

AUSTERITY ISN'T WORKING



NÍL DÉINE
AG OBAIR



Vote

NO

Sinn Féin

CONTENTS

Foreword	3
Réamhrá	4
Introduction: We have a choice Intreoir: Tá rogha againn	5
Executive Summary	6
Achoimre Feidhmiúcháin	7
Treaty deals with the symptoms and not the causes of the Eurozone crisis Tugann an Conradh faoi chomharthaí ghéarchéim Limistéar an Euro in ionad a cúiseanna	9
Analysis of Austerity Treaty Anailís ar an gConradh Déine	11
Key areas of concern – why it is a bad deal for Ireland and the EU Eochair-réimsí imní – an fáth a bhfuil sé ina dhrochbheart d’Éirinn agus don AE	12
Real solution to the crisis Fíor-réiteach ar an ngéarchéim	14
Conclusion Conclúid	17
Appendix 1: Legal opinion on why a referendum was required Tuairim dhlíthiúil maidir leis an bhfáth a raibh reifreann ag teastáil	18

Foreword

A Chara,

The so-called Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed by EU leaders on 2nd March 2012 significantly reduces the ability of any future elected Irish Government to implement any policies of its own.

It hands over significant control of fiscal and budgetary matters to un-elected and unaccountable EU officials. This Austerity Treaty is bad for Ireland and bad for Europe. Rather than stabilising the Euro it will make matters worse.

It seeks to impose drastic and destructive austerity policies in perpetuity and means the Irish Government will have to implement budgets that involve savage cuts for its full term of office and beyond.

Unemployment, emigration, poverty and inequality will rise. National and household debt, already at unsustainable

levels, will increase. Crucially the arbitrary and draconian 0.5% structural deficit target will not be reached.

There are alternatives. Sinn Féin is arguing for investment in jobs and growth. We want to see debt restructuring agreements for over-indebted economies involving write downs to assist them return to debt-sustainability. We want an end to the obligation on the State to pay the Anglo Irish Promissory Note and unguaranteed senior bondholders in Anglo and other banks.

Europe's leaders are failing. Unless there is a radical change in policy the instability will continue and may result in the collapse of the Euro. Now is the time for a real solution to the Eurozone crisis.

Is mise,



GERRY ADAMS T.D.
UACHTARÁN SHINN FÉIN



Réamhrá

A Chara,

Mura dtaitníonn an beartas geilleagrach ná fioscach atá Rialtas na hÉireann ag iarraidh a chur i bhfeidhm leat, féadann tú roghnú vótáil faoi láthair do dhuine éigin eile a chuirfidh beartais eile chun feidhme.

Mar sin féin, laghdaíonn go mór an Conradh ar Chobhsaíocht, ar Chomhordú agus ar Rialachas san Aontas Eacnamaíoch agus Airgeadaíochta, mar a deirtear leis, arna shíniú ag ceannairí an AE ar an 2 Márta 2012, cumas Rialtas na hÉireann a bheidh tofa amach anseo aon bheartais dá chuid féin a chur chun feidhme.

Tugann sé rialú suntasach saincheisteanna fioscacha agus cáinainnéise d'oifigigh neamhthofa agus neamhchuntasacha an AE. Is olc an mhaise é an Conradh Déine d'Éirinn agus don Eoraip. In ionad an Euro a chobhsú, éireoidh an staid níos measa mar gheall air.

Iarrann sé dianbheartais scríosúla go suthain a fhorchur agus ciallaíonn sé go gcaithfidh Rialtas na hÉireann cáinainnéisí ina bhfolaítear ciorruithe móra a chur chun feidhme ar feadh a thréimhse feidhme agus ina diaidh.

Tiocfaidh méadú ar dhífhostaíocht agus ar eisimirce. Rachaidh bochtaineacht agus éagothroime i bhfeidhm ar níos mó daoine. Tiocfaidh méadú ar fhiachas náisiúnta agus

tí, rudaí atá ag leibhéal neamh-inbhuanaithe cheana féin. Agus ní bhainfean an sprioc threallach dhraganta easnaimh de 0.5% amach.

Tá roghanna eile ann. Tá Sinn Féin ag argóint i dtaca le hinfheistíocht i bpoist agus i bhfás. Ba mhaith linn comhaontuithe um athstruchtúrú fiachais a fheiceáil i leith geilleagar i bhfiacha troma, comhaontuithe ina bhfolaítear díluachálacha chun cabhrú leo filleadh ar inbhuanaitheacht fiachais. Ba mhaith linn deireadh a chur leis an oibleagáid ar an Stát Nóta Gealltanais an Bhainc Angla-Éireannaigh a íoc agus íoc le sealbhóirí bannaí neamhráthaithe sinsearachsa sa Bhanc Angla-Éireannach agus i mbainc eile.

Níl ag éirí le ceannairí na hEorpa. Mura bhfuil aon athrú suntasach ann ar bheartas, leanfaidh an chobhsaíocht ar aghaidh agus féadfaidh loiceadh an Euro bheith mar thoradh uirthi. Is anois an uair le haghaidh fíor-réitigh ar ghéarchéim Limistéar an Euro.

Is mise,



GERRY ADAMS T.D.
UACHTARÁN SHINN FÉIN



INTRODUCTION

Sinn Féin believes that Ireland's place is in Europe. Cooperation with our European partners is essential if we are to meet the challenges facing us in the time ahead.

However, Sinn Féin believes that the Fine Gael-Labour Government has failed to stand up for Ireland in Europe and that the Austerity Treaty will not solve the Eurozone crisis. In our view this Treaty will in fact make matters worse both for Ireland and for Europe.

The Fine Gael-Labour Government tried very hard to avoid a referendum on this Treaty. They did not want citizens to have their say. They sought and secured changes to the final draft of the Treaty in an explicit attempt to avoid having to put it to the people.

Sinn Féin consistently argued that the people must be able to decide on any agreement with such far-reaching consequences for this country and called on the government to commit to a referendum.

Fortunately the Government has not got their way. The democratic right of the electorate to be consulted has been asserted. We, the people, will decide.

Unfortunately the government is now attempting to portray the choice before the people as that of staying in the Eurozone or leaving. This is not the case. Ireland's position as a member of the Eurozone is secure no matter what position we take on the Austerity Treaty. The reason for such scaremongering is the government is unable to find a single positive reason for the Irish people to support the Austerity Treaty.

The real question currently facing the Irish people is whether the Austerity Treaty is a good deal for Ireland and for Europe. Sinn Féin believes that it is not and on that basis we are urging people to vote against the Treaty in the referendum on May 31st.

INTREOIR

Creideann Sinn Féin gur chóir d'Éirinn a bheith san Aontas Eorpach. Tá comhar lenár bpáirtithe Eorpacha riachtanach d'fhonn na dúshláin atá os ár gcomhair amach anseo a shárú.

Creideann Sinn Féin, áfach, gur theip ar Rialtas Fhine Gael – Pháirtí an Lucht Oibre ceart a sheasamh d'Éirinn san Eoraip agus nach réiteoidh an Conradh Déine géarchéim Limistéar an Euro. Is é ár dtuairim go n-éireoidh an staid níos measa d'Éirinn agus don Eoraip mar gheall air.

Rinne Rialtas Fhine Gael – Pháirtí an Lucht Oibre an-iarracht reifreann ar an gConradh seo a sheachaint. Níor mhaith leo guth a bheith ag saoránaigh. D'iarr siad agus bhain siad amach athruithe ar dhréacht deiridh an Chonartha in iarracht shoiléir gan an Conradh a chur os comhair an phobail.

Is go comhsheasmhach a d'argóin Sinn Féin nach mór do dhaoine a bheith ábalta cinneadh a dhéanamh ar aon chomhaontú a bhfuil iarmhairtí forleathana ar an tír seo aige agus d'iarramar ar an rialtas tiomnú do reifreann.

Ní bhfuair an Rialtas cead a chinn, ar an dea-uair. Dearbhaíodh ceart daonlathach na dtoghthóirí comhairle a thabhairt. Déanfaimid, muintir na hÉireann, cinneadh.

Tá an rialtas, ar an drochuair, ag iarraidh an rogha os comhair na ndaoine a léiriú gur rogha í idir fanacht i Limistéar an Euro nó é a fhágáil. Níl sé seo amhlaidh. Tá seasamh na hÉireann mar bhall de Limistéar an Euro daingean beag beann ar an seasamh a ghlacfaimid ar an gConradh Déine. Is í an chúis leis an reacaireacht uafáis seo nach bhfuil an rialtas ábalta aon chúis dhearfach a fháil do mhuintir na hÉireann chun tacú leis an gConradh Déine.

