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Exploring Ireland's Approach to Negotiating the 2012 Fiscal Stability Treaty: A Qualitative Study

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Submitted in accordance with the requirements for the degree of Doctor of Philosophy

National University of Ireland, Cork

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January 2016

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Table of Contents

Table of Contents……..*i*

Acknowledgements……*vi*

Abstract……...*vii*

Index of Terms and Abbreviations…….....*ix*

List of Tables…….…*xiii*

Chapter 1. Introduction…….....1

1.1 The Fiscal Stability Treaty and Institutional Structures……4

1.2 Intergovernmental Conferences and the Union Method……..……....8

1.3 The Case of Ireland…….....12

1.4 How Intergovernmentalism as a Theory Relates to the Study……17

1.5 Irish Opportunity Structures……20

1.6 The Research Methodology…….....21

1.6.1 Primary Data: Benefits and Shortcomings……...22

1.6.2 Secondary Data: Benefits & Shortcomings……..25

1.7 Ethical Considerations in the Research……...26

1.8 Outline of the Thesis Chapters……27

Chapter 2. Theoretical Perspectives in Contemporary European Integration and Governance……..31

2.1 Integration: An Organisational Process……..32

2.2 Common Theoretical Perspectives in EU Integration Studies……...34

2.2.1 Neo-functionalism…….....35

2.2.2 Federalism…….....38

2.2.3 Confederalism…….....…38

2.2.4 New Institutionalism(s)…….....39

2.2.5 Multi-level governance……..42

2.3 Intergovernmentalism in the EU……44

2.3.1 Classical Intergovernmentalism……46

2.3.2 Intergovernmental Institutionalism……...48

2.3.3 Liberal Intergovernmentalism……...50

2.3.4 New Intergovernmentalism……...55

2.3.5 Deliberative Intergovernmentalism……...63

Chapter 3. The 2012 Fiscal Stability Treaty: Nature, Substance and Institutional Background…….….68

3.1 The Fiscal Stability Treaty: An Intergovernmental Treaty……69

3.2 The Fiscal Stability Treaty: An Economic Rationale…….....71

3.3 The Fiscal Stability Treaty Provisions…….…….....77

3.4 General Stages in an Intergovernmental Negotiation Process…….…….....82

3.5 The Irish Negotiating Team……85

3.6 The Fiscal Stability Treaty Negotiations: Leading Institutions……..87

3.6.1 The European Council…….....89

3.6.2 ECOFIN and the Eurogroup……...92

3.6.3 The EFC and EWG…….95

3.6.4 The SHERPA and the COREPER…….....96

3.6.5 The Economic and Monetary Affairs Committee…….....99

Chapter 4. The Case of Ireland…….....104

4.1 Evaluating Ireland's Economy in the Post-Financial Crisis Period….....105

4.2 The Treaty: A Pragmatic Necessity for Ireland……..…….....107

4.3 The Treaty: A Critical Choice for Ireland…….……..112

4.4 Achieving Moral Credibility…….……..115

4.5 Coordinating National Interests……..….....116

4.6 Ireland's National Preferences…….……...122

Chapter 5. Evaluating Ireland's Opportunity Structures as a Measure of Negotiating Influence……130

5.1 Opportunity Structures: Securing Preferences and Achieving Influence…….....131

5.1.1 The European Commission and European Parliament…….....134

5.1.2 The Irish Referendum……...140

5.1.3 Domestic Societal Forces…….....149

5.1.4 Network Capital, Mechanical Coalition Building & Deliberation ……..….....158

5.2 Non-Applicable Opportunity Structures…….…….169

5.2.1 The No Side vs. the Yes Side……...…….....170

5.2.2 An Intended No vote in the Referendum…….....172

5.2.3 Veto over Article 136 of the TFEU…….....175

5.2.4 French Presidential Renegotiation……...…….....177

Chapter 6. Conclusion…….……....…….183

This is to certify that the work I am submitting is my own and has not been submitted for another degree, either at University College Cork or elsewhere. All external references and sources are clearly acknowledged and identified within the contents. I have read and understood the regulations of University College Cork concerning plagiarism.

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Abstract

On the 2nd of March 2012 the intergovernmental Fiscal Stability Treaty was signed by 25 European Union (EU) member-states with the exception of the United Kingdom and the Czech Republic. The treaty was part of a broader set of planned measures taken by EU member-states to protect the Euro in the wake of the 2007 Eurozone crisis. The treaty aimed to reduce national debt in EU member-states by averting fiscal imbalances. Due to the poor condition of the Irish economy, the treaty was a chance for Ireland to regain international market confidence, economic stability and growth.

As an economically small EU member-state, Ireland's position to bargain for concessions was tenuous due to the weakness of its economy and its consequences for the rest of the EU. However, Ireland managed to achieve a considerable degree of influence throughout the Fiscal Stability Treaty negotiations by drawing upon opportunity structures as negotiation leverage. In achieving influence in the Fiscal Stability Treaty negotiations by drawing upon credible opportunity structures, Ireland proved that small EU member-states can and do achieve influence in intergovernmental treaty negotiations, regardless of their economic size.

This study challenges traditional understandings regarding the strength of the small EU member-state in intergovernmental treaty negotiations. As the Union Method becomes ever more embraced by EU member-states, we are urged to think differently about how treaties are agreed between EU member-states. We are also urged to question what this may tell us about intergovernmental treaty making and the influence of small EU member-states in intergovernmental treaty making processes, both at the present time and in the future. This thesis provides a basis for such exploration.

I dedicate this thesis to my mother for her never ending faith in my academic abilities. Without her confidence, encouragement and financial assistance, this thesis would not have been made a reality. Thank you Mum.

Index of Terms and Abbreviations

BEPGs – Broad Economic Policy Guidelines

BRIC- Brazil, Russia, India & China

CAP- Common Agricultural Policy

CFSP- Common Foreign and Security Policy

CJEU- The Court of Justice of the European Union

CoM- Council of Ministers

COREPER - Committee of Permanent Representatives in the European Union

CSO- Central Statistics Office

Dáil – Irish Parliamentary Lower House

DG – Director General (European Commission)

EA- Euro Area

EC- European Community

ECB - European Central Bank

ECJ- European Court of Justice

ECOFIN- Economic and Financial Affairs Council

ECON committee – Economic and Monetary Affairs Committee

ECSC- European Coal and Steel Community

EEC- European Economic Community

EFC – Economic and Finance Committee

EFSF- European Financial Stability Facility

EFSM- European Financial Stability Mechanism

EMI – European Movement Ireland

EMU- Economic and Monetary Union

EP- European Parliament

EPP – European Peoples Party

ESM- European Stability Mechanism

ESRI – Economic and Social Research Institute

EU – European Union

EURATOM- European Atomic Energy Community

EWG- Eurogroup Working Group

FCIC- Financial Crisis Inquiry Commission

FDI- Foreign Direct Investment

FSI- Financial Services Ireland

GDP- Gross Domestic Product

GNP- Gross National Product

IBEC - Irish Business and Employers Confederation

ICTU –Irish Congress of Trade Unions

IFA – Irish Farmers Association

IFAC – Independent Fiscal Advisory Council

IGC- Intergovernmental Conference

IIEA – The Institute of International and European Affairs

IMF- International Monetary Fund

IMFS- European Mechanism of Financial Stability

INOU - Irish National Organisation of the Unemployed

ISME- Irish Small & Medium Enterprises Association

LCD- Lowest Common Denominator

MEP – Member of European Parliament

MLG- Multi-Level Governance

MTO – Medium Term Objective

NERI – Nevin Economic Research Institute

NGO – Non Governmental Organisation

NUI – National University of Ireland

OECD – Organisation for Economic Cooperation and Development

OMC- Open Method of Coordination

PIIGS- Portugal, Italy, Ireland, Greece & Spain

QMV- Qualified Majority Vote

RQMV- Reversed Qualified Majority Vote

RTE - Raidio Teilifis Eireann

SEA- Single European Act

SFA – Small Firms Association

SGP- Stability and Growth Pact

SHERPA – EU Advisor to Heads of State/Government in the EU

SIPTU – Services Industrial Professional and Technical Union

SMV – Simple Majority Vote

SRM- Single Resolution Mechanism

SSM – Single Supervisory Mechanism

TCD – Trinity College Dublin

TD – Teachta Dála (Irish Member of Parliament)

TFEU – Treaty on the Functioning of the European Union (Lisbon Treaty)

U.S.A – United States of America

UCD – University College Dublin

UK- United Kingdom

UL- University of Limerick

List of Tables

2.1 EU Treaties Expressing Neo-Functional Characteristics……..36

3.1 EU (Reform) Treaties produced from IGC's…….....78

3.2 Members of the Irish Negotiating Team……...……..…86

3.3 Main Intergovernmental Institutions in the Fiscal Stability Treaty Negotiations…….....88

5.1 Stances by Organisations Representing Civil Society/Private Sphere toward the Fiscal Stability Treaty and Referendum…….....157

Chapter 1

Introduction

''We have seen integration take place in the absence of supranationalism, with new institutions created that have concentrated the powers and activities of national governments and national representatives. Policy-making has developed informally, escaping many of the legislative frameworks that characterized supranational law-making beyond the nation-state. Understanding this development requires a new effort in theorizing post-Maastricht integration. Instead of merely contrasting the new with the old, we have shown how new policy areas that did not – or only in a very limited form – exist before the Maastricht Treaty have been based on what we call 'the new intergovernmentalism'. The Commission and the CJEU have been reshaped in the post-Maastricht era and are no longer the 'engines of integration' that they once were. Even the European Parliament has been a willing participant in some of these developments''

(Bickerton et al, 2014:15)

In 2012, 25 European Union (EU) member-states agreed an intergovernmental treaty in response to the Eurozone crisis. The Fiscal Stability Treaty[1] was created to protect the euro by implementing legally binding fiscal rules aimed at helping signatory EU member-states to work toward achieving balanced budgets and reducing sovereign debt. The Fiscal Stability Treaty is an intergovernmental treaty and was created on the side-lines of EU treaty law. The November 2011 European Council Conclusions which build upon the December 2010 European Council summit outlined the general institutional structures and negotiation procedures of the treaty, as well as guidelines for the treaty's initial substance. The treaty negotiations lasted a mere three months, having begun in December 2011 and ending in late February 2012. The treaty was signed on the 2nd March 2012 by 25 EU member-states with the exception of the

[1] The treaty is formally known as the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. This thesis will refer to it as the Fiscal Stability Treaty henceforth.

United Kingdom and the Czech Republic. It came into effect across the union on the 1st January 2013.

The Fiscal Stability Treaty received mixed responses from the public and private spheres across the EU. In Ireland, there were strong divides between the left and right wings of Irish politics regarding the nature of the treaty and its benefits for Ireland as a small EU member-state[2]. Similar divides manifested in the public sphere with attitudes and opinions being shaped predominantly by socio-economic experiences and expectations. Many on the left of Irish politics were pessimistic about the treaty and argued that it would fuel further austerity and economic crisis in Ireland[3]. Many on the right were more optimistic and regarded the treaty as a means to regain market confidence, stability and growth[4]. Those on the left saw it as symbolic of German and even French dominance, as well as an erosion of economic sovereignty and democracy. Those on the right saw it as a symbol of collective EU member-state action toward a shared problem and a means to preserve economic security throughout the member-states of the EU.

Ireland joined the European Economic Community (EEC) in 1973 as a small English speaking, agricultural based and relatively conservative nation-state on the periphery of Europe. The country benefitted economically, politically, socially and culturally, shedding its previous isolationist label and developing at a competitive rate through its embracement of industrialisation, multi-culturalism and progressive social values and ideals. Its membership of the EEC provided Ireland as a small nation-state with a sense of independence and political place in the world for the first time since the foundation of the State in 1922. Ireland benefitted greatly from EEC polices such as the Common Agricultural Policy (CAP) and the Cohesion Fund. Its later participation in the single European market and the Economic and Monetary Union

[2] In this thesis a small EU member-state is determined on the basis of economic size. A small EU member-state will refer to a state with a small or weak economy in relative terms to larger EU counterparts.

[3] Parties on the left of Irish parliamentary politics included Sinn Fein, the United Left Alliance and the Socialists.

[4] Although it was predominantly the centre-right Irish parties which supported the treaty, the centre-left Irish labour party was an exception in that it too supported the treaty despite the party's left wing status.

(EMU) throughout the 1990s brought about exceptionally high levels of economic growth. Foreign direct investment (FDI), employment levels, the hourly wage rate, production, output and trade all increased significantly. Ireland became a state of positive net-migration. However, influenced by weak fiscal and banking rules in the EMU, low European Central Bank (ECB) interest rates and banking deregulation at the domestic level, Ireland soon reached a level of economic vulnerability. Its economy suffered economic and financial overheating which it was incapable of controlling. Its negative economic and financial domestic conditions combined with the economic and financial frailties of other EU member-states with whom it shared economic interdependence made it susceptible to the effects of the Eurozone crisis.

The Fiscal Stability Treaty was an opportunity for Ireland to avert crisis by stabilising its fiscal deficits and reducing its national debt level. From the outset, as a small and bankrupt EU member-state, Ireland appeared to be in no real position to influence the Fiscal Stability Treaty negotiations. Its economic conditions could prove harmful to the economic and financial security of its EU counterparts. However, the thesis explores if Ireland as a small-EU member-state did achieve influence in the Fiscal Stability Treaty negotiations. To do so, it looks at the various ways in which Ireland approached the negotiations and secured concessions. Looking at opportunity structures as factors of negotiating leverage provides a lens for such analysis. Opportunity structures are factors which leverage an EU member-states negotiation position in intergovernmental decision making processes. There are a number of opportunity structures that EU member-states may draw upon for negotiation leverage (see Arregui & Thomson, 2009; Bailer, 2009; Bulmer, 1983; Bunse et al, 2005; Cross, 2012; Gron & Wivel, 2011; Hoffman, 1966; Huelshoff, 1994; Laffan, 2014; Panke, 2008; Panke,2011; Schure & Verdun, 2008; Tallberg, 2008; Thomson & Hosli, 2006; Thornhallson & Wivel, 2006). Some are used as political channels such as the European Commission or European Parliament to leverage voice, where an EU member-state can free ride on the negotiation influence of other actors in other EU institutions, or even by holding influential positions such as the rotating council presidency[5]. Others are more politically abstract and are used

[5] The rotating Council Presidency is a useful opportunity structure for a small EU member-state, especially in the EU's Community Method of decision making (see Arregui & Thomson, 2009).

differently, such as domestic public opinion which may determine referendum outcomes. Due to their abstract nature, they are often used persuasively by EU member-states in both formal and informal inter-state negotiations to help convince larger counterparts of a small EU member-states' need for concessions due to various domestic constraints. Opportunity structures are in essence *forces of constraint* in negotiation environments.

The thesis evaluates a number of opportunity structures which were used by the Irish team in the negotiations. Due to the informal decision making dynamics of the intergovernmental treaty negotiations, deliberation was the key to reaching compromise and creating the treaty. The research aims to show that small EU member-states like Ireland may be influential players in intergovernmental treaty making processes and may be able to significantly shape negotiation outcomes, regardless of their perceived size and domestic economic weight. They owe their influence to the various types of opportunity structures that they have at their discretion, as well as the actual quality of those structures. This may provide a basis for the argument that contemporary intergovernmental treaty making negotiations in the EU do not necessarily overly represent the interests of larger EU member-states, nor do they aid their dominance in EU decision making, especially when the process is conducted independent of formal voting rules and norms. The key message of this thesis, to adopt a phrase by Panke (2012), is that small EU member-states do *''punch above their weight''* in informal deliberation based intergovernmental treaty making negotiation processes.

1.1 The Fiscal Stability Treaty and Institutional Structures

The Maastricht Treaty (1991/1992) outlined plans for the Economic and Monetary Union (EMU) to be achieved in incremental stages, but it did not include plans for an EU wide fiscal policy. The Stability and Growth Pact (SGP) was an agreement by EU member-states to engage in responsible fiscal behaviour at the domestic level by achieving structural deficits below 3% and working toward fiscal balance. However, the SGP was not fully adhered to by predominantly larger EU member-states such as Germany and France. Thus, sovereign borrowing and expenditure increased across the Eurozone which was fuelled by increasing economic competitiveness. This made

EU member-states economically vulnerable in the face of exogenous economic shocks due to the negativities of economic overheating.

The Eurozone crisis which was directly influenced by the global economic and financial crisis, which was subsequently sourced in U.S banking failures, was exacerbated by the weak design of the EMU (see Lane, 2012). The EMU's weak design meant that it did not create EU wide fiscal and banking policies to compliment monetary policy to regulate irresponsible fiscal and banking activities within EU member-states. When the Eurozone crisis emerged in the third quarter of 2007, economic and financial markets halted and economies subsequently regressed. Rising sovereign debts across the EU combined with banking failures in some EU member-states (e.g. Ireland) exacerbated the economic effects of the global financial crisis. Soon after, sovereign debt became a universal problem even for countries like Ireland whose failures were not initially associated with fiscal imprudence, but were attributed to banking deregulation and banking failures which led to economic overheating in the form of an unsustainable property bubble. Although Ireland was suffering from financial and growth crises since 2007, Ireland's sovereign debt crisis really only emerged in 2010 when the Irish government nationalised bank debt. Recapitalising banks came in the form of financial bail-outs from the newly established European Financial Stability Facility (EFSF). Larger EU member-states who were suffering from their own crises conditions while financing the PIIGS (Portugal, Ireland, Italy, Greece and Spain) countries[6] through the EFSF suffered increasing economic and financial risk. After all, if the fiscal situations of their debtors did not improve, then large creditor EU member-states would suffer the direct negative effects created by their debtor's domestic economies. Larger EU member-states could suffer economically, financially and even politically due to the transferal of negative economic contagion from such small to medium size EU member-states by proxy of economic interdependence.

Albeit experiencing their own financial and economic problems, larger EU member-states tend to be more economically stable than smaller EU member-states due to

[6] The PIIGS countries are those EU member-states whose economies particularly stood out in the EU due to the relative degree of their financial, growth and sovereign debt crises. The regressive economic cycles in these EU member-states were particularly dangerous to economic stability across the EU and to hopes of protecting the Euro.

their economic size and capacities, even though it was large EU member-states that were amongst the first to abuse[7] the SGP and generate high national debts. As concerned financiers subject to great risk, larger EU member-states such as Germany and France became architects of the Fiscal Stability Treaty. The treaty would act as a stabilising force for all across the union and would enhance each member-states' resistance to the effects of future external economic and financial shocks through balanced budgets. It would also help reduce the negative effects of economic contagion across the Eurozone and wider EU. The treaty was not a sole solution to the crisis, but was part of a broader set of plans to reform the weak design of the EMU[8].

Resting on the side-lines of EU treaty law, the Fiscal Stability Treaty was not created in accordance with traditional methods of EU treaty decision making. Therefore, it was not introduced with a typical intergovernmental conference (IGC). Additionally, it was not subject to formal voting rules such as unanimity. It was a Union Method treaty based on an 'in or out' process that required 12 out of 17 Eurozone member-states to be passed, and it relied on informal consensus based decision making via inter-state deliberation which subsequently determined the ways in which EU member-states bargained to achieve national preferences. It was the shortest major treaty created between EU member-states. The short negotiation process was indicative of the urgency of the treaty for the Eurozone and wider European Union. Completing the treaty in a short and timely manner was necessary for corrective procedures to start mending the effects of crisis across the EU. Heads of State/Government of the EU agreed to create the Fiscal Stability Treaty through the intergovernmental route. It was a concern for countries such as the United Kingdom (UK) and Czech Republic who both advocated the intergovernmental route, as they do not share the same relationship with the EMU and the euro currency as their EU counterparts. They were not enthusiastic about a potential federalisation of EU fiscal policy through an IGC approach for fears about its effect on economic sovereignty in

[7] Germany and France were amongst the first EU member-states to abuse the terms of the SGP.

[8] Apart from the Fiscal Stability Treaty, EU member-states (particularly Eurozone member-states) made the first moves toward establishing Banking Union within the EU. This coincided with the establishment of *de novo* regulatory bodies such as the SSM, SRM (see table of abbreviations) and European deposit insurance scheme.

their respective states. As the treaty was an 'in or out' process conducted through deliberation with outcomes derived from consensus based decision making, negotiating parties anticipated concessionary gains based on their ability to influence negotiations effectively. Therefore, EU member-states had to find ways of leveraging their negotiation positions. However, the informal deliberative style of the intergovernmental treaty negotiations appears to be less realist than one may expect to see in the more formal voting based negotiation process. The way small EU member-states bargain in such negotiations appear to be less constrained by the *modus operandi* of the negotiation process.

As the treaty was created through the Union Method route, the roles of the European Parliament and European Commission were significantly side-lined by the European Council. Neither of the EU's supranational bodies played a direct role in the negotiation processes. Although, they did maintain observer status throughout the negotiations. Although it was European Council led, the treaty was predominantly bureaucratically brokered. Negotiating institutions were effectively borrowed from the EU's Council of the European Union (Council of Ministers). Both the Economic and Financial Affairs Council (ECOFIN) and Eurogroup contributed to the negotiations. However, as a bureaucratically brokered treaty, specialist committees such as the Economic and Finance Committee (EFC) and Eurogroup Working Group (EWG) which both housed national bureaucrats played a particularly important role in seeing the treaty agreed. These specialist committees acted as secretariats to ECOFIN and Eurogroup throughout the negotiation process and it was both within and outside these specialist committees that members engaged in national preference bargaining.

The early provisions of the treaty reflected the preferences of larger creditor countries such as Germany and France. However, the terms of the treaty changed considerably as negotiations progressed and diverging national preferences were reconciled through bargaining and compromise. The final draft of the treaty was binding, but less strict in essence than initially anticipated. Title III (The Fiscal Compact) was the most important section of the treaty because it contained the fiscal rules for EU member-states. Title III deals with matters such as the debt brake rule; the automatic correction mechanism; the role of the European Court of Justice; the

reversed qualified majority Vote (RQMV); the 1/20th rule and the role of national parliaments. Subsequently, it was the most important aspect of the treaty for the Irish negotiation team due to Irish national preferences relating to the treaty's constitutional place at the national level, as well as the structural deficit measurement. Both matters accounted for two of the three main national preferences of the Irish. Ireland's third national preference related to guarantees associated with access to the European Financial Stability Facility (EFSF) and the European Stability Mechanism (ESM). This was detailed in the preamble of the Fiscal Stability Treaty.

The Fiscal Stability Treaty provides a useful context for studying small EU member-state influence in intergovernmental negotiation processes due to its rather unique intergovernmental nature. Unbound by formal voting rules, inter-state dynamics regarding negotiation and compromise reaching relied heavily on strategic preference bargaining. As the treaty did not employ formal voting rules, negotiation outcome where opaque. Therefore, it becomes a useful case for evaluating the bargaining behaviour of small EU member-states under such procedural conditions, as well as the negotiating influence of small EU member-states under such conditions in contemporary and future EU intergovernmental treaty negotiations.

1.2 Intergovernmental Conferences and the Union Method

EU treaty making typically takes place through intergovernmental conferences (IGC's) with a purpose of amending the founding treaties of the EU and redirecting EU integration (see Dur & Matteo, 2006; Thurner & Urban Pappi, 2009). Policy making in the EU facilitates integration through its formation of common policy and its implementation which strengthens Europeanisation across the EU. Whilst IGC's may appear typically straightforward, policy making in the EU manifests through a number of different modes (see Wallace et al, 2015:99-111) with variations in institutional influences, decision making norms and outcomes. Occasionally, under certain circumstances the lines between intergovernmental EU policy making modes and extra-EU treaty making processes can become blurred. One can observe this through the Union Method which is associated with extra-EU intergovernmental treaty making in relation to nationally sensitive policy areas such as economic

governance. The Union Method in form is influenced by the *policy coordination* and *intensive transgovernmentalist* modes of EU policy making (see Wallace et al, 2015:107-111).

It is worth mentioning that although a typical EU IGC and the EU's Union Method are differentiated in EU scholarship for good reason, both treaty making processes share a number of similarities to one another in institutional and structural terms. The main differences between both treaty making avenues is seen in their intended purposes and outcomes. The former is a clear EU treaty reform process which often empowers supranational institutions in EU policy making. Whilst the latter is used as an intergovernmental mode of extra-EU treaty making for matters requiring *hard law* formation resting outside the EU's former community pillar which traditionally focused on everyday commercial interests in the EU. The Union Method often empowers intergovernmental actors and quasi-intergovernmental bodies over traditional supranational institutions in policy making processes.

''The term EU intergovernmental conferences' describes the negotiations between the governments of the members preceding and surrounding the original Treaties of Paris (1951) and Rome (1957), and the follow up amendments''

(Thurner & Urban Pappi, 2009: 7)

To reiterate, IGC's are used for EU treaty amendment process. They draw EU member governments together within the European Council for the purpose of reforming the founding treaties of the EU[9]. Each of the six reform treaties in the EU since the Single European Act (1986) began with an IGC. The most recent treaty to begin with an IGC was the 2009 Treaty on the Functioning of the European Union (Lisbon Treaty) (see Thurner and Urban Pappi, 2009:7). The significance of the IGC in the EU lies in its role as a catalyst that propels EU treaty reform and in doing so it reconfigures the integration process. In order to reconfigure the EU form in structure and competences which subsequently determines the direction of integration; changes have to be made to the founding treaties of the EU as to reconfigure the EU's constitutional basis.

[9] The founding treaties of the EU include the Treaty of Paris (1951) which created the European Coal and Steel Community (ECSC), and the Treaties of Rome (1957) which created EURATOM and the Common Market.

IGC's being negotiating forums revolve around a series of intergovernmental bargaining rounds with the aim of achieving a sufficient outcome which encapsulates common policy ideals whilst reconciling diverging national preferences. These bargaining rounds typically make use of a number of forces stemming from both the domestic and international spheres to leverage individual negotiation positions. Unanimity is required for any treaty to be created and become part of EU treaty law and is subject to varying national ratification procedures. Where unanimity is used, the risk of a veto drawing outcome toward the *status-quo* is prevalent (see Jupille, 1999:414; Slapin, 2008), as opposed to deliberative consensus where the results may be expected to be more pareto-efficient in outcome as domestic economic size amongst other factors may play greater roles in determining outcomes[10].

''Personal delegates of the foreign ministers, the IGC representatives, are entrusted with the main responsibility for the preparatory work and the negotiations.....Mostly they are recruited from the Permanent Representatives and often they are also top officials of the foreign ministries''

(Thurner and Urban Pappi, 2009: 14)

Due to their intergovernmental nature, IGC's are coordinated by the Heads of Government/State of the EU member-states. Within the IGC process the European Council acts as an executive body in its own right. It initiates and proposes treaty amendments through broad outlines. It is the beginning and the end to any of these conferences (see Thurner and Urban Pappi, 2009: 14). In turn, it is the beginning and end to EU treaty making itself. Being a purely intergovernmental affair, IGC's incorporate an extensive body of intergovernmental networks exclusively through the council structure. Within IGC's it is typical to observe the roles of national

[10] Occasionally, the thesis makes references to Qualified Majority Voting (QMV) and its influence on inter-state bargaining and negotiation outcome. QMV is not a characteristic of treaty making neither through an IGC or the Union Method. It is commonly associated with the Classical Community Method and EU Regulatory Mode - both of which are policy making processes. Mentioning QMV within the thesis serves only the purpose of reminding the reader that different method of decision making, and (in particular) different voting rules will produce different outcomes. QMV acts as a mere reference point for comparative analysis.

foreign ministers in the Council of Ministers working under the European Council, as well as a wider body of senior national bureaucrats working in a complex set of specialist committees and working groups below the Council of Ministers. In fact, the substance of the treaty amendment(s) are predominantly brokered by national senior level bureaucrats (see Thurner & Urban Pappi, 2009) within specialist committees and working groups which act as secretariats to the Council of Ministers formations. Within IGC's the European Commission and European Parliaments roles are relatively limited to that of the European Council and Council of the European Union. IGC's usually see the EU integration process propelled through the delegation of further competences to the EU's supranational institutions after the ratification of a treaty, where policy making procedure such as the Community Method (EU's Regulatory mode) will usually become the dominant *modus operandi*. There can be exceptions depending on the sensitivity of the policy areas incorporated in the EU treaty and their effects on national sovereign competences.

The Union Method is of particular interest to theorists of new intergovernmentalism and deliberative intergovernmentalism (see Bickerton et al, 2015b). It is a hybrid form of intergovernmental activity and can be perceived as a variant of EU integration post-Maastricht which deals with nationally sensitive policy issues that may require *hard law* through intergovernmental routes to consolidate common policy. The Union Method is an interesting phenomenon due to its ability to blur the lines between traditional EU intergovernmental policy making modes and new extra-EU intergovernmental treaty making. Wallace *et al* (2015: 109-111) provide an overview of the intensive transgovernmentalist mode and the policy coordination mode of EU policy making, both of which lend themselves to the Union Method. The Union Method deals with the consolidation of nationally sensitive policy issues that may require intergovernmental coordination amongst EU member-states. Dealing with *hard law* formation, it often requires intergovernmental treaty making as opposed to the production of mere intergovernmental policy agreements/arrangements amongst EU member-states. Reflecting on Thurner and Urban Pappi's work on IGC's, the characteristics of the Union Method resemble closely a typical IGC in the EU. The European Council acts as an executive style body in its own right and there is an apparently limited role for the European

Commission[11] and practically non-existent role for the European Parliament. Decisions are often taken through deliberation to meet consensus and are brokered through national senior level bureaucrats in specialist committees in the Council of the European Union. However, in the Union Method new bodies (*de novo* bodies) are often delegated with new competences to manage policy areas such as the ESM rather than supranational institutions. These characteristics apply to the Fiscal Stability Treaty negotiation process, which itself was as an intergovernmental treaty conducted through the Union Method. The lines between intergovernmental policy making procedures and intergovernmental treaty making procedures become somewhat blurred. A thorough examination of the Fiscal Stability Treaty will show that the negotiation process, as well as the overall outcome reflects qualities expressed by the policy coordination mode and intensive transgovernmentalist modes of EU decision making as would be expected from a Union Method treaty making process.

1.3 The Case of Ireland

Ireland was chosen as the case study for this thesis due to its small EU member-state status. As one of the economically worst affected EU member-states in the post-crisis era, it is a useful case to explore how small member-states in the EU may influence intergovernmental treaty negotiations. Ireland was also the only country to hold a referendum on the Fiscal Stability Treaty. Referendums have been quite favourable to Ireland in the past in terms of achieving concessions and influence in EU treaties such as the Nice and Lisbon Treaties (see O'Mahony, 2009; Quinlan 2012). Ireland has held referendums on all major EU treaties since the Crotty vs An Taoiseach Supreme Court ruling in 1986 (see Barret, 2013).

The Fiscal Stability Treaty was an 'in or out' process meaning that any EU member-state that did not sign and ratify the treaty would not be legally bound to its

[11] However, in IGC's the European Commission has an informal right to be present in such negotiations and reserves the right to propose written and unwritten proposals in the negotiations which may or may not shape the outcomes of the negotiations (see Dinan, 1997).

provisions, but would also not gain access to the ESM if required. This would be risky for smaller EU member-states with little opportunity to gain financing elsewhere in the event of future crisis. Theoretically speaking, as formal voting rules were not applied to the bargaining process, larger EU member-states could not ride roughshod over smaller EU member-states through the merging of vote weights. Alternatively, larger EU member-states could not be constrained by any potential numerical coalition building between smaller and medium size EU member-states. Also and more importantly, in the absence of unanimity, neither small, medium nor large EU member-states could use a veto. Therefore, no EU member-state could draw negotiation outcomes in line with the *status quo* or obstruct the full maximalist potential of the treaty. In line with its informal decision making process, consensus based decision making through collective deliberation generated an unfamiliar inter-state bargaining process to determine treaty outcomes. Although only 12 member-states out of 17 was needed for the treaty to pass, there was a reluctance to achieve less than full consensus. Leaving EU member-states behind is not politically or economically desirable. Failing to reach consensus could be perceived as a signal of internal divides within the EU and would be economically irrational considering the level of economic interdependence that exists between EU partners. The consensus based decision making norms of the Fiscal Stability Treaty opened a window of opportunity for Ireland as a small EU member-state to achieve influence and concessions close to its national preferences. Opportunity structures provide the means for such achievements in intergovernmental negotiations.

Ireland was supportive of the Fiscal Stability Treaty, but it's intergovernmental route was initially less than ideal for the Irish government. As a small EU member-state suffering the effects of the Eurozone crisis and domestic banking failures, Ireland saw the treaty as a means to regain stability, growth and market confidence. This would be done by getting its financial and economic affairs in order by using the rules and guidelines of the treaty. Ireland sought concessions relating to three main preferences:

1) To avoid a national referendum in Ireland.

2) To achieve flexibility with regards to the structural deficit measurement.

3) To secure a guarantee regarding continued access to the EFSF in the event that the ESM was needed and/or if the Fiscal Stability Treaty was not signed.

Although it showed support for the Fiscal Stability Treaty, the Fine Gael/Labour coalition was constrained by a potential referendum amongst a disillusioned electorate. There was firstly a desire to avoid a referendum. Where a referendum may be necessary, there was a desire to reduce the risk of a potential No vote. This could be achieved by securing concessions close to national preferences. The Irish negotiating team sought a re-interpretation to the initial structural deficit measurement and sought a guarantee that any potential ESM requirement would not damage Ireland's access to the EFSF prior to its expiration in January 2013. These further sought concessions were anticipated to sway a Yes vote due to the added economic confidence they may give to the Irish electorate. Although the Irish initially attempted to avoid a referendum on the Fiscal Stability Treaty, in looking back on previous EU treaties such as the Nice and Lisbon Treaties, referendum constraints have leveraged the Irish negotiation position significantly. Historically speaking, referendums on EU treaties seem to help Ireland achieve negotiation influence. Therefore, in having to legally hold a referendum on the Fiscal Stability Treaty, despite initial reservations, the referendum may have been an unexpected advantage for the Irish negotiation team in terms of achieving concessions closest to national preferences.

The Irish government used the referendum early on in the negotiations in a way that would convince EU counterparts that the referendum in Ireland would be dangerous to all EU member-states in the event of a No vote. Thus, to avoid a No vote which would see Ireland left outside the treaty, concessions would be ideally given in the early stages of negotiations. The Irish government, like other EU governments feared a No vote and feared involuntary defection[12] due to the economic and financial consequences for both Ireland and the wider union. The Irish government was tasked with appeasing the Irish electorate by seeking sufficient concessions to reduce the costs associated with austerity. At the same time, they were tasked with expressing a

[12] Involuntary defection happens when the electorate within an EU member-state vote No on an EU Treaty even though the member-states government supported the treaty and sought a Yes vote amongst its electorate. Thus, a diverging of expectations effectively occurs between government and electorate.

desire to comply with the rules of the treaty under discussion, which they were in no reasonable position to reject considering Irelands economic circumstances. Deliberation had to be effective. Although Ireland is said to have influenced the implementation of the term *preferably*[13] in relation to the constitutionality of the treaty at the domestic level as seen in Title III: The Fiscal Compact, the state was not able to avoid a referendum. Legally required to hold a referendum on the advice of the Irish Attorney General Máire Whelan, Ireland's negotiation position was actually leveraged further. Although the Attorney General did not make her verdict on the referendum known until late February 2012, the continuous uncertainty regarding the avoidance of a referendum was enough to leverage Ireland's voice throughout the negotiation process between December 2011 and February 2012. Having to hold a referendum amongst a disillusioned electorate, the real possibility of a No vote provided a platform for Ireland to deliberate and convince counterparts that the achievement of sought preferences would be enough to make the treaty pass in Ireland. Further concessions came in the form of the deal regarding the EFSF, whereby Ireland's access to the EFSF would not be null and void in the event that Ireland needed access to the ESM prematurely. Alternatively, if Ireland did not sign the treaty, access to the EFSF would not be harmed prior to its expiration in 2013. The securing of the deal relating to the structural deficit measurement meant that there was no universal measurement for all signatory EU member-states. Therefore, EU member-states could meet the provision based on their ability to economically adjust toward its terms over time. There was a real possibility of a No vote and a real possibility that Ireland would be left behind despite the Irish government's desire to ratify the Fiscal Stability Treaty. Thus, its negotiation position and voice enhanced further and paved the way for the achievement of reasonable concessions. The idea of concerted action was to gain the support of EU counterparts by persuading them to see that in helping the Irish government to avoid a potentially risky referendum, they were actually helping themselves to avoid future negative

[13] The Fiscal Stability Treaty was changed throughout the negotiation process as to allow greater flexibility with regards to the constitutional nature of the treaty at the national level. With the addition of the word 'preferably' into the provision on the constitutional nature of the treaty, this would in theory allow an EU member-state like Ireland to perhaps avoid having to hold a referendum.

economic consequences that could be cultivated by a continuity of relatively damaging fiscal activity in Ireland, fuelled further by a potential No vote.

Some political representatives on the left of Irish politics, including some independent TD's saw the referendum as a useful obstructive force to achieve more from the unwanted so-called *austerity treaty*[14]. They desired concessions relating to deals on the levels of bail-out repayments, promissory note write-offs, etc. They held the belief that a No vote in the Fiscal Treaty would be an effective veto to Article 136 of the Lisbon Treaty which would obstruct the enforcement of the ESM treaty for all EU member-states. In other words, access to the ESM would be impossible for other EU member-states, unless Ireland voted Yes and ratified the treaty. To gain access to the ESM, EU member-states would be forced to reshape the treaty in Ireland's vision as to secure a Yes vote from the Irish electorate. This was an unrealistic expectation, as too were the types of concessions sought by the left which had nothing to do with the nature of the treaty. Although access to the ESM was dependent on the ratification of the Treaty in signatory EU member-states, a No vote in Ireland would not actually obstruct the ESM for other EU member-states who ratified the treaty. Therefore, Ireland would have found itself isolated and left behind. Opponents of the treaty also called for the government to avoid holding the referendum until after the French Presidential elections with the anticipation that the French Socialist President-elect François Hollande would contest the treaty. The French President-elect was not in a position to renegotiate the treaty. None of these options (or so-called failed bargains) were promising for Ireland's position. In fact, using any such options were guaranteed to jeopardise Ireland's position in the negotiations, its reputation across the EU and its reputation across international economic markets. Throughout the three-month negotiation period credible preferences were secured using effective bargaining techniques and a compliance toward concerted action. The Irish electorate voted a pragmatic Yes for the treaty on the 31st May 2012 (see Costello, 2014).

[14] Many on the left of Irish politics referred to the Fiscal Stability Treaty as an Austerity Treaty. They perceived the terms of the treaty as extremely restrictive on the Irish economy in terms of national investment, development and growth. They argued that the treaty would contribute to austerity and to crisis conditions in Ireland for many years to come. The left wing was extremely critical of the treaty because it did not provide a growth stimulus package to avert the potential effects of its strict rules regarding structural deficits and national debts.

1.4 How Intergovernmentalism as a Theory Relates to the Study

Much of the research on intergovernmental decision making in the EU focuses on formal decision making processes between EU member-states inside the EU's Community Method. Andrew Moravcsik's seminal work '*The Choice for Europe'* (1998) provided a major contribution toward intergovernmentalism in the EU using a number of examples such as inter-state decision making around the Single European Act (1986) and the Maastricht Treaty (1991/1992). Moravcsik's work falls under the label of liberal intergovernmentalism due to its recognition of the roles of both domestic (private sphere attitudes and preferences) and international institutional structures (EU supranational institutions) in leveraging member-states' negotiation positon during times of inter-state preference bargaining in the EU's Council of Ministers. It incorporates Robert Putnam's *two level games* (see Putnam 1988) in its reasoning. The work provided a theoretical insight into intergovernmental decision making which appears to empower EU member-states as drivers of European integration and regards the Council of Ministers and its voting rules and norms and behaviours as designed by EU member-states alone. However, Moravcsik's liberal intergovernmentalism appears biased toward the influence of larger EU member-states deeming their influence over treaties and policies as superior to that of small EU member-states. Liberal intergovernmentalism argues that larger EU member-states are the main drivers of European integration and intergovernmental negotiation outcomes predominantly incorporate large EU member-state national preferences (see Moravcsik, 1998). Small EU member-states appear to accept what they are given from larger EU member-states; usually in the form of marginal concessions. The rationale derives from the formal voting process determining intergovernmental decision making inside the EU's Community Method which works under QMV[15]. Theoretically speaking, large EU member-states have the ability to ride roughshod over the preferences of small EU member-states due to

[15] The EU's Community Method is an EU policy making mode and not associated with treaty making in the EU. Liberal intergovernmentalism is traditionally associated with Community Method decision making. However, this thesis argues that liberal intergovernmentalism contributes valuable insights into inter-state bargaining between EU member-states when creating both EU treaties and treaties of extra-EU nature.

their relatively larger voting weights, especially when those weights are combined[16]. Although liberal intergovernmentalism argues that larger EU member-states have the ability through QMV to ride roughshod over the preferences of smaller EU member-states, it also argues that preference bargaining is part of the process and small, medium and/or large EU member-states seek influence through opportunity structures as a means to leverage negotiation position. By asserting opportunity structures inside negotiation processes, smaller EU member-states in particular can constrain their larger counterparts to achieve concessions. As riding roughshod over small member-state preferences through QMV may be perceived as coercive and taboo, larger EU member-states provide small EU member-states with concessions to gain their support. However, larger EU member-states still appear relatively more powerful in the process due to the constraints of formal voting rules and their relatively more influential positions. Negotiation outcomes are often pareto-efficient. The concessions that member-states achieve are reflective of their size and ability to influence negotiations. This makes larger EU member-state relatively more influential in such formal negotiation processes.

In light of the recent financial crisis and the creation of the Fiscal Stability Treaty as part of the move toward economic governance in the EU, intergovernmentalism (on theory and practice) requires reinterpretation. By drawing upon the Fiscal Stability Treaty one can see that intergovernmental treaty is very different to the rules governing EU policy making as one would expect to see in the Community Method for example. The elimination of formal voting rules in the Union Method significantly changes intergovernmental negotiation processes and inter-state bargaining processes. This in turn makes negotiation outcomes more opaque. New policy interests particularly stemming from the old second and third pillars[17] of the

[16] Of course, this becomes slightly less theoretically sound in terms of recent EU enlargements which increased the number of small EU member-state in the EU. An increasing number of like-minded small EU member-states would theoretically make it more difficult for larger EU member-states to ride roughshod over small EU member-states.

[17] The three pillars of the EU where legal compositions of the European Union established with the Maastricht Treaty (1991/1992) until the Lisbon Treaty (2009). The Pillars outlined the EU's policy areas for which the union was founded. The first pillar dealt with policy areas decided upon through the Community Method. These were labelled the 'European Community'. The second and third pillars dealt with policy areas under intergovernmental cooperation, namely Common Foreign and Security Policy (CFSP) Justice and Home Affairs.

EU appear to be coming to the forefront of EU policy maker's agendas. This is indicated by the recent move toward addressing economic governance in the EU. New policy areas which come to the forefront of policy maker's agendas may require intergovernmental treaty making processes, as is reflected by the Fiscal Stability Treaty. As the Union Method of intergovernmental decision making becomes the norm when dealing with 'sensitive' policy areas that require hard law creation, scholars such as Bickerton, Hodson and Puetter (2015b) in their seminal work '*The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era'* offer new perspectives on intergovernmentalism which are reflected in the new generation of intergovernmentalist theories such as: *New intergovernmentalism* and *Deliberative intergovernmentalism* (see Bickerton et al, 2015b; Puetter 2012a).

New intergovernmentalism, which explains the institutional and structural qualities behind intergovernmental decision making under the European Council also highlights the role of deliberative intergovernmentalism. Deliberative intergovernmentalism explains *how* EU member-states reach compromise in Union Method intergovernmental treaty negotiations, such as the Fiscal Stability Treaty. Due to their emphasis on informal and deliberation based decision making processes incorporating consensus based decision making, these theoretical approaches entice us to think differently about contemporary and future intergovernmental treaty making processes which are anticipated to become ever more popular as the EU evolves. Without formal voting rules, large EU member-states find it difficult to ride roughshod over small EU member-states. However, leaving EU [small] member-states behind in an intergovernmental treaty agreement is not economically or politically feasible. Therefore, decision making under the new intergovernmentalist and deliberative intergovernmentalist schools of thought assumes inter-state preference bargaining to be a process of complex *informal* interaction between EU member-states who still nevertheless draw upon opportunity structures to leverage their bargaining positions, but they do so without the ability or desire to ride roughshod over one another using formal voting rules or norms. When viewed from this perspective, the so-called modified structural-realist nature (as coined by Robert Keohane) of liberal intergovernmentalism no longer holds in explaining contemporary intergovernmental treaty making processes in the EU. This provides a

window for small EU member-states such as Ireland to punch above their weight in such informal intergovernmental negotiation processes.

1.5 Irish Opportunity Structures

As mentioned previously, opportunity structures are forces of negotiating leverage which EU member-states use to achieve concessions and negotiation influence. The following opportunity structures are important considerations in inter-state preference bargaining in intergovernmental decision making processes. They were chosen on the basis of the style of the Fiscal Stability Treaty negotiations highlighting the Union Method of decision making. The opportunity structures are as follows:

1) The European Commission and the European Parliament
2) The Irish Referendum
3) Domestic Social Forces
4) Network Capital
5) Mechanical Coalition Building
6) Strategic Deliberation

This thesis identifies, measures and assess the aforementioned opportunity structures in order to help explain how Ireland approached the Fiscal Stability Treaty negotiations and achieved influence through concession seeking. Having identified relevant opportunity structures by building upon knowledge extracted from the literature, the chosen opportunity structures are deemed appropriate for analysis given the context of the study. The roles of the Irish referendum and domestic societal forces were chosen due to the successes of past Irish referendums on EU treaties, as well as past experiences were societal forces have shaped Irish positions on EU treaties in relation to referendum campaigns[18]. From a structural point of view, the roles of network capital, mechanical collation building and strategic

[18] During the Lisbon Treaty campaign splinter farming groups were critical of the EU's approach to the world trade organisation (WTO) talks and the effects that an enlarged EU would have for agricultural competition amongst small farmers. A Seanad report claimed that the passing of the treaty in Ireland lay in the hands of the Farmers (see Irish Examiner, 9th May 2009).

deliberation were chosen due to the nature of the treaty negotiations and the sociological norms of inter-state negotiating behaviour. After all, the treaty was conducted informally under consensus based decision making, but also required a considerable degree of inter-state bargaining in which opportunity structures were used by EU member-states as leverage in the negotiations. Forming links and alliances are essential for getting national preferences heard. Strategic deliberation is essential for those opportunity structures to be used persuasively enough to achieve concessions. Yet again, from an institutional point of view, the role of the European Commission in particular was important due to its observer status in the intergovernmental negotiations. It had the role of drawing up the treaty on behalf of the European Council and it was incorporated into key intergovernmental negotiating institutions. Similar to the European Commission, the European Parliament was accounted for as an opportunity structure due to its contributions to the negotiation process via the European Parliaments Committee on Economic and Monetary Affairs (ECON committee). Even though its role was purely observational, its close proximity to the negotiations requires it to be measured.

