inform the most significant Ministers on what is going on in that Departments with the objective of promoting coordination and social planning<sup>415</sup>.

In light of the adoption of the Regulation 473/2013/EU, something has been transformed. The Budget Speech, in fact, has been shifted to the first half of October so that the legislative process could be ended for December<sup>416</sup>. In addition, as a consequence of the reform of the Budgetary Process, a new institution was created, the Irish Fiscal Advisory Council (IFAC) which founded statutory recognition with the Fiscal Responsibility Act 2012<sup>417</sup>. IFAC is an independent statutory body, composed of five Council members, and a Secretariat of six members. The main tasks of IFAC are to detect whether the Government is respecting or not the targets imposed at EU level, in particular with respect to the fiscal rules fixed by the Fiscal Responsibility Act 2012, to assess and to endorse the forecasts on the Budget prepared by the Department of Finance, and in the end, to verify in case of non-compliance with the rules, whether this non-compliant behaviour is due or not exceptional circumstances, like recession for instance<sup>418</sup>. In the future, IFAC will substitute the Department of Finance in providing the forecasts which the Budget is based on<sup>419</sup>.

On this change on Budgetary Process, the Irish High Court was asked to solve a case, in November 2013. The Constitutional challenge, specifically, was about the publication of promissory notes by the Irish Minister for Finance. This case saw the dispute between Joan Collins, independent member of the Parliament, and the Minister for Finance.

In this case, the Divisional High Court denied the appeal presented by Joan Collins about the alleged unconstitutionality of the “s 6 Credit Institution Act 2008”, allowed by the

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<sup>414</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 6

<sup>415</sup> <https://www.oireachtas.ie/en/committees/32/finance-per-taoiseach/our-role/>

<sup>416</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 6

<sup>417</sup> Fiscal Responsibility Act 2012, pt. 3

<sup>418</sup> <https://www.fiscalcouncil.ie/about-the-council/>

<sup>419</sup> Fiscal Responsibility Act 2012, pt. 3

Minister for Finance, to provide financial assistance to the Anglo-Irish Bank, the Irish Nationwide Building Society and the Educational Building Society, for a total of 31 billion euro<sup>420</sup>, with the goal of re-stabilising the Irish banking system.

In 2011 the Minister for Finance issued this promissory note of 31 billion euros which, at the beginning, were deemed assets, being so deposited in the Irish Central Bank in exchange for emergency liquidity funding. In a second moment, the Anglo-Irish Bank and the INBS were merged, becoming Irish Bank Resolution Corporation (IBRC). On the ground of what agreed between the ECB and its European partners, in 2013, the IBRC was liquidated and the concerned notes were transformed into national bonds with low interest rates and so with absolutely more favourable conditions for the state<sup>421</sup>. After that, Joan Collins, an independent member of the Parliament, presented the case before the Divisional High Court by stating that the Minister had exceeded his competences and that the entire Act allowing him to do so was unconstitutional because it had circumvented the parliamentary powers in budgetary matters. Once the Divisional High Court rejected his instance, Collins decided to make appeal to the Supreme Court.

Basically, the legal questions presented by Joan Collins were two:

Whether the promissory note was inadmissible as it was enacted without the Dáil authorisation<sup>422</sup>;

Whether the entire 2008 act was unconstitutional as it had not respected the legislative powers in the hands of the Parliament as far as budgetary matters were concerned<sup>423</sup>.

As far as the first legal question was concerned, the Court highlighted that nothing in the 2008 Act made reference to the need of further authorisation for the delivery of funds aimed at the realization of the Act. As far as the second legal question was concerned, the Court finally affirmed that the Act adopted in 2008, because of the financial crisis which has hit Ireland, « was a permissible constitutional response to an exceptional situation. It cannot, therefore, be considered to be a template broader Ministerial power on other

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<sup>420</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 7

<sup>421</sup> Ibidem

<sup>422</sup> Ibidem, p. 8

<sup>423</sup> Ibidem

occasions<sup>424</sup>». On the basis of its reasoning, the Supreme Court in 2016 decided to confirm the judgement of the High Divisional Court by dismissing Collin's appeal. The promissory note to the Anglo-Irish Bank, the INBS, and the EBS were provided as they were found to be legally issued, but basically, they were perceived as politically symbolic, as they were addressed actually to dead banks, confirming the idea at national level that the decision to support these banks came from the European Central Bank, interested in rescuing all its banks<sup>425</sup>. What emerged from this case was anyway an unlimited discretion to the government in the budgetary process, especially in terms of the amount of money to spend for the achievement of a specific goal<sup>426</sup>.

In light of this great governmental discretionary power, in 2016, the Irish Budgetary Process was reformed again with the aim of reinforcing the role of the Parliament. The need of a greater involvement of the Parliament was particularly stressed by the OECD, which influenced the Irish leaders in the decision to modify the Budget Process<sup>427</sup>. A series of procedural changes were proposed by the OECD to promote the parliamentary engagement. For instance, it proposed the introduction of ex ante parliamentary hearings on fiscal planning, under the guidance of the Joint Committee on Finance, Public Expenditure and Reform. These parliamentary hearings should occur in February/March with the goal of setting out the Irish medium-term fiscal plan, which, before being presented before the European Commission, should be approved by the Dáil<sup>428</sup>.

Another proposal had to do with the introduction in the Budget process of pre-budget parliamentary hearings on budget priorities. These hearings should occur in July, and they should culminate in the presentation of a report to the government<sup>429</sup>.

The OECD also proposed to create an Irish Parliamentary Budget Office to better permit parliamentarians to better handle with budgetary matters. Through the activity of this

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<sup>424</sup> Judgement of the Supreme Court available at: <http://courts.ie/Judgments.nsf/09859e7a3f34669680256ef3004a27de/7d2354141a5d55e78025808b00493d86?OpenDocument>

<sup>425</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 9

<sup>426</sup> Ibidem

<sup>427</sup> Collins, S., Cabinet signals green light for more powerful committees, The Irish Times, May 25, 2016 available at: <https://www.irishtimes.com/news/politics/cabinet-signals-green-light-for-more-powerful-committees-1.2659357>

<sup>428</sup> Downes, R., Nicol, S., Review of budget oversight by Parliament: Ireland, OECD Journal on Budgeting, Volume 2016/1, p. 68

<sup>429</sup> Op. cit., Downes, R., Nicol, S., Review of budget oversight by Parliament: Ireland, p. 68

Office, they would be constantly informed about expenditure, taxation and policy costings too<sup>430</sup>.

The proposals dealing with a greater involvement of the Parliament in the Budgetary process became true in 2017. Mr. Noonan stated: «The Government's reforms will provide all members of the Oireachtas with the opportunity to influence and critique budget allocations and priorities, making budgetary debate and discussion in Ireland more realistic, informed and effective<sup>431</sup>».

### **3.4 Changes to the Irish Constitutional Law and the impact of the Fiscal Compact**

Like in Spain, also in Ireland something occurred at constitutional level as a consequence of the 2008 financial crisis, but the routes followed by the two countries were completely different. While Spain introduced the Balance Budget principle into the national Constitution, even though the Fiscal Compact had not been signed yet, in Ireland, just one constitutional amendment was adopted with the goal of ratifying the Treaty on Stability Coordination and Growth. The TSCG was approved in Ireland after the positive outcome of the referendum held on it in May 2012<sup>432</sup>. Voters were asked to express their consent on the following statement: «The state may ratify the Treaty on Stability, Coordination and governance in the Economic and Monetary Union done at Brussels on the 2<sup>nd</sup> day of March 2012. No provision of this Constitution invalidates laws enacted, acts done, or measures adopted by the state that are necessitated by the obligations of the state under the Treaty or prevents laws enacted, acts done, or measures adopted by bodies competent under the Treaty from having the force of law in the State<sup>433</sup>». This statement became the tenth paragraph of article 29 of the Irish Constitution. Thanks to the positive outcome in the referendum, the 30<sup>th</sup> amendment Bill 2012 found enactment into the Constitution by obtaining the Presidential Assent on June 27, 2012. The Fiscal Responsibility Act 2012

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<sup>430</sup> Ibidem

<sup>431</sup> Op. cit., Collins, S., Cabinet signals green light for more powerful committees

<sup>432</sup> Adams, M., Fabbrini, F., Larouche, P., The constitutionalization of European budgetary constraints, Hart Publishing, Oxford, 2014, p. 330

<sup>433</sup> New article 29.10 Irish Constitution

was passed into the Parliament some months later the Presidential Assent, precisely on November 27, 2012, for being subsequently ratified on December 14<sup>434</sup>.

The constitutional amendment procedure in Ireland is written down in article 46 of the Irish Constitution. According to this article, whether the amendment is seriously relevant, the amended text, after being passed by both the chambers, it should be submitted to a referendum. Precisely, article 46.2 states that the procedure for constitutional amendment should be initiated in the Lower House. Once the amendment is approved by both the chambers, then the referendum can take place. The Bill submitted to referendum shall be presented as an « act to amend the constitution<sup>435</sup> ». Considering that the major support for the government comes from the Lower House, it practically impossible to start a procedure for amending the Constitution without getting support from the government<sup>436</sup>.

Basically, the Fiscal Responsibility Act 2012 defines the path to follow for implementing articles 3 and 4 of the TSCG, which deal with the national commitments for the achievement of a balanced or in surplus budget and it has also to do with the correction mechanisms to implement in case of non-compliance with the rules concerning the debt. For instance, whether Ireland would adopt a series of policies which would not allow it to respect the MTO, the government would prepare a correction plan to present before the Lower House within two months from the discovery. In this plan, the government would be asked to set the deadline for the corrections needed<sup>437</sup>.

According to the new rule on debt, European member states cannot exceed the 60% of their national GDP. If this occurs, the difference between the current debt and the limit of 60% must be reduced by 1/20<sup>th</sup> per year. Additionally, according to the Act 2012, a new body was set up, the Irish Fiscal Advisory Council. This body is in charge of assessing whether Ireland is complying or not with the debt rule, whether some extraordinary circumstances have existed by lowering or altering the path, and if yes, whether a correction plan has been adopted<sup>438</sup>. The Irish Constitution can be considered as a rigid

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<sup>434</sup> Op. cit, Adams, M., Fabbrini, F., Larouche, P., The constitutionalization of European budgetary constraints, p. 330

<sup>435</sup> Article 46.3 Irish Constitution

<sup>436</sup> Ryan, F., Ireland's Marriage Referendum: A Constitutional Perspective, in DPCE Online, n. 2/2015

<sup>437</sup> Op. cit, Adams, M., Fabbrini, F., Larouche, P., The constitutionalization of European budgetary constraints, p. 331

<sup>438</sup> Ibidem

one, considering that just a few substantive amendments were made to the 1937 text<sup>439</sup>. This could not appear true considering that twenty-eight amendments were made between 1937 and 2011, but, among these amendments, just a few were significant in constitutional terms. The first two amendments occurred in 1939 and 1941 respectively and they did not need any referendum<sup>440</sup>. Other five referenda were about abortion, and in this case, referenda took place, other seven had to do with the voting system, two were on divorce and the last eight referred to EU Treaties. Like in the last eight, also with respect to the 30<sup>th</sup> amendment, a referendum showed to be needed.

Coming back to our topic, as far as the approval of the Act 2012 was concerned, the deputies from the government party of the Fine Gael expressed all their support to this budgetary discipline, considering it fundamental for reconstructing a secure Eurozone. And they express as well great support for the institutionalization of IFAC, able to provide the transparency of the process which missed in the past<sup>441</sup>. During the reading of the Act, almost all the deputies expressed their consent on it. Just few members expressed their doubts on the Act. According to this minority in fact, the Act would deteriorate democratic legitimacy, damaging the idea of Ireland as a welfare state by, on the contrary, strengthening the power of technocrats and introducing into national legislation neoliberal policies. In doing so, the government would impede to future government to change route in terms of economic choices. Furthermore, this minority blamed the Irish government to cow-tow to any European demand, without asking for anything in exchange<sup>442</sup>. Despite these criticisms, the Act 2012 was passed by the Parliament and was approved by referendum. As already announced, this change at constitutional level was the element which allowed the Fiscal Compact to enter into force. The scope of the Pact can be summarised as follows:

- To convince all the European member states to adopt at national level a fiscal rule which obliges the government to have a budget in surplus, or at least in balance.  
What does it mean? That the fiscal rule is respected by the member states just

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<sup>439</sup> Casey, J., *Changing the Constitution: Amendment and Judicial Review*, in Farrel, B., De Valera's Constitution and Ours, Dublin, 1988, p. 153

<sup>440</sup> Forde, M., *Constitutional Law in Ireland*, Dublin, 1987, p. 9

<sup>441</sup> *Op. cit.*, Adams, M., Fabbrini, F., Larouche, P., *The constitutionalization of European budgetary constraints*, p. 331

<sup>442</sup> *Ibidem*



whether the annual structural balance does not exceed, in terms of structural deficit, the 0.5% of GDP. If the national debt is meaningfully below the limit of 60%, the structural deficit can also exceed the 0.5% rule, but without exceeding the 1% of GDP<sup>443</sup>.

- The second goal is to strengthen the Excessive Deficit Procedure. The eurozone member states are invited to support the recommendations of the European Commission, or from the ECOFIN, whether a Eurozone member state would breach the fiscal rules. In this way, there would be an automaticity in the entrance into force of the Excessive Deficit Procedure<sup>444</sup>.
- The third main element introduced with the Fiscal Compact has to do with the imposition of a benchmark for the government debt reduction. In fact, whether a country has a debt which exceeds the 60% rule, its government is asked to reduce it at an average of 1/20 per year<sup>445</sup>.
- Lastly, member states have the duty to present an ex ante report concerning with their public debt issuance report<sup>446</sup>.

On the ground of these four pillars, we can now try to analyse the reaction of Ireland after the signature of the Fiscal Compact, occurred on March 2, 2012. The most interesting aspect has to do with the process of ratification which took place in Ireland. In fact, we can say that the Fiscal Compact has been ratified by combining different legal tools.

According to articles 46 and 47 of the Irish Constitution, in fact, any law which can affect the Constitution by its introduction into the national legal system shall be submitted to the population. According to these articles so, the national Constitution can be amended just after a referendum on the amendment proposal has taken place. If the majority of the voting people agrees on it, then the President must sign the Bill, allowing it to enter into force<sup>447</sup>.

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[https://www.ecb.europa.eu/pub/pdf/other/mb201203\\_focus12.en.pdf?0ea5f8ccbeb103061ba3c778c8208513](https://www.ecb.europa.eu/pub/pdf/other/mb201203_focus12.en.pdf?0ea5f8ccbeb103061ba3c778c8208513)

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[https://www.ecb.europa.eu/pub/pdf/other/mb201203\\_focus12.en.pdf?0ea5f8ccbeb103061ba3c778c8208513](https://www.ecb.europa.eu/pub/pdf/other/mb201203_focus12.en.pdf?0ea5f8ccbeb103061ba3c778c8208513)

<sup>445</sup> Ibidem

<sup>446</sup> Ibidem

<sup>447</sup> Articles 46-47 Irish Constitution

Basically, what the Treaty aimed to do was to introduce fiscal rules into national legislation of Eurozone member states for allowing an easier coordination of their economic and fiscal policy with the supervision of the European Commission and the European Council. The European Court of Justice, with the entrance into force of the Treaty, would be entitled to fine the states in breach of the fiscal rules. The Fiscal Compact presented itself as a mean for a deeper “federalization” of the European economic governance<sup>448</sup>.

Clearly, like in any referendum, proponents and opponents explained the reasons why the Pact should receive or not the popular support.

In the “Yes” side lived in coexistence Fine Gael, Labour and Fianna Fáil parties, demonstrating how different political visions could not impede the implementation of a fundamental Treaty for the future of Ireland. These three parties were joined also by several civil society groups, like Charter Group and Alliance for Ireland. Alliance for Ireland was particularly active during the referendum campaign. Through newspapers and advertising, it tried to highlight the main peculiarities of the Treaty, trying to draw the attention away from the political debate. The Yes side had recourse to different means for expressing its point of view about the referendum. Firstly, they served of the availability of senior government ministers for stressing the importance of Treaty for a stable Ireland. Secondly, they made recourse to one of the most common methods used by political parties to make campaign: canvass<sup>449</sup>.

What the Yes side argued was that with the entrance into force of the Treaty, Ireland would continue to receive funds from the ESM, additionally, it would be the sole element able to restructure a climate of trust towards Ireland. In fact, whether the Treaty would not be passed, the uncertainty coming from its rejection would reverse in a complete closure of the financial markets. This would comport new destabilisation in the country. Furthermore, the Yes proponents underlined how the introduction of these fiscal rules into national legislation would prevent a new fall in terms of deficit. Ireland had a duty to support the Treaty for bringing the crisis to an end. The Yes side warned Irish people

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<sup>448</sup> FitzGibbon, J., The referendum on the European Fiscal Compact Treaty in the republic of Ireland, 31 May 2012, EPERN, Referendum briefing no. 19, April 2013, p.5

<sup>449</sup> Ibidem, p. 6

that whether the Treaty would not be passed, Ireland would risk entering the economic downturn of Greece<sup>450</sup>.

The “No” side consisted in Sinn Féin and United Left Alliance parties. These two parties basically described the Treaty as a further attempt of austerity from the EU, and so the referendum was presented as an opportunity to tackle it. But the most significant argument came from a member of the United Left Alliance, Clare Daly, who argued that the Fiscal Compact basically could be intended as « a fundamental attack on the basic democratic right to elect a Government and have that Government decide on budgetary and economic strategy <sup>451</sup>». To this open attack, the Minister for Finance responded that according to articles 12 and 13 of the Fiscal Compact Treaty, the involvement of national parliaments in the budgetary policies would continue to exist<sup>452</sup>.

Like occurred for the proponents, also the opponents received support from civil society groups, which were interested in using the campaign for contrasting the government decisions with respect to the Irish bank bailout. Furthermore, among these civil society groups, some of them used the campaign also for contesting the increase in terms of taxes<sup>453</sup>. To scrap the Fiscal Compact, some proposals were made by the opponents, like to draft a Pro-Growth Treaty, a treaty fully rejecting austerity measures, concentrated instead on Keynesian perspectives to boost growth. According to the opponents moreover, not being a European Treaty, but an inter-state agreement, Ireland saying no, would not anyway hold a veto over the entire process of change<sup>454</sup>.