An fhíor-cheist atá os comhair mhuintir na hÉireann faoi láthair is ea cé acu an bhfuil an Conradh Déine ina bheart maith d'Éirinn agus don Eoraip nó nach bhfuil. Creideann Sinn Féin nach bhfuil sé ina bheart maith agus, ar a bhonn sin, táimid ag gríosú na ndaoine vótáil in aghaidh an Chonartha sa reifreann ar an 31 Bealtaine.

EXECUTIVE SUMMARY – AUSTERITY ISN'T WORKING

IRELAND AND THE EU

- Ireland's place is in Europe. Co-operation with our European partners is essential if we are to meet the challenges facing us in the time ahead.
- Ireland does not need more austerity and bank bailout linked EU/IMF loans. We need a change of direction aimed at investing in jobs and growth and reducing the debt burden.
- Ireland's position as a member of the EU and Eurozone is secure no matter what way we vote on the Austerity Treaty.

THE AUSTERITY TREATY WON'T WORK

- There is an urgent need to stabilise the currency. The Eurozone crisis is having a negative impact on the social and economic well being of people throughout the EU. It is blocking a return to economic growth.
- The Austerity Treaty will not solve the Eurozone crisis. It is bad economics and bad politics. The 'one size fits all' monetary policy was part of the problem; adding a draconian and intrusive 'one size fits all' fiscal policy as outlined in the Austerity Treaty, will only make matters worse.
- The Treaty is not a fiscal compact. It is an austerity compact. It seeks to impose right wing austerity policies on Irish and EU governments in perpetuity.

IT MEANS MORE AUSTERITY AND AT LEAST €6BILLION MORE IN CUTS AND TAXES FROM 2015 ON TOP OF THE CUTS IN THE NEXT THREE BUDGETS.

- Putting the new 0.5% of GDP structural deficit limit into the Irish Constitution will mean that the government will have to implement austerity budgets not just to 2015 as required by the EU/IMF programme, but for its full term of office and beyond. This means more cuts to frontline health, education and community services and more stealth taxes like the household charge.
- Introducing a stronger excessive deficit procedure compelling member states with debt-to-GDP ratios

above 60% to reduce that debt by 5% annually and with deficits above 3% of GDP will mean that austerity will be even more severe than in recent years.

- This will lead to a decade of austerity and economic stagnation. Unemployment and emigration will rise. Poverty and inequality will affect more and more people. National and household debt, already at unsustainable levels, will increase. And crucially the arbitrary and draconian 0.5% deficit target will not be reached.

IT HANDS EVEN MORE ECONOMIC POWER OVER TO UNELECTED OFFICIALS IN THE EUROPEAN COMMISSION

- The Treaty undermines member state democracy.
- If the European Commission decides Ireland is breaking their rules, there will be a legally binding obligation on the government to enter into an "Economic Partnership Programme" and allow the European Commission to dictate policy on tax and budgetary matters. This means a detailed and invasive European Commission programme, modeled on the current Troika bailout programme.

IT ALLOWS THE EUROPEAN COURT OF JUSTICE TO IMPOSE FINES OF €160 MILLION

- Significant additional powers are to be given to the European Court of Justice and the European Commission to police the debt and deficit ceiling and the strengthened excessive deficit procedure. The Treaty gives the European Court of Justice power to determine whether Ireland is obeying the debt and deficit rules and they can impose fines of up to €160 million (0.1% of GDP)

PRIVATE SECTOR INVOLVEMENT IN DEBT WRITE DOWN HAS BEEN RULED OUT

- The 9 December 2011 European Council agreement underlying the Treaty explicitly ruled out any private sector involvement in future debt write-downs. This means that the taxpayer, irrespective of the social and human cost, will pay all toxic-banking debts.

THE TREATY IS A STEP TOO FAR – IT IS BINDING AND PERMANENT

- If the Irish people ratify this Treaty it can only be changed by a future referendum and with the agreement of the other EU states, who signed up to it.

THE BLACKMAIL CLAUSE LINKING RATIFICATION TO ESM ELIGIBILITY IS AN EMPTY THREAT

- The blackmail clause is an empty threat to try and bully people into supporting the Austerity Treaty. It is not an article of the ESM treaty but a recital and therefore does not have any legal standing, particularly if it is in conflict with the primary mandate of the European Stability Mechanism as outlined in Article 136 of the EU treaties. It could not be used to deny funding to a member state if to do so threatened the stability of the Eurozone as whole
- The Government has a veto on the ESM, by virtue of having a veto over the amendment to Article 136 of the European Treaties. If the Austerity Treaty is rejected by the people, the government should seek a further amendment to the ESM Treaty removing the blackmail clause and use its veto on this matter if required.
- A second bailout is not in the interests of the citizens of this state, indeed a second bailout is evidence of the failure of the first bailout. We believe that the best way to avoid a second bailout is abandon the failed policies of bank bailouts and austerity and invest in jobs while writing down our debt including the promissory note
- The ESM is not the only source of emergency funding. It was never the only option.

ACHOIMRE FEIDHMIÚCHÁIN – NÍL AG ÉIRÍ LE DÉINE

ÉIRE AGUS AN AE

- Ba chóir d'Éirinn a bheith san Aontas Eorpach. Tá comhar lenár gcomhpháirtithe Eorpacha riachtanach má táimid chun freastal ar na dúshláin atá romhainn amach anseo.
- Níl níos mó déine agus iasachtaí AE/CAI a bhaineann le tarrtháil banc ag teastáil ó Éirinn. Is é an rud atá ag teastáil uainn athrú treo atá dírithe ar infheistíocht a dhéanamh i bpoist agus i bhfás agus ar an ualach fiachais a laghdú.
- Tá seasamh na hÉireann mar bhall den AE agus de Limistéar an Euro daingean beag beann ar an dóigh a vótálfaimid ar an gConradh Déine.

NÍ ÉIREOIDH LEIS AN GCONRADH DÉINE

- Tá gá práinneach leis an airgeadra a chobhsú. Bíonn tionchar diúltach ag géarchéim Limistéar an Euro ar leas sóisialta eacnamaíoch na ndaoine ar fud an AE. Bíonn sé ag cur bac le filleadh ar fhás eacnamaíoch.
- Ní réiteoidh an Conradh Déine géarchéim Limistéar an Euro. Is ionann é agus drocheacnamaíocht agus drochpholaitíocht. Bhí an beartas airgeadaíochta 'uillechoiteann' mar chuid den fhadhb; bheadh cúrsaí níos measa de dheasca beartas fíoscach 'uillechoiteann' atá draganta agus treallúsach, mar atá leagtha amach sa Chonradh Déine.
- Níl an Conradh ina chomhshocrú fíoscach. Tá sé ina chomhshocrú déine. Féachann sé le beartais déine na heite deise a fhorchur ar rialtais na hÉireann agus an AE go suthain.

CIALLAÍONN SÉ NÍOS MÓ DÉINE AGUS €6BILLIÚN EILE AR A LAGHAD I NGEARRTHACHA AGUS I GCÁNACHA Ó 2015, MAR AON LE GEARRTHACHA SNA TRÍ BHUISÉAD SEO CHUGAINN

- Más rud é go gcuirfear an teorainn easnaimh struchtúrtha nua de 0.5% de OTI i bhfeidhm i mBunreacht na hÉireann, beidh ar an rialtas buiséid déine a chur chun feidhme, ní amháin go 2015 mar a éilíonn clár an AE/CAI, ach ar feadh a théarma iomláin in oifig agus ina dhiaidh sin. Ciallaíonn sé seo níos mó gearrthacha ar sheirbhísí túslíne sláinte, oideachais agus pobail, agus níos mó cánacha faoi choim, amhail an muirear tí.

- Más rud é go dtabharfar isteach níos imeachta níos láidre um easnamh iomarcach a chuirfidh iallach ar na ballstáit a bhfuil cóimheasa fiachas le OTI os cionn 60% acu an fiachas sin a laghdú faoi 5% go bliantúil, agus ciallóidh easnaimh os cionn 3% de OTI go mbeidh déine níos déine ná mar a bhí le blianta beaga anuas.
- Mar gheall air seo, beidh deich mbliana déine agus meirbhilthe eacnamaíoch. Tiocfaidh méadú ar dhífhostaíocht agus ar eisimirce. Rachaidh bochtaineacht agus éagothroime i bhfeidhm ar níos mó daoine. Tiocfaidh méadú ar fhiachas náisiúnta agus tí, rudaí atá ag leibhéil neamh-inbhuanaithe cheana féin. Agus ní bhainfear an sprioc threallach dhraganta easnaimh de 0.5% amach.

