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AN COMHCHOISTE FIOSRÚCHÁIN I DTAOBH NA GÉARCHÉIME BAINCÉI- REACHTA

JOINT COMMITTEE OF INQUIRY INTO THE BANKING CRISIS

Déardaoin, 16 Iúil 2015

Thursday, 16 July 2015

The Committee met at 9.30 a.m.

MEMBERS PRESENT:

Deputy Pearse Doherty,	Senator Sean D. Barrett,
Deputy Joe Higgins,	Senator Michael D'Arcy,
Deputy Michael McGrath,	Senator Marc MacSharry,
Deputy Eoghan Murphy,	Senator Susan O'Keeffe.
Deputy Kieran O'Donnell,	
Deputy John Paul Phelan,	

DEPUTY CIARÁN LYNCH IN THE CHAIR.

Nexus Phase

Office of the Attorney General - Mr. Paul Gallagher

Chairman: The Committee of Inquiry into the Banking Crisis is now in public session, and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off? We begin today's hearings with Mr. Paul Gallagher, former Attorney General. I would like to welcome everyone to the public hearings of the Joint Committee of Inquiry into the Banking Crisis.

At this morning's sessions we'll focus upon the legal advice given to the Government during the crisis period. At our first session we will hear from former Attorney General, Mr. Paul Gallagher. Paul Gallagher was Attorney General of Ireland during the period of 2007 to 2011. Mr. Gallagher's appearance here today has been facilitated by a decision of the Government to waive legal privilege in respect of his oral evidence to this inquiry, having regard to the exceptional circumstances of the financial crisis and the important mandate of this committee to inquire into the financial crisis. This of course cannot be interpreted as encroaching on the confidentiality of Cabinet discussions, which cannot be waived by the Cabinet. In addition, the waiver does not extend to discussion of legal advice that could prejudice any litigation pending or anticipated regarding matters the committee may seek to inquire into. Mr. Gallagher, you're very welcome before the committee this morning.

Before hearing from the witness, I wish to advise the witness that by virtue of section 17(2) (l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If you are directed by the Chairman to cease giving evidence in relation to a particular matter and you continue to do so, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given. I would remind members and those present that there are currently criminal proceedings ongoing and further criminal proceedings are scheduled during the lifetime of the inquiry which overlap with the subject matter of the inquiry. Therefore, the utmost caution should be taken not to prejudice those proceedings. Members of the public are reminded that photography is prohibited in the committee room. To assist the smooth running of the inquiry, we will display certain documents on the screens here in the committee room. For those sitting in the Gallery, these documents will be displayed on the screens to your left and right and members of the public and journalists are reminded that these are documents and that they are confidential and should not publish any of the documents so displayed.

The witness has been furnished with booklets of core documents. These are before the committee, will be relied upon in questioning and form part of the evidence of the inquiry. So with that said, if I can now ask the clerk to administer the oath to Mr. Gallagher please.

The following witness was sworn in by the Clerk to the Committee:

Mr. Paul Gallagher, former Attorney General.

Chairman: Once again, thank you, Mr. Gallagher, for being here this morning, and if I can invite you to make your opening remarks to the committee please?

Mr. Paul Gallagher: Thank you. Chairman and members of the committee, I am here to assist the committee in any way I can and to address any questions which the committee may have. The committee will be aware that as Attorney General, under Article 30 of the Constitution, my role was to advise the Government in matters of law and legal opinion and it may be helpful to the committee to know that prior to my appearance here today, I have spent some considerable time in preparing for the appearance and I have also reviewed the core documents which the committee has furnished to me. I don't intend reading my statement, which I prepared for the assistance of the committee unless of course the committee would like me to do so, it's admitted into evidence and the committee have it. There are, however, a number of matters which I mention in the statement and which, with the committee's permission, I would like to mention before commencing my evidence.

I served as Attorney General between June 2007 and March 2011. During two and a half of those years, Ireland experienced an unprecedented financial and economic crisis. And one of the defining features of that crisis - and, of course, there were many - was that Ireland truly stood alone throughout that period. It had the sympathy and goodwill of other countries but, ultimately, it had to rely on its own resources to find its own solutions to the crisis. And I think that may be an obvious point but, I think, it is frequently overlooked and it is an important lesson of the crisis. My abiding memory, at critical times during those years, is the sense of Ireland's isolation. Much was expected of Ireland. It was required to save its banks and it was required to use its own resources to do so. Ireland had to make its own decisions and to do the best it could in the circumstances. On the night of the decision to avail of the bailout - the Cabinet meeting of 20 November 2010 - it was very apparent that Ireland, again, was very much on its own. Ireland's isolation was encapsulated in President Trichet's letter of 19 November and in Minister Lenihan's journey to Brussels on 21 November.

So far as the guarantee is concerned in the events of that night, I address that in my statement. Subsequent to the night of the guarantee, the Credit Institutions (Financial Support) Act 2008 - referred to as CIFS - which was initiated in the Houses of the Oireachtas on 30 September, was enacted by 2 October and this legislation empowered the Minister to provide the guarantee. The proposed guarantee scheme was notified to the European Commission in accordance with Ireland's state aid obligations under the EC treaty and the European Commission approved the guarantee, as being necessary to remedy a serious economic disturbance in Ireland, on 13 October 2008. On 15 October 2008 the guarantee scheme was published by the Government and it was formally approved by the Houses of the Oireachtas on 17 October. On 20 October it was introduced by way of statutory instrument and that set out the terms and conditions on which the participating institutions could benefit from the guarantee. On 29 October the Minister, by statutory instrument, specified the banks covered by the guarantee scheme. And the Act, and the statutory instruments made thereunder, provided the legal basis for the guarantee. On 8 December 2009 the eligible liabilities guarantee scheme was introduced, having been approved by the Oireachtas. This refined the instruments that were covered by the guarantee, it ... guarantee no longer covered asset-backed securities or dated subordinated debt. The ELG scheme was extended in 2010, 2011, and 2012, until 20 December 2013. It ended on 28 March 2013 for any new liabilities but, as I say, continued to cover liabilities until 30 December 2013. Any new liabilities, as and from December 2009, were covered under this eligible guarantee scheme rather than the earlier CIF scheme - that continued in existence to continue the guarantee in respect of instruments that were issued prior to the coming into force of the eligible guarantee ... liabilities guarantee scheme.