Basically, we can say that the scenarios presented by both the sides were too catastrophic. The Yes side, in fact, exaggerated in saying that a negative outcome of the referendum would deny further access to the ESM funds, bringing Ireland to deeper austerity in terms of social welfare. But from the other side, the tragedy of the arguments was even greater. The No side, in fact, stressed that whether people would vote in favour of the referendum

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<sup>450</sup> Op. cit., FitzGibbon, J., The referendum on the European Fiscal Compact Treaty in the republic of Ireland, 31 May 2012, p. 7

<sup>451</sup> Dáil Debates, 19 April 2012, Vol 762 No 1, p. 109

<sup>452</sup> Dáil Debates, 20 April 2012, Vol 762 No 2

<sup>453</sup> Op. cit., FitzGibbon, J., The referendum on the European Fiscal Compact Treaty in the republic of Ireland, 31 May 2012, p. 9

<sup>454</sup> Ibidem

this would mean “permanent austerity”. Because of the contrasting and uncertain arguments proposed by both the sides, this scenario reflected in opinion polls.

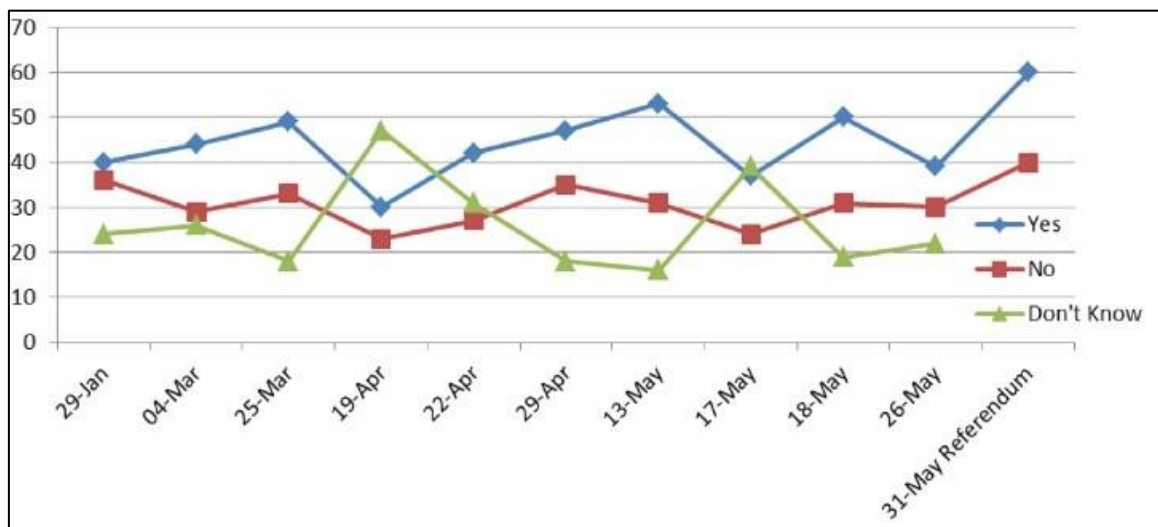


Figure 1: Opinion poll on the Referendum on Fiscal Compact. Source: RedC, Ipsos MRBI, Millward Brown Lansdowne.

Like showed by the graph, people changed idea frequently throughout the months, but, in the end, at the referendum of May 31, 2012, 60,3% of the population voted in favour of the ratification of the Fiscal Compact<sup>455</sup>.

What in the end it is important to underline is that the 30<sup>th</sup> amendment to the Constitution, which introduced a new paragraph to article 29 of the Irish Constitution, will be the constitutional element to allow the ratification of the Fiscal Compact Treaty. We will talk about it very deeply in the next pages. While, as far as the Balanced Budget rule was concerned, its implementation occurred through the Fiscal Responsibility Act 2012, which also served for the implementation of the Directive 2011/85 EU<sup>456</sup>.

### 3.5 The amendment of article 136 TFEU and the ESM: *The Pringle case*

Since the European Council discussion held on December 16/17, 2010, the idea of amending the Treaties, according to the revision procedure described by article 48.6 TFEU, has started to circulate among European member states. On March 25, 2011, the

<sup>455</sup> Ireland passes fiscal treaty referendum by 60.3% to 39.7% (RTE News, 26 July 2012) <<http://www.rte.ie/news/2012/0601/fiscal-treaty-referendum-count-to-begin.html>>

<sup>456</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 51

Council adopted the Decision 2011/199 in which officially declared its intention to amend article 136 TFEU. This amendment would consist in the introduction of a new paragraph stating: «The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality<sup>457</sup>». According to the national procedures, the process of approval ended in the mid of April and the new article entered officially into force on May 1, 2013<sup>458</sup>.

The revision procedure used for amending article 136 TFEU, is the first of the two simplified procedures laid down in article 48 TFEU. This simplified procedure can be applied in all the cases the proposal of amendment has to do with «Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union<sup>459</sup>» and just whether the amendment does not provide an increase in terms of competencies to the European Union. If the just described situation occurs, the amendment should follow the ordinary legislation procedure, described by the first five commas of article 48 TFEU. Making an example, we can say that whether the amendment proposed by the EU would interest article 153.5 TFEU, and the amendment would be aimed at removing the sentence which forbids the usage of European policies in the field of association right or right to strike, the procedure to use in this case could not be the simplified one, because of the implied intent to increase the EU's competences in that field. The procedure to follow so, it would be the ordinary revision procedure<sup>460</sup>.

According to article 48.6, the amendment whether obtains the unanimity in the European Council can directly be adopted. But, differently from the second simplified procedure described by the seventh paragraph of article 48 TFEU, the decision taken by the EC shall be submitted to all member states in respect of their own constitutional requirements. These constitutional requirements can refer for instance to the need of a referendum on the amendment, a consultation and a positive response of the national parliament on it. Because of the unanimity requested in the Council, and because of the need of national

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<sup>457</sup> Article 136.3 TFEU

<sup>458</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 21

<sup>459</sup> Article 48.6 TFEU

<sup>460</sup> De Witte, P., The European Treaty Amendment for the Creation of a Financial Stability Mechanism, SIEPS, European Policy Analysis, 2011: 6, p. 4

approval, it is not so obvious that the simplified procedure is really much simpler than the ordinary one<sup>461</sup>.

The decision to amend the TFEU has its roots in the sovereign debt crisis which progressively hit many Eurozone countries, Ireland included. The European Stability Mechanism, direct consequence of the amendment of article 136, was precisely aimed at substituting the existing package of tools which were created at the dawn of the crisis, and that mixed tools of different legal origin, like tools of public international law, European Union law and finally, also private law<sup>462</sup>.

In order to overcome the two temporary funds created at the beginning to manage the crisis, the European Countries all agreed to establish a permanent tool, the European Stability Mechanism. To do so, a constitutional amendment was clearly needed. In the autumn of 2010 the German chancellor convinced the French one that the amendment of the TFEU was the best way to follow for the establishment of the ESM, and she also highlighted the need of a presidential intervention on the matter<sup>463</sup>. On October 28-29, 2010, all the member states expressed their conviction in recognizing the need of a permanent mechanism to enact for protecting the Eurozone from future crises and on October 8, 2012 it entered into force. Few months before, the text of the amendment of article 136 TFEU was presented by the European Council, for entering finally into force, as already said, on May 1, 2013.

As far as Ireland was concerned, since the beginning, both the Houses showed a great enthusiasm for the amendment of article 136 TFEU. The Government's great support stemmed from the awareness of the financial situation of Ireland, which was dependent upon the ESM<sup>464</sup>. The Government, in fact, was frightened that once exited the financial assistance programme, Ireland would have coped with many difficulties to raise funds.

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<sup>461</sup> Op. cit., De Witte, P., *The European Treaty Amendment for the Creation of a Financial Stability Mechanism*, p. 4

<sup>462</sup> J.V. Louis, *The No-Bailout Clause and Rescue Packages*, *Common Market Law Review* 2010, pp. 971-986

<sup>463</sup> Kaczynski, P. M., and O' Broin, P., *From Lisbon to Deauville: Practicalities of the Lisbon Treaty Revision(s)*, CEPS Policy Brief no.216, October 2010

<sup>464</sup> *Dáil Debates*, 6 June 2012, Vol 767 No 1, 72-73

So, the ESM was perceived as a foothold for the sake, as something which could grant secure funds in case of closure by the financial markets<sup>465</sup>.

The process of ratification of article 136 occurred in Ireland through the adoption of a legislative act of Parliament, known as The European Communities (Amendment) Act 2012. This act modified the already existing European Communities Act 1972 with the aim of involving the new article 136 TFEU. On July 3, 2012, the President signed the Act, and both the notification and ratification were sent to the European Council at the beginning of August<sup>466</sup>.

The amendment of article 136 in Ireland was discussed on two different occasions. Firstly, during the referendum campaign on the Fiscal Compact, and secondly, during the parliamentary debates appositely dedicated to the approval of the European Communities (Amendment) Act 2012.

During the referendum campaign, the opponent factions of the Fiscal Compact started to debate on the amendment of article 136 TFEU, by stating that « the amendment of Article 136 TFEU provided the Irish government with leverage in their approach to the Fiscal Compact and in obtaining an improved package of financial assistance <sup>467</sup>.» Basically, they were conscious that just amending this article the ESM could enter into force, and, considering that for allowing the amendment, the approval by all the twenty-seven member states would need, the opponents of the Fiscal Compact suggested to veto the amendment and hence the ESM, in order to get political leverage for fighting against the blackmail clause of the ESM and of the Fiscal Compact, and also in order to obtain improvements as far as the financial assistance programme was concerned<sup>468</sup>.

As far as the parliamentary debate on the amendment was concerned, the sole thing which was criticised had to do with the short time given to the deputies and to the senators for discussing the amendment. But generally, we can say that the amendment proposal obtained great support. In fact, it was perceived as fundamental for allowing Ireland to raise funds once the financial assistance programme would have ended<sup>469</sup>.

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<sup>465</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 21

<sup>466</sup> Ibidem

<sup>467</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p., p. 22

<sup>468</sup> Ibidem

<sup>469</sup> Ibidem

After what said on the amendment, we should also add that when the ESM entered into force, on September 27, 2012, the amendment was not yet in force, and the ESM hence was perceived as an intergovernmental institution which was created on the ground of an international agreement between the Eurozone partners<sup>470</sup>. According to article 3 of the ESM Treaty: «The purpose of the ESM shall be to mobilise funding and provide stability support under strict conditionality, appropriate to the financial assistance instrument chosen, to the benefit of ESM Members which are experiencing, or are threatened by, severe financing problems, if indispensable to safeguard the financial stability of the euro area as a whole and of its Member States. For this purpose, the ESM shall be entitled to raise funds by issuing financial instruments or by entering into financial or other agreements or arrangements with ESM Members, financial institutions or other third parties<sup>471</sup> ».

As far as the ratification process in Ireland of the ESM was concerned, according to the Irish Constitution, the body who is entitled to exercise its executive powers in relation to international agreements is the Government<sup>472</sup>. With the exception of international agreements referring to technical or administrative aspects<sup>473</sup>, international agreements should be presented before the Lower House, while those constituting a further burden for the national public finances should receive the approval of the Lower House to bind the country to respect them<sup>474</sup>.

Because of the dualist system operating in Ireland, the international agreement was incorporated into the national legislation through an act of the parliament, namely, the European Stability Mechanism Act 2012, which after discussion in both the Houses, got the presidential approval on July 3, when the Act was signed. After that, the ESM Treaty was ratified by the Government.

The Government and the opposition, led by the Fianna Fáil group, were all in favour of the ESM Treaty and ESM Act. Who contested the Treaty and the Act were Sinn Féin and the United Left Alliance. Those in favour considered the Act as a valuable system for

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<sup>470</sup> Craig, P., Pringle: Legal Reasoning, text, purpose and teleology, Guest Editorial, 2013, p. 4

<sup>471</sup> Article 3 ESM Treaty

<sup>472</sup> Article 29.4 Irish Constitution

<sup>473</sup> Op. Cit., Hogan, G.W., White, G.F., JM Kelly: The Irish Constitution, p. 546

<sup>474</sup> Article 29.5 Irish Constitution



protecting Ireland in case of closing by the financial markets once the EU-IMF programme would be concluded<sup>475</sup>. Those who contrary did not support the Act sustained that because of the strict conditionalities imposed by the Mechanism, this would further the austerity already domaining Europe. In this context, we should analyse the Pringle case.

On April 13, 2012, Mr. Pringle, member of the Irish Parliament went before the High Court, challenging the involvement of Ireland into the ESM. Basically, Pringle argued the unconstitutionality of the amendment of article 136 TFEU through the adoption of the European Council's Decision 2011/199, and secondly, he argued that the aforementioned decision followed inappropriately the simplified revision procedure described by article 48.6 TFEU, as the amendment in question went to modify the European competences. In addition, Pringle also claimed that the same Council's Decision was in breaching of the TEU and TFEU provisions concerning with the monetary principles of the EU. Furthermore, Pringle claimed that through the ratification of the ESM Treaty, Ireland would trespass the exclusive competences of the EU in the field of monetary and economic policy. Through the creation of the ESM in fact, according to Pringle, the European member states would like to create an independent institution able to circumvent the limits imposed by the TFEU on the economic and monetary policy. In the end, he concluded by stating that the Treaty on the ESM was in conflict with the principles at the basis of the judicial protection, and it was also in conflict with the principle of legal certainty<sup>476</sup>.

On July 17, 2012, the High Court dismissed Pringle's instances, and Pringle decided to refer the case to the Supreme Court, which was asked to answer some questions:

- Does the ESM Treaty represent a delegation of national sovereignty to an international organization? If yes, Pringle highlighted the unconstitutionality of the ESM Treaty on the ground of the Crotty case<sup>477</sup>.

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<sup>475</sup> Minister for Finance, Michael Noonan, Dáil Debates, 7 June 2012, Vol 767

<sup>476</sup> Borgert, V., The ESM and the European Court's Predicament in Pringle, German Law Journal, Vol. 14, No. 01, 2013, p. 121

<sup>477</sup> Pringle v Government of Ireland and Others, 2012, IESC 47, Supreme Court, October 19, 2012

- Does the implementation of the ESM Treaty in the Irish domestic law represent an unconstitutional delegation of legislative authority to the Government?<sup>478</sup>
- Is the ESM Treaty in breaching of the European Union Law?<sup>479</sup>
- Is the Decision 2011/199 in breaching of the European Union Law?<sup>480</sup>
- Pringle also added that, whether the breaching by the ESM Treaty exists, a breaching of the Irish Constitution occurs as well, in name of the special status that article 29 of the Irish Constitution recognizes to EU law<sup>481</sup>;
- Finally, according to Pringle, an injunction should restrain the enforcement of the ESM Treaty in the Irish legal system<sup>482</sup>.

With respect to these six arguments presented by Pringle, the Supreme Court decided to refer questions 3 and 4 to the European Court of Justice, by making a request, that is, to use an accelerated procedure. As far as the second question was concerned, the Supreme Court did not find any urgency in solving this claim, as it did not refer to the ability of the Irish Government to ratify the ESM Treaty, but rather it was about the obligations up to Ireland once the Treaty would enter into force. Question 5 was not addressed by the Court, as, whether the ESM Treaty would not be in compliance with Union Law, then, it would neither be in compliance with the Irish Constitution. The Court so decided to address the first and the last questions presented by Pringle<sup>483</sup>.

As far as the sovereignty claim was concerned, according to Pringle, the ESM Treaty did not respect the Crotty landmark decision of the Irish Supreme Court, decision taken in occasion of the Single European Act ratification. What was questioned in the Crotty case was the decision of the Government to delegate its power in the foreign policy to an international institution. According to the Irish Constitution, in fact, sovereignty comes from the people and it is exercised by different organs set out by the Constitution itself. To the government is recognized the discretion in the field of foreign policy. In accordance with the Constitution, however, this discretion does not mean the faculty to limit or to delegate this power. Title III of the Single European Act instead, had a broad

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<sup>478</sup> Ibidem

<sup>479</sup> Ibidem

<sup>480</sup> Pringle v Government of Ireland and Others, 2012, IESC 47, Supreme Court, October 19, 2012

<sup>481</sup> Ibidem

<sup>482</sup> Pringle v Government of Ireland and Others, 2012, IESC 47, Supreme Court, October 19, 2012

<sup>483</sup> Ibidem

scope, as it foresaw the adjustment of national foreign policy to the needs of the other member countries. Basically, according to the Irish Constitution, this represented a breach of constitutional provision and hence, an unconstitutional delegation of national sovereignty<sup>484</sup>.

But differently from this case, the ESM Treaty had a specific scope, that is, to maintain the stability of the Eurozone by providing financial assistance to the member states in need. Its scope additionally was set down to the Treaty by the single countries. The institution is just asked to implement the scope. The Supreme Court, by quoting the Supreme Court's judge Liam MacKechnie, said that the basic difference between the Title III of the SEA and the ESM Treaty consists in the fact that whether the ESM just implements a policy, the SEA made the policy. Moreover, the Supreme Court stated that the commitment of Ireland was not open-ended, Ireland in fact, would contribute in a limited way, and in case of further requests of commitment, just the Irish Parliament could intervene for allowing or denying the requests<sup>485</sup>.

As far as the last question was concerned instead, on the ground of an affidavit supplied by a senior civil servant of the Department of Finance, it was clearly stated the convenience for Ireland to enter the ESM, and the convenience to make it enter into force as soon as possible, considering its financial situation. On these grounds, the proposal of injunction was rejected by the Supreme Court<sup>486</sup>.

In the end, we can say that the Judgement of the Supreme Court did not find any element of unconstitutionality, confirming the compatibility of the ESM Treaty with the Irish Constitution, by allowing so the ESM to enter into force consequently permitting Ireland to take part in it. The European Court of Justice, which was asked to decide on two of the questions presented by Pringle, concluded that member states were free to sign international agreements in the field of the economic pillar of the European Monetary Union. On the ground of this freedom, the Court added that the new provision amending article 136 TFEU shall not be perceived as the legal basis allowing the ESM to enter into place. In fact, in paragraph 72 of the Court's judgement, the Court stresses that it is the

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<sup>484</sup> Crotty v. An Taoiseach [1987] IESC 4; [1987] IR 713 (9th April, 1987)

<sup>485</sup> Pringle v Government of Ireland and Others, 2012, IESC 47, Supreme Court, October 19, 2012

<sup>486</sup> Ibidem

same article 136 paragraph 3 of the TFEU to “confirm” the nation states’ power to establish the stability mechanism<sup>487</sup>. The usage of the term “confirm” shows clearly that member states have all the power to act unilaterally in deciding to sign or not an international agreement in the field of economic assistance<sup>488</sup>.