TUGANN SÉ NÍOS MÓ CUMHACHT EACNAMAÍOCH D'OIFIGH NEAMHTHOFA SA CHOIMISIÚN EORPACH

- Baineann an Conradh an bonn ó dhaonlathas ballstát.
- Más rud é go gcinneann an Coimisiún Eorpach go bhfuil Éire ag briseadh a rialacha, beidh ceangal dlíthiúil ar an rialtas dul i mbun "Clár Comhpháirtíochta Eacnamaíochta" agus ceadú don Choimisiún Eorpach polasaí a dheachtú ar chúrsaí cánach agus buiséid. Ciallaíonn sé seo clár mionsonraithe ionrach an Choimisiúin Eorpaigh, a bheidh múnlaith ar an gclár reatha tarrthála Triúrachta.

CEADAÍONN SÉ DO CHÚIRT BHEITHIÚNAIS AN AONTAIS EORPAIGH FÍNEÁLACHA DE €160 MILLIÚN A GHEARRADH

- Tá cumhachtaí breise suntasacha le tabhairt do Chúirt Bheithiúnais an Aontais Eorpaigh agus don Choimisiún Eorpach chun rialú a dhéanamh ar an uasteorainn fiachais agus easnaimh agus ar an nós imeachta um easnamh iomarcach. Tugann an Conradh de chumhacht Chúirt Bheithiúnais an Aontais Eorpaigh cinneadh a dhéanamh ar cé acu atá nó nach bhfuil Éire ag comhlíonadh na rialacha fiachais agus easnaimh agus is féidir léi fíneálacha de suas le €160 milliún (0.1% de OTI) a ghearradh

CUIREADH RANPHÁIRTÍOCHT NA HEARNÁLA PRÍOBHÁIDÍ I LAGHDÚ FIACHAIS AS AN ÁIREAMH

- I gcomhaontú na Comhairle Eorpaí ar an 9 Nollaig 2011, rud atá mar bhun leis an gConradh, cuireadh aon

rannpháirtíocht ón earnáil phríobháideach i laghdú fiachais amach anseo as an áireamh. Fágann sé seo go n-íocfaidh an cáiníochóir as na fiachais bhaincéireachta tocsainí uile, beag beann ar an gcostas sóisialta agus daonna.

TÁ BARRAÍOCHT I GCEIST LEIS AN GCONRADH – TÁ SÉ CEANGAILTEACH AGUS BUAN

- Más rud é go ndaingníonn muintir na hÉireann an conradh seo, ní féidir é a athrú ach amháin trí reifreann amach anseo agus le comhaontú stáit eile an AE a shíniú.

TÁ AN CLÁSAL DÚMHÁIL A NASCANN DAINGNIÚ LE HINCHÁILITHEACHT SEC (AN SÁSRA EORPACH UM CHOBHSAÍOCHT) INA BHGAIRT FHOLAMH

- Tá an clásal dúmháil ina bhgairt fholamh chun bulaíocht a dhéanamh ar dhaoine le go dtacódh siad leis an gConradh Déine. Ní airteagal de chonradh an tSásra Eorpaigh um Chobhsaíocht é. Is aithris é agus, dá bhrí sin, níl aon seasamh dlí aige, go háirithe má tá sé i gcoimhlint leis an sainordú príomhúil den Sásra Eorpach um Chobhsaíocht mar atá leagtha amach in Airteagal 136 de chonarthaí an AE. Ní fhéadfaí é a úsáid chun maoiniú a dhiúltú do bhallstát má chuireann diúltú den sórt sin cobhsaíocht Limistéar an Euro ina iomláin i mbaol
- Is féidir leis an Rialtas an Sásra Eorpach um Chobhsaíocht a chrosadh, de bhua ceart crosta a bheith aige ar an leasú ar Airteagal 136 de Chonarthaí an Aontais Eorpaigh. Má dhiúltaíonn na daoine don Chonradh Déine, ba chóir don rialtas féachaint le leasú breise a dhéanamh ar Chonradh an tSásra Eorpaigh um Chobhsaíocht a bhainfidh an clásal dúmháil de agus ba chóir dó a chrosadh a úsáid ar an ábhar seo más gá.
- Níl an dara tarrtháil ar mhaithe le leas shaoránaigh an stáit seo, go deimhin, tá an dara tarrtháil mar fhianaise ar mhainneachtain na chéad tarrthála. Creidimid gurb é an bealach is fearr chun an dara tarrtháil a sheachaint beartais loicthe amhail tarrthálacha banc agus déine a thréigean agus infheistíocht a dhéanamh i bpoist agus muid ag laghdú ár bhfiachais, lena n-áirítear an nóta gealltanais
- Ní ionann an Sásra Eorpach um Chobhsaíocht agus an t-aon fhoinse maoinithe éigeandála. Níorbh é an t-aon rogha amháin riamh.

THERE ARE ALTERNATIVES TO THE AUSTERITY TREATY SIGNED UP TO BY FINE GAEL AND LABOUR

Sinn Féin is arguing for:

- 1 Investment in jobs and growth. Increasing the lending capacity of the European Investment Bank so that by working with member states on major investment projects it can help stimulate activity in the real economy.
- 2 Cleansing the European Banking system of toxic debts through a new round of rigorous stress tests and deleveraging followed by recapitalisation where necessary funded by the European Central Bank.
- 3 Debt restructuring agreements for over indebted economies involving debt-write-downs to assist them return to debt-sustainability. Ending the obligation on the state to pay the Anglo Irish Promissory Note and un-guaranteed senior bondholders in Anglo and other banks.
- 4 Within existing EU Treaty provisions the European Council must ensure that the European Central Bank takes all necessary action to stabilise sovereign bond interest rates and ensure market access for all member states.

DEALING WITH THE SYMPTOMS

The Eurozone crisis became evident when Greece was frozen out of the international bond markets in 2010 and the EU and IMF intervened. At this point EU leaders believed the problem to be purely a Greek one. It was argued that the Greek government had borrowed and spent recklessly, had run up excessive debts and deficits and markets no longer believed that they would repay their debts.

The solution proposed was to impose austerity on Greece to force it to get its deficit into line with the Stability and Growth Pact criteria and to provide funding in the form of loans from EU member states and the IMF until such time as the international bond markets were willing to lend to Greece at an acceptable rate.

When Ireland and then Portugal were frozen out of the international bond markets in 2010 and 2011 EU leaders took the same view and applied the same proposed solutions.

While the circumstances surrounding Ireland's forced entry into the EU/IMF programme in November 2010 were different to that of Greece and Portugal the policy prescription from the EU and IMF was the same. Ireland had always met the Stability and Growth Pact criteria and had run budget surpluses, structural deficit surpluses and had a low Debt-to-GDP ratio in the period preceding the economic crash of 2008.

However the cost of the bank bailouts in 2009 and 2010 and the additional risk to the state arising from the banking guarantee and NAMA meant that the markets also believed Ireland might not repay its debts. Emergency loans were provided for Ireland on broadly the same austerity terms as Greece and subsequently Portugal.

At this stage the view of the EU leaders was that this was a crisis of the Eurozone periphery, caused by reckless spending, borrowing and bailouts of the banking system. It was viewed as a debt crisis to be rectified by a heavy dose of austerity.

The EU established a temporary bailout mechanism known as the European Financial Stability Facility (EFSF) which had a lending capacity of €440bn. Monies from this fund would be provided to 'programme states' on the basis that their governments would adhere to strict policy prescriptions and monitoring by the European Commission, the European Central Bank and the International Monetary Fund.

The EFSF was to be replaced in 2013 with a permanent bailout mechanism known as the European Stability Mechanism (ESM) with an initial fund of €500bn. While the details may have differed, the basic premise and function of the ESM was the same as the EFSF.

However by the summer and autumn of 2011 it became increasingly clear to EU leaders that the problem was not contained to the periphery. Core Eurozone economies including Italy, Spain, and France and to some extent Germany were all coming under pressure from markets who increasingly believed they would have difficulty repaying their debts.

The funds available to the EFSF were too small to provide any meaningful safety net either for the larger economies or the markets should the likes of Italy or Spain get into trouble.

