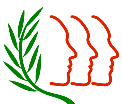
# THE EUROPEAN STABILITY MECHANISM AND THE CASE FOR AN IRISH REFERENDUM

## SECOND EDITION



PEOPLE'S MOVEMENT
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**SECOND EDITION**

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# BY WAY OF INTRODUCTION

Last year the German Chancellor, Angela Merkel, proclaimed that the current financial crisis represented a "beneficial crisis" or golden opportunity to push ahead with the establishment of an effective EU government to complement monetary union.[1]

The EU Council of Prime Ministers and Presidents agreed in March 2011 to adopt a "comprehensive package of measures" to "respond to the crisis" and "preserve financial stability" in the European Union.

Following the Council meeting the president of the European Commission, José Manuel Barroso, boasted to RTE News about how far along that road the EU had travelled. "We have reinforced our monetary union with economic union. I think one can say that henceforth economic and monetary union will stand on both legs."[2]

The centrepieces of the March package are the "Euro Plus Pact"[3] and an amendment to the EU Treaties to establish a permanent "European Stability Mechanism."[4]

The Euro Plus Pact will subject the seventeen countries of the euro zone, and particularly smaller ones, such as Ireland, to a regime of detailed intrusive surveillance of budgets, tax policy, wages policy, pensions policy, and economic policy, to be enforced by fines and sanctions. It represents a drastic reduction in what is left of a state's national democracy and independence.

Last November this country was "bailed out" by the EU and ECB through the European Financial Stability Fund (EFSF) and the European Financial Stability Mechanism (EFSM), by the IMF through its Extended Fund Facility, and by Britain, Sweden and Denmark through bilateral loans.

Even the dogs in the street now know that the "bail-out" was in fact a stitch-up, a "forced loan" that has turned the state into a vast debt-servicing machine. Thousands of millions of euros in loans were provided on foot of it to prevent insolvent Irish banks from going bust and thereby defaulting on their debts to the German, French, British and other banks that

were incurred during the property-fuelled borrowing binge from 2002 to 2007.

These debts were now shifted onto the Irish state, and its citizens have been turned into 21st-century financial serfs, bound to service a "bankocracy" every bit as grasping and oppressive as the aristocracy of feudal times.

In addition, from June 2013 a "European Stability Mechanism" (ESM) will take over from the European Financial Stability Facility and the European Financial Stabilisation Mechanism in the provision of loans to euro-zone members in difficulties—strictly conditional on the implementation of a range of "adjustment measures." For this, read turning a country into a social and economic wasteland.

Described by the German Chancellor, Angela Merkel, as a "solidarity" measure, the ESM will not have retrospective effect so will not be of any help to this country in its present situation.

To add insult to injury, the Tánaiste, Éamon Gilmore, admitted in response to a question in Dáil Éireann on 13 April 2011 that Ireland will be required to pay approximately €9.87 billion towards the fund.

The EU authorities are very anxious to avoid a referendum in any EU state on the establishment of the ESM, even though it will entail an amendment to the EU Treaties. It is proposed to push through this amendment using the "self-amending provision" of the Lisbon Treaty (Article 48, TEU).[5]

The line from the Government parties and the Fianna Fáil "opposition," along with the usual supporting chorus drawn from media, business and trade union circles, is that the changes do not increase the power of the EU.

This is based on the opinion of the last Attorney-General, Paul Gallagher. It was the same Mr Gallagher who advised the Fianna Fáil-Green Party Government in September 2008 that a blanket state guarantee of all the debts of Ireland's private banks was legal, and that Irish law required that the creditors and bondholders of the Irish banks should not be touched in view of such a guarantee.

This opinion fitted in neatly with the insistence of the European Central Bank on a guarantee that no Irish bank could be allowed to fail, in case the German and French banks from which the Irish banks had borrowed would not be paid back.

As demonstrated below, the refusal to hold a referendum clearly breaches the Crotty Judgement (1987) of the Supreme Court, simply so

that the German and French governments and Brussels will not be inconvenienced.

This is a travesty of democracy.

By denying the people a say on this fundamental matter, the Government and their opposition soulmates will be engaging in yet another stitch-up to add to the bank guarantee and last November's "bail-out."

It is one stitch-up too many, and we ask you to join the People's Movement in demanding a referendum on the European Stability Mechanism now.

## Some things you can do

- You can access a PDF of this document on the People's Movement web site (www.people.ie). Why not send a copy to your friends for their consideration?
- Write a letter to your local newspaper, based on this document. It can be as brief as calling for a referendum on the European Stability Mechanism.
- Organise a local public meeting. We can provide posters and speakers.
- Organise a People's Movement group to campaign locally for a referendum. We can help.
- Propose a resolution at your residents' association, trade union or other representative forum. Don't forget to send a statement to your local papers, and let us know about it (post@people.ie).
- Call your local radio station and ask them to invite a People's Movement speaker to talk about the campaign.
- Send a donation to help with the campaign. (Bank details are at the back of this pamphlet.) All donations will be acknowleged.

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# THE GENESIS OF THE EUROPEAN STABILITY MECHANISM

In December 2010 the European Council, comprising the twenty-seven heads of state and government agreed to amend Article 136 of the Treaty on the Functioning of the European Union (TFEU) to establish a permanent European Stability Mechanism (ESM).

This permanent mechanism was to replace the existing temporary bail-out fund from 2013. This is the fund from which the EU-IMF money has been provided for Ireland and earlier for Greece, and now for Portugal.

The European Financial Stability Facility (EFSF) expires in mid-2013. From 2013 onwards, "bail-outs" will be by way of loans conditional on "adjustment measures"—for this read regimes of austerity and the sale of national assets.

There will be provision in exceptional cases for the direct purchase of government bonds in the primary market.

An agreement between France and Germany in October 2010 was a major impetus towards the replacement of the temporary "bail-out" fund by a permanent one, based on a treaty between the member-states of the euro zone.

## Chancellor Angela Merkel's "little legal difficulty"

*Der Spiegel Online* reported on 17 December 2010 that

> Merkel had insisted on the treaty amendment in part to avoid a scenario in which future bail-outs could be challenged in German courts.[6] Merkel did her best to generate enthusiasm for the crisis mechanism. She called it a "major element of solidarity among member states."