The Government so was left free to ratify the ESM Treaty. Once recognized the validity of both, the ESM Treaty and the amendment of article 136 TFUE, they entered officially into force respectively on September 27, 2012 and May 1, 2013.

In the last chapter, we will go to make a comparative analysis on the effectiveness of the national policies adopted to combat the crisis by Spain and Ireland, taking into account the financial assistance programme they were submitted to.

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<sup>487</sup> De Gregorio Merino A., *Legal Developments in the Economic and Monetary Union during the debt crisis: the mechanism of Financial assistance*, CMLRev, 2012, pp. 1613–1646

<sup>488</sup> De Lhoneux, E., Vassilopoulos, C. A., *The European Stability Mechanism before the Court of Justice of the European Union: Comments on the Pringle Case*, Springer Briefs in Law, 2014, p. 72

## **Chapter 4. The medium-long term effectiveness of the new rules adopted at European level**

In this conclusive chapter, we will analyse the results achieved by Spain and Ireland once adopted the measures agreed in the European Union. We will see how and if the recovery occurred, posing our attention on how these measures have affected the main sectors of the society, and whether the respective Post Programmes Surveillance have been implemented in a sustainable way. In the second part of the chapter instead, the focus will shift to the impact of the new European Economic Governance on the national Parliaments' powers and on the national Courts. These two kinds of institution have been taken as a reference in order to analyse whether their involvement in EU matters has been enhanced or not during the Eurozone crisis.

### **4.1: Was the new European Economic Governance effective in Spain to combat the crisis?**

When the crisis hit Spain, immediately the debate among economists rotated around which kind of policies Spain should adopt to recover. Two main positions emerged: Rajoy and his supporters, like the IMF and the European Commission, sustained the need of austerity policies<sup>489</sup>. On the contrary, there were also economists who stated the urgent need of expansionary policies which could help Spain to grow again<sup>490</sup>. In order to answer the abovementioned question, we have to make an in-depth analysis.

The period preceding the Eurozone financial crisis was characterized in Spain by an impressive growth, so impressive to deserve the label of “Spanish Miracle”<sup>491</sup>. The expansive phase of 1995-2007, as already explained in the first chapter, was led by two main sectors: the financial and the construction sectors, which basically can be defined as the pillars of the Spanish economy in that decade. So, when the crisis arrived the main sectors to be hit were exactly those two. « Unable to produce the required resources to

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<sup>489</sup> See generally, Weisbrot, M., and Jorgensen, H., *Macroeconomic Policy Advice and the Article IV Consultations: A European Union Case Study*. Washington, DC: Centre for Economic and Policy Research (CEPR), 2013

<sup>490</sup> See generally, Navarro, V., Torres, J., and Garzón, A., *Hay alternativas. Propuestas para crear empleo y bienestar social en España*, Sequitur, Madrid, 2011

<sup>491</sup> See generally, Bernaldo de Quirós, L., and Martínez Rico, R., *El modelo económico español. 1996–2004: una revolución silenciosa*. Madrid: Instituto de Estudios Económico, 2005

finance its growth model, Spain had to rely on debt, which was borrowed by its private sector cheaply -as a consequence of the low interest rates that accompanied euro membership- and invested in the construction and real-estate sectors at the expense of other sectors of the economy. This indebtedness was at the heart of the crisis <sup>492</sup>». The collapse of the construction sector led firms and company to dismiss workers, in fact, between 2007 and 2013 more than 3.4 million people were fired. In 2009 the Spanish deficit amounted to 11% and, in 2015, despite the recovery, it was still high, 5.1%<sup>493</sup>.

Since the beginning of the crisis, the then Spanish government opted for implementing austerity measures, which, over time were further toughened. Surely, the decision of the government was partially influenced by the pressure exercised by the European Institutions, which sent to Spain very strict recommendations to respect whether it wanted to get financial assistance from the Troika<sup>494</sup>. The financial assistance programme which Spain signed was aimed at: firstly, reducing as much as possible the costs of labour to permit Spain to come back to the pre-crisis degree of competitiveness, secondly, it was aimed at decreasing the size of the public sector, and thirdly, it was aimed at substituting the welfare approach of the Spanish state with the one of a state interested in forming and training its workforce<sup>495</sup>.

With respect to the first goal, two important labour reforms were passed in 2010 and in 2012. Basically, through these labour reforms, the procedure of dismissal was made easier for employers, so that the rate of unemployment sharply increased<sup>496</sup>. Clearly, because of these cuts in workforce, demands for unemployment benefits raise significantly, and the government, to tackle the subsequent increase in terms of expenditures, was forced to adopt a series of instruments which could avoid the deepening of the crisis. Wages were frozen, the retirement age was augmented, the number of years of contribution for

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<sup>492</sup> Parker, O., Tsarouhas D., (eds.), *Crisis in the Eurozone Periphery, Building a Sustainable Political Economy: SPERI Research & Policy*, 2018, p. 68

<sup>493</sup> Op. cit., Parker, O., Tsarouhas D., (eds.), *Crisis in the Eurozone Periphery, Building a Sustainable Political Economy*, p. 65

<sup>494</sup> Pavolini, E., León, M., Guillén, A. M., and Ascoli. U., *From Austerity to Permanent Strain? The EU and Welfare State Reform in Italy and Spain*. In: *The Sovereign Debt Crisis, the EU and Welfare State Reform*, ed. De La Porte, C., and Heins, E., London: Palgrave Macmillan, 2016, pp. 131–158

<sup>495</sup> Op. cit., Parker, O., Tsarouhas D., (eds.), *Crisis in the Eurozone Periphery, Building a Sustainable Political Economy*, p. 66

<sup>496</sup> Banyuls, J., and Recio, A., *Crisis dentro de la crisis: España bajo el neoliberalismo conservador*. In *El triunfo de las ideas fracasadas. Modelos de capitalismo europeo en la crisis*, ed. S. Lehndorff, Madrid: La catarata, 2015, pp. 39–69

obtaining an early retirement was increased and so on. Furthermore, cuts in the healthcare system occurred as well, stressing the direction that the government, supported by the EU, had decided to follow.

The consequence of these austere measures damaged for sure the idea of Spain as a welfare state, idea fixed in article 2 of the Spanish Constitution<sup>497</sup>. In 2014 in fact, Spanish wages continued to be below the pre-crisis period of at least 7%, the rate of the population risking the poverty despite a job was in 2015 higher than ever<sup>498</sup>. But while from a social perspective the measures adopted decreased the degree of social protection which had always characterized Spain, since 2014 the Spanish economy started to grow again. For sure, the slow recovery of Spain took advantage from many instruments made available by the European institutions, like the decision from the ECB to reduce the level of interest rates, or the decrease in terms of prices for access to energetic sources, the decrease in taxes and the increase in expenditures which characterized the 2015 electoral year. As a consequence of all these policies, in 2016-2017, the Spanish export achieved a level as never reached before<sup>499</sup>. In order to understand whether the path of recovery undertaken by Spain is sustainable or not and whether the European measures have produced their effects or not, we can analyse some aspects concerning Spain which can help us to conclude the puzzle. We can try to do it by assessing whether the main recommendations included in the Spanish Post Programme Surveillance, as outlined in the EU Regulation 472/2013, have been followed or not<sup>500</sup>.

Above any expectations, according to the Country Report 2018 on Spain, drafted by the European Commission, the Spanish economy is continuing to grow, also above the euro average<sup>501</sup>. Nonetheless, this positive trend risked being stopped when, between 2016 and 2017, Spain and Portugal were on the verge of being sanctioned for their excessive deficit. In the end, the EU decided not to proceed against them just for political reasons.<sup>502</sup> Since 2014, when the economy re-started to grow, the Spanish improvements have never had

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<sup>497</sup> Article 2 Spanish Constitution

<sup>498</sup> OECD, *Social Spending During the Crisis*, Paris: OECD, 2012

<sup>499</sup> Op. cit., Parker, O., Tsarouhas D., (eds.), *Crisis in the Eurozone Periphery, Building a Sustainable Political Economy*, p.68

<sup>500</sup> European Regulation 472/2013 adopted by the EU Parliament along with the Council on May 21, 2013

<sup>501</sup> European Commission, *Country Report Spain 2018*, Brussels, March 7, 2018, p.5 available at: <https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-spain-en.pdf>

<sup>502</sup> Maurice, E., *Spain and Portugal likely to face fines over deficit*, Brussels, May 18, 2016, available at: <https://euobserver.com/economic/133456>

setbacks. The leading element of this unstoppable race is for sure the domestic demand, particularly important is the private consumption, which in the post-crisis has always been sustained by the policy of job creation initiated by the government. Exports confirmed to be a pillar of the Spanish growth, also thanks to the process of internationalization the Spanish firms have decided to undergo. In addition, the way in which Spain is increasing has been considered from the EU sustainable<sup>503</sup>. In fact, the path of growth is supposed to gradually reduce its speed, but without stopping anyways. Surely, despite the Spanish economy is growing, the high debt level and the high unemployment rate still challenge the country.

Despite many steps forward in terms of debt reduction have been done, the private sector indebtedness is still above the minimum level of prudence. In the third quarter of 2017 (Q3-2017), private sector debt amounted to 159.9% of GDP (61.8% of the debt referred to households, while the remaining to the non-financial corporate debt). Clearly, if the GDP continues to grow in a sustainable way, the household debt, along with the non-financial corporate debt is expected to continue its path of reduction, even if the level of prudence will continue to be very far<sup>504</sup>.

As far as the general government debt is concerned, in autumn 2017 the Spain debt was 98.3% of GDP, 0.7% less than 2016. The trend is good, but its value is still very high, and it could represent a vulnerability for Spain if some changes occur in the market. Unemployment rate as well is high. It is constantly falling and declining, but its percentage is not acceptable for developed countries. According to the European forecasts, the unemployment rate should fall up to 15.6% in 2018, ten points below the peak reached in 2013. This data is encouraging, but unfortunately, more than one third of young people do not have a job yet. Another element to consider is that the job opportunities created by the Spanish government have favoured an increase in temporary contracts, while nothing has occurred as far as permanent contracts are concerned<sup>505</sup>.

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<sup>503</sup> European Commission, Country Report Spain 2018, Brussels, March 7, 2018, p.5 available at: <https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-spain-en.pdf>

<sup>504</sup> Banco de España, Annual Report 2016, Bank of Spain, Madrid, 2012. Available at: [https://www.bde.es/bde/es/secciones/informes/Publicaciones\\_an/Informe\\_anual](https://www.bde.es/bde/es/secciones/informes/Publicaciones_an/Informe_anual)

<sup>505</sup> Op. cit., European Commission, Country Report Spain 2018, p.17



Despite the above described criticisms, Spain has improved a lot in the last four years. Its current account surplus is constantly improving since 2013, and this is favoured by some specific structural factors. At the beginning, the factor which mainly contributed to its recovery were factors like low oil prices and low interest rate, the so called cyclical factors<sup>506</sup>, but more recently, the factors allowing the current account surplus to rise are structural factors, particularly, we can say that the exports of good and services are the main responsible for this growth.

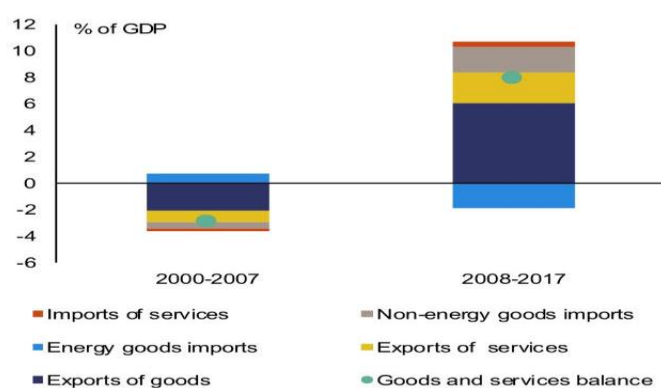


Figure 2 The graph shows the Spanish change in the balance of trade goods and services, in the years pre, during and post crisis. Source: (Eurostat)

The graph here above, perfectly shows what just said. The exports of goods and services have become a pillar of the Spanish economy, Spain, is the second European exporting country for cars, just after Germany. Thanks to this constant growth in terms of current account surplus, Spain is gradually reducing its debt level in terms of international investment (NIIP). To counterbalance this positivism, we should also say that while the Spanish Net International Investment Position is improving, Spain's Net External Liabilities are still very far from reaching a sustainable level. Furthermore, to seriously contrast the Spanish NIIP, which despite the improvements is still very negative, the current account surplus should continue to grow for another very long period<sup>507</sup>. How to do it? Continuing the path of consolidation undertaken by Spain in the immediate post 2008 with the support of the European Union, and preserving the competitiveness achieved recently, particularly through wages' cuts.

<sup>506</sup> European Commission, Empirical current account benchmarks: modelling the impact of demographic variables, LIME Working Group, 24 April 2017

<sup>507</sup> European Commission, Refining the methodology for NIIP benchmarks, LIME Working Group, 21 Nov 2016

Very good data shows that the cancer which affected Spain in the pre-crisis period, the private debt, is drastically reduced. In 2017, it was calculated that the private debt had been cut for more than 58 points from 2010, the year of the peak. The private cut has achieved this important goal because of a drastic reduction of the corporate debt and of the household debt. Clearly, it is not enough, we are very far from prudential levels, but great steps forward have been done. Furthermore, this reduction is expected to continue also in the future considering the positive increase in terms of nominal GDP growth. Spain's lending capacity is completing its restoration, by demonstrating how the Spanish economic growth of these last years is strong<sup>508</sup>. In 2017 indeed, the quality of the Spanish banks' assets moved largely in the direction of the European expectations, continuing its path of improvements. The Spanish banks, which at the eruption of the Eurozone crisis were overloaded by non-performing loans, have achieved the Euro average as far as the NPL are concerned, demonstrating how the financial sector is now working correctly. Along with the financial sector, the housing market and the construction sector have reaffirmed themselves, completing their recovery, granting the housing prices to increase for four years in a row<sup>509</sup>.

The public-sector debt reduction is expected to accelerate. If between 2014 and 2016 the public debt has been reduced just by 1.4% of GDP, the debt ratio is foreseen to decline up to 97% of GDP in 2018. Many elements can contribute to this decline, like the reducing deficit, the expenditures cut, and the constant economic growth.

The labour market as well has achieved important goals, but many vulnerabilities remain. Many job opportunities have been created after the two labour reforms of 2010 and 2012, and also thanks to the cuts in terms of wages. However, many jobs are based on temporary contracts, not giving certainty to workers about their working future. This element plays for sure a negative role in the growth of the country in terms of productivity. Spain is adopting some measures to tackle this problem, but mainly relying on the capabilities of the regional public employment services, which despite the funds received, did not manage to improve the situation. The EU is stressing Spain to address the problems

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<sup>508</sup> Banco de España, Annual Report 2016, Bank of Spain, Madrid, 2017. Available at: [https://www.bde.es/bde/es/secciones/informes/Publicaciones\\_an/Informe\\_anual](https://www.bde.es/bde/es/secciones/informes/Publicaciones_an/Informe_anual)

<sup>509</sup> See generally, Philipponnet, N. and Turrini, A., Assessing house price developments in the EU, European Economy Discussion Paper 48, Publications Office of the European Union, Luxembourg, May 2017

concerning the education which heavily influence the rate of unemployment<sup>510</sup>, along with the skills gap<sup>511</sup>.

To conclude, we can say that Spain since the process of recovery has started, has reduced many of its macro-economic imbalances, despite this, public and private debt remain very high. It is impossible to deny that the process undertaken by Spain has been surprising, many structural factors, as already said, have contributed to its revival. However, many vulnerabilities still remain, and Spain is expected to continue on this path of consolidation. « Spain may be winning the war, but the battle is far from over<sup>512</sup> ».

#### **4.2: The impact of the new European Economic Governance on the Spanish Parliament**

According to many scholars, like Maduro or Fabbrini, national Parliaments are those who most suffered the adoption of the new European rules<sup>513</sup>. While through the Lisbon Treaty national Parliaments managed to obtain some additional powers<sup>514</sup>, it looked that after the Eurozone crisis their powers were affected again by the new European rules. For sure the European instrument which mainly had an impact on the position of national Parliaments was the criticized Fiscal Compact, which exactly in article 3.2 of its Treaty specifies that “national prerogatives” cannot be limited. The Fiscal Compact basically represented an opportunity for national Parliaments by recognizing to them the power of controlling, along with the European Parliament, the correct implementation of the Treaty by the singular member states<sup>515</sup>. Basically, if it is impossible to affirm that the Eurozone crisis

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<sup>510</sup> OECD, OECD Skills Strategy Diagnostic Report: Spain 2015, OECD Publishing, Paris

<sup>511</sup> Op. cit., European Commission, Country Report Spain 2018, p. 19

<sup>512</sup> Chislett, W., Spain turns the corner, but the legacy from the crisis persists, Elcano Royal Institute, working paper 9/2014, August 5, 2014, available at: <http://www.realinstitutoelcano.org/wps/wcm/connect/0dd3cd8044fab8c8ba06fb846cb70c38/WP9-2014-Chislett-Spain-turns-corner-but-legacy-from-crisis-persists.pdf?MOD=AJPERES&CACHEID=0dd3cd8044fab8c8ba06fb846cb70c38>

<sup>513</sup> See Maduro, M., A New Governance for the European Union and the Euro: Democracy and Justice, RSCAS Policy Paper, n° 11, EUI, Florence, 2012, p. 6 ff, and Adams, M., Fabbrini F, Lerouche, P., (eds.) The Constitutionalization of European Budgetary Constraints, Oxford-Portland, OR, Hart Publishing, 2014, pp. 379-398

<sup>514</sup> Op. cit., Adams, M., Fabbrini F, Lerouche, P., (eds.) The Constitutionalization of European Budgetary Constraints, p. 344

<sup>515</sup> This power is recognized by article 13 of the Fiscal Compact which states: “As foreseen in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will

has contributed to strengthen the role of the parliaments, we could say that it has provided to them a stimulus to better manage powers they already had, or to use them more appropriately<sup>516</sup>. Surely, the process of adaptation of national Parliaments to the new rules was not equal and did not occur at the same time in all member states. Furthermore, many differences among member states remain as far as the role of their Parliaments is concerned, in particular with respect to the degree of autonomy in the field of fiscal and budgetary matters.<sup>517</sup> The national Parliaments which more suffered the new rules were those of the Eurozone and in particular those of the Member States receiving financial assistance. Here we will analyse how the Spanish Parliament position and role have modified with the occurrence of the Eurozone crisis.