In addition to the rising cost of state borrowing in the Eurozone core, banks in the core economies were also experiencing difficulties of their own as a result of high exposure to peripheral Eurozone sovereign debt. In response to the growing crisis a number of solutions were proposed.

The first, agreed at the crisis summit in July 2011, was to increase the size of the funds available to the EFSF by raising funds on the international markets, supported by guarantees provided by EU member states.

The second was to bring forward the start date of the ESM to 2012 in an attempt to reassure the markets that the EU was serious about resolving the cause of the problem.

However when this failed to provide the necessary funds three alternative scenarios were proposed all involving the European Central Bank (ECB).

The first was that the ECB would lend money to the European Financial Stability Facility to provide the necessary financial safety blanket needed to reassure the markets. The second was that the ECB would lend money to the IMF, which would provide the safety blanket.

Finally the European Commission proposed 'Eurobonds' as a mechanism to raise money on the international markets, which would be used to provide the safety net.

However at successive European Council summits in 2011 EU leaders and the European Central Bank were unwilling or unable to agree on which combination of these measures should be implemented.

By December 2011 many economists, commentators and politicians believed that the Euro was close to collapse.

At a controversial crisis summit on 9 December 2011, 26 EU leaders agreed a new set of proposals, which they hoped would resolve the crisis.

Because the British Government would not support the proposals the other 26 leaders decided to operate outside the EU treaties. They proposed the creation of a new 'fiscal compact' aimed at reducing member states' debt and deficits.

On 30th January 2012 the Treaty was adopted by 25 leaders, with the government of the Czech Republic joining the British government in not supporting it. The formal signing of the Treaty took place on 2nd March 2011.

The agreement was broadly criticised by economists and commentators. Even those who supported its contents argued that it would not address the causes of the currency crisis.

Once again EU leaders failed. They focused on the symptoms of the crisis rather than the causes.

ANALYSIS OF AUSTERITY TREATY

Contents

Preamble: A three-page preamble outlining the aspirations and existing obligations for the Signatories such as *'ever-closer coordination of economic policies'*, *'sound and sustainable government finances'*, *'price stability'*, *'strong sustainable growth'*, *'need [for] deficits to remain below 3% of GDP'* and *'government debt is below or significantly declining towards 60% of GDP'*.

The preamble states that it is the objective of the Eurozone heads of state and government to *'incorporate the provisions...as soon as possible into the Treaties on which the European Union is founded'*.

The preamble states that *'compliance with the obligation to transpose the "Balanced Budget Rule" (i.e. not running structural deficits of more than 0.5% of GDP) into national legal systems through binding and permanent provisions, preferably constitutional, should be subject to the jurisdiction of the European Court of Justice'*.

Significantly, compliance with the balanced budget rule contained in the treaty is stipulated as a condition for receipt of funds under the European Stability Mechanism, the EU's permanent bailout mechanism due to come into operation in 2012.

Article 1: Signatories agree to *'strengthen the economic pillar of Economic and Monetary Union'*, to *'strengthen the coordination of policies and to improve the governance of the Euro area'*. It also states that the treaty *'shall apply in full to the Contracting Parties whose currency is the euro...'* and under certain conditions to member states outside the Eurozone.

Article 2: Agreement must be *'in conformity'* with EU law.

Article 3: Outlines the rules and exemptions to budgetary discipline, including those relating to balanced budgets and circumstances in which temporary deficits are allowed; providing more detail on the operation of the 0.5% balanced budget rule; outlining some exemptions for over-indebted countries; outlining an automatic correction mechanism in place to force countries in breach of the balanced budget rule to amend their budgets on recommendation from the Commission and for this mechanism to have a *'binding and permanent character,*

preferably in constitutional law'; detailing the role of the Commission and Council in enforcing the balanced budget rule; and providing definitions of *'deficit'* and *'exceptional economic circumstances'*.

Article 4: Requirement to reduce government debt by 5% per year when it exceeds 60% of GDP. The 5% reduction is on that portion of the debt above the 60% threshold.

Article 5: Strengthens the excessive deficit procedure, i.e. the mechanism used by the EU to compel Member States to meet their debt and deficit targets. This involves a legal obligation to enter an Economic Partnership Programme, the details of which would be drawn up by the European Commission detailing Government plans to reduce debt and deficit based on EU law.

Article 6: Commitment to improve reporting of national debt and to provide reports to the Commission and to other Member States.

Article 7: Obligation to support Commission proposals where 0.5% deficit ceiling is breached, and new reverse Qualified Majority Voting blocking mechanism. Under existing EU rules the Commission can only intervene if a qualified majority of the European Council agrees on such a course of action. Under the changes proposed in the Treaty Commission intervention would be automatic unless a qualified majority votes against such action. This is called reverse QMV.

Article 8: Mechanism for one EU member state to take another member state to the European Court of Justice for breaching the Agreement; obligation on signatories to comply with European Court of Justice judgments. Failure to comply brings a penalty payment of up to 0.1% of Member States GDP. (This would equate to €160m on the basis of current Irish GDP)

Article 9: Commitment to *'enhanced convergence and competitiveness'* and support for *'Euro Plus Pact'* (a set of rules agreed by the European Council in November 2011 dealing with coordination of fiscal and budgetary policy in the EU and, among other things, committing Member States to wage restrictions, reduced job security and an increased retirement age).

Article 10: Commitment to use *'enhanced cooperation'* on unspecified matters (enhanced co-operation is a

mechanism provided for in the EU treaties that allows small numbers of member states to proceed with policy initiatives without the support of all 27 member states).

Article 11: Commitment by member states to share ‘*major policy reforms*’ with each other and with EU institutions in advance of their implementation and to coordinate such reforms.

Article 12: Creation of new informal Euro Summit meetings involving euro member state leaders, the president of the Commission and the ECB (with its own president elected by summit with a simple majority), to meet at least twice a year. This is a non-EU structure attempting to manage EU institutions and policies.

Article 13: Commitment to hold meetings of members of national parliaments with their European Parliament counterparts.

Article 14: Requirement that twelve member states ratify Agreement in order for it to come into force.

Article 15: Allows for additional EU Member States to sign up to the Treaty.

Article 16: Clause allowing treaty to be incorporated into EU law within five years at most without going through the Ordinary Treaty Revision Procedure.

ANALYSIS

There are a number of key areas of concern:

1 Permanent obligation to comply with the rules of the Treaty: The ‘Balanced Budget Rule’ will be binding, permanent and preferably constitutional: This is in the preamble and Article 3. If implemented, this will mean that there will be a constitutional requirement and a binding international legal requirement to meet the debt and deficit rules. This means austerity budgets and severe debt reduction targets in perpetuity. These obligations could only change if they were removed from the Irish constitution in a subsequent referendum and if all of the countries who have signed the Treaty agreed to amend or repeal it.

2 Tougher deficit and debt rules: Article 3 constitutionalises the new 0.5% structural deficit target meaning that as a general rule the government should not exceed that 0.5% ceiling. At present the target ceiling is a 3% Government deficit. The Government deficit is the gap between spending and revenue minus one off expenditures such as bank recapitalisations. A structural deficit is the Government deficit adjusted to take account of what is known as the business cycle, that is growth and recession over a period of time. There is no agreed method of calculating the structural deficit and many EU Member States dispute the method used by the European Commission. It is also subject to retrospective revision as a result of over optimistic forecasting.

Article 4 strengthens the existing Stability and Growth Pact 5% per year debt reduction target for member states whose debt-to-GDP ratio is above 60%. This means that they will have to reduce the excess debt by 5% annually until they are within the 60% ceiling over a period of time agreed with the European Commission.

Taken together, the combined effect of the debt and deficit targets in Articles 3 and 4 will be very severe on heavily indebted economies such as Ireland. While they will not apply until after Ireland meets the EU/IMF programme targets in 2015, they will have a medium and long term impact on the ability of Governments to choose options that may be in the countries best interests. If implemented fully they will mean austerity for more than a decade and possibly in perpetuity.

3 Greater powers for Commission and Court of Justice:

Articles 5, 7 and 8 provide for additional powers for the European Commission and legal jurisdiction of the European Court of Justice to police and enforce compliance with the debt and deficit rules. There are significant departures from existing EU Treaty law in these articles.

The Commission is given new powers with respect to the Economic Partnership Programme's to be imposed on member states involved in an excessive deficit procedure. In effect this means that if the European Council and European Commission is not satisfied with the progress of a Member State in meeting the debt and deficit rules, the Commission can impose a detailed programme of structural reform similar to those currently contained in the EU/IMF austerity programme, even where a Member State is borrowing on ordinary terms from the international bond market.

