

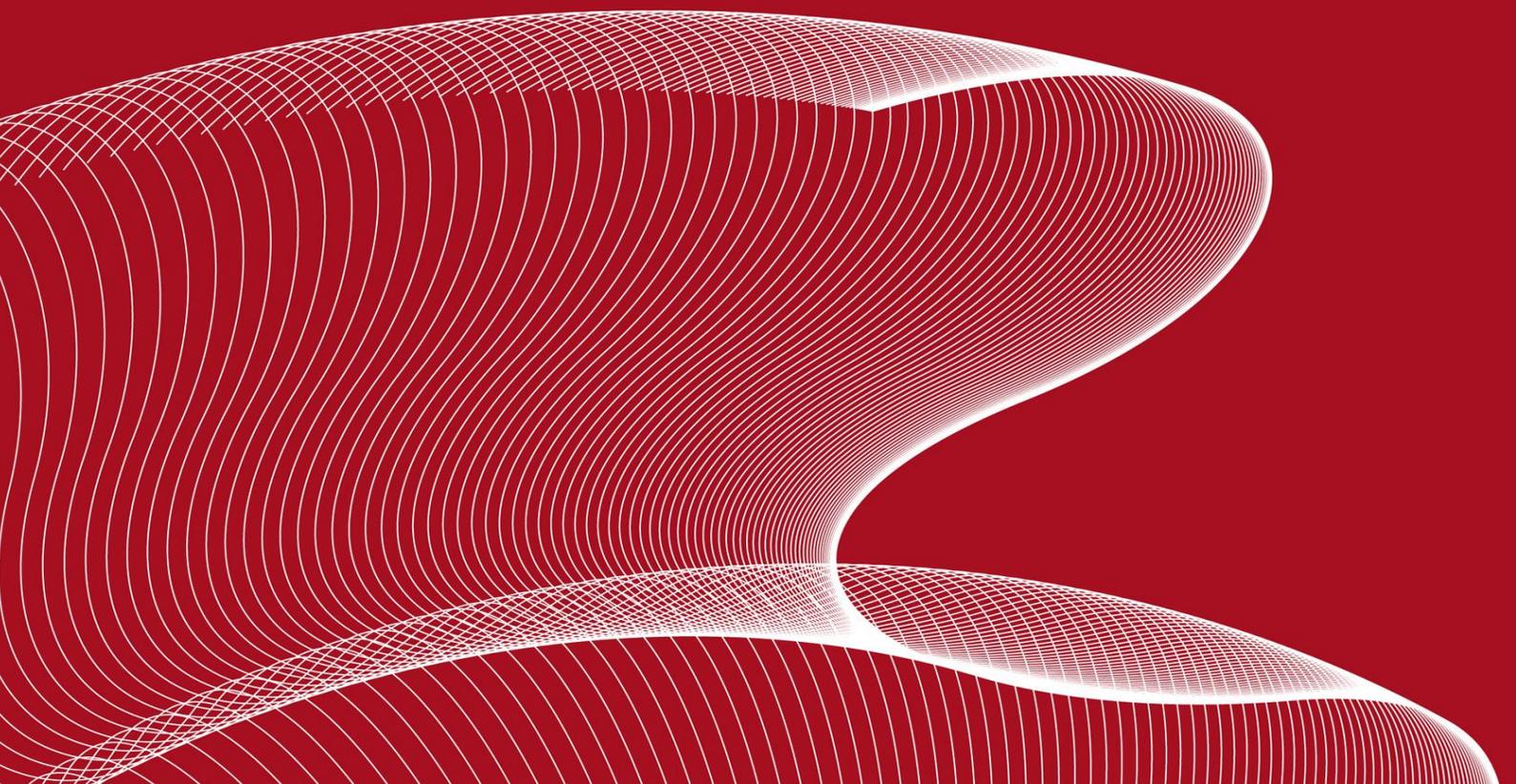
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# **Never Again? – Averting Another Crisis**

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**STRENGTHENING IRELAND'S NATIONAL  
RISK MANAGEMENT STRATEGY**

**May 2016**



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## PREFACE

A critical feature of the period leading up to Ireland's recent economic and financial crisis was a major underestimation of the risks associated with an increasingly unbalanced economy. The many official enquiries into the causes of Ireland's unprecedented collapse all indicated that there had been a systemic failure to assess and manage key risks on the part of a wide range of public institutions.

From this perspective, an important task going forward is to put in place appropriate institutional arrangements and procedures to try to ensure that a crisis from whatever – perhaps currently unknown – source will not recur. Robust structures and processes that allow identification, analysis and mitigation of complex threats and potentially adverse developments are essential.

Against this background, Publicpolicy.ie agreed to a proposal from Dr Donal Donovan to visit a small number of countries - with some characteristics not dissimilar to those of Ireland – to study their practices and experiences in relation to national risk management. We were encouraged to undertake this work by the Secretary General of the Department of the Taoiseach who felt that it would be an informative and useful exercise. The Secretaries General of the Departments of Finance and Public Expenditure and Reform, as well as the Governor of the Central Bank of Ireland, also lent their support to the project.

This report was prepared during a nine month period from autumn 2015. We are particularly grateful to Dr Donovan as the principal author of the report for overseeing the project. Thanks are also due to Dr Don Thornhill and Colm Farrell who contributed significantly at all stages in the project, including participating in the Working Group and the preparation of the report.

Publicpolicy.ie provided logistic and financial support for the travel involved. Drs Donovan and Thornhill did not receive remuneration for their work on the project.

We were fortunate to have the benefit of an experienced Advisory Group, comprising John Shaw and Dr Barry Vaughan (Department of the Taoiseach), Neil Ryan (Department of Finance), Dr Orlaigh Quinn and Dermot Nolan (Department of Public Expenditure and Reform), and Mark Cassidy (Central Bank of Ireland). We are grateful for their very valuable insights and advice. However, responsibility for the report's contents lies solely with the authors.

The engagement and input of government officials from agencies and other independent experts in Australia, New Zealand, Singapore, Canada, Denmark, Finland, Netherlands,

Norway and the UK has been substantial and greatly appreciated. We also wish to thank sincerely the Irish Embassies in each country for their very valuable support in advising on and arranging meetings with the institutions visited.

We also wish to express our appreciation to senior officials in a number of Irish government departments, agencies and institutions who gave generously of their time to discuss the issues involved.

As noted above, the views and recommendations in this Report should not be attributed to any individual person or agency, whether in Ireland or abroad.

Donal de Buitleir

Director

Publicpolicy.ie

*May 2016*

## BIOGRAPHIES



Dr Donal Donovan is currently Adjunct Professor at the University of Limerick and a visiting lecturer at Trinity College Dublin and the University of Maryland (USA). He was a member of the teams that produced the Governor of the Central Bank of Ireland's report in May 2010 and the Nyberg Commission's report in April 2011, both dealing with the causes of the Irish banking crisis. He worked in the IMF from 1977 until 2005, when he retired as Deputy Director. During his career at the IMF, he worked closely with many countries experiencing financial crises. He holds a Ph.D. from the University of British Columbia and Bachelor's degree from Trinity College Dublin. He is the joint author (with Professor Antoin Murphy) of "The Fall of the Celtic Tiger; Ireland and the Euro Debt Crisis" (Oxford University Press, 2014). He was a member of the Irish Fiscal Advisory Council during 2011 - 2014. Email: [djaddonovan@gmail.com](mailto:djaddonovan@gmail.com)



Dr Don Thornhill is a former top civil servant. He was Executive Chairman of the Higher Education Authority (HEA) from 1998 until he resigned from the public service in 2005. Prior to his appointment to the HEA he was Secretary General of the Department of Education and Science from 1993 to 1998. He also worked in the Irish Revenue Commissioners and in the Departments of Foreign Affairs and Finance. He currently chairs the Chartered Accountants Regulatory Board and the board of Music Generation. He chaired the advisory National Competitiveness Council of Ireland from 2005 until 2015. Other board memberships have included Forfás (Irish statutory national policy advisory body for enterprise and science) and Science Foundation Ireland. He was chairman of the

2012 Inter-Departmental Expert Group which designed a local property tax which has been enacted into law. In February 2015 he was asked by the Minister for Finance to review the operation of the property tax and to recommend what changes, if any, should be recommended. His report was published in October, 2015. He is a graduate of University College Dublin (B.Sc. and Ph.D. (Chemistry)) and Trinity College Dublin (M.Sc. (Econ)). He was awarded an honorary doctorate by the National University of Ireland in 2007. He has been a Fulbright Scholar at the Brookings Institution in Washington DC.



Dr Donal de Buitléir is Director of Publicpolicy.ie - an independent think-tank. He is Chairman of the Irish Low Pay Commission. He was a Board Member of the Health Services Executive and a former Chairman of the Citizens Information Board. He worked at a senior level in the Irish Revenue Commissioners and in AIB Group. He served as President of the Statistical and Social Inquiry Society of Ireland. He has chaired or been a member of a number of government reviews in the areas of local government reform, business regulation, funding of the health service, integration of tax and welfare and higher education. He is a graduate of University College Dublin (B.A., M.Econ, Sc. and Ph.D.) and Trinity College Dublin (M.Sc. (Strat Mgt)). He is an Eisenhower Fellow and has been a Board Member of Eisenhower Fellowships in Philadelphia.



Mr Colm Farrell is a researcher at Publicpolicy.ie. He obtained a B.A. from Maynooth University in 2011, a P.D.E. from NUI Galway in 2012 and a M.Sc. Environmental Policy degree in 2013 from University College Dublin. His primary research interests include public service delivery, local and national government reform, environmental planning and taxes, and education.

## Never Again? – Averting Another Crisis Strengthening Ireland’s National Risk Management Strategy

### EXECUTIVE SUMMARY

A critical feature of the period leading up to Ireland’s economic and financial crisis was a major underestimation of the risks associated with an increasingly unbalanced economy. The conclusions from the many official enquiries into the causes of Ireland’s unprecedented collapse all indicate that there had been a systemic failure to assess and manage key risks on the part of a wide range of public institutions.

From this perspective, an important task going forward is to put in place institutional arrangements and procedures to try to ensure that a crisis from whatever - perhaps currently unknown - source will not recur. The recent experience – and the fact that this was the second time in thirty years that Ireland has faced major economic and financial difficulties that were largely of its own making - emphasises the importance of strengthened economic policy making, especially given the current external environment of increased uncertainty and risk. Robust structures and processes that allow identification, analysis and mitigation of complex threats and potentially adverse developments are essential.

Considerable progress has already been made by government and associated agencies in putting in place important institutional improvements affecting key areas of economic and financial policy risk. To support this process, this report examines the practices of a number of other countries, several of which are small open economies with some characteristics similar to Ireland and which have also faced national risk management issues<sup>1</sup>. While there is no universally applicable set of “best practices” in this area, considering initiatives taken elsewhere can enrich the debate on important issues.

The report emphasises the role of processes and institutional arrangements rather than the precise measures aimed at achieving particular outcomes. In this connection, two general points should be stressed: (i) structures are needed that delineate clearly the mandates, responsibilities and accountabilities of bodies engaged in various areas of risk management; and (ii) robust and well-defined processes of coordination and collaboration between different agencies are required so as to avoid the emergence of “silo mentalities”.

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<sup>1</sup> In the course of preparing this report the team visited various institutions in Australia, Denmark, Finland, Netherlands, New Zealand, Norway, Singapore and the United Kingdom (see Appendix).

The report's main conclusions regarding several key areas are summarised as follows (details are provided in the concluding part of each section):

## **II THE NATIONAL RISK ASSESSMENT (NRA) EXERCISE**

In 2014 and 2015 the Government prepared and published a National Risk Assessment (NRA), the objective of which is "to identify strategic risks that may arise due to potential changes in the economic, financial, geo-political and social environments".

Several countries are continuing to experiment as to how best to conduct their NRA exercises. Based partly on their experiences, several improvements/refinements aimed at strengthening Ireland's current NRA process are suggested.

- Overall responsibility for the NRA exercise should remain with the Department of the Taoiseach. The NRA should bring together the work of separate existing structures (including the Office of Emergency Planning) within a coherent framework that avoids risks of silos and stipulates via terms of reference the responsibilities of different bodies, including where significant cross cutting issues are involved.
- To help the Department of the Taoiseach ensure that agencies undertake substantively adequate work in accordance with previously agreed priorities and criteria, a small group of experts should be established that could include experienced people drawn from outside the public sector and a number of other relevant bodies. The assessments of this group regarding progress achieved should be published.
- Regarding methodological aspects, greater attention can be given to (i) broader socio-economic and geo-political sources of risk; and (ii) differentiating between more concrete outcomes /scenarios (for example, a Brexit) and longer run societal changes, as well as between more directly measurable economic and financial issues and those less amenable to quantification (such as "erosion of social cohesion"). While it is useful to distinguish more clearly the concepts of likelihood and impact associated with risk scenarios, scarce resources should not be devoted to quantitative exercises of limited practical use.
- Other specific steps should be considered, such as: (i) the detailing of risk provisions in Ministerial budgets; (ii) a formal audit system of public security and risk

governance approaches, in conjunction with capability assessments of individual departments/agencies; and (iii) an increased focus on risk mitigation.

- A move to, say three year intervals for a comprehensive Irish NRA could also be appropriate, accompanied, however, by a shorter annual “Interim NRA Update” that would focus on major recent risk-related developments and provide an update and assessment of progress under the overall NRA work programme.

### **III MANAGING FISCAL RISK**

The analyses of fiscal risk, i.e., the assessment of the uncertainties associated with the outlook in public finances, have been expanded in Ireland’s recent budget documentation. In an important step forward, the April 2016 Stability Programme Update (SPU) contains a new risk matrix of 11 key external and domestic macroeconomic risks, assessed by likelihood of occurrence, impact and the main transmission channels involved. However, there is scope for further development.

- It would be useful to consider explicitly alternative broad scenarios as regards major taxation or expenditure categories (e.g., pay and pensions, social benefits and capital expenditures) to inform public debate about trade-offs among available options.
- The analysis could be extended to consider individual shocks greater than those presented to date, as well as the combined impact of several simultaneous shocks (i.e. a broader adverse macroeconomic scenario).
- In view of the structural dependence on certain revenues, risk analysis should devote explicit attention to the volatility of some revenue categories, for example, taxes on property transactions and corporation tax.
- The forward looking analysis could, on a periodic basis, be extended to cover a longer period, for instance, at least 10 years.
- Budget documentation should analyse systematically divergences between outcomes and previous official forecasts for key variables and assess what improvements in methodology and data availability may be appropriate.
- The system of multi-year expenditure ceilings designed to contain the risks associated with fiscal overruns has been undermined in recent years by continuous upward revisions in spending, notably in the health sector. The reasons for these

overruns and the steps being taken to prevent them in the future should be addressed as part of the risk assessment.

- The accounting presentation of the government’s financial position and risk outlook based on a “cash flow” approach has inherent weaknesses. An alternative accrual accounting framework should be adopted.
- Serious consideration should be given to further loosening the central controls on pay and numbers along the lines of, say, the Danish model. Also, the practice whereby external recruits are placed at the first point of an incremental pay scale, regardless of experience, should be modified.
- Greater official focus on the Analytical Statement and on the quarterly publication of the General Government accounts – as opposed to the Exchequer monthly returns - would facilitate improved public understanding of the true fiscal position.
- For ease of access and comprehension, it is preferable to consolidate the differing components pertaining to the “universe” of fiscal risks into a single comprehensive report as part of the annual budget documentation.

#### **IV ENHANCING THE ROLE OF PARLIAMENT**

A feature of Ireland’s pre-crisis period was the failure to exercise effective parliamentary oversight on key economic and financial issues. The absence of sufficiently substantive input to the parliamentary budgetary process dilutes some of the potentially important “checks and balances” that can guard against the incurrence of excessive fiscal risk.

Against this background, the 2016 Programme for Government envisages the establishment of an independent Budget and Finance Office as a resource for the Oireachtas. The present report outlines in some detail alternative models for independent fiscal institutions that have been in place for some time in a number of countries (including Australia, the Netherlands and the United Kingdom).

It is recommended that before any decisions are taken as to precise institutional modalities, a small group should assess in-depth the relative merits of alternative possible approaches to meeting clearly defined objectives. The group would address issues such as the nature and extent of likely demands on the office’s resources by parliamentarians, the staffing (both size and expertise) requirements involved, the relationship between the office and

government departments, the possible need for legislative underpinning and the financial costs.

If an alternative option, namely an expansion of the current remit of the Irish Fiscal Council (IFAC) to include a parliament-related costings function, were to be explored, the legislative, accountability and resource implications for IFAC would require careful consideration, as well as the need ensure that IFAC's independence is not compromised.

## **V RISKS TO FINANCIAL STABILITY**

Especially given the nature of Ireland's crisis, ensuring appropriate macro prudential policies designed to safeguard the health of the banking system and overall financial stability are a critical part of national risk management. Generally speaking, the countries examined in the present report have put in place relatively more formal interactive consultative structures relating to the formulation of financial stability/macroprudential policy than is the case currently in Ireland. However, the wide variety of experiences suggests that an appropriate framework needs to be tailored to specific circumstances and may require adaptation over time.

In Ireland, unlike in several other countries, responsibility for both macro and micro prudential policies is assigned to one unitary institution, the Central Bank of Ireland (CBI). As is generally the case elsewhere, given the possible presence of short term political pressures, it is essential that the independence of the CBI in fulfilling this role be maintained.