As I comment in my statement, I believe it may be of interest to the committee to note the

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response of other countries and the European institutions to the crisis as I think it provides both a legal context and an understanding of some of the difficulties which arose. I don't believe this has been addressed by any other witness in any detail - but I may be incorrect - but there were very significant developments, particularly at a European level, subsequent to October 2008, and the committee may consider those relevant to its inquiry, and, in particular, relevant to the issue which it has to consider as to the relevant structures and measures that might assist in avoiding a recurrence of a crisis of this nature. In my statement to the committee I also touch on the fact that the European legal architecture, which was provided for in the Maastricht treaty and which set up the European Monetary Union, was significantly lacking in important respects. Control of money matters and, in particular, money supply rested with the ECB. However, the legal responsibility for each member state's financial system rested with that state. Interest rates were set by the ECB having regard to the overall situation in Europe and not by reference to the individual situation of any member state. The ECB, in discharging its function, was always very concerned and of course rightly concerned of its legal obligations and legal constraints and, in particular, to have a necessary legal base for its actions. Each state, however, was at the time individually in control of, and responsible for, its banking system. What is called supervision and resolution was the exclusive responsibility of member states and that position did not alter until 2013 when the ECB adopted a role provided for in Article 127 of the treaty, that is, the role of supervision of financial institutions. Article 127 empowered the ECB to contribute to the prudential supervision of financial institutions and the stability of the financial system and the delay in the introduction of this supervision and supervisory regime is partly explained by a concern on the part of many that combining monetary policy and supervision created unavoidable conflicts of interest.

It was not until 2014 that a single resolution mechanism and a single resolution fund was set up, and the delay there arose because of the concern of the lack of any explicit legal basis in the treaty for such a role. In between, the European Banking Authority was set up towards the end of 2010 and it was designed to increase the transparency of the financial system and also to identify weaknesses in banks' capital structures. And the European Systemic Risk Board was also set up in late 2010 and it had responsibility for the macro-surveillance of the financial sector in the EU. Perhaps of particular interest to the committee is the fact that it was not until 2014 that the banking recovery and resolution directive was introduced at a European level. The benefit of that directive is that it provided a sound legal footing for resolution actions which have very considerable and financial implications and which as a consequence can create uncertainties and systemic instability. An EU-wide structure for banking resolution provides an *ex ante* structure for dealing with troubled banks. This is important because it removes uncertainties and reduces the basis for legal challenge. Markets recognise and expect that these actions will be taken and that limits the contagion effects of actions that might be taken. And the introduction of that important measure, I think it's worth nothing, was six years after the commencement of the great recession. The recitals to that directive explicitly state and recognise that the financial crisis had shown that there was a significant lack of adequate tools at Union level to deal effectively with unsound or failing credit institutions. It says the financial crisis was of systemic dimensions in the sense that it affected areas ... or it affected access to funding of a large proportion of credit institutions. So that provides a very brief overview of the system as it was in 2008 and subsequently, and I am happy to address any questions if the committee thinks that that may be of help in its deliberations.

Before speaking on other topics, I wonder if I could be permitted by the committee because I think it is both important and fair to refer to it. And it's a matter I touch upon in my statement and that is the performance and commitment of the civil servants with whom I worked closely

during the crisis. I think it is important because they are part of the institutions of the State and I think it's fair because so many of them worked so hard to find solutions to the crisis. In particular, I mentioned the people involved in the Department of Finance with whom I had much contact in relation to legal issues arising from the financial crisis and those people have given evidence, I think, before you, Chairman and members of the committee, and also the people in my own office, which includes the Chief State Solicitor's office. And coming from the private sector I had the opportunity, I suppose, of a look at their performance from a different perspective. And I think it is important to say, in a context that was so difficult and created so many difficulties for everybody, that their performance was of an extremely high standard; that I never met people who wouldn't make decisions, who were afraid of making decisions, who said, "This isn't my job" and I didn't meet people who weren't prepared to do their very best for Ireland. And that was, for me, a remarkable feature and my abiding memory of my period in office.

As I understand the Government's waiver, Chairman and members of the committee, in relation to my evidence, it's been agreed, as you have said, that, having regard to the exceptional circumstances of the financial crisis and the very important mandate of the committee, that legal privilege should be waived, so far as my oral evidence goes, and that I am relieved from my professional duty to respect the confidentiality of the client which extends to confidential information entrusted to me by the client in the course of my ... in the discharge of my obligations and I'm also relieved from the obligation to protect legal privilege. That is subject to one qualification that you have identified and that relates to the continuing obligation not to prejudice any existing or anticipated litigation. Subject to that, my ... I just want to note that my written statement, as the committee will appreciate, respected the obligations of confidentiality and legal, professional privilege. I'm now released from those obligations in that way. I'm permitted to answer any question which the committee might like to pose to me and I will do so. Thank you very much, Chairman.

Chairman: Thank you very much, Mr. Gallagher, for your opening statement and if I can invite the first member this morning to engage in his line of questioning and that's Deputy Joe Higgins.

Deputy Joe Higgins: Good morning, Mr. Gallagher. Mr. Gallagher, you refer there to the Credit Institutions (Financial Support) Act 2008, enacted by the Oireachtas on 2 October 2008. Can you recall when work commenced in the Attorney General's office on the legal provisions which eventually became enshrined in that and, just to put it in context for you, I refer to a scoping document dated 24 January 2008 within the Department of Finance? The paper is called Financial Stability Issues - Scoping Paper, beginning to scope out the issues of crisis that are beginning to emerge and, under "Urgent Next Steps", it says, "Seek legal advice from the Office of the Attorney General as a matter of urgency on the legal issues highlighted in this paper."

Mr. Paul Gallagher: Yes. I think, in fairness to the Department, Deputy, they contacted my office on 30 November 2007 and raised a number of legal issues that are then referred to in this scoping document which I believe, but subject to correction, was January 2008. I think the committee will also have seen what I might call ... not spreadsheets, but slides, where various issues were identified with regard to the challenges that existed and those slides, I'm not sure precisely what date they came into existence, but they noticed that there were legal challenges and legal issues but no legal impediments ultimately. Between 30 November 2007 and 29 September 2008, the Department was in constant contact with my office, looking at possibilities, identifying different options. I believe that it was on 16 June 2008 that there was a particular

emphasis on producing the necessary legislation that would provide legal options that included, Deputy, in particular, nationalisation legislation and also the provision of a legislative basis for any guarantee that might have to be offered in respect of any institution.

Deputy Joe Higgins: Okay. And referring to those very slides, Mr. Gallagher, there were some from February '08 and then a further presentation - all this has been in evidence previously but we don't need to take the time to put it up. I just want to ask you one thing in relation to that ... in this ... that the February slide said, "open-ended [...] State guarantees [exposing] the Exchequer to the [...] the [...] significant [fiscal risk] are not regarded as part of the toolkit for successful crisis management and resolution". But then, come February, there is added ... or sorry, come April, there is added, "there are circumstances where such guarantees may be unavoidable to maintain confidence in the overall financial system." That's the first time that this is mentioned in this way. Can you throw any light on that development of thinking in the Department?

