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# **Joint Committee of Inquiry into the Banking Crisis**

**Witness Statement of**

**Pat Rabitte**

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<sup>1</sup> See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

Mr Chairman and colleagues

Thank you for inviting me to appear before your Inquiry. I was Leader of the Labour Party from 2002 to 2007

With regard to R5(a) and (d) it is difficult to argue that the effectiveness of Oireachtas scrutiny of public policy on the banking sector matched the standards that citizens are entitled to expect. I think it is fair to say that oversight has improved somewhat as a result of the changes ushered in by the Recommendations of the ***Parliamentary Inquiry into DIRT***, the evolving Committee structure and the lessons of the crash. The Executive influence vis-a-vis parliament has continued to grow over the last couple of decades. In addition there is excessive secrecy surrounding Executive decision-making and nowhere is that more true than in the relationship of government to the financial services sector. Confidentiality and due regard for commercial sensitivity are unavoidable in this area but more effective oversight need not intrude in a negative way.

For example, it is difficult to conclude that effective oversight would have completely missed the manifest weaknesses in the regulatory system. Parliament would seem to have counted for little when the compromise between the two parties then in government produced the hybrid regulatory structures in place leading up to the crisis. The outcome of the tug-of-war between Fianna Fáil and the P.D.s was the Central Bank and Financial Services Authority of Ireland Act 2003 which Labour opposed at Second Stage and sought to amend before enactment. The result, apart

from the question of competence, was lack of clarity about who precisely was responsible for what.

On the basis of evidence heard to date by this Inquiry it appears that a small number of influential individuals in the Financial Sector had more influence with government than did Dáil Eireann. By extension, it is my own view that government in the boom years was more responsive to outside influences in respect of decision-making that related to the property sector than it was to the Dáil. I recall measures taken by the then Environment Minister, Noel Dempsey T.D. in respect of social housing being subsequently diluted by the Minister for Finance arising from representations by the construction industry. The labour party consistently pressed for measures that would have helped prevent the property bubble but mostly these were not taken on board. I will come back to this.

Of course, as some witnesses have told this Inquiry there is nothing wrong with government hearing from outside expertise. However it is the task of government to distinguish the public interest from vested interest.

For as long as I am in the House, government has tended to arrogate to itself more and more of the substantial decision-making while observing constitutional propriety towards Dáil Eireann. Where government doesn't change for 14 years, Ministers are more likely to adopt the hedgehog pose and some Civil Servants are more likely to be leveraged onto the side of the political hegemony of the day. The fact that there were warnings in the system but that they were benignly filtered before reaching government would appear to bear that out.

There have been changes in more recent years that have improved political accountability. Improving general accountability however is not the same as the capacity for effective scrutiny of a complex sector like banking. It would appear that senior civil servants – not to mention political parties in opposition – felt that supervision and regulation of the banks was the responsibility of someone else. Both civil servants and politicians presumed that those responsible knew what they were doing. Today's Finance Committee is theoretically better positioned and better structured to scrutinise banking. However the efficacy of the network of Committees is constrained by a small parliament and inadequate backup. A parliament of, say, 650 members is likely to throw up functioning Committees that can specialise and draw on members with an appropriate mix of skills. It is more difficult to achieve such specialisation in a Parliament of 158 members. Individual Deputies being members of more than one or of several Committees compounds the problem.

A glance at the material that comes through the Finance Committee shows why professional backup is still somewhat inadequate. That is before the necessity to examine instruments coming from Europe is included. Proposals that the upper House might be required to scrutinise EU instruments is mere sophistry. It won't happen.

Enactment of the Regulation of Lobbying Bill 2015 will help in respect of R5(d). The principal issue is not to stymie or stop lobbying but the need for transparency. I don't object to the CIF setting out its Budget stall to the Minister for Finance; but members of Dáil Eireann should broadly know why and what is targeted for change. It is not

possible to stop the kind of lobbying that the Inquiry has unearthed in respect of the banking collapse; the challenge is to know what it is going on and that, if there are vested interests at stake, that should be declared. In addition this was the era of Social Partnership – a sound concept before it went off the rails but it was conducted out of sight of Dáil Eireann.