The chosen opportunity structures not only help evaluate the ways in which the Irish team negotiated the Fiscal Stability Treaty, but also helps to discover if/how Ireland achieved influence in the negotiations. Knowledge of concessions alone is not enough to deduce the extent of actual negotiation influence. Only by identifying the *ways* in which an EU member-state bargained for concessions, can one gain a greater understanding of the extent of influence that an EU member-state may have achieved in intergovernmental negotiations.

1.6 The Research Methodology

The research is qualitative in nature. It relies on primary and secondary sources to explore the chosen opportunity structures as forces of negotiation leverage for the Irish negotiating team in the Fiscal Stability Treaty negotiations. Fourteen elite interviews were conducted with British, Irish and French Members of European Parliament (MEPs), senior officials from Irish government departments which included the Department of Taoiseach, Department of Finance and the Department of Foreign Affairs. Former Irish Ministers of State, a former Irish Cabinet Minister, a

senior official from the Council General-secretariat of the European Council and leading Brussels based EU media correspondents were also interviewed. Primary research was conducted in Cork, Dublin and Brussels and followed a semi-structured interview process.

Secondary data included parliamentary transcriptions from Dáil Eireann debates, including transcriptions from the Joint Committee on EU Affairs and Sub-Committee on the Referendum on the Intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union[19]. Access to EU level data was limited due to the lack of transparency. There was effectively no access to documentation regarding European Council, ECOFIN or Euro group minutes. Therefore, the thesis relies on national and international media sources in addition to national parliamentary data sources.

1.6.1 *Primary Data: Benefits and Shortcomings*

''If the whole universe is too large to study, examination of a random sample is usually recommended as a means of insuring that the criteria of selection do not correlate with the dependent variable''

(Geddes, 1990:135)

The process of collecting primary data differed to more conventional methods advised in the social sciences in terms of selection. King, Keohane & Verba (1994) and Geddes (1990) alongside others in the natural and social sciences have advised toward random selection when conducting scientific inquiry. In the soft and hard sciences, random selection has become a prescription to data collection rather than an option. It serves the purpose of avoiding research bias and potential disregard for useful variables that may prove essential to the research. Due to the particular nature of this research which focuses on an intergovernmental treaty negotiation process, data collection was necessarily rooted in selection bias.

[19] The Sub-Committee on the Referendum on the Intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union shall be referred to as the 'Sub-Committee on the Referendum' for the remainder of the thesis.

As the Fiscal Stability Treaty negotiations were highly exclusive and access to these negotiations was open to only a select few; isolating potential interviewees was limited and caution had to be taken when choosing participants. Contrary to random selection, the process of choosing participants for the interview process was in itself methodologically predetermined. As only few people were involved in the process, selection bias was justifiable. Random selection of participants for this study would have negatively affected research findings. As so few individuals were involved in the negotiations from Ireland, random selection could have resulted in findings of little substance to the research by people not directly or even indirectly part of the negotiation process who may have had limited or even no knowledge of the actual negotiation process at the EU level. A potential risk is that findings could have reflected personal beliefs regarding the treaty making process, rather than plausible empirical knowledge based on actual experience. If random selection was employed and produced inaccurate results, this would have not only reduced the plausibility of findings, but would also have distorted the applicability of the theories used to conduct the inquiry. Thus random selection in itself has limits for certain studies and is not always the best method. As King, Keohane and Verba (1994) state: *''random selection is not always appropriate in small-n research''*, and as a single case study, this research is categorically small-n.

There was a number of benefits in collecting primary data for the research. As EU level secondary data was limited or even inaccessible, the research relied on national secondary data sources. However, with regards to this research, primary data was comparatively more accurate as the interviewees (for the most part) were either directly or at least indirectly associated with the Fiscal Stability Treaty negotiations. This meant that any data collected had a higher accuracy rate based on the empirical observations of the interviewees who were party to the negotiations. Also, when conducting interviews, it was discovered that building a professional relationship (albeit temporal) with the participant had a positive effect on the quality of the responses given. In turn, interviewees (with assurance of anonymity) were likely to give direct and unconstrained responses to questions asked of them. This enhanced the quality of research findings. This was particularly observed when dealing with national senior civil servants who were particularly important to the research due to their direct role in brokering the treaty within specialist committees such as the EFC

and EWG. Also, in conducting face to face interviews, there was a greater element of control over the direction of discussions. This ensured that sufficient answers were provided for necessary questions asked of the interviewees. This proved to have a time controlling effect on data collection and ensured that there was a collection of constructive data in a timely manner that would not disadvantage research output. This is something less likely to be controlled when reading through large secondary data sets. From a comparative perspective, conducting interviews and analysing responses led to greater insight into the various political attitudes and opinions associated with the elite roles behind the treaty.

A number of shortcomings regarding the collection of primary data were noted. In many cases, elites who had very strong knowledge of the negotiation process were unable to participate in the research. These included the Irish Taoiseach and Irish Minister of Finance. Both the Taoiseach and Minister of Finance were central to the negotiation process. Therefore, as neither could be accounted for in the study, there is a potential loss of strong data. Also, some of those on the left of Irish politics who actually opposed the treaty could not participate in the research due to work related obligations. Therefore, some alternative perspectives on Ireland's approach to the negotiation process could not be accounted for. However, as most of the people on the opposition side of parliament were not actually directly party to the negotiation process, any loss of data would be minor in consequence to the research.

A majority of those who were interviewed and who were party to the negotiations directly or indirectly appeared to be close to the centre-right ideology politically speaking, if not in a professional capacity such as civil servants. Therefore, it is likely that for professional and/or party based reasons they may have portrayed Ireland's approach to the negotiations in positive light. This may indicate information bias based on political or professional relationships and perhaps loyalty to the party or position which they served. Some interviewees, particularly politicians, expressed noticeable similarities in their responses. The often used similar or even identical words and/or analogies to describe certain events or issues that related to Ireland's approach throughout the negotiations.

1.6.2 *Secondary Data: Benefits & Shortcomings*

As access to EU level data was limited, the research relied on national level secondary sources in the form of parliamentary debates/discussions, as well as media related sources. Dáil Eireann[20] was an important source of secondary data. As the lower house of the Oireachtas it was instrumental in coordinating inter-party parliamentary debates and specialist committee discussions regarding Ireland's approach in negotiating the Fiscal Stability Treaty. Official transcriptions proved useful for deciphering Ireland's national preferences, as well as indicating the various opportunity structures used by the Irish team and measuring the extent of their success in leveraging the Irish team's negotiation position.

Parliamentary transcriptions provided access to the opinions/attitudes of opposition forces that could not be accounted for in primary data. As some opposition forces were critical of the government's stance and approach to the negotiations, they scrutinised and urged the government parties to defend their political actions throughout. They also queried the ways in which the government negotiated the terms of the Fiscal Stability Treaty to successfully meet national preferences which could help win over a Yes vote amongst the Irish electorate in a referendum. This helped in the evaluation of the opportunity structures used by the Irish team.

These documents were also useful in identifying the key players in the negotiation process which was important for selecting appropriate interviewees for participation in the research. The Dáil debates and Joint Committee on EU Affairs, including the Sub-committee on the Referendum were useful for identifying the types of foreign national officials that were considered political allies for Ireland in building influence in the negotiations. This helped with the analysis of network capital building and mechanical coalition building; two opportunity structures central to the study. The discussions within the Joint Committee and Sub-committee were influential for highlighting the attitudes of domestic societal forces and exploring how they shaped both Irish and other EU member-states' national preferences. They were also useful to discovering how those societal attitudes influenced elite opinions

[20] Dáil Eireann (Assembly of Ireland) is the lower house of the Oireachtas (Irish Legislature/parliament). The upper house of the Oireachtas is referred to as Seanad Eireann (Irish Senate).

regarding the Irish referendum which subsequently determined the policy stances of elites. It was also through such official documents that the roles of the European Commission and European Parliament could be queried. This aided the research further in evaluating their applicability as opportunity structures, which may have leveraged the Irish negotiation position in the Fiscal Stability Treaty negotiations.

Shortcomings associated with parliamentary documents is that they are only a substitute for inquiry and do not provide detailed access or knowledge about the actual negotiating environments or actual behaviours of negotiators at the EU level. As a window for inquiry they are relatively vague. They do not provide insight into the minutes taken during negotiations at the EU level. It is therefore difficult to identify if, how or even what issues the Irish team may have intervened on throughout the negotiations. Other shortcomings relate to the practice of written answers[21] often provided by the Taoiseach and Minister of Finance to questions posed from the parliamentary opposition regarding Ireland's approach to the treaty. Members of the government have answered different questions using the same answers on a number of occasions throughout Dáil proceedings. This has made the discovery of new and even important knowledge difficult to acquire on occasion throughout the readings.

Media sources were less useful as secondary sources for the research. Whilst newspaper articles provided insight into the negotiations through journalistic analysis, newspaper articles were only useful for providing context to the negotiations, rather than providing hard data that could be tested.

1.7 Ethical Considerations in the Research

A researcher has a duty to act ethically when conducting academic research. Throughout this study a number of measures were taken to ensure the research in both content and output is ethical and abides with the standards outlined by the

[21] 'Written answers' is the process whereby government officials provide answers to questions asked by members of the opposition during Dáil proceedings.

Universities Social Research Ethics Committee, on part of the University Research Ethics board.

With regards to primary research, each participant in the study was informed about the nature of the study prior to the commencement of the interview. This was often conducted via email correspondence. When requested, interview questions were sent in advance to the interviewees. Interviewees were informed of any structural changes to the interview questions or interview process prior to the date of the interview. In accordance with privacy and confidentiality, at the start of each interview, interviewees were guaranteed their anonymity as to protect their personal and professional roles. Measures were taken throughout the study to avoid personal/professional identification of any interviewees. This becomes evident by the ways in which extracts, statements or quotes where cited in the thesis and how interviewees were cited and referenced in the both the thesis and the bibliography. Where there is any discussion in the thesis regarding interviewees, caution was taken to avoid identifying their roles. Overall, data provided from primary research was not unprofessionally managed in any way that would indicate abuse to the ethical quality of the research.

1.8 Outline of the Thesis Chapters

This thesis consists of six chapters including the introduction and conclusion. The body of the thesis comprises of theory, context and the research findings.

Chapter two discusses the theories of integration and governance in the EU. It outlines the various theories that allow researchers to trace European integration and observe and explain the various institutions, structures, norms, values and actor based behaviours within the EU. A particular emphasis is placed on the intergovernmentalist schools of thought due to their relevance to the thesis. The chapter analyses the theories of liberal intergovernmentalism, new intertgovernmentalism and deliberative intergovernmentalism, as a means to understand contemporary inter-state decision making and inter-state preference bargaining in intergovernmental treaty negotiations.

The chapter discusses some of the major scholarly works which have developed intergovernmentalist theories throughout the process of EU integration. It traces the intergovernmentalism of Hoffman (1966) which provides insights into intergovernmentalism in the pre-Maastricht era. It discusses the seminal works by Moravcsik (1998) which explain intergovernmentalism in the Community Method of EU decision making. Moving beyond the Community Method of EU decision making, the intergovernmentalist theories of scholars such as Bickerton, Hodson and Puetter (2015b) are discussed which provide insight into the Union Method of EU decision making. Like any theory of integration and governance in the EU, one theory of intergovernmentalism alone is not enough to grasp the complexity of contemporary intergovernmental treaty making. Thus, in order to understand how Ireland as a small EU member-state approached the Fiscal Stability Treaty negotiations, one needs to gain a deeper theoretical understanding of intergovernmentalism in its many forms, both old and new.

Chapter three provides a contextual analysis of the Fiscal Stability Treaty. It discusses the intergovernmental nature of the treaty and examines for what purpose the treaty was created. It also provides a brief overview of the main treaty provisions that determine the treaty's contribution toward the development of economic governance in the EU. A thorough examination of the institutional and structural background of the Fiscal Stability Treaty negotiations is conducted also. The chapter discusses the main negotiating institutions behind the creation of the treaty, as well as the main types of negotiating actors. In doing so, the chapter highlights the inherent Union Method characteristics behind the Fiscal Stability Treaty negotiations. This provides the reader with insight into how the Union Method shapes intergovernmental decision making in the 21st century.

Chapter four evaluates Ireland's relationship with the Fiscal Stability Treaty. In order to understand this relationship, it discusses the condition of the Irish economy in the post-financial crisis era and explains why Ireland required the treaty due to its economic and financial conditions. The chapter draws upon Ireland's national interest which is a reflection of its need for the treaty and looks at its main national preferences relating to the avoidance of a referendum, flexibility regarding the structural deficit measurement and guarantees associated with the EFSF and ESM.

Using primary and secondary data, it documents the various concessions which Ireland achieved throughout the negotiations. The chapter provides the first indications that Ireland as a small EU member-state achieved influence in the Fiscal Stability Treaty negotiations.

Chapter five discusses the various opportunity structures that Ireland sought as leverage to secure concessions in the Fiscal Stability Treaty negotiations. It evaluates how applicable the chosen opportunity structures were to the Irish negotiation position and to the extent of their success. It also rules out a number of potential opportunity structures which it subsequently argues would have been harmful to the Irish negotiation position despite members of the Irish parliamentary left urging the government to use them as leverage. The chapter draws upon primary and secondary data extensively in its evaluations. The findings within this chapter reflect not only the success of the opportunity structures as forces of negotiation leverage for the Irish, but also indicate if Ireland achieved influence in the Fiscal Stability Treaty negotiations as a small EU member-state.

Chapter six concludes the thesis. It revisits the purpose of the thesis and determines if the research has fulfilled its purpose. It provides an overview of the thesis chapters and presents the research findings. The research findings determine how applicable the chosen opportunity structures were in measuring how Ireland as a small EU member-state approached the treaty negotiations and indicates the extent of Ireland's influence in the negotiations.

The research has implications for many areas of study related to the thesis. No research has been conducted on Ireland's approach to negotiating the Fiscal Stability Treaty. Therefore, this thesis offers and original contribution to knowledge as a basis for deeper analyses regarding the place/roles of small EU member-states in contemporary EU intergovernmental treaty making processes. Also, contemporary theories of intergovernmentalism such as new intergovernmentalism do not provide an in-depth analysis of how EU member-states actually negotiate intergovernmental treaties. Rather they focus on the framing of institutional structures and institutional norms. This thesis provides insight into how EU member-states actually bargain under the Union Method of decision making. Therefore, it contributes fresh perspectives to the new intergovernmentalist and deliberative intergovernmentalist

schools of thought. In addition, the study also contributes fresh knowledge to portray how opportunity structures are still useful in leveraging small EU member-states, even in informal deliberative style negotiating forums under the Union Method.

As the Union Method is becoming an ever more apparent approach to policy coordination throughout the course of EU integration, this thesis addresses some questions which will be central to the future analysis of small EU member-states in Union Method treaty making processes.

Chapter 2

Theoretical Perspectives in Contemporary European Integration and Governance

Introduction

This chapter introduces integration theory and provides an insight into some of the most influential theories of EU integration and governance in the 20th and 21st centuries. It briefly discusses the theories of neo-functionalism, federalism, confederalism, the new institutionalism(s) and multi-governance theory. As this thesis is based on intergovernmental decision making in the EU, the discussion matures with an in-depth analysis of a series of intergovernmentalist theories in the EU. It discusses their evolution in response to institutional and decision making changes that have taken place over the course of the EU integration process. In considering the style of intergovernmental decision making particularly in the post-Lisbon era for which the study is based (circa. 2011/2012), it provides a background analysis of classical intergovernmentalism as developed by Hoffman (1966) followed by an in-depth discussion of the various contemporary versions of intergovernmentalism that provide a lens through which we may study contemporary EU intergovernmental decision-making.

The theories of *liberal intergovernmentalism, new intergovernmentalism* and *deliberative intergovernmentalism* have shaped intellectual thought regarding inter-state policy/treaty decision making in the European Union. Theories of intergovernmentalism reconfigure as institutions and inter-state decision making practices change in the EU. However, theories of intergovernmentalism work best when treated as compliments to each other, rather than contrasting theoretical perspectives in their explanation of inter-state negotiation/bargaining behaviour. Each new development in intergovernmentalist theory builds upon the foundations

of its theoretical predecessor. When studying the 2012 Fiscal Stability Treaty negotiations, one looks toward new intergovernmentalism for an understanding of the institutional background of the treaty. One looks toward deliberative intergovernmentalism for understanding contemporary inter-state negotiation norms, and one looks toward liberal intergovernmentalism to understand the actual ways in which Ireland leveraged its negotiation position. Negotiation leverage is found in the use of opportunity structures. Each theory is essential for a deeper understanding of how a small EU member-state such as Ireland negotiates Union Method intergovernmental treaties like the Fiscal Stability Treaty, and how they may leverage their negotiating position in pursuit of concessions closest to national preferences. This indicates how small EU member-states may achieve influence in intergovernmental treaty negotiations often regardless of economic size and economic context. The size of an economy is often considered a factor that reduces a small EU member-state's negotiation potential in intergovernmental decision making processes.

2.1 Integration: An Organisational Process

''[integration is] (1) the process whereby nations forgoe the desire and ability to conduct foreign and domestic policies independently of each other, seeking instead to make joint decisions or to delegate the decision making process to new central organs [and] (2) the process whereby political actors in several distinct settings are persuaded to shift their expectations and political activities to a new centre''.

(Wiener and Diez, 2009:47)

Integration amongst nation-states in the international sphere is a process whereby two or more nation-states voluntarily pool their sovereignty to new and higher tiers of governance. The reasons for integration are numerous. However, often nation-states integrate for the purpose of avoiding/reconciling conflict between each other in the international sphere, and/or for the purpose of coordinating economic capabilities to facilitate economic competition, growth and development, which has been the case for the European project. An analysis of the Schuman Declaration as

the beginning of the European project highlights this (see Burgess, 2011). Thus, integration has both political and economic beginnings. However, as a process the line between both economics and politics is often blurred. This is especially true over time as integration becomes more complex. Pooling sovereignty to new and higher tiers with established defined institutional rules and norms facilitates the building of trust and loyalty between nation-states which in turn generates cohesiveness. This incentivises further integration. Over time, integration in one policy area may require integration in further policy areas due to various complexities and technicalities that may arise. An example of this includes the effects of the single market on the social security of free moving workers in the EU and the need for EU wide policy regarding workers' rights. This was dealt with in the Amsterdam Treaty (1997) which followed the Maastricht Treaty (1991/1992) which effectively created the single market.

The institutional developments that emerge from integration transform how autonomous nation-states function at the domestic level, as well as how they behave at the supranational level. Institutional rules and norms limit and constrain actor behaviour and in turn influence how member-state actors act accordingly in meeting their national preferences. Institutions facilitate negotiation which is essential for balancing differentiated national preferences between integrating nation-states. Negotiation is defined as *''a process in which explicit proposals are put forward ostensibly for the purpose of reaching agreement on an exchange or on the realisation of a common interest where conflicting interests are present''* (Ikle, 1964:3-4, as cited in Elgstrom & Smith, 2000). There are many theories of EU integration and governance (see Bache et al, 2015; Chryssochoou, 2001; Rosamond, 2000) each one contributing *part* of the puzzle in explaining the nature, form and purpose of the EU *beast*. Some theories such as liberal intergovernmentalism argue that EC/EU institutions and their rules and norms are envisaged and created by nation-states, rooted in rational choice with a means to maximise national self-interest. Later developed theories recognise that institutions form their own rules and norms over time, in turn limiting nation-state behaviour. This is something which the new intergovernmentalist school regards as important in its assessment of

contemporary governance particularly outside the Community Method of decision making and draws upon new-institutionalism in its understanding.

2.2 Common Theoretical Perspectives in EU Integration Studies

The EU, as an entity is difficult to define. As a complex system of ever changing governance without an established constitutional government, one theory alone cannot explain its process in full. Its form is ever changing and open to reinterpretation with every new treaty. Various theories come and go in explaining its form and functions. It is widely accepted to be a supranational-intergovernmental entity owing itself to the post-Maastricht Community Method of decision making, where there is an interplay between autonomous EU institutions and intergovernmental institutions in the decision making process. The supranational wing of the EU is thus labelled because of its autonomous institutions representing the EU wide interest based on *''taming the sovereign''* (see Bickerton, 2015b:43). The intergovernmental wing representing national (domestic) preferences of the nation-states is aimed at preserving the sovereign, and in turn regulating the extent of power centralisation at the EU level. Theories of integration include neo-functionalism (see Chryssochoou, 2001; Hass, 1958; Lindberg, 1963; Rosamond, 2000), federalism (see Burgess, 1989; Burgess 2011) and confederalism (see Rosamond, 2000). These theories are useful in helping to map EU integration and explain the EU's form. In turn, they help make assumptions about how the EU institutions work. This allows for thorough critical analysis, and in some cases, normative interpretation i.e. the quality of the EU's form and how it may be improved over time (see: Bellamy and Weale, 2015). Contrary to integration theories, a set of EU governance theories attempt to explain the political or decision making functions behind EU integration. Such theories include new-institutionalism(s) (see Bache et al, 2015; Cryssochoou, 2001, Rosamond, 2000; Pollack 2009 in Wiener and Diez; Verdun, 2015), multi-governmentalism (see Bache et al, 2015) and a series of contemporary takes on intergovernmentalism that will be dealt with in this chapter (see Bickerton et al, 2014 and Bickerton et al, 2015b; Hoffman, 1966; Moravcsik, 1991; Moravcsik, 1998; Puetter, 2014a; Puetter 2014b; Puetter, 2012a; Puetter, 2012b).

The complexity of the EU is reflected in the complexity of theory. Each theory is an added piece of the puzzle toward understanding the multi-faceted and ever changing form of EU integration and governance. Indeed, theories overlap in their explanation, but applying a multitude of theories to this particular study would be beyond its purpose. However, a brief analysis of some of the key theories of EU integration and governance are discussed in the following sections.

2.2.1 Neo-functionalism

Neo-functionalism builds upon the sociological theory of functionalism (see Carreira da Silva, 2010). It identifies integration as a process based on gradual and incremental steps that take place over time with no pre-conceived or specific type of resulting political regime. The theory emphasises concepts of spill-over and [policy related] issue linkages that determine integration as a means to reconcile structural or systematic complexities. These concepts relate to the process whereby functional integration (low politics) between autonomous nation-states create complexities that will over time gradually require further integration in related policy areas. This should eventually lead to the development of political institutions (high politics) to organise those complex areas in order to achieve policy efficiency and outcome. This process is not essentially constitutional in nature, although constitutions may develop in time. Policy efficiency is managed by independent [autonomous] bodies in the form of supranational institutional structures (see Hass, 1961; Hass, 1975; Hass, 1976; Hass, 1980; Mitrany, 1948; Mitrany, 1965; Mitrany, 1975: Lindberg, 1963). Neo-functionalism explains the EU integration process as far back as the EEC in 1957 with the Treaties of Rome and can be followed through to the present state of the union post-Maastricht Treaty (1991/1992). This has occurred with a series of policy area enhancements and decision making changes leveraging the EU's supranational institutions in policy making processes over the course of European integration (see table 2.1). Neo-functionalism is a path toward federalism, but not necessarily toward a constitutional federal state. A key critic of neo-functionalism who advocated constitutional federalism was that of Altierro Spinelli who advocated

European constitutional federalism in his 1941 *Ventotene Manifesto* (see Union of European Federalists, 2015).

Neo-functionalism in the early years has been criticised for not regarding the influence of the nation-state in shaping integration due to its predominant focus on the role of autonomous supranational institutions in driving the integration process. As a result, neo-functionalists are criticised for ignoring the prominent role of intergovernmentalism in the integration process as both a shaper of integration and an inhibitor of federalism. Phillip Schmitter has argued that neo-functionalism lost its place in the post-Maastricht era (see Bickerton et al, 2015b:14) due to the reluctance of member-states to further empower supranational institutions. However other scholars have made attempts to apply it in the post crisis era c.2007 to explain the move toward intergovernmentalism in managing economic governance (see Ioannou, et al, 2015; Niemann & Ioannou, 2015; Schimmelfennig, 2014; Tortola, 2015).

The following tables provides an overview of some of the policy areas and institutional developments over the course of EU integration which can be analysed from a neo-functionalist perspective.

Table 2.1 EU Treaties Expressing Neo-Functional Characteristics

Treaty of Paris (1951)	Independent High Authority to manage supranational coal and steel policy.
Treaties of Rome (1957)	Development in community policy. Incorporation of atomic energy policy and common market rules relating to common policy areas.
Maastricht Treaty (1992) Single European Act (1986)	Enhanced powers for European Commission and European Parliament; QMV in Council of Ministers with shared decision making procedures with European Parliament (co-

	decision procedure); Commission gains policy oversight with the European Parliament (consultation procedure). Single market created; four freedoms enhanced; currency union created and plans for an independent European Central Bank.
Amsterdam Treaty (1997)	Enhancement of community wide policy to deal with workers' rights. European Social charter implemented. Extended interest in elevating second and third pillars of European policy (Foreign Affairs & Justice and Home Affairs)
Nice Treaty (2002)	Enlargement of European Parliamentary seats in response to European enlargement; creation of subsidiary courts in autonomous European Judicial branch; new rules to enhance further cooperation in policy areas; rules to balance member-state representation in the European Commission; new policy areas extended to European Commission and European Parliament. Foreign Affairs and Justice and Home Affairs given extensive consideration.
Lisbon Treaty (2009)	European Council becomes officially recognised as an EU institution with a permanent president. Creation of High Representative of Foreign Affairs. Increased role for national parliaments in EU decision making process. Formation of a diplomatic service; number of policy areas added to community method of decision making increased.

2.2.2 Federalism

Federalism, unlike neo-functionalism is a theory of integration that portrays some form of clear cut constitutional end regime to integration (see Elazar, 1995; Rosamond, 2000; Burgess 1989). This is usually (but not necessarily) in the form of a federal-state system or federation. The federal-state entails a clear constitutional separation of powers between the multi-tiers of governance, as well as a defined system of federal government where powers are shared between the main institutions of power through power balance i.e. the intergovernmental institution is not superior, nor is it subordinate to the autonomous institutions of the federal state. In essence it is a democratic arrangement with links between different levels of government (see Chryssochoou, 2001). A system of integration can have federalist characteristics without being a federal state. The EU is a clear example of this phenomenon (see Burgess, 1996; Castaldi, 2011) where it is not characteristically a federal-state, but exercises federalist characteristics e.g. a common court, a semi-autonomous executive, an autonomous parliament and a senate like Council representing territorial (national) interests (see Burgess, 1989; Burgess, 1996). Federalism in the EU has been criticised by neo-functionalists. Harrison argues that federalism in Europe is ‘‘*merely the prospect of the unattainable’’* (see Chryssochoou, 2001:47). Harrison argues this due to the ever existing interests of nation-states and their desire to preserve national sovereignty and control the extent of supranational building in terms of monitoring the roles of the EU’s autonomous and semi-autonomous institutions. It is from this that the powerful European Council structure in decision making processes is empowered further over time. A similar criticism has been held toward the neo-functionalists by constitutional federalists with regards to EU integration as discussed previously.

2.2.3 Confederalism

Confederalism is structurally and institutionally different to federalism, though a similar principle applies. Namely the sharing and separating of power remains, but power transferal is not constitutional and the extent of power transferal is limited. The majority of power rests at the [nation] state level. Thus the national (federal)

level of governance is subordinate to state (regional) level (Chryssochoou, 2001) with power transferal carefully managed and transferred only when necessary. A federation typically has separate institutions that will be autonomous above the state. A confederation on the other hand often works predominantly on the basis of intergovernmentalism. The purpose of confederation is to create a flexible union of interdependence and peace without overstepping national sovereignty, whilst federalist/federal institutions require parts of national sovereignty to be reduced for the system to be effective. The EU today demonstrates confederal characteristics. Although it has autonomous and semi-autonomous institutions above the nation-state with delegated powers, its intergovernmental (territorial) branch wields increasingly significant powers which shift the balance of power away from the autonomous and semi-autonomous branches toward the member states (see Bulmer 1996). The theory of new intergovernmentalism recognises this. The EU retains a series of legal treaties reflecting constitutional properties. Attempts to create an EU constitution in 2004 were rejected in Europe. Rejecting an EU federation, in turn reiterated the desire to maintain the EU's current form which is neither a federation nor a confederation, but a mixture of both. Europe's treaty culture builds on its neo-functional background which preserves its confederal character contributing to the supranational *cum* intergovernmental entity. From a neo-functional perspective, confederalism as a starting point is considered to be processes toward federation building; a process that is recognised by federalist scholars with regards to the EU (see Castaldi, 2011). A close evaluation of the Schuman plan implies as much despite its neo-functional principles (see Burgess, 2011).

2.2.4 New Institutionalism(s)

New Institutionalism is a theory of governance. The theory and its variations are behaviour based theories mapping the relationship between actors and institutions in relation to decision making processes. It is less about how policy actors shape institutions, but more about how established institutional norms and values shape policy actor behaviour and therefore policy outcomes in turn (see Bache et al, 2015:26). It conflicts with liberal intergovernmentalism in that liberal intergovernmentalism places emphasis on the roles of state actors as architects of

decision making in institutions and how they control and in turn maintain control over policy making rules and norms. Alternatively, new intergovernmentalism does not ignore that institutions are shaped by actors, but recognises that institutional rules and norms can organically develop and in turn influence the policy choices and outcomes of negotiating actors. New-Institutionalism is divided into three main theoretical strands which are discussed as follows (see Rosamond, 2000).

Rational Choice Institutionalism: This theory contributes to understanding how institutional rules and norms not only constrain how policy making actors seek their preferences in EU's institutions (see Bache et al, 2015:26-28), but how policy making actors respond to these constraints and find new ways of meeting their preferences in a strategic manner. Actors seeking preferences will attempt to act in a way that maximises those preferences, but may be limited in their actions by the formal rules of the institution they are working through. A clear example is Qualified Majority Vote (QMV) in the Council of Ministers. For example, QMV (when formally applied) limits the extent to which small EU member-states who seek the *status quo* can assert their preferences for the *status quo*. As QMV eliminates the veto, member-states use other strategic methods to meet their preferences, such as seeking support within the European Parliament or the European Commission i.e. by using opportunity structures (see Bunse et al, 2005, Cross, 2012; Gron & Wivel, 2011; Laffan, 2014; Panke, 2008; Panke,2011; Schure & Verdun, 2008; Tallberg, 2008; Thornhallson & Wivel, 2006). The theory is associated with the *principal-agent* theory whereby supranational institutions (the agent) become empowered by intergovernmental bodies (the principal) enhancing supranational influence in EU policy making. An example is the extension of co-decision to the European Parliament and consultation to the European Commission in the 1986 Single European Act (SEA) which gave the European Parliament an added role in Community Method decision making alongside the Council of Ministers (co-decision) and a shared responsibility between the European Commission and European Parliament in the decision making process (consultation) in terms of policy review.

Historical Institutionalism: Unlike rational choice institutionalism which explores the relationship between institutional rules and norms and strategic actor behaviour, historical institutionalism seeks to explain how institutional rules and norms shape and explain actor behaviour as a historical process which is repetitive over time i.e. how actor policy making behaviour becomes reproduced time again due to institutional constraints. The theory is based on path dependency (see Bache et al, 2015:28). For example, the weak institutional design surrounding the structures of the Economic and Monetary Union (EMU) (see Glencross, 2014; Lane, 2009; Verdun, 2015) contributed to the Eurozone crisis. Lacking a consolidated banking or fiscal policy, whilst having a monetary policy which did not apply to all EU member states made responding to the crisis difficult from a community wide perspective. Member-states had to respond to the crisis in a new intergovernmentalist way outside the traditional EU treaty making processes. The ways in which the European Financial Stability Facility (EFSF), Fiscal Stability Treaty, European Stability Mechanism (ESM) Treaty, and even Banking Union have been created due to the underlining institutional limitations in the EMU is a reflection of this (see Verdun, 2015).

Sociological Institutionalism: Sociological institutionalism relates to the constructivist school of thought. It is based on *cultural norms* within institutions and how these cultural norms influence behaviour and actor policy making choices. Institutions are believed to determine actor preferences and identities (see Bache et al, 2015:29; Cryssochoou, 2001:117). Actors in their pursuit of preferences socialise their preferences around common goals which the institution facilitates. Institutions are seen as providing legitimacy to decision making and providing a legitimate forum for actors to work together (in pursuit of common interests). An example of this is how even though the Fiscal Stability Treaty negotiations did not have formal rules to direct actors and the negotiations relied heavily on deliberation through open methods of coordination, actors to still agreed to extend a role for national parliaments in future fiscal policy negotiations. This in turn legitimises the role of the citizenry in future processes, as well as the democratic quality of the decision making process.

2.2.5 Multi-level Governance

''It is hypothesized to be an organization in which the central executives do not do all the governing, but share and contest responsibility and authority with other actors, both supranational and subnational''

(George, as cited in Bache and George, 2015:38)

Multi-level governance (MLG) (see Chryssochoou, 2001; Rosamond, 2000) is less a theory and more a model of explaining power sharing and representation between multiple tiers of governance (see Murphy, 2011). MLG helps us to assess the complex modes of political interactivity and representation amongst governmental and even non-governmental forces that shape public policy between political tiers. MLG is therefore widely associated with federalist or confederalist style political systems due to their multi-tiered nature. The model brings attention to the overt separation and sharing of powers within such political models while highlighting the various channels of political interactivity and representation between governing and non-governing bodies between such tiers. Common tiers under analysis include the local, regional, national and even supranational levels of governance. The model holds that as levels of political interactivity and representation enhance between the various tiers, this suggests a ''*loss of authority at the state level''* (Murphy, 2011:554). However, this does not take away from the leading position of the nation-state, particularly in the EU decision making.

The MLG holds three main tenets:

(1) Decision-making competences are shared by actors at different levels, rather than monopolised by state executives.
(2) Collective decision-making among states involves a significant loss of control for individual state executives.
(3) Political arenas are interconnected, rather than nested.

(Murphy, 2011:553)

In the EU, the complex interaction between tiers of governance during times of policy/treaty decision making calls for greater interactivity and policy negotiation between the tiers. While national executives are core to this process due to their political roles in negotiating EU policy, bureaucracy is also a central component of MLG due to their role in trans-governmental networking (See Thurner and Pappi, 2013) and policy brokerage on behalf of governments. Like political roles, the role of bureaucracy in MLG is ever more important in contemporary intergovernmental treaty/policy making in the EU. Reflecting on the Fiscal Stability Treaty as created under the Union Method, bureaucratic activity has become an important focus point regarding MLG due to the role of bureaucrats in seeing the treaty agreed on behalf of their national governments through complex webs of interactivity. As with any federalist style system, bureaucrats play a major role in assisting their respective executives by coordinating policy between the tiers of governance helping in the achievement of compromise over common policy interests.

From a parliamentary/assembly perspective, MLG is useful for assessing representation by looking at the role that national or regional parliaments/assemblies play in the EU and how they scrutinise or even shape EU policy. With the Lisbon Treaty, the role of national parliaments has received greater recognition in the EU policy making process. This suggests an enhanced democratic decision making process taking place between political tiers beyond the confines of national executives in closed door EU institutions and indicates greater levels of multi-governmental representation in the EU policy making process. With the increase in federalism and devolution across EU member-states throughout the last century, the complexity of decision making in the EU has increased. MLG is becoming an ever more important lens for studying the patterns of political interactivity which are becoming more complex and multi-faceted. This is becoming ever more noticeable with the increasing number of autonomous regions, or growing level of autonomy in existing regions across the EU such as Northern Ireland, Scotland[22] and Catalonia who are calling for greater clarity in their relationship with the EU. As the tiers of governance become more complex across the contemporary EU, questions arise

[22] In particular, Scotland is showing significant concern with regards to its relationship with and representation in the EU in the aftermath of Brexit on the 23rd June 2016.

regarding political and economic representation and accountability amongst such regions (see Murphy, 2011).

Each of the above theories are as useful today as they were at the time of their development aiding explanation of EU integration and governance. No one theory alone can explain integration or governance in the EU. In textbook terms the EU is a *sui generis* entity. It has no clear familiar definable form.

2.3 Intergovernmentalism in the EU

Intergovernmentalism has been a dominant interpretation both theoretically and procedurally throughout the European Integration process. Developing from a neo-functional blueprint outlined by the Monnet Memorandum and later, the Schuman plan (see Burgess, 2011), the European Economic Community (EEC) became characteristically intergovernmental as the incremental route to integration paved the way for the nation-state to secure hold on the reigns of European integration. With the Treaties of Rome (1957) decision making power moved away from the supranational High Authority originally empowered with executive responsibility in the Treaty of Paris (1951) to the intergovernmental Council of Ministers as policy areas became more numerous and complex. From the Treaties of Rome (1957) to the Brussels Treaty (1965), each of the three communities (ECSC, EURATOM and EEC)[23] had a powerful intergovernmental Council of Ministers of their own to do their bidding. The Brussels Treaty (the Merger Treaty) assimilated the three communities and created one compact set of governing institutions. Even then the Council of Ministers remained in a dominant legislative position aside the European Commission which merely retained the power to propose policy, rather than determine policy outcomes. The European Parliament retained the relatively weak

[23] The ECSC, EURATOM and the EEC comprised of three separate communities with their own decision making institutions in the Treaties of Rome (1957) prior to being merged in one single community with one set of governing institutions in the Brussels Treaty (1965). The European Coal and Steel Community (ECSC) dealt with matters relating to production and distribution of coal and steel throughout the community. EURATOM dealt with the production and distribution of nuclear energy throughout the community and the European Economic Community dealt with matters relating to trade and competitiveness with provision relating to funding, exchange rates and free movement of goods, services and people associated with the certain areas of production.

and uninfluential power labelled *cooperation* which had little legislative influence. The structural-realist undertones of Hoffman's intergovernmentalism is marked with the empty chair crisis in 1969 which highlighted the nature of self-interest maximisation amongst council members and the shortcomings associated with unanimity voting. The empty chair crisis highlights the constraints which unanimity placed on decision making amidst diverging interests and how influential it is in terms of maintaining the *status-quo* or producing lowest common denominator (LCD) outcomes. Even though the empty chair crisis was not the product of a formal vote, it still represented an effective veto on part of the French under President de Gaulle.

During the 1970's, intergovernmental representation developed further with the creation of the European Council in the 1975 European summit in Dublin. This addition of an intergovernmental watchtower reflected the importance of intergovernmental regulation over the integration process during a time of relative stagnation and collective concerns for the future of the European Community. The European Council proved in later years to be an important catalyst in the integration process, particularly in the post-crisis era (c.2007/2008). After nearly two decades of policy stagnation in the community and the signing of the Single European Act (SEA) in 1986, the EEC prepared for a transition to economic and political union with changes in the roles of governing institutions, thus enhancing the legitimacy and accountability of the EU's supranational institutions. The Council of Ministers was subject to changes, but with little or no reduction in its powerful role in EU legislating (see Burgess, 1996). The implementation of QMV in the Council of Ministers coincided with the co-decision procedure in the European Parliament. This can be seen as a neo-functional response to policy stagnation in the years preceding the 1990s. It is representative of a move away from unanimity voting and vetoes in the council toward *''enhanced procedural consensus''* (see Burgess, 1996) influenced by QMV and the role of the European Parliament in policy making under the Community Method of EU decision making.

The single market created by the Maastricht Treaty required increased oversight from the EU's supranational institutions due to the complexity of further policy areas

associated with the single market e.g. welfare regarding economic migrants and workers' rights etc. which were essential due to enlargement. However, the Council of Ministers and its intergovernmental character maintained its position as a leading institution in delivering policy through pareto-efficient bargaining influenced by QMV. This in turn preserved the council's role and facilitated further integration. Reaching consensus through informal means is preferable for EU member-states, rather than creating policy through formal voting methods (see: Hayes-Renshaw; Aiken & Wallace, 2006). However, liberal-intergovernmentalism is highlighted by decision making within the Council of Ministers, particularly over everyday policy making procedures through the Community Method. The EU's Community Method does not always follow formal voting rules, but continues to work against a backdrop in which formal rules can be applied at will by actors.

With the Maastricht Treaty's pillar structure came the path for new intergovernmentalism which developed with the second and third pillars regarding Common Foreign Security Policy and Justice and Home Affairs. This was also applied to economic governance as marked by the implementation of the Stability and Growth Pact (SGP) as a means for some form of fiscal oversight between EU member-states. The Maastricht Treaty reformed the Community Method (see Wallace et al, 2015), but it also marked the beginning of new modes of EU governance guided solely by the European Council for the purpose of dealing with *sensitive* policy areas of national interest that may require hard law creation for their secure establishment. An example of this is the hybridisation of the Union Method working through informal and often deliberative decision making procedures to create treaties of extra-EU nature (see Bickerton *et al*, 2015b).

2.3.1 Classical Intergovernmentalism

Intergovernmentalism as a theory of European integration developed from the works of Stanley Hoffman (1966). Intergovernmentalism is rich in structural-realist [behavioural] undertones and differs considerably from contemporary intergovernmentalist accounts in EU studies since the early 1990s. Hoffman's intergovernmentalism developed against the backdrop of the Cold War. This

backdrop connected intergovernmentalism with the school of international relations theory (see Baylis *et al*, 2014) which was rich in realism and rational choice behaviourisms. International pressures were seen as a driving force in developing security communities, but unlike the neo-functionalists, the intergovernmentalist's observed the rational behaviour of nation-states regarding European integration as a product of diverging economic interests mixed with international pressures to mutually coordinate policy. Thus, Hoffman's intergovernmentalism regards the dominant role of the Council of Ministers at this time as a place for member-states to manage and preserve national sovereignty (via unanimity) whilst constraining the actions of others (through the veto) and maximising economic self-interests whilst reconciling international pressures to integrate as a security community in a volatile bi-polar international sphere. At this time, the rationale for integration and the creation of institutions beyond the nation-state was a security measure to create credible commitments influenced by international pressures to facilitate domestic welfare interests which mimicked a confederation-like form of European integration.

Hoffman's understanding of intergovernmentalism was drawn from neo-realist political behaviour. This is seen in the context of the unanimity orientated Council of Ministers with its veto culture that carefully regulated the supranationalisation process. However, Hoffman's intergovernmentalism has been relatively diluted to incorporate progressive changes in intergovernmental governance in the EU. This can be seen with the recognition of domestic forces (see Putnam, 1988) and the roles they play in shaping national preferences and holding European counterparts to account in the Council of Ministers (see Bulmer, 1983). Intergovernmentalism as associated with the contemporary EU has evolved to incorporate the enhanced influence of supranational institutions, as well as domestic forces in inter-state negotiations; something which the neo-realism of Kenneth Waltz (1979) tends to treat only lightly in international relations theory. Of course the neo-realist perspectives of Kenneth Waltz are significantly different to neo-realist style activity in the EU in how it is applied contextually. It is from where Robert Keohane derived his concept of the EU's intergovernmental dimension (Council of Ministers) as a *'modified structural realist'* approach to EU integration (see Moravcsik, 1991:21). Keohane recognised the role of supranational and domestic forces in the EU

intergovernmental dimension. In Hoffman's intergovernmentalism, bureaucratic agencies are considered facilitators of the process, but greater emphasis is placed on the role of the *state actors* in determining the delegation of powers to other institutions, controlling the extent of supranational institutional structures and maintaining the superiority of Council of Ministers (Hoffman, 1966:909). Hoffman's intergovernmentalism can be seen as dismissing the role of neo-functionalism in explaining supranational building. Whilst neo-functionalism speaks of exogenous and endogenous pressures leading to spill-over, Hoffman's intergovernmentalism regards supranational building as controlled by nation-states and their security interests, not just abstract pressures in the international market. The recognition of the domestic level in determining EU activity influenced later adjustments to intergovernmentalist theory in response to the creation of the single market and the enlargement process. Intergovernmentalism remained a dominant feature in EC decision making. Intergovernmentalism preserved the role of the member-state in decision making which was ever more important to member-states as the community became more complex and policy areas deepened. The formal voting rules of the Council of Ministers at the peak of Hoffman's intergovernmentalism centred on unanimity voting which facilitated the equalisation of influence between small and large states, as well as preserved national sovereignty and controlled the further transfer of powers to a supranational centre. It is from unanimity that the realist undertones derive. Unanimity influences lowest common denominator (LCD) bargaining often leading to outcomes closest to the *status-quo* (see Moravcsik, 1991; Moravcsik, 1993:501). This proved a constraint on the full potential of integration especially in times when progressive responses were needed to avert crisis events.