The current Principals Group, chaired by the Department of Finance and including representatives of the CBI and the National Treasury Management Agency (NTMA), can serve an important consultative purpose. However, in order for this arrangement to work effectively a number of changes are suggested, aimed at putting the Group on a more formal footing, along the lines of somewhat similar arrangements elsewhere. Specifically:

- The Group should adopt formal terms of reference, covering explicitly consultation and review of financial stability/ systemic risk issues.
- The core membership of the Group should be specified explicitly, presumably to consist of representatives of the Department of Finance, the CBI (including the Governor and the two Deputy Governors) and the NTMA. Others might be invited to participate in discussions of particular topics as appropriate

- The Group should agree on a memorandum of understanding relating to the sharing of information between concerned parties.
- The Group should meet regularly and specify a minimum number of meetings to be convened annually. Consistent with a recent similar decision by the CBI Commission, the Group should publish minutes of its meetings. Information on the terms of reference of the Group and its composition should also be public.
- If necessary, sub-groups of the Principals Group to deal with specific financial stability issues and ensure efficient sharing of information and analysis could be established.

## **VI THE CIVIL SERVICE - AN ESSENTIAL ROLE IN NATIONAL RISK MANAGEMENT**

The identification of risks and the formulation of policies to adequately address them require a strong, well-functioning and professional civil service to perform these tasks to the required high standard. In the period leading up to the crisis, the quality and independence of civil servants - in particular the furnishing of expert and forthright advice on economic and financial matters and associated risks – was perceived to have been inadequate.

Against this background, the Government's Civil Service Renewal Plan launched in 2014 addresses the key features required to raise civil service performance. An action oriented focus on accountability, as well as achieving consistency and cohesiveness across departments and agencies, will be essential to ensure effective implementation. The present report outlines key reform elements covering performance evaluation, human resource management that have been central to other countries' civil service reform experiences. Most of these actions are in various stages of development and implementation under the Irish reform programme.

It will take some time for all the necessary changes to be put in place and for the effectiveness of the oversight framework adopted recently to be fully felt. However,

- it could be that a structure involving a separate body with a separate head with an associated mandate, responsibilities and adequate, full time dedicated resources might prove more effective (a structure containing some of these features had been earlier proposed in the report of an independent panel commissioned by the government).
- a model of this type (such as is found in New Zealand) involving a powerful commission responsible for assessing performance of all departments and relevant

agencies on “a whole of government” basis and for overseeing all aspects of human resource management, is one example of such an approach. It is recommended that alternative frameworks involving more far reaching structural and organisational change than implied to date, be kept under consideration.

## **VII PROVIDING FRANK POLICY ADVICE AND THE ROLE OF FREEDOM OF INFORMATION**

In order to try to avoid policy decisions that are based on inadequate or ill-informed assessments inconsistent with sound risk management, officials must ensure that their policy advice is provided to Ministers in a frank and open manner with respect to deliberations on all important substantive issues, for the written record. While broad guidelines do exist on paper as to the need to record interactions on key matters, it is far from clear that such guidelines are in fact being adhered to or that systematic monitoring with sanctions for noncompliance are in place. Several publicised events in Ireland in recent years suggest that inadequate record keeping with respect to key policy deliberations has been a serious issue.

At the same time, Freedom of Information (FoI) legislation, while highly welcome on grounds of accountability on the part of official bodies, needs to balance this laudable objective with the need to ensure that that the provision of frank and candid policy advice by officials for the record is not endangered. The majority of the countries surveyed in this report – including several which have a high reputation for openness - place considerable restrictions on access under FoI to policy advice. The report also details instances in a number of other countries where ensuring that adequate exemptions are in place has become a matter of lively public and political debate.

In the Irish case, taking into account differing (sometimes competing) considerations, a set of integrated measures is proposed.

- Highest priority should be accorded to establishment of a statutory duty to record, together with specific implementing guidelines and codes of conduct. Compliance with the above “requirement to record” above should be specifically reviewed by the Comptroller and Auditor General.
- To address concerns (whether genuinely justified or not) that may be inhibiting the recording of advice in writing and to provide additional protection, the “public interest” test in the current 2014 FoI Act could be replaced by the provision contained in earlier legislation, namely, a more unqualified exemption of records relating to “policy deliberations”.

- To balance what might be otherwise perceived as a “tightening” of access, the records exempted under a more unqualified exemption should be automatically accessible within a period of, say around 5 years, i.e., the length of a government’s maximum term of office (at present there is no time limit for records deemed exempt); this would extend to “policy deliberations” the same treatment as is currently applicable to records relating to meetings of the Government.
- Data should be furnished on a regular basis by bodies subject to FoI to the OIC (and published) regarding the operation of the exemption clauses under FoI, including their use to justify withholding of access.
- As in the case for all similar bodies, OIC should undertake, at periodic intervals, an external peer review of its activities.
- Finally, serious consideration should be given to reducing the current 30 year rule under the National Archives Act (1986) relating to the transfer and public availability of Departmental records to at least 20 years.

## I. INTRODUCTION

A critical feature of the period leading to the collapse of the so-called Celtic Tiger was a major underestimation of the risks associated with an increasingly unbalanced economy. Although warnings were expressed by some advisers and analysts, the broadly shared consensus prior to the crash was to minimise the potential downsides and accentuate the positives.

Evidence on a wide range of distortions and imbalances was available at the time. As is by now well known, these included: dramatic increases in bank lending to the property and construction sectors, a narrowing of the tax base, an acceleration of public expenditure fuelled by unsustainable increases in property-related tax revenues, inflation in pay and domestic costs resulting in falling external competitiveness and a deteriorating balance of payments and a switch in the drivers of economic growth (and associated employment) from exports to the construction, retail and public expenditure sectors.

Despite the alarming evidence provided by these indicators it was widely believed at the time that the grossly overinflated property market – the root cause of the underlying imbalances - would be corrected by a so-called “soft landing”. The outcome was very different. A collapse in property prices led eventually to the insolvency of the banking system, a deep and lasting recession, soaring unemployment and yawning budget deficits.

Against the background of an increasingly difficult international environment, Ireland’s financial situation became increasingly unsustainable, leading in late 2010 to the emergency bail out from the troika of the EU, the IMF and the European Central Bank. The social costs associated with this period of painful economic adjustment were severe – large scale job losses and a resumption of emigration, severe financial difficulties leading to the collapse of many businesses and widespread household mortgage arrears, cuts in pay and public sector services and serious reputational damage to critically important national institutions.

There have been many official enquiries into which individuals or institutions - public or private – should be held responsible for Ireland’s unprecedented economic collapse. These have been important and necessary exercises to help understand better what happened and why in order to move on from the crisis. The conclusions from these inquiries all indicate that there had been a systemic failure to assess and manage key risks on the part of a wide range of public institutions.

From this perspective, a critically important task going forward is to put in place institutional arrangements and procedures to try to ensure that a crisis from whatever -

perhaps currently unknown - source of the severity Ireland suffered in the last several years will not recur. Indeed, the recent debacle was the second time in thirty years that Ireland has faced major economic and financial difficulties that were largely of its own making. This experience suggests that a fundamental strengthening of economic policy making is required, especially to take into account the current external environment of increased uncertainty and risk. Robust structures and processes that allow identification, analysis and mitigation of complex threats and potentially adverse developments are essential.

Strengthening the capacity of key economic and financial institutions to manage the risks that Ireland faces now and in the future is the theme of this report. As described in detail below, since the crisis broke, a great deal of attention and effort has been devoted by government and associated agencies to putting in place major institutional improvements affecting key areas of economic and financial policy areas. Considerable progress has already been made.

To support this process, it was thought helpful to look at the practices of a number of other countries, several of which are small open economies with some characteristics similar to those of Ireland and which have also faced national risk management issues<sup>2</sup>. There is no universally applicable well-defined set of “best practices” in this area and every country’s situation differs. Nevertheless, considering how various initiatives elsewhere have worked can enrich the debate on important issues affecting Ireland.

The remaining sections of this report deal in turn with the following areas:

II The National Risk Assessment (NRA) Exercise

III Managing Fiscal Risk

IV Enhancing the Role of Parliament

V Risks to Financial Stability

VI The Civil Service - An Essential Role in National Risk Management

VII Providing Frank Policy Advice and the Role of Freedom of Information

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<sup>2</sup> In the course of preparing this report the team visited various institutions in Australia, Denmark, Finland, Netherlands, New Zealand, Norway, Singapore and the United Kingdom (see Appendix).

Several general observations are relevant at this point. First, given the very wide ranging set of issues involved in national risk management, this report has perforce been selective and focused on what seem to be major areas and issues stemming from the pre-crisis experience. It has also emphasised the role of processes and institutional arrangements, rather than the precise measures that may be most effective in achieving particular outcomes.

Second, a recurring theme of the report is the need to establish structures that delineate clearly the mandates, responsibilities and accountabilities of different bodies, the work of which impacts risk management on a whole-of-government basis. This applies especially to the NRA exercise (Section II of the report) but is also relevant in the case of other sections dealing with fiscal and financial stability risks and civil service renewal. Well-defined terms of reference will help ensure clarity and efficiency, and will promote transparency and accountability.

Third, a specific allocation of responsibilities should not in any way diminish the need for robust and well-defined processes of coordination and collaboration between different agencies involved in work on similar topics. It is well recognised that “silo mentalities” within and across departments/agencies were a significant contributing factor to the pre-crisis failure to assess overall risks. Exchanges of letters and memoranda of understanding dealing, for example, with exchanges of information, can be highly useful in ensuring effective interaction, while also contributing to enhanced transparency and accountability.

## II. THE NATIONAL RISK ASSESSMENT EXERCISE

In September 2013, the Government announced that as part of the process of Dáil reform, it would publish annually, alongside other documents, a National Risk Assessment (NRA) for debate in the Dáil. Subsequently, two assessments have been published, NRA 2014 and NRA 2015. The objective of the NRA is “to identify strategic risks that may arise due to potential changes in the economic, financial, geo-political and social environments. As such, it can be seen as part of the response to failures in the past to identify and address risks beyond a short time horizon” (NRA 2015).<sup>3</sup>

### A. The Process to Date

Both Irish NRAs were prepared using a similar consultative procedure. Following collaborative work between Government departments on potential risks, preliminary findings were presented at a forum hosted by the Department of the Taoiseach attended by a cross section of public servants and individuals from civil society, the business community and academia. Subsequently, a draft paper listing specific risks was published and public reactions invited (the procedure for NRA 2015 included an online facility for commentary by participants in the earlier forum). Following feedback, the NRAs were finalised and published. The 2014 and 2015 NRAs list potential risks under five broad headings: (i) economic; (ii) environmental; (iii) geo-political; (iv) social; and (v) technological. Within each category some half dozen or so specific risks were enumerated and described in summary form.

NRA 2015, in light of feedback sought via the online commentary facility, identified certain risks that were perceived to merit the most “concern” (namely, persistence of structural unemployment, misalignments in the property market, disruption to energy supply and price shocks and infrastructural developments). Risks thought to be of least concern were nuclear contamination and uncertainties about the impact of the ECB’s policy of

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<sup>3</sup> ‘National Risk Assessment 2015 – Overview of Strategic Risks’, available at [http://www.taoiseach.gov.ie/eng/Publications/Publications\\_2015/National\\_Risk\\_Assessment\\_2015.pdf](http://www.taoiseach.gov.ie/eng/Publications/Publications_2015/National_Risk_Assessment_2015.pdf). Many other countries have undertaken similar exercises (see below), while the OECD and the EU have also taken the lead in promoting international awareness of risk management approaches (see OECD Economic Policy Paper No.9 (July 2014) *Policy Challenges for the Next 50 Years* and *Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism*). In the economic and financial spheres, cross country work of the European Commission under the Macro-Economic Imbalance Procedure (MIP), as well as various initiatives in the area of macroprudential supervision under the auspices of the European Central Bank, are playing a key role.

“quantitative easing”. A third category where there appeared to be less of a consensus as to the relative importance of risks comprised: the importance of multinational corporations (MNCs)/ potential tax regime changes; weak economic growth and public debt sustainability; uncertainty over the UK’s relationship with the EU; loss of competitiveness; food safety; re-emergence of the euro area sovereign debt crisis; and expenditure pressures.

NRA 2015 noted that an exercise of this type represented a snapshot of perceptions. Thus, the risk rankings by relative importance could be expected to change over time (as indeed occurred comparing the 2014 and 2015 NRAs). Also, several submissions, citing possible concerns about the absence of risk mitigation strategies and/or insufficient willingness to implement them, affirmed the importance of ensuring that the public service is able to deal effectively with risks. This latter aspect involved “institutional risks” which, as observed in NRA 2015, could be viewed as being at least as significant as many of the specific substantive risks enumerated.<sup>4</sup> In this context, NRA 2015 noted the development of the Government’s Civil Service Renewal Plan - discussed in section VI below.

Earlier in 2012, the Office of Emergency Planning (OEP) published a document with a similar title, *National Risk Assessment for Ireland*.<sup>5</sup> However, this document did not encompass the broader economic, social and geo-political factors dealt with in the subsequent NRA 2014 and NRA 2015; it focused rather on various civil emergency type hazards that could cause direct harm to individuals or communities, the environment or the social or economic infrastructure. Two further documents are in the course of preparation: a revised ‘*National Risk Assessment*’ and a ‘*Strategic Emergency Management: National Structures and Framework*’ document.

The OEP documents lay out comprehensively the structures, responsibilities and procedures relating to emergency planning and crisis management. The Government Task Force on Emergency Planning (GTF), chaired by the Minister of Defence, provides overall political leadership and oversight, and meets every 6-8 weeks and at least 6-7 times a year. The National Emergency Coordination Group (NECG) consists of relevant members of the GTF and is chaired by the “Lead Government Department” (LGD) responsible for the specific issue or issues<sup>6</sup>. The OEP convenes the NECG and chairs a number of GTF subgroups; it also

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<sup>4</sup> These submissions drew attention to the need to ensure that analysis is adequately resourced within the public sector to identify and track risks, that criteria are developed to assess the significance of particular risks and that key indicators are developed for each risk.

<sup>5</sup> Previous documents covering this area were: the *Framework for Co-ordinated Response to a Major Emergency* (1984) and *A Framework for Major Emergency Management Guidance Document* (2010) published by the Department of the Environment, Heritage and Local Government.

<sup>6</sup> Six LGDs have been identified and assigned responsibilities for different categories of emergencies.

staffs on a full-time basis the National Emergency Coordination Centre which is used as a focal point for communications and planning and execution of responses to emergencies.

## **B. Approaches Followed by Other Countries**

Many OECD countries have in recent years undertaken NRA exercises which are broadly similar to Ireland's NRA. As with Ireland, in many cases the process elsewhere is still very much in its infancy, and there is general recognition of the need to "feel one's way" and be adaptive and flexible as required. A number of interconnected issues have featured prominently in other countries' exercises, including:

- the absence to date of an accepted robust analytical framework to address overall risk management at the national level;
- the degree to which an overall oversight structure should explicitly assign responsibilities for specific risk areas to entities (including to separate specialised bodies such as a Ministry of Finance or a central bank);
- the fact that particular adverse "events/scenarios" are more amenable to specific risk assessment than are broader "national" risks involving cross-cutting interrelated features;
- the need to ensure that the NRA process does not degenerate into a "tick box exercise" with insufficient meaningful follow up actions.

It is generally agreed that NRA exercises have raised consciousness about the need for improved risk management, especially in the context of "adverse events" exercises. However, it is too early to draw firm conclusions as to the overall usefulness of the extensive work undertaken up to now, especially since there is inevitably an element of the counterfactual present, i.e. what might have transpired in the absence of an NRA process?

It appears that that no single country to date has been able to grapple entirely satisfactorily with the issues described above. Thus there is no "optimal model" which Ireland might consider emulating. However, the experiences elsewhere can provide some helpful insights. The main features of NRA exercises can be summarised under three broad headings: (i) coverage; (ii) methodology; and (iii) governance, monitoring and accountability.

### **i. Coverage**

Most NRAs surveyed address a mixture of emergency type hazard risks (along the lines addressed by the work of the Irish OEP) and broad economic social and geopolitical risks (as in Ireland's case). However, in most countries, partly reflecting the difficulties described above, considerable greater emphasis is placed on the first category of risks.

Some examples are:

**Finland:** the *National Platform for Disaster Risk Reduction* (2012) lists risks of disasters caused by three categories of natural hazards: hydrometeorological, geological and biological. An earlier document, *Security Strategy for Society*, prepared in 2010 and due to be updated by 2017, dealt extensively with philosophy and broad goals (namely, the criteria underlying the strategy, securing the “vital functions”, crisis management, and implementation). As with all the “vital functions” the “functioning of the economy” involves a desired end state and associated strategic tasks (18 in all) assigned to specific ministries who are also responsible for developing the required capabilities.

The *National Risk Assessment 2015* (the first for Finland) examines 21 scenarios, chosen on the basis of the assessment of probabilities and impacts submitted by ministries. The scenarios comprise 15 serious regional events (including a major maritime accident, disruption in water supply and a mass influx of migrants), for which an impact and likelihood matrix is prepared, and 6 wide-ranging events (such as serious disruptions in energy supply, cyber risks and a solar storm). Each department in Finland has a Head of Preparedness and national preparedness exercises are undertaken every four years by ministries. The Government Preparedness Unit located in the Prime Minister’s Office has a 24/7 crisis management centre.

Future planned developments include an increased focus on capabilities (by 2017), linking the NRA to budgets (see Norway below) and greater involvement of outside experts in the process.

**Norway:** the *National Risk Analysis* (NRA, 2013) provides a comprehensive analysis of 13 precisely defined major “scenarios” grouped under three headings: (i) natural events; (ii) major accidents; and (iii) malicious acts. The NRA is based on conceivable worst case scenarios and incidents, 23 of which are to be included in NRA 2016; 11 natural disasters, 6 accidents and 6 malicious events. Natural events and major accidents are largely based on historical occurrences, except in the case of extreme malicious acts.

The Ministry of Justice and Public Security provides a framework for risk management but individual ministries remain responsible for taking necessary actions. Risk provision costs for ministries are specified in the Budget and since 2013 public security proposals of ministries have been reviewed by the Ministry of Justice and Public Security. Since 2004, ministries’ public security and risk governance approaches have been subject every three years to formal audits that (since 2013) are published.

