Treaty on Stability, Coordination and Governance

Referendum 31st May 2012

Analysis of:
ESM Treaty & Stability (Fiscal Compact) Treaty

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Personal Declaration

- I have no political associations whatsoever and would describe myself as apolitical (i.e. I have little political interest and am not involved in any political activity)

- I have never had any associations with, nor have I worked for or supported in any way, any political parties or political candidates

- I hold all politicians in equal regard

- I decided to create this document due to:
  - disappointment at the superficial standard of analysis generally offered by mainstream media, amounting in most instances to repeating sound bites
  - disappointment at the absence of analysis accessible to people who do not have financial backgrounds (i.e. the majority of the population)
  - reservations, particularly on ESM treaty content
  - the simplified, primary school level of information being provided, and scaremongering approach adopted, by the government in advising the public, and
  - the potentially massive implications for the future of our children, nieces and nephews – for the innocent next generation

- I scribed this document from the following perspective:
  - that of a lay person with no financial or economic education
  - that of an analyst, applying critical thinking and analytical techniques to the content and implications of the treaty

- I scribed this document as a simple point of reference, for people who have not had an opportunity to review the treaties

- This document is meant as a reference point (and possibly a starting point) to support discussion, debate and further research – to support individual analysis, ideally far removed from political affiliations - and as a support towards ultimately reaching an individual's own informed decision as to how he or she wishes to vote on 31st May 2012

- It is my fervent hope that people will take a step back from the guidance being issued by political parties. That people will question everything, not take anything at face value, and use independent, analytical thinking to assess the treaties on merit, as this referendum transcends the traditional 'right' / 'left' political divide

- Ireland's future is in our collective hands. We have the power to effect real change, through making our collective voices heard, and by supporting friends, family and neighbours through tough times ahead

- Gráinne M. Clarke is a pseudonym, used to protect my employer from any association with my personal viewpoints

What are the "ESM" & "Fiscal Compact" Treaties?

What is the ESM (European Stability Mechanism) Treaty?

- The **ESM (European Stability Mechanism) Treaty** lays down rules for the creation and management of a permanent Emergency Fund. It defines where the money will come from, how the Emergency Fund will be managed and how it will be topped up with additional funds
- The **ESM (European Stability Mechanism) Treaty** was signed by Michael Noonan (and all 17** Euro area member states whose currency is the Euro) on 11th July 2011 and an amended version of the ESM treaty was signed on 2nd Feb 2012
- **The ESM (European Stability Mechanism)** will replace the European Financial Stability Facility ("EFSF") and the European Financial Stabilisation Mechanism ("EFSM") in providing, where needed, financial assistance (i.e. loans of large sums of money, with interest and strict terms and conditions attached) to Euro area member states
- **The ESM (European Stability Mechanism)** members will have voting rights relative to the amount of money they pay into the fund). Ireland is so small, that it's vote counts for just 1.59% , while Germany's vote counts for 27.15% and France for 20.39%

What is the Fiscal Compact Treaty?

- The **Fiscal Compact Treaty** refers to the **Treaty on Stability, Coordination and Governance in the Economic Union.** It is also referred to as the **"TSCG"** or the **Stability Treaty**. This is what we will vote on, on 31st May 2012
- The **Fiscal Compact Treaty** defines rules to try to rein in and control Government overspending and sovereign debt levels. Legal action can be taken, and financial penalties applied, against Governments that break the rules. It was signed by Enda Kenny on 2nd March 2012 (but must be ratified by the Irish people via a referendum)
- The **Fiscal Compact Treaty** will take effect in Jan 2013, if it is approved by 12 or more of the 17 Euro area countries. If passed, a small new sub section will be embedded into Article 29 of the Irish constitution, and the details of the Treaty will be dealt with in laws made by the Oireachtas

What is the relationship between the ESM (European Stability Mechanism) Treaty & Fiscal Compact Treaty?

- If Ireland (or any other Euro area country) cannot pay its own debts (and / or cannot pay the socialised debts of private companies adopted as sovereign debt), or if a Financial institution of a Euro area country has a solvency issue, it can request an interest bearing loan (i.e. it can take on more debt) with terms and conditions attached, via the ESM – but only if the country has ratified (i.e. approved) the Fiscal Compact Treaty
- Ireland's commitment to the fund will be €11,145,400,000 (€11.145 billion) , ~1/3 (one third) of Ireland's annual tax take. Michael Noonan has agreed that that Ireland will not be allowed to borrow from the fund unless the Fiscal Compact Treaty is ratified on 31st May
- Michael Noonan has committed that Ireland will contribute into the ESM bailout fund whilst being "bailed out" . So on the one hand, Ireland is borrowing billions from a loan facility (EFSF) as it cannot meet its financial commitments, whilst on the other hand, Ireland has guaranteed that €11.145 billion (that is does not have) will be available to a replacement loan facility (ESM), for access by other Euro area countries that cannot meet their financial commitments, or perhaps even for access by Ireland at a future point

**17 European Stability Mechanism Nations (also called the "CONTRACTING PARTIES") :

THE CONTRACTING PARTIES, the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic (i.e. Greece), the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Grand Duchy of Luxembourg, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland (the "euro area Member States" or "ESM Members")

NB: Key ESM and Fiscal Compact Treaty Information available here: http://www.european-council.europa.eu/home-page/highlights/european-stability-mechanism-treaty-signed

ESM – Initial & Ongoing Funding

A substantial amount of money is involved:

- Initially all Euro area countries will contribute money to set up the fund. The fund will total €700,000,000,000 - seven hundred thousand million Euro (i.e. seven hundred billion Euro) (Ref. Article 8). This is made up of made up of cash (€80 billion), and Euro area country guarantees to pay up €620 billion more cash
- The payment schedule is as follows:
  - €80,000,000,000 (€80 billion) of "paid-in" capital, which will be paid in 5 annual instalments by Euro area countries, and
  - €620,000,000,000 (€620 billion) of guaranteed "callable capital", which can be requested as and when needed
  - Ireland has committed €11.145 billion in total, made up of cash payments, and a guarantee of additional cash payments, if and when needed
  - Ireland's "paid-in" capital amount is €1,270,000,000 (€1.27 billion), payable in 5 instalments, with first payment of €254,000,000 due in July 2012
  - Ireland's "callable capital" payment amount (i.e. *the contribution that can be called upon as needed*) is €9,870,000,000 (€9.87 billion)
- Although the initial level of ESM funding is set to €700 billion, the ESM can decide to increase the fund size (i.e. *the ESM can increase the fund from €700 billion to any other amount*), and can change Article 8 to reflect the increased fund size. No upper size limit has been set for the ESM fund (Ref. Article 10, Paragraph 1)
- The ESM can increase the size of the fund whenever and as often as the ESM decides. (NB: *although the ESM Treaty states that the adequacy of capital stock shall be regularly reviewed, and at least every 5 years, this is not restrictive – and as such a review can happen whenever the ESM deems a review to be necessary*) (Ref. Article 10, Paragraph 1)
- When the ESM issues a demand for additional authorised funds from the Euro Area countries, countries may have just 7 days upon receipt of request to pay - if required to avoid the ESM defaulting on its creditors (Ref. Article 9, Paragraph 3)
- Article 15 allows for ESM funds to be used to recapitalise (bailout) the Banks of Euro Area countries

ESM TREATY TEXT - FOR REFERENCE ONLY :

ESM Treaty – Article 8, Paragraph 1
"1. The authorised capital stock shall be EUR 700 000 million " (i.e. seven hundred billion Euro)

ESM Treaty – Article 8, Paragraph 4
"4. ESM Members hereby irrevocably and unconditionally undertake to provide their contribution to the authorised capital stock, in accordance with their contribution key in Annex I. They shall meet all capital calls on a timely basis in accordance with the terms set out in this Treaty"

ESM Treaty – Article 9, Paragraph 3
"3. The Managing Director shall call authorised unpaid capital in a timely manner if needed to avoid the ESM being in default of any scheduled or other payment obligation due to ESM creditors.....ESM Members hereby irrevocably and unconditionally undertake to pay on demand any capital call made on them by the Managing Director pursuant to this paragraph, such demand to be paid within seven days of receipt"

ESM Treaty – Article 10, Paragraph 1
"1. The Board of Governors shall review regularly and at least every five years the maximum lending volume and the adequacy of the authorised capital stock of the ESM. It may decide to change the authorised capital stock and amend Article 8 and Annex II accordingly"

ESM Treaty – Article 15, Paragraph 1
"Financial assistance for the re-capitalisation of financial institutions of an ESM Member 1. The Board of Governors may decide to grant financial assistance through loans to an ESM Member for the specific purpose of re-capitalising the financial institutions of that ESM Member"

ESM: What Happens When it's Time to Pay the Piper..?

Ireland's Government advocates a 'Yes' vote so that Ireland can access another loan in 2014. It would be wise for Ireland to remember, ESM money flows in two directions (i.e. into the fund as well as out). Let's examine a "what if….." ESM borrowing scenario:

ASSUMPTIONS: *the following scenario does not factor in ESM operational costs, concurrent ESM loans, the ESM reserve fund position - including possibility of negative return on investment – nor any IMF loan contribution). Treaty references are stored in Appendix A, due to volume of text*

- The ESM Treaty enters into force in July 2012 (1 year earlier than planned). The 1st of 5 "paid-in" capital instalment is due 15 days later, to gradually grow a "paid-in" fund of €80 billion. Ireland 1st contribution is €254 million (one fifth of Ireland's initial contribution of €1.27 billion, which is due by 2016)
- In July 2013, the 2nd of 5 "paid-in" capital instalment is due. For Ireland this is another €254 million
- Now, by this stage, let's say Spain's fiscal problems *(think Ireland on steroids)* come to a head, and it requests €300 billion from the ESM fund. *Incidentally, Article 8, Paragraph 4, means that Spain would have to continue to contribute into the ESM fund, even if in receipt of an ESM loan. This means that a bailed-out country, Spain, would be using some of its bailout funds to pay into the ESM fund, to bail itself out, or possibly other countries*
- At this stage, the ESM will have a total of just 40% of "paid in capital", €32 billion out of a target €80 billion. If €80 billion was projected to allow the ESM to borrow €500 billion from the Markets, then €32 billion would theoretically raise €200 billion
- However this leaves the ESM short €100 billion for Spain. A this stage, Article 41 (2) would kick in, forcing a ramping-up of payments from the Euro Area countries, including Ireland, with potentially 7 working days to pay up. Article 9 (1) allows for "authorised unpaid capital" calls "at any time "
- But what happens if not all countries can pay-up? No problem, as Article 25 (2) means that all of the other Euro Area countries must simply chip in to make up the shortfall (*subject to the upper limit defined for each country, as per Annex II)*
- What happens if Spain does not recover economically, and cannot pay back the ESM? The Markets will have loaned on the basis of a 'guarantee' , that the ESM can make good €800 billion if needs be, and will expect the money back
- The ESM would request that members make good the loss: Article 25 (1). This would cost Ireland €4.8 billion in total (*three sevenths of €11.145 billion*)
- Now remember, that despite all of the potential, unexpected, emergency extra payments into the ESM fund, all Euro Area countries will still be expected to meet the strict Fiscal targets outlined in the Fiscal Compact Treaty. If they do not then **[a]** they can be brought before the European court of Justice (*there might just be a queue*) **[b]** if they encounter fiscal challenges, from funding loans to other Euro Area countries, they won't be allow a loan from the ESM if they have breeched Article 3 of the Fiscal Compact Treaty **[c]** if they don't clean up their act, then they can be hauled back before the European court of Justice and fined .1% of GDP (Article 8 (2)), which in Ireland's case would be €1.8 billion (*based on a projected GDP of €156 billion in 2013*)
- Now what happens if one or more Euro Area country and /or its bank(s) needs a loan from the ESM at the same time as Spain, or after Spain has defaulted? And furthermore, what if additional countries partially or wholly default? The ESM would have to draw down on Ireland's €11.145 billion
- Also remember, if Article 10 is invoked, and the ESM ceiling of €700 billion is raised, it then it may end up costing Ireland even more than €11.145 billion
- What of countries that cannot meet the ESM capital calls? Article 25 (2) states that the ESM may "decide an appropriate course of action" for lack of response to capital calls, but there are no parameters defined. And what of countries that default on loans? Article 13 (3) states that the European Commission, the ECB and the IMF (where possible), shall define the "strict conditionality" attached to ESM loans. Paragraph 12 of the Treaty preamble (WHEREAS section) allows for the IMF to have "private sector involvement" . Article 5 (5) allows for "including representatives of institutions or organisations " to attend the Meetings of the Board of Governors. This paves the way for everything being up for grabs: low corporation tax rates and perhaps countries, with no way of scaling their debt mountains, selling off natural and historic assets, and the privatisation of any remaining state resources of value. It is, additionally, hard to see how austerity, on a scale hitherto unseen, could be avoided by impacted countries, crippled by debt

