

An Irish challenge to the European Stability Mechanism

Legal proceedings have been initiated by Thomas Pringle T.D., Independent Irish Member of Parliament for Donegal South-West, challenging the Irish Government on fundamental aspects of the European Stability Mechanism (ESM)

Treaty and the Stability, Coordination and Governance in the Economic and Monetary Union (Fiscal Compact) Treaty

Pringle stated that he is “of the opinion that both treaties raise serious legal difficulties both at the level of EU treaty law and Irish Constitutional law.”

Stating “my primary democratic concern as both a citizen and as an elected public representative is the integrity of the Irish Constitution and the EU treaties which now form such an important part of our constitutional framework. I believe that the matters that I seek the clarification and assistance of the Court on are of crucial importance not only for the citizens of this country but for the future of the EU.”

Of special concern to him are the implications under the terms of the ESM Treaty of a new permanent €700 billion bailout fund called the European Stability Mechanism to be set up with power to call on Ireland (at a time of that institution’s choosing) to make capital contributions of up to €11,145,400,00 in various forms of capital.

“In this country’s case, this is the equivalent to approximately one-third of Government Tax Revenue for 2011. This figure can be increased at the sole behest of the ESM at any time in the future and with no limit set in the treaty as to what may be sought from Member States in the future.

“In effect this Stability Mechanism can direct the State to raise sovereign debt, give the money so raised to it and can

then decide, where, when, whether and how it is to be spent. Therefore Ireland will not have power to control decisions regarding the use of funds raised by it.”

Implications – What if a majority of voters in the May referendum on the Fiscal Compact Treaty vote in favour of imposing permanent austerity rules on the country in order to get access to a proposed permanent Eurozone loan fund only to discover that the treaty to establish that fund is illegal under EU law and unconstitutional in Ireland and may never in fact come into force?

Pringle said “On the 9th March last I wrote to Irish Taoiseach Mr Enda Kenny, the Minister for Finance and the Minister for Foreign Affairs detailing some of these very serious concerns. To date I have received no reply to this correspondence beyond the usual standard acknowledgement of receipt of the communication. I have now been left with no other option but to take this course of action.”

Summary of the Case

“I am asking the Court to examine the legality of the amendment of Article 136 of the Treaty on the Functioning of the European Union (TFEU) before any further action is taken by Government to approve that amendment. That amendment is being adopted under a so-called ‘simplified revision procedure’ of the EU treaties which I believe is legally wrong. The changes being proposed are so fundamental that they should go through the ‘ordinary treaty revision procedure’ to ensure proper democratic scrutiny. They also require the approval of the Irish people.

“I am also asking the Court to consider whether the ESM Treaty is in breach of existing EU treaty principles which have been approved by the Irish people in previous referendums and which are now therefore part of our law.

“In addition I am asking the Court to decide whether the State

can ratify the Treaty Establishing the European Stability Mechanism without first having the approval of the people in a referendum.

“The Treaty on Stability, Coordination and Governance in the Economic and Monetary Union signed on 2nd March 2012 is intertwined with the ESM Treaty. They each depend on the other.

“If I am right in my belief that the ESM Treaty is unlawful, then there is in my opinion a question over the validity of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union.”

Timing & Positioning Q & A

Pringle states that he “appreciates and welcomes the Irish Government’s decision to submit the issue of the Fiscal Treaty to the people by way of referendum”, but he “has concerns that due to the intense pressures on Government at this time, the need to put the amendment to the EU treaties and the ESM Treaty to a referendum may not yet have been fully scrutinised. In order to assist in that scrutiny, he is seeking particular judicial review in these proceedings.”