A White Paper on security and foreign policy, expected in the autumn of 2016, is likely to decide on future approaches to the NRA.

**Denmark:** the Danish Emergency Management Agency (DEMA) has operational, supervisory and regulatory functions. It undertook annual *Risk and Vulnerability* (RVA) based analyses between 2005 and 2010, the results of which were published in a *National Vulnerability Report*. The RVA model comprises: (i) the purpose and scope of the analysis; (ii) scenario development; (iii) assessment of the risks and vulnerabilities of each scenario to determine likelihood, consequences, and capacity to prepare, respond and recover; and (iv) a risk matrix and a vulnerability overview.

Work began on the development of a National Risk Profile in 2010. A *National Risk Profile* (NRP) was issued in 2013 and included details on the characteristics, possible consequences, past occurrences and possible trends for ten incident types, encompassing both natural events (based on historical events rather than scenarios – a unique approach among the countries surveyed) and man-made incidents. The document focused on the consequences as opposed to the likelihood of events.

The next NRP is due in 2016; a three year interval was thought to be sufficient. A separate National Risk Management Capability Assessment (RMCA) is to be carried out by DEMA.

**Netherlands:** the first *National Risk Assessment* was published in 2007. *National Risk Assessment 2012* analysed four detailed scenarios (cyber hacktivism, violent loner, widespread unrest and weapons control in a failed state)<sup>7</sup>. NRA 6 (2014) examines three scenarios (far-right extremism, dyke breaches and flooding, and a foreign enterprise unmasked as a criminal Trojan horse). A *Network of Analysts for National Security* consisting of research institutes, universities, civil services, the critical infrastructure sector and private companies, is closely involved in the preparation of the NRA and utilises scenarios, historical cases and strategic assessments. The network has over 100 members.

Over 45 scenarios have been examined to date and consideration is currently being given to grouping these into themes in the next NRA. In the Netherlands there is a major focus on prevention. Investment is informed by risk (for example, taking a hundred year view, it is estimated that rising sea levels require an investment of €1bn per annum).

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<sup>7</sup> The Netherlands has also published a *National Progress Report on the Implementation of the Hyogo Framework for Action* (2015) in response to a “Hyogo Framework for Action” agreed by the United Nations General Assembly aimed at reducing disaster risk.

Beginning in 2016, the Netherlands are moving to a 4 year cycle to allow for a more in-depth exercise. Cross cutting themes such as migration and climate change are likely to be focussed on as well as “economic security” (it is recognised that this is a sensitive issue involving other bodies). Their experience suggests that risk identification (undertaken by the Network of Analysts) should be separate from oversight of the appropriate response by the relevant bodies. Approaches to response issues are increasingly emphasising “capability assessments”.

**Australia:** the *National Strategy for Disaster Resilience* (2011) sets out the priorities to be addressed across federal, state and territory government levels as well as the role of businesses, the non-government sector and individuals, in taking collective responsibility for resilience in the face of disasters. The Crisis Coordination Centre is a 24/7 all-hazards facility run by Emergency Management Australia. State governments have their own separate emergency management legislation which designates the responsibilities of agencies and services during a crisis.

**United Kingdom:** the *National Risk Register of Civil Emergencies* (NRR) covers the risks of civil emergencies over the next five years. The first NRR was published in 2008. The NRR is the unclassified version of a National Risk Assessment. The NRR considers eight natural hazards (including flooding and severe weather), five major accidents (including major industrial accidents and disruptive industrial action), and five terrorist and other malicious acts (including terrorist attacks on infrastructure and cyber security). Civil emergency risks are identified by consulting experts in different government departments and agencies. The NRR and NRA cover only emergency events and do not address longer term trends such as technological advances or climate change.

Apart from “emergency hazard” type risks, several NRAs refer to broader economic and social risks (for example, fiscal or financial risks), noting that these are to be addressed by specialised agencies such as the Ministry of Finance, the central bank and/or the financial regulatory agency. This approach is similar to that of Ireland’s NRAs.

The absence of a published NRA does not necessarily imply that less attention is being paid to risk issues. For example, **Singapore**, while not publishing an NRA, has a highly structured risk management framework supported by an extensive Risk Assessment and Horizon Scanning Programme (RAHS). Under the aegis of the RAHS, the National Security Coordination Secretariat holds biennial conferences at which domestic and external experts present (published) papers. **New Zealand**, which does not publish an NRA either, has a well-developed National Security System (NSS) supervised at cabinet level. While the risks considered are mainly non-economic in source/nature, certain broader risks, namely,

“global financial crisis”, “banking services failure or attack” and “commodities price collapse” are noted in NSS documentation.

## **ii. Methodology**

NRA exercises elsewhere have sought to give some ranking of the relative likelihood that the risks cited might eventuate.<sup>8</sup> Finland, Netherlands and Norway all assign a probability of occurrence (ranging from “very low” to “very high” / “highly unlikely” to “very likely”). New Zealand also employs a spectrum of “relative likelihoods of occurrence” ranging from “at least once a year” to “at least once a millennium.”

Many NRAs contain impact assessments in combination with probability of occurrence analysis. New Zealand’s documentation, while not involving a formal NRA, assigns a range of “relative consequences” (“minor” to “catastrophic”) as do those of Denmark, Finland and the Netherlands. Norway’s NRA uses a “very low/very high” impact range applied to six different “society assets” (such as life and health, economy, societal stability) and also provides an indication of the uncertainty surrounding both probability and consequence estimates.

Given the extent of the uncertainties present and the difficulties in tracing through “knock on” effects, several officials involved with the above NRAs noted the need to recognise, including vis-à-vis the public, the limits associated with quantified estimation of risk and impact.<sup>9</sup> That said, the quantitative exercise had encouraged participants to think more deeply about possible negative scenarios. Also, significant changes in probabilistic/impact rankings over time could be a useful gauge of the evolution of specialized/expert advice (although “group think” needed to be avoided).

## **iii. Governance, Monitoring and Frequency**

In nearly all countries considered, specific risk assessments (and preparations for possible prevention and mitigation) are, in the first instance, the responsibility of a designated “line/lead agency” which also has a responsibility for seeking to ensure that other departments involved cooperate effectively. As noted earlier, the need for a process to

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<sup>8</sup> These mainly related to “non-financial”, as opposed to broader economic and social risks.

<sup>9</sup> Some voiced concern that insufficient appreciation of these elements could lead the public (and perhaps politicians) to be either too complacent about certain risks or become too alarmed with respect to others.

satisfactorily address organisational responses to risks involving overlapping areas of responsibility was emphasised by many; this has not always been easy to achieve.<sup>10</sup>

In Denmark, Finland, Netherlands, New Zealand and Singapore, designated agencies report to a responsible Minister/ coordinating entity that acts as the “centre” with an important substantive role in overseeing the process.<sup>11</sup> The number of staff dedicated to risk assessment/management and their location reflects the precise arrangements in place. The preparation of the NRAs in most cases (notably, Finland, Norway, Netherlands and Singapore) has involved, apart from civil servants, individuals from academia and institutes and others with particular expertise. Often (as is the case with the Netherlands Network of Analysts) such “outsiders” are members of the committees/groups that oversee the process and draft documents. An important recent innovation in New Zealand is the establishment of a ‘Strategic Risk and Resilience Panel’, composed of senior public and private sector experts and which is intended to play a major role in guiding ongoing work on risk management strategies at all levels.<sup>12</sup>

All the officials involved in NRAs elsewhere emphasised that, while the elaboration of risks was important, a structure/process for follow-up i.e., the subsequent operational oversight of possible risk mitigation/prevention strategies was essential. Nevertheless, for many, how best to do this was not yet entirely clear and some experimentation would be needed. The role of the “centre” was best thought of as catalytic and coordinating, especially given resource constraints and the technical and specialized nature of much of the work. That said, the involvement of outside experts within a structured framework led by the centre could help avoid the danger of the role of the latter being diluted to that largely of a “post box”. The need for the centre to be in a position, via such expert input, to ensure that lead agencies undertake substantively adequate work in accordance with previously agreed priorities and criteria was emphasised.<sup>13</sup>

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<sup>10</sup> In cases where issues of cooperation arise, it was recognised that ministerial/cabinet level intervention may be required.

<sup>11</sup> The documents outlining the New Zealand arrangements place considerable emphasis on the need for a strong “driving force”. Reference is made to “strong policy leadership from the centre, not just to coordinate direction and align departmental priorities, but also to address structural impediments to improved performance...The centre needs to be able to drive thinking among agencies, to generate agreed national level strategic policies and to ensure that departments work to agreed policies” (Department of the Prime Minister and Cabinet, [New Zealand’s National Security System](#), 2011: 11). The “central entities “in New Zealand are assigned wide ranging powers.

<sup>12</sup> Pending input from this panel, the New Zealand authorities have decided for the time being not to proceed with elaboration of a follow up National Risk Assessment document (the previous assessment was published in 2010).

<sup>13</sup> By way of specific procedures, in Norway, comprehensive audits of Ministries are carried out to assess how they are identifying and managing risks under their remit. Under the National Budget Part 3, the risk-related provision costs of Ministries are detailed. In Norway, public security reviews by the Ministry of Justice and Public Security of budget proposals were introduced by Royal Decree in June 2012.

The countries surveyed have been undertaking NRA exercises for somewhat longer periods than in the case of Ireland. Although they have generally been published on an annual or biennial basis up to now, a clear trend towards issuing NRAs less frequently has emerged. Denmark, Finland (which only began the process in 2015), Netherlands and Norway either have decided upon or are actively considering a move to a cycle of 3-4 years. The probability and impact estimates of most risks are unlikely to change significantly over a one year period. There is also some concern that a repetition of previous assessments will encounter public indifference and that the process could start to be viewed as another “form filling” exercise.

### **C. Conclusions**

Based on NRA-related work elsewhere, several improvements/refinements aimed at strengthening Ireland’s current approach to the NRA process are suggested. However, as emphasised earlier, no “one size fits all” framework has yet emerged from the experiences of other countries.

**A well-developed NRA structure can become a key part of a strengthened framework for addressing effectively the wide variety of economic, financial and social risks facing Ireland.** This could involve a number of elements:

- overall responsibility for the NRA exercise should remain with the Department of the Taoiseach. The framework should be a vehicle for bringing together the work of separate existing structures in order to establish a coherent picture for the overall NRA and to avoid risks of silos. Within this framework, terms of reference should state who is responsible for what parts of the system. Where significant cross cutting issues are involved, the framework should explicitly assign responsibility for areas to “lead departments”, supported, as appropriate, by designated other departments. In such cases, the lead department would be charged, in the first instance, with seeking to ensure that appropriate arrangements for cooperation are in place.
  - to ensure that the Department of the Taoiseach is in a position to effectively guide the process, it is proposed, along the lines of the recent New Zealand initiative, that a small group of external experts be established that would play a key role in helping oversee the NRA exercise. The work would involve; (a) identifying and defining the priority areas that required deeper analysis of the risks present and possible mitigation strategies; (b) ensuring that a corresponding work programme for each key area, often likely to
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involve external specialised expertise, is elaborated; and (c) monitoring implementation, including appropriate follow up actions. In this connection, the scope of the NRA should be widened sufficiently to ensure that it captures adequately broader, as opposed to specific “event”, risks.

- the Department of the Taoiseach needs to be in a position, with the help of this expert input, to ensure that lead agencies undertake substantively adequate work in accordance with previously agreed priorities and criteria. The assessments of the panel regarding the degree of progress achieved should be published, via a separate report or incorporation into published NRA documents.
- the expert panel – which should be kept small in size - could include senior and experienced people drawn from outside the public sector and of a small number of other relevant “overarching”<sup>14</sup> bodies such as the National Competitiveness Council (NCC), the National Economic and Social Council (NESCC) and the Advisory Council on Climate Change. These bodies could be asked to undertake and publish formal submissions to the panel which may require substantive analytical work on various key topics. A holistic approach should encompass positive as well as negative developments.

**The consensus elsewhere highlights the need for effective follow up arrangements if the NRA process is to lead to tangible benefits.** The process described above would be a key element to help promote greater transparency and accountability by the responsible entities and to spur needed actions. Other specific steps adopted elsewhere should be considered, such as: (i) the detailing of risk provision costs in Ministerial budgets (as in Norway); and (ii) a formal audit system of public security and risk governance approaches (also Norway). Also, the envisaged capability assessments of individual departments/agencies (discussed in Section VI in the context of Civil Service Renewal) should pay specific attention to risk management issues.

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<sup>14</sup> i.e. with mandates which transcend individual sectors.

**The coverage and methodology of the NRA to date appears broadly appropriate, although deeper attention ought to be given to broader socio-economic and geo-political sources of risk.**

- The current framework is consistent with the separate, but closely related, work programme of the Office of Emergency Planning dealing with specific hazard event risks. Maintaining this distinction for operational purposes generally follows practices elsewhere. However, as with other entities, the work programme and related activities of the OEP should be incorporated explicitly into the overall NRA exercise.
- The approach to considering (non-hazard event) risks can be expanded. It would be useful to differentiate explicitly between outcomes/scenarios that could, in principle, be specified in fairly concrete terms (for example, a Brexit or a change in international corporate tax arrangements) and longer range societal changes and projections, including demography-related trends such as ageing, changes in work force participation and educational attainments, and immigration. A further distinction can be made between more directly measurable economic and financial issues and those less amenable to quantification (such as “erosion of social cohesion”); the latter type of assessments, while potentially of at least equal importance, requires the use of somewhat different analytical tools.
- Several NRAs elsewhere have involved quite extensive modelling of the probabilities of occurrence and the impact of “hazardous events”. It would be useful for the Irish NRA to, as a minimum, distinguish between the separate concepts of likelihood and impact that are currently subsumed under the concept of “concern”. However, recognising inherent methodological constraints, it would not be advisable to devote scarce resources to detailed quantitative exercises of limited practical applicability.
- An increased focus on prevention following the Netherlands’ example would provide an important dimension to risk mitigation.

**The frequency with which NRAs are undertaken should be reconsidered.**

- As noted above, there has been a trend recently for several countries to reduce the frequency with which NRA exercises are undertaken. A move to, say a three period, for a full-fledged Irish NRA could also be appropriate. However, this should be associated with a commensurate enhancement in the quality and impact of the exercise along the lines suggested above. A more comprehensive, analytically deeper NRA prepared less frequently could be much more effective than an annual exercise that runs the risk of superficial repetition.

- Nonetheless, significant changes in risk assessment can occur within a shorter time frame than three years. It is also important to maintain the momentum of the process. Accordingly, a shorter “Interim NRA Update” should still be issued on an annual basis. Such a document would focus on major developments that have taken place in the risk outlook over the past year. In addition, to ensure that risks are still being identified and assessed on an ongoing basis, the interim document should provide an update and assessment of the work programme, including the degree of progress being achieved.

**Finally, assessments of risks are likely to vary significantly over time as objective circumstances – and perceptions – change.** During the preparation of NRA 2014 and 2015, risk areas such as the possibility of a UK Brexit, changes in the taxation regime affecting multinational corporations, competitiveness concerns and expenditure pressures arising from demographic changes are likely to have attracted considerable attention. However, more recently, new areas of risk, for example, the impact of mass immigration or a major recession in China, may have become deserving of greater attention. A key element of the structure and process outlined above would be to help ensure flexibility and appropriate timing in Irish policy making to take account of the volatilities and uncertainties inherent in the current global environment. The possibility of a Brexit taking place provides a good example.

### III. MANAGING FISCAL RISK

#### A. The Concept of Fiscal Risk

The recent crisis has led to far greater attention being paid by governments to explicitly assess and manage macroeconomic risks in general and, in particular, fiscal risks. As described by Kopits (2014):

“Broadly speaking, fiscal risk denotes the uncertainty associated with the outlook in public finances. [It] can be defined as the probability of significant differences between actual and expected fiscal performance, over a short- to long-term time horizon. More critically, a sharp build-up of public indebtedness, coupled with financing difficulties, renders an economy vulnerable to shocks. In the event, the government may face risks in rolling over or extending credit arrangements or securing new borrowing. In an extreme case, fiscal risk encompasses the probability of sovereign default”.<sup>15</sup>

The author points out that while the “sovereign risk premium”, measured by yield spreads, serves as a broad indicator of a government’s vulnerability, it conveys limited information

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<sup>15</sup> Kopits, George, ‘Coping with Fiscal Risk: Analysis and Practice’ (OECD, 2014)

on actual fiscal risk for several reasons: sovereign spreads embody not only fiscal risk but also country, currency, and even systemic risks; spreads driven by market vagaries rather than fundamentals may be volatile in (often) thin secondary and credit default swap markets; and changes in interest rate spreads on government borrowing cannot be decomposed into the sources of fiscal risk. Ireland's pre-crash experience indeed confirms the view that prevailing market sentiments may not be a reliable indicator of underlying fiscal weaknesses.

Kopits identifies different types of fiscal risks: *economic* risks (macroeconomic vulnerabilities, the possible realisation of contingent liabilities); *technical* risks (mainly forecasting errors); and *political* risks (discretionary actions by governments inconsistent with previously announced policies). Each risk category can be *temporary* (pre-election pressures, for example) or *permanent* (change in international taxation regimes) and either primarily *exogenous* (domestic / external macroeconomic conditions) or *domestic* (expenditure decisions). Finally, risks can be thought of as *specific* (linked to particular fiscal measures), *general* (associated with deviations in macroeconomic aggregates), or *systemic* (for instance, the illiquidity and/or insolvency of the state arising from a broader financial crisis).