ESM – New Financial Institution

- *With an initial (cash + guarantees) fund of €700,000,000,000 (seven hundred billion Euro), potential sporadic on-demand cash calls to the Euro area countries (up to this limit), and a payment timeline that can be set at will by the ESM Governing body, coupled with the ability to raise the €700 billion fund ceiling, wouldn't you agree that there is an important need for the following?*

Three ESM 'Controls'

1. The need for complete transparency and accountability within the ESM (i.e. *the operations of the ESM should be fully transparent and the people of Europe should be able to hold the ESM to account for its actions and decisions)*
2. The need for ESM employee accountability (i.e. *ESM employees should be held fully responsible for their actions*)
3. The need for a clear definition of how the organisation will operate (defined operational boundaries) – and clearly defined success criteria (i.e. *so that people can easily assess whether the ESM is meeting its objectives)*

What is a 'Control'?

→ Each item in the box on the left hand side could be considered to be a 'control'

→ A 'control' is an action or activity that removes or reduces risks that exist in an organisation

→ A 'control' is a way of supporting an organisation to do the right thing, and provides a structure to help an organisation stay on the 'right track'

→ Let's take a look to determine whether that three basic, proposed 'controls' are covered in the ESM Treaty

ESM Organisation – Keeping it Open & Accountable

Proposed Control No. 1: The need for complete transparency within the ESM *(i.e. the people of Europe should have access to accurate information about the workings of the ESM, understand how decisions are reached, and should have some way of holding this powerful organisation responsible for its actions and decisions)*

Q: Why do we need this control?
A: If an organisation is not transparent, and/or if there is no means by which it can be held to account, then there is a risk that it may take inappropriate actions or make incorrect decisions

Q: Does the ESM Treaty allow for openness and transparency?
A: No – it does not, because of the following ESM Treaty provisions:

- **The ESM is completely above the law (i.e. The ESM is immune from every form of judicial (legal) process or prosecution)** (*Article 32, Paragraph 3*)
- **The ESM's property, funding and assets are outside of the reach of the law** (*Article 32, Paragraph 4*)
- **ESM documents are outside the reach of the law** (Article 32, Paragraph 5)
- **The premises / offices of the ESM are outside the reach of the law** (Article 32, Paragraph 6)
- **On the bright side, Article 30, Paragraph 1 states, "*The Board of Auditors shall consist of five members"* … *"one from the European Court of Auditors*". Mindful that this is where Kevin Cardiff now works, we can rest easy, knowing that when ESM Reserve Funds are low, perhaps €3.6 billion might turn up out of nowhere**

ESM TREATY TEXT – FOR REFERENCE ONLY:

ESM Treaty – Article 32, Paragraph 3
*"3. **The ESM, its property, funding and assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process** except to the extent that the ESM expressly waives its immunity for the purpose of any proceedings or by the terms of any contract, including the documentation of the funding instruments"*

ESM Treaty – Article 32, Paragraph 4
" 4. **The property, funding and assets of the ESM shall, wherever located and by whomsoever held, be immune from search, requisition, confiscation, expropriation or any other form of seizure, taking or foreclosure by executive, judicial, administrative or legislative action"**

ESM Treaty – Article 32, Paragraph 5
"5. **The archives of the ESM and all documents belonging to the ESM or held by it, shall be inviolable"**

ESM Treaty – Article 32, Paragraph 6
"6. **The premises of the ESM shall be inviolable**"

ESM Employees – Embracing Accountability

Proposed Control No. 2: **The need for full employee accountability within the ESM (i.e. *ESM employees should be held fully responsible for their actions*)**

Q: Why do we need this control?

A: If an employee knows that he or she has zero responsibility for his/her actions and can never be held to account – isn't it possible that this could this impact his/her actions and decision making?

Q: Does the ESM Treaty allow for employee accountability?