2.3.2 Intergovernmental Institutionalism

Intergovernmental institutionalism (see Moravcsik, 1991) paved the way for the development of liberal intergovernmentalism (see Moravcsik, 1993; Moravcsik, 1998) as a means to understand pre-Maastricht intergovernmentalism in the EC. It differed to Hoffman's theory in that it assumed member-states bargained for policy outcomes, whilst remaining aware that a veto can be used at their discretion. It is less neo-realist in its assumptions about EU council negotiations and bargaining. It holds

that larger member-states in particular were instrumental in preserving national sovereignty in the EC and in maintaining the member-states role in the integration process. This was done not through the veto culture, but through the concession seeking culture. In the pre-Maastricht era formal rules based around unanimity determined decision making in the council. As smaller member states who were sceptical of the interests, influence and relative power of larger member states could use the controversial veto, integration could be effectively inhibited if smaller member-states sought the *status-quo* as a means to preserve their influence and interests (see Slapin, 2008:138; Tallberg, 2008:694-696). In this sense, larger member-states bargained and offered concessions to secure the support of small member states (perhaps those closest to the *status quo*) that may avail of the ever existing veto. It is assumed that if concessions are attractive enough, small member states may be willing to part with some minor preferences. However, having the veto at their disposal, combined with the likelihood of them using the veto, they had the ability to essentially affect the full potential of policy output. Thus, policy output and integration itself only progresses marginally in theoretical terms. This theory assumes integration progresses due to the efforts of larger member-states to offer concessions, but it also recognises that nation-states remain at the forefront of integration and a lowest common denominator (LCD*)* outcome to policy creation is prevalent. This is especially true were the policy outcome remains closest to the status quo (despite secured concessions) due to the potential use of a veto by a dissatisfied member-state. This LCD outcome inhibits the full potential of the integration process as small member states can still threaten the use of the veto to bring policy output closest to their own interests, even though they apply liberal bargaining practices in their concession seeking.

The three main tenets of intergovernmental institutionalism are:

1) The institution is *intergovernmental.* Thus, it incorporates inter-state cooperation.

2) It introduces *Lowest Common Denominator* (LCD) bargaining between states. This helps to incorporate all parties' interests to ensure the achievement of collective gains, even if minimalist in outcome.

3) It places strict limits on future *transfers of sovereignty* regulated by large states in the intergovernmental environment.

(see Moravcsik, 1991:25)

Under pre-Maastricht conditions, these tenets helped shape what the intergovernmental forum constituted and what they aimed to achieve. However, as mentioned previously, the theory soon adjusted with the structural and institutional changes brought forth with the Maastricht Treaty c.1992 and the move toward further integration which took a supranational turn with the crystallisation of the Community Method. This increased the roles for the European Commission, European Parliament and the European Court of Justice. Intergovernmental institutionalism focusing on a *lowest common denominator* (LCD) (see: Meunier, 2000; Scharf, 1988; Tseblis and Hahm, 2014) bargaining procedure is only sufficient when one considers unanimity voting in the EU's intergovernmental institutions. Accepting the lowest possible policy outcome where all member-states break-even is strategically preferred under intergovernmental institutionalism, where the state with the *status-quo* can effectively use a veto which could obstruct policy output. Taking the example of France's abstention from the Council of Ministers with the empty chair crisis demonstrates an effective veto where one state was not satisfied and sought the *status quo.* However, as unanimity is rarely used in the EU (see Hayes-Renshaw et al, 2006) or extra-EU decision making practices, the theory is less relevant today.

2.3.3 Liberal Intergovernmentalism

The Maastricht Treaty transformed intergovernmentalism to accommodate the radical structural changes across EU institutions which watered down intricate intergovernmental behaviour under old formal constraints associated with unanimity voting. The Maastricht Treaty introduced a less stringent Qualified Majority Vote (QMV) in the council, reserving unanimity voting only in special cases and in intergovernmental conferences (IGC's) (see Thurner & Urban Pappi, 2013). Co-

decision and consultation procedures for the European Parliament and the European Commission respectively, have added an extra dimension which can dilute the strength of intergovernmentalism in EU policy making due to the relatively more Europeanised characters of these institutions. Although, the intergovernmental branch (Council of Ministers) still remains relatively more influential in terms of overall policy output due to its dominant legislative role (see Napel & Widgen, 2006; Thomson & Hosli, 2006). The influence of supranational institutions in the EU enhanced even though the influence of larger EU member-states remained relatively more powerful in the Council of Ministers, as voting was subject to formal rules based on population size reflected in voting weight. With the accession of many new smaller EU member-states, questions have been asked about the changing power dynamics between small and large EU member-states due to a higher number of smaller EU member-states in the union, and the possibility of coalition building (mechanically and/or numerically) (see Thorhallsson & Wivel, 2006). However, whilst the influence of larger EU member-states generally deepened, this was not at the cost of the smaller EU member-state due to the style of bargaining culture that emerged with such changes. Increased supranational influence and the roles of domestic bargaining forces proved useful to smaller EU member-states constrained by lower voting weights. As Panke (2012) has argued, small EU member states do *''punch above their weight'',* when they discover ways to do so. These factors were further enhanced by the general norm of informal decision making (consensus based decision making) that is preferred to informal voting processes under QMV.

From the early 1990s, Moravcsik employed the *liberal* approach to understanding intergovernmentalism subsequently labelled *liberal intergovernmentalism* in the post-Maastricht EU. Regarding supranational forces and their increased influence and adopting two level games concepts, Moravcsik recognised that the actions of national ministers in the Council of Ministers were influenced, constricted, and in some ways, positively facilitated by domestic and supranational forces. These forces act as political opportunity structures or means to achieve grand bargains by constraining the actions of larger negotiating counterparts, in turn, achieving influence in negotiations. The actions of state actors reflect the interests amongst forces within their own nation-states which significantly reshape the practice of

inter-state bargaining over commercial interests. Liberal intergovernmentalism as a theory catered for activity in the Council of Ministers particularly around commercial interests i.e. decision making on competition in the single market and reconciling power and interest asymmetries. Thus, it is well equipped to explain Community Method decision making on matters of the single market. However, it did not take into consideration decision making on more crucial issues with implications for national sovereignty, such as matters relating to the second and third pillars of the EU structure.

The theory focuses on a process of grand bargains in preserving the role of the nation-state in decision making with limited transfer of powers to supranational bodies (Puetter 2014a: 95). However, it did recognise the empowerment of supranational bodies when necessary i.e. in times of crisis and other exogenous pressures. While it is not fully sufficient for explaining decision making activities in institutions outside the Community Method, its recognition of the roles that domestic forces play in enhancing negotiating influence can be incorporated into the new intergovernmentalist and deliberative intergovernmentalist schools of thought. Although, the ways in which such opportunities are used are less structural-realist in these latter theories. While liberal intergovernmentalism is institutionally and procedurally different to new intergovernmentalism, this thesis argues liberal-intergovernmental insights regarding preference formation and bargaining procedures are an important starting-point for understanding how preferences are formed and how the roots of national preference formation are useful opportunity structures, even in less formal decision making practices such as the Union Method of EU treaty making. In this sense, liberal Intergovernmentalism helps fill in a gap of knowledge about inter-state bargaining and concession seeking that the deliberative intergovernmentalism of Uwe Puetter fails to articulate effectively.

With institutional changes in the Maastricht Treaty, liberal-intergovernmentalism emphasised intergovernmental negotiations based on two level games (see Putnam, 1988), in which inter-state bargaining draws upon opportunity structures stemming from *domestic forces* (national electorates, lobby groups, civil society organisations, domestic ratification procedures) as well as *supranational institutions* such as the

European Commission, European Parliament, comitology groups, individual supranational actors etc. (see: Bulmer, 1983; Moravcsik, 1993; Moravcsik, 1998; Arregui & Thomson, 2009; Huelshoff, 1994; Hug & Konnig, 2002; Cross, 2012). Drawing upon these forces helps mediate influence amongst different EU member states with different strengths (level of influence) to reach a pareto-efficient balance in bargaining i.e. the outcome reflects the influence that EU member-states can effectively assert based on bargain resources. EU member-states (especially smaller EU member-states) identify useful constraints and apply those constraints in bargaining processes to leverage their positions and gain greater concessions from larger counterparts. In turn, they preserve their own autonomy and aid limitation of the further transfer of competences to supranational institutions without harming policy output and integration potential in itself. This process also acts as a measurement to examine under what conditions (opportunity structures) a small EU member-states voice is enhanced and under what conditions larger EU member-states are willing to accept that voice in negotiations. This adds a neo-realist dimension to inquiry into EU member-state bargaining behaviour (see Grieco, 1995:40). In liberal intergovernmentalism, formal voting is the *modus operandi* theoretically speaking, and although power remains in the hands of larger EU member-states, the influence of small EU member-states is enhanced as QMV influences creative hard bargaining practices which leverage small EU member-states negotiating position. Although large EU member-states could out-vote smaller EU member states by merging votes, this is often avoided in favour of consensus (see Hayes-Renshaw et al, 2006). In reality, QMV as a formal process which entices bargaining, generates informal decision making processes (on the basis of consensus) which allows smaller EU member-states to identify and utilise opportunity structures to achieve greater concessions that they otherwise would not achieve if QMV was applied. As seeking the *status-quo* through the use of a veto is not an option, the policy outcome moves away from any EU member-state endorsing preferences closest to the *status quo*. Thus, a *pareto-efficient* outcome emerges whereby integration is progressive and both large and small EU member-states achieve more than a mere LCD outcome. To reiterate, the theory builds upon the rationale of Robert Putnam's *two level games* metaphor (see: Putnam, 1998) which still influences intergovernmentalist thought today. As integration progresses further

toward a more quasi-federal entity, institutions change in turn. Although institutional change came about and supranationalism was and is further enhanced, intergovernmentalism as a leading dimension of EU decision making remains.

''The intention is not to deny or ignore the competitive dimension of intergovernmental decision-making. Yet deliberative intergovernmentalism is about identifying specific formal and informal mechanisms for dealing with and taming potential conflict so as to avoid decision-making deadlock and lowest common denominator solutions''

(Puetter, 2014a:60)

Liberal intergovernmentalism holds the following three tenets:

1) National preference formation is influenced by *domestic forces.*

2) Inter-state bargaining is reached by *pareto-efficient* bargaining (not LCD bargaining).

3) Intergovernmental institutions are directed by EU member-states working through formal voting rules as a means to preserve the sovereign role of nation-states in the EU.

(Moravcsik, 1998:21)

These assumptions build upon *intergovernmental institutionalism* and are based on the understanding that intergovernmental institutions (particularly the EU's Council of Ministers) are forums of national preference bargaining between EU member-states who draw upon domestic (and supranational) bargaining forces (i.e. opportunity structures) to assert negotiating influence and to hold negotiating counterparts to account. Domestic and supranational bargaining forces include winning support of national governing coalitions, national parliamentary support, pressures from commercial interest/lobby groups and/or pressure groups, domestic ratification procedures such as national referendums or acts of parliament, EU

Parliamentary and European Commission networks and cross national bureaucratic networks etc. (see: Bailer, 2009; Cross, 2013). Liberal intergovernmentalism also assumes that larger EU member-states such as Germany and France, based on their relative economic/financial capabilities are in a superior position of influence (see: Tallberg, 2008) which further facilitates formal voting rules such as Qualified Majority Vote (QMV) due to population rate and voting weight correlations. However, in reality QMV generates a more informal process of bargaining and small EU member-states do punch above their expected weight. As integration becomes ever more complex, liberal-intergovernmentalism recognises the important role of bureaucracy in facilitating policy negotiation and balancing interests which helps further integration (see: Thurner & Urban Pappi, 2013); a characteristic embedded in the new intergovernmentalist and deliberative intergovernmentalist schools of thought.

2.3.4 New Intergovernmentalism

''The term new intergovernmentalism refers to the system of decentralised decision-making structures and intergovernmental policy coordination that characterises the policy process in these policy domains instead of legislative EU decision-making. The new institutional arrangements attribute a key role to member states' governments, which prefer to repeatedly come to collective agreement on individual policy initiatives and their implementation rather than delegate ultimate decision-making competences to the Commission''

(Puetter, 2014b:20)

New intergovernmentalism explains the institutional and structural qualities of contemporary EU intergovernmental decision making processes in the post-Maastricht era regarding the so-called nationally *sensitive* policy areas such as CSDP, JHA and even economic coordination and governance in the EMU (see Bickerton et al, 2015b; Puetter, 2014a). As a developing approach to understanding contemporary intergovernmental decision making in the EU, it works under six hypotheses (rather than tenets) that drive analysis when applied to cases under analysis. The hypotheses are as follows:

1) Deliberation and consensus are the guiding norms of day to day decision making at all levels.

2) Supranational institutions are not empowered to further the integration process.

3) Where deliberation and governance occur, *de novo* bodies usually direct the process.

4) Domestic preference formation constraints are 'stand-alone' inputs into the integration process.

5) High and low politics has become blurred.

6) The EU is in a state of disequilibrium.

(Bickerton et al, 2015b: 28-39)

New intergovernmentalism is an approach to understanding a new mode of governance in the EU emerging predominantly in relation to the second and third pillars of the EU (see Bickerton et al, 2015b; Puetter, 2014a). *''...the episode of the economic crisis is only the most recent example of an institutional dynamic referred to above as new intergovernmentalism''* (Puetter, 2014b:23). New intergovernmentalism (see Bickerton et al, 2014; Bickerton et al, 2015b; Puetter, 2015) best explains the process of economic governance in the post-crisis era in the EU specifically when looking at cases such as the European Stability Mechanism (ESM) Treaty and the Fiscal Stability Treaty which were created through intergovernmental routes of decision making. The institutional structures that back dropped the Fiscal Stability Treaty and its negotiation process are explained using this theory in terms of institutional set-ups which frame negotiations between member-state governments. It is argued that Europe is in an *integration paradox.* Member-states seek further integration, but prefer to integrate outside the traditional EU methods (see Putter, 2012a:4) which have defined integration and governance in

the EU for nearly three decades. EU member-states are now opting for an open method of co-ordination (OMC) toward integration building.

In integrating further outside EU law, EU member-states resist the transferal of further competences to EU supranational institutions such as the European Commission, European Court of Justice and the European Parliament. The format of new intergovernmentalist integration is incremental and subject to crisis-leadership initiatives, and therefore takes a path of least resistance. New intergovernmental modes of decision making become that path of least resistance where sensitive policy areas require further integration. Although new intergovernmentalism is an ever growing phenomenon in EU decision making, it does not develop at a cost to traditional methods of EU treaty making or typical policy making procedures such as the Community Method in the EU. In terms of EU policy making, the Community Method is still a cornerstone of everyday legislating in the EU. The movement toward more intergovernmentalist approaches to decision making is not expected to harm decision making methods associated with the former first pillar. New intergovernmentalism merely explains a new branch of intergovernmental decision making practises that deal with policy issues that cannot be effectively reconciled through traditional treaty making processes (when treaties may be needed) or through EU policy making processes such as the Community Method.

‘‘*…. Rather, it is a new phase in European integration that has become entrenched and systematically reproduced in the two decades since Maastricht*”

(Bickerton et al, 2014:3)

With new intergovernmentalism becoming a prominent feature in EU decision making particularly in the post crisis era, national government leaders and their administrations (ministerial and bureaucratic) are taking more ownership of new policy areas in the EU. This is enhancing the scope of indirect representation of the European polity through the European Council. Subject to context, new intergovernmentalism is useful to explore and analyse some of the more recent integrative processes in the EU such as the 2012 Fiscal Stability Treaty the European

Stability Mechanism (ESM) Treaty, and even more recently the Banking Union in the EU (see Bickerton et al, 2014:2). *''…a one-size-fits-all approach to fiscal policy and structural reforms was economically and politically problematic. This concern for the differences between national models of capitalism made EU-level deliberative practices all the more essential''* (Bickerton et al, 2014:7). As the role of supranational bodies such as the European Commission, the European Court of Justice and even the European Parliament have been recently side-lined in the areas of economic governance, new bodies (*de novo* bodies) under the European Council have assumed direction over policy processes. Examples include: The European Financial Stability Facility (EFSF) and European Stability Mechanism (ESM), as well as unified banking agencies such as the Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM). Although the bureaucratic roles of specialist committees such as the Economic and Finance Committee (EFC) and Eurogroup Working Group (EWG) play leading roles in brokering policy on behalf of their national leaders in the new intergovernmentalist process, traditional Council of the European Union formations adopted by new governance structures such as ECOFIN and the Eurogroup still play important deliberative roles when it comes to new intergovernmentalist policy making processes. Their roles add a potent and often informal political dimension to a process that is bureaucratically shaped at lower levels.

Although liberal intergovernmentalism is not fully sufficient for explaining contemporary decision making processes regarding Euro area governance due to its association with more formal modes of intergovernmental decision making such as the Community Method policy making in the EU, it does provide some useful insights into new intergovernmentalist decision making processes. This is seen in terms of how national preferences are formulated and how domestic forces influence EU decision making processes and leverage member-states, particularly small member-states like Ireland. Whilst liberal-intergovernmentalism contributes valuable knowledge to contemporary intergovernmentalist perspectives in terms of preference formation and bargaining, new intergovernmentalism treats the forces of bargaining in a less structural-realist fashion. The pressure to coordinate critical policy areas relating to economic governance in the Eurozone requires deliberation amongst

members due to the structural and institutional qualities it possesses i.e. no formal voting rules such as unanimity. New intergovernmentalism brings about *open methods* of decision making which come in the form of deliberation in order for EU member-states to reach consensus. Formal methods of decision making are not a prominent feature of this decision making process, thus the practice of bargaining is different by proxy. This leads toward the concept of deliberative intergovernmentalism which is a complimentary theoretical approach to the new intergovernmentalism.

''Because LI is a theory of integration, it offers no specific propositions to account for the crisis as such. The EA's [Euro Area's] responses to the crisis, however, can be explained plausibly as a result of inter-governmental bargaining based on partly converging and partly diverging member state interests and designed to strengthen the credibility of member state commitments to the common currency''

(Schimmelfennig, 2015a:178)

Frank Schimmelfennig (2015) offers a liberal intergovernmentalist perspective of the Euro area crisis in relation to the response Euro area member-states took in negotiating bailout policies. Schimmelfennig argues that there was a clear liberal intergovernmentalist dimension to how EU member-states responded when negotiating their national preferences centred on preserving the euro through fiscal convergence. Firstly, Schimmelfennig argues that responses to the Eurozone crisis were predominantly German in influence i.e. Germany shaped the terms of the rescue in return for bailing out debtor countries. This indicates that Germany as a larger and more powerful member-state drove the negotiation process and had more influence by proxy of its relative economic stability in the Eurozone. Tallberg (2008) notes similar patterns in thought around the role of large EU member-state capabilities as driving negotiation processes. A body of literature also relates to the member-state divide (based on economic size) and relative state power in intergovernmental arrangements (see: Laffan, 2007; Panke, 2008, Vandenbosch, 1964; Thornhallson & Wivel, 2006) which has been used to state the case for Ireland during the Fiscal Stability Treaty negotiations.

Secondly, Schimmelfennig argues that differences in influence can be seen as a result of the domestic effects that the banking, financial and sovereign debt crisis (see Congleton, 2009; Kinsella & Kinsella, 2009; Lane, 2012; Shambaugh et al, 2012) had on EU member-states and the effect that negative contagion would have on the Eurozone. This not only meant that there was differentiation of power and influence amongst Eurozone member-states, but that reaching consensus would be difficult and only achievable through hard bargaining via concession seeking in a liberal intergovernmental manner. Schimmelfennig argues that the crisis conditions within nation-states brought concerns over national welfare associated with austerity, which is a necessary product of the new fiscal guidelines. Economically weakened member-states as a result of the crisis who were concerned about austerity, but who recognised the value of further integration to protect the euro would integrate in so far as their national preferences were secure in order to avert potentially negative costs (see: Weber & Wiesmeth, 1991; Martin 1993 in Tseblis and Hahm, 2014).

The choice to integrate initially took a new intergovernmentalist character which in turn commanded a set of values and norms that shaped the way opportunity structures would be used, preferences were mediated and outcomes were met, which differed slightly but not completely from such ways discussed by the liberal-intergovernmental school of thought. It is true that winning concessions and achieving influence was less about strategic constraint and more about positive communication and intellectual argument facilitated by deliberative processes. However, this thesis argues that even amidst the liberal deliberative processes of inter-state bargaining, liberal-intergovernmentalism had a role to play. Although Schimmelfennig contributes a liberal-intergovernmental perspective to explaining the *creation* of the Fiscal Stability Treaty, and rightly so, he fails however to discuss the new intergovernmentalist perspective which holds a considerable degree of weight in terms of analysis and argument. Equally, scholars of new intergovernmentalism and even deliberative intergovernmentalism fail to give due regard toward liberal intergovernmentalism as providing insights into inter-state bargaining under the Union Method.

''In general, LI offers a plausible explanation of state preferences in the EA crisis. All EA countries were in favour of deepening economic integration to manage high actual and potential negative interdependence created by the debt crisis. They differed starkly regarding the preferred terms of integration, however, this difference was in line with their fiscal positions''

(Schimmelfennig, 2015a:7)

Institutional governance was different after the crisis. Economic policy coordination fell under a *sensitive* policy category because of its consequences for national economic sovereignty. Creating the Fiscal Stability Treaty was a crisis initiative process i.e. an integrative process influenced by crisis conditions, and thus, in some ways shares a neo-functional dimension due to its spill-over like nature. EU member-states chose to integrate further and create fiscal policy as a means to address some of the structural flaws in the EMU which exacerbated the crisis (see Creel et al, 2012). EU member-states were however only willing to integrate in so far as their sovereignty was preserved and member-states themselves coordinated the process. Different national preferences amongst EU member-states stemming from their domestic financial/economic activities (domestic political economy) pushed for a new mode of representation and accountability of EU member-states and their preferences at the EU level (see Bickerton et al, 2015b:146). This is how the integration paradox applies to this case. Substituting the European Commission and its comitology with national supervisors was seen as the best way to ensure national regulation and control in the negotiation process. New intergovernmentalism emerged as the chosen path to integration and fiscal coordination. In turn, the European Council and European Council President [as chair] led the project which was facilitated by borrowed institutions such as ECOFIN, which was aided by the Eurogroup which reflected the important role that Eurozone member-states played in the Fiscal Stability Treaty negotiation process. Below these borrowed institutional formations were specialist bureaucratic committees, such as the Economic and Finance Committee (EFC) accompanied by the Eurogroup working group (EWG). These three main tiers of policy brokering with a mixture of political and bureaucratic influences paved the way for the new treaty. Chapter 3 delves deep into

the institutional make-up that back-dropped the Fiscal Stability Treaty negotiations and highlights the new intergovernmentalist characteristics which inherently determined negotiation behaviour amongst actors.

Deliberation was key to the success of the Fiscal Stability Treaty negotiations. Deliberative intergovernmentalism became the *modus operandi* of decision making. However, this is not to say that domestic and supranational bargaining forces which are highlighted by liberal intergovernmentalism were not influential. On the contrary. Bargaining is always central to negotiations when national preferences diverge. However, deliberative intergovernmentalism shows us that while bargaining takes place and EU member-states (particularly small EU member-states) draw upon domestic and international opportunity structures for leverage, the opportunity structures are mediated in a way that is less strategically challenging or structural-realist in approach. Domestic constraints in one country are more often mediated through reasoned out and intellectual arguments to persuade counterparts of the necessity for certain preferences to be met, rather than subtly threatening and constraining larger counterparts, as one would expect in liberal-intergovernmentalist reasoning. The Fiscal Stability Treaty negotiations adapted this method and shows that open deliberation as a *modus operandi* to negotiating the treaty wielded pareto-efficient result for negotiators (see chapter 5). Whilst liberal intergovernmentalist bargaining strategy was identifiable, it was identifiable to a lesser degree in the treaty negotiations. The new intergovernmentalist structures surrounding the treaty, including the deliberative norms that drove the process, reshape our understanding of how the liberal-intergovernmental dimension applies to contemporary bargaining procedures outside traditional negotiation contexts. In turn, the principles that we learn about bargaining under liberal intergovernmentalism are reshaped and are brought more in line with the concerted and open action of contemporary intergovernmental negotiations discussed by scholars such as Bickerton *et al* (2015b) and Puetter (2012), as opposed to the structural-realist nature of Moravcsik's liberal intergovernmentalism (1998).

2.3.5 Deliberative Intergovernmentalism

''Deliberative intergovernmentalism is the umbrella term for an analytical framework which holds that the dependency on permanent consensus generation among member state governments in day-to-day policy-making within the EU's new areas of activity determines intergovernmental decision-making practice and thus the way the European Council, the Council, and related comitology processes function''

(see Puetter, 2014a:5)

Deliberative intergovernmentalism usually focuses on deliberation at the highest level of negotiation processes i.e. the Heads of State/Government in the European Council (see Puetter, 2014b). However, deliberation as a method of negotiation can be seen much lower down (see Puetter, 2014a:37) within relevant ministerial council formations such as ECOFIN and Eurogroup. It can even be seen lower down within the bureaucratically orientated specialist committees such as the EFC and EWG which house national senior level bureaucrats working on behalf of their national leaders in the European Council. This is where we expect to find the majority of formal negotiations and policy brokering (bargaining) over new areas of EU activity conducted. *''Thus, deliberative intergovernmentalism expects institutional engineering to reflect the consensus dependency of the post-Maastricht institutional structure at all levels of decision-making''* (Puetter, 2012b:8). It is at these lower levels that one may expect deliberative intergovernmental techniques to converge (to a lesser degree) with liberal-intergovernmental understandings in terms of the use of domestic forces as leverage in negotiation. However, the way they are used is of course deliberative (see Puetter, 2014b), rather than intentionally constraining as would be assumed in the liberal intergovernmental school of thought which places emphasis on using opportunity structures in a manner of hard strategic bargaining rooted in self-interest maximisation.

Deliberation, albeit an open method of decision making does not ignore the fact that member-states still have different preferences which do diverge. The difference lies in the *way* member-states use their opportunity structures to meet national

preferences. Are they used as a threat or constraint to leverage a state's negotiation position? Or are they used in a progressive manner via discourse and reasoning as a means to leverage negotiation position? These are the questions that must be asked when assessing bargaining practice from this perspective. *''The new intergovernmentalism is a deliberative intergovernmentalism which is based on the practice of and the commitment to continuing policy dialogue on part of the member states''* (Puetter, 2012:20). Although the tenets of new intergovernmentalism in terms of actor-institution relations differ to liberal intergovernmentalism, two level games (see Putnam, 1988) upon which liberal intergovernmentalism is built can still be identified in the deliberative settings, albeit to a much lesser degree (see Puetter, 2014b:164-165). Deliberation and effective argument have become defining characteristics of new-intergovernmentalism based on member-state national preference bargaining through consensus seeking models (see Puetter, 2012a) outside formal voting and institutional constraints.

Deliberative intergovernmentalism as an explanation of how EU member-states *actually* bargain over matters of economic governance compliments the structural and institutional realities laid out by the new intergovernmentalist school in contemporary EU studies. *''...actor's initial preferences are transformed through discussion by the force of the better argument''* (Puetter, 2014a:45). Albeit national executives that drive the negotiation process, the role of domestic forces (and some supranational forces) are still important and are leading shapers in national preference formation. Chapter 5 outlines a number of variables (coined as political opportunity structures) in relation to the way the Irish negotiating team aimed to meet national preferences in the Fiscal Stability Treaty negotiations and assert relative influence. In turn, it evaluates this thesis' argument that liberal-intergovernmental understandings of national preference formation do play a role in the new intergovernmentalist decision making process, but are mediated under deliberative intergovernmental norms that is directly influenced by the institutional nature of new intergovernmentalist decision making structures and practices.

''Rather than rejecting the analytical relevance of the focus on two-level bargaining, deliberative intergovernmentalism infers the relevance of deliberative processes as a

necessary condition for successful formation and implementation of collective policy objectives in the key fields of intergovernmental decision-making at the EU level''

(Puetter, 2014b:164)

Deliberative intergovernmentalism (see Puetter, 2012a; 2012b) is facilitated by intellectual discourse to reach consensus which requires a socialisation process generated by a willingness to communicate. In turn, social capital increases and compromise amongst members can be achieved. This socialisation process in itself acts as an opportunity structure which facilitates the mediation of domestic (and supranational) opportunity structures via discourse in enhancing an EU member-state's influence to achieve national preferences. While under the liberal intergovernmentalist school of thought domestic constraints (e.g. national ratification procedures such as referendums) are used by EU member-states as leverage to constrain larger counterparts, the deliberative method is not meant to use these leveraging forces to constrain counterparts and their actions. They are used to facilitate concerted action amongst EU partners. In other words, concessions are achieved not on the basis of constraint, but on the basis of *reason*. Through effective argument and articulating bargaining variables in an intellectual manner backed up by logic and reason, mutual respect and trust is expected to develop between negotiating actors. All actors come to recognise the potential constraints in one country and in seeking to avoid those unwanted constraints they are enticed to work toward reducing their potential effects. In turn, concessions are given and achieved in a positive manner. In the new intergovernmentalist school of thought, while some domestic forces play a vital role in inter-state bargaining, the role of others have somewhat weakened due to reliance upon national leaders to take control of the reigns of EU policy making (Bickerton et al, 2014:8) e.g. lobby groups, pressure groups etc. due to the weakening of channels to access policy shaping roles. However, such organisations have found other ways to assert influence at the EU level through liberal-democratic institutional channels as is discussed in chapter 5. As negotiating has become an increasingly informal and cooperative affair at all levels, so has the use of various bargaining forces in its process.

Conclusion

This chapter discussed theories of EU integration and governance that have provided a lens for which scholars study the EU. Although the chapter's main focus was on the intergovernmentalist school of thought due to the nature of the study, a number of other essential theories were accounted for due to their explanatory value of EU integration and governance. The theories included: neo-functionalism, federalism, confederalism, new institutionalism(s) and multi-level governance. The purpose of the chapter was to review the most important theoretical works that have shaped this thesis.

The theories of intergovernmentalism discussed in this chapter are essential to conducting a study on Ireland's approach to negotiating the Fiscal Stability Treaty negotiations. Intergovernmentalist theories provide insight into how EU member-states formulate national preferences, how they bargain for concessions and how they achieved influence through the process of negotiations. Additionally, theories of intergovernmentalism tell us how the changing norms and values within EU intergovernmental bodies shape actor based behaviour. The 2012 Fiscal Stability Treaty negotiations were conducted under a Union Method approach which worked under informal deliberative methods of inter-state negotiation. This significantly determined how small EU member-states like Ireland achieved concessions and influence in the negotiations. To best understand how Ireland as a small EU member-state achieved influence in such negotiations, one looks at a combination of new intergovernmentalism, liberal intergovernmentalism and deliberative intergovernmentalism to gain greater understanding. In so doing, new intergovernmentalism helps one to understand the intuitional background of the Fiscal Stability Treaty negotiations and how this influenced negotiation norms and practices. Deliberative intergovernmentalism which compliments new intergovernmentalism helps to explain those negotiation norms and highlights their informal character. Liberal intergovernmentalism helps explain the ways in which a small EU member-state like Ireland achieved negotiating leverage to secure concessions and achieve influence. Although liberal intergovernmentalism is best understood in the context of the Community Method of EU policy making, this

thesis argues that it can provide insights into how EU member-states bargain under the Union Method through deliberative processes.

The central message of the chapter is that in order to fully understand contemporary EU intergovernmental decision making over treaties of extra-EU nature, as well as how small EU member-states achieve influence in such negotiations, one needs to look toward a combination of all three of the aforementioned theories of intergovernmentalism in order to conduct such an inquiry.

Chapter 3

The 2012 Fiscal Stability Treaty: Nature, Substance and Institutional Background

Introduction

This chapter explores the Fiscal Stability Treaty. It discusses the nature of the treaty and why it was necessary for EU partners in the post-crisis era. The Eurozone crisis reached its peak in the third quarter of 2007. Its conditions were influenced by the broader global financial crisis sourced in U.S shadow banking and financial failures. However, internal structural flaws in the design of the Economic and Monetary Union (EMU) combined with the failure of the Stability and Growth Pact (SGP) influenced a series of unsustainable banking and fiscal activities in EU member-states throughout the 2000s. The negative banking and fiscal activities within EU member-states led to economic overheating which made EU member-states vulnerable to exogenous shocks. When the crisis hit, the economic conditions of EU member-states worsened. Due to economic interdependence, the risk of negative economic contagion became a serious threat.

EU member-states decided upon an intergovernmental treaty as a means to avert crisis conditions. The treaty was created through the Union Method due to British concerns about the creation of EU wide fiscal policy and its effect on economic sovereignty through traditional EU treaty making processes. It was negotiated within three months. This made it the shortest major treaty created amongst EU member-states. The short negotiation period was indicative of its urgency for the Eurozone and wider EU. It was not a solution to the crisis, but would help EU member-states regain stability through responsible fiscal behaviour. Over time, this would help EU member-states to avoid the consequences of exogenous economic shocks and counteract transferring negative economic contagion throughout the union. Title III of the Treaty known as the *Fiscal Compact* outlined the main fiscal rules which included such matters as the national debt brake rule (the golden rule of balanced budgets, the automatic correction mechanism and the $1/20^{th}$ rule to name but a few.

As an intergovernmental treaty created through the Union Method, it was an 'in or out' process requiring only 12 out of 17 Eurozone member-states to come into effect. As unanimity was not the *modus operandi*, negotiations followed a deliberative style process with outcomes reached through informal consensus based decision making through an OMC process. This significantly reshapes how EU member-states bargained, thus making outcomes more opaque than would be expected under decision making under formal voting rules. The treaty was European Council led and bureaucratically brokered by SHERPA led teams. There was little or no role for EU supranational institutions due to the extent of its intergovernmental character. The main institutions behind the treaty negotiations included the European Council, ECOFIN, Eurogroup, the Economic and Finance Committee (EFC) and the Eurogroup Working Group (EWG). The EFC and EWG both acted as secretariats to ECOFIN and Eurogroup respectively placing these committees into a leading negotiating role where much of the inter-state preference bargaining took place. National negotiation teams saw the treaty through to agreement at all levels, with the Irish team consisting of the Taoiseach, the Minister of Finance, the Minister of State for EU Affairs, a handful of senior civil servants from relevant departments (Dept. of Taoiseach, Finance and Foreign Affairs & Trade), the Irish permanent representative and the Irish Attorney General.

In assessing the nature, substance and institutional context of the Fiscal Stability Treaty and its negotiation process, this chapter provides a context that crystallises the intergovernmental nature of the treaty and its new intergovernmentalist features. This makes this treaty a useful case for examining the ways in which small EU member-states like Ireland achieve influence in contemporary intergovernmental treaty negotiations.

3.1 The Fiscal Stability Treaty: An Intergovernmental Treaty

''If you can conceive of the European Union with its treaties, like a Gothic Cathedral, a big solid building, meant to last for centuries. Inside there are chapels for the more fervent members. The problem is we have found a weakness inside the foundations of one corner which need repair work. But one of the co-owners, the

United Kingdom won't let us do the necessary repairs. So what we had to do instead is build buttresses to strengthen the cathedral outside. We are certainly not building a separate building and certainly not a separate cathedral but we are strengthening our main structure with external support. And I think that was a nice image of what was achieved''

(British MEP, Brussels, 9th December 2014)

The Fiscal Stability Treaty was signed on the 2nd March 2012 by leaders of all Euro member-states and eight EU member-states with the exception of the United Kingdom and the Czech Republic (Bird & Mandilaras, 2013:2). Fully enforced on the 1st January 2013, the treaty was a means to recovery, rather than the overall solution to the effects of the global and European financial crises. Envisaged at Deauville in France in the autumn of 2010 (see Tsebelis & Hahm, 2014), the treaty was led by Germany and France; two major financial players in the European Union. It was an intergovernmental treaty created on the side-lines of EU treaty law for the purpose of instilling a sense of fiscal order across EU member-states. This order would come about through guidelines that would influence EU member-states to reduce national structural deficits. In doing so, EU member-states would reduce national debt levels and therefore avert the negative consequences associated with the Eurozone crisis. In turn, they would regain stability through fiscal balance.

The intergovernmental method in which the Fiscal Stability Treaty was created was an alternative to creating an EU wide fiscal policy with fiscal powers extended to European supranational institutions. As the Economic and Monetary Union (EMU) is an EU policy protected by EU law, one may argue that fiscal and banking policy ought to have been created through an IGC and subject to EU law. The treaty was not originally expected to be an intergovernmental treaty on the side-lines of EU law. Originally it was envisaged to be built upon previous EU treaties in accordance with EU law; something which the Irish Taoiseach particularly supported (see Dáil Debates, 21/2/2012). However, as fiscal policy is a sensitive policy matter related to ideals surrounding national economic sovereignty, EU member-states opted to create an intergovernmental treaty. This was particularly influenced by the United Kingdom's dissatisfaction with a potential Community Method approach to fiscal policy in the future. The UK expressed reservations about potential future oversight

by the European Central Bank (ECB) and European Commission over national fiscal activities. Although a Union Method approach trumped, provisions have been made in the Fiscal Stability Treaty for fiscal governance to be added to EU law at a later stage in EU integration. Considering the circumstances, it may be argued that a credible and sustainable intergovernmental Fiscal Stability Treaty and other new modes of economic governance may just be more beneficial to EU member-states than a Fiscal Stability Treaty created through traditional treaty making methods for both functional and normative reasons (Wallace et al, 2015:185). One of the most obvious benefits relates to the fact that not all signatories are Eurozone member-states who share the euro currency, nor are all EU member-states fully subject to common EU monetary policy. Thus, there is still a vast amount of asymmetry in terms of economic and financial policy coordination across the union. Considering such factors, the treaty as a product of intergovernmental ideals was neo-functionally and intergovernmentally logical under the economic and political circumstances in which it was created (see Schimmelfennig, 2014).

3.2 The Fiscal Stability Treaty: An Economic Rationale

''The Fiscal Compact was signed under tremendous pressure during the collapse of the Euro.....it was prepared by two right-wing politicians [President Sarkozy and Chancellor Merkel], one who represented the major creditor nation of the EU [Chancellor Merkel]''

(Tseblis & Hahm, 2014)

The Fiscal Stability Treaty was created as a means to correct the flaws in the design of the Economic and Monetary Union (EMU) (see Bellamy & Weale, 2015:11). It was part of an incremental process in establishing fiscal consolidation in the post-crisis era through an intergovernmental method to deal with the matters of fiscal imprudence across the Eurozone. However, the treaty is only one part of a broader proposal of institutional and structural reconfigurations outlined in the *Four Presidents Report* (see: Van Rompuy et al, 2012) to resolve the structural flaws in the EMU which structurally contributed to the Eurozone crisis (see: Congleton, 2009; Honohan, 2010). In the Maastricht Treaty, the EMU process comprised of a

single market, a common currency, the European Central Bank (ECB) and the creation of common rates of interest, which were all developed in incremental stages and completed by 1999. However, the EMU did not create any form of consolidated fiscal [or banking policy] at the EU level as a means of regulating sovereign borrowing and spending. This meant that EU member-states could determine their own fiscal activities without supranational regulation, even though they were collectively part of a common monetary policy.

''The treaty [Maastricht] obliges member states only in general terms to regard their economic policies as a matter of common concern and to co-ordinate them in the council. Apart from providing for a deficit rule, the Treaty does not give further policy prescriptions. EMU's economic pillar remains decentralised''

(Puetter, 2011:168)

As fiscal policy remained as a national level competence, this meant that EU member-states could borrow from the European Central Bank at relatively low common interest rates. In the absence of a consolidated supranational fiscal policy, the competitive fiscal activities of individual EU member-states soon contributed to a destabilising process. This is seen through the financial crisis that developed across the union by the last quarter of 2007. Although the Stability and Growth Pact (SGP) (see: Heipertz & Verdun, 2004; Wallace *et al*, 2015) existed, it became little more than a mere guideline for EU member-states to configure their fiscal activities having lacked constitutional strength (see Blavoukos & Pagoulatos, 2008). It gave no transparent authority to supranational institutions including the European Central Bank (ECB) to regulate [even indirectly] national fiscal policies or activities. Of course, ECOFIN was instilled with the authority to place pressure on EU member-states not abiding by its guidelines. However, it was not successful in using this authority much to the dissatisfaction of the European Commission (see McArdle, 2012). The SGP as an intergovernmental agreement, rather than a *de jure* provision of the Maastricht Treaty eventually came to be known as the *Maastricht Fatigue* (see European Movement Ireland, 2012) due to its inaction in holding EU member-states accountable for questionable fiscal activities. *''The Maastricht Treaty is an incomplete contract as far as rules on EMU are concerned''* (Heipertz & Verdun, 2004:768). Far from a success, medium to large EU member-states such as France,

Germany and Portugal were amongst the first to offend the terms (see Hodson in Wallace et al, 2015). However, Hodson argues that the SGP is given less credit than it is actually worth, for it was relatively successful in ensuring low budget deficits in the early years of the EMU, compared to the broad economic policy guidelines (BEPGs) which ought to be scrutinised further for their failures to apply peer pressure to EU member-states with macroeconomic imbalances (see Wallace et al, 2015:185).

Borrowing at unsustainable levels, EU member-states subsequently became vulnerable to external economic shocks. Although, the global financial crisis was sourced in U.S banking failures (see FCIC, 2015) and failures in the inter-bank lending system, member-states across the EU had their own problems with deregulated banking practices in small EU member-states such as Ireland and rising national debts and structural deficits (see: Congleton, 2008; Girvin, 2011; Honohan; 2010; Hardiman, 2010; Lane, 2013). The fiscal problems in EU member-states were attributed to a lack of consolidated fiscal and banking policies at the EU level which led to reckless borrowing and expenditure patterns at the domestic level. A combination of negative financial and banking practices across Europe sourced in the weak design of the EMU combined with the effects of financial activities in the U.S fuelled *financial, growth and sovereign* debt crises (see Shambaugh et al, 2012) across Europe increasing the domino like effect amongst EU member-states in the union (Beetsma and Vermeylen, 2007). EU member-states such as Ireland, Portugal and Spain who became domestically vulnerable as a result of the effects of domestic banking practices which lowered their resistance to external economic shock had no other option but to seek assistance from the European Financial Stability Facility (EFSF). However, their economic conditions albeit subject to banking failures, as opposed to fiscal imprudence placed them into a dangerous position in the union which potentially endangered the economic stability of other EU member-states. The Fiscal Stability Treaty would help fix the weak design in the EMU and would (for the first time) provide strong fiscal rules and order which would help EU member-states to protect themselves economically from further endogenous and exogenous economic or financial shocks. In turn, this would reduce the potential of transferring negative economic contagion amongst EU partners via trade or common monetary policy (sharing of common interest rates on ECB loans). After all fiscal

imprudence especially in small EU member-states had the potential to economically endanger larger EU member-states (see Beetsma & Vermeylan, 2007) for whom the continuity of the single market relied upon at this time. These new fiscal rules would help EU member-states regain balance and economic harmony, thus paving the road to stability and sustainability. To ensure this, the Fiscal Stability Treaty incorporates the rules of the previous Stability and Growth Pact (SGP) 2011, subsequently reformed from 2005, which issued the 2010 six pack agreements dealing with matters of regulation and EU member-state accountability (Bird & Mandilaras, 2013).

The rationale for the Fiscal Stability Treaty is a politically contested matter. This thesis builds upon the argument that the Fiscal Stability Treaty was a necessary response by EU member-states to correct unsustainable fiscal conditions that aggravated the Eurozone crisis. There is a consensus within expert circles that the Fiscal Stability Treaty was a requirement and was *one part* of a larger solution to the crisis. Like Niemann & Ioannou (2015), this thesis holds that the intergovernmental path to fiscal consolidation in the EU can be observed through a neo-functionalist lens. Crisis conditions influenced further integration in the sphere of economic governance and that integration was a matter of spill-over[24]. With a neo-functional catalyst came an intergovernmental end. It argues that it was indeed necessary in order to implement some form of fiscal order within the EU as a means to reduce the overall costs associated with the Eurozone crisis. The Fiscal Stability Treaty would do this by guiding EU member-states toward fiscal balance through austerity measures.

Although the treaty may appear economically sensible, it was not without socio-economic consequences. The treaty was created with the understanding that short term socio-economic sacrifices would need to be made in order for long term economic benefits. There are a number of scholars, policy analysts and politicians that treated the rationale of the Fiscal Stability Treaty with scepticism. Some were completely against the treaty and did not see it as the correct response to the crisis, whilst others felt that the treaty was a welcome move in Europe, but it could be

[24] Although intergovernmental bodies became empowered over supranational institutions. Contrary to what neo-functionalism assumes.

developed much further. Many critics criticised the treaty's perceivably strict and apparently unforgiving provisions. Amongst the critics were internationally renowned economists Joseph Stiglitz (see The Telegraph, 17th January 2012) and Paul Krugman (see The Journal.ie, 30th May 2012; The New York Times, 15th April 2012). Both Stiglitz and Krugman argued vehemently against the treaty ever being signed with both scholars arguing that the Fiscal Compact was likened to *suicide pact* and a *fiscal straightjacket* as it copper-fastened austerity which would damage economic recovery across the EU for the foreseeable future. They argued that it would significantly endanger the standard of living and employment opportunities of EU's citizens. The problem for Stiglitz and Krugman was that the treaty constrained Keynesian economics which urges higher spending (and borrowing) in times of recession as a means to boost investment in the economy and propel growth to encourage greater returns and welfare security. Therefore, the austerity measures were counterproductive to enabling stability and growth in the long term. Some argued that if the treaty was necessary, it should be substantiated further to contain a growth stimulus package that would reduce the socio-economic costs associated with the inevitable austerity measures that would be required by the treaty terms.

Some policy analysts argued that the treaty would fail to save the euro and protect against future financial crises resembling the Eurozone crisis. They argued that the treaty was of little benefit without structural changes to labour markets that promoted growth and development. Social Justice Ireland in its 2012 briefing to the Joint Oireachtas Committee on EU Affairs argued that Fiscal Stability Treaty would not address three major issues which exacerbated the Eurozone crisis. The first issue is that it failed to address the 'real' problem in Europe which was the *moral hazard* of European banks associated with banking deregulation. Secondly, it failed to address the very low interest rates offered by Irish banks which were influenced by common ECB interest rates. And thirdly, the EU is an incomplete currency union which some EU member-states not being full participants in the EMU. Therefore, Eurozone member-states are still vulnerable toward potential negative financial and economic shocks soured in non-Eurozone member-states in which the EU cannot intervene (see Social Justice Ireland, 2012). Therefore, tackling fiscal imprudence was not going to solve the real problem in the Eurozone which was sourced in banking deregulation practices. It was the issue of financial deregulation at the national levels

and the weakness of regulatory mechanisms at the EU level which the treaty ought to be tackling. In turn, the legitimacy of the Fiscal Stability Treaty in its current state was and still is questionable considering the real issues at hand in the Eurozone. *''It is through our general belief that the present EMU structures will fail – in the sense that the 'fiscal compact' will turn out to be unworkable (Sawyer, 2013) and that those countries suffering current account deficits will not be able to restore anything like prosperity''* (see Sawyer, 2013:21).