Cutting through this hype, *Der Spiegel* correctly concluded:

> In reality . . . however . . . the drastic austerity measures that many indebted countries in the euro zone have implemented may expose the common currency zone to further risks.

The temporary fund was set up under Article 122 of the TFEU. The use of this article was always considered to be questionable at the very least, as the first part of the article only permits EU "measures appropriate to the economic situation, in particular if severe difficulties arise in the supply of certain products, notably in the area of energy."

Article 122.2 was the specific authority for the temporary fund, and it limits "Union financial assistance" to situations where "a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control."[7]

It is for this reason that the European Council agreed that Article 122.2 of the TFEU would not be the “appropriate Treaty Article for the permanent European Stability Mechanism (ESM)” and “will no longer be needed for such purposes.”

A constitutional challenge in Germany also cites Article 125 of the TFEU, which forbids EU bail-outs of member-states in principle and most particularly when they are a result of states failing to abide by the rule of a maximum annual deficit of 3 per cent of GDP and a maximum national debt of 60 per cent of GDP, which is laid down in the same treaties.[8]

Article 125 of the TFEU is clear about what is not permitted. It states:

> The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

Article 123 also forbids overdraft or credit facilities by national governments with the European Central Bank.[9]

The German government is concerned that elements of the existing EU-IMF bail-out fund are illegal under EU law or German law, or both.

The deputy director of the Centre for European Reform, Katinka Barysch, told a British House of Lords Select Committee on 7 December 2010 about Merkel’s problem.

> I read in the *Irish Times* the other day a scenario in which the constitutional court declares that Germany is no longer allowed to continue with any bail-outs and the eurozone breaks apart immediately. I do not think that is plausible, because the court is aware of the impact that it has on politics and now also on European economics.
>
> Having said that, because the court has made its position quite clear that a permanent crisis management mechanism that involves transferring money from one sovereign country to another cannot be set up unless there is a solid treaty base for it, this is what the Germans think they need to do. That’s a

political imperative as much as a legal one, because no German politician can be seen to be acting in contravention of the court.

The proposed treaty amendment is the addition of a third paragraph to Article 136 of the TFEU that states:

> The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.

The European Policy Centre (EPC) commented:

> Compared to earlier versions, the first of the two additional sentences added to this paragraph now clearly states that the permanent stability mechanism would only "be activated if indispensable"—a concession to the German government, which is keen to send a clear message to the Karlsruhe [constitutional] court that the mechanism will only be employed as an *ultima ratio* (last resort) in the event that the euro's stability is endangered.[10]

Also, lest there be any confusion, the purpose of the ESM is clearly spelt out to be "to safeguard the financial stability of the euro area as a whole," rather than to solve the problems of an individual member-state.

## A draconian austerity regime that will make problems worse

The European Council conclusions make no bones about just how draconian a regime would be demanded from an applicant euro-zone member.

> Assistance provided to a euro area Member State will be based on a stringent programme of economic and fiscal adjustment and on a rigorous debt sustainability analysis conducted by the European Commission and the IMF, in liaison with the ECB (Term Sheet of ESM).[11]

Countries that apply for financing will thus be subjected to a tough budgetary austerity programme as a condition for obtaining finance. With each recession, when countries are more likely to be forced to turn to the ESM, they will be forced to reduce spending and to increase taxes. Investors who anticipate this will, with each recession, raise the interest rate on government bonds, thereby making the recession worse.

## A final end of social democracy?

Just how retrograde a step this is is borne out when it is remembered that one of the big claims for European liberal and social democracy is the existence of “automatic stabilisers” in the government budgetary policy.

This means that when a recession occurs and the government budget deficit increases, the hardship for those hit by the recession (for example the unemployed who obtain unemployment benefits) is reduced.

The new financing mechanism that is being set up in the euro zone will rob countries of their capacity to protect those hit by the recession. In effect, it is a recipe for a complete suspension of national sovereignty in the field of social policy.

## Pressures on applicant countries

Unlike the IMF, whose decisions require a simple majority (of the shares), ESM decisions to approve a loan, determine interest rates and the conditions to be imposed require the unanimity of euro-zone finance ministers.

Each country is effectually given a veto power on the Board; so already vulnerable countries will find themselves subjected to intense pressure to conform to the demands of the stronger euro-zone members.

It is not difficult to imagine scenarios like the following. Country G, which is in good financial health, trades its consent to lend to country I, in exchange for the latter consenting to adopt the very policy measure that mostly benefits country G (for example an increase in the corporate tax rate).

The proposal requires that the European Commission should carry out an assessment of the sustainability of public debt of the country, presenting difficulties in accessing financial markets. If the Commission were to conclude that a country is technically insolvent, then the ESM would provide a loan only to the extent that the private sector would be involved.

But it is obvious that if a country has difficulties in tapping the financial markets, it must be precisely because investors perceive it as in-

solvent; so it is not difficult to imagine that the Commission will also come to this conclusion for most aspirant borrowers.

Pontificating about “moral hazard” and not rewarding excessive risk-taking is all very well, but imagine what would happen if the ECB was to declare today that all the countries (still) tapping European money after 2013 will default, with absolute certainty, in 2013 (albeit partially).

This is exactly on a par with what will happen with the ESM arrangement. From today, the markets would require higher yields on the new issues of actual and perspective ESM clients, precipitating an insolvency crisis, such as forced Portugal to seek a bail-out recently.

## Too little, too late

The total subscribed capital of the fund will amount to €700 billion, which gives a loan capacity of €500 billion.

Yet in 2011, whatever about the figure for 2013, the debt coming to maturity of Greece, Ireland, Italy, Portugal and Spain will top €502 billion, and the financial requirements of Spain’s central and local governments up to 2013 are estimated at about €470 billion.

Does the Government know the full implications of what it wants to sign up to?

The Tánaiste, Éamon Gilmore, in Dáil Éireann on 13 April: “The manner in which the ESM is structured means that each country’s contribution will not impact on its general government deficit.” His reason for this belief: “Euro-zone member-states will only actually disburse €80 billion, in five annual instalments, starting in 2013. A remaining €620 billion of the subscribed capital will be made available by way of ‘callable capital’ and guarantees.” (Dáil Reports, 13 April 2011)

It’s like turkeys voting for Christmas. As Wolfgang Munchau has pointed out (*Financial Times,* 28 March),

> here is the crux: Germany and France whose sovereign bonds have a triple A rating would not need to put up actual money to cover any shortfall of paid-in capital. A guarantee would do. But countries with lower ratings such as Italy, Spain and yes Portugal, Ireland and Greece would have to pay cash. So we are in a perverse situation. Countries with easy access to capital can provide cheap guarantees, while the weaker countries must put forward cash . . .