The Court is given extra jurisdiction to determine whether Member States are complying with the debt and deficit rules of the Treaty and the implementation of the excessive deficit procedure. Article 8 allows a Member State to initiate legal proceedings against another Member State if they believe the Member State is not complying with the terms of the rules. Significantly the Court could impose fines of up to 0.1% of GDP which at 2011 GDP levels in Ireland would mean approximately €160m.

4 Enhanced Cooperation: Article 10 includes an undertaking to make greater use of enhanced cooperation; this is the mechanism whereby smaller numbers of member states can move ahead with policy reforms. The article doesn't reference any particular area of policy but if the signatories wanted to move on issues such as Common Consolidated Corporation Tax Base or a Financial Transaction Tax (proposals currently being pursued by the Commission) it would be via this article.

5 Incorporation of Treaty into EU law:

Article 16 is an attempt to transpose the contents of the intergovernmental treaty into EU treaties by the backdoor after a period of five years. The legality of such a move is deeply questionable. It is also clearly an attempt to circumvent the ordinary revision procedures of the EU that govern Treaty change and the democratic safeguards contained in this procedure.

6 Linking ratification to ESM eligibility:

This addition to the preamble of the Treaty is believed to be at the request of the German government and in

response to the inclusion of the word 'preferably' in the clause concerning placement of the balanced budget rule in member states' constitutions. It was followed up with a similar amendment to the European Stability Mechanism Treaty which when ratified, will give legal effect to the permanent EU bailout fund.

It is nothing short of a blackmail clause intended to frighten people into supporting a Treaty they would otherwise reject.

Importantly the Irish Government could have opposed this amendment to the ESM Treaty but chose to fully support the link between ratification of the Austerity Treaty and accessing future ESM funds.

Indeed, the requirement on the Government to ratify the amendment to Article 136 of the Treaty on the Functioning of the European Union, which gives a legal basis to the ESM, gives the Government a veto over the ESM Treaty itself.

The Government chose not to use this veto to block the blackmail clause. It can still use this veto to have the blackmail clause removed, until such time as both the Article 136 amendment and the ESM treaty are formally ratified by the State.

However, it is also important to stress that the blackmail clause, and its threat that emergency funding will be withheld if a country rejects the Austerity Treaty, is an empty threat.

The primary function of the ESM as outlined both in the EU Treaties and the ESM Treaty is to provide funding to member states where such funding is "indispensable to safeguard the financial stability of the Euro area as a whole."

The blackmail clause is an additional eligibility criteria inserted into the recitals of the ESM Treaty. A recital is not an article of the Treaty. It does not have the same legal status as an article. The primary mandate of the ESM as outlined in the EU Treaties or the body of the ESM Treaty will determine whether any Eurozone member state secures emergency funding. The blackmail clause cannot be used to alter this mandate.

If Ireland remains frozen out of the markets at the end of 2013 denying emergency funding would be in direct contravention of the EU Treaties and the ESM Treaty. Even worse it would not only undermine the stability of our domestic economy, it would undermine the stability of the Eurozone as a whole.

This is a risk that no European politician would be willing to take.

The European Council will not refuse emergency funding to any Eurozone member state in the future irrespective of the member states final position on the Austerity Treaty.

To do so would be in contravention of European law and potentially destabilize the Eurozone. It would also contradict a commitment given by the European Council in their summit statement of 21 July 2011 when they said they were, “determined to continue to provide support to countries under programmes until they have regained market access, provided they successfully implement those programmes.”

It is also important to point out that if Ireland is unable to return to the sovereign bond markets by 2013, as envisioned by the EU/IMF deal then clearly the austerity programme will have failed in its primary objective. The idea that it would be good for Ireland to enter a second bailout programme on the same, if not more severe terms, as the first one, makes no sense.

Ireland does not need more austerity and bank bailout linked EU/IMF loans. We need a change of direction aimed at investing in jobs and growth.

REAL SOLUTIONS – SINN FéIN'S ALTERNATIVES

Sinn Féin's attitude to the ongoing crisis in the Eurozone is that the priority right now must be to stabilise the Euro.

We do not believe that fiscal federalism will stabilize the Euro. The current policy of austerity and bank bailouts will lead to greater instability. The 'one size fits all' monetary policy was part of the problem; adding a draconian and intrusive 'one size fits all' fiscal policy as outlined in the Austerity Treaty, will only make matters worse.

Sinn Féin is firmly of the view that what is required now is a different approach based on investment and economic growth.

Sinn Féin has been consistent on the issue of economic and monetary policy and the European Union.

Our approach has been guided as to what is in the best interests of Ireland and Irish citizens.

Sinn Féin opposed entry to economic and monetary union in 1992. We argued that a 'one size fits all' policy would be bad for smaller EU states, as the direction of policy would be determined by the interests of the larger, more powerful states. We argued, correctly, that this would result in a further loss of Irish sovereignty and would lead to bad economic decision-making.

Sinn Féin's warnings have been borne out by developments since — the current crisis in the Eurozone is a result of a fundamental flaw in the design of the single currency and the bad policy implemented by the European Central Bank (ECB).

However, it is important to point out that, given the levels of public and private debt in the state and the level of exports within the Eurozone, the social and economic impact of a withdrawal would be severe for ordinary low and middle-income citizens.

Stabilising the Euro and returning to social and economic growth, as Sinn Féin advocates, means that we must understand the cause of the crisis in the Eurozone and implement solutions aimed at resolving it.

There is an inherent instability built into the heart of the Euro currency project which advantages strong economies while disadvantaging weak economies. This can best be seen in the cases of Germany and Greece.

The single currency made German exports more competitive, boosting their exports and growth levels.

In turn, this led to trade surpluses while also encouraging savings surpluses. In addition to exporting manufacturing goods, Germany also became a major exporter of capital in the form of loans by German banks.

Weaker Eurozone economies such as Greece were able to borrow money at cheaper levels with lower levels of risk. This led to an increase in Government and private debt, as Greece built up trade deficits, and rising levels of personal debt.

The design of the Euro provided an incentive to many strong economies to produce ever-bigger surpluses, and weak economies to produce ever-bigger levels of private and public debt.

Domestic policy choices in weaker and stronger economies also played a key role, and though measures could have been taken to counterbalance this tendency, in most cases they were not.

However the architecture of the Euro and the policies of the ECB were decisive in deepening the existing imbalances between stronger and weaker economies.

The central problem was that there was no mechanism for recycling the surpluses generated by the stronger economies in a way that would assist economic development in the weaker economies.

The 'one size fits all' monetary policy, set mainly according to the needs of the stronger national economies such as Germany and France, exacerbated this problem – by providing an incentive for aggressive lending by major European banks and their counterparts in the periphery, and reckless borrowing by Governments and some cases individuals.

Eventually the levels of aggressive borrowing and lending became too great; banks became risk-averse and lending into the real economy stopped during the credit crunch in 2007 and 2008.

While this was a global problem, it had a particular impact on the stability of the Eurozone. The ensuing recession led to rising unemployment, falling tax revenues and spiraling deficits across the national economies of the Eurozone.

This was made much worse by the policy of the European Central Bank, supported by member state governments, to bail out banks irrespective of the cost. At this point the markets began to believe that their debts to Governments, first in the Eurozone periphery and then at the core, would not be honored. This drove up interest rates and led to peripheral economies being frozen out of the markets.

In response, EU leaders fanned the flames of the growing crisis, by further contracting economies with austerity and increasing debt levels by insisting on bailing out banks.

Any solution to the Eurozone crisis must follow a number of interrelated steps. There is a need to correct the design flaws inherent in the project itself. We need to invest in economic growth, primarily in the form of jobs. The European banking system must be cleansed of its toxic debts. There is also a need to reduce the debt levels across the Eurozone through debt restructuring.

Thus, rather than continuing with the policies of fiscal integration, crippling austerity and bank bailouts favored by Fine Gael, Labour, Fianna Fáil and their European counterparts, Sinn Féin is advocating a strategy of investment, debt write-downs, and market return.

Investment

The Eurozone urgently needs investment in jobs, particularly in the periphery. This can be achieved by combining the resources of member states, such as the €5bn in the discretionary portfolio of the National Pension Reserve Fund, with an enlarged investment fund in the European Investment Bank.

Sinn Féin is arguing that the existing funds of the European Investment Bank should be supplemented by a once-off investment by EU member states on a proportional basis. This would be made, not as fiscal transfers between states, but as sound investments that would provide sound returns for the state investment.