In terms of reconciling austerity with growth, the Fiscal Stability Treaty can be accused of being dichotomous. However, despite calls for alternatives in Ireland, few were on offer (Irish Examiner, 22nd April 2012). The anti-treaty party Sinn Fein proposed that the Irish government should invest in a three-year growth stimulus package financed by the national pension reserve fund, the European investment bank and investment from the private pension sphere (Irish Independent, 15th May 2012). Sinn Fein argued that Ireland could use the package to create jobs and enhance national revenue that could be used to pay off national debt whilst reducing welfare costs. However, this argument was challenged by pro-treaty parties such as Fine Gael and the Irish labour party who regarded the proposed alternative as short sighted. It can be argued that this alternative would see Ireland's position significantly compromised in the Eurozone and the EU as a whole. It would do little to tackle fiscal imprudence and would make Ireland less protected from the ability to secure itself from exogenous shocks outside of Irelands control. After all, it does not tackle fiscal imprudence which was a welcome step in EU integration, even if it was not the sole source of the Eurozone's problems. Additionally, by not signing the treaty Ireland would not have access to the ESM if necessary, as access to the fund was subject to ratifying the Treaty. Not signing the treaty would not only harm Irelands access to international financing, but could send out negative signals to both the international markets and euro counterparts - particularly large creditor EU member-state.

It appears that there was no credible alternative on offer that would at least satisfy the markets and larger creditor European counterparts. The *status quo* was not an option for any EU member-states and both the international markets and the largest of the EU member-states expected the Fiscal Stability Treaty to come into effect.

Even though national banking deregulation was of great concern, the conditions of the time allowed for an opportunity to finally consolidate fiscal policy at the EU level which was previously met with wide-scale reluctance amongst EU member-states. Ideally, Fiscal Union should have been established early on in the EMU process. In recognising and reflecting upon some of the diverging rationales of the treaty, a plausible step would arguably have been to consolidate both Banking Union alongside Fiscal Union in the EU. Therefore, the EU would be equipped to regulate both policy areas and avert future crisis that may be sourced in weakness in these areas, whilst subsequently addressing the structural flaws in the EMU. However, the prime focus was on fiscal adjustment and this received considerable criticism.

Regardless of what ought to be, the Fiscal Stability Treaty was and still is a welcome move for EU member-states in terms of integration and crisis aversion initiatives. After all, in a common monetary union where there is high risk of economic contagion, common fiscal rules are a necessary requirement as to protect against the transferal of negative economic contagion and encourage sound fiscal responsibility amongst EU member-states. However, a well-structured and accountable Banking Union is a welcome move alongside these developments.

3.3 The Fiscal Stability Treaty Provisions

The Fiscal Stability Treaty negotiation process began with the Euro Summit statement on 26th October 2011 which led to a speedy negotiation process thereafter. The negotiation process commenced with a short series of intergovernmental bargaining rounds, including three preparatory meetings, and one ministerial meeting before being accepted at European Council level by March 2012 (Council General-Secretariat Official, Brussels, 10th December 2014). These negotiation rounds produced up to five provisional drafts and one final draft version of the treaty between the 16th of December 2011 and the 30th of March 2012 (Kreilinger, 2012). The process lasted a mere three months, comparatively short to EU treaty making processes opening with IGC's[25] which have shaped the integration process via treaty

[25] Intergovernmental Conferences (IGCs) are central to the opening and closing of EU treaty making process. IGCs serve the purpose of creating amendments to existing EU treaties. They are often long

amendments since the foundation of the EU sourced in the 1986 Single European Act (see: Hug & Konnig, 2002; Slapin, 2008).

Table 3.1 EU (Reform) Treaties produced from IGC's

Treaty (Reform)	*Signature*	*Entry into Force*
Single European Act	28th February 1986	1st July 1987
Maastricht Treaty	7th February 1992	1st November 1993
Amsterdam Treaty	2nd October 1997	1st May 1999
Nice Treaty	26th February 2001	1st February 2003
Constitutional Treaty	29th October 2004	Failed to be Ratified
Lisbon Treaty	13th December 2007	1st December 2009

(For original table see Thurner and Urban Pappi, 2009:9)

On first reading, the terms of the treaty appear to be strict and appear to tightly bind signatory EU member-states to comply with fiscal obedience. In reality, the terms are rather flexible which gives a greater sense of ownership to EU member-states. However, the treaty received its fair share of scrutiny throughout the EU. It was seen particularly in Ireland with expressions of pessimism from left wing parties and parliamentary independents, pressure groups, social movements and voters (see Costello, 2014). The final draft built upon the failed Stability and Growth Pact

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drawn out processes and are punctuated by a series of European Council meetings which incrementally advance treaty change through draft Council conclusions. Therefore, EU integration starts and ends with the EU member-states.

Typically, the IGC process incorporates the European Council (as main coordinator), representatives of the European Commission, the European Parliament, and in some cases the European Central Bank (ECB) and European Court of Justice (ECJ). In later years, representation has been extended to the representatives from national parliaments.

(1996) and absorbed the later Six Pack reforms in 2010 and 2011. The reforms implemented five new regulations and one new directive to impose stricter guidelines for EU member-states in order to achieve as close as possible to balanced national budgets. The Fiscal Compact (Article III of the Treaty) incorporated the regulations and guidelines of the SGP into its provisions. In doing so, it not only strengthened the SGP rules, but it creating a direct link between the intergovernmental Fiscal Stability Treaty and the Maastricht Treaty bound by EU treaty law. Adherence to the rules of the compact is fundamental for EU member-states to work toward achieving at least balanced budgets, if not surplus budgets in the expected medium term. EU member-states must meet the treaty's medium-term objective (MTO) which stipulates the reduction of national structural deficits to alleviate national debt burden and regain stability to compete. As this imposes austerity measures, many have queried how feasible this is for debtor EU member-states such as the PIIGS countries and how this may affect the sustainability of future European growth (See: Indecon, 2012, Catrina, 2012, Lane, 2012, Creel, Hubert & Saraceno, 2012, & Bird & Mandilaras, 2013). Despite arguments for and against the treaty, it will take some time before a proper assessment of the impact of the treaty can be conducted.

The Fiscal Compact building upon, and incorporating the previous Stability and Growth Pact with the six pack reforms supplied the following provisions (See: Bird & Mandilaras, 2013; Costello, 2014; Hagemann, 2012; NERI, 2012):

1) The National Debt Brake (The Golden Rule)

   The National Debt Brake or *Golden rule* of balanced budgets stipulates that euro member-states must attempt to achieve at least balanced budgets, if not surplus budgets by reducing their national structural deficit toward 0.5% of gross domestic product (GDP). A reduction toward 0.5% is expected for those member-states with debt levels over 60% of GDP and 1% for member-states with debt under 60% of their respective GDP. Only by reducing their structural deficits toward 0.5% can member-states effectively reduce debt levels.

2) Automatic Correction Mechanism

This provision relates to checks and balances. If member-states fail to reduce their structural deficits to achieve balanced budgets, a grace period will be given to the offending states to resolve the matter. If member-states fail to resolve the matter, EU measures shall be taken to hold offending member-states to account. This clause is implemented in national primary law or (preferably) into national constitutions in order to bind member-states in their obligation toward satisfying the rules of balanced budgets.

3) The role of the European Court of Justice (ECJ)

Where a member state is non-compliant with the debt brake rule and poses as an economic threat to the wider union, concerned member-states can bring offending member-states to the European Court of Justice. The offending member-state may be fined up to 0.1% of GDP paid into the European Mechanism of Financial Stability (IMFS) or the common budget.

4) Reversed Qualified Majority Vote (RQMV)

In the event that excessive deficit offences exist a reversed qualified majority vote (RQMV) will be applied i.e. a majority of member-states that represent a majority population of the EU will be needed in order to veto and over-rule European Commission recommendations and proposals regarding offending member-states. If the offending member-state cannot correct its imbalances, it may be placed in a budgetary and economic partnership programme.

5) The $1/20^{th}$ Rule

Euro member-states are expected to reduce their debt below 60% threshold of GDP at a level of $1/20^{th}$ per year. As member-states work toward correcting their structural deficits reaching a headline target of 3%, a three-year grace period will be applied before the $1/20^{th}$ rule comes into effect. This gives member-states

flexibility to grow. Member-states who commit toward reducing their debt to GDP ratio below 60%may be given a chance to avail of increasing their structural deficit threshold to 1% of GDP. Thus, allowing for greater economic leverage.

6) Further Coordination

In accordance with further economic coordination, the Fiscal Stability Treaty expects member-states to work in a concerted fashion by bringing their plans and proposals to the European Council and the European Commission for positive convergence in policy negotiation.

7) Governance in the Eurozone

Governance in the Eurozone is managed by Euro summit meetings which take place twice a year on average. The meetings aim to discuss progress and future policy directives. The summit president is elected by simple majority vote (SMV). The president of the European Central Bank (ECB) may be invited as will the president of the European Commission at the discretion of member-states. At least once a year, members of non-euro member-states who signed the treaty will be invited to summit sessions. This is an important step in Eurozone governance in order to incorporate those who will potentially adopt the euro in the future, and by proxy, will become subject to the treaty.

8) The role of the EU and National Parliaments

Members from both the European Parliament and National Parliaments will work closely on budgetary matters and other issues central to the treaty. Members from all national parliaments that are associated with relevant treaty agendas will at

their discretion work closely to organise the formation of select committees to mediate issues of interest.

As evident from the aforementioned terms, the treaty expresses elements of subsidiarity, flexibility, consistency and permanency. Member-states have the freedom to take ownership over their own fiscal policies under a broader set of EU guidelines and work with those guidelines in an incremental fashion subject to economic feasibility. However, those terms are legally binding at the national level adding a sense of permanency and continuity on the road to fiscal order and regaining stability across the union. Having discussed the nature and substance of the intergovernmental Fiscal Stability Treaty, it is now important to draw attention to the institutional background to the treaty. Only through an institutional analysis does one gain greater insight into the logistics of the treaty and gain greater insight into the institutional based behaviours of negotiating partners.

3.4 General Stages in an Intergovernmental Negotiation Process

''Complex multi-level negotiations require appropriate coordination of formal and informal administrative cooperation between the ministerial bureaucracies, and they necessitate the empowerment of administrative leadership. This applies both to within-governmental as well as cross-border transgovernmental administrative cooperation''

(Thurner & Urban Pappi, 2009:3)

The negotiation process at the specialist committee level of the Council of the European Union is most important in understanding the dynamics of the Fiscal Stability Treaty. As an intergovernmental treaty, European heads as national executives conferred upon their national administrations the role of seeing the treaty through to agreement. Thurner and Urban Pappi call these specialist committee levels the ''*informal administrative networks behind the official negotiations''* (Thurner & Urban Pappi: 2009:3). As committees housing national bureaucrats, they brokered the treaty on behalf of national governments. The European Council, ECOFIN and the Eurogroup focused primarily on reconciling negotiation issues and

finalising outcomes. However national preference formation in a strategic bargaining sense was conducted at the committee level. Therefore, negotiated outcomes from hard bargaining practices derive from the activities of actors at this particular level (Bache et al, 2015:260). The typical hierarchy of negotiating actors behind EU policy/treaty making (see Thurner & Urban Pappi, 2009:13) are as follows.

(1) Heads of State and Government

(2) The Foreign Affairs Ministers

(3) The negotiation delegation

Blavoukos and Pagoulatos (2008) note that negotiation processes formulate around a series of phases ranging from the preparatory stage (specialist committee), to the pre-negotiation stage (COREPER), to the formal negotiation stage (Council of European Union) and finally to the post-negotiation stage (European Council). A similar framework is also discussed by Thurner and Urban Pappi (2009) who also place great emphasis on the multi-tiered nature of intergovernmental negotiations: *''We provide a new theoretical perspective which opens the black box of the nation state, emphasising the crucial role of ministerial bureaucracies as the most relevant 'constitutional interest groups' with regard to such [intergovernmental] conferences''* (Thurner & Urban Pappi, 2009:1). The stages can be simplified further by categorising them in terms of the *pre-debate* communicative stage, a *persuasion* stage and a *voting/action* stage (Thurner & Urban Pappi, 2006:169). The importance of these multiple stages lies in their ability to help structure the wider institutional and structural processes behind negotiations at the EU level which helps explain how decision making is conducted and where power and influence lies.

The bureaucratic preparatory and pre-negotiation stages outline the initial agenda for discussions at the ministerial level. This is where negotiation compromise is often reached through the realisation and mediation of mutual preferences. Specialist committees and their negotiating techniques are generally informed by the broad objectives outlined in European Council conclusions. Thus, these committees work to satisfy the broad objectives whilst negotiating their own national preferences. This heavy workload of preparation eases the negotiation process at the Council of

Ministers and European Council levels. Preparation is facilitated by strong communicative networks that pave the way for consensus in the European Council at the later stages in the negotiation process. It is within the preparatory stages and pre-negotiation stages that national preferences are realised, expressed, mediated and reconciled amongst actors, and are brought to the so-called negotiation and post-negotiation stages where loose-ends are tied up. During the negotiation and post-negotiation stages, national preference bargaining is conducted and agreements are for the most part already established having been brokered by the specialist committees and overseen by the COREPER who worked on behalf of their respective governments to achieve concessions close to national preferences. In this case the agent carries out the principal's work and it is at the preparatory and pre-negotiation stages that the real negotiations take place, especially in intergovernmental treaty making processes. Although national preferences are heard and bargaining is said to continue at the so-called negotiation and post-negotiation stages, the extent of bargaining, especially regarding the Fiscal Stability Treaty at the Council of Ministers and European Council level is still rather vague. As most data indicates, most of the work including treaty brokering was actually done in the specialist committees.

''.....the [negotiating] objectives had been written out in advance and the issues [inter-state preferences being bargained] had been sorted out largely before going back to the European Council''

(Senior Official, Dublin 12th September 2014)

Meetings in the post-negotiation stage are said to indicate the decisive outcomes of a treaty negotiation process (see Blavoukos & Pagoulatos, 2008). If the outcome is brokered predominantly before the actual formal negotiations, then national preference bargaining between member-states are considered strongest at the bureaucratic levels in the process. This is facilitated by informed bureaucratic strategies, as well as policy networking (as discussed by Puetter, 2011) aided by the building of sustainable cross national relationships. This is combined with knowledge of EU negotiations and shared expertise in areas under discussion. Within liberal democracies bureaucrats act as a link between society and national representatives. Likewise, they also act as links between governments in the

international sphere due to the their often permanent positions in national government administrations, expertise, connections and superior knowledge of the system as agents compared to that of their principal's (see Thurner & Urban Pappi, 2009:50). It is within the final stage of negotiations that actors in the European Council are said to reveal their true preferences and that negotiation delegations ''*weigh up the opportunity costs when communicating"*, acting differently ''*according to the stage of the negotiation''* (Thurner and Urban Pappi, 2006).

The 2012 Fiscal Stability Treaty negotiations reflected this process particularly due to its new intergovernmentalist character (see Bickerton et al, 2015b). The institutional architecture incorporated a unique set of institutional arrangements. The following section looks at the various intergovernmental institutions and actors that were party to the negotiations process. The roles of the Irish negotiating team are particularly focused on to provide the reader with greater understanding of the types of actors that were party to the negotiation process. Indeed, the number and roles of actors vary across EU member-states subject to size of government and their associated administration.

3.5 The Irish Negotiating Team

By using the Irish negotiating team as a window to understand the types of actors party to the Fiscal Stability Treaty negotiations, one finds that the Taoiseach, the Minister for Finance, Minister of State for EU Affairs including the Tánaiste and Minister for Foreign Affairs and Trade, two members from the Department of Foreign Affairs i.e. a legal advisor and the Permanent Representative, the secretary general, second secretary-general and assistant secretary generals from the Department of Taoiseach and the secretary general, second secretary general and assistant secretary generals from Department of Finance were all central to the negotiation process. A wider body of experts including economic policy advisors from the Department of Finance and Public Expenditure and legal advisors from the Attorney General's office, as well as officials such as policy advisors from the Department of the Taoiseach were involved in the process. However, government advisors played a more indirect role in the process. This team description gives an

overview of the types of actors that played a role in negotiating the treaty, not just from Ireland, but from other EU member-states. It is indicative of the bureaucratic influence that was central to the negotiation process. This relates to the literature on IGC's and European Council negotiations which underlines the major role played by senior level bureaucrats in framing the terms of EU treaties, as well as being the real bargaining actors in EU treaty making negotiations due to their strong cross-governmental links and expertise in negotiation arenas (see: Thurner & Urban Pappi, 2009). This highlights a deeper need for exploration and analysis of the wider body of institutions below the European Council and Council of the European Union with a view to determining the precise nature and extent of their role in interstate bargaining and negotiation dynamics. According to a senior official, the initial onus was on the European Council as it was this institution which played the decisive role in terms of setting out the main objectives of the Fiscal Stability Treaty. However, when these objectives reached national administrations they were coordinated, mediated and refined by the relevant SHERPA led groups of senior civil service officials who devised strategic national positions and stances.

Table 3.2 Members of the Irish Negotiating Team

Department	**Team Members**
Taoiseach	Taoiseach; Secretary General; Second Secretary General*; Assistant Secretary Generals; Minister of State for EU Affairs; Policy Advisors
Department of Finance and Public Expenditure	Minister of Finance; Secretary General; Second Secretary General; Assistant Secretary Generals; Economic and Finance Policy Advisors
Department of Foreign Affairs and Trade	Tánaiste and Minister for Foreign Affairs and Trade; Irish Permanent Representative (Perm Rep); Legal Advisor to Department of Foreign

	Affairs
Attorney General's Office	Attorney General; Legal Advisor

3.6 The Fiscal Stability Treaty Negotiations: Leading Institutions

EU's institutions were borrowed by the European Heads of State/Government for the intergovernmental treaty making process to best coordinate the treaty and manage information flows and outcomes in a timely and structured manner. As the European Council has a leading position in terms of the economic governance of the EU (see Wallace et al, 2015), it is no surprise that it took a leading role in the Fiscal Stability Treaty making process aided by the Council of the European Union, via its ECOFIN and Eurogroup formations. Both institutions dealt with negotiations amongst the Finance Ministers of the participating EU and Eurozone member-states. The Eurogroup's purpose was to give special attention to the Euro area (EA) for which the Fiscal Stability Treaty was of most relevance. The European Council agenda was facilitated by COREPER II i.e. the Permanent Representatives or national ambassadors to the EU hailing from all 27 member-states. COREPER II being the seat of the EU ambassadors played an important role in agenda setting and national preference coordination and assisted ECOFIN, Eurogroup and the European Council meetings during the 2012 Treaty negotiation process. COREPER II provided important communicative and administrative links between national bureaucrats within specialist committees, ministers within the Council of the EU and the Heads of State/Government in the European Council. Therefore, the permanent representatives play a vital intermediary role between the many complex institutions in intergovernmental negotiation process. Throughout decision making process, specialist committees facilitated the work of COREPER, but also played a major role in their own right. They included the Economic and Finance Committee (EFC) and Eurogroup Working Group (EWG), which subsequently acted as secretariats and prepared the agendas for ECONFIN and Eurogroup respectively. Each committee housed a number of expert national senior civil servants which varied between EU member-state subject to their professional portfolio in their respective national administrations.

The *modus operandi* of inter-state bargaining in the treaty negotiations becomes clearer considering the informal consensus based decision making culture through which the treaty was conducted. In these modes of decision making, inter-state bargaining becomes facilitated by opportunity structures as a means to leverage. As the EFC, EWG, and COREPER prepared the agenda and negotiations for ECOFIN, Eurogroup and the European Council by building on a broad knowledge of multinational preferences, we look toward this set of bureaucratically centred bodies to gain a greater understanding of how the treaty was brokered.

Table 3.3 Main Intergovernmental Institutions in the Fiscal Stability Treaty Negotiations

European Council	Head of Government/State of 'then' 27 EU member-states. Heads of Government/State proposed the treaty and conducted the final formal vote prior to its ratification
Economic and Finance Affairs Council (ECOFIN)	Council formation of Finance Ministers of from 'all' EU member-states
Eurogroup	Formation of Finance Ministers from 'all' Eurozone member-state (assisting ECOFIN)
Economic and Finance Committee (EFC)	Committee of national bureaucrats assisting ECOFIN with preparatory work and treaty brokering alongside the EWG (Secretariat of ECOFIN)
Eurogroup Working Group (EWG)	Committee of national bureaucrats assisting the EURO group with preparatory work and treaty brokering alongside the EFC

	(Secretariat of Eurogroup)
Committee of Permanent Representatives(COREPER)	Formation of Permanent Representatives from each member-state organising preparatory work (agenda setting and national preference coordination), briefing ministers and facilitating communication between each negotiating branch.

3.6.1 The European Council

''The European Council has emerged as the centre of political gravity in the field of economic governance. The Council and Eurogroup fulfil a critical role as forums for policy debate''

(Puetter, 2011: 161)

On the 26th of October 2011 European Council conclusions outlined the political objectives in relation to future economic policy coordination and fiscal governance in the Economic and Monetary Union. The objectives became the basis for the negotiation of the Fiscal Stability Treaty. A number of topics are mentioned in the statement from Economic and Fiscal Coordination and Surveillance to the governing structures of the Euro area. This statement not only outlined the issues which would eventually find their way into the treaty, but acted as a guideline for the institutional structures charged with negotiating and agreeing the treaty. The statement highlights the roles of ECOFIN, the Eurogroup, the EFC and the EWG. The European Council effectively determined the broad terms of the treaty making process by framing the initial substance of the document and by outlining the subsequent institutions and norms of decision making within the negotiations.

The European Council consisted of the European Council President Mr Herman Van Rompuy and the 27 Heads of Government/State of the EU. It also had extended participatory role for the president of the European Commission Mr Jose Manuel

Barroso, as well as an *ad hoc* attendance by the secretary-general of the Commission Ms Catherine Day. Finance and Foreign Affairs ministers did not accompany the relevant Heads of State/Government of the EU to the European Council as this was a matter of economic governance and was not an amendment to existing EU treaties. The European Council was a manifestation of the political dimension of the negotiation process. As the configuration of the negotiation process followed the Union Method approach, this minimised supranational representation and limited any real supranational influence from the European Commission and European Parliament. This is an important point as supranational bodies have in the past been sought by smaller EU member-states as allies (see: Cross; 2012). In recent years the power of the European Council has been increasing and taking a leading role in EU economic governance. This is evident by its increasing role in coordinating intergovernmental treaties such as the ESM Treaty, as well as the Fiscal Stability Treaty itself. The symbolic quality of this configuration highlights the new intergovernmentalist dimension of the treaty and the negotiation process.

Evidence suggests that the Taoiseach played an important role in forming bonds with Heads of State and Government across the Eurozone and used this as a means to express the need for his government's preferences to be met. The Taoiseach participated in a number of informal working dinners with the German Chancellor Angela Merkel and the Prime Ministers of Latvia and the Czech Republic leading up to the final draft of the treaty (see Dáil Debates, 21/12/2012). This behaviour has an effect on negotiating and bargaining at the preparatory stages. The preparatory bodies such as EFC and EWG were informed by national leaders on various stances to focus on in their brokering of the treaty which would then feed into the negotiation process. This is stated clearly by the Irish Labour Party's Deputy Joan Burton T.D (now Tánaiste) who argued rather frankly in Dáil Eireann that:

''Countries do not have friends, they have interests. That is particularly true of a small country which has successfully chosen to base its development and prosperity on being a trading nation. It is in our interests to be inside every European Council, committed to national budget discipline, as one significant but far from exclusive part of a strategy, to promote growth and job security in every corner of Europe''

(Dail Debates, 19/04/2012)

The Labour deputy argued that the leaders' role in the European Council during the negotiations was just as important as was the role of their ministers who deliberated on their behalf, and their bureaucrats who brokered the treaty on behalf of their governments. After all, intergovernmental directives are developed at the European Council level and activities at this level have an effect on the substance brokered at the bureaucratic stages where preferences are strategically bargained upon. Knowing what one leader desires at one level, can influence how another leader's administration strategically acts at another level. Although bureaucrats were informed by the European Council, it is the bureaucrats that particularly shaped the negotiation process as brokers of the treaty bargaining hard on behalf of their governments. In turn, they reshaped the national position as knowledge of other member-states' preferences become realised throughout the process.

A majority of interviewees agreed that national bureaucrats played a major role in the treaty making process and were largely organised and coordinated under the role of the SHERPA[26] who worked through numerous specialist committees and engaged in bi-lateral negotiations on part of their national governments. Though many regard the influence between national leaders and bureaucrats as balanced in weight and affect, there was discrepancies within the data regarding how 'hands on' the European leaders really were in terms of managing and coordinating the Fiscal Stability Treaty negotiations in terms of preference bargaining. While one former Irish Minister of State argued that Heads of State/Government of the EU and national Finance Ministers shaped the treaty through hard political bargaining from start to finish, being merely aided, informed and advised by a number of senior civil servants (Former Minister of State, Dublin, 2nd May 2014), another former Irish Minister of State had a different viewpoint on the matter. The other former minister argued that the Irish case was unique in that civil servants (approximately five) did most of the important work whilst politicians took a ''*hands off''* approach. (Former Minister of State, Dublin, 19th September 2014). This former minister stated that politicians, particularly the Heads of State/Government played little or even no role

[26] The SHERPA was a senior official within national administrations leading the negotiation process on behalf of his/her respective government. In the Irish case, the SHERPA was the second secretary-general (SSG) from the department of the Taoiseach, Ms Geraldine Byrne-Nason who had the special responsibility of managing EU policy coordination.

in bargaining and that those most informed and expert in the substance of the treaty such as senior civil servants actually drove the negotiation process using their knowledge of the system and expertise in the area. ‘*‘The Taoiseach would not have had really any interest in the substance, so it was left to officials’’* (Former Minister of State, Dublin, 19th September 2014). These are clearly competing viewpoints between the two former junior ministers who were close to negotiators. However, the former junior minister who was most critical of the role of the Taoiseach in the negotiations was actually the one closest to the negotiations at this time. Therefore, this particular former junior minister had deeper insight into the logistics behind the negotiation process. This former junior minister also indicated that that the Irish Permanent Representative was an important member of the negotiating body, as well as the SHERPA, and most of Ireland’s bargaining strategy relied on his knowledge, expertise and connections.

3.6.2 ECOFIN and the EUROGROUP

‘‘The Finance ministers [ECOFIN] would have had strong views, but I don’t recall that there was any sort of major discussion in the ECOFIN circle’’

(Senior Official, Dublin, 12th September 2014)

Although the Economic and Financial Affairs Committee (ECOFIN) plays an important role in the Community Method of EU policy making its role was comparatively weaker during the Fiscal Stability Treaty negotiations. It was seen as an important institution when it came to matters of EU economic and financial policy, but it was not a central organ of preference bargaining throughout the treaty negotiations. It appears to have built on what was already formulated and negotiated at lower bureaucratic levels in the EFC and EWG. Meeting only once during the negotiation period it consisted of the Finance Ministers of all EU member-states accompanied by other national politicians (sometimes deputising for ministers who could not attend) with committee based roles and a number of senior officials from national finance ministries. Ministerial discussions served a procedural purpose and added an additional element of national representation, but this was not decisive in

terms of outcome. *''The council, as far as I can recollect, was not involved in the negotiations. It was formally the member states that agreed on the treaty, not the institutions of the union as such''* (Senior Official, Dublin, 12th September 2014). In some ways it acted as an extra institution for re-affirming national preferences and as a useful [mechanical] coalition building environment. A more informal and relaxed institution than the European Council, the level of cohesiveness in terms of deliberation is high in this environment (especially in the Eurogroup) (see Puetter, 2011:165). Meetings generally take the form of informal breakfast meetings (see: Puetter, 2011:162) which are useful locations and settings for preference strategy formulation as would be expected from informal deliberations amongst politicians. Ministers use this time to make connections of a more personal nature and to express their national viewpoints on treaty developments in a frank manner. Although not an environment of formal treaty brokerage, it can serve as a useful means for coalition-building and enhancing negotiation voice at other levels in the process.

As suggested by the data, the Eurogroup appears to have played a relatively more important and weighty role in the intergovernmental treaty negotiations than ECOFIN, which is typical of its role in economic governance (see Puetter, 2014). As the treaty was fundamentally drawn up by Eurozone member-states at least in the short term, the Eurogroup as a *de facto* institution of the Council of the EU and an exclusive body of Eurozone finance ministers played a necessary and important role in the negotiations. After all, the treaty would arguably have greater consequences for the Euro area due to their membership of the single currency and common monetary policy. Any negative consequences would be exacerbated amongst the partners via negative economic contagion. While the Eurogroup members usually consist of Finance Ministers of Eurozone states, they are also usually accompanied by one senior departmental civil servant from their respective finance ministries (who are usually members of the EFC and/or EWG also). In attendance also are representatives of the European Commission and the European Central Bank. The group technically worked ''*under but on''* the same schedule as the ECOFIN (Puetter, 2011:170). The Eurogroup has been discussed as a relatively more important representative institution working aside ECOFIN, but nevertheless an institution in its own right with its own specific portfolio. The Eurogroup is a more informal institution (Puetter, 2011:169). It was facilitated by the Eurogroup Working

Group (EWG) which acted as secretariat for the Eurogroup preparing discussion matters. The EWG worked with the Economic and Finance Committee (EFC) which was the secretariat for ECOFIN and the European Council via the COREPER. Thus, ECOFIN and the Eurogroup not only worked aside each other, but were facilitated by two preparatory agencies that where inherently linked. These preparatory bodies consisted for the most part, of the same delegations and members. This demonstrates not only the structural complexity and ambiguity of the treaty making process in contrast to previous EU treaty processes, but also the intergovernmental character at each level of the process. The cooperation between the Eurogroup and ECOFIN, as well as the sharing of actors between the EFC and EWG expresses the importance of incorporating non-Eurozone member-states into the negotiation process despite the treaty's main focus being centred on Eurozone members. The importance of the Eurogroup in this process can also be seen as having strategic importance particularly for Eurozone Ministers of Finance to assert their interests further; particularly in relation to the Fiscal Compact in Title III of the treaty which was particularly significant[27] to them.

The environments of ECOFIN and the Eurogroup make it strategically possible for all parties to discuss and gain last minute deals that can filter back into the subsequent treaty drafts at the EFC and EWG levels. ECOFIN and Eurogroup played important procedural roles through national finance ministers and their strong links with national government leaders and their knowledge of other member-states' national preferences. These bodies add a political value to what is usually a complex negotiation process mediated by bureaucratic actors using pragmatism as their means to broker a treaty. Therefore, ECOFIN and Eurogroup played an important role in the negotiation process in setting the political stage for the negotiations. After all, to quote a former Minister of State; '*'it was an executive matter''* (Former Minister of State, Dublin, 2nd May 2014).

An example of finance ministers using their political positions to advance negotiations via ministerial formations can be seen through the various efforts of the Irish Finance Minister Michael Noonan who maintained strong links with the German Finance Minister which was made possible through ECOFIN. This can even

[27] For a deeper analysis of the Fiscal Stability Treaty see O'Broin (2012).

be seen with regards to the former Irish Tánaiste and Minister of Foreign Affairs and Trade Eamon Gilmore who met with other ministerial counterparts from Austria, Portugal, Luxembourg, Finland, the Netherlands and the UK to seek support for the Irish position on the treaty (Dail Debates, 26/1/2012), even though the Department of Foreign Affairs and Trade playing little or no active role in the actual negotiations. These ministerial formations allow for ministers to play an ambassadorial role in place of hard strategic bargaining which helps further an EU member-states voice in negotiation. This in turn feeds into the deliberative and inter-state bargaining framework at other negotiating levels.

3.6.3 The EFC and EWG

''The EFC sets the agenda for ministers. It does the technical work and it sort of feeds through to the political level''.

(Senior Official, Department of Finance, 25th September 2014)

The Economic and Financial Committee (EFC) was headed by Vittorio Grilli until his replacement by Thomas Weiser in January 2012. As mentioned previously in the thesis, the committees purpose was to broker the treaty on behalf of the respective governments of the EU. Members were responsible for collecting relevant data from their respective national domains and discussing their stances through the specialist committee meetings. Members also networked through channels outside the specialist committees at the intergovernmental level by forming transgovernmental links through bi-lateral negotiations. The secretariat of the EFC resided within the European Commission, therefore bridging a relationship between the European Commission and the negotiating process even though Commissioners where not formal negotiators. Apart from national senior civil servants and Commission representatives via the secretariat, the EFC was made up of officials from the ECB and national central banks.

The EFC acted as the secretariat for ECOFIN and the Eurogroup via its sub-group the EWG. It is within the EWG that the drafts of the Fiscal Stability Treaty were drawn in terms of substance. '*'The commission would have also been involved*

amongst others, but the core of the drafting would have been done by the euro working group'' (Senior Official, Dublin, 12th September, 2014)**.** Within this body, an important role was played by the Irish delegation particularly stemming from the Department of Finance. Such members were instrumental in determining the economic stances/positions for Ireland in response to the implications of the so-called German led Fiscal Compact for Ireland's future stability.

As mentioned previously, the European Commission (represented via the secretariat) and the European Central Bank (ECB) were represented at this level in the preparations for Eurogroup meetings. The EFC and EWG not only acted as secretariats for ECOFIN and the Eurogroup and played an important role in linking each institution and providing cohesiveness, but were strategically important for the intergovernmental agenda. The internal structure of these committees were diverse, and bridged the link between the various national preferences at the tables and the EU wide interest as a whole, as well as setting the scene for inter-state bargaining. These negotiating environments effectively mediated data assisting in the reaching of compromise between actors through the configuration of strategies to mediate and reconcile diverging national preferences, if or when conflict or contention emerged amongst members. From this, a pareto-efficient outcome emerged in the forms of the treaty drafts. Therefore, one may suggest that it was within these bodies that the real hard bargaining between EU member-states took place in relation to the treaty making process and it was indeed bureaucrats that conducted the process.

3.6.4 The SHERPA and COREPER

''Principally a lot of the negotiation was done by civil servants and then it came up to agreement at ECOFIN level, and then at full[European] Council level''

(Irish MEP, Brussels, 10th December 2014)

Having established the importance of the roles of the EFC and EWG as brokering agencies that drafted the Fiscal Stability Treaty it is now appropriate to explain the importance of the SHERPA and his/her delegation who worked alongside representatives of the European Commission, European Parliament and ECB within

the EFC and EWG committees. The power to direct the negotiations at these levels was handed to the SHERPA by the European Council President Herman Van Rompuy. The role of the European Council President has enhanced in recent years with it becoming the prime coordinator of crisis management in the Eurozone in response to the Eurozone crisis, much to the diminishment of the rotating council presidency. *''The position [European Council Presidency] decouples the European Council from the rotating presidency of the Council''* (see Puetter, 2014:20). The SHERPA worked closely with the Head of Government throughout the treaty negotiation processes. In the Irish case, this was the second-secretary general within the Department of the Taoiseach. As suggested in primary data, there were approximately six formal negotiations over the three-month period of the treaty making process. Apart from working through the EFC and EWG, SHERPA negotiations crystallised cross-nationally through foreign embassies accompanied by officials from the Department of Finance and Foreign Affairs. As indicated by a senior official in the Department of the Taoiseach, the role of the bureaucracy was rather important in creating links between national capitals. Senior civil servants in national departments/ministries worked closely with the national government and cabinet, advising and being advised in return. These senior officials created strong and enduring networks with foreign embassies and worked closely with other senior national administrative officials through their membership and attendance at the EFC and EWG in Brussels. In all, senior civil servants and expert economists from relevant government departments working with the Permanent Representatives played a constructive role in the bargaining process having collected essential data about national preferences both domestically and internationally. In turn. they reviewed their options and planned strategically to determine the best possible ways to achieve their own national preferences whilst accommodating the preferences of other EU member-states and satisfying the main collective goals of the European Heads of Government/State of the EU (see: Thurner & Urban Pappi, 2006:183). As quoted by one senior official:

''.....the Department of Finance and the Department here [Taoiseach] and our Perm Rep in Brussels would be pouring over the document and everybody would be trying to pick out the new changes. What are the new amendments being made? Do they suit us? Are they better? Are they worse? Do we need to be defensive here or do

we need to actually push.....encourage a particular text? So that was then pulled together into a single briefing at the senior negotiator and senior officials levels. Something that ultimately the Taoiseach could go ahead with''.

(Senior Official Dublin, 9th September 2014)

This quote sums the process up rather cogently. It is clear that at the SHERPA level national preference formation, and of course achieving actual preferences were key components of the role of SHERPA. The EWG and the EFC were not '*'actually mandated to advance the negotiations''* but were led and informed by the SHERPA in close association with the Permanent Representative (COREPER II) about how to mediate the preferences in discussion. In other words, the EFC and EWG were the forums of bargaining, but it was the national SHERPA's that directed the mandate of these institutions. Undoubtedly, the negotiation process and the ultimate outcomes were determined by the work of these senior officials. As the discussions were SHERPA led and inter-departmental in nature, the COREPER attended the SHERPA meetings. At these meetings the COREPER could collect vital data about the preferences of member-states that would be instrumental in shaping discussions and stances in ECOFIN and the European Council. As the negotiations were led via the SHERPA, the Permanent Representatives albeit being present at SHERPA meetings did not actually discuss the issues collectively within COREPER. *''The issues where not discussed collectively in COREPER or amongst the permanent representatives..... it just made sense to divide the labour''* (Senior Official, Dublin, 12th September 2014)). The COREPER merely acted as a link or informant between the SHERPA led meetings in EFC and EWG and EU institutions such as ECOFIN and the European Council. However, apart from mediating interests between the various EU institutions, the Permanent Representative also organised the negotiating agenda for the European Council which stemmed from the working groups. In the words of a senior official; *''the normal pattern is for the government to be asked to approve the broad approach in the negotiations. But a lot of the detail or all of the detail more or less would be left to the negotiators''* (Senior Official, Dublin, 12th September 2014). The Permanent Representatives with COREPER attended SHERPA meetings and in many cases acted as spokesperson for the meetings (Senior Official, Dublin, 12th September 2014). However, in the Irish case the

Permanent Representative did not act as spokesperson on the bureaucratic side of the negotiations. Although it is unclear why, it may be plausible to say that it served a strategic purpose in terms of division of labour and representation i.e. keeping the Department of the Taoiseach in the coordinating position, rather than the Permanent Representative who stems traditionally from the Departments of Foreign Affairs. In the Irish case the Department of Taoiseach was in the clear coordinating position, rather than the Department of Foreign Affairs which played little or no role.

The Irish Permanent Representative was particularly highly praised and highly regarded for his ability to extract vital information from the meetings to speedily mediate with other Permanent Representatives in an efficient and effective manner and to provide dossiers outlining stances rather quickly for the European Council under strict time constraints. Network capital (see Crossley et al, 2015) was an important asset to the Irish delegation and was made possible by the SHERPAs efforts, as well as the wider governmental links created by the bureaucracy. It has been mentioned by a former Irish government minister that the Irish delegation, particularly those members from the Department of the Taoiseach and COREPER had strong ties with influential bureaucratic and political actors at the national and intergovernmental levels. In particular, the Irish delegation were placed in a very strong negotiating position in terms of strategic planning and national preference formation due to their very close links with influential foreign senior officials who happened to possess vast knowledge about the treaty making process and the national preferences of other EU member-states'. This style of networking is referred to as *mechanical coalition building* and is discussed in greater depth later in the thesis. Mechanical coalition building is an essential practice for forming strong and long lasting networks in intergovernmental negotiation processes and is highly beneficial for the strategic negotiating actor.

3.6.5 The Economic and Monetary Affairs Committee

Due to the intergovernmental nature and bureaucratic character of the negotiation process a deliberative role existed for supranational institutions. However, their involvement was of little significance to preference bargaining within the negotiating

institutions. For example, members of the European Parliament (MEPs) who sat on the Economic and Monetary Affairs Committee (ECON Committee) had an observational role in the process, but had no real negotiation powers and were certainly not there in the sense of providing checks and balances, typical of their place in general EU policy making processes. This committee was procedurally incorporated due to the nature of the committee, in addition to its member's roles as public representatives of the European peoples for whom the treaty would affect. Incorporating the ECON committee into this discussion is useful for highlighting the extremity of the intergovernmental dimension, given that the ECON committee hails from arguably one of the most democratic institutions of the EU in terms of its representative nature. However, its powers and influence in this instance were clearly reduced to an observational status. As the treaty was not created through typical EU treaty making procedures it was met with considerable hostility from MEP's, particularly those with membership on the ECON committee. This was expressed by members of the ECON committee who were interviewed and who felt that the democratic quality of the process was lacking. This was combined with concerns for the negative effect that the Union Method may have had for the voices of the European peoples. This concern was particularly expressed by a French centrist MEP who was interviewed for the study. The SHERPA led intergovernmental process was considered counter-intuitive to the logic of parliamentary democracy at the EU level. This intergovernmental process wielded a considerable degree of concern for legal reasons as much as symbolic reasons due to the lack of knowledge about where the rules within the treaty were actually stemming from. Furthermore, there was no place to hold the European Council to account for any action taken under what was a system of national interest bargaining void of any real supranational oversight. Therefore, the democratic quality of the treaty could not be scrutinised effectively within the EU.

''The second thing is that you take a risk when you are outside the community method. You do not have the public discussion in the parliament, you don't have the possibility to have amendments for all the member states, you only have the majority ruling the country and not the majority and the opposition as is the case in the parliament''

(French MEP, Brussels, 9th December 2014b)

It was argued by the French MEP that the Community Method is the only way to ‘‘*safeguard the balance between small and large states’’*. Therefore, by creating the treaty through the Union Method it’s substance and terms would not eventually become subject to rules and norms of Community Method oversight after its ratification, as one may expect after an IGC process. This was considered highly dangerous to the balance of power in the EU as one does not know how much pressure large EU member-states would place on smaller EU member-states or even if smaller EU member-states would ‘‘*over play their cards’’* with regards to this policy area in the future. This is an interesting point as although the ECON committee only had observer status, various members on the committee still had a role to play throughout these negotiations. However, being an observational role, much of their concerns appeared to be overshadowed by council interests. This in itself further highlights the strong intergovernmental intent behind the treaty negotiation process.

Conclusion

This chapter discussed the nature and substance of the Fiscal Stability Treaty, as well as the institutional architecture that back-dropped its creation. It dealt with issues relating to the intergovernmental rationale of the treaty for euro-partners. It assessed the economic rationale of the treaty and explored why it was a necessity for the Eurozone and wider EU. It observed the main provisions of the treaty, particularly in association with Title III which constitutes the Fiscal Compact. It also looked deeply into the various institutions and types of actors that were part of the negotiation process which highlighted the extent of intergovernmentalism under the Union Method of decision making.

The Fiscal Stability Treaty exhibits the prime characteristics of the Union Method approach to EU treaty making as is explored by new intergovernmentalism. Although the treaty’s intergovernmental character was sourced in British contention, the intergovernmental nature allowed the treaty negotiations to be conducted quickly

and effectively, thus bringing the treaty into effect in a timely manner appropriate for the conditions under which it was created. The treaty was a real necessity for the Eurozone and wider EU due to its ability to help EU member-states reduce national debts via a reduction in national structural deficits and get their economic and financial affairs in order. This would help EU member-states regain market confidence, regain economic stability and generate growth. With little means to grow under the pressures of austerity, market confidence and external investment was a necessity for growth to be possible. This was apparently only achievable by working toward fiscal balance. The treaty was also important as it was a first step to fixing the weak design in the EMU. In bringing about fiscal consolidation, it ensured EU member-states may never again engage in similar fiscal activity that made them vulnerable to the effects of the crisis. It is through provisions such as the debt brake rule (Golden Rule of balances budgets), the automatic correction mechanism and the $1/20^{th}$ rule that EU member-states like Ireland can move forward from the crisis. The fiscal rules do not impose upon the autonomy of EU member-states. Instead, they help guide EU member-states to work together in a new form of economic governance to ensure the protection of the euro and the single market.

As the Union Method was used to create the treaty, the institutional decision making background of the treaty was significantly different to previous EU treaties. There was little or no role for the EU's supranational institutions, although the European Commission was represented in many of the negotiation bodies. It was European Council led, and for the most part, it was bureaucratically brokered via specialist committees. These committees included the EFC and EWG which housed national senior civil servants who were led by national SHERPA's. These negotiating bodies were tasked with brokering the treaty on behalf of their national executives; a characteristic intrinsic to the treaty's intergovernmental nature. The specialist committees acted as secretariats for ECOFIN and Eurogroup. As secretariats much of the initial work (bargaining and outcomes) were established prior to negotiations at the ECOFIN, Eurogroup and even the European Council levels. The roles of national government ministers in ECOFIN and Eurogroup and the Heads of State/Government in the European Council revised the negotiated outcomes and bargained for last minute deals. Although the process was highly influenced by national bureaucrats at the EU level, this did not diminish the political importance of

the roles of national Finance Ministers or European Heads of State/Government. After all, bureaucrats tasked with brokering the treaty were advised by national Heads of State/Government on stances/positions to take when negotiating on their behalf. Therefore, much of the decision making was conducted on the basis of constant communication between principal and agent. As is characteristic of the Union Method, the European Council maintained the leading role in the process, thus giving the Fiscal Stability Treaty its distinctive intergovernmental character in both creation and substance.