Most official estimates of fiscal risk try to assess the impact of unanticipated events, i.e., either specific shocks, including realisation of risks related to contingent liabilities; or shocks affecting certain specified macroeconomic variables (i.e., broader sensitivity analyses/stress tests). There are well known limitations associated with these approaches, including the arbitrariness of shocks considered, the omission of probability estimates of their occurrence, and the absence of an assumed possible policy response to the shock. Nevertheless, the findings, if communicated effectively to a wider audience, can help raise political and public awareness of fiscal risk issues.<sup>16</sup>

## B. Analysing Fiscal Risk

### Official Assessments

The Irish Government's approach is set forth in the "Statement of Fiscal Risks", issued as part of the annual budget documentation and the annual Stability Programme Update

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<sup>16</sup> Partly to address some of these limitations, an alternative methodology, known as the stochastic approach, has found some favour in recent years, especially within the academic literature. The models used are considerably more complex in nature and, perhaps because of this, have generally not been included in official documents addressing risk issues (see Kopits (*op. cit.*) for a comprehensive discussion of this approach).

(SPU). Budget 2016<sup>17</sup> contains: first, a medium term base line scenario for aggregate revenue, expenditure and the budget deficit and debt; and second, an analysis of the impact on these variables of three separate and distinct shocks, namely, a one per cent decrease in world output, a one per cent increase in the domestic savings rate, and a one per cent increase in interest rates.<sup>18</sup>

The “Risk and Sensitivity Analysis” in the April 2016 SPU analyses the impact of an additional risk factor, namely, a 5 percentage point sterling depreciation against the euro. It also contains a new Risk Assessment Matrix of 11 key external and domestic macroeconomic risks. These are assessed by likelihood (Low/Medium/High), their impact and the main transmission channels involved. In relation to contingent liabilities, the SPU notes that “under European law, from 2017, Ireland will be required to give an estimate of its total accrued pension liabilities, based on a standard series of assumptions, for publication in its national accounts”.

Analysis of the type described above has by now become standard for most industrial countries. Several have moved towards more comprehensive government fiscal presentations aimed at broadening the evaluation of risk, including by focusing on a balance sheet approach:

- In **the UK**, the system of Whole of Government Accounting (WGA), in place since 2009/10, is a consolidated set of financial statements (based largely on International Financial Reporting Standards (IFRS)) covering some 5500 public sector organisations, including central and local government, the National Health Service and public agencies<sup>19</sup>. WGA includes information on certain sources of fiscal risk, for example, the net public service pension liability, the government’s commitments under Private Finance Initiative (PFI) contracts, and other contingent liabilities. By providing a comprehensive picture of the components of the government’s net assets, including “off balance sheet” items, WGA enables more informed decision making on the acquisition and use of property and the build-up of liabilities.

Individual Departments and Local Government prepare accounts on an accruals (IFRS) basis. A “Translate Project” (Clear Line of Sight Project) links these accounts to the Fiscal Accounts

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<sup>17</sup> ‘Budget 2016’, available at: <http://www.budget.gov.ie/Budgets/2016/2016.aspx>

<sup>18</sup> A similar analysis is contained in the Government’s ‘Stability Program Update, April 2016’ <http://www.budget.gov.ie/Budgets/2016/Documents/SES/SPU%202015.pdf>. This document also included summary information on certain contingent liabilities.

<sup>19</sup> HM Treasury, Whole of Government Accounts publications are available at <https://www.gov.uk/government/collections/whole-of-government-accounts>

which are on a National Accounts Basis. Reporting to Parliament is on a cash basis and there are cash limits on expenditure.

Beginning in 2017 the UK's Office for Budget Responsibility will prepare a Report on Fiscal Risks every 2 years. In addition to analysing the fiscal implications of overall macroeconomic shocks, it is intended to consider the potential volatility of individual tax heads.

- **New Zealand**, long regarded by many as a world leader in matters of fiscal transparency and risk management, published in 2014 a landmark document that outlines in detail “the shape and health of the Crown’s portfolio of assets and liabilities,...assesses how the balance sheet aligns with governments’ service delivery objectives ... and where the main risks lie in terms of governments’ ongoing ability to provide the public goods and services that New Zealanders expect of their governments”<sup>20</sup>. In an accompanying statement, the Deputy Chief Executive to the Treasury observed that “it aims to assist us to understand the degree to which the Crown’s assets and liabilities are fit for the purposes for which they are held, and are delivering New Zealanders value for money”. She added that “no one wants the New Zealand Crown to get hit with the types of unpleasant surprises that some European governments have had to contend with in recent years. This was because, in part, they did not have a proper handle of their own finances, including their public balance sheets...”<sup>21</sup>

- In **Finland**, contingent liabilities are accounted for in the Ministry of Finance report *Overview of Central Government Risks and Liabilities 2015* (published annually) which details the nominal value of liabilities using sensitivity analyses and key indicators.<sup>22</sup> A Ministry of Finance working group<sup>23</sup> recommended methods to identify and assess contingent liabilities, many of which are reflected in the *Overview 2015* document.<sup>24</sup> Sustainability forecasts for the public finances are a primary focus of the Ministry of Finance.

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<sup>20</sup> Read the document ‘Investment Statement: Managing the Crown’s Balance Sheet’, available at <http://www.treasury.govt.nz/government/investmentstatements/2014/is14.pdf>

<sup>21</sup> See Speech Notes from 26 March 2014, available at <http://www.treasury.govt.nz/publications/media-speeches/speeches/2014investmentstatement/is14-slides.pdf>

<sup>22</sup> Forecast error reporting is carried out by the Finnish Ministry of Finance. Forecast errors were included in the *Economic Survey Spring 2016* by the Ministry of Finance, available at <http://vm.fi/en/publication?pubid=10703>. The National Audit Office of Finland (VTV) also assesses the forecasts of the Ministry of Finance for systemic bias, available at <https://www.vtv.fi/en>

<sup>23</sup> The working group report was titled ‘Development of the government’s financial risk reporting and management’ (available only in Finnish).

<sup>24</sup> See ‘Overview of Central Government Risks and Liabilities 2015’, available at <http://vm.fi/documents/10623/456829/Overview+of+Central+Government+Risks+and+Liabilities+2015/b275a6ab-47ea-49be-9cf9-815c75094e1f?version=1.1>

- In the **Netherlands**; (i), comprehensive stress tests are carried out every three years (to date in 2011 and 2014). The stress test scenarios are agreed between the Ministry of Finance, De Nederlandsche Bank (the Central Bank) and the Central Planning Bureau (CPB); (ii) with respect to contingent liabilities, the Ministry of Finance is responsible for determining the impact on debt-to-GDP. The issue of moral hazard is being addressed by charging premia to the relevant government agencies, while the control framework operates on a “no, unless” basis; i.e., unless the Ministry of Finance can be convinced otherwise. A nominal ceiling on guarantees is also applied (unless agreed otherwise) as well as a sunset clause. The budgetary cycle integrates proactive risk assessment of contingent liabilities on the Dutch public finances.

### C. Conclusions

The risk analyses reflected in Ireland’s recent budget documentation, especially in the April 2016 SPU, are an important step forward. However, there is scope for further improvement.

- The base line medium term scenario in Budget 2016 reflected a technical set of projections based on current trends and did not consider tax measures announced earlier as policy intentions by the government. In addition, no information was provided as to the key assumptions underlying expenditure forecasts, including the impact of demographic factors or other elements driving service demand. A government may well be reluctant to specify in advance the precise nature and quantitative impact of envisaged measures with substantial implications for public expenditure – such as those relating to public sector pay or social welfare benefits. Nevertheless, it would be highly useful to consider explicitly alternative broad scenarios as regards major taxation or expenditure categories (e.g., pay and pensions, social benefits and capital expenditures) to inform public debate about trade-offs among available options. Otherwise, in a period of rapid economic recovery, rising public expectations may lose sight of the constraints associated with Ireland’s very high debt burden and vulnerability to adverse exogenous shocks.
- Again to avoid the risk of complacency, the analysis could be extended to consider individual shocks greater than those presented to date, as well as the combined impact of several simultaneous shocks (i.e. a broader adverse macroeconomic scenario)<sup>25</sup>. Budget 2016 included an assessment of the overall balance of risks which were judged

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<sup>25</sup> The development of alternative “model-based” scenarios would likely involve close partnership with other bodies such as the CBI and the Economic and Social Research Institute – a quite common practice elsewhere.

to be on the downside. The discussion in the Budget could be enhanced by a more systematic and thorough presentation of individual risks (along the lines of the 2016 SPU), including a qualitative assessment of relative likelihood. Upside risks could also be considered.

- In view of the structural dependence on certain revenues that was the major cause of Ireland’s subsequent budgetary collapse, risk analysis should devote explicit attention to the volatility of some revenue categories, for example, taxes on property transactions (as was the case in the period leading up to 2008) and corporation tax revenues from multinational companies. In the case of the latter, if needed, legislation could be introduced (as was done in Australia) to address constraints arising from an inability of the Revenue Commissioners to share with other government departments information pertaining to individual large companies<sup>26</sup>.
- The forward looking analysis could, on a periodic basis, be extended to cover a longer period, for instance, at least 10 years<sup>27</sup>. While representing merely an “illustrative scenario”, this can help stimulate deeper thinking about underlying economic, social, demographic and environmental trends and their implications for risk management.
- Forecasting errors, while inevitable, can be an important source of fiscal risk. Budget documentation should analyse systematically divergences between outcomes and previous official forecasts for key variables and assess what improvements in methodology and data availability may be appropriate<sup>28</sup>.
- To date, the published outcomes of the risk analysis exercises have not addressed risks associated with a failure to maintain actual expenditures in line with planned amounts.

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<sup>26</sup> Given the concentration of corporation tax receipts among a relatively small number of large multinational corporations, this constraint may be a significant impediment to analysing overall budget vulnerabilities. This issue arose in Australia some years ago and led to passage of an amendment that permitted the sharing of tax receipt information on a strictly confidential basis with specified Treasury department staff.

<sup>27</sup> The New Zealand Treasury issues a document ‘*Affording Our Future*’ at least every four years that considers fiscal projections over a 40 year horizon, available at <http://www.treasury.govt.nz/government/longterm/fiscalposition/2013/affordingourfuture/lfts-13-aof.pdf> For several years Australia’s budget documentation has included 10 year out aggregate fiscal projections (see Budget 2016-17 documents at <http://www.budget.gov.au/index.htm>), while an Intergenerational Report (IGR) is issued every five years that contains projections covering 40 years (see IGR 2015 at [http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/2015%20Intergenerational%20Report/Downloads/PDF/2015\\_IGR.ashx](http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2015/2015%20Intergenerational%20Report/Downloads/PDF/2015_IGR.ashx)

<sup>28</sup> In the UK, the Office of Budget Responsibility (OBR) also publishes annually an evaluation of the reasons underlying forecast errors. However, in Ireland’s case, it is appropriate that an assessment, in the first instance, be the responsibility of the Department of Finance.

The system of multi-year expenditure ceilings, a core component of the Government's medium term budgetary framework designed to ensure that overruns in a single year would be compensated subsequently, has been undermined by continuous upward revisions in spending, notably in the health sector. The reasons for these overruns and the steps being taken to prevent them in the future should be addressed as part of the risk assessment<sup>29</sup>.

- More generally, the accounting presentation of the government's financial position and risk outlook is based only on a "cash flow" approach that has two inherent weaknesses. First, it does not address "balance sheet risks", i.e., movements in assets and liabilities (including contingent liabilities) which affect the financial position of the State; as described earlier, several countries have devoted increased attention to this aspect. Second, it does not provide an incentive for the efficient use of capital. Under an alternative, accrual accounting framework, a depreciation charge would be applied to the use of public sector non-financial assets by government departments and agencies, in particular, property assets and infrastructure<sup>30</sup>. For example in the case of offices, this would encourage more efficient usage or the sale or return to the central government of properties which were surplus or in excess of requirements. The framework would also include accrued pension liabilities so as to reflect the true cost of additional labour services.
- Good risk management requires flexibility to ensure that the quantity and quality of human resources matches evolving needs. However, compared to several other countries, Ireland has operated until very recently a very tight centralised "triple lock" control system: pay rates for each grade, departmental aggregate pay budgets and allowable numbers employed were determined centrally (by DPER), and new posts and upgrades require centralised approval.

This system was partly relaxed in 2015 when the Department of Public Expenditure and Reform (DPER) delegated sanction for management of staff numbers to the majority of government departments. The delegation allows departments to recruit/promote locally (without reversion to DPER for approval) for grades up to and including Principal Officer, subject to adherence to overall pay limits, monthly and quarterly reporting on pay and numbers and "compliance with Work Force planning".

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<sup>29</sup> In Denmark, which experienced expenditure overruns in previous years, with broad political support expenditure ceilings have been introduced that have, by all accounts been an effective binding constraint.

<sup>30</sup> This practice is followed, to different extents, in Nordic countries.

In the UK, central controls on public sector numbers and pay budgets were relaxed in the late 1990s and there is flexibility to transfer expenditures between pay and non-pay budgets<sup>31</sup>. The managerial freedom under this more devolved system appears to have worked well and substantial reductions in public sector numbers have been achieved. Other countries that have introduced more flexibility (for example, Denmark, Norway and the Netherlands) appear to have still maintained effective control over pay.<sup>32</sup>

While recognising the budgetary importance of the pay bill and notwithstanding the recent welcome changes, the Irish system needs to ensure that the system does not discourage efficiency by unduly circumscribing managerial flexibility and diminishing accountability for outcomes<sup>33</sup>. Serious consideration should be given to further loosening this system (including extending the recent changes to public sector agencies), along the lines of, say the Danish model. Also, the practice whereby external recruits are placed at the first point of an incremental pay scale, regardless of experience should be modified.

- Finally, the main focus of official (and media) reporting on the public finances has tended to be on the monthly Exchequer Statement. However, the General Government accounts – produced four months after the end of every quarter - are more comprehensive and are used to assess compliance with EU fiscal rules. Significant differences arise between these two sets of data. The Exchequer statement has been supplemented by an “Analytical Statement” since September 2012. This presentation shows voted expenditure on a gross basis, including spending from the Social Insurance Fund. The monthly outturn for Appropriations-in-Aid (A-in-As), involving departmental receipts that may be retained to defray related expenses is shown separately. A-in-As do not form part of the Exchequer accounts. This alternative format allows for a clearer analysis of underlying drivers of both expenditure and revenue. Greater official focus on the Analytical Statement and on the quarterly publication of the General Government accounts would facilitate increased public understanding of the true fiscal position than is at present the case.

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<sup>31</sup> Specific controls are exercised on any salary in the civil service above that of the Prime Minister.

<sup>32</sup> Norway and the Netherlands rely entirely on a budget for pay and do not impose detailed controls on numbers and posts. In Denmark, numbers control as a general policy was abandoned about 30 years ago and exists only for the 3-4 highest level posts; pay savings may be transferred to other operational spending categories but not in reverse. Departmental heads have flexibility on setting pay rates for critical posts, within reasonable limits.

<sup>33</sup> An example of a less than optimal outcome may be over reliance by the health sector on agency employees.

The Irish Fiscal Advisory Council (IFAC) has drawn attention to several of the above shortcomings, including the absence of economically more meaningful medium term projections (the November 2015 IFAC report presented detailed taxation and revenue projections<sup>34</sup>) and the risks associated with successive expenditure overruns. In 2013 IFAC issued a comprehensive paper<sup>35</sup> dealing with the “balance sheet approach” and it has also analysed the sources of forecast errors on several occasions<sup>36</sup>. While these initiatives on the part of IFAC are very welcome, they are not a substitute for the government itself taking the lead on key aspects of risk assessment.

The IMF’s 2013 Fiscal Transparency Report<sup>37</sup> noted that information on some elements relating to risk assessment were contained in documentation of agencies other than the Department of Finance (for instance, the Central Bank, the NTMA or the Comptroller and Auditor General). For ease of access and comprehension, it is preferable to consolidate the differing components pertaining to the “universe” of risks into a single comprehensive report as part of the annual budget documentation.

#### **IV. ENHANCING THE ROLE OF PARLIAMENT**

##### **A. Background**

Ireland’s potential for incurring inappropriate fiscal risk is to a significant extent circumscribed by commitments to the “fiscal rules” enshrined in the European-wide Fiscal Compact Treaty and reflected subsequently in Ireland’s Fiscal Responsibility Act<sup>38</sup>. However, these fiscal rules, while highly valuable, are of a somewhat “one size fits all” nature and need to be supplemented by a focus on longer term sustainability issues that take account of the specific characteristics of the Irish economy. It is important therefore to build up a suitable system of domestic “checks and balances”. In this context, a strengthened role of Parliament in overseeing fiscal policy has been the subject of active public and political discussion in recent months.

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<sup>34</sup> IFAC (2015) ‘Fiscal Assessment Report’, available at [http://www.fiscalcouncil.ie/wp-content/uploads/2015/11/FAR\\_Draft\\_30.11.15-Website-Final.pdf](http://www.fiscalcouncil.ie/wp-content/uploads/2015/11/FAR_Draft_30.11.15-Website-Final.pdf)

<sup>35</sup> IFAC (2013) ‘The Government’s Balance Sheet after the Crisis: A Comprehensive Perspective’, available at <http://www.fiscalcouncil.ie/wp-content/uploads/2013/09/Balance-Sheet1.pdf>

<sup>36</sup> IFAC (September, 2015) ‘An Analysis of Tax Forecasting Errors in Ireland’, available at <http://www.fiscalcouncil.ie/wp-content/uploads/2012/01/An-Analysis-of-Tax-Forecasting-Errors-in-Ireland-final.pdf> and IFAC (March, 2015) ‘Uncertainty in Macroeconomic Data: The Case of Ireland’, available at <http://www.fiscalcouncil.ie/wp-content/uploads/2015/03/Uncertainty-in-Macroeconomic-Data-Final-09-july-2015.pdf>

<sup>37</sup> IMF (2013) ‘Ireland: Fiscal Transparency Assessment’, available at <https://www.imf.org/external/pubs/ft/scr/2013/cr13209.pdf>

<sup>38</sup> See each semi-annual Fiscal Assessment Report by IFAC for a comprehensive discussion of the methodology and application of the various rules involved.