Mr. Paul Gallagher: Well, my information came from the briefing documents from the Department and originally, it is true to say, Deputy, that the focus was on individual institutions. As 2008 progressed - and, particularly, I think, by April, 2008 - there was a concern with regard to systemic risks across the financial system. I think as and from that date but, more particularly, later and in August and September, there was a preparation for the possibility that a guarantee might have to extend beyond the individual institution.

Deputy Joe Higgins: Okay. And, Mr. Gallagher, can we fast forward then the night of the guarantee in September 2008? And the evidence from the senior bank executives, who were in and out of meetings in Government Buildings, is that they brought a draft guarantee on the night. And Mr. Gleeson's evidence is, to quote, "we furnished our draft guarantee [...] to the Government at [a] very early session." And Mr. Cardiff, who was a senior executive in the Department of Finance, recalls working on a draft guarantee. Can you throw any light on that?

Mr. Paul Gallagher: My specific recollection, Deputy, and I want to be very careful in relation to this, is set out in my statement. I can't be certain of every detail. That, to the best of my recollection, is true in the sense that the instruments that might require to be covered by a guarantee were part of what the banks brought to the meeting. So, an identification of the particular instruments.

Deputy Joe Higgins: And, Mr. Gleeson, or Mr. Gallagher, sorry, Mr. Gleeson, to quote him again, he makes that point but then ... and he says, "This formula was eventually adopted later in the night pretty well word for word". And what I want to put to you, Mr. Gallagher ... if it's extraordinary, or not, that you, perhaps, and the Government wouldn't be coming with written formulas in relation to what needed to be done rather than the banks coming in and presenting their agenda and that being then worked on by Government officials?

Mr. Paul Gallagher: Well, Deputy, if I may answer that. Firstly, I was asked to come to a meeting that evening late in the afternoon ... that the banks were coming in to meet with the Government. Obviously, it was apparent something serious was going to occur but not what precisely occurred. Secondly, the Department of Finance had given very careful consideration to the guarantee. That had been carefully considered. What Mr. Gleeson is referring to are the specific instruments, the technical description of what needed to be covered. In relation to that, both the Department of Finance and the Governor had the specific expertise with regard to the type of instrument that need to be covered. The banks had their view on what needed to be covered. There was an interaction with the banks and their views were considered and taken

into account. But I want to make one thing very clear. The interaction with the banks were that they were invited into the meeting, they were asked certain questions, they were given an opportunity to say certain things. Very appropriately, in my view, they were then asked to leave. And anything said by the banks was carefully and independently considered by what I might call “the Government team”. And any decision that was made with regard to what should be covered was made, as I set out in my statement, after very careful consideration as to what the Government thought was necessary to address what was described by Governor Hurley as the real possibility of a meltdown of the financial system.

Deputy Joe Higgins: And, Mr. Gallagher, do you remember having sight of that document or having the document in your hand that the banks said they brought?

Mr. Paul Gallagher: I don’t precisely remember that. I’m sure I did see it but I certainly remember drafts that were prepared by Mr. Cardiff. And I think the Taoiseach drew the distinction between what’s called the guarantee and the statement. What was being prepared was a statement, which was identifying the instruments that would be covered and the Government’s position, and there were various drafts of that, and I certainly looked at that. And one of the things I was particularly concerned about, Deputy, was to ensure that that statement made clear to everybody when it was ... that this was going to be subject to terms and conditions, because that was a vital protection for the State that any guarantee of any instruments was to be subject to the terms and conditions, and those terms and conditions were, ultimately, set out in the scheme that was approved by the Oireachtas.

Deputy Joe Higgins: Thank you, Mr. Gallagher. We’ve also had evidence that there was a sentence, I think, at the initiative of the Government or Government officials stating that all banks in the State were solvent, and on the banks’ request that was removed from the final version. Can you throw any light on that?

Mr. Paul Gallagher: Yes, I believe that was so. I think there was ... the Government was in the difficult position that the statement it issued the following day before the markets opened had to be very careful and very precise and it had to achieve the objective which was desired to be met, namely to protect the banks. It, therefore, had to ... and you’ll see it’s a very measured statement, because it didn’t want to create uncertainty; it didn’t want to create a lack of confidence in the very banks that were being guaranteed. And, yet, there was a concern not to say anything that might have market implications and that was a very fine line that had to be tread and I think that the ultimate statement that was issued actually achieved that very difficult objective.

Deputy Joe Higgins: But, Mr. Gallagher, does it suggest that there were people in the room that night who had very serious concerns that there were ... some banks were actually insolvent on that night?

Mr. Paul Gallagher: That is, emphatically, not the case, Deputy Higgins. For all of the time that I was in the room, that was ... nobody suggested that, and I say in my statement that the Governor and the Financial Regulator made it clear the banks were solvent but illiquid. There were difficulties identified, as I say in my statement, with regard to three institutions-----

Deputy Joe Higgins: Yes.

Mr. Paul Gallagher: -----but it was that they were solvent. But one has to be very careful in sending out a statement to the market. And there is a responsibility in that regard and I think

the view was taken at the end that the safer course was to remove that statement but it wasn't for any reason that somebody had said, "These banks are insolvent."

Deputy Joe Higgins: Just to move on, Mr. Gallagher, because of time. You state in your opening statement that President Trichet of the European Central Bank "had evidently made it clear that the Government should stand behind its banks, and that the banks were the State's responsibility". Do you remember being advised of the rationale given to you to accept the position of Mr. Trichet?

Mr. Paul Gallagher: Governor Hurley very clearly set that out and, of course, as I mentioned in my opening statement, that was the legal position. Under the treaties, the member states had the sole responsibility to protect their banks. The ECB had no function and couldn't legally step in to protect the banks, but I think the significance of what President Trichet was saying was it was unambiguous - "You are on your own; you must save your banks", and that is the position. I also make clear in my statement that the Taoiseach and, I believe, also Minister Lenihan questioned that and interrogated that and asked: "Is there any prospect of a European solution, a European measure?" And they were explicitly told that while ECOFIN was meeting, I think, two days later, that there were no proposals before ECOFIN to address it. Governor Hurley was also meeting with the governing body of the ECB in a few days and there were no proposals. So one thing was clear: the ECB and Europe were not going to do anything to resolve the issues that faced the Government that night and the responsibility was solely on the Government to make the decision that it thought appropriate to address the crisis.