> Since this guarantee has to serve as the equivalent of a pre-paid cash payment, a guarantee by a non-triple A rated country would not cover the shortfall.

How could this country realistically comply with a cash demand in these circumstances?

In addition, "callable" capital means that the fund can ask shareholders to supply new capital if existing capital gets wiped out. But how realistic is this for a country like Italy, with public-sector debts of 120 per cent of GDP? How will it find the tens of billions for a bail out of another State? Italy's share in ESM is nearly 18 per cent. What if Italy could not honour its commitment? It has been argued that the biggest risk to the solvency of countries such as Italy has nothing to do with its own debt but rather its exposure to the euro-zone "crisis mechanism."

A guarantee has to serve as the equivalent of a pre-paid cash payment; so a guarantee by a country like Ireland would not cover any shortfall. The hope—if any rational thought at all has been given to the matter—is that it will never be put to the test.

It's a high-risk strategy that can come unstuck very easily.

## A speculators' paradise

Although the proposals provide for the possibility of accelerating payments should a crisis unfold before 2013, delays are likely to be long and destabilising, leaving vulnerable euro-zone members exposed to speculative attacks.

The ESM will apply a relatively high interest rate (two percentage points above the funding rate, according to the ESM Term Sheet).

It has been estimated, for example, that for every €100 billion that Italy would have to contribute as being necessary to "save" other countries of the euro zone the Italian budget will be burdened by almost €18 billion—about one percentage point of Italian GDP—and this would occur at the worst possible time, when the markets would probably require high and rising interest rates.

The equivalent for this country would be that for every €30 billion that we would be required to contribute, €5.4 billion would be added to our budget.

## Markets made even more prone to volatility

Even mainstream politicians and economists fear that the whole set-up is dangerously prone to volatility and makes markets more sensitive to speculative fears.

A recent example: the *Independent* reported on 21 April 2011 that the interest rates on Greek, Irish and Portuguese government debt had risen dramatically because of concerns of a possible Greek announcement over the weekend and a warning by Citi Group that long-term cuts would lead to "austerity fatigue" among voters and politicians in Portugal, Spain, Greece, and Ireland.

The political fall-out would make it impossible to deliver the spending cuts and tax increases needed to reduce deficits, it said. In the secondary markets, the Irish ten-year yield closed the week at 10.48 per cent and the two-year rate at 11.34 per cent, both records.

## "Collective action clauses"

Even the so-called burden-sharing part of parts of the proposals are considered risky.

From 2013 on, all members of the euro zone will be obliged to introduce "collective action clauses" when they issue new government bonds.

A collective action clause allows a supermajority of bondholders to agree a debt restructuring that is legally binding on all holders of the bond, including those who vote against the restructuring. Bondholders generally opposed such clauses in the 1980s and 90s, fearing that it gave debtors too much power.

However, following Argentina's default of December 2001, in which its bonds lost 70 per cent of their value, CACs have become much more common, as they are now seen as potentially warding off more drastic action but enabling easier co-ordination of bondholders.

But when the German government made the first proposal to introduce collective action clauses, at the European Council meeting last October, the immediate effect was to intensify the crisis in the euro-zone sovereign bond markets. Interest rates on the government bonds of

Greece, Ireland, Portugal and Spain shot up almost immediately. Since then these interest rates have remained high. This should not have been surprising.

When private bondholders know that in the future their bonds will automatically lose value when a country turns to the ESM, they will want to be compensated for the added risk with a higher interest rate.

In addition, each time they suspect that a country may turn to the ESM for funding they will "run for cover" and try to avoid the loss in the value of their bond. They will do this by immediately selling their government bonds. But this selling activity will raise the interest rate on these bonds, and will make it more likely that the government will have to ask for support from the ESM. Thus, the mere fear of losses will precipitate a crisis, making those losses more likely.

The ESM is unlikely to withstand the shock of a severe financial crisis and may accelerate and even spread the crisis to high-debt countries. Rather than being a solution it is one more indicator of the unreformable nature of the euro zone. Ironically, it might even be another nail in its coffin.

Voting weights within the Board of Governors and the Board of Directors of the ESM will be proportional to the member-states' subscriptions to the capital of the ESM. A qualified majority is defined as 80 per cent of the votes.

It can be seen, according to the contribution key,[12] that France and Germany combined will command 47.5 per cent of the votes, while Ireland will have 1.6 per cent. Unlike the IMF, whose decisions require a simple majority (of the shares), ESM decisions on approving a loan, determining the interest rates and the terms of conditionality require the unanimity of euro-zone finance ministers.

If the Kenny-Gilmore Government were not so anxious to keep bowing and scraping before the EU and our EU "partners" they would quickly abandon the decades-old habit of deference to Brussels and stand up for Irish interests.

Up to now, Irish policy is to keep as far away from other peripheral countries as possible, preferring the lapdog role. The Government should now break that habit and start to co-ordinate its responses to the crisis with the governments of the other peripheral countries, especially Portugal, Italy, Greece, and Spain.

We all need to break free from this prison-house of peoples.

## THERE MUST BE A REFERENDUM ON ESM

We have seen that the proposal to establish a permanent stability mechanism is one of those steps whereby the EU makes a qualitative leap towards becoming a federal-style European state, under German and French hegemony, at the expense of what is left of our national economic independence and democracy.

It is full of danger for the citizens of this state, and for the democratic rights of peoples throughout the EU.

But what constitutional principles should be applied in response to it?

They are to be found in the Supreme Court judgement in the case of *v. An Taoiseach* (9 April 1987, Supreme Court 1986 No. 12036P). The Supreme Court established the rule best summarised in the judgement of Mr Justice Hederman:

> It appears to me that the essential point at issue is whether the State can by any act on the part of its various organs of government enter into binding agreements with other states, or groups of states, to subordinate, or to submit, the exercise of the powers bestowed by the Constitution to the advice or interests of other states, as distinct from electing from time to time to pursue its own particular policies in union or in concert with other states in their pursuit of their own similar or even identical policies.
>
> The State's organs cannot contract to exercise in a particular procedure their policy-making roles or in any way to fetter powers bestowed unfettered by the Constitution. They are the guardians of these powers—not the disposers of them.