A: No – it does not, because of the following ESM Treaty provisions:

- **ESM employees cannot be held accountable for any action or decision made by them – they are completely immune from legal proceedings and are effectively above the law** (*Article 35, Subsection 1*)
- **The Board of Governors of the ESM has the authority, if it so chooses, to waive the immunity to legal proceedings of any ESM employee. However, there is zero independence here. The ESM has total control over decisions on whether legal proceedings can take place in relation to ESM employees** (*Article 35, Subsection 2*)
- **The Managing Director of the ESM has the power to decide, completely at his/her discretion, to waive the immunity to legal proceedings for any ESM employee. This places tremendous power in the hands of one single individual, and leaves the individual open to personal considerations or bias. Again, there is zero impartiality present here** (*Article 35, Subsection 3*). ***To put Article 35, Subsections 2 and 3 in context, remember the outcomes at Anglo Irish Bank & Irish Nationwide when power was concentrated into the hands of a few powerful, unaccountable people?***
- **To summarise, Article 35 consolidates the ESM's position as an organisation above the law** (*Article 35*)

ESM TREATY TEXT – FOR REFERENCE ONLY:

ESM Treaty – Article 35, Paragraph 1

- Immunities of persons
- 1. "In the interest of the ESM, the Chairperson of the Board of Governors, Governors, alternate Governors, Directors, alternate Directors, as well as the Managing Director and other **staff members shall be immune from legal proceedings with respect to acts performed by them in their official capacity and shall enjoy inviolability in respect of their official papers and documents**"

ESM Treaty – Article 35, Paragraph 2

- 2. "The Board of Governors may waive to such extent and upon such conditions as it determines any of the immunities conferred under this Article in respect of the Chairperson of the Board of Governors, a Governor, an alternate Governor, a Director, an alternate Director or the Managing Director"

ESM Treaty – Article 35, Paragraph 3

- 3. "The Managing Director may waive any such immunity in respect of any member of the staff of the ESM other than himself or herself"

ESM – Purpose & Measures of Success

Proposed Control No. 3: Defined operational boundaries – and clearly defined success criteria

Q: Why do we need this?

A: If the ESM does not define rules governing how it operates, and if it does not define what success looks like – then how will the people of Europe ever know whether it is fit-for-purpose, and how will the people of Europe ever be able to gauge any need for its continued existence (or any need for its termination)?

1. **Timeline**: The ESM Treaty states the need for "a permanent stability mechanism" (i.e. that the ESM will be permanent). However, from a practical point of view, how long do you think the ESM should be needed for? *Shouldn't it be true that, if the Euro is a solid and stable currency, positioned to last the test of time – and that if the Fiscal Compact Treaty is helping to address the root cause of the financial crisis - that there should be only a temporary need for the ESM? So, shouldn't it be possible, if not desirable, to define a target timeline for the life / duration of the ESM – for example one year, two years, three years etc.*)? However – according to the ESM treaty, the ESM is 'for ever'.... This does not bode well for either the Euro, or the ever growing mountain of debt being racked up by Euro area countries

2. **Budget**: What are the drivers for the initial fund being set to €700 billion? What is this figure based upon? How was it derived? Has the figure been stress tested? Does it contain contingency (i.e. has a few 'extra' few billion been added in to cover the unknown, and if so, how was this figure determined)? .....*Or is there a risk that the ESM is making it up as it goes along....?*

3. **Scope**: What is the upper 'ceiling' for the ESM fund, which if reached, would set off alarm bells that there is an escalating problem? How much is too much?. *If there is no predefined, target upper limit to the fund, and not even a cursory attempt to define one, then it could be argued that the full extent of the financial crisis is not known, and that the ESM may be analogous to a watering can being used to try to quell a raging fire*

4. **Cost / Benefit**: In all aspects of life, whenever money is spent – there should be a definable benefit resulting from that monetary spend, and alternatives, if they exist, should be considered. In simple terms, a well thought out cost / benefit study should prevent the throwing of good money after bad. So, how much will the ESM cost to set up? How much will it cost to operate annually? Considering the ESM treaty references the fact that it will work very closely with the IMF, and that Euro area countries requesting a loan should make a similar request to the IMF (***ESM Treaty quote****: "WHEREAS….. (8) The ESM will cooperate very closely with the International Monetary Fund ("IMF") in providing stability support. The active participation of the IMF will be sought, both at technical and financial level. A euro area Member State requesting financial assistance from the ESM is expected to address, wherever possible, a similar request to the IMF").* In that case, could it be more cost effective to simply utilise the IMF in the first instance - rather than incurring the setup and operational costs of yet another financial institution to service indebted countries and their banks with loans and support through the primary and secondary bond market?

5. **Critical Success Criteria**: How will we know whether the ESM is 'doing a good job'? *Will it be if Politicians tell us so*? How will we know if the ESM is not doing a good job or, at a point in time, whether it is no longer needed? How do we measure success in terms of ESM performance? *Is it if the dividends referenced in Article 23, Paragraph 1 ever see the light of day?* How do we measure failure or below par performance? *Is it if the coverage of losses process outlined in Article 25 kicks in?* Chances are, people will have slightly (or even vastly) different answers to these questions, which is why, to correctly set expectations from the outset, it would be helpful to have defined critical success criteria

The above questions should be answerable, and answered

Fiscal Compact Treaty - One Size Fits All... (summary-on-a-page)