Deputy Joe Higgins: Mr. Gallagher, you outline in your statement that there was "no fundamental legal or constitutional impediment to introducing legislative measures for further burden sharing." Can you throw a little light then on what happened subsequently? We had evidence yesterday from Mr. Corrigan of the National ... formerly of the National Treasury Management Agency writing to the Minister for Finance in November 2010 at a later stage outlining €20 billion and €12 billion tranches of various kinds of debt which he felt that an aggressive approach should be taken to reducing that liability. So did the Government decide of its own volition not to introduce burden sharing or was there pressure from the European institutions?

Mr. Paul Gallagher: The position, I think, has two stages, Deputy, so far as I'm concerned. On the basis of the information which I saw, as of 30 September 2010 when the guarantee expired, very careful and serious consideration was given at that stage by the Government to, if I may use the phrase, "burning" the unguaranteed senior bonds. And my recollection is, and I think evidence has been given to this effect, was the NTMA weighed up the consequences of doing that. This, as you know, coincided with the decision in October 2008 of the NTMA to step back from the bond market and cease to attempt to raise further funding for the State. The decision was taken that the benefits that might be achieved from burning those bondholders at that stage could well be outweighed, and would probably be outweighed, by the disadvantages in terms of the continued funding of the State. There was also obviously a continuing concern about contagion effects as to what it would mean for funding of the banks but it was really the funding of the State. That changed dramatically at the time of the bailout.

Chairman: Supplementary, Deputy, to wrap up if you will?

Deputy Joe Higgins: Yes. On the other hand then, Mr. Gallagher, you said it wasn't a legal or constitutional impediment. You had these other considerations and pressure from Europe. But what was your reflection on putting a €64 billion burden of bad bank debts onto the shoulders of the Irish people, taxpayers and the consequences of austerity and so forth that flow from

that?

Mr. Paul Gallagher: Well, of course, firstly might I say that was a terrible and unfortunate consequence of the events that happened and any reasonable person can only be horrified as to that occurring and be very sympathetic for all the difficulties that were caused. My role as a legal adviser was not to make a policy decision in that regard. But one thing just has to be understood, because I think it has become part of the narrative and I think it is fundamentally wrong. And that is that decisions were made to save the banks. Well in my interaction with Government, it wasn't about saving the banks, it was about saving the financial system. And the calculation had to be made as to what would have been the consequences for the people if the financial system collapsed - that was the decision.

And when it came to the bailout, the Government was determined to burn the bondholders. And, in fact, I wrote to Mr. Lenihan, Minister Lenihan, on 29 November when I was finalising what is called the Credit Institutions (Stabilisation) Act and I said, "We can include in that Act a provision to burn the senior bondholders but I understand that the troika have forbidden that." I said, "Nevertheless the position might change and we are dealing with the burning of the subordinated bondholders and one thing, if you would like I can include is I can emphasise in that Act the protection of the deposit holders." Because the idea was to burn the bondholders and protect the deposit holders. And in the recitals to that Act, or the preamble, we emphasised that, for Ireland, a core objective was to protect the deposit holders. And that was to begin the creation of legal structures that if the position changed with the troika, we could then introduce specific legislation to burn the bondholders.

Now, it would be foolish and misleading to suggest that that wouldn't give rise to legal difficulties; it would. We considered those very carefully and, indeed, post the bailout, I had various meetings to look at that. I had meetings also with IMF representatives and specialist lawyers to consider that and we confirmed repeatedly that that could be done in legal terms, notwithstanding the legal difficulties, and it depended solely of the approval of the troika to doing that, and that as you know was prohibited and was a condition of the bailout.

Chairman: Okay, thank you. Just before I bring in Deputy O'Donnell, just on a related matter with the timeframe being earlier, Mr. Gallagher, you state in your own opening statement that "President Trichet had evidently made it clear that the Government should stand behind its banks, and that the banks were the State's responsibility." Can I ask you please to advise the rationale given to you to accept the position as, as said of Mr. Trichet?

Mr. Paul Gallagher: Well, I ... a rationale wasn't articulated, I understood it and I think those in the room understood it, Chairman, that under the treaty, the ECB is forbidden to bail out any banks and the European institutions are forbidden to do so, and you may remember the controversy that arose when the ESM was introduced in 2010, and subsequently when the ESM was introduced, the present ESM, sorry, EFSM under 2010 and the ESM following the amendment to the treaties in 2013 and there was a challenge before the European Court on the basis it was said, "this is monetary financing and cannot be done". The European Court rejected that but the one thing the ECB could not do is bail out the banks and the provisions of the treaty were interpreted, actually as preventing other member states doing so. There was a change in perspective and further legal solutions were sought in 2010, precipitated by the Greek financial ... sovereign debt crisis.

Chairman: Can I just ask you to further clarify the, the earlier part of your response there Mr. Gallagher, because you're making it ... I just want to get it understood, that it wasn't a posi-

tion whether Mr. Trichet said this or not, it would appear to say what you're saying this morning, this was a fact anyway?

Mr. Paul Gallagher: Absolutely, Chairman.

Chairman: So can I ask you in, in your advice to the Government, did you believe the banks were the State's responsibility, and if so, what implications did that have for the sovereign?

Mr. Paul Gallagher: Well the Government were aware and there was no misunderstanding that the whole interaction with the Department of Finance was premised on the basis the banks were the State's responsibility, and the Department of Finance and the Government were well aware of that, because that was the very clear position. So far as the consequences for the sovereign were concerned, that was a matter for the financial and economic experts in the NTMA to advise, the documents that I've seen recorded the realisation on the part of the Government that of course that had implications for the sovereign. Because, if you had to provide moneys to save the financial system, those moneys had to be either borrowed or raised and that had consequences.

Chairman: So just to clarify that statement that you made, that Mr. Trichet "had evidently made it clear that the Government should stand behind its banks, and that the banks were the State's responsibility", if Mr. Trichet had never articulated that position, was that a fact anyway?

Mr. Paul Gallagher: That was a legal fact that there was no ... a legal reality, that there was no avoiding. I think the significance of what President Trichet said, is that he was making it clear that while it was a matter for the Government to do that, the Government shouldn't let any bank fail. I think that was the significance, that you shouldn't let a bank fail, the responsibility for saving is yours, that was something the Government already knew. But the emphasis was, don't let a bank fail because if a bank fails, nobody can predict the consequences and the contagion effect. I think that was the significance Chairman.

Chairman: Okay. Thank you very much, Mr. Gallagher. Deputy O'Donnell.