A move in this direction would represent a significant departure. A feature of Ireland's pre-crisis period was the paucity of substantive debate by the Oireachtas on economic and financial issues, including the overreliance of government revenues on property-related transactions and the unsustainability of rising budgetary expenditures. This failure to exercise effective parliamentary oversight may have mainly been due to a reluctance by politicians (shared by the wider public) to question the sustainability of the boom. However, arguably it was symptomatic of a more general lack of involvement by parliamentary representatives in discussions of economic and financial matters. According to a recent OECD review, "the level of budget engagement of the Houses of the Oireachtas is the lowest observed in any OECD country."<sup>39</sup> This shortcoming is particularly of concern given the exclusive role of Dáil Éireann in approving Budgets and its function in initiating so-called "money bills" which incur a charge on the public finances.

As noted above, the absence of sufficiently substantive input to the parliamentary process dilutes one of the potentially important "checks and balances" that can guard against the incurrence of excessive fiscal risk. Although the Irish Fiscal Advisory Council (IFAC) constitutes an independent "watchdog" with respect to the risk implications associated with overall fiscal policy, there may also be a need for the risks associated with specific policy measures to be more adequately scrutinised, including by elected representatives.

Against this background, there has recently been increased discussion of the establishment of an "Independent Budgetary Office" (IBO) to serve, inter alia, the needs of parliament. The matter was raised in the 2015 "*Spring Economic Statement*" of the government which indicated at that time that it would consider exploring such a possibility but that any decisions on the matter were unlikely to be taken in the short term. More recently, the OECD, in addition to proposing important changes relating to the parliamentary budgetary process, has also advocated establishing an IBO<sup>40</sup>. The recommendation was repeated in the report of the Oireachtas Banking Inquiry<sup>41</sup>. The general question of access by parliamentarians to more specialised resources on fiscal matters was also raised in some party manifestos prior to the February 2016 general election. The Programme for

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<sup>39</sup> OECD (2015) 'Review of budget oversight by parliament: Ireland', available at <http://www.oireachtas.ie/parliament/media/housesoftheoireachtas/Ireland-Parliamentary-Budget-Review-Preliminary-Draft.pdf>

<sup>40</sup> OECD (2015), *op cit*.

<sup>41</sup> Houses of the Oireachtas (2016) 'Report of the Joint Committee of Inquiry into the Banking Crisis – Volume 1: Report', available at <http://inquiries.oireachtas.ie/banking/wp-content/uploads/2016/01/02106-HOI-BE-Report-Volume1.pdf>

Government 2016 envisages the establishment of “An Independent Budget and Finance Office as a resource for the Oireachtas.”<sup>42</sup>

The concept of an Independent Budget Office belongs to a broader set of entities known as “Independent Fiscal Institutions” (IFIs) which have become widespread in many OECD countries in recent years<sup>43</sup>. The functions of IFIs generally encompass some subset of: (i) assessing the accuracy of budgetary projections; (ii) providing an assessment of the “fiscal stance”, including compliance with any pre-set “fiscal rules”; (iii) preparation of official macroeconomic forecasts underlying the budget; (iv) endorsement (or non-endorsement) of these official forecasts; (v) research on specific fiscal topics; and (vi) provision of costings of specific taxation/expenditure proposals by the public and/or parliament (including, in some cases, those associated with parties’ election manifestos). In the Irish context, the mandate of IFAC comprises several of these functions, namely, (i), (ii), (iv) and (v)<sup>44</sup> but not those relating to (iii) or to (vi) (macroeconomic forecasting and costings, both of which remain the responsibility of the Department of Finance).

Several other IFIs provide analysis of specific expenditure and taxation measures, including the US Congressional Budget Office (CBO), the UK Office for Budget Responsibility (OBR), the Netherlands Bureau for Economic Policy Analysis (the Central Planning Bureau (CPB) – the oldest IFI, established in 1945), the Canadian Parliamentary Budget Office, the Austrian Parliamentary Budget Office and, most recently (in 2012) the Australian Parliamentary Budget Office (PBO).

Among the various IFIs the role of the **Netherlands CPB** is the most comprehensive (see Box IV.1). It has a broad mandate to analyse the effects of current and future government policies. Its functions include carrying out and publishing assessments of specific measures, including the overall costing of political parties’ election manifestos and cost-benefit analyses of infrastructural plans.

The CPB plays a particularly important role at the start of each election cycle. It prepares a Medium Term (four year ahead) forecast as a basis for the development of policy plans by parties and the negotiations to form a coalition government after the election. Since 1986, the CPB has provided to all interested political parties analyses of the economic effects of the proposals in their manifestos which are analysed using an identical methodology and

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<sup>42</sup> Programme for Government 2016, available at [http://www.merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme\\_for\\_Partnership\\_Government.pdf](http://www.merrionstreet.ie/MerrionStreet/en/ImageLibrary/Programme_for_Partnership_Government.pdf)

<sup>43</sup> See Kopits, G., ed (2013), *Restoring Public Debt Sustainability: the Role of Independent Fiscal Institutions*: Oxford University Press.

<sup>44</sup> To date, IFAC’s research activities have covered topics affecting the overall fiscal position.

published before the election. Post-election, the CPB is often requested to analyse the policy proposals discussed during the negotiations to form a coalition government. The CPB is part of the Netherlands Ministry of Economic Affairs. The Director is appointed by the Minister for Economic Affairs but is fully independent in the conduct of its work. It has a separate legal mandate and an independent executive and statutory committee.

The **Australian Parliamentary Budget Officer** provides an alternative model. It is a statutory, independent position appointed by the presiding officers of Parliament with a professional staff of about 40 (see Box IV.2). About two thirds of its resources are devoted to responding to requests by parliamentarians for costings of specific budgetary proposals. Roughly one quarter of the PBO's work is concerned with self-initiated research proposals. The PBO does not provide policy advice. Neither does it evaluate the economic implications of specific budgetary proposals.

The Australian Auditor General has praised the work of the PBO for “levelling the playing field for all parliamentarians... [and [for achieving] greater transparency about the fiscal and budgetary framework”, remarks echoed by the relevant Parliamentary committee. An independent survey of stakeholders reported strong satisfaction with the quality of the PBO's output. The Australian model contrasts with the existing practice in Ireland whereby under the system of Parliamentary Questions (PQs) answers to Dáil Deputies' requests for information on specific costings (revenue or expenditure-related) are prepared by civil servants and conveyed to the Deputy by the responsible Minister and published in the Dáil reports.

#### **Box IV. 1 Netherlands - The Central Planning Bureau (CPB)**

The CPB Netherlands Bureau for Economic Policy Analysis, also known as the Central Planning Bureau (CPB), was established in 1945, with Jan Tinbergen, a highly distinguished laureate of the Nobel Memorial Prize in Economic Sciences, as founding director (1945-1955). While the CPB is part of the Ministry of Economic Affairs it is independent of the Ministry with its own legal mandate supported by an independent executive and advisory committee. The Director of the CPB is appointed by the Minister for Economic Affairs.

The CPB analyses the effects of current and future government policies, as well as undertaking economic forecasting. In addition to carrying research on its own initiative, the bureau does research at the request of the government, parliament (collectively), individual members of parliament, national trade unions or employers' federations. The CPB is split into five analytical sectors; (1) public finance, (2) macroeconomics, (3) labour, education and pensions, (4) competition and regulation, and (5) climate and regional economics. Cost-benefit analyses of large infrastructural projects have been undertaken since the 1950s. Research on broad topics such as ageing, healthcare, globalization, education and the financial crisis is also carried out.

The CPB publishes its own assessments on various issues. Since 1986 it has analysed the costings of political parties' election manifestos (if parties so request). The methodology underpinning the analysis is the same for all parties that participate. The process involves the development of a benchmark macroeconomic baseline on the assumption of no policy change in the next term of government. The political parties provide precise information on their policy proposals to the CPB via a common quantitative spreadsheet (the CPB does not read the manifesto documents). The costs of each measure are calculated and parties may subsequently submit an amended set of proposals for further costing. The impacts of measures on the public finances, different income groups and the economy are assessed; there is an ongoing debate as to the inclusion of second round effects in the analysis<sup>1</sup>. Assessments are released prior to the election which inform policy debate.

The CPB's *Medium Term Forecast* (four years out) is the benchmark for the development of fiscal and economic proposals of political parties during and after an election. The *Macro Economic Outlook* (MEV)<sup>2</sup> is published with the Annual Budget in September. Short forecast updates are published quarterly. The CPB's *Central Economic Plan* (CEP), published annually<sup>3</sup>, monitors adherence to the fiscal rules of the Stability and Growth Pact. The Ministry of Finance in practice uses only the macroeconomic forecasts produced by the CPB. The CPB has collaborated in 2011 and 2014 with the Ministry of Finance and De Nederlandsche Bank (the Central Bank) regarding stress tests of the banking system.

1. Research has been conducted over recent years to assess the long-term sustainability of the public finances. In relation to the ageing study conducted by the CPB in 2014, it found a positive sustainability balance of 0.4% of GDP.

2. CPB (2015), '*Macro Economic Outlook 2016*', available at <http://www.cpb.nl/en/publication/macro-economic-outlook-mev-2016> (English translation of chapter 1)

3. CPB (2016), '*Central Economic Plan 2016*', available at <http://www.cpb.nl/en/publication/central-economic-plan-2016> (English translation of chapter 1)

## Box IV. 2 Australia – The Parliamentary Budget Office

The Parliamentary Budget Office (PBO) was established in July 2012 following the consideration of the report by the Joint Select Committee on the Parliamentary Budget Office (March 2011) and the enactment of legislation by Parliament in December 2011. The purpose of the PBO, as cited in legislation, is “to inform the Parliament by providing... independent and non-partisan analysis of the budget cycle, fiscal policy and the financial implications of proposals.”<sup>1</sup> The PBO has divisions in fiscal policy analysis and budget analysis (revenue and program analysis). Members of Parliament can use the *pro forma* documents provided by the PBO for costing requests.

The PBO does not provide policy advice or recommendations in order to protect its independence. The Parliamentary Budget Officer “must assist the Presiding Officers to fulfil the Presiding Officers’ accountability obligations to the Parliament and provide factual information, as required by the Parliament, in relation to the operation and administration of the Parliamentary Budget Office.”<sup>2</sup> Evaluation of the PBO includes Auditor General Audits, Joint Committee on Public Accounts and Audit (JCPA) oversight and stakeholder surveys. The JCPA published a review of the PBO in November 2014 which was positive about the work of the Office. The PBO is also subject to external audit by the Australian National Audit Office.

A memorandum of understanding between the PBO and other government agencies (including the Department of Finance and the Department of the Treasury) supports the exchange of information vital for the proper functioning of the PBO. The work plan for 2015 – 16 states that the PBO “aims to help level the playing field for all parliamentarians by providing access to costing and budget analysis services, and enhance the transparency and public understanding of election commitments and the budget and fiscal policy settings”<sup>3</sup>.

As noted above, about two thirds of its resources are devoted to responding to requests by parliamentarians for costings of specific budgetary proposals. Responses are confidential, unless the Member of Parliament indicates otherwise. The PBO has a particular role in the costings of election manifestos. Responses provided to any request received during the so called “caretaker period” (i.e., the period between the calling of an election and the election date) are required to be published. However, the number of requests received during this limited period is relatively small – most parliamentarians have submitted their requests prior to the start of the caretaker period and thus remain confidential. The PBO has observed that the manifesto costings it publishes after the election have accorded closely with the costings provided earlier on a confidential basis. The Office has responded to more than 3,000 requests since it began. It publishes research on the structural budget deficit, budget sensitivity to shocks and medium term projections.

1. Parliamentary Service Amendment (Parliamentary Budget Officer) Act 2011, available at <https://www.legislation.gov.au/Details/C2011A00170>
2. Ibid.
3. ‘Work Plan 2015-16’ (August, 2015), available at [http://www.aph.gov.au/About/Parliament/Parliamentary\\_Departments/Parliamentary\\_Budget\\_Office/Corporate\\_publications/Work\\_Plan\\_2015-16](http://www.aph.gov.au/About/Parliament/Parliamentary_Departments/Parliamentary_Budget_Office/Corporate_publications/Work_Plan_2015-16)

The UK's **Office of Budget Responsibility (OBR)** established in 2010, prepares the official macroeconomic and budgetary forecasts, including certifying the costings underlying specific policy proposals included in the budget. It does not undertake costings independently, nor does it comment on the appropriateness of fiscal policy (either in the aggregate or with respect to specific measures). A first external peer review of the OBR's activities was undertaken in 2014 (the Page review). At the time, the question of whether the OBR should be asked to take on the role of costing election manifestos was raised. The review concluded as follows:

“Given that the organisational underpinnings of the OBR are in their institutional infancy and are interdependent with a host of government departments and agencies, it is recommended that caution be exercised in considering the expansion of the OBR's mandate (e.g. costing certification of opposition manifestos). The OBR may not have the organisational capacity to expand its remit without further drawing on the resources of other government departments. In addition, the particularly narrow legal framework of the OBR and its interdependencies with the executive branch may risk creating perceptions of conflicts-of-interest”.<sup>45</sup>

Subsequent to this Review, the UK Treasury undertook a separate review of the OBR which also concluded that extending OBR's remit to include election-related costings would not be appropriate.<sup>46</sup>

## **B. Conclusions**

In considering the establishment of an institutional mechanism to provide more extensive and independent specialised support on fiscal matters to the Dáil and Seanad, the extent and nature of the potential usage by parliamentarians needs to be assessed first. Possible shortcomings with the existing arrangements involving Parliamentary Questions should be evaluated<sup>47</sup>.

It could be suggested that insufficient parliamentary involvement has stemmed more from the preoccupation of public representatives with serving the needs of constituents under the current electoral system rather than to lack of access to relevant information and analyses. On this view, the provision of more specialised resources in of itself would not address this aspect. However, if even a modest number of representatives were to make use of an IBO (especially at first), this could make the initiative worthwhile, while over time “supply could create its own demand”, especially if an IBO is combined with other changes

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<sup>45</sup> ‘External review of the Office for Budget Responsibility’ (September, 2014), available at [http://budgetresponsibility.org.uk/docs/dlm\\_uploads/External\\_review\\_2014.pdf](http://budgetresponsibility.org.uk/docs/dlm_uploads/External_review_2014.pdf)

in the parliamentary process, including the planned establishment of an Oireachtas Budgetary Committee.

Rather than establishing a separate parliamentary budget office (along the Australian model) or a CPB organisation, along the lines of the Netherlands model (which is recognised internationally as particularly effective), an option could be for the already existing IFAC to take on the additional role of providing policy costings and, possibly, related economic evaluations<sup>48</sup>. Expanding the role of IFAC would require legislative change, including addressing the question of possible “dual accountability”, and ensuring its independence is copper fastened. Although IFAC is accountable to parliament (in the sense that it appears on a regular basis before the Oireachtas Economic and Financial Committee), IFAC members are appointed (and may be dismissed) by the Minister of Finance. The recent external peer review of IFAC raised the possibility of it assuming some responsibility for costings, specifically of election manifestos<sup>49</sup>. While not expressing a view on the merits of the matter, the evaluation report noted that costings work would require a major expansion in the size and skill mix of IFAC staff.

Irrespective of its location, the development of an IBO with a more comprehensive role would likely require significantly more resources than are applied at present to IFAC. However, the potential economic and social dividend from an enhanced oversight role for the Dáil and Seanad in terms of improved policy discussion and debate could potentially be considerable. Nevertheless, before any decisions are taken as to precise institutional modalities, it is recommended that a small group be established to assess in-depth the relative merits of alternative possible approaches to meeting clearly defined objectives. The group would address issues such as the nature and extent of likely demands on the office’s resources by parliamentarians, the staffing (both size and expertise) requirements involved, the relationship between the office and government departments, the possible need for legislative underpinning and the financial costs.

If an “IFAC+” option were to be explored, it would be important to consider carefully the legislative, accountability and resource implications for IFAC as it is currently, as well as the

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<sup>46</sup> ‘HM Treasury review of the Office for Budget Responsibility’ (September, 2015), available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/458248/HM\\_Treasury\\_review\\_of\\_the\\_OBR\\_03092015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458248/HM_Treasury_review_of_the_OBR_03092015.pdf)

<sup>47</sup> In the run up to an election, the Department of Finance provides a confidential service to political parties to cost individual specific proposals.

<sup>48</sup> An independent fiscal council similar to IFAC does not exist in Australia.

<sup>49</sup> IFAC (2015) ‘How is the Irish Fiscal Advisory Council Performing? - An Independent Evaluation of the First Years of IFAC’ (Jonung, Begg and Tutty), available at [http://www.fiscalcouncil.ie/wp-content/uploads/2012/01/PeerReview\\_Formatted\\_23062015.pdf](http://www.fiscalcouncil.ie/wp-content/uploads/2012/01/PeerReview_Formatted_23062015.pdf)

need to ensure that IFAC's independence is not compromised. The possibility of the Economic and Social Research Institute (ESRI) being associated in some way with a new arrangement could also be explored.

## V. RISKS TO FINANCIAL STABILITY

A critical lesson from the crisis in Ireland and elsewhere is the need for significantly strengthened supervision and regulation of the financial system to reduce the major risks associated with imprudent behaviour. In the Euro area, this has involved, among other things, the assumption by the Single Supervisory Mechanism (overseen by the European Central Bank) of supervisory responsibilities for all "systemically important" banks, together with a framework for the tightening of capital requirements. The new framework has heightened attention at the national level to the formulation and implementation of "macro prudential policies", i.e., policies aimed at ensuring overall financial stability by influencing activities of the financial system.