1. ARTICLE 3 (1): This paragraph states that when Government spending is added up and compared to what the country 'earns' (i.e. GDP) that, ignoring certain qualifying outgoings, overspending will not be by more than 1% of GDP if finances are healthy (i.e. Government debt less than 60% of GDP), and no more than .5% of GDP if finances are less healthy (i.e. if Government debt is greater than 60% of GDP) (*NB: GDP = Gross Domestic Product = the value of all goods & services produced by a country in a year. It is a measure of a country's standard of living)*
2. ARTICLE 3 (2): This paragraph states that Article 3 (2) must be integrated into the law of the Euro area countries within one year of the treaty taking effect, and that countries will kick off a "correction mechanism" if the country is not on financial track
3. ARTICLE 4 : This means that regardless of which of the 17* countries (*if all 17 sign up), with its unique economic landscape, gets into debt, the same rigid approach must be taken to address the problem, and that is to chop the debt in size by one twentieth (1/20) per year
4. ARTICLE 8 (1): This means that if a European Commission report highlights that a country has failed to comply with Article 3(2) as summarised above, the country can be brought to the European Court of Justice – or alternatively – independent of the European Commission report - if any other Euro area country believes that another Euro area country has not complied with Article 3(2), that country can bring the accused country to the European Court of Justice
5. ARTICLE 7: This means that even if a country does not believe in the suitability of the proposal or recommendation of the European Commission in regard to the budget deficit / government debt problem of a Euro area country, it must support the recommendations (unless the country has the support of a majority of other Euro area countries that also disagree with the Commission ruling)
6. ARTICLE 8 (2): This paragraph means that if a country is brought to the European Court of Justice, and the country does not comply with a judgement made against it, that any other Euro area country can bring that country back to the European Court of Justice and request that financial penalties be brought against it. If the European Court of Justice finds that the defendant country has not complied with the judgement – the Court can impose a financial fine on the defendant country

FISCAL COMPACT TREATY TEXT – FOR REFERENCE ONLY:

Article 3, Paragraph 1: "The budgetary position... Shall be balanced or in surplus... With a lower limit of a structural deficit of .5% of the Gross domestic product"

Article 3, Paragraph 2: *"The rules set out in 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"*

Article 4: "When the ration of... Government debt to gross domestic product exceeds.... 60%.... That" (Country) "shall reduce it at an average rate of one twentieth per year"

Article 7: *"..the Contracting Parties commit.... to supporting the proposals or recommendations submitted by the European Commission where it considers that a member state of the European Union whose currency is in breach of the deficit criterion in the framework of a excessive deficit procedure". "This obligation shall not apply where it is established... That a qualified majority.... Is opposed to the decision proposed or recommended"*

Article 8, Paragraph 1: *"If the European Commission.... concludes in its report....that such 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 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"*

Article 8, Paragraph 2: *"Where, on the basis of its own assessment or that of 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..". If the Court of Justice 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"*

Fiscal Compact Treaty: Friend or Foe - I?

Despite Michael Noonan stating on 11th Jan 2012 that talk of a 2nd bailout is "ludicrous" (and that Ireland is funded up to the tail end of 2013), the Government has expressed that a key reason for the Fiscal Compact Treaty to be ratified, is the ability to access yet another loan to manage Ireland's budget deficit and sovereign debt. It is nonetheless important to consider the longer-term consequences of a 'Yes' or 'No' vote:

- The ESM Treaty states that it is: "COMMITTED TO ensuring the financial stability of the euro area". However, if the only means of ensuring "stability of the Euro area" is a permanent, open-ended multi-billion (and perhaps in time multi-trillion) loan facility, does this not imply that there is a fundamental flaw in the system? Why does Europe appear to be deploying an inappropriate, incomplete solution?
- The Fiscal Compact Treaty treats the symptoms and not the root cause. It does not consider why a country would run a deficit > 60% of GDP in the first instance, but instructs it in what to do if this happens, regardless of why it happened, or the possibility that it may happen again
- The Fiscal Compact Treaty offers a one-size-fits all approach to managing debt. How can the same solution be appropriate across 17 diverse Euro area countries? Could it be that it cannot? On the contrary, perhaps Europe should not throw away monetary policy as an instrument to deal with monetary crises...?
- If a country does not meet the terms of the Treaty, it can be fined up to 0.1% of GDP. Is it is logical to tackle the problem of a country unable to pay its debts by imposing a monetary fine? This prescribed punishment approach is at odds with the "solidarity" (explicitly referenced in the ESM Treaty) that might be expected from Europe when a fellow country is at its most vulnerable
- Ratifying the Fiscal Compact Treaty allows countries access to the ESM, and in doing so perpetuates the myth that the answer to the so-called "financial crisis" is to heap more borrowing onto over indebted countries. In reality, this appears very like a giant Ponzi scheme, relying for Euro area survival on a continuous drip feed of more and more billions of Euro (i.e. the issuance of ever increasing levels of debt) into the system. The answer to too much debt is not increased debt. The answer to too much debt is less debt (i.e. a combination of **[a]** repudiating "odious"** debt such as socialised Bank debt **[b]** determining the best balance between paying down sovereign debt versus spending to stimulate growth and **[c]** a sharp (but equitable) fiscal adjustment to halt the annual budget deficit. (** *"Odious" debt' is a legal theory which holds that the national debt incurred by a regime for purposes that do not serve the best interests of a nation, should not be enforceable)*
- The previous ESM Treaty version openly declared its fee structure: that it would charge a 2% margin on shorter term funding (up to a 3 year loan) and a 3% margin on loan terms longer than 3 years. This has been deleted from the current version, which states: "*1. When granting stability support, the ESM shall aim to fully cover its financing and operating costs and shall include an appropriate margin.* .". So, indebted countries borrowing from the ESM, will now pay an interest rate that has not been defined, and the country will also have to pay to cover the operational costs of the ESM. The vaguely defined "*appropriate margin*" is wholly at the discretion of the ESM: "*2. For all financial assistance instruments, pricing shall be detailed in a pricing guideline, which shall be adopted by the Board of Governors. 3. The pricing policy may be reviewed by the Board of Governors*". This is a daunting prospect, mindful of the interest rate originally charged to Ireland when the Troika first arrived at Ireland's door, the fact that in March 2011, Enda Kenny failed to negotiate an interest rate reduction while Greece was granted a 1% reduction, at a time of increasing demands from Ireland's Euro area partners that Ireland give up its 12.5% Corporation tax rate. NB: The interest rate reduction eventually bestowed on to Ireland in July 2011 is believed to have been granted only to save Greece (NB: Portugal also benefitted). ESM loans may end up coming with unpalatable and inequitable terms and conditions...
- The Fiscal Compact Treaty offers the Government an opportunity to further postpone tackling the bloated cost of running the state. Why should the Government be motivated to take hard decisions when an apparent safety net is available – i.e. continued borrowing, with the day of reckoning so far down the road that it is unlikely to be the current Government's problem when that day arrives
- The Fiscal Compact Treaty and ESM will not tackle, much less fix, the crisis but will provide for a staggeringly expensive bandage. In other words, the Fiscal Compact Treaty will not stop a similar economic crisis happening in the future
- If the Fiscal Compact Treaty is ratified, this will bind Euro area countries even closure together and irrevocably to the ESM - an unaccountable, autonomous financial institution, with unlimited powers and unlimited, on-demand access to an ATM that is the combined Treasuries of the 17 Euro area countries. Could there come a point, where the collective Euro area countries will have travelled too far down the wrong path, and become chained to so much debt, that Euro recovery becomes unviable...?