The case concerned the ratification of the Single European Act. Although the decision is well known, the reasoning for it is rarely discussed, because the case represents principles of popular sovereignty that are very unpopular in official Ireland.

The court held that it is not within the competence of the Government, or indeed of the Oireachtas, to free themselves from the restraints of the Constitution, or to transfer their powers to other bodies, unless expressly empowered so to do by the Constitution. They are both creatures of the Constitution and are not empowered to act free from the restraints of the Constitution.

## Sovereignty: “the right to say Yes or to say No”

Mr Justice Walsh reminded us:

> Article 6 of the Constitution refers to the powers of government as being derived from the people, whose right it is to designate the rulers of the State “and, in final appeal, to decide all questions of national policy, according to the requirements of the common good.”
>
> It must follow therefore that all the powers of government are to be exercised according to the requirements of the common good . . . The essential nature of sovereignty is the right to say Yes or to say No.

The Kenny-Gilmore Government and the Fianna Fáil “opposition” have agreed to the addition of an addendum to Article 136 of the Treaty on the Functioning of the European Union to the effect that “the Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality.” This treaty change has to be ratified by all twenty-seven EU member-states “in accordance with their respective constitutional requirements.”

The Fine Gael, Labour Party and Fianna Fáil “troika” are as one in their determination not to allow the people “in final appeal” to decide on this important matter by way of a referendum.

Does the fact that the Constitution provides that Ireland is bound by the laws, acts and measures adopted by the EU that are “necessitated by the obligations of membership” of the EU justify the “no referendum at any cost” stance of the main parties in the state?

No, because it is well established that the ratification of a new European treaty is never considered to be among the “laws enacted, acts done and measures adopted by the State necessitated by the obligations of membership of the Communities,” for the purposes of the immunity conferred by Article 29.4.6° of the Constitution of Ireland.

It is for this reason that the Supreme Court is at liberty to inspect the constitutionality of the proposed ESM measure: it enjoys no immunity from challenge.

## Not "Holy Writ"

We have already seen that the whole new framework that is being foisted on the EU member-states significantly extends the essential scope of the EU. This is particularly so in relation to smaller countries, such as Ireland.

But we are assured by the European Commission that "the amendment does not affect the competences conferred on the Union and its institutions in the Treaties. It does not involve creating a new legal base which would allow the Union to take action that was not possible before this Treaty amendment."

And the use of the procedure of Article 48 (6) of the Treaty on European Union for this amendment is very deliberate. Article 48 (6), the "self-amending" clause so hotly debated during the Lisbon Treaty referendums, is supposed to be used only where the new provision "shall not increase the competences conferred on the Union in the Treaties."

Unfortunately for EU apologists, more people than ever before have woken up to the reality that the opinions of the European Commission are not Holy Writ.

Opinions reflect political agendas. Remember the "opinion" that no Irish bank could be allowed to fail, in case the German and French banks from which the Irish banks had borrowed would not be paid back?

"Opinions" of the European Council are political by their very nature and should be judged as such. Similarly, the opinions of the Irish Attorney-General are governed by political expediency.

In the case of *Crotty v. An Taoiseach,* the Supreme Court established the rule that the Government must arrange for a referendum when it proposes to ratify a European treaty that entails an amendment to the Constitution.

The 28th Amendment permitted the ratification of the Lisbon Treaty and the state's membership of "the European Union established by virtue of that Treaty," but only to the extent that it remains within the "essential scope or objectives" of the treaties, up to and including the Lisbon Treaty. This is a test suggested by the then Chief Justice, Mr Justice Finlay, in *Crotty v. An Taoiseach.*

The Commission may insist that the new permanent bail-out fund does not increase the "competences" of the EU. Let us look at the reality, using the Crotty test to establish whether the measure takes the EU beyond the "essential scope or objectives" of the treaties.

First of all, the change involves an actual amendment to one of the treaties. Would this be necessary if the measure did not incorporate at least a degree of change to the essential scope or objectives of the EU?

The legal basis for the present temporary fund was an existing article, Article 122.2 of the TFEU; but, as we have seen, this was not considered "appropriate" for the permanent body.

## Whose agenda?

Some questions prompted by the quotation from Mr Justice Hederman in the Crotty case, given above:

Is the change an instance of the subordination or submission of the exercise of the powers bestowed by the Constitution to the advice or interests of other states?

Most certainly, as we have seen, the amendment to Article 136 reflects the political reality of Franco-German hegemony in the EU and reflects their interests in a very stark way. It imposes a framework on any bail-outs after 2013 that reflects the political agenda of the French and German governments, is dictated by the particular constitutional problems of the German government in relation to the present temporary bail-out fund, and is especially severe on peripheral members of the EU.

Or is it an instance of the Irish state electing to pursue its own particular policies in union or in concert with other states in their pursuit of their own similar or even identical policies?

Because the particular policy in question requires an amendment to one of the EU treaties, the primacy of these treaties in the Constitution of Ireland means in effect that the Constitution is being changed by implication; and any such change should be put to the people by way of referendum. The President should consider referring the legislation purporting to incorporate the treaty change in domestic Irish law to the Supreme Court under Article 26 of the Constitution to determine its constitutionality.

Anyone who doubts that the new body represents much more than just the "natural growth and evolution" of the EU should consider what it will involve.

Access to ESM financial assistance will be provided in accordance with strict policy conditionality under a macro-economic adjustment programme and a rigorous analysis of public-debt sustainability, which will be conducted by the Commission together with the IMF and in liaison

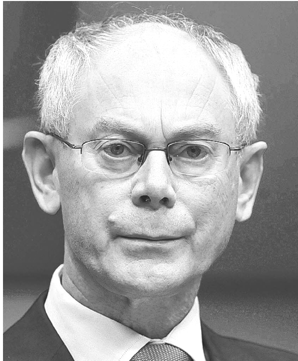
with the ECB. Assistance will be provided only in order to safeguard the financial stability of the euro area as a whole.