In addition, the matching funding criteria for member states should be amended to a 75:25 ratio, with the European Investment Bank providing the larger portion.

With this enlarged fund, the European Investment Bank would work in partnership with those states experiencing severe recession to roll out major projects in order to generate employment, increase competitiveness and improve the social and economic infrastructure, leading to both immediate and long term economic growth.

In the first instance, this EU-wide investment programme would aim to kick-start those economies experiencing recession and assist them in reducing their deficits.

However, a reformed and enlarged European Investment Bank would remain in place after the initial investment period, as a permanent mechanism aimed at recycling a portion of the excessive surpluses from the stronger economies to those on the Eurozone's periphery in need of longer-term economic development.

Unlike the existing bailout transfers, under the terms of the European Financial Stability Facility or European Stability Mechanism, these investments would produce a win-win for both the stronger and weaker economies, generating growth in the periphery and investment return for the investors.

In Sinn Féin's view, an enlarged European Investment Bank working with member state governments would not only assist the immediate problem of underinvestment but would also help address the underlying imbalances in the Euro between those states with excessive surpluses and those with excessive deficits.

Debt write-downs

In parallel with this major investment programme, there is a need to reduce the debt burden, particularly for those states with unsustainable levels of debt such as Greece and Ireland. This can only be achieved by writing down a portion of the debt currently held by sovereigns.

In Ireland's case, this can be achieved by writing down debts that were originally banking debts while honoring real sovereign debt. In the first instance, this will require lifting the obligation on the state and the taxpayer of the Anglo Irish Bank promissory note. This could be achieved by agreement with the ECB and would reduce our debt-to-GDP ratio by up to 20%.

There is also a need to deal with the smaller but not insignificant volume of senior bondholder debt held by banks such as Anglo.

Cleansing the European Banking System

There is also an urgent need to cleanse the banking system of the as yet undisclosed and un-quantified toxic assets on its balance sheets. This can only be done by imposing rigorous stress tests, including not only banks' loan books

but also their exposure to sovereign debt and all special purpose vehicles used for toxic assets, such as credit default swaps and collateralised debt obligations.

These new stress tests must be followed by a process of writing down portions of the banks' toxic debts and deleveraging assets in order to refocus the banking system on the needs of the real economy. Only after such a process should the European Central Bank provide any capital required for the recapitalisation of the cleansed banks.

Returning to the markets

While investing in the real economy and making debt levels more sustainable, there is also a need to assist member states to return to the markets at normal interest rates. Within existing EU treaty provisions the European Council must ensure that the European Central Bank takes all necessary action to stabilise sovereign bond interest rates and ensure market access for all member states.

Notwithstanding the existing prohibition on the ECB lending money to EU institutions or Member States, the European Council should, under Article 282 (2) of the European Treaties, instruct the ECB to take whatever emergency action is required to stabilise the Euro. This could include, in the context of a grave threat to the stability of the currency, entry into the primary market on an emergency basis to stabilise the price of sovereign bonds, in order to prevent any Eurozone member state from being frozen out of the markets due to prohibitive interest rates.

While controversial, there is a strong political and legal argument that this should include, on an emergency basis only, the ECB buying Government bonds of countries currently excluded or at risk of exclusion from the markets. Such bond buying programmes should be done in parallel with programmes agreed between the member state and the ECB detailing strategies for deficit reduction, economic growth and debt reduction.

By investing in growth, reducing the levels of debt, cleansing the banks and assisting member states to remain in or return to the markets at normal borrowing costs, Sinn Féin believes that the instability in the Eurozone can be calmed, the imbalances in the design of the Eurozone can be corrected, and the economies of the Eurozone can be returned to growth. This can all be done within the existing EU treaties and without imposing crippling austerity on ordinary people.

CONCLUSION

The policy of Governments in Ireland and across the EU is one of more austerity, more bank bailouts and handing more decision-making powers over to EU institutions. This is the very opposite of what Ireland and the EU need.

Instead we need greater flexibility for member states to implement policies suited to their specific needs, we need major investment in jobs to generate economic growth and assist in deficit reduction, and we need debt reduction to enable indebted member states to return to the markets at normal rates.

Implementing these policies means we must reject the Austerity Treaty and call for a change of direction in policy by the Fine Gael-Labour coalition and by the other members of the European Council.

Sinn Féin is in favour of investment in jobs and growth. On this basis we are opposed to the Austerity Treaty. We will continue to oppose the failed policies of fiscal federalism and crippling austerity. In the forthcoming referendum we will be campaigning in every constituency in the state for a no vote.

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Summary of advice to Mary Lou McDonald TD, Leas Uachtarán, Sinn Féin, given at consultations on 13 and 21 February 2012.

Question: *May the State ratify the Treaty on Stability, Co-ordination and Governance in the Economic and Monetary Union ('the SCG Treaty') in the absence of a specific Constitutional provision authorising such ratification?*

Preliminary Comments

On 30 January 2012 An Taoiseach Enda Kenny gave his political agreement on behalf of Ireland to the text of the SCG Treaty. The terms of the treaty require that once it is signed, which is scheduled for the next meeting of Heads of State and Government to take place on 1 and 2 March 2012, it is to be submitted within each signatory State for ratification in accordance with their respective domestic procedures. The treaty provides that ratification is to be concluded so that the treaty can enter into force on 1 January 2013. It is necessary for 12 States to ratify the treaty in order for it to come into force. (*Note however the special provision in Article 14.4 regarding Article 12*).

The Government awaits the advice of the Attorney General on the treaty. While the terms of the request to the Attorney have not been published it is likely that she has been asked to advise whether ratification may be based on approval by the Oireachtas or whether it requires a specific Constitutional licence which in turn would require a referendum.

Nature of the SCG treaty

The SCG treaty is a treaty under international law. It reflects an agreement made between 25 States, each of whom is a member of the EU and 17 of whom are members of the eurozone.

It is important to note that it is not an EU treaty. As such in my view it does not come within the scope of the licence contained in Article 29.4.3 to 29.4. 8 of Bunreacht na hÉireann.

The interlinked ESM treaty

It is also important to note that the SCG treaty is linked to the revised treaty establishing the European Stability Mechanism ('the ESM treaty'), which was signed on 2 February 2012. (Unusually and unlike the original ESM treaty, the revised treaty was signed at Ambassador level, which poses a question in its own right.)

Both treaties require analysis in the context of the question posed above. It is notable that there has been no public statement on the part of the Government about the question of holding a referendum on the ESM treaty. For Ireland the ESM treaty envisages an initial charge on public funds potentially of

the order of €11 billion. It establishes a new entity with legal personality and decision making powers potentially binding on the State.

What does the SCG treaty require the State do or to refrain from doing?

Reference is made to the treaty text annexed to this Memorandum.

Particular provisions that appear to merit close scrutiny are underlined in the treaty text below.

Are these commitments capable of being entered into by the Government on behalf of the State acting only with the approval of the Oireachtas and without the approval of the people by way of referendum?

Recall the Supreme Court decision in Crotty v An Taoiseach reflected in this extract from one of the majority judgments:

“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.”

Hederman J, Crotty v. An Taoiseach [1987] IESC 4; [1987] IR 713 (9th April, 1987)

This principle was elaborated by Walsh J –

... 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. To the judicial organ of Government alone is given the power conclusively to decide if there has been a breach of constitutional restraints.

Walsh J continued:

... As was pointed out in the decision of the Court in the first part of this case the essential nature of sovereignty is the right to say yes or to say no. In the present Treaty provisions that right is to be materially qualified.

56. It commits the State, and therefore all future Governments and the Oireachtas, to the other Member States to do the following things:-

- 1. To endeavour to formulate and to implement a European foreign policy.*
- 2. To undertake to inform or consult the other Member States on any foreign policy matters of general interest (not just of common interest) so as to ensure that the combined influence of the States is exercised as effectively as possible through co-ordination, the convergence of their positions and the implementation of joint action.*

Walsh J went on to list the full range of commitments arising under Title III of the SEA and concluded that they would operate to limit the freedom of action of the State in international relations and in the formulation of foreign policy to an extent that was impermissible under the Constitution. This was so even though the language used may at first sight appear to be aspirational rather than binding in nature. This is due to the principle of good faith discussed next.