The Spanish Parliament, as already said in the first chapter, has a bicameral structure, but between the Cortes and the Senate, many differences exist in terms of predominance. The Congress indeed has many more powers than the Senate in the legislative process and in the oversight procedure as well. The Senate, in fact, is just in charge of vetoing legislation. After this brief overview of the Spanish parliamentary architecture, we can now dedicate ourselves to the focus of this paragraph.

Article 3.2 of the Fiscal Compact, as already said, recognizes that the correction mechanism foreseen by the Pact should any way respect the “prerogatives of national Parliaments”<sup>518</sup>. However, the way in which the budgetary and fiscal powers of parliaments are preserved depends on national Constitutions. The Spanish Constitution, if from one hand preserves the parliamentary power to approve and supervise the implementation of the annual budget, from the other hand, it says nothing about the role of the Parliament in the European Decision-Making process. Before the Fiscal Compact’s ratification, both the Houses or the national government, according to article 95.2 of the Spanish Constitution, could ask the Constitutional Court to check the compliance of EU Treaties with the Constitution, and with the respect to the national parliamentary

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together determine the organisation and promotion of a conference of representatives of the relevant committees of the national Parliaments and representatives of the relevant committees of the European Parliament in order to discuss budgetary policies and other issues covered by this Treaty”.

<sup>516</sup> Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, SOG-WP19/2014, p.2

<sup>517</sup> Tuori, K., and Tuori, K., The Eurozone Crisis. A Constitutional Analysis, Cambridge, Cambridge University Press, 2014

<sup>518</sup> Article 3.2 Fiscal Compact

prerogatives. Despite this power, the Court did never intervene in similar cases as the Parliament did not make recourse to this instrument<sup>519</sup>.

Basically, we can say that the Spanish Constitutional Court has not been asked to act in favour of the national parliamentary prerogatives in the budgetary matters. The absence of this kind of rulings can be also linked to the decision of the Court to adopt a behaviour in line with, and in respect of, the austerity measures promoted by the EU<sup>520</sup>. If from one hand, the Court was interested in respecting the European prerogatives, from the other it was also interested in protecting the national governments and parliaments. Most of the times, being the Spanish parliamentary legislation in line with the European rules, the role played by the Court was eased when it was asked to ensure the respect of EU measures. In case of unconstitutionality of national legislation instead, the Court, to limit as much as possible the legal implications for the Parliament, preferred to send a warning to the government and to the Parliament before declaring the concerned laws unconstitutional.<sup>521</sup>.

Generally, we can say that the new European Economic Governance has not significantly altered the position and powers of the Spanish Parliament either formally or informally. But, something new has been introduced. On July 19, 2011, a parliamentary resolution was adopted with the aim of establishing a parliamentary budgetary office, the *Oficina Presupuestaria de las Cortes Generales*. This Office basically works as a Fiscal Council in charge of assessing the execution of the budget for then informing the Parliament on it. Even if the office was created in 2011, it started to operate just in 2013, when it was complemented by another body, the *Autoridad Independiente de Responsabilidad Fiscal*, attached to the Ministry of Economics and Finance<sup>522</sup>. The establishment of the Spanish Fiscal Council is a key element for boosting the role of the national Parliaments in EU matters. Since its setting in Spain, the powers of the Fiscal Council have made stronger. An element which favoured its strengthening was the decision by the *Autoridad Independiente de Responsabilidad Fiscal* to start a proceeding before the Constitutional

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<sup>519</sup> Op. cit., Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 5

<sup>520</sup> See It. CC no. 264/2012 and STC no. 134/2011

<sup>521</sup> Op. cit., Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 8

<sup>522</sup> Ibidem

Court. Through this proceeding, the Autoridad requested the Court to impose to the government the duty to promptly send to the Fiscal Council the requested information, allowing so to national Parliaments to be properly involved in fiscal matters<sup>523</sup>.

As far as the time of parliamentary decision-making is concerned, the financial crisis has speeded up everything, the constitutional reform of article 135 CE as well occurred in very restricted times<sup>524</sup>. Just thirty-two days passed between the proposal and the publication of the constitutional bill<sup>525</sup>. Furthermore, we can also add that the Spanish Parliament was neither involved in the discussion about the financial assistance programme, as well as about the Memorandum of Understanding. The national government in fact considered these agreements not in need of parliamentary approval, making reference to article 94.2 of the Spanish Constitution<sup>526</sup>. The Spanish Parliament was just entitled to discuss and pass the laws coming from the enforcement of the Memorandum of Understanding, bills which generally were adopted by the Government through Decree-Laws, for being subsequently converted into law by the Parliament, without any possibility of amendment. Clearly, like Fasone sustains, it is not very clear why the national Parliament was so supportive of the governmental decision to put it on the spot, but we can deduce that the main reasons are political ones<sup>527</sup>.

Because of the effective lack of transparency which has not allowed to the Spanish Parliament to actively participate in the preparation of the financial assistance programme, something was successively done for reducing these imbalances between the Parliament and the Government. As far as the problem of transparency was concerned, through the European Semester, it was decided to table a series of parliamentary activities at the beginning of the process. As far as the problem of information is concerned, some provisions of the law 22/2013 refer to the right of information of the Parliament during the work for the adoption of the Budget Act. Article 14 of this Law obliges the Government to inform the Parliament every six months about the national expenditures

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<sup>523</sup> Op. cit., Beukers, T., De Witte, B., Kilpatrick, C., Constitutional Change Through Euro-Crisis Law, pp. 108-143

<sup>524</sup> Piedrafita, S., National Parliaments' Say on the New EU Budgetary Constraints: The Case of Spain and Ireland. In M. Adams, F. Fabbrini & P. Lerouche (eds.), 2016, p. 319-340

<sup>525</sup> About the amendment of article 135 CE, see chapter 2 of this thesis.

<sup>526</sup> Article 94.2 CE

<sup>527</sup> Op. cit., Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 11

and public investment, moreover, as provided by article 51 of the same law, the Parliament has the right to be informed about the evolution of the public debt, and about the public guarantees, as provided by article 56<sup>528</sup>. Despite this right, unfortunately, any political sanction mechanism against the government exists in case of non-compliance with the duty, either than to threaten a constructive vote of no confidence.

However, what seems extremely important for an active role of the Parliament in the European Economic Governance is the presence of fiscal councils. In fact, according to the Law 22/2013, it is exactly thanks to the already mentioned Oficina Presupuestaria de las Cortes General that the governmental information arrives at the Parliament. This Office is constantly involved during the European Semester and moreover, it has the duty to present a report about public accounts before the Parliament every year<sup>529</sup>.

With the new European Economic Governance, many steps forward have been done in order to develop the parliamentary scrutiny and the parliamentary oversight powers<sup>530</sup>. National Parliaments, in fact, can use different tools to effectively control the governmental activity, taking advantage of the European rules about scrutiny. Specifically, parliamentarians take part in many committee meetings with the scope of hearing the European Commissioners<sup>531</sup>. Furthermore, the Heads of Government and State which participate obviously in the European Council's meeting, have the duty, before and after the meetings, to explain before the national Parliament the position they intend to adopt in the specific situation. But posing the attention to Spain, we should be honest and say that with respect to many other EU countries, the parliamentary scrutiny and oversight powers of the Parliament have been less strengthened, and furthermore, this improvement has not been enough to counterbalance the loss of discretion that the Spanish Parliament had coped with before. Considering moreover, that also before the new European Economic Governance, the role of the government was anyway

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<sup>528</sup> Articles 14, 51, 56 of the Law 22/2013

<sup>529</sup> Op. cit., Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 14

<sup>530</sup> See Griglio, E., Lupo, N., Parliamentary Democracy and the Eurozone Crisis, *Law and Economics Yearly Review*, vol. 1, n° 2, 2012, pp. 314-374

<sup>531</sup> Here, as an example we can report a case occurred on September 2013, when Olli Rehn went before the Committee on the Budget of the Italian Chamber of Deputies and he was heard as far as the national draft budgetary plan was concerned.

predominant with respect to the one of the Parliament, now the Parliament in Spain sees its power on budgetary issues seriously affected<sup>532</sup>.

In conclusion, we can say that it is well known that the responses adopted at EU level to contrast the Eurozone crisis have affected the Spanish parliamentary powers in the budgetary issues. But we can not limit to say that it is just guilty of the crisis, in fact, this power reduction is connected to other factors as well, like the European integration process in general. If from one hand indeed, the crisis has deepened the centralization of the budgetary matters towards the EU level, from the other hand, the crisis has provided a chance for the national parliaments to improve their role at national level<sup>533</sup>. In fact, as we have seen, the crisis has contributed to efficiently guarantee the right of information the national Parliaments should enjoy. Additionally, the settlement of fiscal councils has represented a further tool in the hands of the Parliament for better assessing the governmental behaviour in the EU. Through the new economic governance also the scrutiny and oversight parliamentary powers have been reinforced, so to better control the position assumed by the national government at EU level<sup>534</sup>. In general, it is possible to say that the more the constitutional protection of parliamentary prerogatives are guaranteed, the less national Parliaments will be deprived of their position and their powers<sup>535</sup>.

We can now shift to analyse the Irish case, firstly in terms of the effectiveness of the new European Economic Governance in the country, and secondly, by analysing how the role of the Parliament has changed.

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<sup>532</sup> Op. cit. Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 14

<sup>533</sup> Jancic, D., National Parliaments and the EU Fiscal Integration, European Law Journal, Vol. 22, No. 2, March 2016, pp. 225–249

<sup>534</sup> Op. cit., Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, p. 14, p. 22

<sup>535</sup> Ibidem



### 4.3 Did the new European Economic Governance work in Ireland?

When Christine Lagarde, Managing Director of the IMF, started her discourse during an important meeting in the Dublin Castle in March 2013, she cannot do without congratulating to Ireland leaders and Irish people for the way in which they managed the crisis. Effectively, there was an ocean between Ireland of 2010 and Ireland of 2013<sup>536</sup>.

Since the eruption of the crisis, Ireland opted for the adoption of austerity measure. Irish leaders were the major supporters of austerity, which later was just strengthened by the Troika and by the decision to accept the bailout<sup>537</sup>. We can state so that the Irish austerity was first of all auto-austerity<sup>538</sup>. In fact, the decision to opt for austerity measures was based on a very long tradition of prejudice with respect to pro-cyclical politics and fiscal policy. All the main parties agreed and sustained the government to go ahead with the path of austerity undertaken. During the crisis, in fact, no relevant disagreements characterized the political scene. Just the Sinn Fein Party protested against austerity, but socially speaking any civil disorder emerged. Austerity clearly affected many areas of the society like the labour market, housing, workplaces, consumption and so on, but it also allowed Ireland to recover.

Generally speaking, the Irish auto-austerity can be perceived as a voluntary choice by the concerned state to opt for fiscal contraction in order to restore competitiveness<sup>539</sup>, but often the decision by a state to implement austerity measures can be driven by different reasons, and more important, it may not be a voluntary choice. This is exactly the case of Ireland, as Thompson underlines by stating: « There is no necessity for an idea of austerity here; governments face a choice between default and the state not being able to meet basic financial commitments<sup>540</sup> ».

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<sup>536</sup> Roche, W.K., O' Connel, P.J., Prothero, A., *Austerity & Recovery in Ireland: Europe's Poster Child and the Great Recession*, Oxford University Press, United Kingdom, 2017, p.1

<sup>537</sup> *Ibidem*

<sup>538</sup> *Ibidem*, p. 2

<sup>539</sup> Blyth, M., *Austerity: The History of a Dangerous Idea*. Oxford: Oxford University Press, 2013, p. 2

<sup>540</sup> Thompson, H., *Austerity as Ideology: The Bait and Switch of the Banking Crisis*, *Comparative European Politics*, 2013, p. 733

	2008–10	2011	2012	2013	2014	2015	2008–15
		€ Billion					
Revenue	5.6	1.4	1.6	1.3	0.9	0.7	11.5
Expenditure	9.2	3.9	2.2	2.3	1.6	1.3	20.5
Total	14.7	5.3	3.8	3.5	2.5	2.0	31.8
Percentage of 2010 GDP	9.2%	3.3%	2.3%	2.1%	1.5%	1.1%	19.5%

Figure 3 Result obtained after the enforcement of the austerity package. FitzGerald, J., *Ireland's Recovery from Crisis*, CESifo Forum, 2014, 15(2), pp. 8–13

The table here above perfectly explains the results obtained throughout the years, after the austerity package took place. It consisted of 32 billion euros, which can be separated in this way: 20.5 billion in cuts expenditures, and 11.5 billion euros in tax increases<sup>541</sup>. This package was very costly for Irish people, but it permitted to Ireland to reach in 2015 a 19.5% GDP. Initially, before the arrival of the Troika, the programme of adjustment implemented by the government amounted to about 15 billion. When the EU came into play, other 15 billion euros were provided, at the condition of further fiscal consolidation and structural reforms.

While, since the beginning of the crisis, the Irish government has favoured a more austere approach, other proposals were done, both at domestic and external level. At European level, a European Keynesian approach was proposed by the British Prime Minister Gordon Brown. It would have been based on a mutualization of the in-crisis countries like Ireland, Greece, Portugal and Spain, through the establishment of a specific system, the one of the Eurobonds, consisting basically in the transferring of money from the richer to the poorer countries of the Eurozone<sup>542</sup>. Germany, supported by the Northern European countries, promptly rejected this proposal considering that, in this way, the European debtors countries would not learn the lesson, and would continue to avoid fiscal prudence<sup>543</sup>.

As anticipated, in Ireland as well, different solutions to austerity were discussed, especially between the National Economic and Social Council (NESC), and by the Irish Congress of Trade Union (ICTU). Basically, NESC stressed the importance of fiscal

<sup>542</sup> See generally, De Grauwe, P. and Moesen, W., Gains for All: A Proposal for a Common Eurobond, *Intereconomics*, May/June 2009

<sup>543</sup> Sinn, H. W., Austerity, Growth and Inflation: Remarks on the Eurozone's Unresolved Competitiveness Problem, CESifo Working Paper No. 4086. Munich: Center for Economic Research & Information Institute, 2013

consolidation and of a restoration of the banking system, in agreement with the then Irish government, but always taking into account the concept of “social solidarity”, requiring hence consultation between the political leaders and the main social and economic groups<sup>544</sup>. The same idea of “social solidarity” was emphasized by the ICTU, and according to its view, what Ireland needed was exactly the opposite of austerity. To its mind, it was necessary to increase wages to favour consumption, to increase infrastructural spending and to set the repayment of the Irish deficit over a longer period<sup>545</sup>. But, at that time, when the government was urgently asked to intervene for contrasting the crisis, the government decided to implement an austerity programme even before the EU proposal to enter a bailout. The path of austerity was for sure later strengthened also because of the pressure exercised by the ECB to the then Irish Minister for Finance, as an exchange of letters between Trichet, the then Head of BCE, and the Irish Minister for Finance, Brian Lenihan can demonstrate<sup>546</sup>.

We can say that the decision to implement such austere policies with their correlated reforms, objects of the National Recovery Plan 2011-2014, can be more or less reprehensible, but it gave its fruits, especially with respect to fiscal consolidation and banking system restoration. When Ireland definitely exited the EU-IMF financial assistance programme, in December 2013, it immediately entered the Post Programme Surveillance (PPS) which will last until 75% of the loans received would be repaid. Thanks to the PPS it is possible to measure the intensity and the quality of the measures adopted by the Irish government to bring the state back to the pre-crisis level.

If we look at Ireland currently, through the Country Report of 2018, we can see an economy which continues to increase constantly. Its estimations, as far as 2018 is concerned, foreseen an increase of 4.4% in terms of GDP, and a further increase of 3.1% in 2019<sup>547</sup>. The domestic demand is very high, and this is for sure also due to a successful policy undertaken by the government in the field of employment. The full-time employment is, in fact, an indicator of the Irish economy’s strength. The labour market

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<sup>544</sup> NES (National Economic and Social Council), Ireland’s Five-Part Crisis: An Integrated National Response. Dublin: National Economic and Social Council, 2009

<sup>545</sup> ICTU (Irish Congress of Trade Unions), There is a Better Fairer Way: Congress Plan for National Recovery. Dublin: Irish Congress of Trade Unions, 2009

<sup>546</sup> Irish Times, ‘The Trichet–Lenihan Letters: The Full Text’, 7 November 2014

<sup>547</sup> European Commission, Country Report Ireland 2018, Brussels, March 7, 2018, p. 6

indeed is one of the pillars of Ireland. Employment among people between 20 and 64 years old continues its astonishing growth. As a consequence, the Irish unemployment rate has fallen below 7% in 2017<sup>548</sup>. Along with employment growth also wages have faced with a moderate increase. In 2016 they have increased by 2%, and in 2017 by 2.6%.<sup>549</sup> the increase in wages has clearly to do with the growth in production and with the very low rate of unemployment.

From a social perspective as well, Ireland is winning its battle. Poverty, in fact, has been combatted, even if it is something which should be constantly monitored, especially because the risk of social exclusion it is not estimated to stop<sup>550</sup>.

As far as public finances are concerned, we can say that the Irish deficit is close to balance, while the debt continues to drop, even if it remains above the Medium Term Objective. In 2016 it was 72.8% of GDP and for 2019 it is expected to further decrease to 67.2%<sup>551</sup>. Despite according to the European targets, the Irish debt can be considered high, the Irish financing situation does not represent a damage. The national bond yields started to drop since 2013, resulting in a very good economic and fiscal shape for Ireland. In 2017 in fact, the Irish authorities announced the decision to repay the loans received by the IMF, and also the bilateral loans coming from Sweden and Denmark. The government decided to undertake this path with the goal of profiting from the favourable market situations and also for reassuring the European continent of the healthy condition of Ireland. On the ground of this decision, it is possible to say that the Irish debt sustainability is no longer in question<sup>552</sup>.

In conclusion, we can say that the adjustments to the public finances provided by the Irish government and the Troika represent significant achievements of the austerity programme started in Ireland since before the rescue package. Ireland's experience of austerity can be considered unique. In fact, the negative effects of the austerity package, like the severe

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<sup>548</sup> Ibidem, p. 7

<sup>549</sup> Arpaia, A. and Kiss, A., Benchmarks for the assessment of wage developments, European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Analytical web note 2/2015, 2015

<sup>550</sup> Op. cit., European Commission, Country Report Ireland 2018, p. 7

<sup>551</sup> Ibidem, p. 19

<sup>552</sup> Ibidem, p. 20

spending cuts, were completely counterbalanced by a stunning demand for exports which was not replicated in the other Troika programme countries<sup>553</sup>.