Fiscal Compact Treaty: Friend or Foe - II?

- Failure to ratify the Fiscal Compact treaty would demonstrate a refusal to accept the worst mistake made by Government in Irish history, a decision vehemently opposed by the current Government up to the moment they got into power: the burdening of Irish people with responsibility for repaying the debt of private financial institutions
- Failure to ratify the treaty would demonstrate a refusal to accept severe cuts to health, education, benefits for the elderly, infirm and incapacitated, and welfare to the genuinely needy – all to pay back the banking debt of private organisations, organisation that, had the normal rules of capitalism applied, would have been wound down
- A second reason put forward by the Government for voting 'Yes' (i.e. besides the ability to rack up even more debt via the ESM) is that it will bring confidence back to the 'Markets'. Putting aside the fact that this is a highly questionable assertion, voting 'No' demonstrates that people and society are more important than the 'Markets'
- Voting 'Yes' places unhelpful, rigid confines around the management of current debt-to-GDP and debt-to-GNP levels that are unsustainable and unmanageable
- Voting 'No' would shake the complacency of a Government that has been less than honest and is not representing the wishes of the people. The Government has not adequately, nor openly and honestly explained the Treaty and its implications. It is currently the Irish peoples' only means to remind the Government of its true mandate:
  - **"The first choice that Irish voters are going to have to make in this election is whether our budgets are decided in Frankfurt or decided by the democratically elected government of the Irish people". "if... we accept the EU IMF deal.. it'll mean more taxes, more cuts, high unemployment and no recovery""** - *Eamon Gilmore on 3rd February, 2011– leading Irish people to believe Labour would defend Ireland's interests if elected*
  - "*...***the banks aren't getting another cent. Anglo Irish Bank is not getting another cent of our money**" - *Leo Varadkar in Feb 2011 – leading Irish people to believe Fine Gael would pursue a bank-debt write down if elected*
  - "**If the Anglo bondholders are paid, they will be paid from their own resources. This will not come from the taxpayer**" - *Enda Kenny, misleading the Irish people on 28th September, 2011*
  - ***"We have never looked for a debt write-down"*** *– Enda Kenny in the Dáil on 24th January 2012, defying his mandate and the wishes of the Irish electorate*
  - "**Any tax on a person's home is immoral**" - *Enda Kenny's strong anti-household tax position – prior to being in Government*
  - "**I suppose in a way you might call it a safety net or water wings**" - *Joan Burton, on the Stability Treaty;*
  - "**It's like saying: 'Look. I'm going to buy this house, but I'd like to know that it's insured**" - *Enda Kenny, on the Stability Treaty*
- Worryingly, if the Government has adopted an unquestioning, 'best boy in the class' approach in blindly obeying the Troika, on the basis of a dangerous assumption that when the Troika is eventually proven to be wrong about Ireland's debt sustainability, and when Ireland is on the precipice of default that the Government will be allowed a concessionary debt 'haircut' – then this is a very dangerous assumption, because:
  - When that time comes, Ireland will have paid off the banking debt, and all of the loans adopted to do this will have become sovereign debt
  - Ireland will have no bargaining chips, nothing left to negotiate with once the Banking debts have been paid, will face being forced to sell off any assets of value that the country possesses, on top of further cuts to crumbling health services, ever diminishing support for the elderly and infirm, and an overstretched educational sector. Your children, grandchildren, nieces and nephews will not live in a people friendly society, but a neo liberal Europe ruled by private capital
  - There is a future risk of having to give up Ireland's low Corporation Tax rate, in exchange for additional loans or for permission to stretch out debt repayment terms (because if Ireland has no cards to play, then Ireland does not call any shots)
- It is acknowledged by both sides that the Fiscal Compact Treaty is not going to resolve the debt crisis, so wouldn't Europe arguably have been better focused on determining the root cause of this unprecedented crisis, and defining a holistic, comprehensive solution, and then incrementally implementing that solution? Following Government use of analogy, isn't the Fiscal Compact Treaty akin to wearing water wings to protect one in a house that is insured but has no foundations?
- A majority 'No' vote avoids the classic mistake of allowing the fear and uncertainty of a crisis to effect sweeping, inappropriate legislative change, at a time of ongoing austerity, an ever growing mountain of debt and record pan-European unemployment levels. Is this the appropriate time for permanent surrender of sovereignty and perpetual supervision of budgets and economic policy, in a monetary union that is not working , and has no strategy to remediate a crisis that has spanned 5 years?