Chapter 4

The Case of Ireland

Introduction

This chapter of the thesis discusses Ireland's relationship with the Fiscal Stability Treaty. Ireland's relationship with the treaty was by no means unique. Although, Ireland is a useful case study in order to understand the role of the small EU member-state in the Fiscal Stability Treaty negotiations. Ireland was one of the PIGGS subject to bank bailouts in the form of the EFSF organised by Germany and its associate creditors. Due to a banking failure in the Irish state combined with the effects of the global financial crisis, including a breakdown in the interbank lending system, as well as fiscal imbalances across the EU rooted in the weak design of the EMU, Ireland found itself to be one of the most vulnerable EU member-states in the EU at the time of the Eurozone crisis. By assuming bank debt on behalf of the taxpayer in the form of the EFSF, Ireland became subject to further austerity measures and suffered a sharp increase in its structural deficits and national debt. The Irish economy became one of the worst in the Organisation of Economic Co-ordination and Development (OECD) after a long period of international economic competitiveness and running structural surpluses above 1% with national debt below 40%.

Ireland had a critical choice to make regarding the Fiscal Stability Treaty. If Ireland failed to ratify the treaty it could see itself running further into higher national debt with little opportunities for seeking financing. Ireland also risked losing further market confidence, losing foreign direct investment and regaining stability and growth. Accepting the treaty meant that short term sacrifices had to be made in order to achieve long terms gains. The Irish government being supportive of the treaty as a method to avert the effects of crisis had to seem compliant, whilst also appeasing its people. The German Ambassador to Ireland said as much when he argued that it was essential to reduce debt in a way that was convincing to the European public, as well

as investors (see report of the sub-committee, 2012). In order to ensure the ratification of the treaty, the Irish government bargained for three prime concessions closest to their national preferences. They bargained for a more flexible provision relating to the constitutional nature of the treaty at the national level, thus eventually achieving the term *preferably* in the treaty. Effectively Ireland found a means to avoid a referendum and the possibility of involuntary defection (see Iida, 1996) at the hands of the people. However, despite the achievement, Ireland was legally required to hold a referendum. Concerned about the referendum leading to a No vote, further concessions would need to be sought in order to win the peoples support. Thus, the Irish negotiating team bargained and achieved further concessions most notably associated with the terms of access to the EFSF and ESM and a more flexible structural deficit measurement. Backed up by primary data, the chapter argues that Ireland as a small and economically weak EU member-state not only secured concessions close to national preferences, but also achieved a degree of *relative* influence in the negotiations. This paves the way for a deeper analysis of the actual ways in which Ireland achieved such influence, which will be discussed later in the thesis.

4.1 Evaluating Ireland's Economy in the Post Financial-Crisis Period

Financially speaking, one may argue that a debtor country like Ireland in the post-crisis era was not in a valid position to dictate the terms of the Fiscal Stability Treaty to a large creditor EU member-state such as Germany or France, especially when the debtor possesses risk that could significantly affect the security of the creditors. This point has been made on a number of occasions by members of the Irish governing parties in Dáil debates throughout the months preceding the May 2012 referendum. They were often made in response to calls by opposition leaders to use stronger opportunity structures as means for leverage in the negotiations in order to secure better concessions. As a result of Ireland's economic and financial circumstances following the Eurozone crisis in 2007, the state fits in with what constitutes a *small* member-state in EU terms (see Bunse et al, 2005; Gron & Wivel, 2011; Panke, 2011; Panke, 2012; Thornhallsson & Wivel, 2006; Vandenbosch, 1964). Ireland's economy contracted considerably due to the bursting of its property bubble which

was influenced by the international credit crunch following a series of bank insolvencies and exacerbated by domestic banking deregulation practises in Ireland and across Europe. This was combined with failures in the inter-bank lending system (see: Congleton, 2013; Hardiman, 2010) sourced in USA shadow banking practices (see: FCIC, 2011). Following its bank bailout, Ireland became bound to strict austerity measures which placed downward pressure on its economic progress in a number of economic sectors. Financial lending became prudent, borrowing contracted, investment reduced, wage demands increased and unemployment rose to approximately 15%. The economy became stagnant with growth levels fluctuating marginally between 1% and 2% per annum since 2009 (see: CSO, 2015). The country entered *programme status* due to Ireland's acceptance of the financial bailout to recapitalise its banks. The Irish economy became one of the most vulnerable economies in the OECD (see: Kinsella & Kinsella, 2009). The bailout mechanism known as the European Financial Stability Facility (EFSF) which comprised of the European Financial Stability Mechanism (EFSM) which totalled €500 billion combined was organised and implemented for Ireland and Portugal. Ireland was the first EU member-state in November 2010 to receive bailouts from these mechanisms totalling €85 Billion, followed by Portugal which received €78 billion (see Wallace et al, 2015:177-178). The funds were co-financed by members of the Eurozone (particularly Germany and France), the International Monetary Fund (IMF) and Britain, Denmark and Sweden (Brady, 2013). Despite the bailout fund, Ireland's economic prognosis regressed further due to austerity measures, reduced borrowing and spending and rising domestic taxes to cover structural costs and sovereign debts. Amidst these regressions, there was a sharp reduction in Foreign Direct Investment (FDI) having lost market confidence which exacerbated the rise in unemployment and welfare dependency rates. The state was effectively bankrupt. As the bailout fund came in the form of the EFSF which was contributed to largely by Germany, this placed Germany into a leading negotiating position in the interest of safeguarding financial stability in the Eurozone and ensuring that finances provided to EU member-states like Ireland would be effectively utilised with the best financial return possible for the union as a whole. *''In general, people who are richer or stronger have an advantage. But in fairness, this is something which is recognised by the small member states as well''* (Senior Official, Dublin, 12th

September 2014). The fact that Ireland risked spreading negative economic and financial contagion via the single market to larger and more stable EU counterparts; this placed Ireland into a perceivably limited negotiable position throughout the post-crisis era. This was particularly seen in relation to discussions on tax harmonisations, corporate tax discussions and bank debt write-offs circa the 2010 and 2011 negotiations. Due to its economic conditions, Ireland was not initially in a position to make strong demands in the Fiscal Stability Treaty negotiations, nor was it in a position to assert any position closest to the *status quo*. However, identifying and drawing upon opportunity structures helped the gradual assertion of hard bargains which helped its securitisation of national preferences.

4.2 The Treaty: A Pragmatic Necessity for Ireland

The terms of the Fiscal Stability Treaty are well documented. However, some have questioned how affective the terms actually are and even under what conditions they would be most effective for a country such as Ireland (see Hagemann, 2012; NERI, 2012). With the onset of the Eurozone crisis, Ireland's economic and financial stability weakened. This led to a sharp and continuous regressive cycle as the crisis exacerbated with time. Subject to its economic and financial frailties throughout the 2011/2012 crisis period, Ireland appeared to be in a less than credible position to express a great deal of influence over the Fiscal Stability Treaty. Ireland's economy in the post 2007 period was destabilised and lost a great deal of confidence from international markets compared to its larger and more successful EU counterparts. As discussed in chapter 3, the Fiscal Stability Treaty was not a particularly new concept. Its rules were not so different to those proposed by the Irish government in its Fiscal Responsibility Bill outlined in election manifestos throughout 2011 which built upon already agreed EU fiscal rules and regulations (see: European Movement Ireland, 2012). As a senior official with the Department of Finance and Public Affairs stated: *''yes you are putting these [fiscal rules] at a high legal level but these requirements were already there anyway. So in that sense it was nothing huge. We were not getting pushed into a corner or anything''.* (Senior Official, Dublin, 25th September 2014). The treaty's purpose is to bring countries into balance in the present so they can run necessary deficits in future cyclical recessions, if or when

necessary. This logic of fiscal prudence during times of economic recession has been argued by those of the left of Irish politics such as Paul Murphy (TD) as ruling out Keynesian economics policies (see Sub Committee on the Referendum, 2/4/2012; Sub Committee on the Referendum, 4/4/2012). Keynesian economics advocates injecting multipliers into the economy during times of recession as to increase output, increase national income and reduce debts. This would not be feasible under the economic and/or financial conditions of EU member-states influenced by the consequences of the Eurozone crisis. However, the Labour party's Sean Sherlock TD argued that the Fiscal Stability Treaty's rules would not affect investment despite their perceived strictness. In fact, they were quite compatible with classical takes on Keynesian economics (Dáil Debates, 18/4/2012) considering the economic and financial conditions of EU member-states. The crisis period provided the catalyst for the formulation and implementation of the rules into national primary law, or (preferably) national constitutional law. Thus, legally binding signatory EU member-states henceforth.

''A widely accepted definition of a fiscal rule is a……. constraint on fiscal policy—expressed as a numerical ceiling or target—in terms of summary indicators of overall fiscal performance."

(Kopits and Symansky as cited in Hagemann, 2012:5)

Some of the larger EU member-states such as Germany and France (the so-called architects of the treaty) were the first to abuse the guidelines of the original SGP (see Dáil Debates, 1/2/2012), and in turn they ran high structural deficits resulting in high national debts. By the time the crisis hit, their financial frailties placed them into a vulnerable and unsuspecting position providing a challenge for them to sustain themselves in a highly interdependent single market. As the Fiscal Compact was born in response to the weaknesses that structural imbalances create in times of crisis, it is still questionable why Ireland was highlighted as one of four main 'examples' of structural deficit imbalances, when in reality Ireland's problems were actually sourced in banking deregulation, illegitimate banking practices and the emergence of an unsustainable property bubble. Property prices grew at a 10% average per annum between 1999 and 2007 (Wallace et al, 2015:173). *''Ireland for instance, began the crisis with a balanced budget but saw government borrowing*

reach an astonishing 30.8% of GDP in 2010 after house prices plummeted and the government stepped in to guarantee the country's troubled banks'' (Wallace et al, 2015:176). As stated by Professor Philip Lane (TCD), during the good years Ireland ran budget surpluses at a modest plus 1% (Sub-Committee on the Referendum, 4/4/2012). *The Sunday Times* placed the structural net surplus of Ireland at 1.97% of GDP between 2000 and 2007 (The Sunday Times, 29th April, 2012b). Ireland was in fact well within the guidelines of the SGP and had been quite fiscally sound during the boom years. *''Ireland satisfied the EU-mandated debt to-GDP brake every year between 2000 and 2008. Between 2000 and 2007, Ireland's debt to GDP ratio was below 40%''*. (The Sunday Times, 29th April, 2012b). Economist Dan O'Brien speaking to the sub-committee on the Referendum, stated that Ireland's debt to GDP level was actually below the Maastricht's criteria of 60% compared to Italy's debt level which reached in excess of 114% to GDP by 1999 (Sub-committee on the Referedum,4/4/2012). Ireland's structural imbalances were a consequence of its banking debt which the Irish state assumed having nationalised banks after the crisis upon receiving the EFSF bailout. It was only after the bank bailout in 2010 that Irish debt multiplied rapidly and risked transferring negative economic and financial contagion to larger EU and Eurozone counterparts suffering from their own economic and financial instabilities. However, the macroeconomic failures in the EMU contributed to Ireland's structural flaws. Low European central bank interest rates combined with the failures of European institutions to fully enforce the SGP paved the way for the banking craze in Ireland. If Ireland had not been a member of the Eurozone, the Irish Central Bank could have regulated and even dampened *''runaway demand''* for mortgages. This could have allowed Ireland to avoid the inflationary property bubble (see Wallace et al, 2015:172). Drawing our attention to the Swedish banking crisis between 1994 and 1995, a similar point was made by Susanne Eberstein, Deputy First Speaker of the Swedish Rikstag who argued that part of Sweden's successful recovery was that it had its own currency and control over monetary policy through which it could manipulate interest and exchange rates. Ireland as an EU member-state did not have this level of autonomy (see report on sub-committee, 2012). Had the Eurozone applied a stricter application of the SGP in the early years and created a properly consolidated fiscal and even banking policy

across the Eurozone, perhaps conditions across Europe may have been different, especially in Ireland.

Ireland's response to the Fiscal Stability Treaty and particularly Title III which outlines the Fiscal Compact was sourced in pragmatism and necessity. National and supranational political actors and civil servants have argued that Ireland was not initially supportive of the treaty in its new intergovernmentalist form, but recognised its necessity nevertheless. A senior official argued that not many people saw the need for the treaty and feared that it would be too repressive on the Irish economy in terms of the Fiscal Compacts rules regarding balanced budgets and the automatic corrective mechanism (Senior Official, Dublin, 12th September 2014). From a pragmatic standpoint, a former Minister of State for EU Affairs stated that whilst Ireland dreaded the treaty due to an uncertain referendum outcome, the Irish were extremely anxious to be seen supportive of the treaty. This was important because it was a German project and it was *''strategically very important''* to be seen as eager to cooperate rather than be obstructive, especially as a small EU/Eurozone member-state in a bailout programme financed by predominantly larger EU member-states such as Germany. *''Frankly, Ireland's primary objective was to ensure that Ireland was perceived by its partners to be seen as an enthusiastic and willing partner therefore engaged''* (Former Minister of State, Dublin, 19th September 2014). A senior official from the Department of Finance and Public Expenditure stated that Ireland certainly did not want the treaty, but because German Chancellor Angela Merkel wanted something *called* a treaty, countries with initial reservations gave her what she wanted. *''Well I suppose we knew that we had to do what the Germans wanted ..... so yes, we knew what we had to do basically''* (Senior Civil Servant, Dublin, 25th September 2014). A French Socialist MEP and member of the ECON committee bluntly stated that there was no alternative for Ireland and said that indicating that it did not matter whether the Irish liked the idea of the treaty or not. They simply were not in a position to voice otherwise (French MEP, Brussels, 9th December 2014. Considering the Irish economic context, its security was reliant on the stability of the union which would be assured by the treaty. An Irish MEP stated that it was pragmatism that drove Irish support. They needed the ESM and it was the way to get it and *'it was in our interest to get it over the line'* in a non-obstructive manner (Irish MEP, Brussels, 10th December 2014). The MEP was of the view that

the Irish were in no position to make demands due to their financial status in the EU. This perspective backs-up the opinion of the French socialist MEP mentioned previously. An EU correspondent stated that the Irish were '*'not in a position to think about anything''*. As the treaty built upon what was already there, the Irish government was in a situation ''*where they kept their heads down''* (EU Correspondent, 11th November 2014). It was argued that whether or not they were supportive, they certainly assured that they *appeared* supportive of the treaty. ''*It's a matter of keeping a smile on your face and [saying] yes and rolling the problem out to try and get them [larger member-states] to understand. But whatever you do, you don't create waves''* (EU Correspondent, Cork, 11th November 2014).

A more positive response came from another EU correspondent who believed the Irish were actually supportive of the treaty. However, once again it was indicated that the Irish support was sourced in pragmatism and the realisation that the treaty was a necessity, rather than ideational enthusiasm about its expected structural changes in Ireland and the EU as a whole (EU Correspondent, Brussels. 10th December 2014). After all, the outcome of the treaty can only express itself over time. It appears that regardless of the support for the treaty, the Irish were prepared to do what was necessary to achieve their aims which was to regain market access, investor confidence and overall economic stability. Accepting the treaty would be a start to achieving these. Many of those who were either negotiators or close to negotiators of the treaty believed that Ireland did not desire the treaty for a number of reasons. These ranged from economically oppressive provisions in the case of the Golden Rule of Balanced Budgets and the automatic corrective mechanism to the fear for a referendum with uncertain results. Any support based on pragmatism was linked to the expectations of the larger EU member-states like Germany [as creditors] mixed with the expectations and limitations of international markets, as well as the realities of weak market confidence. Despite initial attitudes, there was a unanimous agreement amongst interviewees that considering the conditions and economic limitations, Ireland and the Irish electorate via the referendum made the right decision regarding the passing of the treaty. It was agreed that it was necessary that the Irish made this decision due to the fact that they had no credible alternatives to the treaty, and due to the potential domestic and international economic consequences associated with a rejection of the document. However, according to

some members of the Irish government opposition and members of the left and far-left of Irish politics, the treaty could have been developed further in substance, as well as provided a greater safety blanket for the Irish people from the strict terms of the treaty.

4.3 The Treaty: A Critical Choice for Ireland

Although the treaty was an economic necessity for Ireland and the rest of the EU alike, Ireland had a critical choice to make. The choice was to become part of, or remain outside the newly modified form of EU fiscal consolidation within the EMU. This choice would be determined on the basis of whether or not the voting public ratified the Fiscal Stability Treaty through national referendum. It has been argued that if Ireland had not ratified the treaty, the *train* was guaranteed to leave without Ireland (The Journal.ie, 7th March 2012). This point relates to the ratification process of the treaty. The Fiscal Stability Treaty would commence with or without Ireland. As stated by the former Minister of State for EU Affairs, Lucinda Creighton TD, Ireland's rejection of the rules would send out negative signals to the international markets. This in turn would jeopardise Ireland's chance to regain access to the markets and regain economic stability. This would send out negative signals to euro counterparts (see: The Irish Times, 29th February 2012). This would damage Ireland's securitisation of future foreign investment and its chances at improving employment and enhancing growth and would eventually damage long term stability and sustainability. Having been questioned about the reality of the EU leaving Ireland behind, an Irish MEP who was part of the Irish referendum campaign on the treaty stated that the EU would have ''*absolutely*'' left Ireland behind if the Irish public had not signed the treaty. He argued that as a small EU member-state the idea of not signing the treaty would have been *''madness''* considering its place in the single currency zone with a single common monetary policy. *''This train is leaving the station; it is up to us if we are on it or not. It would be madness not to go on this''* (Irish MEP, Brussels, 10th December 2014). It was quite clear that if Ireland failed to ratify the treaty, euro counterparts would continue onwards without Ireland which meant that negotiations would not be re-opened in order to win over the Irish vote in a second referendum. However, Irish government opposition forces on the

left of Irish politics refuted this. They looked toward previous Irish referendums such as the Nice and Lisbon Treaties, where national rejection the first time around led to subsequent renegotiations in favour of Irish national preferences (see Quinlan, 2009; Quinlan, 2012). In reality, considering the severity of the economic context across the EU combined with the rapid need for a treaty, there was no time to renegotiate at the hands of potentially obstructive small EU member-states like Ireland. If Ireland remained outside the compact, its economic conditions would potentially endanger the economic stability of other EU member-states in the union who would have to share the burden of Ireland's financial frailties. This is a very telling point in regards to the extent of Ireland's initial influence upon entering the negotiations which was relatively weak to begin with. However, with informal consensus based decision making behind the treaty negotiations, one would expect that Ireland found ways to achieve influence in the negotiations as they progressed.

Many initially believed that Ireland was not in a position to bargain. A senior official within the Department of Finance argued that ''*there was no bargaining''* on the Irish part (Senior Official, Dublin, 25th September 2014). When the official was asked about the strength of the referendum as a bargaining chip, he stated that the Irish referendum could not have possibly been used as a bargaining chip. It must be noted that this official was neither a negotiator nor was he present at the negotiations. Therefore, the extent of this particular senior official's knowledge is ambiguous. The official's role was predominantly analytical and advisory. Others much closer to the negotiations have argued that bargaining was most certainly central to the negotiations and indicated that the Irish team did have a part to play, albeit a small part. In retrospect of the concessions that were secured by Ireland discussed later in this chapter, they were actually quite favourable relative to Ireland's initial preferences. This indicates that relative influence was achieved to some degree.

Ireland had reservations about the intergovernmental nature of the treaty, but not an EU wide fiscal policy which was evident by its signing of the original SGP, as well as the latter two pack and six pack agreements which strengthened the original SGP. Irish national preferences did not rest with the *status quo,* whereby the *status quo* represented a non-treaty. Ireland preferred an alternative route to intergovernmental

treaty making, but due to time pressures and contestation by the British government over the potential involvement of the Commission, the Union Method was the only option to safeguard the euro in a speedy manner. From the beginning, Ireland would need to accept the permanent and legally bound fiscal budgetary provisions which were not previously implemented by the SGP. Unlike the less secure SGP, Ireland would be legally bound to short term domestic economic and financial sacrifices (further austerity measures) in order to achieve long term domestic and international benefits (stability, sustainability and market confidence).

Looking at the negotiations from a new intergovernmentalist perspective in institutional terms and because the treaty itself was conducted under an 'in or out' process requiring only a mere 12 out of 17 member-states for it to come into force (see Tsebelis & Hahm, 2014), this determined the bargaining format of the negotiations considerably. Deliberation and consensus seeking was key. Keen to win the support of small and valued EU member-states like Ireland, large EU member-states understood that by not using formal voting methods but choosing consensus based decision making, Ireland and other less influential smaller EU member-states would achieve influence and meet preferences in other ways (see Gron & Wivel, 2011; Schure & Verdun, 2008). This was accepted by larger EU member-states as it would be politically untenable to go ahead once the quota was met and leave an EU member-state behind in political and economic limbo. When EU member-states fail to reach consensus, this can be considered a ''*breach of [negotiating] etiquette''* (see Bickerton et al, 2015b:10). Therefore, EU member-states will try to accommodate all national preferences as much as is possible when under informal consensus based decision making practices. One senior Council official backs up this point in saying: *''you [as a dominant negotiator] try to find an agreement together [with less dominant negotiators] that is going to be acceptable for everybody. This is also why in the Council; you will rarely have a vote. You would normally try to agree on something that everybody could live with……..''* (Council Secretariat Official, Brussels, 10th December 2014). When divides in national preferences become ever more pronounced to the point of potentially obstructing negotiating outcomes, larger and more dominant EU member-states try to incorporate the interests of smaller EU member-states as a means to achieve universal agreement and create a pareto-efficient outcome which satisfies all negotiators. Prior to inquiring further about

Ireland's national preferences, it is necessary to evaluate Ireland's strengths and weaknesses upon entering the Fiscal Stability Treaty negotiations in order to gain better insight into Ireland's negotiating position at this time.

4.4 Achieving Moral Credibility

The factors that affected Ireland's initial ability to negotiate the treaty were sourced in its domestic economic and financial conditions caused by its three way *financial*, *sovereign debt* and *growth* crises (see: Chari & Bernhagen, 2011; Lane, 2013; Shambaugh et al, 2012). Although Ireland's weaknesses are believed by some to have affected its ability to make staunch demands for concessions and achieve initial influence in the negotiations, the state most certainly had strengths. Ireland's strengths were reflective of its proactive take on the treaty and its willingness to comply generally with the terms without being overly obstructive within the negotiation process. An Irish EU correspondent (EU Correspondent, Brussels, 10th December 2014) stated that Ireland received a certain moral credibility due to their willingness to work hard and by doing what was necessary and expected of them. In being compliant, Ireland won trust from its counterparts. A willingness to comply mixed with the long established and highly regarded professional roles of its Permanent Representative and its national civil service were also instrumental factors. These actors were said to have possessed a unique ability to mix business and pleasure which gained them support and allies in Europe which is instrumental in having preferences heard inside and outside negotiating forums. A similar point was uttered by a French centrist MEP (French MEP, Brussels 9th December 2014) close to the negotiations via the Econ Committee who held the belief that the professionalism and lack of corruption of Ireland's civil service wins them a considerable degree of trust. A Department of Foreign Affairs senior official stated that Ireland's strength was that ''*we were sort of a poster child for doing things the way we were told, below the belt with austerity agenda and so on...''* (Senior Official, Dublin, 4th December 2014). Another strength identified by the official was that Ireland's referendum was a strength in itself due to its ability to act as a strong *''negotiating chip''*. Likewise, a British MEP (British MEP, Brussels 9th December 2014) made a similar point. He argued that whilst electorates can say No in a

referendum, countries like Ireland in the past have rejected treaties. This in turn, has generated renegotiation processes. Renegotiation is sought in situations like this as EU member-states who are more supportive of the agreed terms of a treaty would find it difficult to continue with a treaty ratification whilst leaving other EU member-states behind. The consequences for the union would be too great. So there is always a means to help EU member-states see the need for the treaty and therefore see the treaty through its process. This point is discussed more later on in the thesis.

Although the Irish economy was in poor economic health, Ireland did have some strengths including its willingness to comply with rules set out by larger counterparts that may not have been desired, but were nevertheless, accepted as rational and above all necessary considering Ireland's economic conditions. Some may argue that keeping one's head down and complying without being obstructive is actually a weakness and that it represents a lack of voice and influence. Some may argue that it is an indication of being oppressed by more powerful negotiating counterparts. Alternatively, others may argue that it is not reflective of weakness or oppression, but a smart act of tact or strategy by recognising one's economic and political weaknesses and responding effectively and strategically in a manner suitable to one's position until one has means to negotiate further. As Ireland was a small EU member-state which is known to have gained concessions (as discussed later) it would be plausible to argue that this negotiation strategy worked, despite perceptions of Ireland having little initial influence in the negotiations.

4.5 Coordinating National Interests

Inquiring about Ireland's national preferences required thorough examination of 14 elite interviews and Irish parliamentary and committee debate documents in seeking indicators of sought national preferences and concessions available to Ireland. No EU level discussions relating to the treaty have been published to date. As the treaty was an intergovernmental treaty on the side-lines of EU treaty law the matter of transparency is a contested issue amongst certain European governments. As stated by Jakob Thomson, spokesperson of the General Secretariat of the European Council during the negotiation period, *"Revealing the national position of a participating*

member state in the negotiating process of the fiscal compact treaty would most likely lead to more difficulties reaching similar agreements in the future and would seriously undermine similar negotiations." (Irish Examiner, 7th July 2012). The Department of Taoiseach in Ireland confirmed the lack of transparency of the negotiations. They and others, believed that revealing the Irish national position in the treaty negotiations could undermine the European Union. Any release *'would undermine the protection of the public interest as regards the financial, monetary or economic policy of the union."* (Irish Examiner, 7th July 2012). Protection seems to be a key theme regarding the lack of transparency in these negotiations.

Ireland's national interest was not dissimilar to many of its EU counterparts, although its national preferences differed quite considerably. The interest of Eurozone members was to save and protect the euro by whatever means necessary and eventually ensure, or in the cases of bailout states, actually regain access to the international markets with a credible backdrop as security against future potential financial and economic threats. Protection and sustainability was of utmost importance for all euro member and non-euro member EU counterparts alike due to the intensity of interdependence within the single market. An intergovernmental based fiscal policy would be a dynamic start to saving the euro by driving down national deficit and debt levels paving the way for further integration in areas such as the banking sector. Once combined, the accumulation of cross EU reduction in national debt levels would have a stabilising effect on the EU economy and restoring faith and confidence in the euro. Despite the high level of interdependence within the Eurozone, interdependence is asymmetrical. This means that there is a clear difference in the social, political and economic conditions of individual EU member-states who seek (through interaction) common policy goals without harming the political and economic autonomies of each EU member-state. Although common goals are similar or even perhaps equal to each other due to interdependence, national preferences naturally differentiate due to differentiated domestic conditions, as well as the subsequent effects that common policy goals will have on individual EU member-states. Reaching common interest requires both gains and losses amongst all negotiating parties in order to reach a point of intersection whereby a multitude of cross-national preferences meet at a common point that ensures the common interest is met. This is the pareto-efficient outcome explained by Moravcsik

(1998) which explains the ways in which EU member-states bargain to meet their diverging national preferences intergovernmentally. It is through bargaining that the creativity and intensity of intergovernmental negotiations play out.

''To put it bluntly, there was very little enthusiasm for the new treaty. There was enthusiasm in essentially one country which was Germany. Not much in Ireland or elsewhere''

(Senior Official, Dublin, 12th September 2014)

Ireland's overall national preferences cannot be considered extremely demanding. They did not obstruct the treaty in terms of its long term goals, nor did they harm the national preferences of other EU member-states. This may be one explanation for why Ireland's preferences were duly and easily accommodated in the negotiations by larger EU counterparts, as Ireland's preferences were reasonable and did not obstruct the success of the treaty. Ireland has held referendums on all major EU treaties since the 1986 *Crotty vs. An Taoiseach* Supreme Court ruling. The case related to the legitimacy of the 1986 Single European Act in relation to Irish sovereign competences and power transferal to EU institutions. The ruling has since required a referendum on all EU treaties in Ireland where national competences are transferred to EU bodies. As EU treaties reshape power and governance in the EU and require changes to the Irish constitution, referendums in Ireland on EU treaties are essential. Although it was not an EU treaty, the Fiscal Stability Treaty is an intergovernmental treaty which intended on transferring fiscal powers beyond the EU member-state to EU bodies. Therefore, in accordance with law, this required a referendum in Ireland as to avoid violating the boundaries of national sovereignty. As national sovereignty constitutionally rests with the Irish people and not just parliament, laws relating to the transfer of national competences beyond the state cannot be passed via mere parliamentary rulings (see: Doolan, 2003) as one would expect to observe in the United Kingdom. This has placed Ireland into a significantly influential strategic

position in previous EU treaty negotiations such as the Nice and Lisbon Treaties[28]. Based on this knowledge, the Irish referendum as a national constraint in times of EU treaty change appears to act as a useful variable for analysing negotiations and bargaining from an intergovernmentalist perspective. It is after all a domestic constraint which fits in with the works of scholars who have researched two level games through the liberal intergovernmentalist perspective (see Putnam, 1988; Closa 2013; Hodson and Maher,2014).

A No vote in the Fiscal Stability Treaty referendum would have effectively represented the Irish people's preference for the *status quo* (Brady, 2013). This would have seen Ireland opting out of the treaty. This may have been detrimental to Ireland's political relationship with Europe, the Irish economy in general and Ireland's link with the international markets in terms of market confidence and future investment. Ireland would also have been exempt from access to the ESM worth €500 Billion if it was needed after the expiration of their €85 Billion loan provided by the EFSF in December 2013 (Brady, 2013). The country would also have found it difficult to access finances from financial institutions across Europe and beyond. However, the head of the IMF's External Affairs Mr Bill Murray stated that Ireland could apply for funds from the agency post-2013 even without the Fiscal Stability Treaty.

As previously mentioned, Ireland's national interest was not dissimilar to the interests of other signatory EU member-states. This is evident through a clear common denominator which was to protect the Euro at all costs. Ireland's interest (like its euro counterparts) was to further the integration process and bring about stronger fiscal rules to ensure stability. Irish Taoiseach Enda Kenny outlined four main aims which he brought to the European Council. These main aims were associated with the Irish national interest and preferences.

1) The need to strengthen governance structures.

2) The need for new instruments at EU level i.e. flexibilities with the EFSF.

[28] The Nice (2001/2002) and Lisbon (2008/2009) Treaties are evidence of when Ireland as a small EU member-state achieved influence due to failed referendums. Failures in both treaty referendums in Ireland considerably reshaped the terms of these treaties in Ireland's favour.

3) A workable application of the structural balance rule and a debt brake at the national level.

4) The incorporation of the agreement in the EU legal framework at the earliest opportunity.

(Dáil Debates, 24/1/2012)

Ireland's national preferences, being the ways in which Ireland would meet the common goals while satisfying its own unique domestic expectations differed in the negotiation environment in contrast to its larger counterparts, but only to a minor degree. As commonly documented within primary and secondary data, the terms and rules of the pact were not new. They were agreed upon in the Maastricht Treaty with subsequent revisions in the form of the Stability and Growth Pact's and the two pack and six pack reforms. Within their election manifesto, the Fine Gael party outlined their intention for a Fiscal Responsibility Bill prior to coming into office in February 2011. Thus, the treaty as a means to secure market confidence and drive down debt was not of great concern, despite the initial lack of support for its intergovernmental nature. ''*If you recall, we gave a commitment that we would introduce the fiscal responsibility bill. So for us, we had this commitment in our manifesto to implement it. Then the new institutional framework was put in place in the treaty itself. So for us it was logical''* (Irish MEP, Brussels, 10th December 2014). The Fiscal Stability Treaty was merely the manifestation of legally strengthened rules which were previously agreed upon by EU member-states. Therefore, it was argued that national preferences across the EU did not differ considerably as EU member governments were well aware of the rules long before the treaty took place. However, there was minor differences in national preferences as would be expected from an economic union made up of different nation-states with different economic conditions. Irish national preferences related to the constitutional nature of the treaty's terms at the domestic level, guarantees relating to the EFSF and ESM and issues relating to the structural deficit measurement. Of course, these matters were not solely Irish concerns. They were also of concern to the Danish who also questioned the constitutional nature of the treaty at the domestic level and the Portuguese who expressed concern regarding their own guarantees toward the EFSF and ESM.

Coordinated national interests bring negotiators together, but it is national preference differentiations that shape debates and determine bargaining processes. Both the Irish Taoiseach Enda Kenny (Fine Gael) and the then Irish Tánaiste and Minister for Foreign Affairs and Trade Eamon Gilmore (Labour party) as national government coalition partners saw the need for the protection of the Euro and a more consolidated EMU with fiscal rules. Issues did arise in relation to the early drafts of the treaty from the 9th December 2011. The fact that the drafts changed over the course of the negotiations is an indicator of the degree of inter-state bargaining (see Kreilinger, 2012). This is even more obvious when assessing the drafts relative to aspects of *compromise, compensation* and even *elimination* of treaty provisions as a measure of preference bargaining and influence between and by EU member-states (see: Tseblis & Hahm, 2014). This process points toward the initial uncertainty of national preference formation in the early stage of EU negotiations which leads one to argue that whilst broad national interests are realised early on, specific national preferences are relatively unknown, or at least, they are uncertain to negotiators in the early stages of treaty negotiations. Puetter indicates that informal processes of economic governance under the European Council in bodies such as the ECOFIN and Eurogroup implies '*decision making under high uncertainty''* which is in turn instrumental and beneficial to policy deliberation i.e. conductive to strategic bargaining and reaching common agreements through progressive and deliberative avenues. *''Moreover, as the pressure on national governments to act quickly is significant, divisions over policy inevitably emerge. At the same time, the crisis implies decision-making under high uncertainty – an aspect which is considered to be conducive to policy deliberation''* (Puetter, 2011:170). National preferences only formulate as national administrations gradually gain knowledge of their counterpart's national preferences and strategic intentions. In turn, this leads negotiators to model their national preferences accordingly in a strategic manner to achieve their preferences which are *''declared at discrete points in time''* (see Thurner & Urban Pappi, 2006).

The rules of the Treaty were designed to slow down hyper economic activities in countries like Ireland and reduce the level of risk associated with sovereign borrowing. As a treaty designed by large EU member-states to satisfy their interests and preferences, one would assume that the treaty was designed in a way that

maximised the welfare benefits of larger EU member-states. However, that is not to say that it was a treaty intent on maximising large EU member-states' interests at the cost of smaller EU member-states and their interests. After all, the preferences of small EU member-states are equally as important in order to reach consensus and to achieve stability in the single market. This is especially true if the economic conditions of small EU member-states are potentially dangerous to all EU members (large or small) involved in the single market.

4.6 Ireland's National Preferences

Ireland's main national preferences can be summed up as:

1) A more flexible and *non-harmonised* approach regarding the Golden Rule of balanced budgets.

2) Guarantees regarding the EFSF and ESM. If Ireland accepted the treaty but fell into crisis, Ireland's access to the funds under the EFSF would not be affected in the event that the ESM was required. Also, if Ireland did not sign the treaty but subsequently fell into crisis, Ireland's access to the EFSF would be secure.

3) The text relating to the constitutional nature of the pact would have the word *preferably* added to the text. Therefore, Ireland could potentially avoid a referendum.

''The main issue for us I guess was of a technical and economic nature, because we did have some problems with the key fiscal rule in the preventative arm of the pact which is the so-called balanced budget rule''

(Senior Official, Dublin, 25th September 2014)

Ireland's national preferences related specifically to the terms of the Fiscal Compact in Title III of the treaty. The first being the structural deficit rule (the Golden Rule of Balanced Budgets) which capped structural borrowing at 0.5% of GDP (see Article 3 of the Treaty). There was increased concern in response to the apparent strictness of the rule. For a small EU member-state like Ireland in deep recession under budget austerity, it is expected that as GDP reduces, but structural costs increase, a deficit will increase to cover such costs in order to keep the state afloat if the state's growth

model is weakened. In turn, national debt increases. Naturally the 0.5% rule would mean further austerity measures in order to reduce national deficits over time. However, technically speaking the structural deficit is hard to measure, or even to define, especially in small EU member-state economies (See Dáil Debates, 21/2/2012). However, a broad understanding of the structural deficit accounts for the difference between government revenue and government expenditure adjusted for changes in the business cycles (see: NERI, 2012). Unlike the cyclical deficit, the structural deficit is based on estimations and is harder to define. The ambiguity of its definition owes itself to the different economic contexts of different EU member-states. This means that a universal structural deficit rule is difficult to create and implement due to different adjustment requirements in each EU member-state. As it was difficult to measure or define considering the number of EU member-states subject to the conditions, many disparities could emerge. The European Commission hold the power over the definition, but it agrees that measurement is difficult. However, the Irish government used *back channels* through the European Commission and managed to dilute interpretations regarding the measurement of the structural deficit. In turn it became non-harmonised and sufficed the interests of smaller EU member-states. *'Where we insisted.....about national interests whether it was ours or someone else's that there was a country specific element in this where one size doesn't fit all and that was linked in to the way in which the golden rule would be applied and also the way in which it would be introduced''* (Senior Official, Dublin, 9th June 2014). Having worked avidly to ensure that the interpretation of the structural deficit could facilitate the conditions of smaller EU member-states, the structural deficit provision (after Irish intervention) appears to have been a concessionary gain for Ireland, as well as a marker of Irish influence. It was estimated that in 2011 Ireland's structural deficit in headline terms was 7.9%, but the country was estimated to move toward 3.5% by 2015 (NERI, 2012). This meant that despite austerity conditions, Ireland was expected to make strict adjustments to meet its 2015 target. However, a universal measurement for the whole EU would have been considerably stricter for a small country like Ireland and would possibly place more pressure on the state to reduce deficits even further, despite an already regressive economy. Economically stable larger economies are much better equipped to make adjustments than smaller economically regressive

economies. Whilst its so-called coercive-like nature was noted by a senior official in the Department of Taoiseach having secured guarantees relating to an interpretive measurement which reduces pressure on small EU member-states, the rule cannot be regarded as a large EU member-state provision to regulate small EU member-states like Ireland. If one considers the rule as strict, one must note that it also applies to large EU member-states who also could make losses due to the strict nature of the 0.5% structural deficit cap. Thus, what is strict for a small EU member-state like Ireland is equally as strict for a large EU member-state like Germany. Therefore, it is difficult to argue that the 0.5% rule, albeit endorsed by larger EU member states, is a rule to restrain small EU member-states. France and Greece also had concerns with the measurement and the treaty's rules which they perceived as being strict. Failure to abide by the rule would see an offending member-state placed into the automatic correction mechanism whereby the member-state would be placed in a programme and issued with a period of time to correct its deficits prior to being fined. In relation to debt reduction rule, the rule expects governments with debts to GDP over 60% to reduce their debts by $1/20^{th}$ per annum, but this may pressurise governments to increase cuts in public expenditure, as well as increase taxes combined with proactive measures to reduce structural deficits. Ireland has until around the year 2035 to achieve this aim. This gives Ireland adequate time to make adjustments to its fiscal activities.

If the Treaty is read thoroughly one will notice that the 0.5% rule is not immediately applied. EU member-states are given a reasonable amount of time to work toward the 0.5% rule. Ireland was only expected to reduce structural deficits to below the headline terms of 3%. It has achieved this to date since the publication of Ireland's 2014 budget. This was reiterated by the Irish Finance Minister Michael Noonan (Fine Gael) to Deputy Michael McGrath T.D (Fianna Fáil) when the Deputy questioned the Minister on the strictness of the 0.5% rule and its consequences for a small country such as Ireland running high national debts (see: Dáil Debates, 1/2/2012). However, once the 3% is reached Ireland is expected to move diligently toward 0.5% in the medium term (Senior Official, Department of Finance, 2014). The SGP actually required a perfect balance of 0%. In retrospect, the terms of the Fiscal Stability Treaty are more flexible than the SGP and not as excessive. This challenges various arguments that may regard the golden rule as a large EU member-

state provision intent on constraining the fiscal activities of small EU member-states. In hindsight, the rules relating to balanced budgets actually appear rather lenient for small EU member-states.

A strong focus was placed on the European Stability Mechanism (ESM) outlined in Article 136 of the Treaty of the Functioning of the European Union (The Lisbon Treaty). Small EU member-states like Ireland looked toward the mechanism as a means to protect the country in the event of a crisis, either exacerbated by financial consequences of the treaty as argued by leftist political parties and movements, or exacerbated by exogenous or endogenous economic and financial pressures within individual EU member-state economies or the EU economy as a whole. The ESM provides €500 billion to recapitalise banks as a means to protect sovereigns for assuming bank debt. The ESM was a very desirable backdrop mechanism in the event of crisis. It is arguably one of the most enticing factors that helped a Yes vote in Ireland on the 31st May 2012. Due to the vital aspect of securing the ESM as a protective mechanism in the event of future crisis, it is not surprising that access to the ESM was one of Ireland's greatest preferences and for which much of Ireland's bargaining strategy was focused. The first drafts proved to be concerning for the Irish government. Not only did the first draft require signatory states to place the *international agreement* into national constitution, but the ESM treaty was inherently linked to the *Fiscal Stability Treaty* as it was later referred in treaty drafts. This meant that access to the latter was dependent on the ratification of the former. In Ireland's case this became quite problematic as Ireland's ratification would rely on securing a public Yes vote via national referendum - a very uncertain situation with equally uncertain outcomes. The constitutional nature of the treaty's rules appeared to be a suffocating measure for Ireland in the negotiations, as well as a potential problem for 'winning over' the voting public. *Well, what we hoped to achieve was to avoid a referendum. It was our prime objective to be honest''* (Senior Official Dublin, 12th September 2014). This was evident from the drop in government party support in the lead up to the referendum between the months of November 2011 and March 2012 aside increases in support for left wing parties on the No side of the campaign such as Sinn Fein. As was evident from 2012 opinion poll analysis published by RedC Research leading up to the referendum, Sinn Fein became the government's main competitor in terms of party support. The matter of potentially

avoiding a referendum was desired by members of Ireland's Department of Finance due to the open nature of the measurement. A non-constitutional method of applying the rules at national level would add extra security to measurement and help win over the people's support for the golden rule which appeared strict on paper. *''We and others as well were quite happy to see the phrase 'preferably' at the constitutional level because that didn't oblige member states to have it [Golden Rule] at a constitutional level''* (Senior Official, Dublin, 25th September 2014). The Irish government held strong reservations about this provision because a No vote at the hands of the public regarding concerns over the provision would mean an official opt-out for Ireland. This would inhibit future access to the ESM if needed after the expiration of the EFSF at the end of 2013. Not having an effective backup could damage the economy and potentially lead to a breakdown in trade relations combined with a further reduction in market confidence. Ireland also needed to be assured that *not* signing the treaty would not affect continued access to the EFSF, at least until its expiration. And in signing the Fiscal Stability Treaty and potentially requiring the ESM, the EFSF would still not be effected. Securing such guarantees were a major concessionary gain for Ireland. This added confidence in public support for the Treaty. If Ireland did not sign the Fiscal Stability Treaty, guaranteed access to the ESM would be null and void and Ireland would have found it extremely difficult to win parliamentary support in Germany and Finland for future bailouts (Senior Official, Dublin, 12th September 2014) as well as secure confidence in potential international creditors. '*While it may be viewed as improbable that Ireland would be left unfunded from external sources in 2014 it is not known for sure at this time what options exist for continuing funding and what price would be paid in terms of interest owed and policy conditions imposed on Ireland''* (NERI, 2012). However, Ireland was sure to still have access to the EFSF until its expiration. One Irish EU Correspondent did not get the impression from the Irish Permanent Representative at the time that the Irish government had a problem with the link between the ESM and the Fiscal Stability Treaty as it made *''absolute sense''* (EU Correspondent, Brussels. 10th December 2014). However, Ireland wanted to be assured that access to the EFSF would not be damaged even if it required the ESM whilst under the terms of the EFSF bailout programme. Members of the Irish government opposition felt that the link between the treaty and the ESM was nothing

more than a blackmail clause and the government attempted to avoid a referendum for fear of a No result amongst the electorate. All semantics put aside, securing these guarantees were important gains for Ireland.

It has become evident that Ireland did in fact achieve concessions close to their national preferences. The team achieved the means to *potentially* avoid a referendum on the treaty by influencing a change in the treaty provisions. They achieved a guarantee to the EFSF until expiration if the Stability Treaty did not pass, and a guarantee on the EFSF if the ESM was required after signing the treaty. They also achieved a more flexible and non-harmonised measurement of the structural deficit which allowed for greater flexibility and adjustment. In turn, Ireland achieved influence. However, it is now necessary to delve deeper into the actual ways in which Ireland managed to achieve its concessions and relative influence in the Fiscal Stability Treaty negotiations as a small economically weak EU member-state which had been argued by some to have been in no actual positon to bargain and achieve influence. Chapter six carries out this inquiry.

Conclusion

The Fiscal Stability Treaty was a necessary response to stabilising the weak economic and financial conditions caused by the global and Eurozone financial crises. The Eurozone crisis was sourced in a mixture of U.S shadow banking processes combined with deregulated banking practices and/or fiscal imbalances in EU member-states. The causes of the crisis were exacerbated by the flaw in the design of the EMU which lacked a fully coordinated and consolidated EU wide fiscal policy as a means to ensure structural balances across EU member-states that could have influenced good banking practices in turn. The Fiscal Stability Treaty, which was created through an intergovernmental route attempted to correct the fiscal flaw in the EMU and instil legally bound fiscal rules amongst signatory EU member-states, excluding the United Kingdom and the Czech Republic. It was merely a step toward reforming the foundations of the EMU, rather than an overall solution. The treaty was pragmatic for Ireland considering its domestic economic and financial frailties, loss of confidence from the international markets and potential to transfer

negative economic and financial contagion to euro-counterparts via common monetary policy and international trade. If Ireland was to regain stability and market confidence, it needed to correct its structural deficit, reduce national debts and slow down its economy. Ireland's problems were not sourced in fiscal imprudence, but were sourced in its domestic banking failures that led to high structural deficits and national debt upon assuming bank debt in the form of financial bailout. Having secured a bailout and nationalising debt, further austerity measures soon followed. These conditions threatened Ireland's economic recovery in the short term, as well as Irish public opinion toward the EU and Eurozone.