Deputy Kieran O'Donnell: Welcome, Mr. Gallagher. Was the Government, in your opinion, bounced into the decision for the, on the night of the guarantee, given that the decision was taken incorporeally in terms of the Cabinet meeting and does the delay suggest a lack of preparedness by officials to the policy decision by Government?

Mr. Paul Gallagher: I don't believe that's a correct characterisation, Deputy, in the sense that I'm very clear that from 30 November 2007 the interaction between the Department of Finance with my office was looking at a range of possibilities. In fact, I think the Merrill Lynch report, which identifies various possibilities, shows the work that was done and puts-----

Deputy Kieran O'Donnell: What date, what date?

Mr. Paul Gallagher: 30 November 2007. Now, the possibilities were worked on, they were slightly varied, new ideas came in but there was constant interaction over that period. I think what changed on the night of the guarantee was this; over the period, I believe probably until September 2007, there was a very considerable fear something might happen and people were preparing for it so they could address it. I think things began to change in September and I think-----

Deputy Kieran O'Donnell: '07 or '08?

Mr. Paul Gallagher: '08.

Deputy Kieran O'Donnell: So just to recap ... so from 30 November '07 on there was preparations taking place in the Department of Finance-----

Mr. Paul Gallagher: Absolutely.

Deputy Kieran O'Donnell: -----across a range of measures?

Mr. Paul Gallagher: Across a range of measures. And they were constantly being looked at, constantly being re-evaluated in the context of the changed conditions. They were constantly being raised and there was constant interaction. And that had been very carefully looked at. I think - and it's not for me, it's outside my area of expertise - but something that I did note and I think is fairly obvious to everybody, that things began to change in September, there were a number of bank failures-----

Deputy Kieran O'Donnell: Of '08?

Mr. Paul Gallagher: Of '08. On 15 September Lehman's collapsed and that is said very frequently and sometimes perhaps its significance is overlooked. Its significance, so far as I could see, was this; that here you had a major bank collapsing and being allowed to collapse. You had in Ireland a series of banks we thought were big and were too big for us but were very small in international level. And there is no doubt that the funding dried up. The preparations intensified between that period and the-----

Deputy Kieran O'Donnell: Just before you go on there, could you tell us the measures that were being looked at from November '07 onwards?

Mr. Paul Gallagher: Yes and I'll try and do it in chronological sequence and I hope I get this right. In November 2007 the concentration was ensuring that the Central Bank could give emergency liquidity assistance, that there was no legal prohibition and it had the powers under the Act and it had under-----

Deputy Kieran O'Donnell: You were satisfied that was the case?

Mr. Paul Gallagher: We were satisfied that was the case and we told them that. The other was could the Minister consult with the Central Bank to ensure that it provided it, if it wasn't going to provide it. The other matter that was looked at from an early stage was the possibility of nationalisation of a failing institution. The other matter that was referred to was a private sector solution. And I think one thing that does need to be clarified is the Department of Finance and the Government were very concerned, if at all possible, to get a private sector solution which meant getting somebody else to take over a weakened solution from the private sector so that the taxpayer would not be at risk. Those were critical issues that were looked at. In that context they had to look at the competition issues because if you had to take over an institution suddenly, you had to ensure that you got competition approval. That was being very carefully looked at.

Deputy Kieran O'Donnell: Did you look at bank resolution? Because we had the Governor, former Governor of the Central Bank, Governor Hurley, in before us, John Hurley-----

Mr. Paul Gallagher: Yes.

Deputy Kieran O'Donnell: -----he stated that the resolution legislation was looked at,

referred to your office and that you as the AG had difficulties with it being put in place. Is that correct?

Mr. Paul Gallagher: Well, no that's not correct in the strict sense and let me clarify, because the word "resolution" is used very loosely. Any resolution measure which means finding a solution to a failing bank and managing that was proposed by Finance, and they were extensive and I will outline them in a moment, each of those were sent to my office, were reviewed and there was no legal impediment.

Deputy Kieran O'Donnell: When was that roughly?

Mr. Paul Gallagher: That was over that period. And, for example, one of the things that was looked at was secured lending - the Minister providing secure lending through the NTMA. The issue of transferring assets from banks was looked at and, indeed, was provided for in the draft Bill that was available that night - these are all methods of resolution. So any method of resolution that was furnished to my office was looked at, assessed and there was no legal impediment.

Deputy Kieran O'Donnell: But why wasn't our bank resolution ... the question ... you're telling us that for nearly a year prior to the guarantee being put in place in September, there was effectively crisis management under way-----

Mr. Paul Gallagher: Yes.

Deputy Kieran O'Donnell: -----in the Department of Finance. So why did we get to the night of the guarantee and there wasn't resolution legalisation in place in terms of dealing with various issues? Why was a decision taken incorporeally in terms of the Cabinet? Why wasn't it taken on the two days before and a full Cabinet meeting, the day before a full Cabinet meeting, on 28 September? Why do we get to a point where, on the night of the guarantee, these issues were rushed?

Chairman: Allow a response now Deputy as well.

Mr. Paul Gallagher: There are a number of questions there, if I can deal with them?

Deputy Kieran O'Donnell: There are indeed. All interlinked.

Mr. Paul Gallagher: All interlinked but still importantly separate. Every resolution measure that was put forward was available and we were ready to go with it. So I don't think people have clarified what resolution solution they are talking about that should have been available and wasn't. The resolution measures that were available were: a guarantee, which is a form of resolution; secured lending; nationalisation; ELA; transfer of assets. All of those were available.

Deputy Kieran O'Donnell: Burden-sharing for subordinated debt holders?

Mr. Paul Gallagher: Burden-sharing was never put to us.

Deputy Kieran O'Donnell: Never put to you?

Mr. Paul Gallagher: Never put to us. But, Deputy, I make clear in my - and I think it's important to address this - I make clear in my statement burden-sharing was not a feature of the legal system of any of the European countries at that stage. The United Kingdom brought

in burden-sharing in 2009, Germany in 2010, Spain in 2012, France in 2013, and, most importantly of all, Europe in 2014. Secondly, bailing in involves a failure of the bank, so you start bailing in because you say the bank is going to fail. That, of course, creates huge issues of contagion and systemic risk; it's not a thing that is lightly done, and, even now, it is an issue that creates difficulties.

Deputy Kieran O'Donnell: In the limited time I have, can you progress in terms of why we had this decision taken over six or eight ... on the night of the guarantee?