The principle of good faith and the principle of loyal cooperation

The majority Crotty judgments emphasise the importance of the good faith principle operating on a State when it concludes international agreements. As Walsh J noted at para. 54 “*In international law the State in entering into a treaty must act in good faith*”. This principle arises under the Vienna Convention on the Law of Treaties. A State must enter into these commitments wholeheartedly with the intent of meeting them to the full.

This principle is mirrored in Article 2 of the SCG treaty which in turn refers back to the restatement of the other key EU principle, that of ‘*loyal cooperation*’ found in Article 4.3 TEU. Appreciation of the operation of these two principles is essential to a proper understanding of the commitments being sought from Ireland under this treaty.

McGimpsey distinguished

In McGimpsey the Court was urged to take a like view of the Agreement under scrutiny as it did of the Single European Act, but Finlay CJ had no difficulty in distinguishing the issues and in rejecting the suggested analogy:

Fettering of the power of Government to conduct external relations in breach of Article 29 of the Constitution

33. *The submission made on this issue was that the terms of the Anglo-Irish Agreement were of similar character to the terms of the Single European Act which the decision of this Court in Crotty v. An Taoiseach [1987] I.R. 713 held to be inconsistent with the provisions of Article 29 of the Constitution.*

34. *I am satisfied that this analogy is quite false. The Anglo-Irish Agreement is an agreement reached between two Governments, both of whom have an acknowledged concern in relation to the affairs of Northern Ireland. It acknowledges that the Government of Ireland may make representations, put forward proposals, and try to influence the evolution of peace and order in Northern Ireland.*

[...]

36. *The basis of the decision of this Court in Crotty v. An Taoiseach [1987] I.R. 713 was that the terms of the Single European Act could oblige the Government in carrying out the foreign policy of the State to make the national interests of the State, to a greater or lesser extent, subservient to the national interests of other member states. I have no doubt that there is a vast and determining difference between the provisions of this Agreement and the provisions of the Single European Act as interpreted by this Court in Crotty v. An Taoiseach [1987] I.R. 713.*

[1990] 1 I.R. 110 Christopher McGimpsey and Michael McGimpsey v. Ireland, An Taoiseach and Others

Selected potential counter arguments:

[Section omitted]

Evidence of SCG treaty’s effects

Any intended action would require to be grounded on reputable and authoritative evidence of the significance of the treaty’s effects on Ireland and on its freedom of action into the future.

The combined effect of this treaty and the ESM treaty must not be overlooked. Both are now explicitly interwoven. It would therefore be appropriate to examine their combined impact on the future freedom of action of an Irish Government in the course of any such action.

From detailed discussions with persons in a position to give such evidence it is clear that a number of provisions in the treaty may have a constraining effect on countries binding themselves to it in ways that are of profound importance.

Any such action must prepare to face the claim that there is 'nothing new' involved by way of commitments on the part of the countries concerned. This claim in turn rests on an assertion that all the mooted commitments are in place at present and that they are legally rooted in the existing EU treaties.

Certain governance provisions ("the six pack") comparable to those in the SCG treaty were adopted within the EU framework in recent months. The proposed transformation of these provisions into the non EU SCG treaty is however legally significant. The States purported to have adequate legal authority for these new governance provisions in the existing EU treaties. In reality this was in doubt and the States themselves clearly lacked confidence in the proposition that these new provisions would be binding if based solely on the existing treaties, hence the introduction of the SCG treaty.

The question arising therefore in response to the 'nothing new' claim, is that if there is nothing new involved why is there a need to place these commitments in a new international legal treaty cross-linked to a second new international legal treaty? In my view this is to render them permanent and binding on a secure legal footing.

It seems a reasonable inference to draw from the fact that two new treaties have been agreed that they are intended to have effects of a substantive, permanent and binding nature. An examination of their content supports this view. By contrast the current Troika and EFSF arrangements are short term and declared to be of a voluntary nature. From my analysis and from my discussions with potential expert witnesses it appears to me that the 'nothing new' argument, though superficially attractive, is capable of being countered.

Conclusion

For the reasons summarised above, having regard to the Constitutional framework and to the principles set out by the Supreme Court in Crotty v An Taoiseach, in my view it would be unconstitutional for the Government to ratify the SCG treaty without the prior approval of the people in a referendum.

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Annex

SCG treaty (as approved, recitals omitted):

*TITLE I**PURPOSE AND SCOPE***Article 1**

1. By this Treaty, the Contracting Parties agree, as Member States of the European Union, to strengthen the economic pillar of the Economic and Monetary Union by adopting a set of rules intended to foster budgetary discipline through a fiscal compact, to strengthen the coordination of economic policies and to improve the governance of the euro area, thereby supporting the achievement of the European Union's objectives for sustainable growth, employment, competitiveness and social cohesion.

2. *The provisions of this Treaty shall apply in full to the Contracting Parties whose currency is the euro. They shall also apply to the other Contracting Parties to the extent and under the conditions set out in Article 14.*

*TITLE II**CONSISTENCY AND RELATIONSHIP WITH THE LAW OF THE UNION***Article 2**

1. This Treaty shall be applied and interpreted by the Contracting Parties in conformity with the Treaties on which the European Union is founded, in particular Article 4(3) of the Treaty on European Union, and with European Union law, including procedural law whenever the adoption of secondary legislation is required.

2. The provisions of this Treaty shall apply insofar as they are compatible with the Treaties on which the Union is founded and with European Union law. They shall not encroach upon the competences of the Union to act in the area of the economic union.

*TITLE III**FISCAL COMPACT***Article 3**

1. The Contracting Parties shall apply the following rules, in addition and without prejudice to the obligations derived from European Union law:

a) *The budgetary position of the general Government shall be balanced or in surplus.*

b) *The rule under point a) shall be deemed to be respected if the annual structural balance of the general Government is at its country-specific medium-term objective as defined in the revised Stability and Growth Pact with a lower limit of a structural deficit of 0.5 % of the gross domestic product at market prices. The Contracting Parties shall ensure rapid convergence towards their respective medium-term objective. The time frame for such convergence will be proposed by the Commission taking into consideration country-specific sustainability risks. Progress towards and respect of the medium-term objective shall be evaluated on the basis of an overall assessment with the structural balance as a reference, including an analysis of expenditure net of discretionary revenue measures, in line with the provisions of the revised Stability and Growth Pact.*

c) *The Contracting Parties may temporarily deviate from their medium-term objective or the adjustment path towards it only in exceptional circumstances as defined in paragraph 3.*

d) *Where the ratio of Government debt to gross domestic product at market prices is significantly below 60 % and where risks in terms of long-term sustainability of public finances are low, the lower limit of the medium-term objective specified under point b) can reach a structural deficit of at most 1.0 % of the gross domestic product at market prices.*

e) In the event of significant observed deviations from the medium-term objective or the adjustment path towards it, a correction mechanism shall be triggered automatically. The mechanism shall include the obligation of the Contracting Party concerned to implement measures to correct the deviations over a defined period of time.

2. The rules mentioned under paragraph 1 shall take effect in the national law of the Contracting Parties at the latest one year after the entry into force of this Treaty through provisions of binding force and permanent character, preferably constitutional, or otherwise guaranteed to be fully respected and adhered to throughout the national budgetary processes. The Contracting Parties shall put in place at national level the correction mechanism mentioned in paragraph 1.e) on the basis of common principles to be proposed by the European Commission, concerning in particular the nature, the size and the time-frame of the corrective action to be undertaken, also in the case of exceptional circumstances, and the role and independence of the institutions responsible at national level for monitoring the observance of the rules. This mechanism shall fully respect the prerogatives of national Parliaments.

3. For the purposes of this Article, definitions set out in Article 2 of Protocol (No 12) on the excessive deficit procedure annexed to the European Union Treaties shall apply. In addition, "annual structural balance of the general Government" refers to the annual cyclically-adjusted balance net of one-off and temporary measures. "Exceptional circumstances" refer to the case of an unusual event outside the control of the Contracting Party concerned which has a major impact on the financial position of the general Government or to periods of severe economic downturn as defined in the revised Stability and Growth Pact, provided that the temporary deviation of the Contracting Party concerned does not endanger fiscal sustainability in the medium term.

Article 4

When the ratio of their general Government debt to gross domestic product exceeds the 60 % reference value mentioned under Article 1 of Protocol (No 12), the Contracting Parties shall reduce it at an average rate of one twentieth per year as a benchmark, as provided for in Article 2 of Council Regulation (EC) No. 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure, as amended by Council Regulation (EU) No. 1177/2011 of 8 November 2011. The existence of an excessive deficit due to the breach of the debt criterion will be decided according to the procedure set forth in Article 126 of the Treaty on the Functioning of the European Union.