#### **4.4: The impact of the new European Economic Governance on the Irish Parliament**

As already said for Spain, the Eurozone crisis surely did not significantly improve the position of national Parliaments with respect to their relationship with governments, but, it offered stimulus and challenges which could allow Parliaments to try to re-balance their positions, particularly in the Budgetary Process. Here, we particularly focus on understanding whether the introduction of the Fiscal Compact in the Irish legislation has modified or not the Irish parliamentary position. The focus on the Fiscal Compact is driven by the way in which the Irish legislators have decided to incorporate the Balanced Budget rule into the national legal systems. The new article 29.10 states that: «The State may ratify the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union done at Brussels on the 2nd day of March 2012. No provision of this Constitution invalidates laws enacted, acts done, or measures adopted by the State that are necessitated by the obligations of the State under that Treaty or prevents laws enacted, acts done, or measures adopted by bodies competent under that Treaty from having the force of law in the State<sup>554</sup> ». What emerges from this article is that the Fiscal Compact is allowed to interact within the Irish domestic law, but without having constitutional footing. The Irish approach is in contrast with the one adopted by other member states, Spain included.

To understand the role played by national Parliaments in the process which brought to the adoption of the new European budgetary constraints, it is important for two main reasons: because the new system can undermine the power which parliaments have always had on state budgets, even though, since the Maastricht Treaty, national Parliaments were already coping with a series of limits on budgetary issues, and secondly, because parliaments have always represented an important element of democratic legitimacy in

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<sup>553</sup> Op. cit., Roche, W.K., O' Connel, P.J., Prothero, A., Austerity & Recovery in Ireland: Europe's Poster Child and the Great Recession, p.17

<sup>554</sup> Article 29.10 Irish Constitution

the EU<sup>555</sup>. Since the process for the realization of an Economic and Monetary Union took place in 1992, many steps forward were done to enhance an active role of national Parliaments in the EU decision-making process. The maximum degree of involvement was reached with the Lisbon Treaty. The analysis of how parliaments will be influential in the EU budgetary constraints will permit us to understand the importance covered by them in the EU decision-making process<sup>556</sup>, particularly with respect to the adoption of the Fiscal Compact and the incorporation of the “golden rule” in its legal order.

In Ireland, in 2001, the European Union Scrutiny Bill was introduced with the aim of allaying the concerns about the EU democratic deficit which emerged after the negative outcome of the referendum on the Nice Treaty. This Bill functioned as a precursor of the European Union Scrutiny Act, adopted in 2002, according to which the Government was obliged to forward to the Parliament any copy of all the EU legislative proposals with an attached statement about the contents of the measure, its purpose and the consequent implications for Ireland. Until 2007, that is when the Joint Committee on European Scrutiny was created, the scrutiny of the EU measures was in the hands of the subcommittee of the Joint Committee on European Affairs. Unfortunately, when the Lisbon Treaty was signed, and its ratification process started in Ireland, the effectiveness of the parliamentary scrutiny of EU affairs was questioned, particularly after that the first referendum on it failed. So, in October 2008, a subcommittee was created, the so called “Ireland’s Future in the European Union”. This subcommittee proposed a series of recommendations to improve the role of the Irish Parliament in EU affairs. In 2009, the Joint Committees on European Affairs and on European Scrutiny published a report which specifically focused on how to reinforce the bond and the balance of power between national governments and parliaments in the EU. But despite this report, very few provisions got statutory basis in the Irish legal system<sup>557</sup>.

When the economic crisis erupted, Ireland entered the bailout programme and new discussions on the role of the Parliament re-emerged. In 2011, the Irish government recognized the need to handle the procedure of scrutiny of the European draft legislative

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<sup>555</sup> Piedrafita, S. in Op. cit., Adams, M., Fabbri F, Lerouche, P., (eds.) *The Constitutionalization of European Budgetary Constraints*, p.343

<sup>556</sup> *Ibidem*

<sup>557</sup> *Ibidem*, p.347

acts and of other proposals concerning EU legislation and dealing with the reform of the economic governance, in parliamentary committees. Standing committees are in charge of considering EU matters even though they remain under the guide of the governmental departments they belong to. The task of these committees is that one of finding out the main implications of the EU measures on the Irish system, and on the ground of their conclusions, they are asked to send recommendations to the Parliament or to ministers which are obliged to consider these recommendations before taking any decision. These measures have surely contributed to increase the position of the Oireachtas, in particular with respect to access information to European documents<sup>558</sup>.

When the Fiscal Compact was signed, the member states who ratified it were also asked to adopt a specific law, at statutory level or constitutional level, which specifically recognized the introduction of the Balance Budget Rule in the legal system. The European Commission was entitled to verify the state of implementation of these provisions in the member states. The decision to entrust the Commission of this task was controversial<sup>559</sup>. According to article 13 of the TSCG, the European Parliament and the national Parliaments should cooperate for determining how to organize and promote meetings with the most relevant representatives of the national and European committees to take decisions on budgetary matters. Despite the existence of this provision, the abovementioned cooperation could not be strong to compensate for the loss of importance the national parliaments individually were forced to cope with the introduction of the new rules<sup>560</sup>.

Despite the national Parliaments were excluded from the drafting of the Treaty of the Fiscal Compact, on the contrary, they were asked to approve the Pact. Ireland was the sole Eurozone member states to organize a referendum for the ratification of the TSCG, in accordance to article 46.2 of the Irish Constitution. According to this article, whether the amendment is seriously relevant, the amended text, after being passed by both the chambers, it should be submitted to referendum. Precisely, article 46.2 states that the procedure for constitutional amendment should be initiated in the Lower House. Once the

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<sup>558</sup> *Ibidem*

<sup>559</sup> Hix, S., Possibilities for reinforcing the Eurozone following the December European Council, available at: <https://publications.parliament.uk/pa/cm201012/cmselect/cmeuleg/writev/eurozone/eu01.htm>

<sup>560</sup> *Op. cit.*, Adams, M., Fabbrini F, Lerouche, P., (eds.) *The Constitutionalization of European Budgetary Constraints*, p.348

amendment is approved by both the chambers, then the referendum can take place. The Bill submitted to referendum shall be presented as an « act to amend the constitution »<sup>561</sup>. Just in case of a positive outcome, the Parliament could exercise the right to adopt the needed law for the implementation of the TSCG. As already said in the previous chapter, once the referendum showed the popular will, the 30<sup>th</sup> Amendment Bill was adopted. The Fiscal Responsibility Bill 2012, the ordinary law containing the Balanced Budget principle, was passed by the Parliament at the end of November.

The main novelty introduced by the Pact, which represented an opportunity for the Parliament to re-balance its position with respect to the executive, was the creation of the Irish Fiscal Advisory Council as provided by article 3.2 of the TSCG, by the Six Pack directive and by the Two Pack Regulation 473/2013. This body, through the Fiscal Responsibility Bill 2012, got statutory basis. This body was created with the scope of firstly, boosting the transparency and the credibility of the country, and secondly, with the objective of checking the compliance of the national legislation with the budget rules. Since its setting up in the Irish legal system, the Irish Fiscal Council has been perceived as a tool for enhancing the role of the Parliament, being independent but always accountable to it. The technical competence which characterizes the members of the Fiscal Councils can guarantee to the national Parliaments more certainty about the information and the assessments provided. Generally speaking, we can say that « by monitoring the executive on the grounds of the financial effects of its policy options, by providing macroeconomic forecasts, and by making the results of their analyses publicly available, Fiscal Councils are not only able to improve the credibility and the transparency of fiscal decisions, but they can also reinforce parliamentary ex ante scrutiny and oversight on budgetary matters, and, ultimately, the weight of the parliaments in European economic governance <sup>562</sup>». In other terms, if the independence of Fiscal Councils is guaranteed, these bodies can also be able to rebalance the relationship between the Parliament and the Government. According to the Annual Report 2017 of

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<sup>561</sup> Article 46.3 Irish Constitution

<sup>562</sup> Fasone, C., Griglio, E., Can Fiscal Councils Enhance the Role of National Parliaments in the European Union? A Comparative Analysis, in B. de Witte, H. Héritier, A.H. Trechsel (eds.), *The Euro Crisis and the State of European Democracy*, Fiesole, EUI, RSCAS and EUDO, 2013, p. 266



the European Fiscal Board, Ireland, in terms of efficiency of Fiscal Councils, is considered, at international level, a best practice<sup>563</sup>.

In the case of Ireland, the Irish Fiscal Council was introduced into the national legislation through the Fiscal Responsibility Act 2012<sup>564</sup>. According to article 3.2 of the TSCG, it is necessary to recognize to the Council full independence for the realization of its task. But while the body in charge of the ex post scrutiny of state finances, the Comptroller and Auditor General, deserves the constitutional protection, the same is not foreseen for the Fiscal Council, which is in charge of the ex ante scrutiny. This difference, and the absence of an ex-ante scrutiny system before the eruption of the crisis, can be also considered the main causes of the failure occurred in recent years in this area<sup>565</sup>.

An element, which on the contrary, could be able to re-balance the relationship between the Irish Parliament and government is the so called “comply or explain” principle. According to this principle, the government should follow and respect the assessments and the recommendations provided by the Fiscal Council, but, if it does not occur, the government has the duty to explain why it has decided not to follow the advice of the Council<sup>566</sup>. The Fiscal Responsibility Act guarantees the respect of this criterion through many different provisions. According to section 8.6 of the Act in fact, if the government decides not to accept the Council’s assessment it must present, before the Dáil, a specific statement in which explain the reasons of its choice, within two months<sup>567</sup>. This provision basically guarantees that the higher-level economic advice provided by experts are not ignored by the government. The sole critique to the provision is with respect to the timing. Two months for explaining the reasons for the rejection are considered excessive, particularly considering the speed which should dominate in legislative processes when changes in the markets can have a negative impact on the country<sup>568</sup>.

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<sup>563</sup> European Fiscal Board, Annual Report 2017, p. 34, available at:

[https://ec.europa.eu/info/publications/2017-annual-report-european-fiscal-board\\_en](https://ec.europa.eu/info/publications/2017-annual-report-european-fiscal-board_en)

<sup>564</sup> Memorandum of Understanding between the European Commission and Ireland, para. 25.

<sup>565</sup> Op. cit., Adams, M., Fabbrini F, Lerouche, P., (eds.) *The Constitutionalization of European Budgetary Constraints*, p. 305

<sup>566</sup> *Ibidem*

<sup>567</sup> Article 8.6 of the Fiscal Responsibility Act 2012

<sup>568</sup> Op. cit., Adams, M., Fabbrini F, Lerouche, P., (eds.) *The Constitutionalization of European Budgetary Constraints*, pp. 305-306

As far as the Irish Fiscal Council is concerned, instead, the most significant critique regards the way in which the members of the Irish Fiscal Council are appointed. The appointment procedure, in fact, shows a strong proclivity for the government. The members of the Fiscal Council are in fact appointed by the Minister for Finance<sup>569</sup>, while, it is up to the Dáil just the right to adopt a specific resolution in case a member of the Council wants to anticipate the expiration of his/her mandate.

In the end, it is possible to say that the introduction of the Fiscal Compact has further deepened the already existing distance between the national and the supranational level for what concerns the Parliament. However, the Fiscal Compact cannot be considered as the guilty for the erosion of the powers of the national parliament, because the imbalance of power in favour of the government in Ireland existed also before. The creation of the Fiscal Council, even if some adjustments are needed, and the introduction of the “comply or explain” criterion can represent an opportunity for the Dáil to have a greater say on the governmental activity.

In the next sub-chapter, we will analyse the impact of the new rules adopted at EU level on the highest judicial authorities and on constitutional adjudication in Spain and Ireland.

#### **4.5: The impact of the new European Economic Governance on National Courts: A comparison between the Spanish Constitutional Court and the Irish Supreme Court**

This paragraph is aimed at unravelling the role played by the Spanish Constitutional Court and the Irish Supreme Court with respect to the austerity measures implemented by the EU during the Eurozone crisis and in light of the remarks presented in the previous chapters.

Spain, being a country under bailout, was asked by the Troika to adopt or implement a series of tools to contrast the effects of the crisis. Some of these tools were brought before the Spanish Constitutional Court. The judgement 2/2012 is the perfect example which allows us to understand the trend undertaken by the Court during the crisis period<sup>570</sup>.

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<sup>569</sup> Schedule to the Fiscal Responsibility Act, s 1(2).

<sup>570</sup> This case has already been mentioned in paragraph 2.5

On September 27, 2011, the amendment of article 135 of the Spanish Constitution occurred. This provision interested not only the central administration but the regional governments as well. On the ground of that amendment, the Budgetary and Financial Stability Act was adopted, and the Canarias government decided to challenge it. The reasoning which brought the Canarias government to challenge the Act had to do with the new extensive powers recognized to the central government by the Act, that is, the powers to inspection and sanction regions if they fail to respect the new limits imposed by the Act in terms of debt<sup>571</sup>. Specifically, the provision challenged by the government was the one contained in article 11.6 of the Budgetary and Financial Stability Act which indirectly empowered the central government to fix the limits of the structural deficit each administration should not overcome, by relying on the methodology followed by the European Commission.

The Constitutional Court, nonetheless, after a deep analysis recognized the constitutionality of the limits set by the central government. According to the Constitutional Court in fact, among the powers recognized to the EU Commission, there are those of assessing the deficits of member states and additionally to decide the methodology to apply. On the ground of this reasoning, the Court stated that « it is not only constitutionally necessary to observe the maximum structural deficit determined by the EU (Article 126 TFEU and Article 135.2 CE) but the EU provisions related to the method to be followed to assess the deficit »<sup>572</sup>. From this decision it is clear the position assumed by the Spanish Constitutional Court, that is, to act in favour of the central government and consequently, within the frame drawn by the EU. Another example which can be eye-opening to understand the stance of the Court refers to the contents of the Spanish Troika Programme. When the Financial Assistance Programme was approved, many Spanish regions decided to adopt a series of laws dealing with the right to housing, which basically were aimed at temporarily suspending evictions. The Constitutional Court was asked to intervene to determine the constitutionality of these measures and it ordered to suspend them as they could jeopardise the entire financial

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<sup>571</sup> Op. cit., Almendral, V. R., *The Spanish Legal Framework for Curbing the Public Debt and the Deficit*, pp. 198-202

<sup>572</sup> Judgment of the Spanish Constitutional Court n. 215/2015, 22.10.2015

assistance programme, and also the obligations Spain has the duty to respect with its international partners<sup>573</sup>.

It is clear that the Euro-crisis law has obliged national Courts to be active actors of the play and if we also consider the severity of the crisis, it becomes clear that the tight cuts asked in terms of debt and deficit had repercussions on social rights and national discretion<sup>574</sup>.

In conclusion, we can say that, on the ground of two main ideas, the Spanish Constitutional Court assumed a precise position when it was asked to decide on constitutional challenges. Firstly, it stressed the duty of the national government to follow to the letter the recommendations sent by the EU on fiscal and economic matters, secondly, it added that in case of room of manoeuvre for the government, it is just the central one which can enjoy this opportunity<sup>575</sup>. On the ground of what said in this paragraph and on the ground of the constitutional adjudication analysed in the second chapter of this thesis, it clearly emerges the support the Spanish Constitutional Court gave to the Euro-crisis law by upholding its validity in most cases.

As far as the impact of the Euro-crisis law on the role played by the Irish Supreme Court is concerned, we can say that, as occurred in Spain, also in this case, the Court was asked to intervene with respect to some tools adopted in the European context. The two Courts are not perfectly comparable, as many differences exist between them, but the Irish Supreme Court has the power to detect constitutional challenges as a last resort, and for this reason it is possible, in a way, to compare the Irish Supreme Court to the Spanish Constitutional Court<sup>576</sup>. To understand the position assumed by the Irish Supreme Court during the Eurozone crisis, we will analyse its position with respect to the ESM Treaty.

The legality of the ESM was challenged by Thomas Pringle, independent member of the Irish Parliament which contested the constitutionality of the ESM with respect to the national Constitution, but also with respect to EU law. According to him, the decision by

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<sup>573</sup> Judgements of the Spanish Constitutional Court n. 69/2014, 10.03.2014 and n. 115/2014, 08.04.2014

<sup>574</sup> González Pascual, M., Constitutional Court before the Euro-crisis law in Portugal and Spain: a comparative prospect, E-publica, Volume 4, N. 1, May 2017, p. 125

<sup>575</sup> Ibidem, p. 126

<sup>576</sup> See generally, Ferrers Comella, V., Constitutional Courts and Democratic Values: A European Perspective, Yale University Press, 2009

the Irish government to participate in the ESM represented a further delegation of national sovereignty beyond the state, in violation of the Irish Constitution, and that the same provisions of the ESM Treaty were in contrast with EU law. Furthermore, it challenged also the constitutionality of the Decision 2011/199/ EU which basically permitted a modification of article 136 of the TFEU on the ground of a simplified procedure. To Pringle mind, the decision to adopt a simplified procedure was unlawful and inconsistent with EU law<sup>577</sup>. For these reasons, he presented the case before the High Court, which after having deeply analysed the provisions of the ESM Treaty, on July 17, 2012 dismissed Pringle's claim. Pringle so decided to appeal against the High Court's decision before the Irish Supreme Court<sup>578</sup>. The Irish Supreme Court validated the High Divisional Court's judgment even though referred some questions of the claimants to the ECJ, which in the end confirmed the High Court's ruling.

What immediately emerges from both the Courts' decisions, is the existent entanglement between the EU law and the national one as far as the legality of the ESM Treaty was concerned<sup>579</sup>. But, while according to the High Court, the ESM was totally lawful and so, the intervention of the ECJ was considered superfluous, the Supreme Court, understanding the delicacy of the case, preferred to refer the case also to it. In this way, the Irish Supreme Court allowed the ECJ to be fully involved as far as the debate on the legality of the ESM Treaty was concerned<sup>580</sup>.