To Vote 'Yes' or 'No' – that is the question… (I)

	Majority 'No' Vote	Majority 'Yes' Vote
Assessment of ease with which the Government may 'kick the can down the road' and defer difficult fiscal decisions	With no easy loan option on-tap (NB: *though an IMF funding request would, theoretically, still be possible, as would an EFSF request by June 2013*) – the Government would have an incentive and justification to rapidly address the fact that Ireland spends more than Ireland takes in	As the ESM fund is always there to tap into, there is no rush on taking hard decisions in regard to Ireland's diminished spending capacity relative to increased outgoings. Heaping more debt on top of Ireland's budget deficit and sovereign debt allows a deferral of responsibility (i.e. facing up to and resolving an overspending crisis) to the next Government, who will then be blamed for the next round of resultant austerity and asset stripping
Ability to address the staggeringly serious issue of banking debt taken on as sovereign debt under false pretences ("odious debt") , pushing debt-to-GDP ratio up by 1/3, from 80% to 120%, locking Ireland out of bond Market	A majority 'No' vote is a wake up call that Irish people do not agree with the sequence of decisions and events that have taken Ireland to the current crossroads. It offers what may be the last opportunity to force the Government to address and undo the biggest political mistake in Irish history (i.e. the socialisation of billions of euro of private bank debt). *Pacta sunt mutanda* ("Treaties should be altered")	A 'Yes' vote is an affirmation that all decisions that have taken us to the current crossroads are correct (and /or are acceptable). A 'Yes' vote embraces and represents a ratification of the next step in this journey. A 'Yes' vote binds us closer to the institutions that **a)** placed significant pressure on Government to stand over socialised private banking debt and **b)** are touting the current brand of prescribed austerity as the only option. A 'Yes' vote is a step towards normalising the socialisation of private debt, and leaves the door firmly open for this to happen again in the future, as soon as the next 'too-big-to-fail' financial institution hits a solvency crisis
Addressing and determining the root cause of the 5 year old economic crisis, and identifying lasting solutions	The crisis is 5 years old. How many years must go by before a solution-less 'crisis' becomes normality? Europe has a strategic leadership vacuum, and is applying inequitable tactical solutions. A 'No' vote is a reality check for the Irish Government and for Europe that the people have awoken and can see that the Emperor has no clothes. A 'No' vote offers an opportunity to face up to and holistically analyse and assess the crisis, and to re-evaluate the future direction of Europe and the Euro	A 'Yes' vote does nothing to tackle the root cause of the economic crisis but instead offers empty posturing - a façade of something being done. It offers comfort to Germany that the peripheral Euro area countries will be restrained, as Germany will be the majority ESM share holder (i.e. Germany will contribute the most money into the ESM fund). A majority 'Yes' vote is a ratification that it is acceptable to ignore the elephant in the room – to pretend that there aren't significant issues with the Euro (some may go so far as to suggest that the Euro is not working as a common currency). A 'Yes' vote is a resounding triumph for appearance over substance
Impact on 'The Markets'	A 'majority No' vote (assuming outcome as per 'Long Term Implications' slide) would over time restore market confidence (NB: after an initial short term shock). Repudiating remaining bank debt, focusing on a short, sharp fiscal adjustment and retaining control of monetary policy as a means to apply problem-specific solutions to fiscal challenges, would give confidence to the Markets that we are in control (as did Iceland)	A majority 'Yes' vote will not give confidence to the Markets. On the contrary, an overriding focus on austerity undermines economic recovery and decreases a country's ability to return to the Markets. A 'Yes' vote reaffirms the acceptability of socialised private debt, it places the Markets on a pedestal above people, regardless of the consequences on society: i.e. health cuts, education cuts, cuts to benefits for the elderly and infirm, and a widening gap between an elite and the 'nouveau poor', a society whose value is measured by its people as debt paying cash cows, with formally self-sufficient nations under the domination and bidding of private capital

To Vote ‘Yes’ or ‘No’ – that is the question… (II)

	Majority ‘No’ Vote	Majority ‘Yes’ Vote
<u>SUMMARY</u>: SHORT TERM IMPLICATIONS A summary of projected short to medium term economic outlook	A difficult economic position, a budget deficit and level of sovereign debt that needs to be addressed, and austerity. A ‘No’ majority is not a magic solution in itself, and prolonged austerity will come hand-in-hand with either a ‘Yes’ or ‘No’ majority. A ‘No’ vote forces the Government to evaluate why the treaty does not have the support of the people , and in conjunction with people finally making their collective voices heard (in particular regarding socialised bank debt), this leads to the projected long term implications, outlined below, starting with non-payment of maturing Irish Nationwide unsecured, unguaranteed Bonds on June 21st 2012. A majority ‘No’ vote offers Politicians an opportunity to halt negative thought patterns (i.e. “*It can’t be done because…..*”) and to start thinking in terms of solutions: (i.e. “*How can this be done?…*). If circumstances significantly alter as a result of majority ‘No’ vote outcomes, there is no plausible reason to believe that the Government cannot hold another referendum, if conditions are right for a ‘Yes’ vote….	Difficult economic position, a budget deficit and level of sovereign debt that needs to be addressed, and austerity. A ‘Yes’ majority is not a magic solution in itself and prolonged austerity will come hand-in-hand with either a ‘Yes’ or ‘No’ majority. However with a ‘Yes’ vote, the long term implications for Ireland are more severe, when compared to the achievable outcomes that present with a majority ‘No’ vote. A ‘Yes’ vote, in accepting levels of debt that do not belong to the people of Ireland, also accepts that it is preferable to pay these odious debts, and the interest on the odious debt, instead of investing money into future economic development , education, health and support for society’s most vulnerable. In summary, a majority ‘Yes’ vote means a preservation of the status quo, it means that nothing changes. Furthermore it means that as a people we will no longer have the right to bemoan our unfolding fate, as we will have passed up the fleeting opportunity to alter it….
<u>SUMMARY</u>: LONG TERM IMPLICATIONS A summary of projected long term economic outlook	A quicker escape from uncertainty and the pain of austerity through a majority ‘No’ vote illustrating the public appetite for a ‘bite-the-bullet’ acceleration of the economic adjustment process, and a majority ‘No’ vote, in particular, driving home the overwhelming public support for the Government repudiating all remaining former banking debt (“odious debt”), foisted on the Irish people without their consent. A majority ‘No’ vote offers the opportunity to deliver solutions in line with the wishes of the Irish people and best interests of the Irish state. Although default appears inevitable, in terms of securing Ireland’s future there is a significant difference between proactively choosing to ‘default’ now - on banking debt that was never Irelands to begin with – rather than defaulting on Ireland’s sovereign debt, when the country is on its knees, on or after 2014	A prolonged period of austerity, a higher debt mountain to repay, possibly tougher austerity if NAMA has to be brought on to the country’s balance sheet, as suggested by the Fiscal Compact Treaty preamble. Staying afloat just long enough for it to be too late to step away from banking debt now fully subsumed as sovereign debt, approaching default without any bargaining chips left, asset-stripping by vulture capitalists as the country is forced into fire-sales of state assets of value. Privatisation (and increased costs) for basic services that should be paid for on a not-for-profit basis (e.g. water services). Crumbling health and education sectors, no social protection for the elderly, incapacitated nor socially vulnerable. Ireland’s Corporation tax rate may also end up in jeopardy. Ultimate outcome: breakdown in social cohesion, social unrest, widespread poverty. And all this in an attempt to pay down what, from the outset, is clearly an unmanageable level of debt

