



## CONSTITUTIONAL CHANGE THROUGH EURO CRISIS LAW PROJECT TEAM

Invites you to a Workshop on

***Odyssey of a Eurozone country.  
Adjudication of postnational law in national (constitutional) courts***

**by Samo Bardutzky  
(University of Kent)**

**Wednesday 3 June 2015, h. 16.00-17.30, Villa Schifanoia, Sala Triara**

### **Abstract**

The paper looks at the decisions of the national (constitutional) courts (of Estonia, Ireland and Germany) that adjudicated on the constitutionality of the European Stability Mechanism (ESM). It does so with the aim of critiquing the role of national courts in, speaking more broadly, mechanisms and institutions of postnational/global governance and more narrowly, the emerging governance structures of the Eurozone.

In spite of constitutional concerns over the design of the ESM that were expressed by scholars, the courts rejected the challenges of the ESM's conformity with the respective national constitutions. The focus of the paper is on the courts measuring the ESM against sovereignty clauses and the clauses that safeguard representative democracy. To accommodate the ESM within the national constitution, the courts had to adopt a certain approach to sovereignty. The claim of the paper is that the courts' decisions let us recognize the tenets of the 'precommitment approach' in their reading of the sovereignty clauses.

The paper uses the arguments from the precommitment debate related to the legitimacy of judicial review to analyze whether the precommitment approach can be validly used in the case of the ESM and national sovereignty and to identify the shortcomings of this approach in this concrete case. In presenting its normative claim built on the analysis of the shortcomings, an alternative reading of sovereignty clauses in similar cases is proposed.

Project funded by the Research Council of the EUI  
For further details see <http://eurocrisislaw.eui.eu>