There is general recognition that some "learning from experience" is needed in order to develop the most effective framework and modus operandi for implementing macro prudential policies. In this regard the assignment of responsibilities in this policy area (and associated institutional arrangements) is an important issue to be considered.<sup>50</sup>

### A. The Current Irish Structure

The current structure in Ireland features key elements relevant for considering an optimal macroprudential framework: (i) the CBI has a statutory mandate for financial stability and is also the designated national authority in relation to macroprudential powers in the Capital Requirements Regulation and Directive (CRR/CRD IV) and European macroprudential requirements related to the European Systemic Risk Board (ESRB). The CBI has a unitary structure, encompassing the microprudential functions earlier assigned to a separate financial regulator; (ii) the CBI's approach has been articulated clearly in the published document "A Macro-Prudential Policy Framework for Ireland" (2014); (iii) the independence of the CBI is enshrined in legislation, while remaining accountable to the Houses of the Oireachtas<sup>51</sup>; (iv) a Principals Group consisting of the CBI, the Department of Finance and

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<sup>50</sup> The question of the appropriate use of specific macro prudential policy instruments is not addressed in this report.

<sup>51</sup> In terms of transparency, a decision has recently been taken to publish the minutes of the Central Bank Commission, the main decision-making body of the CBI.

the National Treasury Management Agency (NTMA), exists to facilitate interaction between these institutions on key economic and financial issues. However, the Principals Group has not been assigned an explicit role as regards the conduct of financial stability policies; and (v) in addition to up to six external appointees, the Secretary General of the Department of Finance is *ex officio* a member of the CBI Commission; he/she is required to act in the collective interest of the CBI rather than as a representative of the Department<sup>52</sup>. In order to ensure external views are taken into consideration, the CBI holds biannual round tables for outside experts, one relating to overall economic and financial risks and the other relating specifically to the property sector.

Assignment of responsibility to the CBI for macroprudential policy is consistent with the need, in light of pre-crisis events in Ireland, to ensure that the CBI is, and is seen to be, both *de jure* and *de facto* independent in the discharge of its duties. It is generally acknowledged that, as with monetary policy, independence from short term political pressures is important in order to ensure that policies focused on stability over the medium and long term can be developed and implemented. In this case appropriate arrangements for democratic accountability of the CBI are essential.

The CBI, as part of its macroprudential initiative in early 2015 to impose maximum loan to value (LTV) and loan to income ratios on banks' mortgage lending, invited reactions from interested parties (including the public) on the Bank's draft proposals. A wide range of submissions were received (including from the Department of Finance) and published prior to the CBI announcing its final decisions.<sup>53</sup> Following the submissions received, and taking the views and evidence into consideration, some important changes were made to the regulations by the CBI. The measures were introduced by regulation and, as is the case with all statutory instruments, this regulation was laid before the Houses of the Oireachtas and came into effect immediately when signed.

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<sup>52</sup> This is consistent with the approach underlying the boards of state agencies in general – board members are required to serve the interests of the agency concerned rather than act as a representative of their own department or agency. In the CBI's case, the Secretary General of the Department of Finance is not (normally) permitted to share documents received as a member of the CBI Commission with other Department of Finance officials.

<sup>53</sup> Certain macro prudential instruments, such as the imposition of capital requirements, have already been transposed into Irish law and their application is solely the responsibility of the CBI. In the case of LTV limits, under the Central Bank (Supervision and Enforcement) Act 2013, the CBI is required to consult with the Minister for Finance, including by providing the Minister with a draft of the proposed regulations and with other bodies as appropriate. The finalised regulations must also be placed before each House of the Oireachtas.

## B. Consultative Structures in Other Countries

The institutional arrangements and associated governance arrangements for macro prudential policy making and implementation differ significantly across countries<sup>54</sup>. Several have established structured/formal frameworks involving explicit interaction between the central bank/financial regulator and other concerned official bodies, some of which are statutory in nature<sup>55</sup>. It would appear that formal coordination arrangements are particularly important when either: the micro and macro prudential supervisors are not the same body (unlike in Ireland's unitary system), the central bank is not the designated macroprudential authority (again, unlike the CBI) or an authority other than the central bank (such as a Ministry of Finance or Parliament) has the power to change certain borrower-based prudential measures<sup>56</sup>.

**Australia:** a "Council of Financial Regulators", chaired by the Governor of the Reserve Bank of Australia and consisting of representatives of the Reserve Bank, the Australian Prudential Regulatory Authority, the Australian Securities and Investments Commission and the Treasury has been established. The Council, which is non-statutory, is a forum seen as helping arrive at a consensus regarding key financial policy matters. However, final responsibility for macro prudential policies remains with the Reserve Bank<sup>57</sup>.

**Denmark:** a Systemic Risk Council (SRC) is chaired by the chair of the Board of Governors of the Danish National Bank (the central bank). Two members are appointed by the Danish Financial Supervisory Agency (FSA) with the remaining members appointed by several ministries<sup>58</sup>. The SRC may issue "advice", "warnings" and "recommendations" that, subject to confidentiality/sensitivity considerations, are published. Recommendations by the SRC may be directed to the FSA or, in the case of legislative action, to the government and are addressed via a "comply or explain" principle. The SRC has a role in reaching a consensus on what macro prudential instruments should be utilised. However, the Minister for Business and Growth is responsible for setting the countercyclical capital buffer. Denmark is unique

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<sup>54</sup> For an overview, see 'Allocating macro-prudential powers' (ESRB, 2014), available at

[https://www.esrb.europa.eu/pub/pdf/asc/Reports\\_ASC\\_5\\_1411.pdf?15faaf2c4fad94ff647c68d58bc12e2b](https://www.esrb.europa.eu/pub/pdf/asc/Reports_ASC_5_1411.pdf?15faaf2c4fad94ff647c68d58bc12e2b)

<sup>55</sup> In the case of Singapore, the Monetary Authority of Singapore (MAS) is responsible for macro prudential policy. However, given the governance structures in Singapore and the fact that the Deputy Chairman of the MAS is a senior member of the government, in practice a "whole of government" approach predominates in key decision making by MAS.

<sup>56</sup> In Ireland's case, after measures are "laid before the Oireachtas" (see above) they could subsequently be annulled by Oireachtas decision.

<sup>57</sup> A Memorandum of Understanding between the Members of the Council of Financial Regulators underpins the Council's activities, available at <http://www.cfr.gov.au/about-cfr/memoranda.html>

<sup>58</sup> This latter group does not have voting rights with respect to warnings or recommendations by the SRC that are directed at the government.

in this respect as it the only EU country where the Ministry of Finance is responsible for macroprudential policy.

**Finland:** macro prudential policies are implemented by the Financial Supervisory Authority (FSA). The chair of the FSA Board is the Deputy Governor of the central bank (the Bank of Finland) and the vice chairman is the Permanent Secretary of the Ministry of Finance. A Memorandum of Understanding between the FSA and ministries specifies arrangements for information sharing. The FSA takes decisions on the countercyclical capital buffer and the loan-to-value ratios.

**Germany:** a Financial Stability Committee, established by legislation in 2013, consists of representatives of the Ministry of Finance, the central bank (the Bundesbank) and the financial regulatory authority (Bafin). The Committee plays an advisory role, similar to that of the SRC in Denmark.

**Netherlands:** the central bank (De Nederlandsche Bank (DNB)) is responsible for applying the buffer capital requirement for systemic banks and, the countercyclical capital buffer<sup>59</sup>. Decisions regarding LTV limits and related measures are made by the Ministry of Finance. A Financial Stability Committee (FSC) was created in November 2012 consisting of representatives of the DNB, the Authority for Financial Markets and the Ministry of Finance (a non-voting member) and is chaired by the President of the DNB. The FSC's role is largely advisory in nature<sup>60</sup>.

**New Zealand:** macro prudential policy is addressed via a formal Memorandum of Understanding (May 2013) between the Reserve Bank of New Zealand (RBNZ) and the Ministry of Finance<sup>61</sup>. The MoU outlines the RBNZ's mandate and role as well as its (broad) operational approach. It provides explicitly for "consultation" by the RBNZ with the Ministry, while stating that decision making responsibility lies solely with the Governor of the RBNZ. The MoU outlines the four macro prudential instruments which can be applied in New Zealand; the countercyclical capital buffer, adjustments to the minimum core funding ratio, sectoral capital requirements and temporary restrictions on high loan-to-value (LTV) ratio residential mortgages.

**Norway:** the Ministry of Finance takes final decisions on macro prudential matters. The central bank (Norges Bank) and the financial regulator (FSA) play an advisory role.

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<sup>59</sup> <http://www.dnb.nl/en/about-dnb/duties/financial-stability/macroprudentiele-instrumenten/index.jsp>

<sup>60</sup> [http://www.financieelstabiliteitscomite.nl/en/about\\_fsc](http://www.financieelstabiliteitscomite.nl/en/about_fsc)

<sup>61</sup> <http://rbnz.govt.nz/financial-stability/macro-prudential-policy/mou-between-minister-of-finance-and-governor-of-rbnz>

**United Kingdom:** the Financial Policy Committee (FPC), under the auspices of the Bank of England (BoE), is responsible for macroprudential decisions. The FPC is chaired by the Governor of the BoE and consists of BoE Deputy Governors, the Head of Financial Stability at the BoE, the Head of the Financial Conduct Authority (FCA), 4 external appointees and a non-voting member from the UK Treasury<sup>62</sup>.

### C. Conclusions

Generally speaking the countries referred to above have put in place relatively more formal interactive structures relating to the formulation of financial stability policy than is the case currently in Ireland. However, the wide variety of experiences suggests that an appropriate framework needs to be tailored to specific circumstances and may require adaptation over time. For instance, in Australia, while the approach of a non-statutory Council of Financial Regulators is felt to have contributed effectively to consensus making up to now, it is recognised that that this may not necessarily always be the case. In New Zealand, there is an ongoing debate as to whether the reference in the RNBZ/Ministry of Finance MoU needs to elaborate more clearly the meaning of “consultation” between the parties. Aspects of some of the arrangements currently in force elsewhere are also the subject of ongoing discussion.

The framework adopted in Ireland since the changes legislated in 2011 has reinforced the independent role of the CBI – an extremely important objective. It is critical that the arrangements in force should not impede the need for timely decision making or allow for inaction bias, especially when what may be viewed as politically sensitive issues are involved.

That said, as memories of the crisis begin to fade, and to reduce the risks of creeping silo mentalities and perspectives, it is important that an effective consultative structure be firmly in place. This will help ensure systematic and efficient sharing of information, when appropriate, and a coordinated monitoring of financial conditions. It could also help achieve a greater “buy in” from other stakeholders and generate broader support for measures that, while not necessarily popular, may be required from time to time.

The current Principals Group can serve this consultative purpose. However, in order for this arrangement to work effectively a number of changes are suggested, aimed at putting the Group on a more formal footing, along the lines of somewhat similar arrangements elsewhere. Specifically:

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<sup>62</sup> <http://www.bankofengland.co.uk/financialstability/pages/fpc/default.aspx>

- the Group should adopt formal terms of reference, covering explicitly consultation and review of economic/ financial stability/ financial crisis management issues.
- the core membership of the Group should be specified explicitly, presumably to consist of representatives of the Department of Finance, the CBI (including the Governor and the two Deputy Governors) and the NTMA. Others might be invited to participate in discussions of particular topics as appropriate.
- the Group should agree on a memorandum of understanding relating to the sharing of information between concerned parties, where the exchange of information is required for the respective parties to carry out their responsibilities. The exchange of information would be subject to the legal restrictions that exist on disclosure of information, notably Section 33AK of the Central Bank Act.
- the Group should meet regularly and specify a minimum number of meetings to be convened annually. Consistent with a recent similar decision by the CBI Commission, the Group should publish minutes of its meetings. Information on the terms of reference of the Group and its composition should also be posted publicly.

The above suggestions could significantly help strengthen cooperation between the CBI and other stakeholders in the area of financial stability. If necessary, sub groups of the Principals Group could be established to deal with specific financial stability issues and ensure efficient sharing of analysis and information.

## **VI. THE CIVIL SERVICE - AN ESSENTIAL ROLE IN NATIONAL RISK MANAGEMENT**

The identification of risks and the formulation of policies to adequately address them are a vital part of national risk management. In a democracy such as Ireland, a strong, well-functioning and professional civil service is critical to performing these tasks to a high standard. In order to be able to provide the best possible advice based on careful evaluation of alternatives, civil servants should be selected carefully, have very high ethical standards and possess the necessary skills and competencies. The status and calibre of the Civil Service should be such that Ministers have confidence in the quality of advice and analysis provided by his/her officials and that Ministerial and government policies and lawful decisions will be implemented professionally and effectively. Moreover, civil service structures (including the formal administrative arrangements, procedures for appointments, remuneration and promotion, as well as the conduct of work and organisational cultures) should be sufficiently robust so that the information, advice and recommendations

provided to Ministers are evidence-based and reflect sound analysis and judgement, and not tailored to meet actual or perceived political preferences<sup>63</sup>.

From this perspective, consideration of civil service reform is an integral component of a strengthened national risk management strategy.

#### **A. Background and Actions Taken to Date**

The Irish Civil Service over a number of years has enjoyed a high reputation for professional dedication and integrity. However, in the period leading up to the crisis, the quality and independence of civil servants – particularly the furnishing of expert and forthright advice on economic and financial matters - is perceived to have been inadequate. A serious underestimation and mismanagement of fiscal and financial risks by key officials (as well as by politicians and the wider public) was a major contributor to what eventually occurred. Given this erosion in public confidence and trust, the 2011 Programme for Government<sup>64</sup> emphasised the urgent need to strengthen Civil Service accountability and performance; this followed a series of earlier, less than fully successful, initiatives to address issues relating to civil service reform (see Box VI.1).

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<sup>63</sup> A clear distinction is to be drawn between the independent advice offered by civil servants and the obligation on all civil servants to implement the lawful decisions and instructions of Ministers and Governments.

<sup>64</sup> The Programme for Government in 2011 set out an ambitious programme of government reform to deliver fundamental change in democratic and public governance in Ireland. This included commitments around Regulation of Lobbying; Protected Disclosures (i.e. “Whistleblowing”); Freedom of Information; Ethics; Civil Service Accountability; Statute Law Revision; Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013); Ombudsman (Amendment) Act 2012; and Open Data. The work described below to strengthen Civil Service accountability and performance should be viewed as one part of an overall government reform programme encompassing both the wider public service and the structure of government itself.

**Box VI.1 Previous Initiatives to Address Civil Service Reform**

A consultation paper titled 'Strengthening Civil Service Accountability and Performance – Consultation Paper on Programme for Government Commitments' issued in early 2014 contained a useful summary of initiatives over the decades to address various issues relating to the Irish Civil Service. These included: the 1969 report of the *Public Service Organisation Review Group* (or Devlin Report); the 1985 White Paper *Serving the Country Better*; the 1996 *Delivering Better Government (DBG)* report; the 1997 *Public Service Management Act (PMSA)* arising from the recommendations of the DBG report; and the 2002 *Report of the Working Group on the Accountability of Secretaries General and Account* (known as the Mullarkey Report).

In 2008 the OECD conducted a major public management review of the Irish public service *Towards an Integrated Public Service*, which was followed soon thereafter by issuance of a report of a Task Force on the Public Service entitled *Transforming Public Services, Citizen Centred, Performance Focused*.

The Consultation Paper concluded that, while some important positive developments have occurred over the years, the degree of "ambition set for [the reform] process had not been fully realized." It suggested that this could be attributable to several factors, including "organizational inertia, the natural attraction of the status quo, the impact of change on individuals, inherent institutional resistance to reform... the prevailing political culture... and a concern about undermining an established system which has developed over time, albeit with [recognised] limitations". However, neither the Consultation Paper nor the Panel Report attempted an assessment of the relative importance of these possible factors nor discussed how alternative possible structures or arrangements might effectively address them.

In May 2014 the Report of an Independent Panel on Strengthening Civil Service Accountability (hereafter referred to as the Panel Report) was published<sup>65</sup>. The Panel report was based on an earlier (January 2014) Consultation paper<sup>66</sup> (see Box VI. 1 above) which generated submissions from a wide range of stakeholders within and outside the public service. The Consultation paper, among other things, reviewed the history of earlier initiatives to address different aspects of civil service performance. In parallel, an internal group, the Civil Service Renewal Task Force, was established, comprising civil servants representing all government departments.

In light of these two bodies' findings,<sup>67</sup> a three year (2014-2016) Civil Service Renewal Plan was launched by the Government in October 2014.<sup>68</sup> The plan outlines 25 practical areas involving actions aimed at achieving a more unified, professional, responsive and open and accountable Civil Service. Apart from a recommendation relating to the appointment of a Head of the Civil Service, the rest of the Panel Report's recommendations were accepted and reflected in the Plan.

Under the Plan, an Accountability Board has been established, chaired by the Taoiseach and comprising the Tánaiste, the Ministers for Finance and for Public Expenditure and Reform, the Secretaries General of the Departments of the Taoiseach, Finance, Public Expenditure and Reform (DPER), Education and Skills, the Chairman of the Revenue Commissioners, the Chair of the Top Level Appointments Committee, and three members from the private sector.

A 21-member Civil Service Management Board (CSMB) has also been established, under the sponsorship of the Secretary General of the Department of the Taoiseach (Chair) and the Secretary General of DPER and comprising all Heads of Government Departments and major Offices. Each Board member has been assigned responsibility for taking the lead on one or more Renewal Plan actions.

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<sup>65</sup> 'Report of the Independent Panel on Strengthening Civil Service Accountability and Performance' (May, 2014), available at <http://www.per.gov.ie/en/civil-service-accountability-consultation-process/>

<sup>66</sup> 'Strengthening Civil Service Accountability and Performance – Consultation Paper on Programme for Government Commitments' (January, 2014), available at <http://www.per.gov.ie/en/civil-service-accountability-consultation-process/>

<sup>67</sup> The internal Task Force did not issue a published report.