Article 5

1. The Contracting Parties that are subject to an excessive deficit procedure under the European Union Treaties shall put in place a budgetary and economic partnership programme including a detailed description of the structural reforms which must be put in place and implemented to ensure an effective and durable correction of their excessive deficits. The content and format of these programmes shall be defined in European Union law. Their submission to the European Commission and the Council for endorsement and their monitoring will take place within the context of the existing surveillance procedures of the Stability and Growth Pact.

2. The implementation of the programme, and the yearly budgetary plans consistent with it, will be monitored by the Commission and by the Council.

Article 6

With a view to better coordinating the planning of their national debt issuance, the Contracting Parties shall report ex-ante on their public debt issuance plans to the European Commission and to the Council.

Article 7

While fully respecting the procedural requirements of the European Union Treaties, the Contracting Parties whose currency is the euro commit to support the proposals or recommendations submitted by the European Commission where it considers that a Member State of the European Union whose currency is the euro is in breach of the deficit criterion in the framework of an excessive deficit procedure. This obligation shall not apply where it is established among the Contracting Parties whose currency is the euro that a qualified majority of them, calculated by analogy with the relevant provisions of the European Union Treaties without taking into account the position of the Contracting Party concerned, is opposed to the decision proposed or recommended.

Article 8

1. *The European Commission is invited to present in due time to the Contracting Parties a report on the provisions adopted by each of them in compliance with Article 3(2). If the European Commission, after having given the Contracting Party concerned the opportunity to submit its observations, concludes in its report that a Contracting Party has failed to comply with Article 3(2), the matter will be brought to the Court of Justice of the European Union by one or more of the Contracting Parties. Where a Contracting Party considers, independently of the Commission's report, that another Contracting Party has failed to comply with Article 3 (2), it may also bring the matter to the Court of Justice. In both cases, the judgment of the Court of Justice shall be binding on the parties in the procedure, which shall take the necessary measures to comply with the judgment within a period to be decided by the Court.*

2. *If, on the basis of its own assessment or of an assessment by the European Commission, a Contracting Party considers that another Contracting Party has not taken the necessary measures to comply with the judgment of the Court of Justice referred to in paragraph 1, it may bring the case before the Court of Justice and request the imposition of financial sanctions following criteria established by the Commission in the framework of Article 260 of the Treaty on the Functioning of the European Union. If the Court finds that the Contracting Party concerned has not complied with its judgment, it may impose on it a lump sum or a penalty payment appropriate in the circumstances and that shall not exceed 0,1 % of its gross domestic product. The amounts imposed on a Contracting Party whose currency is the euro shall be payable to the European Stability Mechanism. In other cases, payments shall be made to the general budget of the European Union.*

3. *This Article constitutes a special agreement between the Contracting Parties within the meaning of Article 273 of the Treaty on the Functioning of the European Union*

TITLE IV

ECONOMIC POLICY COORDINATION AND CONVERGENCE

Article 9

Building upon the economic policy coordination as defined in the Treaty on the Functioning of the European Union, the Contracting Parties undertake to work jointly towards an economic policy fostering the smooth functioning of the Economic and Monetary Union and economic growth through enhanced convergence and competitiveness. To that end, the Contracting Parties shall take the necessary actions and measures in all the domains which are essential to the good functioning of the euro area in pursuit of the objectives of fostering competitiveness, promoting employment, contributing further to the sustainability of public finances and reinforcing financial stability.

Article 10

In accordance with the requirements of the European Union Treaties, the Contracting Parties stand ready to make active use, whenever appropriate and necessary, of measures specific to those Member States whose currency is the euro as provided for in Article 136 of the Treaty on the Functioning of the European Union and of enhanced cooperation as provided for in Article 20 of the Treaty on European

Union and in Articles 326 to 334 of the Treaty on the Functioning of the European Union on matters that are essential for the smooth functioning of the euro area, without undermining the internal market.

Article 11

With a view to benchmarking best practices and working towards a more closely coordinated economic policy, the Contracting Parties ensure that all major economic policy reforms that they plan to undertake will be discussed ex-ante and, where appropriate, coordinated among themselves. This coordination shall involve the institutions of the European Union as required by European Union law.

TITLE V

GOVERNANCE OF THE EURO AREA

Article 12

1. *The Heads of State or Government of the Contracting Parties whose currency is the euro shall meet informally in Euro Summit meetings, together with the President of the European Commission. The President of the European Central Bank shall be invited to take part in the meetings. The President of the Euro Summit shall be appointed by the Heads of State or Government of the Contracting Parties whose currency is the euro by simple majority at the same time the European Council elects its President and for the same term of office.*
2. *Euro Summit meetings shall take place, when necessary, and at least twice a year, to discuss questions related to the specific responsibilities which the Contracting Parties whose currency is the euro share with regard to the single currency, other issues concerning the governance of the euro area and the rules that apply to it, and strategic orientations for the conduct of economic policies to increase convergence in the euro area.*
3. *The Heads of State or Government of the Contracting Parties, other than those whose currency is the euro, who have ratified this Treaty shall participate in discussions of Euro Summit meetings concerning competitiveness for the Contracting Parties, the modification of the global architecture of the euro area and the fundamental rules that will apply to it in the future, as well as, when appropriate and at least once a year, in discussions on specific issues of implementation of this Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.*
4. *The President of the Euro Summit shall ensure the preparation and continuity of Euro Summit meetings, in close cooperation with the President of the European Commission. The body charged with the preparation and follow up of the Euro Summit meetings shall be the Euro Group and its president may be invited to attend the Euro Summit meetings for that purpose.*
5. *The President of the European Parliament may be invited to be heard. The President of the Euro Summit shall present a report to the European Parliament after each of the meetings of the Euro Summit.*
6. *The President of the Euro Summit shall keep the Contracting Parties whose currency is not the euro and the other Member States of the European Union closely informed of the preparation and outcome of the Euro Summit meetings.*

Article 13

As foreseen in Title II of Protocol (No 1) on the role of national Parliaments in the European Union annexed to the European Union Treaties, the European Parliament and the national Parliaments of the Contracting Parties will together determine the organisation and promotion of a conference of representatives of the relevant committees of the national Parliaments and representatives of the relevant committees of the European Parliament in order to discuss budgetary policies and other issues covered by this Treaty.

TITLE VI

GENERAL AND FINAL PROVISIONS

Article 14

1. *This Treaty shall be ratified by the Contracting Parties in accordance with their respective constitutional requirements. The instruments of ratification shall be deposited with the General Secretariat of the Council of the European Union.*
2. *This Treaty shall enter into force on 1 January 2013, provided that twelve Contracting Parties whose currency is the euro have deposited their instrument of ratification, or on the first day of the month following the deposit of the twelfth instrument of ratification by a Contracting Party whose currency is the euro, whichever is the earlier.*
3. *This Treaty shall apply as from the day of entry into force amongst the Contracting Parties whose currency is the euro and which have ratified it. It shall apply to the other Contracting Parties whose currency is the euro as from the first day of the month following the deposit of their respective instrument of ratification.*
4. *By derogation to paragraph 3, Article 12 shall apply to all Contracting Parties whose currency is the euro as from the date of the entry into force of this Treaty.*
5. *This Treaty shall apply to the Contracting Parties with a derogation as defined in Article 139(1) of the Treaty on the Functioning of the European Union, or with an exemption as defined in Protocol No 16 on certain provisions related to Denmark annexed to the European Union Treaties, which have ratified it, as from the day when the decision abrogating that derogation or exemption takes effect, unless the Contracting Party concerned declares its intention to be bound at an earlier date by all or part of the provisions in Titles III and IV of this Treaty.*

Article 15

This Treaty shall be open to accession by Member States of the European Union other than the Contracting Parties. Accession shall be effective upon the deposit of the instruments of accession with the Depositary, who shall notify the other Contracting Parties thereof.

Article 16

Within five years at most following the entry into force of this Treaty, on the basis of an assessment of the experience with its implementation, the necessary steps shall be taken, in compliance with the provisions of the Treaty on the European Union and the Treaty on the Functioning of the European Union, with the aim of incorporating the substance of this Treaty into the legal framework of the European Union.

[**NLCC note:** in relation to the commitment made under Article 16, recall the comment of Walsh J in Crotty v An Taoiseach on an analogous provision in the Single European Act where he said: The obligation on the High Contracting Parties after five years to examine whether any revision of Title III is required does not give the Treaty a temporary character.]