Mr. Paul Gallagher: I was going to come to that and try to do that. On 26 September, we were asked to look at ... the issue had been broached generally, but very specifically, to look at the question of a guarantee across the system, and, obviously, concerns were heightening at that stage. I think concerns deepened over the weekend, and there was the meeting which I wasn't at, or invited to, on 28 September, with Merrill Lynch. And-----

Deputy Kieran O'Donnell: Separate from the Cabinet meeting.

Mr. Paul Gallagher: That was separate from the Cabinet meeting and that document records the worsening situation and that's why I say Lehman was an important point in time because things got very bad after that with the failure of major institutions in the States. On the 29th, things worsened further, Bradford and Bingley was in difficulty; the banks came in. So what was a developing situation, the severity of which was increasing, turned into an immediate crisis on the 29th; the Government was left in the difficult position that it was then faced with a crisis. It was advised that the crisis was of systemic dimensions-----

Deputy Kieran O'Donnell: By the Governor?

Mr. Paul Gallagher: By the Governor and by the regulator, and also by the banks that came in. When they came in at 9.30 that evening, and I say it in my statement, they said the markets had turned against Ireland. They were saying no quote for Ireland, no lending to Ireland, they were differentiating between Ireland and elsewhere. So, as sometimes happens in banking crises, happened in the UK and happened in the US-----

Deputy Kieran O'Donnell: Did you give any advice at the Cabinet meeting on 28 September in terms or around the financial situation?

Mr. Paul Gallagher: No particular legal issue arose; the legal issues were taken as read. Obviously, I can't talk about discussions at the Cabinet but, as I think has been said, the Cabinet were briefed on the developing situation, and there was no legal issue, or no lack of a legal response that in any way impeded what had to be done.

Deputy Kieran O'Donnell: Did you maintain any notes on the night of the guarantee-----

Mr. Paul Gallagher: I didn't-----

Deputy Kieran O'Donnell: -----that didn't involve legal advice?

Mr. Paul Gallagher: No, I didn't maintain notes, it's not my habit of doing so. I was focused in on the matters that were of concern to me, which were the legal issues. But what I did do, Deputy, and you've heard this, I recorded the relevant facts that were relevant, the legal issues, that I had to address. And I did so ... my letter is dated 1 October but I believe I dictated it on 29 October because I note in my letter that I said the opening ... sorry, that it was on 30 October, because I refer to "yesterday" being the 29th so I believe I did that on the 30th. The

purpose of that was to provide legal advice to the Government on the state aid. My concern was to marshal all of the facts that needed to be provided to the Commission to get state aid, which was a very serious legal concern. And those facts involved the basis for the decision - what were the concerns the Government had to address, why this was necessary ... because remember, to get state aid approval, and none of this could have been brought into law, you had to satisfy the Commission that the decision and the measure was necessary. And that's ... so I have a very clear recollection of the evidence.

Deputy Kieran O'Donnell: In the limited time I have ... can I go back ... you referenced in your own statement on page 8 and 9, that the Government had a draft, a guarantee statement in place, which we ... William Beausang was in before us previously provided ... which provided for a six-month guarantee, which provided for just, in relation, purely deposits, not senior bondholders or dated subordinated debt. What was the legal reason that ... why it was two years of a guarantee and did the issue come up that senior bondholders ranked *pari passu* with depositors? How did we go from a situation where the Government's, we'll say, guarantee they brought to ... on the night of the 30th, which was for a six-month guarantee purely on deposits, went to a two-year guarantee which covered, as Mr. Somers, the former NTMA head stated, covered everything that moved in sight?

Mr. Paul Gallagher: Firstly, Deputy, I don't mention Mr. Beausang's guarantee because I didn't see that. Secondly, the situation moved on as I think the-----

Deputy Kieran O'Donnell: Did you see ... did you see-----

Chairman: Give him time to respond, Deputy.

Deputy Kieran O'Donnell: It's a quick ... well, it's a clarification point. Did you see a written draft guarantee from the Government?

Mr. Paul Gallagher: No. The Government didn't have a written draft guarantee. A draft guarantee was prepared by Mr. Cardiff following the information that was provided and-----

Deputy Kieran O'Donnell: Did that initial draft guarantee-----

Mr. Paul Gallagher: I'm sorry, when I say a draft guarantee, a statement identifying what was to be covered.

Deputy Kieran O'Donnell: And was that after ... before or after the meeting with the banks?

Mr. Paul Gallagher: That was after the meeting with the bank as I recorded in my statement.

Deputy Kieran O'Donnell: And did that statement ... that actual statement state that it was a six-month guarantee?

Mr. Paul Gallagher: No. There was, as I said in my statement, there was a very careful consideration given to the length of the guarantee. The advice to the Government was, and I record this at the time, you have one shot at getting this right. If you don't get this right and the markets open tomorrow, you could have a collapse of the financial system.

Deputy Kieran O'Donnell: But you-----

Mr. Paul Gallagher: Sorry, Deputy-----

Chairman: Give him time to respond now, Deputy, please.

Mr. Paul Gallagher: I do need to respond because you've asked quite a number of issues and-----

Chairman: Please don't interrupt any more now, Deputy.

Deputy Kieran O'Donnell: Well, it's a clarification point-----

Chairman: Please, Deputy, don't interrupt any more, do not interrupt anymore, please.

Mr. Paul Gallagher: Sorry, I'll try hurry up because I know of your time.

Chairman: Mr. Gallagher, you've the floor.

Mr. Paul Gallagher: Yes. So, this was the position. The position changed, I don't know what was brought to the meeting. I arrived at the meeting late, as I made clear. Before I arrived, there was a discussion of the worsening situation. I wasn't there for that but I quickly picked up on what was said because much of it was repeated and I have recorded in my statement what was repeated and what was said. And I think it's very clear from my statement, the position had now changed. It was quite clear to everybody that a guarantee of deposits was not going to avert the risk of what was likely to happen the following day. The best advice available to the Government was that the guarantee that was offered was the minimum that could be done and what was said is "We're not sure this will actually save the financial system. So, if you don't get it right and you put something more limited, then you're facing into a situation where the collapse has started and it may be too late to do anything". Secondly, Deputy, the guarantee was extended subsequently after review in 2009 and it always covered senior bonds and the reason was, this was a liquidity crisis and the purpose was, not just to protect the depositors that you might do when the banks are about to collapse to make sure the depositors, it was to get liquidity into the banks to keep the banks going. Because the view that was taken was that if Ireland, with a sophisticated and developed economy, didn't have a financial system, that the economic position would be worse. And there's a remark in my statement that was seared in my memory and that is Governor Hurley said, and I remember this, "If this is not done, Ireland's economy will go back 25 years." And he said that because it was clear to anybody there, that what was being said was if you have a collapse in the financial system, how do you ever pick that up? You don't pick it up again and the whole trading and commerce of the country fails. And I want to be very fair to Governor Hurley because everybody says Governor Hurley advised and he did advise. Firstly, he was there and he was prepared to make a decision and he was prepared to give advice. He had come back from being sick and that's a matter of record, I don't want to talk about his personal circumstances, but he was there and he was unstinting and fearless and clear. And he gave very clear and unambiguous advice to the Government and the Government was told the economy will go back 25 years, this is the best you can do. I don't think any government or any politician ever wanted to have to be faced with a decision like that or have to make it and politicians don't necessarily have the skills to, I think, well, don't have necessarily the economic skills and financial skills. So that's how it came from a deposit to that, Deputy.