The so-called Term Sheet on the ESM from the EU Council (24–25 March 2011) spells out what would be involved:

> Financial assistance from the ESM will in all cases be activated on a request from a Member State to the other Members States of the euro area . . . On receipt of such a request, the Board of Governors will ask the Commission to assess, in liaison with the ECB, the existence of a risk to the financial stability of the euro area as a whole and to undertake a rigorous analysis of the sustainability of the public debt of the Member State concerned, together with the IMF and in liaison with the ECB. The subsequent steps in the activation of ESM financial assistance will be as follows: If an ESS [ESM stability support] is requested, the Commission, together with the IMF and in liaison with the ECB, will assess the actual financing needs of the beneficiary Member State and the nature of the required private sector involvement, which should be consistent with IMF practices.

But note that access to an ESS short to medium-term stability support is strictly conditional on "adequate policy conditionality commensurate with the severity of the underlying imbalances in the beneficiary Member State. The length of the programme and maturity of the loans will depend on the nature of the imbalances and the prospects of the beneficiary Member States regaining access to financial markets within the time that ESM resources are available"—Eurospeak for a social and economic regime of hell on earth!

> On the basis of this assessment, the Board of Governors will mandate the Commission to negotiate, together with the IMF and in liaison with the ECB, a macro-economic adjustment programme with the Member State concerned, detailed in a Memorandum of Understanding.
>
> . . .
>
> The Commission, together with the IMF and in liaison with the ECB, will be responsible for monitoring compliance with the policy conditionality required by a macroeconomic adjustment programme. It will report to the Council and to the Board of Directors. On the basis of this report, the Board of Directors will decide by mutual agreement on the disbursement of the new tranches of the loan.
>
> . . .
>
> Approval by the EU Member States will be sought to allow the Member States to task the Commission, together with the IMF and in liaison with the ECB, [with] the analysis of the debt sustainability of the Member State requesting financial support [and] the preparation of the adjustment programme accompanying the financial assistance, as well as with the monitoring of its implementation. [See Term Sheet below].



It is claimed that, as the proposed ESM is confined to the euro-zone states only, it is therefore "intergovernmental" and does not empower the EU as a whole or its institutions in any new way.

But the trigger to start the process requires amendment to the Treaty on the Functioning of the European Union, to be ratified by all twenty-seven member-states.

Also, the euro is the currency of the Union as a whole (Article 3.4, TEU), and new EU members must commit themselves to joining the euro zone.[13]

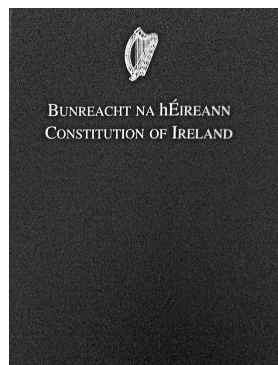
Little wonder that the EU authorities are determined that no country will have a referendum on the establishment of the ESM!

The European Council agreed that the Simplified Revision Procedure under Article 48 (6) would be used to amend Article 136 of the TFEU. Under this procedure, member-state governments, or the European Parliament or the Commission, may  to the European Council proposals for changes to these policies.

## What can be done?

Members of the Oireachtas and of the European Parliament should consider how best to use this aspect of the procedure to challenge a deadly assault on democracy.

Perhaps the President might be invited to consider referring Irish legislation purporting to incorporate the Treaty change in domestic Irish law to the Supreme Court, under Article 26 of the Constitution, to determine its constitutionality?




Allies should be sought, particularly in the other peripheral countries.

The text of the amendment agreed by EU leaders has gone to the European Parliament, the Commission, and the European Central Bank. The three institutions give their opinion on the proposal, although their views do not bind the European Council.

The decision thus adopted must be "approved by the Member States in accordance with their respective constitutional requirements."

Thus we are back to the democratic imperative of having a referendum.

## Some questions arising from Article 29 of the Constitution of Ireland that should be addressed

? **Is the change necessitated "by the obligations of membership of the European Union . . . or institutions thereof"?**

No, because it is well established that the ratification of a new European treaty is never considered to be among the "laws enacted, acts done and measures adopted by the State necessitated by the obligations of membership of the Communities," for the purposes of the immunity conferred by Article 29.4.6° of the Constitution of Ireland.

? **Is it a measure of a body "competent under the treaties"?**

No.

? **Is it a "decision, regulation or other act authorising the Council of the EU to act other than by unanimity"?**

No.

? **Is it a "decision, regulation or other act under those treaties authorising the adoption of the ordinary legislative procedure"?**

No. The European Council agreed, for political reasons, that the Simplified Revision Procedure under Article 48 (6) should be used to amend Article 136 of the TFEU.

**There are good political and legal reasons, therefore, for concerned citizens to start planning now for a Supreme Court challenge to any failure by the Government to hold a referendum on what is a further transfer of power to the EU, beyond that envisaged by the Lisbon Treaty.**

**The pending referendums on the Seanad, possibly children's rights and the competence of Oireachtas committees—some of which are planned for late 2011, probably in tandem with the Presidential election—provides an opportunity to hold a referendum on the ESM. Such a referendum could easily and effectively be turned by progres-**

**sive forces into a referendum on the bail-out, which would most probably be defeated.**

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## ARGUMENTS AGAINST THE EUROPEAN STABILITY MECHANISM—TO MAKE A LONG STORY SHORT

**1.** Voting weights within the Board of Governors and the Board of Directors of the ESM will be proportional to the member-states' subscriptions to the capital of the ESM. A qualified majority is defined as 80 per cent of the votes.

It can be seen, in accordance with the contribution key, that France and Germany combined will command 47.5 per cent of votes, while Ireland will have 1.6 per cent. Unlike the IMF, whose decisions require a simple majority (of the shares), the ESM decisions on approving a loan, determining the interest rates and the terms of conditionality require the unanimity of euro zone finance ministers.

Each country is effectually given a veto power on the Board. It is not difficult to imagine scenarios like the following: country G, which is in good financial health, trades its consent to lend to country I, in exchange for the latter consenting to adopt the very policy measure that mostly benefits country G—a topical example being an increase in the corporate tax rate.

**2.** The statute requires that the European Commission should carry out an assessment of sustainability of public debt of the country presenting difficulties in accessing financial markets. If the European Commission were to conclude that a country is technically insolvent, then the ESM will provide a loan only to the extent that the private sector will be involved—as provided for in the Term Sheet of March 2011.