The Fiscal Stability Treaty offered member-states like Ireland access to the €500 Million European Stability Mechanism (ESM). However, this was only conditional and subject to ratifying the Fiscal Stability Treaty as an assurance policy toward good fiscal behaviour. Failing EU support in Ireland made this problematic with wide-scale scepticism toward the treaty. The Irish government who expressed support for the treaty showed compliance with its terms, therefore adding strength and credibility to their position and voice in the EU. Fearful of the need for a referendum, the Irish government sought to avoid a referendum and bargained for a more flexible provision in the treaty. Although they secured flexibility having achieved the implementation of the word *preferably* in the document relative to the constitutional nature of the treaty at the domestic level, Ireland was to hold a referendum on the basis of legal advice. As a result, the outcome of the treaty would be highly uncertain for the Irish government due to failing government support and scepticism toward the so-called *austerity treaty* as labelled by those on the left of Irish politics. Involuntary defection became a real possibility. Therefore, further concessions would need to be achieved as close as possible to national preferences as to influence a Yes result amongst the electorate. Ireland's national preferences extended further to ensuring that if access to the ESM was required, or if Ireland failed to ratify the treaty, Ireland's access to the European Financial Stability Facility (EFSF) would not be harmed either way and would continue until its expiration. Ireland also worked to avoid a universal measurement of the structural deficit rule, opting instead for flexibility that would allow individual EU member-states time to adjust to the terms on the basis of their individual economic and financial capabilities. In guaranteeing access toward finances and flexibility in economic

adjustment, these concessions appeared favourable enough to secure a Yes vote in Ireland on the 31st May 2012.

It was evident that the Irish team bargained effectively enough to receive concessions close to Ireland's national preferences that significantly shaped various provisions within the treaty. This reshaped the treaty's relationships with all other EU signatory member-states. As a result, it is clear that Ireland actually achieved influence in the Fiscal Stability Treaty negotiations despite its economic and financial conditions and its relative economic size. This would indicate that small EU member-states regardless of relative economic size, can and do achieve influence in intergovernmental treaty negotiations. However, in order to fully validate this assumption, it is necessary to delve further into the securitisation of Ireland's concessions and look at the various ways in which Ireland leveraged its negotiation position in order to achieve them. Only then can the research provide evidence for Ireland's ability to achieve influence in the negotiations and substantiate such claims.

Chapter 5

Evaluating Ireland's Opportunity Structures as a Measure of Negotiating Influence

Introduction

This chapter evaluates the various opportunity structures which the Irish team used to leverage their negotiation position and eventually achieve relative influence in the Fiscal Stability Treaty negotiations. The Irish team used a number of opportunity structures which were instrumental in helping Ireland achieve concessions close to its national preferences. These opportunity structures included the *European Commission* and *European Parliament*, the *Irish referendum, domestic societal forces, network capital, mechanical coalition building* and *strategic deliberation*. The theories of new intergovernmentalism, liberal intergovernmentalism and deliberative intergovernmentalism (see chapter 2) provide analytical insight into how such structures may be used in intergovernmental negotiations. A deep engagement with both primary and secondary research data throughout the chapter portrays just how effective such opportunity structures were in leveraging Ireland's negotiation position and how effective they were in helping Ireland as a small and relatively economically weak EU member-state to achieve relative influence way beyond what may have been expected for a small EU member-state.

Three additional opportunity structures are included in the discussion due to their prevalence in national parliamentary discourse. However, this thesis refutes their applicability in leveraging Ireland's position in the negotiations. These so-called opportunity structures are as follows:

1) A No vote in the Irish referendum as means to reopen negotiations.

2) A veto over Article 136 of the Lisbon Treaty as to block the ESM coming into effect. This was anticipated to lead to renegotiations on the Fiscal Stability Treaty.

3) The French presidential election as a potential means for Ireland to free ride on French concessions which may have been secured through renegotiation of the treaty.

Although such matters were prevalent within Irish parliamentary discourse particularly stemming from the left-wing branch during the referendum campaign, research findings strongly refute their place as potential leverage to the Irish negotiation position. The research argues that any attempt to use such opportunity structures may have done considerable damage to Ireland's negotiation position and its relationship with the EU.

5. 1 Opportunity Structures: Securing Preferences and Achieving Influence

The Fiscal Stability Treaty worked under an 'in or out' arrangement. As unanimity was not the *modus operandi*, an informal consensus based decision making process was used as a means to achieve consent amongst negotiating EU member-states. This in turn enticed EU member-states to bargain effectively to meet national preferences. As an informal process, it was exempt from some of the limitations associated with formal decision making processes, such as the ability for some EU member-states to obstruct the decision making process using a veto or some EU member-states riding roughshod over others through QMV. Deliberation and consensus seeking was the preferred route for negotiation and outcome. Therefore, the channels for which small EU member-states could leverage their position of influence was reshaped due to the particular structural qualities of the treaty making process. As the treaty was an 'in or out' process, the protocol behind inter-state bargaining altered compared that which would be expected under more formal negotiation processes.

A French MEP suggested that Ireland was not in a bargaining position. Therefore, Ireland did not achieve influence in the Fiscal Stability treaty negotiations (Irish

MEP, Brussels, 10th December 2014a). This thesis refutes this argument. Logically, if Ireland was *not* in a position to bargain, then it was not in a position to influence the treaty. In turn, this would mean that it was affectively overshadowed by the interests of larger and more dominant EU member-states. Having researched Ireland's role in the 2012 Fiscal Stability Treaty, it is evident that Ireland had a number of useful opportunity structures (bargaining forces) at its discretion which leveraged its negotiation position.

Since the 1986 Crotty vs. An Taoiseach Supreme Court ruling, Ireland's bargaining potential has increased in EU treaty negotiations. Ever since this ruling, Irish national referendums on EU treaties have empowered Irish negotiators to achieve relative influence (see: Hodson & Maher, 2014). Irish referendums in the past have secured useful concessions for Ireland and have acted as a measure of Ireland's ability to shape negotiations and achieve influence in the EU regardless of Ireland's relatively small economic size. This is evident from Ireland's role in the Nice and Lisbon Treaties were the dominant No votes in both referendums influenced renegotiations of both treaties. Secured concessions were in favour of Irish national preferences after renegotiations in both treaties. With regards to the Fiscal Stability Treaty negotiations, this research suggests that the Irish referendum was arguably the most important factor in facilitating Ireland in achieving negotiation influence. As with any complex intergovernmental negotiation process, one variable alone is not enough to leverage an EU member-states' negotiation positions. Equally the Irish referendum alone was not enough to leverage Ireland's negotiation position in the Fiscal Stability Treaty negotiations. A multitude of other opportunity structures must be accounted for.

Opportunity structures come in many forms (see: Bunse et al, 2005, Cross, 2012; Gron & Wivel, 2011; Laffan, 2014; Panke, 2008; Panke,2011; Schure & Verdun, 2008; Tallberg, 2008; Thornhallson & Wivel, 2006). The significance of opportunity structures lies in their ability to facilitate EU member-states in achieving influence by seeking either the *status quo* or concessions closest to national preferences in international negotiations. In terms of small EU member-states such as Ireland, opportunity structures do this by leveraging an EU member-states negotiation position particularly where the EU member-state may lack relative negotiating

influence due to its economic size (Panke, 2012). Larger EU member-states in EU intergovernmental negotiations often anticipate that small EU member-states will give support for a policy/treaty despite perceived losses through an informal bargaining process. Larger member-states know from experience that smaller EU member-states will identify useful opportunity structures and use them as leverage in negotiations to achieve concessions close to national preferences. When used by smaller EU member-states, opportunity structures are means to influence the choices or actions of (often) dominant counterparts without dominating the policy making agenda itself. Through this process a shift in the balance of power can occur. This in turn reshapes negotiations. As opportunity structures come in many forms, many different opportunity structures can be used by EU member-states in EU negotiations. In some cases, opportunity structures may even overlap when being used to achieve influence. In dealing with the use of opportunity structures as a measure of a small EU member-state's achievement of influence, this research identified the most useful opportunity structures used by the Irish team in seeking concessions. These opportunity structures included the European Commission and the European Parliament, the Irish Referendum, Domestic Societal Forces, Network Capital, Mechanical Coalition Building and Strategic deliberation.

The veto as a force of leverage was not tested in this study as unanimity did not apply to this treaty. Also, Numerical coalition building was not tested as Qualified Majority Voting (QMV) was not applied. The opportunity structures mentioned previously are only few of the many opportunity structures highlighted in the literature. Most of Ireland's bargaining influence over the treaty was achieved through its effective use of network capital by its small but dynamic and resourceful national administration. The senior civil servants who were Ireland's main brokers of the treaty leveraged Ireland further by using the Irish referendum to their advantage in their strategic deliberations to secure concessions. Of course, the referendum alone was not the only factor that the brokers used to achieve influence. However, the referendum became central to the overall discourse as a marker of public opinion and public choice. The Irish team's ability to deliberate strategically using domestic-win sets (referendums and social forces) to substantiate their arguments, as well as their ability to form allies using credible supranational structures and trans-

governmental networks with useful EU counterparts were important in enhancing Ireland's negotiation position and achieving influence.

5.1.1 The European Commission and European Parliament

''The small states look at the Commission as a key partner in their attempt to build coalitions and thus try their utmost to get the Commission on their side before facing the large states in the Council of Ministers''

(Thornhallson & Wivel, 2006:660)

Under the Community Method of decision making, a number of *supranational* opportunity structures can leverage small EU member-states bargaining positions in EU negotiations. Traditionally, big EU member-states have favoured the Council of the European Union, whilst small EU member-states have favoured the European Commission in terms of enhancing their negotiation influence (Bunse et al, 2005). Small member-states prefer a European Commission with wide discretionary powers, while medium to large member-states typically prefer a European Commission with purely executive powers in the EU sense (Schure & Verdun, 2008) due to the fear that extensive Commission powers would limit larger EU member-states interests. A small EU member-state may assert influence through the European Commission's various technocratic channels which share a relationship with the Council of the EU as a means to influence proposals close to the member-state's national preferences. Forming strong relationships with Commissioners and/or Director Generals (DG's), or even using one's own commissioner by capitalising on his/her relevant portfolio may be useful in being *heard* and considered in European Commission agenda setting under the Community Method. '*'A Commissioner's task is to explain rather than represent national sensitivities to their colleagues when relevant''* (Bunse et al, 2005:14). The influence of the European Commission as an ally of the small EU member-state is ambiguous, as the European Commission's proposals often change under parliamentary and council scrutiny; with the latter being highly influenced by larger EU member-states in the Community Method. This means that for the European Commission to provide any real support for small EU member-states, small EU member-states are best facilitated by making credible

coalitions with larger EU member-states or even with an EU member-state holding the rotating council presidency due to the European Commission's strong ties with these forces (see Cross, 2012). In order for small EU member-states to do well in negotiations via the European Commission, a small EU member-state should have strong links with the European Commission facilitated by strong technical expertise, and they should align with at least one large EU member-state, as large EU member-states are more often consulted by the European Commission in negotiations. Small EU member-states holding the Council Presidency are also more likely to be consulted by the European Commission due to their added power-value to drive the course of negotiations and have their voices heard. *''Thus before and during the presidency a small country's relationship with the Commission becomes more active and small states try to use the Commission and its resources more systematically''* (Bunse et al, 2005: 41-42). However, the rotating council presidency was of little influence in this treaty due to the reduced role of the Council of the EU in what was a treaty governed by the European Council. *''In post-Lisbon EU decision-making, the rotating Council presidency essentially involves limited, yet important, responsibilities without much power to set policy priorities. This is particularly true for the new areas of EU activity''* (see Puetter, 2014:29). Additionally, the European Commission was not the agenda setter in this process, as it followed an intergovernmental treaty making process. However, it is not to say that the European Commission cannot be helpful to smaller EU member-states, even in intergovernmental treaty making processes. This is what this thesis seeks to discover.

Traditionally speaking, in every day decision making, small EU member-states may also capitalise upon the role of the European Parliament due to the institution's democratic voice. Similar to that of the European Commission, the European Parliament is often regarded as an ally of small EU member-states. In contrast, the Council of the European Union traditionally tends to be favoured by large EU member-states due to its tendency (through modes of formal voting) to enhance the voices of larger EU member states. *''The independence of the Commission offers small states a potential means to counterbalance the power of the 'bigs''* (Bunse et al, 2005:8). Others have argued that the European Parliament as a whole may not be the strongest of allies to the small EU member-state due to its diversity of (ideological) interests (Gron & Wivel, 2011). A former Irish Minister of State argued

that as the European Parliament is based on national participation relating to the share of population and economic size, the European Parliament (in everyday EU policy making) actually leverages larger EU member-states in the co-decision procedure (Former Minister of State Dublin, 2nd May 2014). However, this is not to say that small EU member-states negotiators don't work closely with members of select European parliamentary groups in the attempt to build support on specific issues relating to an EU policy or treaty. It must also be noted that the European Parliament does not represent the national interest, but is formulated around ideological lines. Therefore, the extent to which the European Parliament represents larger EU member-states due to national participation on the basis of economic size is questionable. Of course, these intellectual insights focus more on the relationship between supranational institutions and small EU member-states in everyday Community Method decision making, and not in intergovernmental treaty making processes. Regardless, such intellectual insights pave the way for the analysis of such relationships in intergovernmental treaty making processes such as the Fiscal Stability Treaty.

How useful were the European Commission and European Parliament to the Irish Team?

Many interviewees argued that there was little or no role for the European Parliament or even the European Commission in the intergovernmental Fiscal Stability Treaty negotiations. A former Minister of State argued that the European Parliament lacked influence over the fiscal negotiations as their influence was apparently ''*recognised and preserved at other stages''* of EU decision making (Former Minister of State, Dublin, 2nd May 2014). It is assumed with reason that these *other stages* include the European Parliament's role within Community Method decision making processes. As the Fiscal Stability Treaty was an intergovernmental treaty directed by the European Council, there was no real negotiation space for the European Parliament. The European Parliament merely had observer status. If the European Parliament leverages small EU member-states' bargaining positions in intergovernmental treaty making processes, then it is likely that it is due to the European Parliament sharing similar policy positions to smaller

EU member-states and expressing these in their recommendations, rather than actually negotiating and deliberating on behalf of small EU member-states like Ireland. This sort of role was not at the discretion of the European Parliament or its working groups as they simply were not formal players in the Fiscal Stability Treaty negotiation process. However, the European Parliament's Economic and Monetary Affairs Committee (ECON committee) was highlighted by one EU correspondent who argued that members of the committee played a big role in *softening* certain areas of the treaty though recommendations made from their observations (EU correspondent, Cork, 11th November 2014). This suggested that the ECON committee played some role in influencing the dilution of certain terms of the treaty which were subsequently in the interests of smaller EU member-states. It would also indicate that the Council of the EU was open-minded toward the opinions of EU supranational institutions even though they were not formal negotiating bodies in this treaty. As the treaty provisions were predominantly determined by large EU member-states such as Germany, any softening that may have happened would logically be to the benefit of smaller EU member-states that desired looser arrangements. *''In the treaty the key provisions on fiscal discipline always fulfilled the demands of Germany…….''* (Kreilinger, 2012). One French MEP mentioned that whilst the European Parliament on this occasion was not a formal negotiator and only retained observer status, the European Parliament was instrumental in stressing the excessive deficit procedure (automatic correction mechanism) and rules relating to the reverse qualified majority vote (RQMV) (French MEP, Brussels, 9th December 2014b). Once again, although it appears that the European Parliament's voice was instrumental in holding the larger EU member-states to account by stressing softer provisions, the degree to which these rules actually act in favour of small EU member-states like Ireland is rather vague and is based on the kinds of evidence that currently exists; which is rather weak. Also, the MEP did not mention what the parliamentarians where actually stressing in relation to these rules. An Irish senior official argued that of the group of parliamentarians [from the Econ Committee] who were invited to speak, the speakers were predominantly focused on less trivial characteristics of the treaty such as the role of national parliaments being brought into EU debates alongside the European Parliament as outlined under Article 13 of Title V of the Treaty on the matter of Governance of the Euro area. It would appear

that the parliamentarians' agenda was to enhance the democratic nature of euro-governance through national parliaments to make up for the perceived democratic deficit associated with intergovernmental negotiation processes. Whilst the answer was contextually vague, the senior official stated that the European Commission in fact played its part in terms of the structural deficit provision.

The European Commission contributed to *watering down* the definition of the structural deficit rule and making it more interpretive and flexible, rather than fixed and universally applicable. This made allowances for how it may be applied to individual EU member-states' economic capacity to adjust to the terms. Ireland as a small EU member-state was concerned with the strength and applicability of the structural deficit rule in regards to earlier drafts of the treaty, and this was a central issue relating to Ireland's main national preferences. As mentioned by a senior official in the Irish Department of Finance (Senior Official, Dublin, 25th September 2014), the Irish negotiating team formed *back channels* through the European Commission to try and ease the definition and avoid a universal application of the definition across the Eurozone. As documented in Dáil debates, the Irish Finance Minister Michael Noonan worked rather closely with Olli Rehn who was then Commissioner for Economic and Monetary Affairs and Vice President of the Commission and who was a vocal spokesperson on the treaty throughout the negotiation process. Minister Noonan worked with Commissioner Rehn on Ireland's economic assessment which the Commission conducted [on a state-to-state basis] as a means to assess Ireland's financial capabilities and financial options. Discussions between the two actors also extended to Ireland's EU-IMF deal and Ireland's position in the Fiscal Stability Treaty (see Dáil Debates, 1/22012). It is through high end channels such as Commissioner Rehn that Ireland achieved voice and highlighted its national preferences. This helped Ireland to contribute to the shaping of the structural deficit provision by drawing upon independent, yet powerful voices within the European Commission who were tasked with drafting the document on behalf of the European Council. This indicates that the European Commission was instrumental in leveraging Ireland's preferences, and albeit retaining only observer status, its position as a leading EU institution was of influence even in the intergovernmental treaty. Although it is unknown exactly how the European Commission leveraged Irelands negotiation position since it had no real formal role,

the Commission has in recent years formed a close working relationship with the Eurogroup (see Bickerton et al, 2014:10) which was a directly involved institution in the Fiscal Stability Treaty negotiations.

Although the European Commission facilitated Ireland in achieving its preference relating to the structural deficit (see chapter 5), the relative power between the European Commission and European Council was discussed by another former Irish Minister of State. The former Minister of State highlighted the power contrasts between the two institutions and argued that the European Commission was generally side-lined in the process, and not just in institutional and structural terms. The former Junior Minister stated that although the European Commission had some influence, as evident from its ability to leverage Irish preferences, the contrast in institutional power between the European Council and European Commission was clear when a particular important piece of legal advice was offered by the European Commission to the European Council on a particular draft of the treaty. However, the advice was swiftly retracted overnight to fit with the interests of larger EU member-states who discarded the European Commission's advice. It is suggested that due to German dominance of the treaty and its process, the legal advice by the European Commission was changed to suit larger EU member-states such as Germany who coordinated the treaty process. *''I believe the Commission was extremely weak on that front and whether that's a bad thing is debatable, but on this occasion Berlin certainly drove the entire process''* (Former Minister of State, Dublin 19th September 2014). A senior official with the Department of Finance further highlighted the power contrast between the European Commission and European Council by arguing that the Commission was tasked with drawing up the document incorporating the balanced budget rule that eventually evolved into the wider treaty. However, there was nothing particularly new in the document because it was merely building upon previous EU fiscal guidelines outlined by the SGP and two pack/six pack reforms and it did not require large-scale deliberations in the European Commission compared to previous EU treaties. The Commission's job was to merely write the document, while the larger EU member-states dictated the terms. *''…. they were caught between a rock and an iron. They had members telling them to get this done! They had the UK saying that: we also pay into this club''* (Senior Official, Dublin 25th September 2014). The official argued that where the

European Commission did have some sway over the document, it was predominantly larger EU member-states like the UK and Germany making the demands and being accounted for by the European Commission. In general, the European Commission was not in a structural or legal position to reject large EU member-state demands, and thus it included most of the larger EU member-states' interests in the document. After all, this was an intergovernmental treaty directed by the European Council on the side-lines of EU treaty law. However, despite the subordinate power and influence of the European Commission and the fact that it has been argued to have bowed down to the preferences of larger EU member-states regarding the Fiscal Stability Treaty, Ireland as a small EU member-state was affective in its networking with the European Commission. Through its networking it collaborated with the European Commission in softening the terms of the structural deficit measurement which was a key preference for the Irish. This suggests that even in an intergovernmental treaty, the European Commission as the most powerful supranational EU institution has some influence and will work toward balancing treaty provisions which in some cases may be favourable to the interests of smaller EU member-states such as Ireland.

With respect to the European Commission's ability to leverage small EU member-states' national preferences in intergovernmental treaty making processes, this research highlights a gap in knowledge and calls for further investigation into the ways in which the European Commission influences changes in intergovernmental treaties on behalf on EU member-states.

5.1.2 The Irish Referendum

''Too much literature has concentrated on the upper tier- the formal institutional framework of the communities – without examining the domestic sources of national negotiating positions''

(Bulmer, 1983:354)

Domestic win-sets are forces at the *domestic level* that can leverage an EU member-state's negotiation positon at the *EU level*. They are associated with the national

ratification process at the domestic level (see Trumbore, 1998). They manifest in various forms such as the influence of social movements, lobby groups, business groups etc. As these organisations make up civil society which is a vital component of liberal democracies, these groups wield much influence in determining national preference formation at the domestic level. Ireland is a typical reference point for it is one of the few EU member-states to regularly hold referendums on EU treaties. Ireland won a number of vital concessions due to their renegotiations of the Nice and Lisbon treaties due to failed referendums[29]. Referring to the Nice and Lisbon treaties, where an EU member-state may have to ratify EU treaties amendments via a constitutional referendum, a small EU member-state like Ireland can find itself in a relatively stronger bargaining position. However, under certain conditions a small EU member-state may find that the power of its domestic win-sets is relatively less useful under certain circumstances, especially if there are discrepancies between government preferences and public preferences. Such a situation could lead to involuntary defection whereby a national government supports the general terms of an EU or intergovernmental treaty at the EU level, but its electorate votes against the treaty in a national referendum. Alternatively, involuntary defection (or the potential for it) can sometimes boost an EU member-states negotiation influence, especially if the government is seen to be compliant with, and supportive of, the new treaty terms, but is then constrained by its electorate's pessimism towards change and general preference for the *status-quo*. The Fiscal Stability Treaty is a reflection of this. *''...a state may gain power by claiming that isolationist domestic actors tie its hands and restrict its margin for manoeuvre''* (see Closa, 2013).

A failed national referendum sends a signal within the EU that an EU member-state has effectively vetoed a treaty. One must question how many times this form of veto at the hands of a nation is acceptable before it can be considered obstructive and dangerous to an EU member-states' credibility amongst its EU peers. Involuntary defection can be obstructive to the policy making process despite the negotiation influence that referendums can exert over more influential and larger EU counterparts. Although in the Nice and Lisbon Treaties involuntary defection can be

[29] Some concessions that Ireland secured by proxy of referendums on EU treaties include: neutrality in the Nice Treaty, and matters relating to maintaining the numbers of European Commissioners in the Lisbon Treaty.

identified, it did not harm Ireland's negotiation position because larger EU member-states relied upon Ireland to ratify the treaty due to the treaties formal voting rules i.e. unanimity was a requirement for the treaty amendments to come into effect across the EU. As the treaty could not technically take effect without Ireland, involuntary defection actually leveraged Ireland's negotiation position. Involuntary defection (although a shock to the government[30]) appears to have worked to Ireland's benefit in achieving concessions in rounds II of both treaties renegotiations. As the Irish government showed their initial support toward Nice I and Lisbon I despite both treaties failing in Ireland at the hand of the electorate, EU member-states cooperated to accommodate Irish national preferences in the second rounds of both treaties. If a government's preference diverges with its electorate's preferences, yet the government shows support for an EU treaty, it is likely that that larger EU counterparts will still work with the government to help secure its peoples support, even if this means offering concessions closest to the national preferences of the EU member-state expressing electoral constraints at the domestic level.

For domestic win-sets to be influential the right context and conditions are necessary for them to have any influence in leveraging an EU member-state like Ireland. Involuntary defection at the hands of the people was not an option in the Fiscal Stability Treaty negotiations. If the Irish people chose not to ratify the Fiscal Stability Treaty there was no means for renegotiation due to the limited timescale, the severity of the international context and the state of the Irish economy itself. Only 12 out of 17 states were needed to ratify this treaty. This gave Ireland a slightly reduced bargaining position to begin with. Also, there was no effective veto in the negotiations as unanimity was not the modus operandi.

''For the Nice and Lisbon treaties, Ireland's Yes vote was essential for them to come into effect. In those treaties, Ireland had negotiation powers because the other countries needed us to sign and agree to the terms. This new treaty is different. It

[30] Involuntary defection in the cases of the Nice and Lisbon Treaties can be attributed to a lack of elite participation in the referendum campaigns and a subsequent lack of information about the treaty for the public. This led to a considerable degree of misinterpretation about the treaties terms amongst the Irish electorate (see O' Mahony, 2009).

only requires 12 Eurozone countries out of 17 to ratify it before it comes into effect. In this sense, the train is leaving one way or the other''

(Deputy Mary Mitchell-O'Connor T.D, Dáil Debates, 19/4/2012)

Not having a veto and being a small EU member-state on a bailout programme, Ireland's initial influence was rather weak on entering the negotiations. However large EU member-states desired to have Ireland on board due to the high economic consequences of Ireland's continuing fiscal imprudence. The likelihood of involuntary defection at the hands of a national referendum appeared as a strong enough motive for the Irish negotiating team to use the referendum to their advantage in securing concessions closest to their national preferences. As discussed in chapter 4, those preferences included matters relating to the constitutional nature of the treaty at the domestic level, the structural deficit measurement issue and the terms associated with the EFSF and ESM. The latter preference was particularly important with respect to the fact that Ireland would be guaranteed the ESM alongside the EFSF if needed, and the EFSF funds would not be effected if Ireland required access to the ESM prematurely (see Dáil Debates, 1/2/2012; Dáil Debates, 6/3/2012).

How useful was the Irish Referendum?

The data indicates that the matter of having to hold an Irish referendum on the Fiscal Stability Treaty was actually used to convince larger EU counterparts that Ireland should have been able to avoid placing the treaty into national constitutional law. By being able to avoid implementing the treaty into the Irish constitution, Ireland could effectively avoid having to hold a referendum. By proxy, Ireland could avoid a potential No vote[31] amongst the Irish electorate. The argument followed that an Irish referendum would be just as dangerous for larger EU member-states (economically speaking) as it would be for Ireland in the event of a No vote. Considering the

[31] Avoiding the referendum was never guaranteed. The matter rested with the Attorney General who did not state her verdict on the matter until nearing the end of the negotiations in late February 2012. As a result, EU partners proceeded with the negotiations from start to finish with the view that the Irish still may need to hold a referendum on the Fiscal Stability Treaty. This helped in the further achievement of concessions.

diversity of the national debate on the treaty in Ireland and the falling government support in Ireland at the time amidst a complex treaty making process, the outcome of the referendum was highly uncertain.

''*As regards the content, it is expected that deliberative processes are fostered when actors interpret policy challenges as common problems and/or have to decide under uncertainty''*

(Puetter, 2011:166)

A Council General-Secretariat official (Council General-Secretariat Official, Brussels, 10th December 2014) stated that the Irish referendum was a useful bargaining chip due to its perceived difficulty of passing at the hands of the Irish electorate which would have harmed Ireland's place in the Eurozone, as well as the financial security of other EU member-states. It was suggested that negotiators worked diligently to help the Irish government to avoid a referendum having been requested by Ireland and a number of other EU member-states to add something more flexible in the treaty. This eventually led to the term *preferably* being added in the treaty with regards to the provision which stipulated the treaty being added to national constitutions or national primary law. Although Ireland secured the term *preferably* in the treaty, Ireland was expected to hold a referendum regardless. As Ireland had to hold a referendum on the constitutional advice of the Irish Attorney General, this created concern for other EU member-states signing up to the treaty. A No vote was now a real possibility and a risk far too great to everyone's future financial security in the EU.

''Everybody understands, that because the situation was so fragile, obviously nobody wants to force the Irish in this difficult circumstance to organise a referendum and then fail. Nobody wants that! So in that case.....you can make your case as a small state [to secure further concessions in line with national preferences]''

(Council General-Secretariat Official, Brussels, 10th December 2014)

The council official recognised that if small EU member-states argue their case for concessions sincerely in a rational, logical and persuasive manner, then larger

negotiating counterparts are more than willing to listen and consider their concerns. Therefore, where a domestic win-set like the Irish referendum may be obstructive to the success of the treaty, it can be considered a force of negotiating influence in EU negotiations or intergovernmental negotiations between EU member-states. An Irish senior official (Senior Official, Dublin, 12th September 2014) made a similar point of view in stating that the Irish referendum was seen as an influential bargaining chip, but not in its traditional negotiation sense. Unanimity was not needed, so a No vote was not going to lead to renegotiations as seen in the Nice II or Lisbon II or more recently with the Greek bailout referendum in July 2015. A No vote in the referendum simply was not an option if Ireland was to be part of the treaty. Ireland used referendum rhetoric in the negotiations in a way that enticed larger EU member-states to actually *help* Ireland avoid the need for an actual referendum. This came in the form of a concession regarding the constitutionality of the treaty at the domestic level. Eventually, as the Irish government could not avoid a referendum due to domestic legal constraints, further concessions where was sought by the Irish team. The reality of an uncertain referendum outcome therefore helped achieve further concessions. The Irish team did no use referendum rhetoric in a threatening or obstructive manner, nor did they even anticipate using a referendum as a strategy to attempt to achieve concessions in the event of a No vote. The Irish government was quite aware that the latter was not an option. Effectively, the Irish referendum as a potentially obstructive and a damaging force for all brought negotiators together to negotiate constructively as a means to eliminate such threats to the collective interest. Thus, bargaining in the treaty appeared less realist/neo-realist in essence as one may witness in previous *EU* treaties. On reflection of previous Irish referendums on EU treaties, a referendum can be obstructive to the quality of the treaty outcome, especially in accordance with the maximalist treaty ideals of larger EU member-states. This can be examined with regards to the Nice Treaty were Ireland's concerns regarding the reduction in the number of Commissioners in the European Commission was considerably different to the interests of larger EU member-states like France who endorsed such a reduction. In the end, the European Commission (in terms of numbers and representation) remained equally balanced, an outcome very much in Ireland's national preference influenced by a renegotiation process after holding a referendum.

''We were quite successful in using the argument that you are helping us to avoid a referendum. You may help us avoid a referendum if you give us X, Y and Z and that helped in some of the language on fines and so on and the language on the precise matter of the wording that the rule had to be enshrined at constitutional or equivalent level''

(Senior Official, Dublin, 12th September 2014)

A senior official in the Irish Department of Foreign Affairs and Trade stated that referendums gives Ireland ''*a little bit of weight''* (Senior Official, Dublin, 4th December 2014) due to the difficulty to win the support of a complex and diverse voting population. The referendum being potentially obstructive to the EU and Eurozone counterparts meant that Ireland could use the strategy to convince larger counterparts that whilst the government was supportive, it was the Irish people that the EU had to convince and not the Irish government *per se*. At this time the majority of Irish people did not understand the technicalities of the treaty (see The Sunday Times, 22nd April 2012).

''The referendum is something we always have [as a bargaining chip] in EU negotiations because we ask [Irish government and EU counterparts]; how are you going to be able to convince the average Irish citizen in places like Dublin or Cork of the treaty's benefits ''

(Senior Official, Dublin, 4th December 2014)

This kind of tactic is not channelled in a passive-aggressive manner that may be misinterpreted as a subtle or even overt threat, but is used within reasonable argument and persuasive language associated with the norms of deliberation discussed within the deliberative intergovernmental school of thought (see Puetter, 2012).

A former Irish Minister of State held the belief that Ireland was in no position to bargain due to its weak economy and felt that the referendum was actually of no consequence at all to the negotiation procedure. *''The prospect of a referendum in Ireland in fact did not enter the equation. It was perceived to be our problem. That's it!''* (Former Minister of State Dublin, 19th September 2014). The former Junior

Minister argued that Ireland's achievement of influence manifested in other methods owing themselves to factors such as the personalities of negotiators and the respect that key Irish negotiators commanded due to their positions in important national and EU institutions combined with their strong and respected negotiation skills. However, contrary to the former Junior Minister's pessimistic attitude toward the power of the Irish referendum as a credible opportunity structure for leveraging Ireland's negotiation position, the former Junior Minister did argue that the referendum could not be entirely dismissed as having some influence in achieving ''*certain objectives''* [national preferences] in the negotiations. Therefore, in hindsight, the former Junior Minister came to recognise that the Irish referendum may have actually leveraged Ireland's negotiation position. An [Irish] EU correspondent (EU Correspondent, Cork, 11th November 2014) built on this point in arguing that the referendum may have added weight to the Irish case, but stressed that it was *not* in a threatening manner or form. In line with other interviewees, the correspondent felt that the referendum was used in a way to help other negotiators recognise the potential negative consequences of an Irish referendum for all in the Eurozone, rather than using it as a strategy to achieve influence in a passive-aggressive manner as one may be led to perceive in traditional intergovernmental negotiations. It was mentioned by the EU correspondent that speaking about the Irish referendum in EU corridors or in EU negotiating forums was conducted with strict caution. Any discussion about the Irish referendum was expressed in moderation for fears of how it may be perceived by more dominant negotiating partners i.e. perceived as a threat.

One former Irish Cabinet Minister (Former Cabinet Minister, Dublin, 23rd January 2015) argued that the Irish referendum was not a credible domestic win-set. Like the former Junior Minister, he argued that [other] negotiating variables played a role in Ireland securing the term *preferably* in the negotiations, but it was not the fear of the referendum that influenced the change. Recognition for the referendum as an influential domestic bargaining force (regardless of manner of use) was weakest amongst supranational politicians particularly in the European Parliament. Members from the European Parliament who were interviewed stressed the fact that Ireland was in no position to bargain due to its economic frailties and its economic consequences for other countries. They indicated that whilst nobody wanted Ireland

to remain out of the EU or Eurozone they did not have bargaining power and therefore they could not achieve credible influence through such means. One MEP and member of the ECON committee (French MEP, Brussels, 9th December 2014b) referred to referendums (in the sense of bargaining chips) as ‘‘*blackmail*’’ and stressed that [she] disliked them and the EU should never allow any country to use them. It appears her reservations came from the fact that involuntary defection can harm every EU member-states’ progress regarding a treaty and can potentially lead to demands from one EU member-state to others that can endanger the overall substance of the treaty, as well as the democratic quality of the treaty making process. As it is not easy to leave one EU member-state behind and continue on with the treaty, this puts all other EU member-states into an unfair situation. It effectively becomes undemocratic. Whilst clearly against the prospect of using national referendums as bargaining chips, the MEP did not overtly argue against their reality in EU negotiations and their benefits for the EU member-states who use them to their advantage. Although, she did argue that the EU counterparts should be tougher on EU member-states wishing to use them strategically for concessions and greater empowerment in EU negotiations.

‘‘They [smaller states] should be tougher in the negotiations and maybe not accept something but we [EU members as a whole] should really avoid considering that there is a kind of second round of negotiations after a referendum because it is simply blackmailing the others. You can have a government that had huge difficulties with its public opinion and that managed to sell it without getting anything more. If you give something more to the ones not playing according to the rules, it’s very dangerous’’

(French MEP, Brussels, 9th December 2014b)

The MEP argued that there is nothing wrong with arguing one’s case and finding more positive methods of communication, but not playing fair can weaken the whole system. However, a British MEP close to the negotiations had similar views to the Council General-Secretariat official as he argued that when a country comes into difficulty with potential involuntary defection, the difficulty would inspire ongoing negotiations to deal with this potentially obstructive problem either before or after the referendum took place. *‘‘In this case, had the stability treaty been rejected in*

Ireland.....well, you always negotiate with a country that has difficulty…'' (British MEP, Brussels, 9th December 2014). He argued that although this treaty did not require unanimity, the potential for a No vote may have been influential in leveraging Irish preferences due to the economic nature of the treaty. However, in Ireland's case this would depend on the nature of Irish preferences. If the concessions were dangerous to overall interests of larger EU member-states, then the level, style and quality of concessions would need to be evaluated accordingly. As Ireland's referendum was potentially dangerous to other EU member-states and it was in the interest of larger EU member-states to either help Ireland avoid a referendum or at least avoid involuntary defection, it can be argued that it was a reasonable cause for meeting Irish national preferences in the negotiations. After all, Ireland's national preferences were not potentially destructive to the interests of those driving the treaty as they were not overtly close to the *status-quo*. In relative terms, the effects of a No vote in an Irish referendum was way more destructive to the EU as a whole than the mere concessions sought by the Irish team.

5.1.3 Domestic Societal Forces

A number of reports were published which evaluated the consequences of the Fiscal Stability Treaty for Ireland. Some of the most informative reports came from the European Movement Ireland (European Movement Ireland, 2012), the Institute of International and European Affairs (IIEA) (see: McArdle, 2012; Gallagher, 2012) and economic assessments from leading economic bodies and economists (see: Indecon, 2012; Weymes & Bermingham, 2012) which provided sound and rational perspectives on the treaty. These reports recognised the inherent risks associated with the provisions, but also the inherent benefits of the treaty considering the conditions for which it addresses. Advocates from business and labour groups contributed to the debate with the American Chamber of Commerce (Ireland) and the Irish Congress of Trade Unions (ICTU) showing support for the treaty. Although, the latter had some internal complications. Some divides emerged within the country's leading unions with some leaders calling for a No vote unless a growth stimulus package was negotiated as part of the treaty. However, a growth stimulus

package was never intended to be part of the treaty (The Sunday Times, 29th April, 2012a).

There was mixed feelings within the academic sphere with a number of Irish academics expressing concern over the treaty such as Dr Andy Story, (UCD), Professor Brian Lucey and Professor Gerry Whyte (TCD) and Professor Terence McDonough (NUI Galway) (see: The Irish Times, 19th April 2012) who publically criticised the treaty, as well as American economists such as Joseph Stiglitz and Paul Krugman (see Journal.ie, 30th May 2012) who placed a great deal of emphasis on Ireland's future spiral toward continuous austerity in the event of ratifying the treaty.

Domestic societal forces such as civil society actors and business actors are considered as important indirect actors in shaping intergovernmental negotiations especially in the liberal-intergovernmentalist school of thought. However, judging from research data, they appear to be given less credit in terms of shaping negotiations within the new intergovernmentalist and deliberative intergovernmentalist schools of thought which the Fiscal Stability Treaty negotiations reflects in structure and process.

''Nevertheless, it is assumed that wherever deliberative processes proliferate, the two-level game character of EU policy co-ordination is much less pronounced compared with the pattern expected by liberal intergovernmentalism as top-level decision-makers insulate themselves more strongly from domestic processes involving partisan and interest group pressure''

(see Puetter: 2011: 164-165)

Nevertheless, such bodies often achieve influence through lobbying practices at the national and supranational levels during EU treaty negotiation processes. Civil society and business actors as representatives of both public and private opinions and attitudes provide powerful data which are used by policy makers and policy shapers. Discourse, actions and attitudes stemming from the civil and private spheres at the domestic level within liberal-democracies can prove highly constructive for national preference formation and strategic preference planning. In particular, the attitudes of business actors toward EU treaties play an important role in EU economic policy and

treaty negotiations[32]. It is in the interest of member-states as a collective to ensure that the attitudes and concerns of business actors stemming from the domestic level across the EU who contribute to the single market should be considered in effective policy making. Although less credit is given to the opinions and attitudes of domestic societal forces in intergovernmental treaty negotiations, when a member-states like Ireland must hold a referendum, the opinions of societal forces are of great importance. After all, it is the opinions of society as a whole which will determine the outcome.

''Dutch Permanent Representation in Brussels is of the opinion that pressure groups outside the civil service are even more important in stimulating initiatives than the bureaucracy itself''

(see Meerts, 1997: 471-472)

Did Domestic Societal Forces have a Role to Play?

Although the Fiscal Stability Treaty is an intergovernmental treaty which was European Council created and SHERPA led, there is no reason to suggest that domestic societal forces did not leverage Ireland's position in the negotiations. After all, the treaty was SHERPA led and the senior civil service as non-political actors with knowledge of policy areas and policy making procedures act as the bridge between society and the political sphere in their shaping (or administering) of public policy. When questioned about the role of business leaders, academics, lobbyists and civil society in shaping the treaty, interviewees were predominantly dismissive of any role that such bodies may have played in leveraging Ireland in the Fiscal Stability Treaty negotiations. A Senior Official close to the negotiations (Senior Official, Dublin, 12th September 2014) stated that there was no input or influence by

[32] In the past, Ireland's ratification of EU treaties relied heavily on the support of a proportion of influential actors in the Irish sphere. In 2008 the Irish Farmers Association (IFA) (see: IFA, 2015) threatened to withhold their support for the Lisbon Treaty fearing its adverse impact on agricultural production in the internal market. By advocating a No vote, Irish farmers influenced the achievement of further concessions in order to gain their support (see Hodson & Maher, 2014). Lisbon 'I' also saw a number of Irish Euro-sceptic social groups calling for a No vote due to fears over national sovereignty and extending powers to the ECJ over policy areas. Their attitudes subsequently influenced various concessions secured in Lisbon II.

domestic social forces as the treaty negotiators did not have the time to consider the broad variation of viewpoints on the treaty. As the treaty had a time limit, the timing was not appropriate to incorporate such extensive voices into the debate which would have increased longevity and complexity within the process. A former Minister of State (Former Minister of State, Dublin, 2nd May 2014) argued that there was no place for the opinions of societal forces as this was an intergovernmental treaty conducted by European Heads and their administrations, so it made *no sense* to incorporate societal influences. An Irish senior official (Senior Official, Dublin, 9th June 2014) did bring attention toward the role of the Independent Fiscal Advisory Council (IFAC) arguing that it was influential in shaping government preferences. Although it was non-statutory at the time, it played an important role in informing and advising negotiators on the treaty (see: IFAC, 2015). However, it is necessary to note that IFAC is not a social organisation, but is instead a body of independent experts who were tasked with assessing the government's success in meeting its budgetary targets, assessing the soundness of the government's macro-economic projections and assessing government's compliance with the fiscal rules (see: Dáil Debates, 22/5/2012). Members included Sebastian Barnes (OECD); Professor Alan Barrett (TCD); Dr. Donal Donovan (UL); Professor John McHale (NUI Galway & Chair of the Council) and Dr. Róisín O'Sullivan (Smith College, Massachusetts). The senior official's advisor who was present at the interview drew attention to the role of *comments* sections of national newspapers. He stated that these sections were watched rather closely by policy makers and lead negotiators for useful information that could be used in negotiating the treaty. They were monitored closely for the opinions and attitudes of economists contributing views to national newspapers, as well as private individuals. Press offices within embassies were also considered useful sources of information on grass root opinions and attitudes. Additionally, negotiators who typically brief their ministers by the end of the working week about treaty related business were likely to receive feedback from their minister by the following Monday morning. From time to time, ministers would consult with members of their constituency over their weekend break and these various opinions would feed into the negotiation process. According to the advisor, this was seen as an important sense of interaction between both minister and constituents, and also important in terms of data and feedback for strategic preference planning.

Other highly important sources of public interest that were instrumental in shaping political and bureaucratic arguments in the negotiations at the EU level came from submissions to the Sub-Committee on the Referendum on the Fiscal Stability Treaty (see Oireachtas.ie, 2015). Academics such as Professor Sean O'Riain and Professor John O'Brennan (NUI) Maynooth and the NGO *European Movement Ireland* contributed submissions to the sub-committee. The quality of the submissions reflected both concerns and prescriptions regarding the treaty and Irish stances. It was clear from the interview conducted with the senior official that the opinions of societal forces were monitored carefully regarding Ireland's relationship with the treaty and its position in the negotiations.

''The Joint Committee on European Union Affairs focuses its activities on matters concerning the strategic direction of the EU and on optimising its influence on framing that agenda''

(Joint Committee on EU Affairs, 16/2/2012)

Most importantly, the senior official drew attention to the Joint Committee on EU Affairs which is of great significance to this research. The Joint Committee and its Sub-Committee on the Referendum on the Intergovernmental Treaty on Stability, Coordination and Governance in the Economic and Monetary Union were both extremely instrumental in incorporating external voices into the debates which contributed useful policy shaping data. The interviewee also discussed the role of parliamentary debates from the floor of Dáil Eireann where it is evident that TD's drew upon constituency concerns during the *leader's questions* segment of parliamentary proceedings. There is little doubt that professional individuals, academics, civil society actors and business actors who are invited to such meetings are invited to serve a purpose, and that their contributions are important in shaping discussions and stances that are elevated to the EU level. This point was made by Maros Sefcovic, Vice President of the European Commission with Responsibilities for Inter-institutional Relations and Administration, who mentioned in the Joint Committee on EU Affairs that national Parliaments (who are becoming more involved in public consultations via parliamentary committees) are important in shaping ministerial discussions at the EU level as national ministers collect opinions from national parliaments which help organise national positions in ministerial

formations of the Council of the EU and below in the bureaucratic forums in the Council of the EU structure (see Joint Committee on EU Affairs, 16/2/2012).

The Joint and Sub Committees were attended by many experts and peoples with an interest in the treaty. ''*Ambassadors, business and employers' groups, trade unions, NGOs, university academics, economists and business journalists participate in these meetings''* (Deputy Sean Kyne T.D, Dáil Debates, 18/4/2012). Transcriptions from the committees indicate that many contributors weighed up the importance of the treaty or the dangers of the treaty for Ireland and Irish business in both the EU and global markets, including the economically desirable BRIC (Brazil, Russia, India & China) countries who are rapidly becoming competitive in world markets. These discussions were important for lead negotiators to understand the attitudes of influential societal forces and to use those attitudes and opinions in framing their own arguments and policy stances, either relating to the treaty's effects on the Irish and EU economy or the treaty's provisions and its consequences for securing an Irish Yes vote. The importance of such actors in these committees lie in their ability to debate and to persuade negotiators of the importance of their viewpoints. Ireland's future relationship with the EU at this time was dependent on public opinion on the treaty which would be reflected in the referendum. Heads of State/Government across the EU were constrained by public opinion for which their political seats in national government and EU governance depended upon. Therefore, public opinion being mediated through parliamentary committees helped in the process of national preference formation and facilitated negotiations and inter-state bargaining at the EU level. This was influential due to the inherent link between Irish public opinion and the fate of the treaty in Ireland.