As Fabbrini suggests the significant increase in terms of powers and involvement of national courts on EU affairs depends on the intergovernmental approach adopted by the EU member states to cope with the crisis, and also with the decision by them to adopt measures outside the EU legal order<sup>581</sup>. In fact, it is normal that in a context of intergovernmental governance, national courts find more room to have a say on the measures adopted by the nation states. Therefore, as Fabbrini states: « if the political

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<sup>577</sup> Fabbrini, F., *The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective*, Berkeley Journal of International Law, Volume 32, Issue 1, 2014, p. 93

<sup>578</sup> In the previous chapter we have already analysed the ruling of the Irish Supreme Court. Here, starting from this case law, we will assess the position taken by the Irish Supreme Court with respect to the Euro-Crisis law.

<sup>579</sup> Tomkin, J., *Contradiction, Circumvention and Conceptual Gymnastics: The Impact of the Adoption of the ESM Treaty on the State of European Democracy*, 14 GER. L. J. 170, 2013

<sup>580</sup> *Op. cit.*, Fabbrini, F., *The Euro-Crisis and the Courts: Judicial Review and the Political Process in Comparative Perspective*, p. 95

<sup>581</sup> *Ibidem*, p. 104

branches want to minimize the scope for judicial overreach, in the future they should respond to the Euro-crisis by working within the framework of the EU <sup>582</sup>».

To conclude, we can say that it is possible to trace a tendency of greater judicial involvement in the EU fiscal matters, and two are the main features of this involvement. Firstly, the rulings taken by the Courts are generally in favour of the new measures adopted in the European framework for strengthening the budgetary rules in nation states, even though national Courts have also demonstrated to be worried about the social implications of these rigid fiscal rules. Secondly, that the greater courts' involvement in fiscal matters finds its roots in the will of not letting the political branches to deal with these matters independently. So, if courts can basically benefit from the decision to introduce stringent fiscal rules in national law, by increasing their institutional weight compared to the political branches<sup>583</sup>, they are a bit worried about the impact of these rules on social rights, which through their implementation reduce the states' capacity to guarantee social protection because of the economic obligations coming from the new European Economic Governance.

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<sup>582</sup> *Ibidem*

<sup>583</sup> Fabbrini, F., *The Fiscal Compact, The 'Golden Rule' and the Paradox of European Federalism*, 36 *Boston College Int'l & Comp. L. Rev.*1, 2013

## **Conclusion**

In conclusion, this thesis has described the main mechanisms adopted at European and international level to tackle the financial crisis which hit the Eurozone in 2008. Particularly, we have analysed how these tools have been implemented in Spain and Ireland, two of the countries entering a financial assistance programme. This thesis has also attempted to evaluate to what extent the new European Economic Governance has impacted on the Spanish and Irish national Parliaments and Courts, furthermore, to what extent the Post Programmes Surveillance have been effective in these two countries.

As the introduction and the main chapters of this thesis have underlined, the Spanish and the Irish cases are very similar as far as their pre-crisis economic conditions were concerned. Specifically, the policy choices taken by the then political leaders brought both countries to an unsustainable private bubble, which, when the crisis arrived, burst. Moreover, both in Spain and Ireland, the economic growth which characterized the 2000s was significantly reliant on the construction sector. Finally, the banking sector demonstrated to be ill and overloaded with non-performing loans in both of them. Because of all these reasons, when the real estate bubble burst, all these wrong policies showed their deficiencies. On the contrary, as far as the managing of the crisis is concerned, occasionally, different routes were taken when they were asked to implement certain tools.

The thesis has been structured in the following way: the first chapter has provided the constitutional setting of the two countries, and it has focused on the immediate impact the crisis had on both of them. The second chapter has focused specifically on the case of Spain, going to analyse the path of implementation of the European tools to overcome the crisis. In addition, the chapter has been also interested in detecting the specific conditions Spain had to respect, according to its Memorandum of Understanding, to obtain financial assistance from the Troika. In the end, some cases brought before the Spanish Constitutional Court with respect to the Euro-crisis law were discussed. The third chapter instead, has focused on the case of Ireland. More or less, the same points analysed in the second chapter were detected again, but obviously, with respect to the Irish case. In this third chapter, nonetheless, great emphasis has been put on the changes occurred in the

Budgetary Process because of the Euro-crisis law. In the end, two arguments were worthy of deep analysis, that is, the effects of the amendment of article 136 TFEU in Ireland and the procedure of implementation of the ESM. These two arguments have been analysed in light of the *Pringle case*.

The answer to our research question instead, can be found in the conclusive chapter of this thesis. Starting from the case of Spain, we can say that with respect to the Country Report 2018, Spain has impressively recovered, achieving many of the goals it was expected to reach. The economy is growing, both the public and the private debt have sharply decreased, even if they remain above the European targets, the rate of unemployment has fallen, and the good level of consumption represents a signal of a sustainable growth, along with the optimal results got in the export market, particularly in the car industry. The banking and financial sector have restored, and their good shape is now demonstrated by the significant reduction of the Spanish Non-Performing Loans, which has achieved the Euro average.

The same results are valid also in the case of Ireland, where austerity measures were undertaken also before the entrance in the financial assistance programme. The initial Irish auto-austerity, supported by the European one, demonstrated to be the key factors of the Irish recovery. Currently, the economic growth is good, the public and private debt have collapsed, even if they remain above the limits imposed by the European rules. The banking sector has been restored and revitalised, and the financial sector has restored the confidence of the international partners. The economy is expected to growth also this year at a lower but constant speed.

With respect to the impact of the new European Economic Governance on both Spanish and Irish Parliaments and domestic Courts, we can say that in both countries the role and position of Parliaments have not significantly improved, while a new role has been enhanced for the Courts.

If with the Lisbon Treaty, national Parliaments had been able to find more room to exercise their competences also at EU level, when the crisis arrived, many of their functions were lost again. Clearly, as a consequence of the crisis, national Parliaments have been deprived of their powers in particular with respect to the budgetary constraints. The crisis, in fact, has fasted the process of re-centralization of fiscal matter towards the



EU, but something has been done, specifically at national level. With the creation of Fiscal Councils, the right to information of Parliaments and their scrutiny and oversight powers have been slightly reinforced, allowing a greater control over the position assumed by national governments at EU level. Surely, many steps forward must be done, particularly in Ireland, where the members of the Irish Fiscal Council are dependent upon the Minister for Finance, while, it is up to the Dáil just the right to adopt a specific resolution in case a member of the Council wants to anticipate the expiration of his/her mandate. The introduction of the “comply or explain” principle could nonetheless invert this tendency.

As far as the impact of the new rules on the national Courts is concerned, we can say that the Eurozone crisis has for sure enhanced the role of national Courts, which in most of the cases have been supportive of the European rules, also for not letting the political branches to take decision by their own mind, particularly in the field of fiscal matters. In the end, we can say that courts have so basically benefitted from the European decision to introduce stringent fiscal rules in national law, by increasing their institutional weight compared to the political branches. To reduce this ever-growing participation of Courts, national governments should avoid dealing with eventual future crises through intergovernmental governance, by trying to cope with them within the European framework.

After what just said, to definitely conclude with this thesis, we can say that the reform of the European Economic Governance has been successful from an economic perspective, while it had some residual effects on the political and constitutional settings of both countries.

As far as Spain is concerned, the aftermath of the economic crisis is continuing to show its criticisms, particularly with respect to the instability which is characterizing the Spanish political scenario. Since May 2011 indeed, Spain is coping with a political crisis which has culminated with the vote of no confidence against Rajoy. To stress the meaningfulness of this event, we can say that this instrument, since the establishment of the Spanish Parliamentary Monarchy, through the democratic Constitution of 1978, has been used for the first time in June 2018. The leader which brought Spain from the near-collapse to the recovery, the leader who was able to manage the Catalan crisis, has been

dismissed by the Spanish Congress through a constructive vote of no confidence, passing the presidency of the Government to Sanchez leader of the Socialist Party.

The economic crisis that began in 2008 has transformed into a political crisis in the Spanish peninsula, in which the institutional settings are significantly suffering of instability. The origins of this crisis can be in fact traced back to 2010, when the then President Zapatero decided to undertake a path of austerity for the recovery of the country, sacrificing the idea of the Spanish welfare state for escaping the crisis<sup>584</sup>. Since that moment, the Spanish crisis of hegemony started. The peak of discontent of the population with the political decisions taken by the government emerged on May 15, 2011, when the so-called *indignados rebellion*, led by the 15M, took place. The main critiques of this movement were against the political elite, completely hijacked by financial matters and totally disinterested in national welfare, and against the financial and economic powers, blamed of being the root causes of the financial crisis<sup>585</sup>. The 15M can be considered as the predecessor of a populist party which started to occupy the Spanish political sphere since 2012, Podemos. Podemos is a party predominantly composed of Professors of Political Sciences which were able to benefit from the institutional period of instability the country was facing, because of the economic crisis<sup>586</sup>. This left-wing popular party, in less than three years since its emergence, escalated the Spanish political scenario becoming the third greatest political force in Spain, presenting itself as the voice of the discontent part of the population. At the elections of June 2016, it missed the second place by only a handful of votes<sup>587</sup>.

To aggravate this situation of political chaos, in 2012, the Catalan demand for national independence hit the country like a thunderbolt. The call for independence finds its roots in the failed attempt to reform the Statute of Cataluña. This process of reform started in 2003 within the regional government, and after two years of work, finally, the new Statute was passed by the Catalan Parliament in September 2005. After that, the Statute was brought before the central government in 2006, as regional statutes are approved by

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<sup>584</sup> Antentas, J. M., Spain: from the indignados rebellion to regime crisis (2011-2016), *Labor History*, 58:1, 2017, pp. 106-131

<sup>585</sup> *Ibidem*

<sup>586</sup> Sola, J., Rendueles, C., Podemos, the upheaval of Spanish politics and the challenge of populism, *Journal of Contemporary European Studies*, 26:1, 2018, pp. 99-116

<sup>587</sup> *Ibidem*

organic law by Cortes, (article 146 CE) which, in turn, limited some aspects of the statute. Nonetheless, the greatest limitations arrived from a ruling of the Spanish Constitutional Court<sup>588</sup>. In 2010 in fact, the Court struck down fourteen articles of the updated Statute, and furthermore, it provided an interpretation in compliance with the Constitution for other twenty-seven articles<sup>589</sup>. Among them, the articles recognizing the superiority of the Catalan language over Spanish, and all the others in which could emerge the idea of Cataluña as a nation rather than a region were interpreted<sup>590</sup>. Just an hour after the ruling, Catalan people were already on the streets to protest<sup>591</sup>. In 2014, an unofficial referendum on independence was held in Catalonia, and about 80% of voters went to the poll and voted “Yes”. This result was repeated at the last referendum of October 2017, when again, the Catalan Parliament organized a new referendum on the same matter. The Spanish government had declared the illegality of the referendum before it even happened, so, when people went to the poll, they were forced to cope with the Spanish Civil Guard, which used sudden violence against voters attracting the critique of the international public opinion. The Catalan premier Puigdemont defined what happened before the polls in October 2017 as the « worst attack on Catalan institutions since the dictator General Franco ordered the end of our autonomy <sup>592</sup>» denouncing Rajoy as the responsible of this attack. For the first time in history, article 155 of the Spanish Constitution was used by the then President Rajoy, through which he got the full control of Catalonia, dismissing Puigdemont.

Catalonia had experienced autonomy, not only until the 18<sup>th</sup> century but also after the declaration of Spain as a republic in 1931. When Franco arrived, he took control of Barcelona and executed all its political leaders, so, just after the death of Franco, Catalonia managed to restore its regional institutions. Clearly, the renewed desire for

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<sup>588</sup> Op. cit., Antentas, J. M., Spain: from the indignados rebellion to regime crisis (2011-2016), p. 118

<sup>589</sup> STC 31/2010, See comments by Castellà Andreu, J. M., La sentencia del Tribunal Constitucional 31/2010, sobre el estatuto de Autonomía de Catalunya y su significado para el futuro del estado autonómico, Federalismi.it, No. 18, June 6, 2010

<sup>590</sup> Spanish Constitutional Court judgment No. 31/2010, of June 28

<sup>591</sup> Mortimer, C., Catalan Crisis: Why does Catalonia want independence? Do the majority really support it?, Independent UK, October 29, 2017, available at:

<https://www.independent.co.uk/news/world/europe/catalan-crisis-why-does-catalonia-want-independence-do-people-really-support-it-spain-latest-a8025836.html>

<sup>592</sup> Fortheringham A., Catalonia: Carles Puigdemont accuses Spanish government of “worst attacks” since dictatorship, Independent UK, October 21, 2017, available at:

<https://www.independent.co.uk/news/world/europe/catalonia-government-carles-puigdemont-spain-independence-referendum-worst-attacks-since-franco-a8013241.html>

independence came at a time of great economic instability due to the financial crisis which hit Spain in 2008. The entrance of Spain in a financial assistance programme frustrated the wealthy Catalonia, the richest region of Spain, which felt to be paying a high bill because of the inefficiencies existing in the other regions of the State. The economic crisis contributed to create an unstable political situation which favoured the emergence of populist parties, the grievance of the Catalan separatist movement and that culminated with the dismissal of Rajoy for corruption.

If in Spain the economic crisis had medium-term repercussion on the political stability, with respect to the long period of stability the country had experienced since 1978<sup>593</sup>, despite the terroristic menaces Spain was obliged to cope with, in Ireland instead, the awareness of the institutional failure which sharpened the deepness of the crisis brought the Irish leaders to start a broader process of reform which interested some of the most sensitive parts of the Constitution. These radical constitutional changes are highlighted by the decision of the government to organize national referenda on sensitive issues of the society.

The second referendum which took place after the one which permitted Ireland to ratify the Fiscal Compact was about the abolition of the Irish Senate. On October 4, 2013 Irish voters had the opportunity to abolish the Upper Chamber of the Parliament, but 51.7% of them, despite the distrust in the political institutions due to the economic crisis, voted against the proposal of abolition, basically voting in favour of the retention of bicameralism. The Fine Gael party was the one which conducted the campaign in favour of the Senate's abolition, focusing the attention on the benefits that this choice would have represented in terms of costs. In fact, as stressed by the Fine Gael party, the abolition of the Senate would mean savings equal to 20 million euro per year and it would also mean stopping the delay in terms of progress of legislation<sup>594</sup>. Those instead in favour of the retention of the Senate accused the government to use the referendum on the Senate to compensate for its deficiencies which caused the economic crisis.

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<sup>593</sup> See generally, Ferreres Comella, V., *The Constitution of Spain: A Contextual analysis*, Hart Publishing, 2013

<sup>594</sup> MacCarthaig, M., Martin, S., *Bicameralism in the republic of Ireland: The Seanad Abolition Referendum*, *Irish Political Studies*, 30:1, 2015, pp. 121-131

Once the voters went to the poll, they decided to give trust to the Senate, confirming the bicameral shape of their Parliament.

Two years later, Irish voters were asked to go to the polls again. This time, the question they had to answer was about the same-sex marriage. On May 22, 2015, the same-sex marriage referendum proposal was largely approved by the Irish voters with a majority of 62.1%. This outcome was surprising, considering the prominent role played by the Catholic Church in the country over time. Furthermore, Ireland has been the first country all around the world to legalise same-sex marriage by referendum. The uniqueness of this referendum, in fact, stems from: the legal basis chosen to amend the Constitution, that is, the referendum, the vigorous and active political campaign in support of the referendum, and lastly, the gradual detachment from the conservative idea dominating the Irish politics<sup>595</sup>. On August 25, 2015, the 34<sup>th</sup> Amendment Bill 2015 inserted a new paragraph to article 41 of the Irish Constitution by stating: « Marriage may be contracted in accordance with law by two persons without distinction as to their sex <sup>596</sup>».

The last referendum which recently took place in Ireland was the one concerning abortion. On May 26, 2018, Ireland voted “Yes” repealing the 8<sup>th</sup> amendment of the Irish Constitution which basically had banned abortion until 2018. This outcome has contributed to strengthening the path of detachment from the Catholic Church and from the Conservative idea which had dominated the country. The Irish Taoiseach, Leo Varadkar, supported the repealing of the 8<sup>th</sup> amendment stressing that its existence did not avoid abortion, but that it just obliged women to go abroad to abort. In the end, with a majority of 66.4%, Irish people voted in favour of the repealing of the 8<sup>th</sup> amendment<sup>597</sup>. The 36<sup>th</sup> amendment to the Irish Constitution will start to produce its effects once signed into law.

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<sup>595</sup> Elkind, J., A., Farrel, D. M., Reidy, T., Suiter, J., Understanding the 2015 marriage referendum in Ireland: context, campaign, and conservative Ireland, *Irish Political Studies*, 32:3, 2017, pp.361-381

<sup>596</sup> Article 41.4 Irish Constitution

<sup>597</sup> Kelly, B., Hoddinott, H., Osborne, S., Baynes, C., Oppenheim, M., Irish abortion referendum- Official results confirms overwhelming win for Yes vote as Ireland rejoices, *Independent UK*, May 26, 2018, available at: <https://www.independent.co.uk/news/world/europe/ireland-abortion-referendum-live-updates-repeal-eighth-amendment-vote-latest-poll-a8366691.html>

To conclude we can say that, if in the Spanish case the economic crisis was at the basis of political turmoil and political instability, in Ireland it represented the spark for initiating a new and broader path of reform interesting the most sensitive aspects of the Constitution and of the society.

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## Summary

### Introduction

This thesis has attempted to analyse the impact of the 2008 Eurozone economic crisis on Spain and Ireland. These two cases-study have been chosen on the ground of the *Most Similar Cases Logic*, conceptualized by John Stuart Mill in 1843. This logic postulates that « researchers should compare cases that have similar characteristics, or cases that matched on all variables or potential explanations that are not central to the study, but vary in the values on the key independent and dependent variables <sup>598</sup>». The two cases here selected perfectly fits this logic. In fact, despite their common pre-crisis characteristics, and the successfulness of their financial assistance programmes, the legal patterns they undertook for implementing the agreed European measures were different.

This thesis so, has tried to answer the following research question: To what extent the Euro-crisis law has been effective in mitigating the impact of the crisis in these two countries? To what extent the new European Economic Governance has impacted on the role of national Parliaments and national Courts? In which way the crisis has impacted on the unstable Spanish political system, and on the Irish Constitutional framework?

### Chapter 1: Constitutional Context and the eruption of the crises

This chapter has provided a brief introduction to the Spanish and Irish Constitutional systems, delineating their main features and their settings and to the immediate impact of the crisis on the two countries.