On economic grounds, if a country has difficulties in raising funds on the financial markets, it must be because investors see it as insolvent, and, logically, the Commission will come to this conclusion for most aspirant borrowers. So, the markets will require higher yields on the new issues of actual and perspective ESM clients, thereby precipitating the insolvency crisis. Just as has happened in Portugal.

**3.** The total capital of €700 billion gives a loan capacity of €500 billion. Member-countries will actually disburse only €80 billion, in five annual instalments, starting in 2013. The rest will take the form of guarantees and "callable capital." Many commentators consider this "too little,

too late," as during 2011 (and not in 2013!) the debt coming to maturity in Greece, Ireland, Italy, Portugal and Spain will top €502 billion, and the financial requirements of Spanish central and local government up to 2013 are estimated at about €470 billion.

The agreement provides for the possibility of accelerating payments should a crisis unfold before 2013. However, as delays now seem inevitable, and questions surround the scheme ever coming to fruition, this leaves the euro zone's sovereigns very exposed to speculative attacks.

**4.** Because the European Stability Mechanism is financed by guarantees that will be called in case of need, rather than by significant capital of its own, the activation of the guarantees is likely to produce multiplier effects and contagion. The success in activating the mechanism would depend on the creditors' ability to make good on their promises, without getting themselves into trouble.

But the ESM's credit has equal status with privately held bonds. This means that if a country defaults, all those who signed up would get hit equally. Governments would have to pay immediately. What is intended as a rescue mechanism could then become a crisis propagator. This is why it is so important to establish a mechanism with enough paid-in capital from the outset, rather than relying on guarantees. In the Irish example, for every €100 billion that may be necessary to "save" other countries of the euro, the Irish budget will be loaded with another €1.6 billion (ESM contribution key). With tax revenue of about €30 billion last year, this would create a substantial hole, to be plugged in the main by the PAYE sector.

**5.** The problem with callable capital is a "can't pay, won't pay" scenario, as the member-states all guarantee each other. For example, do we really believe that Italy—a country with public-sector debts of 120 per cent of GDP—is in a position to find tens of billions for the bailing out of another member-state? And where is Ireland going to find the money?

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# Notes

1. "We have a shared currency but no real economic or political union. This must change. If we were to achieve this, therein lies the opportunity of the crisis . . . And beyond the economic, after the shared currency, we will perhaps dare to take further steps, for example for a European army." Open Europe international press survey, 13 May 2010.
2. RTE Television News, 25 March 2011.
3. The Euro Plus Pact (March 2011, edited). Full text: www.european-council.europa.eu/council-meetings/conclusions.aspx (p. 14–21).

This Pact has been agreed by the euro area Heads of State or government and joined by Bulgaria, Denmark, Latvia, Lithuania, Poland, Romania to strengthen the economic pillar of the monetary union, leading to a higher degree of convergence.

**a.** It will be *in line with and strengthen the existing economic governance* in the EU, while providing added value. It will be consistent with and build on existing instruments. *It will involve a special effort going beyond what already exists* and include concrete commitments and actions that are more ambitious than those already agreed, and accompanied with a timetable for implementation. These new commitments will be subject to the regular surveillance framework, with a strong central role for the Commission in the monitoring of the implementation of the commitments.

**b.** In the chosen policy areas *common objectives will be agreed upon at the Heads of State or Government level. Participating Member States will pursue these objectives with their own policy-mix, taking into account their specific challenges.*

**c.** *Each year, concrete national commitments will be undertaken by each Head of State or Government.* In doing so, Member States will take into account best practices and benchmark against the best performers, within Europe and vis-à-vis other strategic partners. The implementation of commitments and progress towards the common policy objectives will be *monitored politically by the Heads of State or Government* of the euro area and participating countries on a yearly basis, on the basis of a report by the Commission.

**Our goals**

Participating Member States undertake to take all necessary measures to pursue the following objectives: Foster competitiveness, Foster employment, Contribute further to the sustainability of public finances, Reinforce financial stability.

Each participating Member State will present the specific measures it will take to reach these goals.

Progress towards the common objectives above will be politically monitored by the Heads of State or Government on the basis of a series of indicators covering competitiveness, employment, fiscal sustainability and financial stability. Countries facing major challenges in any of these areas will be identified and will have to commit to addressing these challenges in a given timeframe.

**Foster competitiveness**

Progress will be assessed on the basis of wage and productivity developments and competitiveness adjustment needs. To assess whether wages are evolving in line with productivity, unit labour costs (ULC) will be monitored over a period of time, by comparing with developments in other euro area countries and in the main comparable trading partners. For each country, ULCs will be assessed for the economy as a whole and for each major sector.

Each country will be responsible for the specific policy actions it chooses to foster competitiveness, but the following reforms will be given particular attention:

**(i)** review the wage setting arrangements, and, where necessary, the degree of centralisation in the bargaining process, and the indexation mechanisms, while maintaining the autonomy of the social partners in the collective bargaining process; ensure that wages settlements in the public sector support the competitiveness efforts in the private sector (bearing in mind the important signalling effect of public sector wages).

**(ii)** measures to increase productivity, such as: further opening of sheltered sectors by measures taken at the national level to remove unjustified restrictions on professional services and the retail sector, to foster competition and efficiency, in full respect of the Community *acquis*.

**Foster employment**
The following reforms will be given particular attention: labour market reforms to promote "flexicurity", reduce undeclared work and increase labour participation; tax reforms, such as lowering taxes on labour to make work pay while preserving overall tax revenues, and taking measures to facilitate the participation of second earners in the work force.

**Sustainability of pensions, health care and social benefits**
This will be assessed notably on the basis of the sustainability gap indicators These indicators measure whether debt levels are sustainable based on current policies, notably pensions schemes, health care and benefit systems, and taking into account demographic factors.

Reforms necessary to ensure the sustainability and adequacy of pensions and social benefits could include: aligning the pension system to the national demographic situation, for example by aligning the effective retirement age with life expectancy or by increasing participation rates; limiting early retirement schemes and using targeted incentives to employ older workers (notably in the age tranche above 55).