Chairman: I'll bring you in once more, Deputy, and then for the wrap-up later on. And just one item, now.

Deputy Kieran O'Donnell: Just on the night of the guarantee, it's reported that the Min-

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ister for Finance, then the late Brian Lenihan, and Kevin Cardiff were in favour of nationalising Anglo Irish Bank and Irish Nationwide Building Society. Was that the case and was there any legal impediment to the nationalisation of Anglo and Irish Nationwide on the night of the guarantee?

Mr. Paul Gallagher: There was no legal impediment and, I think, as the committee have heard, we had the legislation ready to go. That was the case and I think what was interesting and what was important is that the decision arrived at was made after considering the various options and everybody was listened to. I wasn't privy, as I make clear in my statement, to discussions that took place between the Taoiseach and Minister Lenihan privately. I remained in the Taoiseach's, I think, conference room or consultation room throughout. I went out for various bits and pieces but I never got involved in any of the political discussions. So, I can't enlighten the committee any more in relation to that. But Minister Lenihan never said to me that he was overruled and a decision was made after considering all of the options. Nationalisation was one of them and I think I outlined in my statement why it was considered that was not the route to go. Sorry, Chairman, thank you.

Chairman: Thank you very much, Mr. Gallagher, and I'll bring Deputy O'Donnell back in as we wrap up. Just two matters before I move on to the other questioners. In earlier engagement with Deputy O'Donnell, you spoke about notes on the meeting of the night of the guarantee. If possible and if legally permissible, can you provide the inquiry with any contemporary notes of this meeting, which you did not record as legal advice sought or given to you?

Mr. Paul Gallagher: I don't have any note that doesn't record the legal advice, Chairman, but what I have done is I have faithfully recorded in my statement to you the facts-----

Chairman: Okay.

Mr. Paul Gallagher: -----in relation to it.

Chairman: So all those matters are addressed through your statement?

Mr. Paul Gallagher: Exactly.

Chairman: Thank you very much. Just one other item as well, Mr. Gallagher, earlier this morning when we were discussing matters with you, you stated that in June, the draft legislation - this is the nationalisation legislation - was redirected to cover more than one ailing bank.

Mr. Paul Gallagher: Yes.

Chairman: Yes. This would seem to coincide with the NTMA's refusal to put deposits into Irish banks and can I ask you to comment, was this cognisant of that fact or was that just a coincidence and what was your contact over this period directly or indirectly with the NTMA?

Mr. Paul Gallagher: Okay. Firstly, what happened on 16 June was they said go ahead and draft. It was still focused on a particular bank because that's what you would do with nationalisation legislation. Secondly, I would have had no direct contact at any stage with the NTMA, their contact was with Finance, we get our instructions from Finance. Thirdly, the issue in relation to putting deposits in banks, I think, was somewhat earlier, if I recollect what Dr. Somers said. I think it was in late December 2007 and I think that then continued to that period, so far as I'm aware and certainly wasn't aware at the time there was any connection between the two, Chairman.

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Chairman: To your knowledge. Thank you very much. I'm going to invite Senator Susan O'Keeffe. Senator, you've seven minutes.

Senator Susan O'Keeffe: Thank you, Chair. Mr. Gallagher, the memorandum from Merrill Lynch dated Sunday, 28 September - was your office requested or asked to assess the options that were outlined in that in terms of legal impediments or was it a piece of paper that just appeared along with other ones?

Mr. Paul Gallagher: Firstly, I think I made clear in my statement I didn't see that document, Senator O'Keeffe. My office had already advised, which is the way it's done, that the various options are put forward to see if there is a legal impediment and we had advised there wasn't a legal impediment. So that wasn't furnished to me to advise in relation to that.

Senator Susan O'Keeffe: Had you ever been asked in the period, say, from November 2007 right up to that time? Had you been asked for legal advice in relation to any banks seeking ELA in that time?

Mr. Paul Gallagher: Well, I had been asked in November 2007 as to whether there was any impediment to providing ELA. It wouldn't have been my concern as to which bank was asking for it and I wasn't involved. We said there is no legal impediment to the Central Bank providing ELA. Of course, in providing ELA, as you know, it is subject to the statute of the ECB. There are ... I think it's Article 14 ... imposes limitations under the circumstances which ELA ... but in principle, so far as the Irish legislation was concerned, this ... it would permit the Central Bank to provide ELA.

Senator Susan O'Keeffe: Okay. So, you were asked that, I'm sorry, in November '07, is that what...?

Mr. Paul Gallagher: November '07.

Senator Susan O'Keeffe: '07. And were you asked ever again or was it sufficient once you'd been asked, if you like?

Mr. Paul Gallagher: No, that was ... well, the written advices were there-----

Senator Susan O'Keeffe: Were they? That's fine.

Mr. Paul Gallagher: -----and it was a constant, I suppose, issue that come up but it was there and that was unambiguous.

Senator Susan O'Keeffe: And did any banks ... were you aware of whether any bank actually saw it?

Mr. Paul Gallagher: No, that wouldn't be ever referred to me. Just tell them you can do it and then it's a matter for others to decide whether to do or not.

Senator Susan O'Keeffe: On page 8 of your statement you say, "The Financial Regulator confirmed that none of the Banks were insolvent but stated that Anglo was illiquid and if that illiquidity were not immediately addressed Anglo would fail." Is that a direct quote from the Financial Regulator or is that your recall or-----

Mr. Paul Gallagher: I suspect that's my recall of the ... what was said. I think the committee has had evidence that it had to make a repayment, I think on Tuesday and later in the week.

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And, of course, if you don't make the repayment, then somebody can ... you have defaulted and for a bank to default, that is the equivalent to failing.