Arguments to further reduce the membership of Dáil Eireann are short-sighted and ignorant and usually no more than knee jerk populism. Democracy means that Dáil Eireann will always comprise a cohort of cross-party deputies who are strangers to legislating but are assiduous constituency representatives. Take out 30 Ministers and 30 opposition spokespersons and developing specialist Committees with the necessary skills set becomes more difficult. The Report of the Dáil Inquiry into DIRT evasion in 2001 made recommendations that were designed to improve the quality of scrutiny and, if implemented in full, would have helped avoid at least some of the mistakes that were made leading up to the crash.

That Report, for example, acknowledged that the failure to implement the Deposit Interest Retention Tax as legislated for by Dáil Eireann was partly

*“due to a breakdown in parliamentary scrutiny. One factor in the failure was the inadequate resourcing of the Houses and members of the Oireachtas.”*

The DIRT Report made a large number of recommendations but a cornerstone recommendation was for *“the establishment of an Independent Oireachtas Commission.”* Unquestionably improvements have happened deriving from that and

related recommendations. These recommendations in respect of the effective functioning of the Houses and Committees of the Oireachtas included –

- *Urgent consideration be given to an increasing role for Oireachtas Committees in the passage of legislation, especially as a means of avoiding hasty scrutiny;*
- *Meetings of Committees should not be scheduled to run in parallel with Plenary Sessions of the Oireachtas;*
- *Each Chairman of an Oireachtas Committee is fully briefed on the modalities of Parliamentary Inquiries;*
- *A Handbook of Parliamentary Inquiries be prepared by the Secretariat of Committees; and*
- *Powers of discovery for Committees be amended so that any documentary Discovery made by any Parliamentary Inspector is automatically Discovered to the Committee;*
- *General powers of Direction of Witnesses be included in the Resolution of the Oireachtas establishing a Parliamentary Inquiry;*
- *The procedures for taking of evidence before a Parliamentary Inquiry provides for groups of Witnesses to be taken;*

- *All Witnesses appearing before a Committee to which the Compellability Act, 1997 applies should be under Direction;*
- *All business, including ordinary business of the Committee of Public Accounts should be under direction;*
- *All Parliamentary Inquiries be conducted by a Sub-Committee of manageable size; Provisions should be made to have all further Parliamentary Inquiries and Tribunals of Inquiry broadcast live on television; and*
- *A comparative study be undertaken by the Department of Finance and the Attorney General's Office into Parliamentary Inquiries and Tribunals of Inquiry in the light of this Inquiry and to report back to the Oireachtas by 1 December 2000.*

In addition may I draw the attention of the members of the Inquiry to the Report I prepared for the Public Accounts Committee in 2005 entitled: **“Proposals for alterations in the way that estimates for expenditure are considered by Dáil Eireann”**

Essentially the Report is concerned with the whole budget or public expenditure cycle of central government. As noted by then Finance Minister, Brian Cowan T.D. commenting on the Financial or Budgetary cycle.



*“ . . . the Dáil consideration of these matters is ex post facto rather than prior to the decision-making process.”*

The Report sought to address this and related issues such as Parliament (or Committee) being required to deal with spending “*proposals*” half way through the year to which they related.

May I, in particular, refer you to pp. 54 – 56 of that Report which considers, inter alia, the case for a Super Budget Committee (as in Germany), a Parliamentary Budget Commission and a strengthened support service and resources for members and concluded that:

*“what is more important in the first instance is the task of parliamentary scrutiny . . . . it is generally recognised that professional support for parliamentarians is weak in Ireland compared to other parliamentary systems.”*

As a potential first step the Report recommended that consideration be given to this support service having a professional head of service similar in status and authority to the Comptroller and Auditor General. The service would have power to request where necessary relevant papers and records from departments.

However as the Report notes, no matter what changes are made there is no getting away from the fact that

*“the constitutional practice is one of the Executive in parliament. The critical aspect of this model is that only the government can propose a tax plan or spending item. Parliament can defeat a proposal or reduce the amount involved but it cannot increase the sums or re-allocate them to take account of different priorities. Generally speaking the opposition is confined to seeking to vote down the government which would of course cause a general election.”*

In other words, the government is the government and the opposition is the opposition.