**Reinforce financial stability**
eveloping a common corporate tax base could be a revenue neutral way forward to ensure consistency among national tax systems while respecting national tax strategies, and to contribute to fiscal sustainability and the competitiveness of European businesses. The Commission has presented a legislative proposal on a common consolidated corporate tax base.

**Concrete yearly commitments**
In order to demonstrate a real commitment for change and ensure the necessary political impetus to reach our common objectives, each year participating Member States will agree at the highest level on a set of concrete actions to be achieved within 12 months. The selection of the specific policy measures to be implemented will remain the responsibility of each country, but the choice will be guided by considering in particular the issues mentioned above.

4. European Council Conclusions, 16–17 December 2010 (edited). Full text: www.european-council.europa.eu/council-meetings/conclusions.aspx.

Whereas: (**1**) Article 48 (6) of the Treaty on European Union (TEU) allows the European Council, acting by unanimity after consulting the European Parliament, the Commission and, in certain cases, the European Central Bank, to adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union (TFEU). Such a decision may not increase the competences conferred on the Union in the Treaties and its entry into force is conditional upon its subsequent approval by the Member States in accordance with their respective constitutional requirements.

(**4**) The stability mechanism will provide the necessary tool for dealing with such cases of risk to the financial stability of the euro area as a whole as have been experienced in 2010. At its meeting of 16 and 17 December 2010, the European Council agreed that, as this mechanism is designed to safeguard the financial stability of the euro area as whole, Article 122(2) of the TFEU will no longer be needed for such purposes.

(**5**) On 16 December 2010, the European Council decided to consult, in accordance with Article 48(6), second subparagraph, of the TEU, the European Parliament and the Commission, on the proposal. It also decided to consult the European Central

Bank. [On [dates], the European Parliament, the Commission and the European Central Bank, respectively, adopted opinions on the proposal.]

(**6**) The amendment concerns a provision contained in Part Three of the TFEU and it does not increase the competences conferred on the Union in the Treaties,

HAS ADOPTED THIS DECISION:

**Article 1**

The following paragraph shall be added to Article 136 of the Treaty on the Functioning of the European Union: "**3. The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."**

**Article 2**

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements. This Decision shall enter into force on 1 January 2013, provided that all the notifications referred to in the first paragraph have been received, or, failing that, on the first day of the month following receipt of the last of the notifications referred to in the first paragraph.

5. Article 48.6, TFEU: Simplified revision procedures.

The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the Union. The European Council shall act by unanimity after consulting the European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area.

That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements. The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

6. *Der Spiegel Online International,* 17 December 2010.

7. Article 122.2 of the TFEU.

Where a Member State is in difficulties or is seriously threatened with severe difficulties caused by natural disasters or exceptional occurrences beyond its control, the Council, on a proposal from the Commission, may grant, under certain conditions, Union financial assistance to the Member State concerned. The President of the Council shall inform the European Parliament of the decision taken.

8. Article 125, TFEU.

1. The Union shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of any Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. A Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings

of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project.

2. The Council, on a proposal from the Commission and after consulting the European Parliament, may, as required, specify definitions for the application of the prohibitions referred to in Articles 123 and 124 and in this Article.

9. Article 123, TFEU.

1. Overdraft facilities or any other type of credit facility with the European Central Bank or with the central banks of the Member States (hereinafter referred to as "national central banks") in favour of Union institutions, bodies, offices or agencies, central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank or national central banks of debt instruments.

2. Paragraph 1 shall not apply to publicly owned credit institutions which, in the context of the supply of reserves by central banks, shall be given the same treatment by national central banks and the European Central Bank as private credit institutions.

10. Janis A. Emmanouilidis (senior policy analyst, European Policy Centre), "Adding pieces to the European economic governance puzzle," 20 December 2010.

11. Annex II: Term Sheet on the ESM (edited). Full text: www.european-council.europa.eu/council-meetings/conclusions.aspx (p. 22–34).

The European Council has decided to add to Article 136 of the Treaty the following paragraph:

***"The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."*** The ESM will assume the role of the European Financial Stability Facility (EFSF) and the European Financial Stabilisation Mechanism (EFSM) in providing external financial assistance to euro-area Member States after June 2013.

Access to ESM financial assistance will be provided on the basis of strict policy conditionality under a macro-economic adjustment programme and a rigorous analysis of public-debt sustainability, which will be conducted by the Commission together with the IMF and in liaison with the ECB. The beneficiary Member State will be required to put in place an appropriate form of private-sector involvement, according to the specific circumstances and in a manner fully consistent with IMF practices.

***The remainder of this term sheet sets out edited key structural features of the ESM.***

**The ESM will be established by a treaty among the euro-area Member States** as an intergovernmental organisation under public international law and will be located in Luxembourg. The statute of the ESM will be set out in an annex to the treaty.

The ESM will have a Board of Governors consisting of the Ministers of Finance of the euro-area Member States (as voting members), with the European Commissioner for Economic and Monetary Affairs and the President of the ECB as observers. Voting weights within the Board of Governors and the Board of Directors will be proportional to the Member States' respective subscriptions to the capital of the ESM. A qualified majority is defined as 80 per cent of the votes.

The ESM will have a total subscribed capital of €700 billion. **Of this amount, €80 billion will be in the form of paid-in capital provided by the euro-area Member States being phased in from July 2013 in five equal annual instalments.** In addition, the ESM will also dispose of a combination of committed callable capital and of guarantees from euro area Member States to a total amount of € 620 billion. During the transitional phase from 2013 to 2017, Member States commit to accelerate, in the unlikely event that this is needed, the provision of appropriate instruments in order to maintain a minimum 15 per cent ratio between paid-in capital and the outstanding amount of ESM issuances.

**The contribution key of each Member State in the total subscribed capital of the ESM will be based on the paid-in capital key of the ECB as annexed.** By ratifying the Treaty establishing the ESM, Member States legally commit to provide their contribution to the total subscribed capital.

If indispensable to safeguard the stability of the euro area as a whole, in line with the amendment to Article 136 of the Treaty, **the ESM will provide financial assistance subject to strict conditionality under a macro-economic adjustment programme, commensurate with the severity of the imbalances of the Member State.** It will be provided through loans. However, it may intervene, as an exception, in debt primary markets on the basis of a macro-economic adjustment programme with strict conditionality and if agreed by the Board of Governors by mutual agreement.