In Spain, with the 1978 Constitution, the dictatorial regime imposed by Franco was dismantled and a democratic state, organized as a Parliamentary Monarchy, was established. The final text of the Constitution was the result of a long-hard work needing the approval of all the most significant political forces. Spain, in fact, has changed many constitutions throughout the years, reason why the key word for the elaboration of the

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<sup>598</sup> Ran, H., The Question of Case Selection in Comparative Constitutional Law, American Journal of Comparative Law, Vol. 53, No. 1, 2006, p. 134



1978 text was compromise<sup>599</sup>. In Spain, the Cortes plays a fundamental role in the political life of the country. It is made up of two chambers, the Congress of Deputies and the Senate. The legislative power is mainly in the hands of the Congress of Deputies. The Senate can initiate legislation, but the Congress might overrule the veto advanced by the Senate, simply voting by majority. The Senate instead has the primary function of representing the autonomous communities<sup>600</sup>. When a community fails to respect its duties, the government with the Senate's approval may decide to act in a way which obliges the community to comply with its obligations, as defined by article 155 of the Spanish Constitution<sup>601</sup>. Despite the existence of this article, its application has occurred for the first time just with the current Catalan question one year ago.

After the death of Francisco Franco, the need for transition for the Spanish government from a dictatorship to a democracy emerged and revealed the need of establishing a system of constitutional protection of fundamental rights. This need became true with the creation of a separate Constitutional body. The Spanish Constitutional Court was defined by the Title IX of the 1978 Constitution as the constitutional body aimed at granting «the defense of the Fundamental Law through judicial proceedings heard by the Court»<sup>602</sup>. Like in most states observing the rule of law principle, the Constitutional Court is the final interpreter of the constitutional text. It is an independent body, outside the judicial branch, and just bound by the principles and the norms settled in the Constitution. The presence of the Constitutional Court strengthens the idea of Spain as a democratic and social state, which supreme values, according to article 1 of the Constitution, are equality, pluralism, freedom and justice. The Court is not only a pillar for the public powers, but for the citizens as well. It is the guarantor of the democratic values of the state.

With respect to Ireland, the first main decision undertaken by the Irish Founding Fathers of the 1937 Constitution was the one dealing with the perpetration of the legal system that characterized the “Celtic Tiger” during the British domination. The Acts of the British

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<sup>599</sup> Ferreres Comella, V., *The constitution of Spain: A contextual analysis*, Oxford and Portland Oregon, 2013, Chapter 1, Paragraph 7

<sup>600</sup> Harguindéguy, J. B., Coller, X., Cole, A., *The failed reforms of the Spanish Senate*, *Research Notes on Parliamentary Democracy*, 4/2017

<sup>601</sup> Article 155 C.E

<sup>602</sup> <http://www.tribunalconstitucional.es/en/jurisprudencia/InformacionRelevante/Folleto-divulgativo-EN.PDF>

Parliament, the judges in charge, and the judicial system, in fact, were maintained<sup>603</sup>. However, a significant element of break with the past is represented by the decision to impose a rigid Constitution and to introduce a system of judicial review. Moreover, in order to stress the gained independence from the British, the idea of parliamentary sovereignty was replaced with the one of popular sovereignty<sup>604</sup>. Ireland is a common law system and like in all common law systems, it is not rare to assist to a high degree of judicial activism, which culminates with the recourse to the use of Precedents on the ground of the *Stare Decisis* principle. The use of precedents consists in taking a decision by departing from a decision adopted previously in a similar constitutional case. It is not «a binding unalterable rule»<sup>605</sup>, however, to reverse it is not so easy, some compelling reasons must be provided. To conclude, we can state that what said about the Spanish Constitutional Court, when we highlighted that the Court is the final interpreter of the Constitution and that its presence gives the state a social and democratic character, is valid also for the Irish Supreme Court, which acts as a Constitutional judge.

The year 2008 was both the 30<sup>th</sup> birthday of the Spanish Constitutional Monarchy and the beginning of a nightmare. After the death of Francisco Franco, Spain started to grow sharply in terms of GDP, investments and employment rate, but in 2008 the spell broke. From 2000 the expansion of the construction sector was enviable. The housing sector was growing at the yearly speed of 5%. Between 1996 and 2009, there was an increase in the number of houses equal to 6.5 million. The 22% of national GDP between 2006 and 2007 was dependent on the sector of construction, with a rise of 7% since 1995<sup>606</sup>. Unfortunately, Spain was overloaded by non-performing loans, signal of a non-sustainable growth and so, when the financial crisis hit the US, it was clear it would have reached Europe as well because of the existing strong links between the American and the European markets<sup>607</sup>. At the beginning, the Spanish government and the financial

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<sup>603</sup> Doyle, O., *Constitutional Law: Text, Cases and Materials*, Clarus press, Dublin, 2008

<sup>604</sup> See Hamilton, J., *Judicial Activism in Irish Constitutional Law*, Report to the Conference on Judicial Activism and Restraint Theory and Practice of Constitutional Rights (Batumi, Georgia—13–14 July 2010) Strasbourg, Venice Commission, CDL-JU(2010)013, 7 July 2010, p. 2

<sup>605</sup> Fasone, C., *The Supreme Court of Ireland and the Use of Foreign Precedents: The Value of Constitutional History*, 2013, p. 115

<sup>606</sup> European Commission, *Occasional Papers 118, The financial Sector Adjustment Programme for Spain*, October 2012

<sup>607</sup> Landler, M., *The US Financial Crisis is spreading to Europe*, *The NY Times*, September 30, 2008, available at: <https://www.nytimes.com/2008/10/01/business/worldbusiness/01global.html>

sector were quite optimistic, aware of the “strength” of the country. But when the housing bubble burst, the situation became much clearer. The price of houses fell by 37%, Spain passed from fiscal surplus to fiscal deficit, the rate of unemployment began to get bigger and bigger. Spain was on the route to default<sup>608</sup>. The EU, which obviously wanted to avoid such risk, invited Spain, along with the IMF, to adopt some adjustment programs, before to directly intervene.

Since April 2008, the Spanish government initiated to work in this direction by approving a series of reforms with the aim of tackling the deepening of the crisis. These measures were, in a second moment, combined in a single plan, called “Plan E”<sup>609</sup> that had the goal of stimulating the recovery of the country. This plan is based on four main principles that move from the interest to provide support to the small and medium-sized enterprises, to the employment promotion, from the support to the financial system, to structural reforms dealing with the most sensitive sectors, such as transportation, pension system, services<sup>610</sup>. Unfortunately, these measures demonstrated to be a failure so, in 2010 and in 2011 a new labor and pension reforms were launched. Despite some improvements with respect to the Plan E, some deficiencies continued to exist, and so Spain was forced to ask the intervention of the Troika.

As far as the Irish case is concerned, we can say that the Irish economy is one of the smallest open European economies, and when the crisis hit the country, the contraction in the economic activity was enormous. To worsen the situation there was the absence of immediate efficient national policy responses, which caused the protraction of the crisis. Before the eruption of the crisis, Ireland was facing a great economic growth and the government was convinced that higher the economic growth of the country, higher the happiness of the population. As a consequence, just the policies that could help the country to improve economically were adopted. The construction sector was perceived as the one to invest in. But, the growth in housing was hiding the frailty of the state. The level of housing construction was clearly unsustainable, more than 800.000 private houses had been constructed between 1991 and 2008, and, considering the reasoning

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<sup>608</sup> Op. cit., European Commission, Occasional Papers 118

<sup>609</sup> Royal Decree-Law 9/2008 of 28 November 2008 and Royal Decree-Law 13/2009 of 26 October 2009

<sup>610</sup> Wölfl, A. and J. S. Mora-Sanguinetti, Reforming the Labour Market in Spain, OECD Economics Department Working Papers, No. 845, OECD Publishing, 2011

adopted by the government, that is, “giving back people what they had given the state, is a better strategy than investing the revenues obtained through taxation in infrastructure or services”, it is clear that when the crisis arrived in August 2007, the country was unprepared for such an event and policymakers were not immediately able to provide effective responses to the crisis. Finally, in 2008, the country launched a National Reform Program (NRP) 2008-2010, which represented a first attempt to buck up the country. This auto-austerity program foresaw a series of structural reforms which could help the country to recover, but it was not enough, so like happened in Spain, the Irish national leaders were forced to ask the intervention of the European Union and the International Monetary Fund.

## **Chapter 2: Spain and the intervention of the European Union and of the Troika**

On May 9, 2010, the European Financial Stabilisation Mechanism (EFSM) and the European Financial Stability Facility (EFSF), two temporary emergency funds, got the approval of all the Eurozone member states. The EFSM from one hand, binding for all the 27 member states, is based on article 122.2 TFEU, according to which, « where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken »<sup>611</sup>. The EFSF, on the other hand, was purposely created just for the then 17 Eurozone member states. It was signed two weeks later the EFSM, on June 7, 2010 and it entered into force on June 24, 2010<sup>612</sup>.

When the EFSM and the EFSF were approved, the then president Zapatero promptly went before the Congress informing national representatives of what just decided. He announced the participation of Spain to the EFSM, reporting to the country the amount of money mobilised, that is, 750.000 million<sup>613</sup>. Rajoy stressed how was important at that

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<sup>611</sup> Article 122.2 TFEU

<sup>612</sup> Estrada-Cañamares, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 19

<sup>613</sup> *Diario de Sesiones del Congreso de los Diputados* No. 162, of 12 May 2010

time of crisis, to make understand to the international partners how Europe was solid and compact, and these two instruments were perfect signals of firmness.

The EFSF is deemed as an international agreement, therefore needing national ratification. The legal instrument used by the Spanish government to give application to the EFSF was the Royal Decree. The Royal Decree is a norm, with the same legal value as any other legislative norm, which can be adopted just in particular situations of extraordinary nature, like in case of a crisis. On July 11, 2010, the EFSF Agreement was published in the Official State Bulletin.

Since many EU countries hit by the financial crisis were not improving, despite the numerous reforms undertaken, the European institutions started launching a series of packages aimed at fostering competitiveness and employment, strengthening the financial stability of member states and granting the feasibility of public finances<sup>614</sup>. The first instrument used by the European Union with this goal was the Euro Plus Pact, also known as the “Pact for Competitiveness”<sup>615</sup>. This Pact was conceived as a non-binding political agreement aimed at inducing member states to adopt structural reforms falling under the sphere of national competences. The goal indeed was to « achieve a new quality of economic policy coordination <sup>616</sup>». The basic idea of the Pact was, as already said, to encourage European countries to embrace a path of structural reforms. In fact, because of the interdependence resulting from the Union, if you implement a reform in a specific state, then you would not only reinforce that country, but also the euro area as a whole<sup>617</sup>. On the ground of the Euro Plus Pact, the then President Zapatero, on August 22, 2011, suddenly affirmed that both the parties, the majority and the opposition of the government, had agreed on amending the constitutional text to limit public debt and deficit, precisely referring to article 135 of the Constitution.<sup>618</sup> Just thirty-two days after his announcement, the article 135 of the Spanish Constitution had been amended. The most important goal of the new Article 135 was to submit the public administration to

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<sup>614</sup> Hubert, G., Karsten, S., The Euro Plus Pact: Cost, Competitiveness and External Capital Flows in the EU countries, Working Paper No. 1650, The Competitiveness Research Network, March 2014, p. 4

<sup>615</sup> Wessels, W., The European Council, Palgrave Macmillan, 2011, p. 193

<sup>616</sup> European Council Conclusions, The Euro Plus Pact. Stronger Economic Policy Coordination for Competitiveness and Convergence. Annex I to European Council Conclusions, 24-25 March 2011

<sup>617</sup> Op. cit., The Euro Plus Pact: How integration into the EU Framework can give new momentum for structural reforms in the Euro area

<sup>618</sup> Gutiérrez Calvo, V., Reforma exprés sin referéndum, El País, Madrid, 23 August 2011, available at: [https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715\\_080054.html](https://politica.elpais.com/politica/2011/08/23/actualidad/1314128715_080054.html)

observe what defined at European level in the Stability and Growth Pact, with respect to the budgetary stability. The intention was to avoid the overcoming of what permitted in terms of structural deficit, that is, 0.4% of national GDP<sup>619</sup>. According to the new article 135.5 of the Spanish Constitution, to allow the implementation of the reform, an Organic Law had to be adopted. The Organic Law 2/2012 on Budgetary Stability and Economic Sustainability is actually the law which gives enforcement to the provisions of the new article 135. With the reform to article 135 CE, the enforcement of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, also known as Fiscal Compact, was facilitated.

The Fiscal Compact was signed up on March 2, 2012, for entering officially into force on January 1, 2013. On February 8, in plenary session of the Congress, the Spanish President Rajoy highlighted the most important novelties the instrument was envisioned to introduce and that would be fundamental for setting robust bases for the Eurozone, and for granting a healthy recovery of the country. Moreover, the greatest novelty who really satisfied Rajoy was the obligation up to all the member states to introduce in their national legislation the Balanced Budget Rule, like Spain did in 2011<sup>620</sup>.

Other two packages of measures were enforced in Spain, the Six Pack and the Two Pack. The Six Pack is a package of six measures, as the name suggests, focused on the fiscal and macro-economic targets of coordination. It is composed of five regulations and one directive, which, as a whole, were adopted in November 2011, after a year of work, and that finally entered into force on December 13, 2011<sup>621</sup>. Some of the measures are addressed just to the Eurozone member states, while the remaining to all the EU member states. These measures are in support of the Stability and Growth Pact (SGP), adding to it new aspects, such as a further Macroeconomic Imbalances Procedure, a new voting system in the Council and new sanctions for the Eurozone member states missing the compliance with the new rules<sup>622</sup>.

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<sup>619</sup> Stability and Growth Pact

<sup>620</sup> Op. cit, Estrada-Cañameres, M., *Constitutional Change Through Euro Crisis Law: Spain*, European University Institute, 2014, p. 73

<sup>621</sup> The European Commission with the MEMO 11/89 communicated on December 12/2011 to the EU member states the entry into force of a new package of measures, the Six Pack, MEMO available at: [http://europa.eu/rapid/press-release\\_MEMO-11-898\\_en.htm](http://europa.eu/rapid/press-release_MEMO-11-898_en.htm)

<sup>622</sup> The package was composed of: The Regulation 1175/2011 amending Regulation 1466/97, the Regulation 1177/2011 amending Regulation 1467/97, the Regulation 1173/2011 and finally the Directive

The Two Pack is the package of reforms following the Six Pack, which was coined in November 2011 by the European Commission, which proposed the adoption of these two regulations for further fostering the coordination and the surveillance of the budgetary processes interesting the entire Eurozone<sup>623</sup>. On May 21, 2013, the Two Pack was adopted and a week later it started to produce its effects when the Fiscal Compact was already in place. These two regulations must be read along with the SGP, in the sense that they were drafted in light of the SGP's objectives. The Two Pack does not add significant novelties to the SGP. Basically, it is aimed at making more efficient the European Semester, and the preventive and corrective characteristics of the SGP.

After the EFSF and the EFSM, it was time to create a permanent emergency fund for the European countries in need. On July 11, 2011, the European Stability Mechanism Treaty was signed, for being renegotiated and re-signed on February 2, 2012. Once the final text of the ESM was signed, Rajoy, the newly appointed President of the Spanish government, went before the Congress to inform it of the activities undertaken at EU level<sup>624</sup>. Rajoy expressed his complete support to the mechanism, recognizing the innate characteristic of the ESM of ensuring liquidity to the MSs for allowing them to respect their fiscal duties. The process of ratification in Spain was not so easy, and some veto proposals were presented both in the Congress and in the Senate, but in the end on June 21, 2012, King Felipe VI passed the Treaty which officially entered into force on September 27, 2012<sup>625</sup>.

While at European level new Treaties were concluded for giving a better shape to the European system, Spain decided to ask for financial assistance, especially to restructure and recapitalise the damaged banking sector. The official request arrived on June 25, 2012. Once the request arrived at the European Commission, the latter, along with the IMF and the ECB, came together for assessing whether the country had the right credentials for getting this financial assistance. The evaluation was positive and at the summit of June 29, 2012, the Heads of State of all the Eurozone member states

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2011/85/EU, all deal with fiscal policy. The remaining Regulation 1176/2011 and Regulation 1174/2011 they have to do with Macroeconomic Imbalances.

<sup>623</sup><http://leg16.camera.it/465?area=8&tema=747&Le+modifiche+al+Patto+di+stabilit%C3%A0+%28six+pack+e+two+pack%29>

<sup>624</sup> Diario de Sesiones of the Congreso de los Diputados, February 8, 2012

<sup>625</sup> No referendum was held in Spain for the entering into force of the Treaty as defined by article 91 CE. Source: Op. cit, Estrada-Cañamares, M., Constitutional Change Through Euro Crisis Law: Spain, European University Institute, 2014, p. 71

highlighted that the financial assistance would be under the rules of the ESM, once this instrument would be completely operational<sup>626</sup>. In exchange for financial assistance, some measures were requested to Spain, like transparency of the assets, simplify the process for a gradual reduction of exposure of the national banks to the real estate sector, improve the crisis management mechanism to limit, as much as possible, the risk of a new future crisis<sup>627</sup>, and so on. All these measures were included in the Spanish Memorandum of Understanding, which was mainly focused on: the route to follow for the recapitalization and the restructuring of the banks<sup>628</sup>; the environment which should be created for allowing the full operability of the banking sector, like the guidelines provided by the EU for permitting to the Spanish Central Bank of being autonomous<sup>629</sup>; the macroeconomic imbalances<sup>630</sup>. The Financial Assistance Facility Agreement instead defined the path to follow for giving full operationalisation to the Programme. When Spain signed the MoU, it gave the EU its word that it would start a package of reforms touching the principal sectors of the society. Basically, the reforms interested the labour system, the public administration, the fiscal consolidation and the education system.

To conclude, we can say that as one might have predicted, backlashes against the new legislation on budgetary frameworks were not long in coming. The Constitutional Court, in fact, was often asked to intervene, particularly as far as the Balanced Budget Rule, social rights and regional autonomy were concerned.