The foregoing is obviously relevant as well to R5(c). But when all is said and done the cause of our downfall was a property bubble fuelled by tax incentives and over-lending for land and property investment and, in the case of commercial property, indeed reckless lending.

The Labour Party sought to address this issue over the years we are concerned with here in a variety of ways. In our view the speculation in building land was the root cause of the explosion in house prices. Consequently my colleague Eamon Gilmore T.D. on behalf of the Labour party introduced the Planning and Development (acquisition of Development Land) (Assessment of Compensation) Bill 2003 to combat speculation in building land. The Bill would cap the price of building land at existing unzoned - use value plus 25%. At the time the cost of the site could be 40% of the price of a home. The Bill also sought to enable local authorities to intervene to cause hoarded building land to come into use. The Bill went to the heart of the problem.

The Government voted down the Bill. Expert legal advice assured us to the effect that the Labour Bill could be enacted within the existing constitutional framework so that it would not be necessary to have a constitutional amendment. Our experience had been that pressurising the government to deal with the land speculation issue only resulted in the then Taoiseach kicking the issue into the All-Party Committee on the Constitution. No action was taken although the Committee did in due course report and endorsed our approach.

As my colleague will show, Labour consistently highlighted how the different property-based tax incentives and tax shelters hollowed out the tax base so that the average PAYE income tax payer was required to pay the relevant rate but the wealthy and very high earners could mitigate their tax liability. Meanwhile these property based tax incentives and shelters were driving the property bubble. We travelled Labour policy wherever the opportunity arose – by way of Parliamentary Question, amendments to legislation, amendments to Finance Bills in particular and in public discourse generally. We challenged the pattern of government delay in tackling these issues which consisted of reviews of these schemes that postponed action, allowed deadlines to be extended or referred possible solutions to the All-Party Committee on the Constitution on whose recommendations then no action was taken. Sometimes our efforts were merely to persuade government to stick to their own measures such as demanding the reintroduction of a 60% rate of Capital Gains Tax on the sale of hoarded building land to encourage builders to release land. This had been done following the Bacon Report in 1998 but then dropped in a subsequent Budget.

Like most public representatives, Labour became more alarmed that constantly rising house prices were making homes unaffordable even for two persons on reasonable incomes. The banks could no longer fund the demand for credit and increased their borrowing abroad. Household debt was rising and, even if we didn't know it, the banks were becoming more vulnerable. The question became what to do that didn't make the situation worse or hasten a collapse. I had constituents who contracted to purchase houses off the plans at a specified price only to find the price arbitrarily hiked by twenty to thirty thousand Euro through the simple ruse that "*Phase I is sold out but Phase II will be opening next week.*" The choice was to take the same house in what is now called Phase II and pay €20,000 to €30,000 more for it.

I am bound to say, however, that I did not make the connection between our alarm at what was happening in the housing market and the risk to the banking system. I must admit that it never occurred to me that our banks might fail. That fear did not surface in mainline debate until the autumn of 2008 despite Morgan Kelly's article. There were no credible economic reports that I knew of suggesting that the banks might be at risk. In fact there were national and international reports suggesting that the Irish financial system was sound. Even towards the end the public commentary was mainly about a soft landing. The conviction was that those charged with regulating and supervising the banks were doing their job.

## **Conclusion**

In our adversarial system of parliamentary democracy, governments always want to do good things and oppositions always want governments to do more good things. That is the natural impulse of democratic politics. At the end of the day, however, there is no escaping the fact that government must govern and the opposition must attempt to hold government to account. The opposition proposes and government disposes. The efficacy of the oversight of the banking sector in the critical years has been found wanting. In the narrow area of effective scrutiny of the banking sector, if the structures had existed and if the opposition had known the pertinent questions to ask, the government wouldn't have been able to answer them because the government didn't know there was a crisis until it was too late. Hopefully your Inquiry will be successful in throwing more light on why this should have been the case.