**IMF involvement**

The ESM will cooperate very closely with the IMF in providing financial assistance. In all circumstances, active participation of the IMF will be sought, both on the technical and the financial level.

**Pricing**

The Board of Governors will decide on the pricing structure for financial assistance to a beneficiary Member State. The ESM will be able to lend at a fixed or variable rate. The pricing of the ESM will be in line with IMF pricing principles and, while remaining above the funding costs of ESM, **will include an adequate mark up for risks.**

The following pricing structure will apply to ESM loans: 1) ESM funding cost. 2) A charge of 200 bps (200 basis points or 2%) applied on the entire loans. 3) A surcharge of 100 bps for loan amounts outstanding after 3 years. For fixed rate loans with maturities above 3 years, the margin will be a weighted average of the charge of 200 bps for the first 3 years and 200 bps plus 100 bps for the following years.

The granting of the financial assistance will be contingent on the Member State having a credible plan and demonstrating sufficient commitment to ensure adequate and proportionate private sector involvement. Progress in the implementation of the plan will be monitored under the programme and will be taken into account in the decision on disbursements.

**Collective Action Clauses**

Collective Action Clauses (CACs) will be included in all new euro area government securities, with maturity above one year, from July 2013. The objective of such CACs will be to facilitate agreement between the sovereign and its private-sector creditors. The inclusion of CACs in a bond will not imply a higher probability of default or of debt restructuring relating to that bond. Accordingly, the creditor status of sovereign debt will not be affected by the inclusion of CACs.

12. ESM contribution key, based on the ECB key (edited to exclude some member-states):

| | | |
|---|---|---|
| France | FR | 20.386 |
| Germany | DE | 27.146 |
| Greece | EL | 2.817 |
| Ireland | IE | 1.592 |
| Italy | IT | 17.914 |
| Portugal | PT | 2.509 |
| Spain | ES | 11.904 |
| Total | EA17 | 100.0 |

Note: The ESM key is based on the ECB capital contribution key.

**Additional notes**

**1. A decision taken by mutual agreement is a decision taken by unanimity of the Member States participating to the vote, i.e. abstentions do not prevent the decision from being adopted.**

**2. The vote of the Member State whose default is at the origin of the loss to be covered is suspended for this decision.**

**3. As a consequence of joining the euro area, a Member State shall become a member of the ESM with full rights and obligations.**

13. Article 3.4, TFEU. “The Union shall establish an economic and monetary Union whose currency is the euro.”

# PEOPLE'S MOVEMENT
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The People's Movement campaigns against any measures that further develop the EU into a federal state and to defend and enhance popular sovereignty, democracy and social justice in Ireland.

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PEOPLE'S NEWS
*News Digest of the People's Movement*

No. 48 — 2 May 2011

**Could the pension savings of Irish workers be expropriated by the state?**

Many of our workers' life savings are tied up in pension schemes; there's a lot of money in Ireland's private pensions! At present there is €48 billion in defined-benefit private pensions and €23.7 billion in defined-contribution schemes.

To put that in context, it's about €14 billion short of the EU-IMF bail-out figure. So, it wouldn't be surprising if the Government and the EU and IMF had a long, hard look at it, now that they've successfully raided the National Pension Reserve Fund.

Since 2000, 1 per cent of GNP is paid into the NPRF each year. And now it's all gone to the banks: €15 billion to recapitalise Allied Irish Banks, Bank of Ireland and the Educational Building Society and the remaining €10 billion to buy shares in AIB and Bank of Ireland. You may recall that the raid was specifically called for by the EU and IMF in the memorandum agreeing the bail-out.

There are precedents for a grab of private pension fund savings, when a bankrupt state entirely runs out of money, a recent notable example being that of Argentina. In 2008 the state seized—nationalised—the assets of private pension funds but in a prior move had legislated to compel them to invest in the domestic economy. A number of Portuguese pension schemes have also been "nationalised."

But could it happen here? Could the pension savings of workers be used to pay the odious debt of banks? The answer is Yes; and you have to be aware of this, because this is often the way things end when a state goes broke. We are not at that point yet; but have no doubt that the EU and IMF are merciless in their defence of senior bondholders—primarily French and German banks.

We are continually told by various commentators and ministers that Irish pension funds need a financial injection, as many are suffering from "funding difficulties." Their investments in "blue-chip" bank shares have been wiped out, and their exposure to Irish bonds has also taken a hammering, as the price of these bonds has fallen—though there has recently been a partial recovery.

And then there is the accountancy contrivance of the financial reporting standard FRS17, whereby, since 2005, the value of accrued pension liabilities in defined-benefit schemes must be included in the balance sheet of the firm!

In many cases, however, the scheme's future liabilities might outweigh their ability to pay, so they need either extra capital injections or access to investments that return a risk-free high yield.

Enter Brian Lenihan, of bank-guarantee fame, who in December 2010 introduced a scheme—the Sovereign Annuities Initiative—that seems to provide just such an opportunity for the pension funds to get higher-yielding bonds to recapitalise their funds and for the state to get its hands on more of workers' savings.

Irish ten-year bonds are at about 10 per cent at the moment, and if our pension funds could invest in that government debt at something close to that yield it would go a long way towards covering the potential future losses of those funds. But under present legislation pension funds can invest only in top-rated, low-yielding sovereign debt. This prudent investment vehicle would typically be German bonds, yielding 3.2 per cent on ten-year debt.

But the scheme introduced by Lenihan allows the National Treasury Management Agency to issue new bonds that will be available for Irish pension funds, allowing them to buy new debt paying high interest. On the face of it this seems to provide a very neat solution to the funding problem for Irish pension funds, and no doubt will be couched in terms of "keeping our money at home."

But beware: it is also a new source of funding for the state, which then would not have to rely solely on the EU and IMF. It also provides a vehicle whereby the state can start the process of grabbing your savings and pouring them into the banks. And there is an added inducement for trustees and fund managers, in that the statutory minimum funding standard will be changed to allow pension schemes to reprice their liabilities to pensioners to the extent that they purchase sovereign annuities or bonds.

Consider the facts: if the interest rate on an investment is high, that rate reflects the risk associated with that bond. Higher yield is the natural result of higher risk. So pension funds would be

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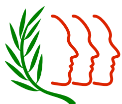

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