<sup>68</sup> 'The Civil Service Renewal Plan – A Vision and Three Year Action Plan for the Civil Service' (October, 2014), available at <http://www.per.gov.ie/en/civil-service-renewal/>

In July 2015, the government published a “First Progress Report” outlining measures taken during the “First 200 Days.”<sup>69</sup> Of the 25 actions contained in the Plan, 23 had been initiated; in particular, projects to implement five “priority actions” were on track. These comprised: (i) the establishment of the Accountability Board and the CSMB; (ii) approval of a performance review process for Secretaries General; (iii) drafting of a revised Disciplinary Code for civil servants; (iv) the holding of open recruitment campaigns for posts below the Secretary General /Assistant Secretary level; and (v) the drafting of a pilot Civil Service wide employment engagement survey to be issued to all staff in late 2015.<sup>70</sup> Other actions were in various stages of development.

## **B. Key Reform Elements**

Although civil service reform involves many multifaceted aspects, performance evaluation and human resource management are likely to be key elements. Many of the actions noted below – which have featured in many other countries’ experiences - are in various stages of development and implementation as part of the current Irish process.

### **Performance evaluation<sup>71</sup>**

- Increasing the rigorousness of the process for evaluating departmental performance. For example, each department/agency, in addition to developing a three year strategic plan (reflecting prevailing governmental priorities), could be asked to prepare an annual business plan; such a plan would indicate, for example, the planned allocation of resources between policy development, policy advice and the provision of services.
- Undertaking on a regular basis (for instance, every two or three years), a “capability review” of each department/agency (Box VI.2 describes such a process in the Australian context).<sup>72</sup> Such reviews, which should involve the participation of outside experts and include the responses of the concerned department/agencies, should be published.

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<sup>69</sup> ‘The Civil Service Renewal Plan – First Progress Report: Progress Achieved in the ‘First 200 Days’ Implementing the Vision and Three Year Action Plan for the Civil Service’ (July, 2015), available at <http://www.per.gov.ie/en/civil-service-renewal/>

<sup>70</sup> The results of the survey were published in January 2016, available at <http://www.per.gov.ie/en/high-levels-of-engagement-in-the-civil-service-in-the-first-ever-employee-engagement-survey/>

<sup>71</sup> Several of the work plan elements described under this heading are, in various forms, envisaged as part of the Government’s Renewal Plan.

<sup>72</sup> Reviews of individual departments (for example, the Department of Finance and the Department of Justice) have been undertaken on an *ad hoc* basis in recent years, usually in response to perceived (and sometimes publicly identified) shortcomings. However, it is far preferable that such reviews be a permanent ongoing element of the process.

- Separately, centralised oversight of annual performance assessment exercises for Secretary Generals and Assistant Secretaries (intended to start in 2016) to ensure even-handedness and consistency.
- Both the capability reviews of departments and performance assessments of senior civil servants should reflect the input of the responsible Ministers as their views and priorities may impact significantly departmental performance and effectiveness.<sup>73</sup>
- Performance assessments should include an explicit focus on the need to rationalise provision of some services and eliminate unnecessary duplication of activities. Proactive engagement by the overseeing bodies would be needed to help identify and addressing such “cross cutting” issues involving more than one department/agency.

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<sup>73</sup> Both the Panel Report and the earlier consultation paper, in discussing various concepts of “accountability” referred to some unavoidable “blurring” of the responsibilities of Ministers and civil servants relating to policy decisions and policy implementation. Nevertheless, the authors of these documents suggest that within the present legislative framework a good deal can be done to improve the procedures for accountability on the part of civil servants.

**Box VI.2 Australia: Capability Reviews by the Public Service Commission**

The Australian Public Service Commission (APSC) is a central agency within the Prime Minister and Cabinet portfolio headed by the Public Service Commissioner, a statutory position.<sup>1</sup> The APSC is responsible for promoting and evaluating compliance with an APS (Australian Public Service) Code of Conduct and APS Values. It develops, promotes and reviews APS employment policies and practices and facilitates APS-wide people management and training, career and leadership development. It also provides advice and assistance on public service matters to agencies upon request.

The APSC has undertaken “Capability Reviews” covering all 24 departments and agencies, the last of which was completed in 2015. The reviews are designed to help lift the productivity of individual agencies and the APS as a whole. They are informed by input from Ministers’ offices, senior leaders and external stakeholders (including other government departments, the private sector and interest groups).

The Capability Review reports typically review key strengths of the department and the key opportunities and challenges they face, including specific areas /actions that require priority attention. Rankings (ranging from “strong” to “serious concerns”) are assigned to three broad categories; Leadership, Strategy, and Delivery and to related subcategories, accompanied by detailed commentary and recommendations.

The reports (which are published) contain the responses of the Department head to the review’s assessment and recommendations.

<sup>1</sup> The 2014-15 Annual report is available at <http://www.apsc.gov.au/about-the-apsc/parliamentary/annual-report/2014-15>. The APSC also supports a second statutory office holder, the Merit Protection Commissioner. This office provides external review of certain personnel actions.

### **Human resource management**

- The reform should assign a central role to developing policies on all HR matters, namely, recruitment, retention, performance, promotion, pay and training, and overseeing their effective implementation.
- Particular attention ought to be paid to skill development, including the need to reallocate staff across departments to address identified skill gaps and to ensure adequate access (including via secondments) to training opportunities.
- The process should involve a structured “whole of civil service” approach to leadership development and “succession planning”.

### **C. Organisational Aspects**

The functions described above are widely seen as important components of successful civil service renewal. However, the actual implementation of inherently multifaceted and complex reforms requires a clearly defined structuring of responsibilities supported by sufficient staff resources to oversee the process effectively. At present, support to help ensure implementation of the work program of the CSMB and the Accountability Board is provided by staff in both DPER and the Department of the Taoiseach. The secretariat for the Accountability Board is provided by the Taoiseach’s Department with overall programme management support for the Renewal Plan provided by a Programme Management Office based in DPER.

An important recommendation of the Panel Report was the establishment of a new full-time post, Head of the Civil Service, at Secretary General Level. The post would not be located in existing departmental structures and would have a separate staff. Its mandate would encompass a wide range of responsibilities for developing and overseeing the implement of civil service reform.

In recommending this step, the Panel report stressed the importance of a “strong centre” which, they observed, was a key feature of the reform process in several other countries that followed the “Westminster approach” to governance. A similar proposal was made in the 2014 report by PublicPolicy.ie in reviewing the work of the Top Level Appointments

Committee (TLAC)<sup>74</sup>. The recommendation regarding the appointment of a Head of Civil Service Head was not included as part of the Government's Renewal Plan.<sup>75</sup>

Consideration of the nature and role of the "centre" forms part of a long running debate as to the extent to which effective change can occur from the "top down" or the "bottom up". Too centralised an approach may not achieve the required "buy in" for change, compared to a framework which emphasises collegiality. On the other hand, over reliance on a "committee approach", absent a sufficiently robust organisational focus and associated accountability, may dilute reform implementation, especially where cross departmental issues and responsibilities arise.

The Panel Report noted that addressing (including via concerted sustained follow up actions) the wide ranging complex issues involved in reform is likely to require significant full time resources. It also observed that the current arrangement whereby support is provided from within DPER may not be optimal, given DPER's current operational role in overseeing and controlling public expenditure.

Different countries have approached the management of civil service reform in different ways. As one alternative example, as part of major reforms in the late eighties, New Zealand established a separate State Services Commission (SSC) with a high degree of visibility and substantial independence (see Box VI.3). The State Services Commissioner provides leadership and oversight on all key aspects of public service performance and is responsible to the Minister of State Services for the Commission's own capability and performance<sup>76</sup>. The Commission's work is characterized by a high degree of transparency, an emphasis on measurable results and extensive feedback surveys from stakeholders (including the public).

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<sup>74</sup> PublicPolicy.ie (2014) 'The Recruitment, Retention, Performance and Development of Senior Civil Servants in Ireland', available at <http://www.publicpolicy.ie/wp-content/uploads/TLAC-Final-Report-080914.pdf>

<sup>75</sup> However, in line with one of the panel report's recommendations, the Secretary General of DPER has been appointed as spokesperson for the Civil Service. It is also intended to assign staff to a "Programme Management Unit" to support the reform effort. It is recognised that a Head of Civil Service function would involve significant resource and legal implications that would require careful analysis.

<sup>76</sup> However, the title "Head of Civil Service" has not been assigned to the Commissioner.

### **BOX VI.3 New Zealand: The State Services Commission**

The Office of the State Services Commissioner (SSC), established in its present form in 1988, is considered a central element of New Zealand's politically neutral, professional and permanent Public Service. It is to provide leadership and oversight, including by: (a) promoting the spirit of service to the community; (b) promoting the spirit of collaboration; (c) identifying and developing high calibre leaders; (d) working with State services leaders to ensure that the State services maintain high standards of integrity and conduct and are led well and trusted; (e) overseeing workforce and personnel matters; (f) advising on the design and capability of the State Services; (g) evaluating the performance of Public Service leaders; (h) supporting the efficient, effective and economical achievement of good outcomes; and (i) promoting a culture of stewardship.

The Commissioner and Deputy Commissioner are appointed by the Governor General on the recommendation of the Prime Minister. While acting independently in a range of matters, the Commissioner is responsible to the Minister of State Services for the Commission's capability and performance. The Commissioner appoints, employs, and reviews the performance of Public Service Chief Executives and matters relating to departmental performance.

Senior managers lead work groups that cover: (i) sector/ agency performance; (ii) state sector results; (iii) reform; (iv) leadership and talent issues; (v) performance improvement programmes; and (vi) organizational strategy and performance. A Human Resource Capability Assessment is published annually that provides information on the workforce, diversity, remuneration and careers<sup>1</sup>.

The Commission's 2015 Annual Report listed, among tasks recently completed: (a) application of a new approach to chief executive performance management designed to improve comparability between expectations, performance and reward; (b) relaunching of "Career Boards" comprised of chief executives from across the State Services so as to promote collective responsibility for leadership development, including establishing a leadership success profile and a common assessment tool; (c) modifying the Performance Improvement Framework (PIF) model so as to provide a sector/ cross agency view of performance and customer satisfaction issues; (d) completion of 12 full PIF reviews of departments/agencies; and (e) improving the chief executive recruitment process.

The Commission itself underwent a PIF in August 2013<sup>2</sup> and a follow-up review in September 2015<sup>3</sup> made recommendations for further changes in SSC practices. The Commission's work is characterised by a high degree of transparency, an emphasis on measurable results and extensive feedback surveys.

<sup>1</sup> See <https://www.ssc.govt.nz/hrc-survey-2015>

<sup>2</sup> *Performance Improvement Framework – Review of the State Services Commission* (August 2013), available at: <https://www.ssc.govt.nz/sites/all/files/pif-ssc-review-aug2013.PDF>

<sup>3</sup> *Performance Improvement Framework - Follow-up Review of the State Services Commission* (September 2015), available at <http://www.ssc.govt.nz/sites/all/files/pif-ssc-follow-up-review-sep2015.PDF>

## D. Conclusions

The work plan outlined in the Government's Renewal Plan addresses the key features required to raise civil service performance. An action oriented focus on accountability, as well as achieving consistency and cohesiveness across departments and agencies will be essential to ensure effective implementation. Nevertheless, it will take some time for all the necessary changes to be put in place and for their beneficial results to be fully felt.

Given the history of earlier reform initiatives and the weaknesses revealed by the crisis, it is too early to judge the effectiveness of the oversight framework adopted recently by Ireland<sup>77</sup>. It could be that a structure involving a separate, body with an associated mandate, responsibilities and adequate, full time dedicated resources might prove more effective<sup>78</sup>. A New Zealand type model, involving a powerful commission responsible for assessing performance of all departments and relevant agencies on "a whole of government" basis and for overseeing all aspects of human resource management, is one example of such an approach. It is recommended that alternative frameworks involving more far reaching structural and organizational change than implied to date, be kept under consideration.

Some other observations of a more general character are relevant. First, the Irish experience highlights the fact that as for any large public or private sector organisation, major institutional renewal is often very difficult. The process of change is continuous, an unsettling prospect to some. However, a dynamic and volatile external environment – affecting particularly a small country such as Ireland - does not permit the luxury of escaping the need to adapt flexibly to changing circumstances.

Second, it is widely accepted that while organisational changes are important, developing an appropriate "culture" is also critical. In this context, reforms can gain wider acceptance if they are seen to be addressing particular weaknesses. As one example, given Ireland's recent experience, it would seem essential to put in place specific mechanisms aimed at preventing the emergence of "group think" and a "cosy consensus."

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<sup>77</sup> The Renewal Plan is for a three year period and its effectiveness will be subject to evaluation. If the Government's assessment is that the collective model is not working as envisaged it can be revisited.

<sup>78</sup> In this regard, the Panel report, after examining a number of options, concluded that the proposed "Head of Civil Service" role should not be combined with the position of either the Secretary General, Taoiseach's Department, or Secretary General, DPER. This conclusion took into account the excessive work load that would be involved in either case and so far as DPER is concerned, its central role in resource allocation and expenditure negotiations.

Finally, it is helpful to study closely the reform experiences of other countries that, as acknowledged in the Panel Report, have generally proceeded further in this direction than Ireland, as to what does and what does not work. This will also help to anticipate, and to avoid, possible unintended consequences of particular reform initiatives.

## **VII. PROVIDING FRANK POLICY ADVICE AND THE ROLE OF FREEDOM OF INFORMATION**

A fundamental tenet of Ireland's public governance is that "officials advise but Ministers decide". This principle is essential for two reasons. First, Ministers and Ministers alone are democratically accountable for policy decisions. Second, civil servants are required to implement - and to be seen to implement - government policies and lawful decisions irrespective of their personal views.

For this approach to operate effectively, officials must be both able and willing to furnish the highest quality advice to the Minister. Ministers should expect no less. This in turn requires that officials possess the expertise necessary to present a comprehensive assessment of alternative policy options, including attendant risks. It also requires that they provide their views honestly and candidly, irrespective of prevailing political preferences. Both these elements are essential in order to avoid decisions based on inadequate or ill-informed assessments inconsistent with sound risk management.

There is a particular need for a written record of officials' views on key policy issues so that the Minister is not left in doubt as to the content of the advice he or she receives. Equally important, this will help ensure that the evidence necessary for purposes of Ministerial accountability and for maintaining an historical record exists and is preserved.

Two key issues are considered in this section; first, prevailing practices in Ireland regarding the provision of frank policy advice by civil servants on the record, to Ministers: and second, the extent to which current Freedom of Information legislation, by now a standard feature of most advanced countries, may influence official behaviour in this area. These elements are interlinked. In particular, there may be a trade-off between, on the one hand, the public's legitimate desire to have access to unpublished official documentation, and on the other, the need to ensure that officials are not inhibited from providing their best advice in written form to Ministers.

## A. Current Irish Practice

### The provision of written policy advice and official record keeping

Inadequate record keeping relating to key policy deliberations, advice and decisions has been a serious issue for some time in Ireland. Several publicised events in recent years have highlighted the problem:<sup>79</sup>

- The Travers Inquiry (2005) into the Department of Health and Children noted that in the case of one key (controversial) issue “there was no formal record of [a] discussion that took place between the Minister and the Secretary General”<sup>80</sup>. The 2014 independent review of the Department of Justice noted similar issues. The Fennelly report (2015) into the events leading up to the retirement in 2014 of the former Garda Commissioner also expressed serious concerns regarding the apparent absence of written documentation<sup>81</sup>.

- As stressed in the Wright report (2010) by the former Deputy Minister of Finance of Canada into the performance of the Irish Department of Finance, there was a noticeable paucity of written documentation outlining macroeconomic and financial risks in a candid and forthright manner prior to the outbreak of the economic crisis. According to the report, some senior officials had stated that they had given more serious warnings on budgetary risks via “oral briefings” to the Minister<sup>82</sup>. In the absence of any paper trail it was not possible to know the nature of such briefings and the implications for ministerial accountability.

- the views and recommendations of key institutions and decision makers in the period leading up to the 2008 bank guarantee were not committed to paper, nor were records kept of the seven hour meeting chaired by the Taoiseach on September 29, 2008<sup>83</sup>. What

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<sup>79</sup> For a comprehensive discussion see Haughey (2016), available at

[http://www.tasc.ie/download/pdf/policybrief\\_settingtherecordstraightfinal.pdf?issuusi=ignore](http://www.tasc.ie/download/pdf/policybrief_settingtherecordstraightfinal.pdf?issuusi=ignore)

<sup>80</sup> The Travers inquiry (2005), available at

<http://www.oireachtas.ie/documents/committees29thdail/committeereports2005/document3.pdf>. The

Department of Justice noted similar issues.

<sup>81</sup> The ‘Interim Report of the Fennelly Commission’ (2015), available at

[http://www.taoiseach.gov.ie/eng/News/Taoiseach's\\_Press\\_Releases/Interim\\_Report\\_of\\_the\\_Fennelly\\_Commission.pdf](http://www.taoiseach.gov.ie/eng/News/Taoiseach's_Press_Releases/Interim_Report_of_the_Fennelly_Commission.pdf)

<sup>82</sup> Wright Report (2010) ‘Strengthening the Capacity of the Department of Finance’, available at

<http://oldwww.finance.gov.ie/documents/publications/reports/2011/deptreview.pdf>

<sup>83</sup> The compressed time scale and the pressure of events may have been a factor in this case. However, handwritten notes that should have been prepared at the time could have been translated into a written record soon thereafter.

individuals may have thought or said at the time could only be ascertained via personal recollections conveyed to the parliamentary banking inquiry seven years later.