As is evident in the concluding report on the Sub-committee on the Referendum…., a number of opinions were voiced within the committee by representatives of civil society, NGO's and the private sphere which reflected patterns in Irish public opinion toward the treaty and what it meant for Ireland. The viewpoints of such organisations not only contributed to the committee's discussion and were influential in shaping *elite* attitudes and stances, but suggest patterns in public attitudes toward the treaty which could indicate referendum outcome. The Irish Farmers Association (IFA) showed considerable support for the treaty and urged a Yes vote in the

referendum. Of their main concerns was the need for a continuity of FDI into the Agri-industry to secure sustainable employment and output and to ensure access to the Common Agricultural Policy (CAP). The state of the Irish economy would be a determining factor into Ireland's role in being a decisive player in the CAP and also in determining the extent of their returns from the CAP. The Financial Services Ireland (FSI), Irish Business and Employers Confederation (IBEC), the Irish Small and Medium Enterprises Association (ISME) and the Small Firms Association (SFA) also endorsed the treaty and a Yes vote in the referendum. As representatives of employment and business they saw the importance of the treaty for regaining stability and confidence from international markets that would aid FDI and growth and employment in Ireland which would generate Irish competitiveness. As representatives of both employers and employees within industry and services etc. and showing support for the Fiscal Stability Treaty, this suggests that a large proportion of individuals being represented by these organisations also showed support for the treaty. While the Services, Industrial Professional and Technical Union (SIPTU) took a cautious approach to the treaty by emphasising its effect on further austerity in Ireland, they too were in agreement that it was necessary in order to secure funding from the ESM if required. Voting No would not help secure future growth and employment. However, their support initially relied heavily on a growth stimulus plan which would be based on drawing funds from the National Pensions Reserve Fund[33]. The Irish National Organisation of the Unemployed (INOU) on the other hand supported a No vote due to the economic risks of the Fiscal Stability Treaty and the fact that the treaty did not address the issue of national investment into education and trade as a means to boost employment. They argued that the structural deficit measurement effectively constrained the state from investing in these sectors. They believed that this lack of investment combined with austerity would exacerbate crisis conditions.

Non-governmental Organisations (NGOs)/Policy Think Tanks contributed to the discussions by showing considerable support for the Treaty as a means to avert crisis conditions and enhance democratic accountability through national parliamentary

[33] SIPTU argued that the state could draw upon the National Pensions Reserve Fund and (approx. 50%) for the purpose of public spending to boost growth and employment. This would counteract the lack of national borrowing and public investment that was limited by the structural deficit rule.

scrutiny, as well as enhance checks and balances between EU member-states to ensure that signatory EU member-states act prudently together. They argued that this would bring about a greater sense of equality between EU member-states both big and small. Such beliefs were strongly endorsed by the European Movement Ireland (EMI). Additionally, the IIEA not only warned against the risk of losing access to the ESM in the event of a No vote, but also stressed the importance of supporting a Yes vote so that Ireland (as a small EU member-state) could be a core player in determining future EU decisions relating to economic governance which would ultimately effect Ireland's economy.

''Together we have influence and that is the main point of the European Union. Small countries have a lot of influence when they work together''

(See: Joint Committee on EU Affairs, 7/3/2012)

The committees played host to a number of foreign officials during the negotiation period who were either party to, or at least close to the Fiscal Stability Treaty negotiation process and with whom Ireland shared close professional and strategic relationships. For example, the committee was attended by French Ambassador to Ireland Emmanuelle d'Achon, Spanish Ambassador to Ireland Javier Garrigues (see Joint Committee on EU Affairs, 1/3/2012) and the Swedish Ambassador to Ireland, Elisabet Borsiin-Bonnier, whose country pushed for a job strategy much in line with Ireland's initial interest in order to tackle the unemployment issue amidst austerity measures. Others included the German Minister of State at the Federal Foreign Office Mr Michael Link and German Ambassador to Ireland Dr. Eckhard Lübkemeier, to name but a few. The German Minister of State discussed how German negotiators listened closely to political debates in Dublin and considered these discussions back home in Germany (Joint Committee on EU Affairs, 22/2/2012). It is indicated that political discussions through parliamentary committees and reports were influential in shaping foreign stances or even preferences in the negotiations and *vice versa*. This becomes part of the true essence of deliberation and negotiation for consensual outcomes. Thus, institutions such as the Joint and Sub-committees evidently provided a forum for Irish politicians and government ministers to meet with foreign officials in order to discuss and reach understandings in the hope of advancing negotiation outcomes at the EU level.

Therefore, it is indicated that societal forces via these domestic institutional arrangements did play an important role in shaping negotiations at the EU level. They did this by promoting foreign knowledge about Irish domestic attitudes and opinions about the treaty. As larger EU member-states wanted Ireland on board, it is likely that such information flows were instrumental in reshaping policy stances at the intergovernmental level. In turn, one may also argue that albeit an executive or intergovernmental matter, national parliaments such as the Oireachtas had a role to play in the intergovernmental negotiation process contrary to popular belief.

Table 5.1 Stances by Organisations Representing Civil Society/Private Sphere toward the 2012 Fiscal Stability Treaty and Referendum.

Pro-Treaty/ Yes Vote	**Anti-Treaty/No Vote**
John, Bryan Irish Farmers Association (IFA)	Brid O'Brien, Irish National Organisation of the Unemployed (INOU)
Brendan Bruen, Financial Services Ireland (FSI)	
Brendan Butler, Irish Business and Employers Federation (IBEC)	
Mark Fielding, Irish Small and Medium Enterprises Association (ISME)	
Patricia Callan, Small Firms Association (SFA)	
Noelle O'Connell, European Movement Ireland (EMI)	
Brendan Halligan, Institute of International and European Affairs (IIEA)	
Jack O' Connor, General President of SIPTU	

Source: From the report on the Sub-Committee on the Referendum on the Fiscal Stability Treaty (2015).

5.1.4 Network Capital, Mechanical Coalition Building & Deliberation

''Senior Irish officials have been very active in meeting their counterparts, and we have sought to secure the support of all potential allies on issues of importance to us. We will continue to do this as the process evolves''

(Eamon Gilmore T.D, Dáil Debates, 17/1/2012)

Network capital is one of the most important variables when analysing negotiation strategy in the EU especially under informal consensus based decision making processes. Network capital is generated from a sociological process of relationship building and forging cross national links between national politicians and their administrations. In turn, value based negotiation norms follow and are substantiated by respect, trust and loyalty building between actors (see Crossley et al, 2015). Networking facilitates discussion, understanding and compromise. As a result, network capital can be useful in leveraging small EU member-states in meeting preferences, especially under informal deliberative negotiations. Through network capital building, negotiators may draw upon domestic win-sets in the negotiation environments and use them in their deliberations persuasively as a means to convince their negotiating counterparts of the significance of their preferences for their own state and the union as a whole. This process incorporates mechanical coalition building which in turn enhances the value of network capital amongst negotiators. The logic of network capital, mechanical coalition building and strategic deliberation as a combined process is one whereby (often) the principles of liberal-intergovernmentalist bargaining (drawing upon domestic forces) are mediated through affective discourse as a means to argue one's case effectively and justify why it is imperative that an EU member-state's preferences are met. Drawing upon the new intergovernmentalist structure of the Fiscal Stability Treaty negotiations and the types of institutions and actors central to the negotiation process, it would appear that national bureaucrats working in forums such as the Eurogroup Working Group (EWG) or the Economic and Finance Committee (EFC) (see chapter 3) facilitated these theoretical dimensions when brokering the treaty on behalf of their respective governments. Therefore, bureaucrats would be instrumental in *persuading* their counterparts of their needs. This helps enhance the accommodation of national preferences. This can be better understood if one considers, once again, the role of

civil society in shaping domestic preferences. Drawing once again on the discussion relating to the Joint and Sub committees, one can identify such patterns whereby national bureaucrats act as a link between the people and the central organs of state and utilise domestic public data (opinions or attitudes) in their negotiations to make their points heard and seek consideration. This allows foreign negotiators to reconsider their stances and offer concessions to smaller EU member-states as to avoid the limitations of a smaller EU member-states' domestic ratification constraints. The communicative value of relationship building aids bureaucratic actors within working groups or even national ministers within the Council of the EU to form *mechanical* coalitions.

''Truthfulness and honesty are honoured and seen as important features for the "correct" EU negotiator''

(Meerts, 1997:479)

Coalition Building is a powerful tool in helping a small EU member-state to achieve influence in negotiations. This can manifest *numerically* or *mechanically*. Numerically speaking (under formal voting processes), a small EU member-state can forge links with other EU member-states (small or large) who may share similar preferences and stances on a common policy issue. By combining their formal votes, they build coalition influence and enhance their chances of wielding or significantly challenging a majority coalition. However, this is often unlikely as it is difficult for small EU member-states alone to numerically ride roughshod over the preferences of larger EU member-states, particularly under the revised double majority rule set out in the Lisbon Treaty.

Mechanical coalition building which emerges during informal negotiation processes can be beneficial to small EU member-states. Using their network capital, small EU member-states can leverage their influence through sociological means such as binding ties and forging loyal friendships which influence their negotiation status. In turn, they can influence common understandings that increase the chances of consensus being achieved. Whilst coalition building is usefully constructed through cross administrative relationship building on an everyday basis, a country may have an added advantage if it's Prime Minister or Deputy Prime Minister has cross party

linkages with members of similar party family backgrounds in influential positions within the European Council or Council of the European Union formations. They can keep in constant contact and inform their ideological counterparts about the order of business taking place in Brussels regarding treaty negotiations and even reach common agreements based on mutual ideological understandings. Thus, ideological backgrounds can be useful in obtaining sensitive and strategic information. Good cross-departmental relations are important here in helping small EU member-states to gain knowledge of the preferences of other EU member states and to equip small EU member-states to manage the negotiation process more effectively and strategically. It is particularly through cross administrative networking that interpersonal relationships formulate which enhance a sense of understanding, cooperation, communication and loyalty amongst negotiating actors which are considered by smaller EU member-states like Ireland as important values for concession seeking (Meerts, 1997). In some ways, this feeds into the sociological institutionalist school of thought due to the cultural perspective of relationship building amongst actors in cross-national networking in terms of building negotiation norms and practices. Much of contemporary relationship building takes place between national administrations via phone, email, Skype calls etc. These informal ties then manifest further in the corridors and working groups of Brussels. Informal luncheons and working dinners are not uncommon and they give negotiators a chance to build relationships, share understandings and form agreements. Thus, these informal processes are just as important as the formal processes in relationship building (Thurner & Urban Pappi, 2013). As technology advances, national capitals are closer than ever and the means for more intense cross national relationships and mechanical coalition building has increased. This has made it easier and faster for those in national governments to coordinate preferences prior to meeting in the working groups in Brussels. This has added to the speed and efficiency of planning and cross national preference coordination. The size of national bureaucracies can place EU member-states like Ireland in a beneficial position as there is a smaller number of faces and names acting on behalf of the government in national administrations and in Brussels. More importantly, these faces and names remain when governments come and go. Therefore, there is a

consistency in cross national *bureaucratic* relationships which enhances and preserves cross national *ministerial* relationships over time.

It is easier and beneficial to coordinate preference and make successful bargains when network capital building is strong. Thus, negotiation skills such as clear and concise cooperation and communication are important and desirable factors in building cross national relationships. If large EU member-state *A* has faith and confidence in small EU member-state *B's* negotiation skills and willingness to comply, it is more likely that small member-state *B's* negotiators will be held in higher regard. In turn, this leverages their voice and influence in negotiations. *''The skills of the other negotiators are greatly appreciated. Negotiators are quite happy with their home institutions, and they typically consult with relevant ministries outside their own''* (Meerts, 1997:471). Negotiators in working group forums are expected to have knowledge of the preferences and stances of other EU member-states and model their preferences accordingly as a means to identify and realise common interests and goals. This is what Gron and Wivel (2011) label the *smart state* which uses information and knowledge as a means to increase leverage in the bargaining environment. After all, preferences may diverge, but common goals generally converge. All EU actors enter negotiations seeking genuine consensus on common issues. Successful small EU member-state negotiators must be strong willed, but equally flexible whilst possessing the ability to avoid being roughshod by larger EU member-state actors (see: Mastenbroek, [1989] in Meerts, 1997). Such negotiating qualities are said to have enhanced Ireland's negotiation position and has had a positive effect on the Irish team's ability to realise their weaknesses and their ability to be flexible enough to utilise their opportunity structures to their advantage. A number of interviewees have said that the Irish Permanent Representative in particular possessed such abilities which added credibility to the Irish negotiating team.

How did Network Capital, Mechanical Coalition Building and Strategic Deliberation manifest in the Negotiations?

''The Government has been working intensively, at the negotiating table, in Brussels, and in capitals, to make sure that our key points are understood and addressed appropriately. To that end, we have offered our views both orally and in writing, including on the detailed elements of the text''

(Eamon Gilmore T.D, Dail Debates, 26/1/2012)

Almost unanimously in the research data it seems that much of Ireland's national preferences were successfully met as a result of the negotiation skills, the personalities and intellect of lead negotiators in the Irish team and their use of network capital as a means to argue their cases successfully with the right people. Although having a relatively small administration, Ireland is believed to possess comparatively strong bureaucratic qualities amongst its negotiation team. This in turn projects a high level of excellence, professionalism and expertise in the ways which the Irish team negotiates EU business. This has been argued by a number of interviewees from national and EU political circles, as well as a Council General-Secretariat official who has observed the Irish team's negotiation skills directly. Data also indicated that members of foreign capitals (politicians and bureaucrats) also perceive the Irish administration in this positive light. A former Irish Minister (Former Minister, Dublin, 23rd January 2015) stated that Irish senior administrative officials (senior civil service) were important in the negotiation process due to their strong cross national and EU bureaucratic links and connections.

''During the course of the negotiations the Government, assisted by our team of senior officials drawn from each of the relevant Departments and Offices, has been fully engaged with our EU partners, both in Brussels and across EU capitals, in order to ensure our national concerns are fully appreciated and understood by other member states. At each iteration Irish interests have been advanced. At the same time, we have been active in cultivating alliances with other partners on matters of common concern''

(Taoiseach Enda Kenny, Dáil Debates, 24/1/2012)

In the opinion of the former Minister, a small EU member-state like Ireland achieves influence through the network connections of its diplomatic service. He stated that it was through strong connections that respect-building was developed further. As one mentioned by one interviewee, the senior civil service lasts longer than politicians in national institutions, and therefore they tend to have time to formulate close and long lasting cross national relationships which work to their advantage when formulating national stances relating to EU policies or treaties. As discussed in chapter 3, the Irish team kept in constant contact with foreign and EU bureaucrats via face to face meetings, video calls, email and phone, which were constructive in networking, trust building and information transferal. This is put to strategic use in national preference building and bargaining strategy planning. A similar point was made by an official in the Department of Foreign Affairs and Trade (Senior Official, Dublin, 4th December 2014) who indicated that the greater the length of time bureaucrats play in building network capital, the greater the benefit to negotiations. Through network capital they build expertise and knowledge of negotiations practises and forge close and mutually respectful relationships which enhances their positions.

From a mechanical coalition building perspective of network capital building, it is evident that the Irish Taoiseach Enda Kenny including the former Tánaiste and Minister for Foreign Affairs and Trade Eamon Gilmore and their respective negotiation team met on many occasions with European counterparts to advance their positions. As discussed in Dáil Debates (24/1/2012), the Taoiseach named a number of actors who were instrumental in leveraging or seen to potentially leverage Ireland's position in the Fiscal Stability Treaty negotiations. The Taoiseach and Tánaiste maintained close connections with the Dutch, Italian, and Danish, Finnish, Portuguese, Luxembourgish and Austrian Heads of Government. The Taoiseach also forged strong links with Chancellor Angela Merkel by attending working dinners with her alongside the prime-ministers of Latvia and the Czech Republic (Dáil Debates, 21/2/2012). Finance Minister Noonan maintained close relationships with the German Finance Minister and President of the ECB Mario Draghi, which was important for Ireland considering Irish issues relating to potential concessions associated with national debt levels and matters relating to the EFSF alongside the ESM provision in the treaty. The British, Swedish, Finish, Dutch and Estonians were amongst the *like-minded* members that Ireland kept in very close contact with

throughout the negotiations. The Swedes, Finnish, Estonians and British appeared to share very close ideas with the Irish about the treaty terms and overall goals, especially in the area of the growth agenda. When reflecting on the economic size of these member-states, one can categorise the majority of them into the small-medium size bracket. Mechanical and even numerical coalition building (under formal vote procedures) is common behaviour amongst member-states of the similar or equal size in EU negotiations due to their common stances on EU issues. It is reasonable to argue that by proxy of the connections sought and made, these EU member-states were considered as important players to Ireland for leveraging their position, perhaps by providing Ireland with a stronger voice in EU negotiations through shared values and understandings. This is also evident from the forging of strong links between the [Irish] Taoiseach Enda Kenny and the Italian Prime-Minister Mario Monti based on their mutual understandings and goals relating to a growth agenda, completion of the single market, trade agenda and the importance of the Community Method of decision making on EU issues (Dáil Debates, 29/2/2012). Naturally some of these issues appear abstract rather than directly related to the Fiscal Stability Treaty negotiations, but when dealing with mechanical coalition building it is necessary to isolate potential counterparts based on the extent of shared values and goals in general terms. By isolating the most like-minded counterparts, a member-state gains knowledge about which relationships are or will be instrumental in leveraging one's position in negotiations later on.

''*Italy was, is and will continue to be a major EU member state, with whom we have a great deal in common across the entire EU agenda''*

(Taoiseach Enda Kenny, Dáil Debates, 29/2/2012)

The importance of building strong and instrumental coalitions is seen in the Irish delegation's ability to identify and work with potential *strong* allies to further their interests. This is highlighted by Dáil Debates (see Dáil Debates, 21/2/2012). Taoiseach Enda Kenny outlined in a statement the various networks he forged and maintained throughout the negotiations. There was evidently a strong strategic reasoning behind the forging of networks. The Taoiseach blatantly stated that he had *''no immediate plans''* to meet with the Greek Prime Minister (Dáil Debates, 21/2/2012). In considering the Greek economic position and weak bargaining

position in the EU at the time (circa 2012), it is clear from the list of allies sought by the Irish team that they (by acting strategically to further their interests) isolated and targeted only those most likely to further their interest in EU negotiations. These allies came in the form of the most relatively economically stable EU member-states across the union, including those member-states who contributed widely to the ESM and who shaped the terms of the Fiscal Stability Treaty itself.

''We had an absolutely excellent Perm Rep at the time. I mean, a lot of it was down to personalities and the individuals who happened to be at the negotiating table and he [the Irish Perm Rep] would have been in a leading position and would be highly respected. ''That's always hugely important and I think that it assisted in the negotiation process from our point of view''

(Former Minister of State, Dublin, 19th September 2014)

A former Irish Junior Minister stated that the Irish Permanent Representative was a *dominant* character in the negotiations who possessed the most capability and intelligence which helped aid the Irish delegation. Having attended COREPER meetings twice to three times a week, the network circle of Permanent Representatives in Brussels was of considerable importance to the Irish delegation. Additionally, the Permanent Representatives character and ability to negotiate was just as important considering his role as a national ambassador to the EU. The former Junior Minister further stated that the ability to make sane and rational arguments, as well as having the right and capable people to help one's country achieve its preferences was important in helping Ireland to be heard. Having achieved a high degree of respect and credibility, the Irish Permanent Representative was believed to be extremely capable to argue points in a persuasive, yet subtle fashion without aggressive or domineering tones that could be perceived as threatening by larger and more dominant EU counterparts.

''I do think that the quality of our officials ...was an important because they had respect and credibility and could argue a point in a convincing fashion that didn't alienate or frighten or in any sense threaten to derail the objectives of the Germans''

(Former Minister of State, Dublin 19th September 2014)

The art of persuasion in the negotiations contained the ability to argue the mutual benefits of avoiding an Irish referendum and in seeking a flexible provision relating to the treaty's constitutional status at the domestic level. Persuasion was also necessary in order to help Ireland achieve more concessions to ensure the treaty passed at the hands of the Irish electorate if a referendum was necessary. It was argued that Ireland achieved concessions relating to the EFSF and the ESM, in that, if the ESM was linked to the treaty, Ireland's access to the EFSF would not be harmed under its current programme and until that programme expired. Capitalising upon the uncertainty of Irish public opinion in the context of a referendum appears to have helped Ireland win guarantees on the issue. A former Irish Minister (Former Minister, Dublin, 23rd January 2015) who was interviewed for the study argued that shaping a text (regardless of national strength) is about offering alternative texts to EU counterparts. Using knowledge to make clear and valid points in the negotiations was of great importance i.e. how will a no vote in an Irish referendum on EU wide Fiscal policy effect Germany's long term sustainability or market access or even debt repayment? Or, how will a fixed measurement of the structural deficit harm Ireland's ability to grow, thus endangering the EU economy over time? Or, how will the application of the ESM effect Ireland's access to EFSF funds and what effect will this have on Irish public opinion toward the treaty under referendum conditions? The process was about being *proactive* and shaping the treaty, rather than being a spectator. As the former minister stated, it is better to shape the treaty by participating than stand down and accept the will of *others*. As evidence suggests, treaty shaping manifested in many forms, from constant cross national communication processes such as formal meetings in EU institutions to video conferencing and even corridor discussions on the margins of European Council meetings. The important point is that small EU member-states like Ireland used their opportunity structures wisely in the form of deliberation and made use of the most qualified and capable members of their teams to defend their preferences in the negotiations.

‘‘*I [Taoiseach Enda Kenny] highlight the 20th preamble, which makes it clear that "none of the provisions of this Treaty is to be interpreted as altering in any way the economic policy conditions under which financial assistance has been granted to a Contracting Party in a stabilisation programme..."*

(Taoiseach Enda Kenny, Dáil Debates, 1/2/2012)

However, an Irish MEP (Irish MEP, Brussels, 10th December 2014) argued against the bureaucracy and its networking qualities. The MEP stated that the bureaucracy and its role is often overstated in Ireland. The MEP placed more emphasis on the role of the network capital of politicians, rather than senior departmental officials. Although the European Council and Council of the European Union provide powerful environments for political networking, it must be remembered that this treaty was predominantly brokered by national bureaucrats on part of the Heads of State/Government and not predominantly senior level politicians. It was SHERPA led. In turn, the sociological habits and resulting behavioural values of Irish bureaucrats and their experiences is of comparative importance to the nature of this study. Although critical of bureaucrats, the MEP did not state how exactly network capital building amongst politicians influenced the achievement of Ireland's preferences. The lack of elaboration places greater weight on the role of the bureaucracy for this study. *''At home I think civil servants exaggerate how important they are. We are a small public administration. Tiny! We have some expert people, but I think it is totally blown out of the water''* (Irish MEP, Brussels, 10th December 2014).

Building on the network capital of politicians, an EU correspondent (EU correspondent Brussels, 10th December 2014) argued that in terms of achieving preferences, the Irish Taoiseach's good relationship with German Chancellor Angela Merkel should not be overlooked via their European Peoples Party (EPP) affiliation. This indicated that party/ideological links play a role in trust and loyalty building especially in a greatly centre-right dominated sphere such as the European Council. The role of the Minister of State for EU Affairs was also regarded favourably amongst interviewees due to the important work the role entailed during the crisis period in terms of Irish-EU relations. Similar to the MEP's stance, another EU correspondent (Irish EU Correspondent, Cork 11th November 2014) made a negative point in mentioning that network capital like bargaining was of little consequence, as a small EU member-state like Ireland under bailout programme status was in no position to bargain, but merely had to keep its head down. However, the correspondent did continue on to say that Ireland found *''ways around''* their issues.

By building on the evident role of network capital and coalition building between delegates, one may interpret statement in the sense of the Irish team using proactive communicative strategies to convince or persuade larger counterparts of the necessity of meeting Irish preferences. *''we were finding ways around other things, but nice and quietly''* (EU Correspondent, Cork 11th November 2014).

From the opinions of senior civil service officials on the matter of network capital, the data appeared more fruitful. It indicated a clear understanding of the role of network capital, unlike the answers provided by national and EU politicians who were not directly party to the negotiation process. A senior official stated that travel and face to face communication was of utmost importance if preferences were ever going to be effectively met. Meetings were accompanied by experts in the policy field such as legal advisors on the constitutional side and economists on the fiscal side. Again, negotiations centred on persuasive arguments, rather than threats. '*...very often you had to convince the SHERPA from capital X that our view on article Y was valid because... and the best way to do that was actually face to face contact''* (Senior Official, Dublin, 9th June 2014). Another senior official (Senior Official, Dublin, 12th September 2014) argued that senior officials from the Department of Finance were well represented. Such senior officials who worked close to the EFC were rather *''authoritative''*, but not ''*dominant''* in their stances, and that they had good knowledge of the issues which helped in negotiating and getting their point across. An official from the Council General-Secretariat of the EU (Council General-Secretariat Official, Brussels 10th December 2014) stated that whilst it was difficult to measure network capital as there were only three official meetings prior to the final draft of the treaty being created; the norm is to look for allies and see who has similar preferences. After this, patterns can be drawn. There was no further elaboration on this point, but secondary data acts as useful substitute. Coalition building patterns were clearly identified in secondary data through the evident processes of network capital building and good communication skills.

In conclusion, connections and friendships help build relationships which act as a base to be heard. This is facilitated by expertise, logic, reason and the ability to seek and defend preferences effectively. It appears that communication in informal intergovernmental negotiation processes is focused on the use of persuasive language

which draws upon opportunity structures in its rhetoric as leverage to achieve concessions closest to national preferences, as well as influence.

5.2 Non-Applicable Opportunity Structures

Within the data it was argued that Ireland was a weak player in the Fiscal Stability Treaty negotiations and was side-lined by its larger EU counterparts as a result of its weak economy associated with its bailout status. However, this is an unfair judgement regarding Ireland's role in the treaty negotiations. Ireland as a small member-state (in a bailout programme) actually achieved influence in the Fiscal Stability Treaty negotiations, with most of its influence seen through its achievement of important preferences relating to Title III (The Fiscal Compact) of the treaty. Although this study is a single case study from the perspective of Ireland, the data indicates that even in intergovernmental treaty negotiations where a small EU member-state appears to be relatively weak, it can in fact still achieve influence and meet its preferences providing it has the advantage of credible opportunity structures to do so.

Having analysed Ireland's opportunity structures, it is evident that the European Commission was influential to a degree in facilitating Ireland in meeting its national preference relating to the structural deficit measurement. It is evident that having to legally hold an (initially unwanted) referendum, Ireland sought the means to avoid a referendum by achieving flexible provisions in the treaty and gained provisions relating to the securing EFSF pay-outs unaffected by the implementation of the ESM. It is also evident that network capital and mechanical coalition building was important in leveraging the Irish voice inside and outside intergovernmental negotiation forums which in turn facilitated Ireland in meeting its preferences. Although the thesis has established that there were a number of credible opportunity structures that leveraged Ireland's negotiation position in meeting national preferences and achieving influence, there were a number of additional so-called opportunity structures that were identified within the data. However, they have no real relevance to the nature of the study in terms of assessing the factors that leveraged Ireland's negotiation position. As these so-called opportunity structures

were popular within national debates surrounding the treaty, it is only ethical to at least account for them in the thesis as to avoid bias. Despite this, the thesis argues against their applicability to the study. These so-called opportunity structures included:

- A 'No' vote in the Referendum on the Fiscal Stability Treaty.
- A veto over Article 136 of the Lisbon Treaty (establishing the ESM).
- A French renegotiation of the treaty.

These factors were argued by members of the Irish parliamentary left and far-left as potentially strong opportunity structures. They were considered as potential means to constrain or even threaten larger EU member-states in the Fiscal Stability treaty negotiations in the hope of generating negotiations and outcomes in Ireland's favour. A number of TD's particularly from the Sinn Fein party, People before Profit, the Socialist party and a number of left leaning independents were unhappy with the so-called *German rules* and held the belief that the Irish team did not bargain enough. They also believed that Ireland had at its discretion a number of credible opportunity structure which they failed to use or articulate due to their fear of larger EU counterparts. Members of the centre-left (the Labour party) and centre-right of Irish politics (Fine Gael/Fianna Fail) argued that these factors were not credible opportunity structures, but were in fact potentially dangerous and threatening factors that would harm Ireland's relationship with the EU. In turn, any usage of these forces in negotiation strategy would endanger Ireland's path toward recovery, as well as endanger Ireland's return to the markets and securing international market confidence.

5.2.1 The No Side vs. the Yes Side

Those within Irish politics intending to reject the treaty saw the Irish referendum, the so-call veto over Article 136 of the Lisbon Treaty and the French Presidential elections as powerful opportunity structures to renegotiate the terms of the Fiscal Stability Treaty in Ireland's favour having held reservations with the Golden Rule of Balanced Budgets and its associated rules in the treaty. The No side of the treaty

debate accused the Yes side of intentionally avoiding a referendum, as they believed that the Yes side knew that the people most harmed by austerity measures, emigration and rising unemployment would vote No on the treaty. This in turn would harm Ireland's chances to access the ESM. Although the No side subsequently argued that a No vote would not harm access to the ESM, it accused the Yes side of failing to use the veto associated with Article 136 of the Treaty of the Functioning of the European Union (Lisbon Treaty) to block the ESM from coming into effect. The No side also urged the government to delay the Irish referendum until after the French President-elect François Holland renegotiated (as promised) the treaty to include aspects of growth stimulus package (Brady, 2013). These so-called opportunity structures were considered failed bargaining chips and according to the left, they apparently where not used because of the Irish government's fear of being rejected in Europe by its larger counterparts. In their defence, the Yes side argued that these so-called bargaining chips would be ineffective and would in fact be ultimately dangerous to Ireland's position in the negotiations and would ensure Ireland's elimination from the proceedings. *''A rejection would hardly put Ireland in a better position to demand concessions from its Eurozone creditors''* (Brady, 2013:2). Despite criticisms from the left regarding Ireland's supposed failure to use powerful opportunity structures, the negotiating skills of Ireland's team was criticised by Ireland's centre-right opposition leader Micheal Martin TD. Despite Deputy Martin's overall support for the treaty, he was critical about the transparency of the EU negotiations and Ireland's actions. He linked these issues with the Irish government's weaknesses to negotiate the terms and assert Ireland's preferences effectively.

''*Negotiations were not inclusive and they fostered acrimony and a lack of ownership of the outcome. It should be a concern to everyone that this is the first time in the Union's history that a treaty will not be signed by all of its members. At home this is the first time that no serious effort was made to seek input to Ireland's negotiating objectives for a treaty, and the first time when these objectives were not outlined in detail for the public''*

(Micheal Martin T.D, Dáil Debates, 1/2/2012)

The deputy insinuated that Ireland was a weak player in the negotiations; especially negotiations that did not require unanimity. He argued that more could have been guaranteed if Ireland had *asserted* itself further. However, the deputy did not follow his left wing parliamentary colleagues in prompting the use of unlikely and potentially dangerous bargaining chips such as those previously mentioned, but did argue that greater assertiveness by the Irish negotiating team would have facilitated better gains. The arguments that follow analyse the quality of such potential opportunity structures, but argue that they would in fact have been more dangerous, rather that power wielding to Ireland in the negotiations. Therefore, they were not effective opportunity structures.

5.2.2 An Intended No Vote in the Referendum

Unlike it's EU counterparts, Ireland did not have the opportunity to ratify the Fiscal Stability Treaty through a parliamentary majority (act of parliament). Ireland was advised by its Attorney General to hold a national referendum due to the treaty's transfer of competences to the European Commission regarding national fiscal oversight, as well as its ability to fine EU member-states who offend the treaty terms. The prospect of Ireland holding a referendum was not in the interests of the governing parties in Ireland. However, it was advocated by many on the left and far-left of Irish politics due to their anti-austerity stances and concerns for the preservation of economic sovereignty. Parties from this side of the ideological spectrum regarded the referendum as a potentially useful opportunity structure or bargaining chip that could lead to renegotiation of the treaty and leverage Ireland in the negotiations to secure further concessions such as a growth stimulus package and even issue-linked concessions on the matters of bond maturities and national debt write-downs. However, these potential concessions were discredited by the Irish government and considered empty wishes due to the actual nature of the treaty.

As Dáil debates suggest, members of Ireland's parliamentary left argued that the Irish government should have used the referendum to their advantage to reap further concessions. This could be done by the government advocating a No vote. Drawing upon previous experiences in the Nice and Lisbon treaties whereby Ireland received

substantial guarantees on matters of neutrality, the right to life of the unborn and configuration of the European Commission; they believed that if Ireland voted No, EU counterparts who were fearful of losing Ireland from the Eurozone would be forced to renegotiate the treaty terms and offer more favourable concessions to Ireland. Concessionary gains may have extended to issues unrelated to the treaty such as a write-down of debt, agreements on maturities and agreements on promissory notes. The latter three were vehemently refuted by members of the governing coalition parties given that they are not linked to the treaty and there simply was no place in the treaty for such matters. After all, it was a treaty on Fiscal Policy, not bailouts.

Deputy Shane Ross T.D was a leading advocate of using the referendum as a means to hold larger European counterparts to account and leverage Ireland in seeking further concessions. The deputy argued that the Irish government should stand up to their euro counterparts and believed that the Irish government was being pressurised by larger EU members. He argued that by using the referendum instrumentally, the Irish government should argue that Ireland would best receive a Yes vote from the electorate if there were greater guarantees relating to domestic social security. Ireland used persuasive tactics to gain concessions, but social security was not one of the issues on the Irish agenda in this treaty. However, unlike the deputies left wing colleagues, he actually advocated using argument, rather than calling for a definite No vote to reopen negotiations similar to those after the failed Nice and Lisbon Treaties.

''I do not want the Taoiseach and the Tánaiste, or whoever is with the Taoiseach, reporting that they rubber-stamped the treaty simply because that is how Ireland behaves in Europe. It may be difficult for the Taoiseach but the referendum gives him leverage. It is a threat. He does not need to go cap in hand to Europe today, tomorrow and Friday. He can tell Europe that the people, who do not like this treaty or its terms, are behind him. He can tell Europe that returning some of our economic sovereignty and writing off some of the debt would make delivering on the referendum easier. It is difficult for him to respond to this practical suggestion

publicly, given that these negotiations are held behind closed doors. For the first time, however, he has leverage in Europe. I beg him to use it''

(Deputy Shane Ross TD, Dáil Debates, 29/2/2012)

Deputy Eamon O'Cuiv T.D (Fianna Fáil) argued for a No vote in an Irish referendum. His logic followed that the Irish electorate could vote No and in doing so they could effectively veto the ESM Treaty through Article 136 of the TFEU. It was believed that this could essentially obstruct larger EU member-states' access to the ESM. If access was inhibited, then this would reshape the attitudes of European governments toward the substance of the Fiscal Stability Treaty and reassess it in Ireland's favour. *''One might argue that if we say "No", we will go over the cliff, but that is not the case because we can hold up the whole show and go back and renegotiate in the interests of the ordinary, plain people of Europe who do not seem to count for much among European leaders''* (Deputy O'Cuiv T.D, Dáil Debates, 18/4/2012). To assume that a No Vote would be positive for Ireland in terms of generating renegotiation of the compact after a national referendum is to assume (rather falsely) that Ireland has a better alternative which could be used as a credible force of persuasion. Considering Ireland's economic context, its bailout status and the consequences of its dangerous conditions for other EU member states, it is inconceivable that Ireland had a credible alternative to hold larger counterparts to account in the negotiations. It was stated many times that a No vote would have been disastrous for Ireland and in turn for Europe. As the treaty was a rapid response to a critical matter which did not require unanimity, one can be quite certain that the train would have left without Ireland. It was not likely that a No vote in the Irish referendum was going lead to renegotiation in Ireland's favour. *''This was a treaty that could enter into force without everybody. So the leverage for countries to hold everybody else hostage, if I can put it that way, is smaller than normal, because it was a separate treaty''* (British MEP, Brussels, 9th December 2014). An EU correspondent (EU Correspondent, Brussels, 10th December 2014) stated that if Ireland had voted No to the treaty, access to the ESM would have been cut off leaving Ireland vulnerable and without means for financial aid. However, Ireland would still be subject to the two pack and six pack rules as well as the SGP.

Therefore, Ireland would be subject to potentially dangerous austerity measures with no backdrop mechanism for security. This point was backed-up by an Irish MEP (Irish MEP Brussels, 10th December 2014) who worked close on the Yes side of the Irish referendum campaign.

5.2.3 Veto over Article 136 of the TFEU

Some of the more Eurosceptic members of the Irish parliament such as the Socialist Party's Deputy Joe Higgins T.D was displeased with the linking of the ESM to the Fiscal Stability Treaty. He argued that Ireland could obstruct EU member-states' access to the ESM by voting No in the referendum *first* (see Dáil Debates, 27/3/2012). Taking a similar stance, Sinn Fein's Deputy Sandra McLellan T.D argued that the government should reject the treaty and return to the European Council and remove the ''*blackmail clause''* by *''using the veto if required''* (Dáil Debates, 20/4/2012). As the so-called blackmail clause linked the ESM to the Fiscal Stability Treaty with the latter only accessible if the former was ratified, they believed that if the Irish voted No to the Fiscal Stability Treaty, the Irish government could then use their apparent veto over the ESM under Article 136 of the TFEU (Lisbon Treaty) to block other EU member-states' access to the ESM. This would make the treaty provision null and void (see The Irish Times, 2nd March 2012). Larger EU member-states would be forced to renegotiate the terms of the Fiscal Stability Treaty in Ireland's favour in order to secure their own access to the ESM. The Irish could then renegotiate the ESM link and sever its relationship to the Fiscal Stability Treaty. Although this method of threat was advocated by those from the left of Irish politics, the Irish Taoiseach argued that the link between the ESM and the Fiscal Stability Treaty was actually very logical (Taoiseach Enda Kenny, Dáil Debates, 19/4/2012). His argument rested in the rationale that larger countries offering financial aid to smaller countries should be assured that their money is being used wisely and that recipient countries will not abuse that aid through fiscally imprudent policies that could damage European partners by order of contagion. Others like Fine Gael's Deputy Andrew Doyle T.D implied that using this veto would damage Ireland's hand in the negotiations. This would then lead to a loss of confidence and credibility, not only from the international markets, but amongst EU

partners also. ‘‘*Introducing a veto would weaken our hand rather than strengthen it’’* (Deputy Andrew Doyle, Dáil Debates, 20/4/2012). Sinn Fein’s Deputy Caoimhghin O’Caoláin T.D decided to initiate proceedings within the Irish High Court for an order to hold a referendum on the ESM treaty as so the Irish electorate could block it and make it difficult for the treaty to pass. In turn, this would supposedly effect other EU member’s access to the funding mechanism. However, as a funding mechanism previously implemented in the Lisbon Treaty, neither a national referendum nor unanimity amongst EU members was actually necessary for it to come into effect (see Dáil Debates, 25/4/2012).

An attempt to use the veto would have damaged Ireland’s position rather than leveraged it in Europe. Firstly, such an act would have been perceived as an overt threat and taboo during times of crisis against net contributors to the Irish bailout programme. Secondly, the veto was technically unsubstantial as unanimity was not actually required for the ESM to come into effect. As former Tánaiste and Minister for Foreign Affairs and Trade Eamon Gilmore argued, the ESM treaty can be ratified once those EU member-states whose collective contribution represents 90% of the total fund have collectively agreed (see Dáil Debates, 20/4/2012). Ireland’s contribution would only then amount to 1.23% of the fund. Therefore, any attempt to use a veto to wield further concessions would have been unsubstantial and considerably dangerous economically and politically for Ireland.

‘‘*It is true that the amendment to Article 136 of the treaty on the functioning of the EU requires unanimity but as this amendment is purely for the purpose of clarifying that the member states may establish the ESM, it is not necessary for it to enter into force before the ESM is established’’*

(Eamon Gilmore, Dáil Debates, 20/4/2012)

An EU correspondent (EU Correspondent, Brussels, 10th December 2014) said that there was no indication from the government that such a matter would have been envisaged, even if it was possible. A former Minister (Former Minister, Dublin, 23rd January 2015) close to the negotiation process implied that to do so would have been politically and economically dangerous for Ireland. The Minister queried why anyone would rationally want to block a mechanism that contributes financial aid

independent of the taxpayer? Secondly, to do so would mean Ireland was not an active player and shaper in the negotiations, and Ireland would have lost credibility amongst EU partners. Therefore, attempting to obstruct the ESM would have been nothing more than an invalid threat upon euro-counterparts that would have been damaging, rather than beneficial to Ireland.

5.2.4 French Presidential Renegotiation

Once again, members of the left and far-left of Irish politics in their quest to seek further concessions regarding a growth stimulus packages and debt write-downs argued that Ireland ought to hold off on a referendum until after the French President-elect François Hollande renegotiated the terms of the Fiscal Compact like he promised during his campaign. In anticipation of the socialist incumbent, left wing members of Dáil Eireann argued that François Hollande would seek a renegotiation for France particularly on the issue of a growth stimulus package that would help employment amidst austerity measures which may be exacerbated by the Golden Rule of Balanced Budgets. If Ireland could have delayed its referendum until after the president-elect sought a new deal with euro partners, then perhaps Ireland could free-ride on French concessions which would be placed within the treaty. Naturally a desire for the incumbent president to seek concessions on the ESM linkage to the Fiscal Compact would be of interest to Ireland's left. However, the likelihood of this was slim considering that the ESM was a mechanism to help bailout countries independent of the taxpayer. It was in fact an incentive to accepting the Fiscal Stability Treaty. Its link to the Fiscal Stability Treaty was completely logical considering France is a net contributor to the fund with a current share value of 20.25% in 2015 (see ESM, 2015). Therefore, the so-called *blackmail clause* was very much in the interest of the French. If France was going to be a leading share holder in the ESM, then other EU partners ought to accept the Fiscal Treaty as to secure French confidence. Equally, the French would ensure the link in order to ensure a positive economic return from the distribution of the ESM. Irish Taoiseach Enda Kenny deliberated with the president-elect and they reached mutual understanding about the need for a growth stimulus package. However, a number of deputies including the independent Shane Ross T.D urged the Taoiseach to delay the

referendum. He argued that it was startling that the Irish government would fail to capitalise upon the renegotiation tactics of a major EU player that may significantly reshape the treaty.

‘‘*He has definitely stated, as his Finance Minister stated last week and has not withdrawn, that he will not sign the treaty as is. Yet we are going ahead with a referendum, riding into the danger that the treaty will be postponed or changed in the next month. That is folly; it is foolish. Even if it is not changed in text, it will be part of a package of changes which will include a possible growth pact’’*

(Deputy Shane Ross T.D, Dáil Debates, 22/5/2012)

However, the Taoiseach did not intend to delay the referendum. Showing his eventual support, he said that the referendum was an ‘‘*opportunity to reaffirm Ireland's commitment to membership of the Euro’’* (The Washington Post 29th February, 2012). The Referendum Commission also said that it was not possible to delay the referendum (see Dáil Debates, 17/5/2012) even if the Irish government wished to do so. Finance Minister Michael Noonan expressed unease at François Hollande’s stance which was taken during the Irish referendum campaign. It appeared that the Finance Minister was not positive about the French President’s ability to reshape the treaty in accordance with his intentions. Any change could obscure the information passed on to the public during the campaign and would add complexity to the process. Delaying the treaty in the hope of free riding on what was unrealistic French ideals could also have damaged Irish-EU relations.

There was a consensus in primary data in which interviewees believe that the possibility of Ireland free-riding on France was unlikely as the French President was in no position to renegotiate a treaty. The treaty was already signed by 25 EU member-states under the Sarkozy centre-right administration and as a result achieved credibility. Michael Link, the German Minister of State at the Federal Foreign office stated that President Hollande’s comments about renegotiation were stated in the ‘‘*heat of an electoral campaign*’’ and therefore should only be considered in such a context alone. It was evident that the Germans did not anticipate a French renegotiation, nor did they even consider François Hollande’s comments as holding any political weight (see report on sub-committee, 2012). A French re-negotiation

would have obstructed the process and perhaps been dangerous to euro-counterparts and would have sent out negative signals to global partners. A French Socialist MEP (French MEP, Brussels, 9th December 2014a) stated that that there was no means for President Hollande to manoeuvre and renegotiate the treaty, even though members of Ireland's opposition parties thought that this was technically a possibility. It was in fact politically unfeasible. The MEP argued that Hollande's statements on renegotiation would have been *''detrimental''* for France and other EU member-states and would have not changed the treaty in the slightest. In considering this point, such attempts would also have jeopardised a small EU member-state like Ireland. This was guaranteed if it sent out the signal of delaying the treaty under the false assumption of free-riding on a French attempt to renegotiate. As expected, the new President-elect accepted the treaty terms as was signed by the Sarkozy government. In turn, there was no delay on the Fiscal Stability Treaty in an attempt for renegotiation.

Conclusion

The purpose of this chapter was to evaluate the various opportunity structures which the Irish negotiating team utilised in their efforts to secure concessions close to their national preferences and achieve relative influence in the Fiscal Stability Treaty negotiations. A variety of opportunity structures can be identified as successfully leveraging Ireland's negotiation positon. These include supranational institutions such as the European Commission, domestic win-sets such as the Irish referendum and domestic societal forces, network capital building, mechanical coalition building and strategic deliberation techniques. Having evaluated the relevant opportunity structures under analysis, the thesis has come to a number of conclusions.