Appendix A – Additional Reference ESM Treaty Text (slides 5 & 9)

WHEREAS (12) In accordance with IMF practice, in exceptional cases an adequate and proportionate form of private sector involvement shall be considered in cases where stability support is provided accompanied by conditionality in the form of a macro-economic adjustment programme.

Article 5 "Other persons, including representatives of institutions or organisations, such as the IMF, may be invited by the Board of Governors to attend meetings as observers on an *ad hoc basis."*

Article 8 (4) "ESM Members hereby irrevocably and unconditionally undertake to provide their contribution to the authorised capital stock, in accordance with their contribution key in Annex I. They shall meet all capital calls on a timely basis in accordance with the terms set out in this Treaty.

Article 9 - Capital calls

(1) "The Board of Governors may call in authorised unpaid capital at any time and set an appropriate period of time for its payment by the ESM Members"

(2) "The Board of Directors may call in authorised unpaid capital by simple majority decision to restore the level of paid-in capital if the amount of the latter is reduced by the absorption of losses below the level established in Article 8(2), as may be amended by the Board of Governors following the procedure provided for in Article 10, and set an appropriate period of time for its payment by the ESM Members"

(3) "The Managing Director shall call authorised unpaid capital in a timely manner if needed to avoid the ESM being in default of any scheduled or other payment obligation due to ESM creditors. The Managing Director shall inform the Board of Directors and the Board of Governors of any such call. When a potential shortfall in ESM funds is detected, the Managing Director shall make such capital call(s) as soon as possible with a view to ensuring that the ESM shall have sufficient funds to meet payments due to creditors in full on their due date. ESM Members hereby irrevocably and unconditionally undertake to pay on demand any capital call made on them by the Managing Director pursuant to this paragraph, such demand to be paid within seven days of receipt"

Article 10 - Changes in authorised capital stock

(1) "The Board of Governors shall review regularly and at least every five years the maximum lending volume and the adequacy of the authorised capital stock of the ESM. It may decide to change the authorised capital stock and amend Article 8 and Annex II accordingly"

Article 13 (3) "If a decision pursuant to paragraph 2 is adopted, the Board of Governors shall entrust the European Commission – in liaison with the ECB and, wherever possible, together with the IMF – with the task of negotiating, with the ESM Member concerned, a memorandum of understanding (an "MoU") detailing the conditionality attached to the financial assistance facility. The content of the MoU shall reflect the severity of the weaknesses to be addressed and the financial assistance instrument chosen. In parallel, the Managing Director of the ESM shall prepare a proposal for a financial assistance facility agreement, including the financial terms and conditions and the choice of instruments, to be adopted by the Board of Governors. The MoU shall be fully consistent with the measures of economic policy coordination provided for in the TFEU, in particular with any act of European Union law, including any opinion, warning, recommendation or decision addressed to the ESM Member concerned. "

Article 23 - Dividend policy

"1. The Board of Directors may decide, by simple majority, to distribute a dividend to the ESM Members where the amount of paid-in capital and the reserve fund exceed the level required for the ESM to maintain its lending capacity and where proceeds from the investment are not required to avoid a payment shortfall to creditors. Dividends are distributed *pro rata to the contributions to the paid-in capital, taking into account the possible acceleration referred to in Article 41(3)"*

Article 25 - Coverage of losses

"(1) Losses arising in the ESM operations shall be charged: (a) firstly, against the reserve fund; (b) secondly, against the paid-in capital; and (b) lastly, against an appropriate amount of the authorised unpaid capital, which shall be called in accordance with Article 9(3).

(2) If an ESM Member fails to meet the required payment under a capital call made pursuant to Article 9(2) or (3), a revised increased capital call shall be made to all ESM Members with a view to ensuring that the ESM receives the total amount of paid-in capital needed. The Board of Governors shall decide an appropriate course of action for ensuring that the ESM Member concerned settles its debt to the ESM within a reasonable period of time. The Board of Governors shall be entitled to require the payment of default interest on the overdue amount"

Article 41 (2) "During the five-year period of capital payment by instalments, ESM Members shall accelerate the payment of paid-in shares, in a timely manner prior to the issuance date, in order to maintain a minimum 15 % ratio between paid-in capital and the outstanding amount of ESM issuances and guarantee a minimum combined lending capacity of the ESM and of the EFSF of EUR 500 000 million"

Article 41 (3) "An ESM Member may decide to accelerate the payment of its share of paid-in capital"