### **The Freedom of Information Regime**

The current regime in Ireland is governed by the Freedom of Information Act (2014) which replaces earlier legislation enacted in 1997 and 2003. As in other countries, the Act deals with access by the public to official documents and records not otherwise in the public domain, including the definition of accessible information and the procedures governing access.<sup>84</sup>

The 2014 Act provides for exemptions (wholly or in part) for several documentation categories<sup>85</sup>, including those relating to: (i) meetings of the Government<sup>86</sup>; (ii) parliamentary, court and legal privilege; (iii) security, defence and international relations; (iv) information obtained in confidence; and (v) commercially sensitive information. Ministers may also in certain circumstances, declare sensitive records conclusively exempt (this provision is seldom used).<sup>87</sup>

Access to certain other categories may or may not be permitted. They include; (i) records relating to “deliberations” (including opinions, advice and recommendations – this category is distinct from records “relating to meetings of the Government” referred to above); (ii) those concerning “functions and negotiations” (where the ability to perform such duties would be compromised); or (iii) where disclosure of records “would harm the financial and economic interests of the State” (18 specific types of information are listed). In these cases, a “public interest” test applies. That is, an exemption from release will not be given if an FoI decision maker<sup>88</sup> finds that, on balance, the public interest is better served by releasing the

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<sup>84</sup> The 2014 Act involves a number of changes with respect to the fees charged for FoI requests and reviews of related decisions. These are not discussed in this report.

<sup>85</sup> These are laid out in Part 4 (sections 28-41) of the 2014 Act, available at <http://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/index.html>

<sup>86</sup> This exemption is for a limited period of five years (see Section 28(3) (b) of the Act).

<sup>87</sup> Under the National Archives Act (1986), after thirty years departmental records are transferred to the National Archives where they are available for public inspection. In October 2015, it was reported that the Minister for Arts, Heritage and the Gaeltacht was seeking Government approval to reduce the period to 20 years on a phased basis following a similar change in the UK in 2013.

<sup>88</sup> Implementation of FoI provisions are delegated to an FoI decision maker in each public body. The initial decision may be reviewed at a higher level within the body itself and may subsequently be referred to the Office of the Information Commissioner (OIC). OIC decisions may be appealed to the Courts on points of law.

record than by withholding it<sup>89</sup>. However, the Act does not define what is meant by “public interest”.<sup>90</sup>

On the basis of data compiled and published annually by the Office of the Information Commissioner, the total number of applications for release received by public bodies in 2015 amounted to just under 28,000. Of these requests, 54 per cent were granted in full and 23 per cent were partly granted. About 330 applications to review decisions taken were received by the OIC. A breakdown of the reasons why FoI decision makers withheld access, including, for example, invocation of the “public interest” criterion, is not available.<sup>91</sup>

## B. Experiences in Other Countries

FoI regimes elsewhere have followed various approaches with respect to the need for written records and, relatedly, restrictions on the public’s access to the content of official policy advice:

### Policies regarding the provision of advice in writing

Evidence on other countries’ practices is inevitably somewhat anecdotal. However, officials in several Nordic countries (including **Denmark, Finland and Norway**) have described a quite widely accepted ‘culture’ whereby advice on major issues, including “warnings” to Ministers, tends to be communicated in writing (in Denmark officials have an explicit duty to make notes). In **New Zealand** and some **Australian states**, two complementary approaches have been adopted: establishment of a statutory obligation to create records; and principles based approach that places record keeping within the framework of public service codes of conduct.<sup>92</sup> Following an investigation into the deletion of sensitive emails in **Canada**, the Canadian Information Commissioners recently called for legislation by (provincial) governments to require documentation relating to their deliberations, actions and decisions.

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<sup>89</sup> The courts have held that mere assertions of harm are not sufficient.

<sup>90</sup> In the case of deliberative processes, the Act cites as an example of the public interest, a situation where the requestor would become aware of a decision that the body is proposing to make. Section 48 allows the Minister to issue guidelines for the effective and efficient operation of the Act. The FOI manual issued provides FoI bodies and their decision makers with a definition of the public interest and its application.

<sup>91</sup> See the 2015 *Annual Report of the Office of the Information Commissioner*, available at [http://www.oic.gov.ie/en/publications/annual-reports/2015-annual-report/online/media/oic\\_ar\\_2015\\_english.pdf](http://www.oic.gov.ie/en/publications/annual-reports/2015-annual-report/online/media/oic_ar_2015_english.pdf) The OIC does not possess detailed information on the requests originally submitted to public bodies. However, information is available (albeit not published to date) regarding the 2-3 per cent of cases which are submitted for OIC review.

<sup>92</sup> A fuller review of these approaches is contained in Haughey (2016).

The recent Shergold Review in Australia (August 2015) put the issue clearly:<sup>93</sup>

“Advice on significant matters must be written down. There will rarely be a single document. The development of policy (as any good public servant knows) is an iterative process of argument, counter-argument, negotiation and compromise. Records of deliberative discussions in all forms, including emails and texts, should be retained.”

In later testimony to the Oireachtas Banking Inquiry, the author of the Wright report (*op cit*) stressed that the need to maintain “a formal written record” was one of the most important recommendations of his earlier investigation.

### **Exemptions on Access to Policy Advice**

It is striking that even in several countries which have a reputation for openness there are considerable restrictions on access to policy advice in force.

**Denmark:** “The right to access documents will not include internal documents and information which is exchanged at a time when there is a reason to assume that a Minister has, or will have, a need for advice and assistance from a ministry’s department and its’ subordinate authorities or other ministries”.<sup>94</sup> Information can be withheld indefinitely, though this stipulation is being reviewed.

**Germany:** “applications for access to information should be rejected for drafts relating to rulings and studies relating directly to the preparation of rulings, insofar as and for as long as premature disclosure of the information would obstruct the success or the ruling or impending official measures. Routine results of the taking and hearing of evidence and expert opinion from third parties shall not be deemed to relate directly to the preparation or rulings pursuant to sentence 1.”<sup>95</sup>

**Netherlands:** “where an application concerns information contained in documents drawn up for the purpose of internal consultation, no information shall be disclosed concerning

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<sup>93</sup> “Learning From Failure” (August, 2015), available at <http://www.apsc.gov.au/publications-and-media/current-publications/learning-from-failure>

<sup>94</sup> ‘Open Administration Act’ (2013), available at <https://www.retsinformatio.dk/Forms/R0710.aspx?id=152299%20> (available in Danish only)

<sup>95</sup> ‘Federal Act Governing Access to Information held by the Federal Government’ (2005, as amended), available at <http://www.parlament.cat/document/intrade/548>

personal positions on policy contained therein”.<sup>96</sup> There are exceptions if the individuals who expressed opinions explicitly agree to the release.

**United Kingdom:** exemptions are provided if disclosure of information “would or would be likely to (i) inhibit the free and frank provision of advice or; (ii) the free and frank exchange of views for the purposes of deliberation, or; (iii) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.”<sup>97</sup>

The Civil Service Code, issued under the *Constitutional Reform and Governance Act 2010*, specifies (at paragraph 6) that civil servants should “keep accurate official records”. Under the *Public Records Act* (PRA), the term ‘records’ is defined (at section 10) in a way that suggests a wide scope; it includes not only written records but records conveying information by any other means whatsoever.

**New Zealand:** “the free and frank expression of opinions by or between or to Ministers or members of an organization or officers and employees of any department or organization” is exempt.<sup>98</sup>

**Norway:** exemptions include “any document which [an agency] has drawn up for its internal preparation of a case” and [external documents] “containing advice on or assessments of how an [agency] should stand on a case.”<sup>99</sup>

**Canada:** “memoranda, discussion papers, records reflecting communications or discussions, records to brief ministers, draft legislation and records of information content of any record” are exempt.<sup>100</sup>

**Australia:** “A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in

<sup>96</sup> ‘Government Information (Public Access) Act 1991’, available at <http://www.legislationline.org/documents/action/popup/id/6395>

<sup>97</sup> ‘Freedom of Information Act (2000)’, available at [http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga\\_20000036\\_en.pdf](http://www.legislation.gov.uk/ukpga/2000/36/pdfs/ukpga_20000036_en.pdf)

<sup>98</sup> ‘Official Information Act 1982’, available at <http://www.legislation.govt.nz/act/public/1982/0156/latest/DLM64785.html>

<sup>99</sup> ‘Freedom of Information Act’ (2006), available at <http://app.uio.no/ub/ujur/oversatte-lover/data/lov-20060519-016-eng.pdf>

<sup>100</sup> ‘Access to Information Act’ (1985), available at <http://laws-lois.justice.gc.ca/eng/acts/a-1/FullText.html>

the functions of: (a) an agency; or (b) a Minister; or (c) the Government of the Commonwealth; or (d) the Government of Norfolk Island.”<sup>101</sup>

### C. Conclusions

From the viewpoint of improving risk management, strengthening significantly the current approach in Ireland to the recording of key policy deliberations and decisions should be assigned high priority. Apart from transparency and accountability considerations, Ministers must be sure that they are receiving the best possible advice from officials in a candid and frank manner and for the record. Broad guidelines do exist on paper as to the need to record key meetings, decisions and policy-related submissions to Ministers. However, it is far from clear that such guidelines are in fact being adhered to or that systematic monitoring with sanctions for noncompliance is in place. The experiences of various well publicised events, as well as anecdotal evidence gathered, suggests continued significant shortcomings in this area.

At the same time, the introduction of a Freedom of Information regime in Ireland has been a highly welcome development. It is a cornerstone of efforts to fundamentally improve accountability on the part of official bodies, especially given heightened disquiet and mistrust on the part of the public in Ireland reaching back some decades.

However, the laudable objectives underlying FoI must be balanced with the need to ensure that the provision of frank and candid policy advice is not endangered. In Ireland, as elsewhere, officials may become reluctant to commit their advice for the record for fear of it being too readily available publicly. Concerns will be exacerbated by eagerness by some in the media to highlight “differences” between “professionally objective advice” and decision making driven by “political” considerations, leading to sensationalist commentary about “divisions” between Ministers and senior officials. Such juxtaposition could complicate policy implementation and also damage the relationship of trust between a Minister and senior officials.

The 2015 Shergold Review in Australia (*op cit*), citing several instances of past weak policy advice, expressed this concern cogently:

*“It is imperative that governments be allowed a measure of confidentiality in the policy-making process. Without free and uninhibited exchange of views between ministers and*

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<sup>101</sup> ‘Freedom of Information Act 1982’ (as amended), available at <https://www.legislation.gov.au/Details/C2016C00067>

*senior public servants, good public policy is jeopardised. Policy debate depends upon mutual trust and respect between both sides. That depends on arguments taking place in private. Deliberations on matters of policy, whether oral or in writing, need to be kept in confidence. Where there is a risk of advice being made public, sensitive topics are less likely to be the subject of full and frank written briefing. This increases the risk that decisions will be made on partial information, feebly presented. It means that there will be an incomplete record of the decision-making process. The [Australian] Freedom of Information Act 1999 should be amended to provide an explicit exemption from release for information that would compromise the ability of public servants to provide ministers with frank advice. Such changes would apply to only a very small proportion of government information".<sup>102</sup>*

The recently elected Trudeau Government in Canada has committed to a review of the FOI Act and the Information Commissioner is also seeking reforms. The Commission's website states:

*"In order to be effective, the duty to document must be accompanied by strong records management practices and standards and independent oversight with sanctions for non-compliance. Canadians can turn to a number of tested models of duty to document legislation, including the United States, New Zealand and some Australian states".<sup>103</sup>*

In the case of Ireland, views appear to vary as to the impact to date of the Irish FOI regime on the provision of policy advice in writing. Work overload, especially in pressurised situations, seems to have also played a role in inadequate documentation practices. More fundamentally, some (both within and outside the public service) have argued that this problem mainly lay, not in FOI, but in a long standing reluctance of many officials to disagree too directly or explicitly with Ministers.<sup>104</sup>

Inevitably, absent counterfactual evidence (i.e., as to the extent of memoranda not written because of FOI considerations), this will remain a somewhat anecdotal and speculative question. Nevertheless, many (although not all) of the officials encountered during the

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<sup>102</sup> 'Learning From Failure' (August, 2015), available at <http://www.apsc.gov.au/publications-and-media/current-publications/learning-from-failure>. The main recommendations of the Shergold Review are listed in an Addendum to this section. The recently appointed Public Services Commissioner of Australia has voiced serious misgivings about the inhibiting influence of the current FOI regime on the provision of frank written policy advice. A government decision to abolish the Office of the Australian Information Commissioner has been blocked so far by the Senate.

<sup>103</sup> Office of the Information Commissioner of Canada (2016), available at [http://www.oic-ci.gc.ca/eng/communiquede-presse-news-releases-2016\\_4.aspx?pedisable=true](http://www.oic-ci.gc.ca/eng/communiquede-presse-news-releases-2016_4.aspx?pedisable=true)

<sup>104</sup> On the other hand, the Wright report (*op cit*) expressed concern about the inhibiting impact of FOI. In later testimony to the Oireachtas Banking Inquiry, Wright stressed that if formal written records were protected, "more blunt advice would be given."

course of this study's preparation opined that FoI considerations were having a significant dampening effect on the directness and candour of written communications. The 2014 Act may have created some uncertainty as to how the "public interest" test may be applied in practice and consequently, officials may well be adopting a quite cautious approach.

Some of the trade-offs involved in this issue should diminish gradually if public bodies routinely issue documentation outlining different viewpoints and the public come to realise more that airing varying opinions is a strength, not a weakness. Hopefully, the current emphasis by much of the media on a "gotcha" style would diminish gradually.

Nevertheless, improvements in the overall "climate" are likely to take considerable time. Therefore, ensuring greater transparency, accountability and provision of frank and candid advice for the record should be accorded a high priority. The following, integrated set of measures is proposed:

- Highest priority should be accorded to establishment of a statutory duty to record, together with specific implementing guidelines and codes of conduct. As noted by Haughey (*op cit*), the Public Standards Bill 2015 (which lapsed with the dissolution of the Dáil) could be used as a vehicle to introduce such changes.<sup>105</sup>
- Compliance with the above "requirement to record" above should be reviewed specifically by the Comptroller and Auditor General as part of their audit operations and reported upon publicly.
- To address concerns (whether genuinely justified or not) that may be inhibiting the recording of advice in writing and to provide additional protection, the "public interest" test in the current 2014 FoI Act could be replaced by the provision contained in earlier legislation, namely, a more unqualified exemption of records relating to "policy deliberations", along the lines of several countries cited above.
- To balance what might be otherwise perceived as a "tightening" of access, the records exempted under a more unqualified exemption should be automatically accessible within a period of, say around 5 years, i.e., the length of a government's maximum term of office (at present there is no time limit for records deemed exempt)<sup>106</sup>; this would extend to "policy deliberations" the same treatment as is currently applicable to records

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<sup>105</sup> Public Sector Standards Bill 2015, available at

<http://www.oireachtas.ie/documents/bills28/bills/2015/13215/b13215d.pdf>

<sup>106</sup> A similar proposal, together with a proposal for *greater* access than at present to policy advice – related records – was recommended by the report of the recent Oireachtas Banking Inquiry.

relating to meetings of the Government. Such an approach implies that all records relating to policy deliberations within the time period of a Government would be exempt. However, after leaving office, a Government's decisions and associated policy advice would be available for public scrutiny within a reasonable time frame.

- Data should be furnished on a regular basis by bodies subject to FoI to the OIC (and published) regarding the operation of the exemption clauses under FoI, including their use to justify withholding of access.
- As should be the case for all similar bodies, OIC should undertake, at periodic intervals, an external peer review of its own operations.<sup>107</sup>
- Finally, serious consideration should be given to reducing the current 30 year rule under the National Archives Act (1986) relating to the transfer and public availability of Departmental records to at least 20 years.

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<sup>107</sup> The recent external peer review of IFAC serves as a useful model in this respect.

## **D. Addendum: Main Recommendations of the Shergold Review**

### CONCLUSIONS | Providing robust advice

**A.1** Public service advice is vital to good government and, to this end, Secretaries should be held accountable for the quality of advice provided to ministers by their departments.

**A.2** Whilst acknowledging the value of frank and fearless oral discussions, the Australian Public Service Commissioner should issue a Direction that significant advice also be provided to ministers in writing. Ministers should insist on receiving frank written advice from the APS, noting that it is generally their decision whether to accept or reject all or part of the advice.

**A.3** The Freedom of Information Act should be amended to ensure that advice and opinion provided to support the deliberative processes of government policy formulation remain confidential.

**A.4** An APS-wide policy on record keeping should provide practical guidance about when and how records must be created, including that records of deliberative discussions in all forms, including digital, should be retained.

## **Appendix – Foreign Institutions Visited in the Course of this Study**

### **Australia**

- Australian Parliamentary Budget Office
- Australian Prudential Regulation Authority
- Australian Public Service Commission
- Department of Finance
- Office of the Australian Information Commissioner
- Reserve Bank of Australia
- The Treasury

### **Denmark**

- Danish Emergency Management Agency (DEMA)
- Danish Parliamentary Ombudsman
- Danmarks Nationalbank (and Systemic Risk Council)
- Financial Supervisory Authority of Denmark
- Ministry of Finance

### **Finland**

- Bank of Finland
- Financial Supervisory Authority of Finland
- Ministry of Finance
- Ministry of the Interior
- National Audit Office of Finland
- The Security Committee (Ministry of Defence)

### **Netherlands**

- Central Planning Bureau
- Ministry of Finance
- National Coordinator for Security and Counterterrorism (NCTV)

### **New Zealand**

- Ministry of Civil Defence and Emergency Management
- Office of the Ombudsman
- Reserve Bank of New Zealand
- Security and Intelligence Group, Department of the Prime Minister and Cabinet
- State Services Commission
- Strategic Risk and Resilience Panel
- The Treasury

**Norway**

- Department of ICT Policy and Public Sector Reform (Ministry of Local Government and Modernization)
- Financial Supervisory Authority of Norway
- Ministry of Finance
- Ministry of Justice and Public Security
- Norges Bank
- Norwegian Directorate for Civil Protection (DSB)

**Singapore**

- Civil Service College
- Irish Chamber of Commerce
- Landfall Strategy Group
- Ministry of Finance
- Monetary Authority of Singapore (Central Bank)
- National Security Coordination Secretariat (NSCS)

**United Kingdom**

- Bank of England (and Financial Policy Committee Secretariat)
- Cabinet Office
- Office for Budget Responsibility
- The Treasury