Firstly, little is documented on the extent in which the European Parliament leveraged Ireland during the 2012 Fiscal Stability Treaty negotiations. The European Commission and European Parliament did not play a strong a role as they did in previous *EU* treaties. Although the European Commission was not a formal negotiating institution, it appears to have leveraged Ireland considerably in achieving flexibility with regard to the structural deficit measurement associated with the

Golden Rule of Balanced Budgets. Although, the role of the European Commission was comparatively limited in what was an intergovernmental process, its ability to leverage Ireland in the negotiations indicates that even in intergovernmental negotiations, the European Commission can assist smaller EU member-states in an environment often considered to favour the preferences of larger EU member-states. This adds a modicum of balance to the negotiation process despite its intergovernmental character. The data indicates that a minor role *may* have been played by the European Parliament's Economic and Monetary Affairs (ECON) Committee who were vocal in discussions about the treaty and who held strong views on the side-lines of the negotiations in accordance with their observer status. Although the committee's representatives were not officially present in the negotiations, the informal role that the committee played in offering advice and opinions may have been supportive and constructive for smaller EU member-states like Ireland. This may hold value in considering that the Econ Committee's concerns with the treaty were close to the concerns of the Irish delegation with regards to the strictness of the terms surrounding the Golden Rule of Balanced Budgets. However, there is no evidence to suggest that the Econ committee in their recommendations intentionally acted on part of small EU member-states such as Ireland. Therefore, one would be inclined to argue that the ECON committee did not leverage the preferences of a small EU member-states like Ireland, at least intentionally.

Secondly, although the Irish government did not desire the referendum but was required to have one, Irish negotiators knew the importance of the referendum as an opportunity structure for securing concessions closest to national preferences, particularly due to the difficult and uncertain efforts of securing a Yes vote amongst the electorate. The power of the referendum was ignored in some cases as it was perceived as dangerous. In other cases, the power of the referendum was dismissed due to pessimistic attitudes about the weak bargaining influence of small EU member-states like Ireland. The Irish government sought to avoid a referendum. Their diligent efforts to avoid a referendum ultimately assisted the Irish team in securing concessions which theoretically allowed them to avoid one. The word *preferably* was implemented in the treaty regarding the treaty's constitutional nature at the domestic level. Despite this concession, Ireland was required to hold the referendum on the legal advice of the Irish Attorney General. Euro-counterparts, like

Ireland, feared the prospect of an Irish referendum due to a potential No vote and its financial consequences for the union as a whole (see Beetsma & Vermeylan, 2007), if Ireland as a small EU member states continued on the road of fiscal imprudence. As both the Irish government and EU counterparts feared the outcome of the referendum, this urged mutual cooperation and concerted action amongst all leading negotiators as to secure even further concessions for the Irish which would be appealing enough to achieve a Yes vote by the Irish electorate in a referendum. Therefore, the referendum was used in a constructive manner as to secure a Yes vote from the Irish electorate and avoid involuntary defection which would have seen Ireland out of the treaty.

Thirdly, the data indicated that domestic societal forces played a strong role in national preference formation and in influencing negotiation outcomes in the form of secured concessions. The research found that societal forces, particularly working through parliamentary committees found channels to influence negotiations at the intergovernmental level. Committees such as the Joint Committee on EU Affairs and its Sub-Committee on the Referendum…. played an active role in bridging debate and discussion between national politicians, civil society organisations and foreign dignitaries. Through committee debates and published reports depicting intellectual contributions from society toward the treaty, national politicians and their wider bureaucratic administrations, as well as foreign officials could gain a better understanding of Irish domestic attitudes toward the treaty and the EU. It is indicated that this was influential in influencing preference formation both nationally and internationally, as well as determining negotiation strategy as to reach consensual outcome at the intergovernmental level through deliberation.

Finally, although the referendum was a central force and one that influenced the securitisation of concessions closest to Irish national preferences, the roles of strategic deliberation substantiated with sophisticated negotiation skills combined with strong cross national bureaucratic/political linkages (network capital and coalition building) were of utmost importance to securing credible concessions. Network capital facilitated the treaty negotiations by not only helping Ireland to forge loyal and trustworthy international relationships and aiding the Irish team to win allies, but by also helping Ireland to shape the strategic preferences of other EU

negotiating parties by presenting them with potential ratification difficulties such as those associated with a national referendum or domestic societal pressures. Processes like this are important in in order to achieve concessions, especially in intergovernmental negotiations.

On reflection of the findings, it can be confidently argued that Ireland acts as a clear example that even in intergovernmental treaty negotiations in the EU, a small economically weak EU member-state can still achieve influence. By identifying and utilising credible opportunity structures constructively in accordance with the institutional rules and norms set out by the negotiation process, a small EU member-state such as Ireland can leverage its negotiation position to successfully achieve concessions close to its national preferences. In turn, it can achieve influence in an environment which is often (theoretically) assumed to be more favourable toward the preferences of larger EU member-states.

Chapter 6

Conclusion

Theories of EU Integration and Governance

The thesis discussed common theories of integration and governance in the EU (see chapter 2) with a special focus on theories of intergovernmentalism. As a complex *sui generis* entity, one theory alone cannot explain the ever evolving EU process. As the EU evolves institutionally and structurally and actor based behaviours change, theories are generated or even reconfigured to help explain the EU's changing qualities and characteristics. The thesis discussed the theories of integration which focus predominantly on structure and form and to a lesser degree, the complexities of actor based behaviour within institutions. These included neo-functionalism, federalism and confederalism. These theories of integration have long influence how scholars understand the EU as an abstract and ever evolving supranationalist entity. These theories have helped shape how scholars define the EU and makes sense of its evolution, and even formulate (normative) theories about its future structural form. On the other hand, the thesis discussed theories of EU governance that delve deeper into the intrinsic qualities of institutions to assess intra/inter institutional activity and actor based behaviour as to understand policy making and policy outcome as products of integration building. These theories included multi-governmentalism, new institutionalism(s) and the various strands of intergovernmentalist theories that have come to the forefront of theoretical literature in recent years as modes of governance in the EU which inspire further interest in the post-crisis era.

The theories of intergovernmentalism were particularly important to this study due the nature of the Fiscal Stability Treaty negotiations. Intergovernmentalism has long shaped how scholars not only assess the negotiation behaviour of EU member-states, but also the outcomes of inter-state negotiations as measurements of EU member-states' influence. As this study is one of measurement in that it sought to measure Ireland's influence by looking at the ways in which Ireland negotiated the treaty;

such theories were essential to this analysis. Among the theories discussed where *classical intergovernmentalism* as developed by the works of Stanley Hoffman, Andrew Moravcsik's *intergovernmental institutionalis*m and his *liberal intergovermentalism* and *new intergovernmentalism* and *deliberative intergovernmentalism* as developed by scholars such as Christopher Bickerton, Dermot Hodson and Uwe Puetter. The purpose of the discussion was not only to provide a background to the various strands of intergovernmentalist theory, but to show that an understanding of all variations of intergovernmentalism, both old and new, is necessary to fully grasp Ireland's approach to negotiating the Fiscal Stability Treaty negotiations for concessions and achieving negotiation influence as a small EU member-state, regardless of its economic size.

New intergovermentalism (see Bickerton et al, 2015b) claims to be a theoretical *approach* to studying EU integration and governance in the post-Maastricht era. Quite embryonic in its development, it is founded on the basis of several hypotheses (as outlined in chapter 2) which the authors urge scholars to engage with in their contemporary analyses of EU integration. The approach attempts to explain the institutional characteristics of the Union Method of EU treaty making for which the Fiscal Stability Treaty negotiation process acts as example. Deliberative intergovernmentalism which is developed in tandem with new intergovernmentalism helps to explain the informal negotiation dynamics characteristic of the Union Method. While both theories provide insights toward explaining the Union Method phenomenon, neither theory fully explains how exactly EU member-states achieve concessions and influence in contemporary intergovernmental treaty negotiation processes. Therefore, these embryonic theoretical approaches alone are not fully equipped to provide a thorough insight into how a small EU member-state like Ireland achieves influence in the form of concession seeking.

New intergovernmentalism suggests that there is a new wave of integration in the EU since Maastricht and it is significantly intergovernmental compared to the pre-Maastricht era. Although, there has been no effect on previously established supranational institutions and community decision making, Bickerton *et al* claim that integration is following a more intergovernmental route due to the need to address more politically *sensitive* policy areas in the EU such as economic governance that

cannot be adequately dealt with through the Community Method or even typical forms of treaty making such as an IGC - which usually empowers the Community Method in post-treaty policy making. New intergovernmentalism suggests that EU member-states are integrating independently of the EU's supranational institutions and carefully delegates new powers to *de novo* bodies which bypass the further empowerment of supranational institutions. Therefore, it is an overwhelmingly intergovernmental process directed by the European Council which acts as an executive in its own right on such occasions. As an intergovernmental process it expresses the qualities of the Union Method which incorporates aspects of both the *policy coordination* mode (soft power decision making) and even the *intensive transgovernmentalist* mode (hard law decision making) of EU policy making (see Wallace et al, 2015). The former is traditionally used in dealing with the sensitive policy areas beyond commercial interests such as CSDP and JHA etc. that requires soft coordination amongst EU member-states.

It is a very thought provoking approach and has made worthy contributions to the analysis of EU integration and governance. As evident from this research, it has shaped understanding regarding the Fiscal Stability Treaty negotiation process and how small EU member-states achieve influence through the Union Method. However, despite its contributions to knowledge and its ability to help shape understanding, its embryonic state opens it up to considerable criticism and a number of caveats are worth mentioning. Frank Schimmelfennig (see Schimmelfennig, 2015b) in his critical response to *Bickerton et al* (2015b) highlights some important points that address the theoretical limitations of this new approach toward understanding European integration. ''*Here I argue that 'new intergovernmentalism' falls behind established standards of (intergovernmentalist) theorising in European integration and that this account of 'new intergovernmentalism' is incomplete''* (Schimmelfennig, 2015b:723). The findings documented in chapter 6 support Schimmelfennig's critique to some extent. Building upon Schimmelfennig's critique, this thesis calls upon the authors to re-examine some of the conclusions that they have drawn. This can be done without actually refuting its potential as a burgeoning theory of EU integration. The authors have drawn a number of conclusions that were not sufficiently theorised in light of existing intergovernmentalist scholarship in the EU and have done so despite a lack of sufficient testing. Some examples include:

1) The authors argue that intergovernmentalism has somehow changed in the post-Maastricht era, in contrast to the pre-Maastricht era. They argue that new intergovernmentalism explains a new wave of integration. Schimmelfennig argues against this point in stating that the characteristics of new intergovernmentalism are not new and there is no evidence to suggest that it explains a new wave of EU integration, but rather it explains a *phase* within contemporary integration associated with policy making in new areas.

2) The authors argue that integration in the post-Maastricht era is overwhelmingly intergovernmental with EU member-states choosing not to empower supranational institutions in the integration process. Whilst this is true in the case of the ESM treaty and Fiscal Stability Treaty it is not a generalizable truth. The series of EU treaties post-Maastricht are proof of this.

3) The authors fail to account for the explanatory powers of liberal-intergovernmentalism even in informal deliberation based negotiations that deal with sensitive policy issues. The authors may be criticised for reducing liberal-intergovernmentalism to a Community Method based theory. They may also be criticised for underestimating liberal-intergovernmentalism in explaining national preference formation and influencing bargaining norms in the Union Method.

4) Building upon point 3, the authors argue that *deliberation* leads to consensus, but they do not offer an explanation of what substantiates deliberation and determines the achievement of consensus and general outcome. The authors significantly downplay the role of two level games in determining national preference formation and shaping intergovernmental deliberation which constitutes *hard bargaining* between negotiators (see Schimmelfennig, 2015b:728). This thesis calls for a re-examination of this, as it is evident from its findings that EU member-states draw upon influential domestic forces and use these forces in their strategic deliberation to influence outcomes closest to their national preferences.

5) The authors assume that supranational institutions are not empowered in the new intergovernmentalist process, yet the creation of *de novo* bodies and delegation of power to *de novo* bodies can be interpreted as a process of supranationalisation due to the quasi-supranational characteristics of such

agencies (see Schimmelfennig, 2015b: 724-725). Additionally, their creation is not actually a new phenomenon in EU integration, but can be traced back as far as the 1970's.

6) The authors argue that the European Commission and European Parliament are side-lined in negotiations. Whilst this appears true in structural terms, the thesis actually finds that the European Commission and perhaps even the European parliament have channels in which they can shape negotiations despite their seemingly 'pure' intergovernmental characteristics. Therefore, supranationalism is not completely without influence inside these so called 'sensitive' intergovernmental decision making processes. The Fiscal Stability Treaty in fact empowered the European Commission in the area of fiscal oversight. Therefore, even in the new intergovernmentalist Union Method process we may expect to see the empowerment of traditional supranational institutions to a lesser degree, as well as a place for them within negotiations.

Schimmelfennig rightly argues that Bickerton *et al* fail to make a concrete case for new intergovernmentalism as a *theory of integration* as the authors do not speak in terms of integration outcomes (see Schimmelfennig, 2015b:724). Instead according to Schimmelfennig, they appear to speak of new intergovernmentalism as explaining some form of policy making process which actually does not initially appear to be different to previous intergovernmental policy making modes. *''At close reading, however, it appears as if the 'new intergovernmentalism' really is about a specific set of policies, rather than the EU as such''* (Schimmelfennig, 2015b:725). However, this thesis argues that there is actually a place for new intergovernmentalism in explaining integration in the post-Maastricht era with regards to the Union Method. As a process, the Union Method blurs the lines between traditional intergovernmental policy making and intergovernmental treaty making in the EU. In turn, it actually produces an *ad hoc* phase of integration using traditional policy making methods. When we consider the formation of intergovernmental treaties such as the ESM Treaty or Fiscal Stability Treaty we are referring to nothing less than an integration processes. Intergovernmental treaties incorporate policy coordination, but they are more than mere policy coordination

processes. They create *hard law* manifested in the form of an international treaty which has constitutional and/or legal implications for policy administration in EU member-states. Intergovernmentally formulated *hard law* propels an integration process, as it requires the transferral of new competences from the national level to the EU level, regardless of the type of institutions the competences are eventually delegated to. The Fiscal Stability Treaty elevated fiscal rules to the EU level. As a treaty making process created through the Union Method it was a process of integration, albeit outside the traditional IGC process. Thus, in creating a treaty which binds member-states via newly transferred competences to the EU level, we can add a new dimension to EU integration which new intergovernmentalism may be equipped to explain.

The authors of new intergovernmentalism responded to Schimmelfennig in defence of their work (see Bickerton et al, 2015a). In their short response, they recognised that their work was embryonic and urged readers to build upon their hypotheses and help in the development of new intergovernmentalism. They recognised that further empirical evidence is required for new intergovernmentalism to become something greater than a series of hypotheses. However, the authors still defend their stance that *integration* in the post-Maastricht era is different and more intergovernmental than in the pre-Maastricht era. The EU is now dealing with sensitive policy areas like EMU that are currently central to European interest at present, and therefore require more than mere policy coordination as was typical of this area throughout the 1970's. This falls back on the point made earlier in this section that the Fiscal Stability Treaty making process was a *hard law* intergovernmental treaty making process that was a marker of integration in itself by mere proxy of using the Union Method to transfer competences to the EU level. *''Our point is that these new areas of EU activity are precisely where the integration process has developed most dynamically in the post-Maastricht period, both in terms of scope and intensity. These new areas of activity are no longer peripheral to the EU's core activities. In fact, they have become themselves the core of what the EU does''* (Bickerton et al, 2015a:733). Whilst providing a some-what worthy defence to Schimmelfennig's critique, the authors still shy away from addressing the fact that their new intergovernmentalism does not elaborate on the role of liberal-intergovernmentalism in helping to explain inter-state deliberation even in the post-Maastricht era. Although the response by the authors is

most welcome, it still fails to elaborate deeply and adequately on some of Schimmelfennig's key observations. It is fair to say that with re-examination, testing and refinement of some of the observational conclusions, combined with the course of time, new intergovernmentalism may come to be regarded by scholars such as Schimmelfennig as a theoretical explanation of something more than a mere *phase* in EU policy making. With time and further testing it may prove to be a credible theory explaining a new dimension of European integration; one where EU integration continues, but is structurally limited by national interest and issues of national sovereignty.

Although the Fiscal Stability Treaty was an intergovernmental treaty created through informal negotiation procedures, the national preferences of EU member-states are still expected to diverge to some degree due to their different domestic conditions and political/economic expectations. Therefore, national preference bargaining was central to the process as with any form of intergovernmental decision making process, regardless of the style of negotiation arrangements. Although both of the new theoretical approaches are still developing along with the Union Method of EU treaty making, the matter of how EU member-states actually negotiate and achieve influence is an important area of inquiry, especially if the Union Method is becoming a more prevalent dimension of EU integration in the 21st century. Alternatively, this thesis argues that we can gain understanding about the role of the small EU member-state in Union Method treaty making processes by referring to the liberal intergovernmentalist school of though. Liberal intergovernmentalism can help explain the ways in which a small EU member-state like Ireland leverage their negotiation position and achieve concessions by drawing upon and strategically mediating relevant opportunity structures. This helps provide a more thorough understanding of the dimension of inter-state bargaining and relative EU member-state influence that the newer theories of intergovernmentalism only lightly address.

The Fiscal Stability Treaty and its Negotiating Institutions

Delving into the contextual background of the study, the thesis provided an in-depth discussion on the Fiscal Stability Treaty and the various institutions that were used by negotiating parties to conduct the intergovernmental treaty negotiations (see

chapter 3). There was a clear Union Method dimension to the Fiscal Stability Treaty negotiation process. As discussed in chapter 3, the Fiscal Stability Treaty was created in response to the Eurozone crisis. Through fiscal policy guidelines, it aims to avert crisis by helping Eurozone and EU member-states to achieve stability by reducing national structural deficits and working toward national fiscal balance. The Eurozone crisis highlighted the flaws in the design of the EMU which has arguably contributed to the exacerbation of the crisis by influencing fiscal imprudence and national banking deregulation which led to extreme borrowing and spending. In turn, when the Eurozone crisis emerged, EU member-states were vulnerable to exogenous shocks due to their negative domestic financial and economic conditions. The Fiscal Stability Treaty aims to curb structural deficits as a means to reduce national debts. Subsequently, it requires austerity measures in signatory EU member-states as a means to ensure a reduction in national borrowing and spending and a speedy recovery toward reducing national debt. The treaty was created through the intergovernmental route due to contestation from the United Kingdom and Czech Republic; two non-euro countries who held reservations about the treaty due to their less than mature relationship with the EMU. The treaty was perceived as being economically rational for Eurozone member-states. It would implement legally binding fiscal rules for the first time across the EU. Therefore, it would aid Eurozone and non-euro EU member-states to achieve stability which would lead to growth and development in the medium to long term. As national debt levels decreased, this would have a positive effect across the union by counteracting negative economic contagion.

As an intergovernmental treaty created through the Union Method, the negotiating institutions that back-dropped its creation reflect the observations made by the new intergovernmentalist school of thought (see Bickerton et al, 2015b:28-39). The treaty was European Council led. This meant that the highest level of negotiations took place at the level of the Heads of State/Government of the EU. Unlike typical EU treaties such as Amsterdam (1997) or Nice (2001/2002) etc., the Fiscal Stability Treaty did not open with an IGC (see Thurner and Urban Pappi, 2013). The negotiating institutions were effectively borrowed from the EU as to coordinate the treaty in a rapid and efficient manner, whilst keeping the intergovernmental treaty as close as possible to the EU's key institutions. After all, the Fiscal Stability Treaty is

expected to be brought closer to EU treaty law in the near future, and therefore, the relationship between the EU's supranational institutions and the Fiscal Stability Treaty will have to be revisited.

Below the authority of the European Council, the ministerial formations of ECOFIN and Eurogroup also played an important deliberative role in the negotiations. Both ECOFIN and Eurogroup housed the EU Finance Ministers and Eurozone Finance Ministers respectively who deliberated informally on behalf of their respective national governments. However, ECOFIN and Eurogroup were subsequently assisted by the EFC and EWG specialist committees who acted as secretariats to the ministerial formations. It was within the EFC and EWG that much of the hard formal bargaining actually took place. As secretariats, much of the hard work and decisive outcomes were finalised at this stage. Therefore, negotiations at higher levels in the process (e.g. ECOFIN, Eurogroup and even the European Council) appear to have been more productive in tying-up loose ends and achieving last minute deals. As a treaty making process which was led by national executives but brokered through specialist bureaucratic committees such as the EFC and EWG, it was national senior level bureaucrats stemming from executive administrations who saw the treaty through to agreement. This is an extremely important observation as it indicates the central role that national bureaucrats play within contemporary EU intergovernmental treaty making processes and may indicate the role they will continue to play in future EU intergovernmental treaties on behalf of their national executives through the Union Method. Indeed, national bureaucrats have always been central to EU treaty making in their roles to assist politicians to negotiate, but the Fiscal Stability Treaty as an intergovernmental Union Method style treaty stands out in highlighting their importance in its negotiation process which appears relatively stronger than their role played in previous EU treaties where both national politicians and supranational actors dominated the process.

Although the treaty was brokered by national senior level bureaucrats within specialist committees on behalf of their national governments, one should not confuse the power of the committees as being in some way superior to the European Council or ministerial formations. After all, whilst the committees broker the policy,

their actions and decisions are directly informed by the preferences of their respective government heads resting in the European Council.

The Irish Case

Having established a background context of the Fiscal Stability Treaty and the institutions that back-dropped its creation, the thesis goes on to provide a contextual analysis of the Irish case (see chapter 4).

In 2010, Ireland received its first bailout from the newly established EFSM and EFSF allowing it to nationalise bank debt at the hands of the tax payer. Austerity measures followed and the Irish economy regressed further. Unemployment rates reached approximately 15%. Due to the increase in national debt due to a bailout, Ireland lost market confidence from international lenders. Amidst austerity measures, Ireland's only means of effectively enhancing growth would be through foreign direct investment. Hence, when the Fiscal Stability Treaty was created it opened a window of opportunity for Ireland to show international markets and EU counterparts that it was serious about getting its economy in order by working toward structural balance, reducing national debts and regaining stability and confidence. Although the Fiscal Stability Treaty meant further austerity measures in Ireland to meet its terms, it was a critical and yet pragmatic choice for the Irish, which has since proved to have merits. However, from the outset Ireland appeared to be in no credible position as an economically small and vulnerable EU member-state in a bailout programme to bargain and achieve influence in the Fiscal Stability Treaty negotiations. Many believed that Ireland achieved its concessions by being compliant with the terms of the treaty and in some cases being a *poster boy* for austerity. This thesis argued otherwise.

As discussed in the thesis, Ireland's national interest was to support the treaty as a means to regain market confidence and eventual stability. In order for the treaty to pass in Ireland, a referendum on the treaty was a potential requirement. However electoral support for the treaty was unfavourable and the outcome was uncertain. The prospect of having to hold a treaty shaped Ireland's national preferences henceforth. First, the Irish government who was fearful of an uncertain outcome at the hands of the electorate and fearful of involuntary defection, sought to avoid a referendum. Primary and secondary data show that Ireland was instrumental in reshaping the

provisions of the treaty as to implement the word *preferably* with regards to the constitutional nature of the treaty at the domestic level. In doing so, Ireland effectively found a potential way to avoid having to hold a referendum. However, the Irish Attorney General deemed it legally necessary to hold a referendum. Again, her verdict was not reached until the end of February 2012 nearing the end of the negotiations. As the uncertainty of being able to avoid a referendum continued prior to the Attorney Generals verdict, there was an ever constant and very real possibility of a No vote among the Irish electorate if a referendum went ahead. Therefore, the Irish government had to bargain further to achieve concessions that where economically favourable to the Irish electorate that could win a Yes vote. Further concessions came in the form of flexibility in relation to the structural deficit measurement, making it less universal and providing a means for EU member-states to work toward it according to their economic capacity. Also, concessions came in the form of guarantees on Ireland's access to the EFSF and ESM. Ireland's access to the EFSF would not be effected if Ireland signed the treaty and required the ESM, nor would it be effected if Ireland did not sign the Fiscal Stability Treaty and had no access to the ESM.

The concessions Ireland achieved indicated that Ireland as a small EU member-state found ways to leverage its negotiation position, and in doing so, it achieved influence in the 2012 Fiscal Stability Treaty negotiations. Considering that Ireland's concessions effectively changed two major provisions of the treaty, it subsequently reshaped every other EU member-states relationship with the provisions in which it influenced change. This suggests that Ireland's small member-states status based on economic size or even financial vulnerability was of little or no consequence to its ability to bargain and achieve influence in some shape or form. This is a telling point for the small EU member-state in contemporary informal intergovernmental treaty making negotiations, where member-states (large, medium and small) have the opportunity to deliberate and reach compromise using opportunity structures without the constraints of formal voting rules. Indeed, to assess this point further, the thesis had to look at the ways in which Ireland achieved influence in the negotiations as to achieve concessions of this nature. Only by looking at the ways in which an EU member-state achieves influence could one accurately measure the actual extent of influence an EU member-state like Ireland achieves in such negotiations.

Opportunity Structures as Negotiating Leverage

The European Commission and European Parliament

One of the most important findings of the thesis is the role that the European Commission played in leveraging Ireland's negotiation position in the Fiscal Stability Treaty. As the Fiscal Stability Treaty was a Union Method treaty under the mandate of the European Council, new intergovernmentalism would suggest that whilst the European Commission is represented in a number of intergovernmental negotiation bodies, it is not an official negotiation party in intergovernmental treaty negotiations. In fact, it is rather side-lined, although not to the same degree as the European Parliament. This leads one to suggest that the European Commission, as well as other supranational EU institutions have little or no influence over the intergovernmental treaty outcomes.

Research findings show that the European Commission did in fact leverage Ireland in achieving quite an important national preference. It is indicated that the European Commission leveraged Ireland in reshaping the provision relating to the structural deficit measurement which was a major treaty provision. Ireland sought to make the structural deficit measurement more flexible and less universal. In doing so, EU member-states could adjust their fiscal activities according to their economic capabilities. The European Commission assisted Ireland through backchannels in achieving this flexibility. Although the European Commission was not a formal negotiator, its role as the traditional and independent executive institution of the EU is not as disassociated from the Union Method process as one may presume based on theory or vague observation. The European Commission is represented within many of the EU's intergovernmental institutions and bodies which were borrowed by leaders to negotiate the Fiscal Stability Treaty. European Commission officials are invited to European Council meetings and to the specialist committees were policy is actually brokered. Although the extent of the European Commission's influence is unknown and difficult to empirically deduce without further insight into the negotiation environments, it is evident that the European Commission was represented closely to main intergovernmental negotiators. It has come to the attention of the study that the backchannels for which the European Commission

used to leverage Ireland's negotiation position may be explained by their close proximity to the intergovernmentalist institutions that brokered the treaty. This is worthy of further research, as it could confirm that the Union Method is not some sort of foreign form of extra-EU decision making, or even a diversion away from traditional integration routes, but is merely a new dimension to existing EU decision making and policy integration in which supranational institutions still may have an important place within.

Although the European Commission helped leverage Ireland's negotiation position, the role of the European Parliament is less clear. Like the European Commission, the European Parliament had a part to play throughout the negotiations. However, its relationship with the intergovernmental negotiating institutions was less intertwined to that of the European Commission. The vast part of the European Parliaments role was seen through its observer status which was represented by the Economic and Monetary Affairs committee (Econ committee). Whilst MEP's within the committee provided opinions on the treaty, it is not known to this research if they were influential in shaping the treaty substance. However, it is known that the Econ committee had interests that resembled Ireland's preferences especially in terms of the structural deficit rule. Despite this knowledge, it is still unclear if the committee or any of its members directly assisted, or even intended to assist Ireland in achieving concessions relating to that particular provision. In turn, the role of this institution in the Union Method as a force of leverage for EU member-states, small or large, is still uncertain and requires further inquiry. Further inquiry will have the ability to validate if the European Parliament is as side-lined in the Union Method process as new intergovernmentalism would have us suggest.

The Irish Referendum

Although the decision making dynamics were different under the Fiscal Stability Treaty negotiations, the findings show that the Irish referendum was as powerful as ever in helping Ireland to achieve concessions. In fact, the referendum was arguably the most important influential opportunity structure that Ireland had as negotiation leverage. Its influence lay in its requirement, combined with the very real possibility of a No vote at the hands of the Irish electorate. A No vote in the Fiscal Stability

Treaty meant that Ireland would be left behind. However, leaving Ireland behind the Fiscal Stability Treaty could have proved extremely dangerous to the Eurozone as it is an important Eurozone member-state which is highly invested in the EMU, as well as an important trading partner and a bailout country. Not getting its affairs in order would have detrimental financial and economic consequences for the other EU member-states. In turn, this would harm the stability of the EU overall.

The very real consequences of a No vote considering Ireland's economic conditions and the nature of the treaty under discussion appears to have been enough to inspire collective action among key negotiating partners to *help* Ireland avoid a referendum. The Irish government did not want a referendum due to the fear of an uncertain outcome and its subsequent consequences for Ireland in the EU. Early on in the negotiations, the prospect of a referendum with an uncertain outcome actually helped Ireland to achieve concessions in the treaty. Ireland eventually achieved concessions relating to the constitutional nature of the treaty as seen in Title III: The Fiscal Compact, where the word 'preferably' was added to the provision relating to the constitutional nature of the treaty at the domestic level. This concession effectively stated that the Fiscal Stability Treaty's implementation into national constitutional law was preferential, rather than an actual requirement. It therefore, paved the legal way for Ireland to try to avoid holding a referendum on the treaty. EU member-states supported this because by helping Ireland avoid a referendum, they were helping themselves to avoid economically and financially obstructive consequences across the EU. Although Ireland's vote was not needed for the treaty to be ratified by EU partners, leaving Ireland behind would have been nonsensical economically, financially and politically.

Although Ireland achieved concessions which allowed them to potentially avoid a referendum; on legal review of the treaty the Irish Attorney General advised that a referendum would be necessary in Ireland. Despite having to hold a referendum, the fact that Ireland achieved a provision that allowed them to avoid it in the first place is symbolic of influence. As avoidance was not ever a guarantee, a no vote remained a very real possibility. In order to avoid involuntary defection at the hands of the electorate the Irish government needed to secure further concessions. Those concessions were achieved due to the continuous possibility of an Irish referendum

having to be held. Confirmation on the referendum was not given by the Irish Attorney General until late February 2012. Therefore, confirmation was not given until near the end of the negotiations. As a result, the constant pressure of a potential referendum acted as strong force of leverage in the negotiations which helped Ireland to achieve even more. The referendum influenced Ireland in securing economically favourable concession regarding access to the EFSF until its expiration. The prospect of a referendum also influenced Ireland's ability to achieve flexibilities regarding the structural deficit measurement (as assisted by the European Commission) due to its economic benefits for a small EU member states like Ireland under the pressure of austerity. The referendum was not used by the Irish as an obstructive strategic force to achieve concessions. After all, the Irish government feared a No vote whilst anticipating that there would be no renegotiation in such an event.

In conclusion, the Irish referendum is potentially the most important factor before any others are considered that allowed Ireland as a small EU member-state to achieve influence in this intergovernmental treaty negotiation process, regardless of its economic size. Although the use of referendums on EU treaties of any form have been criticised, as evident by a discussion with a French MEP; without the legal base to hold referendums on EU treaties, Ireland could possibly see its influence marginally or even significantly diminished. Other than Denmark, the Irish referendum on EU treaties sets this small EU member-state apart from all others when it comes to negotiation influence. The influence that Ireland may lack in size is proven to be leveraged in its referendums on EU treaties. The benefits, rather than the shortcomings of the Irish referendum on EU treaties ought to be given a lot more recognition by political elites than they are currently given due to their ability to leverage negotiation influence. As a small EU member-state, Ireland is in a position of influence that is unmatched by similar small EU member-states in its position. The referendum could prove to be very useful for Ireland in future EU treaties especially under the Union Method of decision making where outcomes can be more opaque, albeit generally favourable toward smaller EU member-states.

Domestic Societal Forces

The role of domestic societal forces has been downplayed in the Fiscal Stability Treaty negotiations by many elite's that's were interviewed for the research. The roles of grassroots organisations in shaping EU level discussions was overlooked due to the strong intergovernmental character of the Fiscal Stability Treaty. However, research findings suggest that the role of domestic societal forces should not be easily overlooked, even in Union Method intergovernmental treaty negotiations. Some believed in Ireland's case that there was no reason to involve civil society groups or representatives from the private sphere into the negotiations, as the treaty simply did not have the time for such a degree of complex and time consuming deliberation at the national level. However, as evident in the findings, domestic societal forces found a way to have their voices heard, and in turn, they leveraged Ireland's negotiation position.

Although, the influence of domestic societal forces may not be as strong and as *direct* as they may have been in previous EU treaties, the opinions and viewpoints from civil society and private sphere organisations were accounted for at the EU level by proxy of deliberations at the national level. As the viewpoints from various societal representatives were indicative of the opinions of members of the public across various sectors, they were also indicators of how the public may vote. In this way, their voices were instrumental in shaping Irish national preferences and the responses of foreign governments towards Irish national preferences. After all, by appeasing the Irish via concessions, the likelihood of a Yes vote in the referendum would be more promising.

The research findings indicate that domestic societal forces found their voice through the Irish parliament. Not just through parliamentary representatives, but through the various parliamentary committees that held discussions throughout the negotiation process. The Joint committee on EU Affairs and the Sub-Committee on the Referendum… provided forums for domestic societal forces to have their voices heard. Representatives of civil society/NGO's and particularly the private sphere were invited to speak and contribute submissions. Examples included the IFA, ISME, SIPTU, EMI, IIEA etc. The viewpoints of such organisations were indicative of public attitudes toward the treaty or Irish referendum, and therefore determined

bargaining outcomes from inter-state negotiations at the EU level. In aiding the Irish to avoid a referendum or secure concessions on the structural deficit etc. it is the viewpoints of societal forces that help foreign officials make decisions when evaluating Irish circumstances, especially when a national referendum is necessary for a treaty ratification. As these committees invited representatives from foreign governments, the opinions of these representatives, as well as submissions by members of the public including academics etc. were listened to rather carefully by foreign counterparts. This most certainly helped foreign governments in their decision making and their responses to Irish preferences at the EU level. This was stated by Maros Sefcovic (a vice-president of the European Commission) and Michael Link (German Minister of State at the Federal Foreign Office) who both agreed that Irish public attitudes were instrumental in shaping negotiations and outcomes at the EU level. Therefore, domestic societal forces were influential in leveraging the Irish negotiation position, when combined with the uncertainty of the Irish referendum outcome.

This finding indicates that even in Union Method intergovernmental treaty negotiations where the substance of democracy is questioned due to the lack of roles for the European Parliament or even national parliaments, there is a democratic quality that is identifiable. It is reflected in the roles of two level games and domestic ratification procedures quite commonly associated with the liberal-intergovernmentalist school of thought. This adds weight to an argument which was made earlier on in the thesis that calls on the new intergovernmentalist school of thought to look upon liberal intergovernmentalism more carefully in its explanation for inter-state bargaining in Union Method treaty making processes.

Network Capital, Mechanical Coalition Building and Strategic Deliberation

Ireland benefited considerably from the process of network capital building, mechanical coalition building and strategic deliberations. As a small EU member-state on a bailout programme, Ireland initially appeared to have little or no influence to bargain for concessions. However, as research suggests, this viewpoint does not hold weight. Ireland did in fact have influence. However, that influence was also leveraged due to the underlining sociological ties of Ireland's bureaucratic administration in the EU. Ireland benefitted considerably due to the links of its

bureaucracy who played a major part in brokering the treaty on behalf of the Irish government. The Irish negotiation team spent a great deal of time forging transgovernmental relationships with foreign bureaucracies and politicians. They used constructive means to build relationships and engaged in constant communication. In doing so, the Irish negotiation team gained significantly from network capital; as constant communication not only helped forge strong relationships with foreign counterparts, but also enhanced the Irish negotiation team's knowledge about foreign national preferences. This was important for strategy building on both sides of the negotiation process. Building successful network capital and subsequently building successful mechanical coalitions relies heavily on the personal qualities of leaders and official's negotiating the treaty. After all the process is sociological. Research suggest that the personalities, knowledge and negotiating abilities of Irish politician and senior officials on the Irish team were especially important in adding to the strength of the Irish position. The negotiating ability of the Irish Permanent Representative drew considerable respect during the negotiation processes. This again elevated Ireland's negotiation position, and the Irish team's chances of being heard in negotiation forums and in achieving influence.

In terms of mechanical coalition building which in itself influenced network capital building, the Irish forged strong relationships with the most influential of EU counterparts. These new *allies* were influential by proxy of their relatively stable economies, and in some cases their roles as net contributors to the EFSF and ESM, such as the Danes and the Germans etc. Being net contributors to the EFSF and ESM is indicative of these member-states' influence over the Fiscal Stability Treaty as key creditors of bailout programmes. The Irish relationship with the European Central Bank via the President of the ECB Mario Draghi also indicated the extent and influence of Ireland's coalition building with influential partners that could have leveraged their negotiation position, enhance their voices in negotiations, be heard by counterparts and achieve concessions.

It was evident that by building network capital and strong coalitions with the right sort of people, Ireland was able to enhance its voice in the intergovernmental treaty negotiations. Being heard by the influential players meant that Ireland could deliberate strategically using other opportunity structures to validate their case for

achieving concessions. Through networking and coalition building, Ireland gained a platform which gave the negotiating team a window of opportunity to state their case and even persuade EU counterparts of their concessionary needs. For example, without credible coalitions based on strong relationship patterns, Ireland may not have been able to effectively articulate the extent of how the referendum would be a danger to all in the EU, or how public opinion was indicating a potential No vote.

Relationships help knowledge transferal and can help with prioritising national issues. Using such windows of opportunity and by being persuasive in their language, as well as avoiding ways of being obstructive to the treaty making process, Ireland could deliberate effectively, and in turn could use such influence to be heard in order to achieve concessions. This is an important point considering the concentration of deliberation as the *modus operandi* under the informal Union Method. The art of negotiation is ever more important outside formal voting rules. Therefore, having a strong negotiating team with strong connections and the right personalities is important for a small EU member-state in the EU, especially in times of crisis.

Inapplicable Opportunity Structures

A number of national representatives stemming predominantly from Ireland's parliamentary left argued that the Irish did not do enough to secure appropriate concessions in the Fiscal Stability Treaty negotiations. In turn, these critics accused Ireland of effectively failing to achieve real influence in the treaty negotiations. They argued that Ireland was coerced by the Germans. They also argued that the Irish government surrendered economic sovereignty to the democratically deficient EU and that the Fiscal Stability Treaty would exacerbate crisis conditions in Ireland. These critics felt that the government should have used more realist style measures to achieve influence in order to hold larger EU member-states (particularly Germany) to account. They argued that a No vote in the Fiscal Stability Treaty referendum would obstruct other EU member-states' access to the ESM and this would force a renegotiation in Ireland's favour. A No vote would be an effective veto over the ESM covered in Article 136 of the Lisbon Treaty. Alternatively, they suggested that Ireland could formally veto Article 136 even if the Fiscal Stability

Treaty was ratified by other EU member-states. They also urged the Irish government to consider delaying the referendum until after the French presidential elections in 2012 in the hope that the socialist politician François Hollande would force renegotiations as promised in the event of winning the presidency. Ireland could then free-ride on French concessions which would include a growth stimulus package; a prime preference of the left wing to counteract the effects of the treaty's austere provisions.

As research findings suggest, these so-called opportunity structures would have severely endangered Ireland's negotiation position, and perhaps even causing Ireland to be left behind the treaty with no access to the ESM if it was required. Research shows that a 'No' vote in the Irish referendum could not have obstructed the ESM coming into effect and a veto did not exist, as the treaty did not require unanimity to pass. The ESM could come into effect once EU member-states whose collective contribution totalled 90% of the fund ratified the treaty. The French presidential election was also a non-credible so-called opportunity structure as research shows that François Hollande was in no position to renegotiate the treaty, as it was signed by the French government under Nickolas Sarkozy. To force a renegotiation could significantly harm France's credibility in Europe.

Evidently Ireland did not use these opportunity structures as they would have endangered Ireland's positon in Europe. Ireland would have most certainly been left behind in the process of fiscal convergence and this would have endangered its economic potential. In turn, Ireland may have found it difficult to gain market confidence and foreign direct investment which would have endangered its ability to regain stability, growth and competitiveness.

Concluding Remarks

On reflection of the findings, it is arguable that Ireland is a clear example that even in intergovernmental EU treaty negotiations, a small economically weak EU member-state can still achieve influence. By identifying and utilising credible opportunity structures strategically in accordance with the institutional rules and norms set out by the relevant negotiation process; a small EU member-state can

leverage their negotiation position to successfully achieve concessions close to national preferences. In turn, they can achieve influence in an environment which is often theoretically assumed to be favourable toward the preferences of larger EU member-states.

The purpose of this thesis was to discover something about the small EU member-state in contemporary EU intergovernmental negotiations. Knowledge about the role of the small EU member-state and its influence in the Union Method treaty negotiations is remains weak. After all the Union Method is a relatively new area of treaty making in the EU and much of the theory surrounding it is still in development. Understanding the role of the small EU member-state in the Union Method is important to scholars. Not least because the Union Method is anticipated to become a popular means to coordinate hard law treaty making outside the traditional first pillar of the EU, but because it will fundamentally have consequences for the many small EU member-states who negotiate under its structures.

The dynamics of policy influence in the EU in recent years has been shifting. Evidently there has been a move toward more informality and deliberation under the Union Method. This has changed the relationship between EU member-states and shifted the dynamics of policy influence. In light of the recent financial crisis and the evident move toward the Union Method with the Fiscal Stability Treaty, the system has urged scholars to think again about the role and influence of the small EU member-state in contemporary intergovernmental treaty negotiations. This thesis was the first of its kind to explore the influence of small EU member-states in contemporary EU decision making by looking at Ireland's approach to negotiating the Fiscal Stability Treaty negotiations. In turn, this has contributed fresh knowledge about the small EU member-state in intergovernmental treaty making negotiations above the broad array of research often assessing the subject through the traditional Community Method lens. Therefore, this thesis acts as a reference point for scholars to refer to when examining small EU member-states under contemporary intergovernmental treaty making processes. This will prove useful as the EU evolves over time and if the Union Method is embraced further by EU member-states.

The thesis finds that the Union Method approach aids small EU member-states to gain a stronger voice in EU treaty negotiations. The informal rules protect small EU member-states from being alternatively marginalised through QMV, as well as the influence of larger EU member-states. The concerted/collective ways in which EU member-states are willing to cooperate creates a more democratic and balanced approach to treaty making. This is important as it does not empower small EU member-states above larger EU member-states, but allows them to realise their capabilities in a way which formal voting rules may not, due to the ability of larger-EU member-states to formally ride roughshod over small EU member-state preferences. Typically, outcomes still represent pareto-efficiency. This creates a greater sense of strength in the relationship between EU member-states, both small and large, as it induces a less neo-realist approach to bargaining and negotiating vital outcomes. EU member-states are urged to cooperate to achieve common goals over sensitive policy issues. This is essential for the EU to survive both in times of crisis and in the future as the EU becomes potentially larger and more diverse and policy areas become more complex with necessary spill-over through integration. With this in mind, it comes to attention that although liberal-intergovernmentalism still has its merits in that it can explain contemporary bargaining behaviour in terms of the leveraging role of opportunity structures, larger EU member-states do not necessarily ride roughshod over the preferences of smaller EU member-states. The small-large member-state divide in *Union Method* decision making is therefore best explained by the new intergovernmentalist and deliberative intergovernmentalist schools of thought which give a more accurate account of inter-state negotiation behaviour under this method. However, liberal-intergovernmentalist teachings still ought to be referenced. In fact, scholars need to look toward each of the key theories of intergovernmentalism to fully understand contemporary intergovernmental decision making in the EU. Therefore, liberal intergovernmentalist teachings can complement the new and deliberative intergovernmentalist insights into intergovernmental treaty making negotiations, without dominating the analysis or inhibiting the potential of the new theoretical approaches. The thesis shows that smaller EU member-states do not just ‘get what they are given’. They realise their capabilities and bargain accordingly and affectively with political strength. In achieving concessions, they achieve influence. Ireland is an example of this. Of course, this is largely attributed

to the decision making qualities of the Union Method and the strength of opportunity structures sought by EU member-states as leverage.

Reflecting upon Ireland's opportunity structures as a measure of achieving influence, the thesis shows that Ireland's referendum is above all else the most important bargaining chip that Ireland can have in treaty negotiations of any style. While the referendum is frowned upon in some European circles and has received its fair share of hostility from Irish governments in the past, the referendum ought not to be dismissed as a tool of political strength. Not only does it provide an extensive democratic quality to EU decision making by bringing decision making power back to the people, but it also sets Ireland aside as a small EU member-state by potentially allowing it to wield relatively stronger concessions in contrast to its small member-state counterparts. This is what allows Ireland to punch above its weight. As seen with the Irish referendum on the Fiscal Stability Treaty, referendums on the EU do not have to be perceived as obstructive forces used by governments to hold larger counterparts to account. Given the significance of the Irish referendum in leveraging negotiation position, its strength and potential for negotiation influence is better embraced, rather than dismissed, as it may prove favourable to Ireland in a larger and more complex European Union of the future.

This thesis contributes to the literature surrounding the small EU member-state in contemporary EU intergovernmental treaty making processes. It also contributes to the literature on opportunity structures as forces of negotiating leverage in intergovernmental treaty making processes and the literature surrounding the ever evolving new intergovernmentalist and deliberative intergovernmentalist schools of thought, having linked and tested these theories to an actual Union Method treaty making process. In-depth scholarly research on the subject of opportunity structures as negotiation leverage for small EU member-states in the Union Method of treaty making is still underdeveloped. This study provides a small, but significant base for scholars to generate further research on the matter. As the Union Method is anticipated by some to become a more prominent dimension of treaty making in the EU over time, one expects that this area of study will attract a greater deal of scholarly attention.

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