### **Chapter 3: Ireland and the intervention of the European Union and of the Troika**

On November 18, 2010, the Governor of the ECB, Patrick Honohan announced that, in agreement with the European Commission, and the International Monetary Fund, the ECB would be prompt to negotiate with Ireland a financial assistance programme. The aim was clear: to avoid a further deterioration of the Irish banking and financial sectors. Additionally, as Ireland in November 2010 had already launched a four-year economic plan, known as National Recovery Plan 2011-2014, the negotiations for the EU/IMF

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<sup>626</sup> [http://ec.europa.eu/economy\\_finance/eu\\_borrower/mou/2012-07-20-spain-mou\\_en.pdf](http://ec.europa.eu/economy_finance/eu_borrower/mou/2012-07-20-spain-mou_en.pdf)

<sup>627</sup> Ibidem

<sup>628</sup> Ibidem

<sup>629</sup> Ibidem

<sup>630</sup> Ibidem



financial package were very eased, as this Plan had already created the basis for the aid programme<sup>631</sup>. In 2010 the European institutions established the system of Early Emergency Funding which was appositely created by the European institutions to support European countries, like Ireland, in financial difficulty.

The decision to accept an economic adjustment programme for Ireland was taken in November 2010, as just said, when a joint financing package of 85 billion euros was agreed for the period 2010-2013. Almost a half of the package was provided by the EFSM and the EFSF, which respectively, supplied 22.5 and 17.7 billion euros to Ireland. The IMF as well contributed to the programme by providing 22.5 billion euros while the remaining part was provided through bilateral loans from UK, Denmark and Sweden and by the Irish state too. Being the EFSF Framework Agreement an international agreement, in order to produce its effects in Ireland, it was supported by a national piece of legislation recognizing its full implementation, the European Financial Stability Facility Act 2010.

This Act consigns the power to issue guarantees in name of the EFSF to the Ministry for Finance, and, in addition, states that all the funds Ireland will receive or will spend for the achievement of the EFSF will arrive from, or will dispense to, the Central Fund. The same Minister for Finance is asked to constantly inform the Dáil as far as the degree of implementation of the EFSF is concerned. The ESFF Framework Agreement has been attached to the European Financial Stability Facility Act 2010<sup>632</sup>. When Ireland accepted the financial assistance programme, it was asked to sign a Memorandum of Understanding as well. The main request emerging from the Memorandum referred to the banking sector. The path to follow was simple: reduce substantially the entire financial sector, identify and label the ill-parts of the system, and bringing it back to a healthy status. Furthermore, when the financial assistance programme was signed, Ireland was also requested to start a path of reforms in the main sectors of the society. The Irish MoU in fact, stressed the importance of structural reforms to be effective. These reforms mainly interested the pension system, the labour market and the public sector<sup>633</sup>.

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<sup>631</sup> See generally *Ibidem*, chapter 11

<sup>632</sup> Coutts, S., *Constitutional change through Euro crisis law: Ireland*, European University Institute, 2014, p. 17

<sup>633</sup> Glassner V., *The public sector in the crisis*, Working Paper 2010.07, Brussels, ETU, 2010, pp. 7-8

After the adoption of the EFSF and EFSF, on March 2011, the European institutions decided to pay their attention to the creation of a specific Pact for the Eurozone member states. As already said for Spain, the first tool for boosting competitiveness which was endorsed by the EU institutions was the Euro Plus Pact. The Irish Government, since the beginning, showed itself to be in favour of the Pact. The Prime Minister, during the European Summit held on March 24, 2011, declared: that «clearly, Ireland will support measures that can contribute to a restoration of confidence in the markets, foster economic growth and job creation and help Europe move beyond the economic crisis<sup>634</sup>». Ireland, in fact, was very interested in restoring its image at European level, and the support to this Pact could contribute to the goal. There was basically a general confidence in the Pact, with the exception of the then opposition party, Sinn Féin, who was worried about a possible further deterioration of the national sovereignty<sup>635</sup>.

In the same year, an important package of reform was discussed and agreed, the Six Pack. Since the first discussions on the package reform, Ireland showed its confidence on it, by considering a mutual surveillance on the economic and budgetary policies of member states<sup>636</sup>. The Six Pack was perceived in Ireland as the pill to cure the illness of the country, as something which could address the root causes which brought Ireland to the crisis. Additionally, Ireland demonstrated to be in favour as well of the role played by the European Commission, preferring it to an intergovernmental route<sup>637</sup>.

On November 2011 finally, another package of measures was coined by the European Commission, the Two Pack, mainly aimed at enhancing the soundness of the national budgets by imposing the EU member states to draft their budgets by taking into account independent macroeconomic forecasts. Furthermore, in order to guarantee the compliance by the states with their national fiscal rules, it appoints specific national independent bodies with this aim.

Object of reform in Ireland was also the Budgetary Process. It was reformed twice, firstly in 2011 and secondly in 2016. In March 2011, the first request for reforming the Budgetary Process arrived from the Department of Finance, and it was aimed basically

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<sup>634</sup> An Taoiseach Enda Kenny Dáil Debates, 22 March 2011, Vol 728 No 3, p. 190

<sup>635</sup> Ibidem, p.192

<sup>636</sup> An Taoiseach Enda Kenny, Dáil Debates, 2 November 2011, Vol 745 No 2, 221

<sup>637</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 38

at, firstly, publishing the Stability Programme within the first months of the year, so to allow a previous discussion on it by the most relevant Parliamentary committees and the Irish Fiscal Advisory Council, for finally sending all the documents to the EU by April, in accordance with the European Semester<sup>638</sup>. Secondly, it was aimed at stressing the value of the systems based on multi-annual planning, particularly highlighting the importance of the MTO, deemed an anchor as far as budgetary policy are concerned<sup>639</sup>.

On this change on Budgetary Process, the Irish High Court was asked to solve a case, in November 2013. The Constitutional challenge, specifically, was about the publication of promissory notes by the Irish Minister for Finance. This case saw the dispute between Joan Collins, independent member of the Parliament, and the Minister for Finance. Basically, what emerged from this case was anyway an unlimited discretion to the government in the budgetary process, especially in terms of the amount of money to spend for the achievement of a specific goal<sup>640</sup>.

In light of this great governmental discretionary power, in 2016, the Irish Budgetary Process was reformed again with the aim of reinforcing the role of the Parliament. The need of a greater involvement of the Parliament was particularly stressed by the OECD, which influenced the Irish leaders in the decision to modify the Budget Process<sup>641</sup>.

Like in Spain, also in Ireland something occurred at constitutional level as a consequence of the 2008 financial crisis, but the routes followed by the two countries were completely different. While Spain introduced the Balance Budget principle into the national Constitution, even though the Fiscal Compact had not been signed yet, in Ireland, just one constitutional amendment was adopted with the goal of ratifying the Treaty on Stability Coordination and Growth. The TSCG was approved in Ireland after the positive outcome of the referendum held on it in May 2012<sup>642</sup>. Voters were asked to express their consent on the following statement: « The state may ratify the Treaty on Stability, Coordination and governance in the Economic and Monetary Union done at Brussels on the 2<sup>nd</sup> day of

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<sup>638</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 6

<sup>639</sup> Ibidem

<sup>640</sup> Ibidem

<sup>641</sup> Collins, S., Cabinet signals green light for more powerful committees, The Irish Times, May 25, 2016 available at: <https://www.irishtimes.com/news/politics/cabinet-signals-green-light-for-more-powerful-committees-1.2659357>

<sup>642</sup> Adams, M., Fabbrini, F., Larouche, P., The constitutionalization of European budgetary constraints, Hart Publishing, Oxford, 2014, p. 330

March 2012. No provision of this Constitution invalidates laws enacted, acts done, or measures adopted by the state that are necessitated by the obligations of the state under the Treaty or prevents laws enacted, acts done, or measures adopted by bodies competent under the Treaty from having the force of law in the State <sup>643</sup>». This statement became the tenth paragraph of article 29 of the Irish Constitution. Thanks to the positive outcome in the referendum, the 30<sup>th</sup> amendment Bill 2012 found enactment into the Constitution by obtaining the Presidential Assent on June 27, 2012. The Fiscal Responsibility Act 2012 was passed into the Parliament some months later the Presidential Assent, precisely on November 27, 2012, for being subsequently ratified on December 14<sup>644</sup>.

In the end, we can say that, really very significant for the analysis of the changes occurred in the Irish legal system during the Eurozone crisis, was the decision taken by the EU to amend article 136 TFEU. This amendment would consist in the introduction of a new paragraph stating: « The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality <sup>645</sup>». According to the national procedures, the process of approval ended in the mid of April and the new article entered officially into force on May 1, 2013<sup>646</sup>. The decision to amend the TFEU has its roots in the sovereign debt crisis which progressively hit many Eurozone countries, Ireland included. The European Stability Mechanism, direct consequence of the amendment of article 136, was precisely aimed at substituting the existing package of tools which were created at the dawn of the crisis, and that mixed tools of different legal origin, like tools of public international law, European Union law and finally, also private law<sup>647</sup>.

In order to overcome the two temporary funds created at the beginning to manage the crisis, the European Countries all agreed to establish a permanent tool, the European Stability Mechanism. As far as Ireland was concerned, since the beginning, both the Houses showed a great enthusiasm for the amendment of article 136 TFEU. The

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<sup>643</sup> New article 29.10 Irish Constitution

<sup>644</sup> Op. cit., Adams, M., Fabbrini, F., Larouche, P., The constitutionalization of European budgetary constraints, p. 330

<sup>645</sup> Article 136.3 TFEU

<sup>646</sup> Op. cit., Coutts, S., Constitutional change through Euro crisis law: Ireland, p. 21

<sup>647</sup> J.V. Louis, The No-Bailout Clause and Rescue Packages, *Common Market Law Review* 2010, pp. 971-986

Government's great support stemmed from the awareness of the financial situation of Ireland, which was dependent upon the ESM<sup>648</sup>. The ESM got in Ireland general support, with the exception of the Sinn Féin and the United Left Alliance. They sustained that because of the strict conditionalities imposed by the Mechanism, this would further the austerity already domaining Europe.

Strictly linked to the amendment of article 136 TFEU and to the ESM, is the challenge posed by Mr. Pringle, member of the Irish Parliament, before the High Court, and indirectly, before the Irish Supreme Court. He basically, challenged the constitutionality of the amendment article 136 TFEU through the adoption of the European Council's Decision 2011/199, and secondly, he argued that the aforementioned decision followed inappropriately the simplified revision procedure described by article 48.6 TFEU, as the amendment in question went to modify the European competences. In addition, Pringle also claimed that the same Council's Decision was in breaching of the TEU and TFEU provisions concerning with the monetary principles of the EU. Furthermore, Pringle claimed that through the ratification of the ESM Treaty, Ireland would trespass the exclusive competences of the EU in the field of monetary and economic policy. Through the creation of the ESM in fact, according to Pringle, the European member states would like to create an independent institution able to circumvent the limits imposed by the TFEU on the economic and monetary policy. In the end, he concluded by stating that the Treaty on the ESM was in conflict with the principles at the basis of the judicial protection, and it was also in conflict with the principle of legal certainty<sup>649</sup>. Pringle's challenges were dismissed by the High Court, and at second stance, by the Irish Supreme Court and by the European Court of Justice.

#### **Chapter 4. The medium-long term effectiveness of the new rules adopted at European level**

In this conclusive chapter, the results achieved by Spain and Ireland once adopted the measures agreed in the European Union have been analysed. We have checked if the

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<sup>648</sup> Dáil Debates, 6 June 2012, Vol 767 No 1, 72-73

<sup>649</sup> Borgert, V., The ESM and the European Court's Predicament in Pringle, German Law Journal, Vol. 14, No. 01, 2013, p. 121

recovery occurred, posing our attention on how these measures have affected the main sectors of the society, and whether the respective Post Programmes Surveillance have been implemented in a sustainable way. From an economic perspective, we have concluded that in both countries, the implementation of the European economic measures has been successful, even if some challenges still remain in both of them. Nonetheless, much more interesting has been to analyse the impact of the new European Economic Governance on the national Parliaments' powers and on the national Courts.

According to many scholars, like Maduro or Fabbrini, national Parliaments are those who most suffered the adoption of the new European rules<sup>650</sup>. While through the Lisbon Treaty national Parliaments managed to obtain some additional powers<sup>651</sup>, it looked that after the Eurozone crisis their powers were affected again by the new European rules. For sure the European instrument which mainly had an impact on the position of national Parliaments was the criticized Fiscal Compact, which exactly in article 3.2 of its Treaty specifies that “national prerogatives” cannot be limited. The Fiscal Compact basically represented an opportunity for national Parliaments by recognizing to them the power of controlling, along with the European Parliament, the correct implementation of the Treaty by the singular member states<sup>652</sup>. Basically, if it is impossible to affirm that the Eurozone crisis has contributed to strengthening the role of the parliaments, we could say that it has provided to them a stimulus to better manage powers they already had or to use them more appropriately<sup>653</sup>.

Generally, we can say that the new European Economic Governance has not significantly altered the position and powers of the Spanish Parliament either formally or informally. But, something new has been introduced. On July 19, 2011, a parliamentary resolution

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<sup>650</sup> See Maduro, M., A New Governance for the European Union and the Euro: Democracy and Justice, RSCAS Policy Paper, n° 11, EUI, Florence, 2012, p. 6 ff, and Adams, M., Fabbrini F, Lerouche, P., (eds.) The Constitutionalization of European Budgetary Constraints, Oxford-Portland, OR, Hart Publishing, 2014, pp. 379-398

<sup>651</sup> Op. cit., Adams, M., Fabbrini F, Lerouche, P., (eds.) The Constitutionalization of European Budgetary Constraints, p. 344

<sup>652</sup> This power is recognized by article 13 of the Fiscal Compact which states: “As foreseen in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the national Parliaments and representatives of the relevant committees of the European Parliament in order to discuss budgetary policies and other issues covered by this Treaty”.

<sup>653</sup> Fasone, C., National Parliaments under External Fiscal Constraints. The case of Italy, Portugal and Spain facing the Eurozone crisis, SOG-WP19/2014, p.2

was adopted with the aim of establishing a parliamentary budgetary office, the *Oficina Presupuestaria de las Cortes Generales*. This Office basically works as a Fiscal Council in charge of assessing the execution of the budget for then informing the Parliament on it. Even if the office was created in 2011, it started to operate just in 2013, when it was complemented by another body, the *Autoridad Independiente de Responsabilidad Fiscal*, attached to the Ministry of Economics and Finance<sup>654</sup>. The establishment of the Spanish Fiscal Council is a key element for boosting the role of the national Parliaments in EU matters. Since its setting in Spain, the powers of the Fiscal Council have made stronger. An element which favoured its strengthening was the decision by the *Autoridad Independiente de Responsabilidad Fiscal* to start a proceeding before the Constitutional Court. Through this proceeding, the *Autoridad* requested the Court to impose to the government the duty to promptly send to the Fiscal Council the requested information, allowing so to national Parliaments to be properly involved in fiscal matters<sup>655</sup>.

With the new European Economic Governance, many steps forward have been done in order to develop the parliamentary scrutiny and the parliamentary oversight powers<sup>656</sup>. This is valid also for the case of Ireland, where, as provided by article 3.2 of the Fiscal Compact, an Irish Fiscal Advisory Council was created. This body was created with the scope of firstly, boosting the transparency and the credibility of the country, and secondly, with the objective of checking the compliance of the national legislation with the budget rules. Since its setting up in the Irish legal system, the Irish Fiscal Council has been perceived as a tool for enhancing the role of the Parliament, being independent but always accountable to it. Unfortunately, some deficiencies still remain, particularly considering that the appointment of the Irish Fiscal Council's members passes for the Minister for Finance<sup>657</sup>, while, it is up to the *Dáil* just the right to adopt a specific resolution in case a member of the Council wants to anticipate the expiration of his/her mandate.

As far as the impact on the Courts, we can say that it is possible to trace a tendency of greater judicial involvement in the EU fiscal matters, and two are the main features of

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<sup>654</sup> *Ibidem*

<sup>655</sup> *Op. cit.*, Beukers, T., De Witte, B., Kilpatrick, C., *Constitutional Change Through Euro-Crisis Law*, pp. 108-143

<sup>656</sup> See Griglio, E., Lupo, N., *Parliamentary Democracy and the Eurozone Crisis*, *Law and Economics Yearly Review*, vol. 1, n° 2, 2012, pp. 314-374

<sup>657</sup> Schedule to the Fiscal Responsibility Act, s 1(2).

this involvement. Firstly, the rulings taken by the Courts are generally in favour of the new measures adopted in the European framework for strengthening the budgetary rules in nation states, even though national Courts have also demonstrated to be worried about the social implications of these rigid fiscal rules. Secondly, that the greater courts' involvement in fiscal matters finds its roots in the will of not letting the political branches to deal with these matters independently. So, if courts can basically benefit from the decision to introduce stringent fiscal rules in national law, by increasing their institutional weight compared to the political branches<sup>658</sup>, they are a bit worried about the impact of these rules on social rights, which through their implementation reduce the states' capacity to guarantee social protection because of the economic obligations coming from the new European Economic Governance.

### **Conclusion**

In reply to our research question, it is possible to affirm that, firstly, the new European Economic Governance, with respect to the Spanish and Irish Parliaments, has not significantly improved their role and position, while a new role has been enhanced for Courts. Secondly, we can add that even if the new European Economic Governance has been successful from an economic perspective, it has provoked some residual effects on the political and constitutional settings of both countries.

As far as Spain is concerned, the aftermath of the economic crisis is continuing to show its criticisms, particularly with respect to the instability which is characterizing the Spanish political scenario. Since May 2011 indeed, Spain is coping with a political crisis which has culminated with the vote of no confidence against Rajoy. To stress the meaningfulness of this event, we can say that this instrument, since the establishment of the Spanish Parliamentary Monarchy, has been used in June 2018 for the first time. The leader which brought Spain from the near-collapse to the recovery, the leader who was able to manage the Catalan crisis, has been dismissed by the Spanish Parliament through a vote of no confidence, passing the leadership to Sanchez leader of the Socialist Party.

As far as Ireland is concerned instead, the awareness of the institutional failure which sharpened the deepness of the crisis brought the Irish leaders to start a broader process of

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<sup>658</sup> Fabbrini, F., *The Fiscal Compact, The 'Golden Rule' and the Paradox of European Federalism*, 36 *Boston College Int'l & Comp. L. Rev.* 1, 2013



reform which interested some of the most sensitive parts of the Constitution. To highlight the governmental intention of a broader constitutional change, there is the decision by the government to organize national referenda on sensitive issues of the society, like the one dealing with the abolition of the Senate, the same-sex marriage and, in the end, the one concerning abortion, which finally in May 2018 has been recognized as legitimate according to Irish voters.

To conclude we can say that, if in the Spanish case the economic crisis was at the basis of a political turmoil, in Ireland it represented the spark for initiating a new and broader path of reform interesting the most sensitive parts of the Constitution and of the society.