Senator Susan O'Keefe: Would that not suggest that the problem was more about insolvency than-----

Mr. Paul Gallagher: Well, the problem was identified as being illiquidity and I think it's true to say that - this is a matter that has arisen before the committee - in normal company terms, you would say about normal businesses if you can't pay your debts you're insolvent. But of course, banks are different because ... that's why you have emergency liquidity. There are times when banks need liquidity to meet their obligations. Their assets at a balance sheet level make them solvent but that's why you have emergency liquidity for the very purpose and that is given to solvent banks.

Senator Susan O'Keefe: You have said that you were not party to the conversation that took place between Mr. Cowen and Mr. Lenihan. At any time in the night, did Mr. Cowen seek any private advice from you?

Mr. Paul Gallagher: No, any advice I gave was in the presence of others.

Senator Susan O'Keefe: Were you party to the conversation that Mr. Cowen had with Mr. Gray on the telephone?

Mr. Paul Gallagher: No.

Senator Susan O'Keefe: Did Mr. Cowen seek any advice having had that phone call? Did he come back and offer something that then required any legal assistance or discussion?

Mr. Paul Gallagher: No.

Senator Susan O'Keefe: No. Were you involved, or were you asked to look at the advice that Mr. Gray had given in writing prior to that night, where he recommended various ... he laid out certain-----

Mr. Paul Gallagher: Yes-----

Senator Susan O'Keefe: -----things? Was that ever brought to your attention?

Mr. Paul Gallagher: No, I never saw Mr. Gray's advice but, as I say, what happens is that that doesn't surprise me. I don't see the advice of the advisers to the Department. What the Department will do is it will prepare its own what I call, "a briefing document", setting out things that are under consideration. We are not concerned with the policy as to whether it's good or bad. But it says, "Here are the issues, can we do this legally?" So that's what I would have been concerned with, that's what I saw, that's all I saw.

Senator Susan O'Keefe: Okay. At any point in the months leading up to September, was your advice sought in relation to the contracts for difference involving the Quinn Group and Anglo and, in particular, were you asked anything about the insurance component that had been taken from Quinn to pay-----

Mr. Paul Gallagher: I ... a couple of ... just answering that particular question-----

Chairman: Certainly-----

Mr. Paul Gallagher: The answer is “No” and I suspect that’s a matter, I don’t want to presume, that’s a matter on which the Financial Regulator would have taken its own advice. I had no involvement whatsoever in it.

Senator Susan O’Keeffe: Okay, so no one ever sought your advice-----

Mr. Paul Gallagher: No.

Senator Susan O’Keeffe: -----just being clear, thank you. On 13 September, Anglo was in touch with the Department for Finance looking for ... to do a deal with the INBS. It talked about having a private funding and liquidity comfort part to that. I’m just wondering and if you haven’t seen it, that’s fine but, were you ever aware of that? Was it ever brought to your attention for legal advice?

Mr. Paul Gallagher: I wasn’t aware of any of those developments or the specifics that were being addressed at that time, Senator.

Senator Susan O’Keeffe: Mr. Corrigan gave advice, sorry, gave in his statement to this inquiry that, in December 2008, he and others were in conversation in a meeting particularly with the Department of Finance in December 2008; trying to persuade the Department that the point had come to nationalise Anglo. So this was seven weeks or eight weeks after the guarantee. Were you aware, were you ... was your advice sought at that point now, if you like, that a guarantee was in place, if nationalisation was to be sought, would that change the advices in relation to any nationalisation or were you aware of any of this?

Mr. Paul Gallagher: I wasn’t aware of it but it wouldn’t change the advice. Nationalisation was an option. The legal structures were there and we were ready to implement them if called upon to do so.

Senator Susan O’Keeffe: And then lastly, there was in ... on 24 April there was an e-mail sent in which advice was being sought by the Department of Finance in relation to amending the State Guarantees Act 1954-----

Mr. Paul Gallagher: Yes.

Senator Susan O’Keeffe: Again, was that part of your work?

Mr. Paul Gallagher: Yes. That was raised at a very early stage, whether if a guarantee had to be given, it could be done under the State Guarantees Act 1954. The advice was unambiguous, it could not be done, so that enabled specific guarantees in respect of scheduled bodies and in any event, this was of a different nature than what was envisaged by the Act and it was made clear that would require a separate and independent legal basis. The Department accepted that, knew that and we had that ready to go on the night of the guarantee.

Senator Susan O’Keeffe: And finally, Chair, can you recall when was the first time that you might have been asked for the legal advice specifically relating to a blanket guarantee?

Mr. Paul Gallagher: Well, I certainly remember that the ... as of 26 September, getting an e-mail from the Department or a letter from the Department saying, “Would you please just look at the provision of a systemic guarantee”, and we had looked at it and we were, as I say, in a position with the legislation for whatever was required to enable that to be done.

Senator Susan O’Keeffe: So you were already in that place?

Mr. Paul Gallagher: Well, when you say, “In that place”, I had confirmed that there wasn’t a legal impediment provided - and this was a big proviso - that the authorisation through legislation was obtained through the Oireachtas. That this could be done through legislation but legislation would be required.

Senator Susan O’Keeffe: Thank you.

Chairman: Thank you very much. Next questioner is ... just a minute. Senator Sean Barrett.

Senator Sean D. Barrett: Thank you, Chairman. Welcome, Mr. Gallagher and you made the point very strongly about Europe leaving Ireland on its own and so on and, indeed, a currency that had been circulated since 1999, only in 2013 was Article 127 of the treaty implemented. Did that propose particular legal challenges for Ireland in ... it was a dangerous area, certainly and that ... did we discard the policies and mechanisms and laws that had ensured there were no bank failures from 1783, Grattan’s Parliament and Bank of Ireland, right up to 1999, when this new currency started?

Mr. Paul Gallagher: I suppose and Senator, I will be completely guided by you in this but, I mean, one of the difficulties with monetary union is that because you don’t any longer control the money supply, you are not in a position to have ... print money and put it into the banks in the case of a failure. So your options for resolving a crisis and a systemic crisis in particular are greatly reduced. That was a big deficit in the legal architecture. My understanding of the architecture was it was designed to address situations where Government deficits and Government profligacy in managing the economy would result in threats to the financial system and that was catered for under the excessive deficit procedure. But they hadn’t addressed this and this is, as is now very apparent, was a very significant restriction in the legal architecture.

Senator Sean D. Barrett: And we had representation on the board of the ECB and in ECOFIN, where we might have made some of those points that you were making.

Mr. Paul Gallagher: Well, I think that was ... well, no, I think it was really the political matter. The countries were very ... and you have seen one of the reasons it took ‘til 2013 for the single supervisory mechanism was that countries were reluctant to pass over the supervision of their financial system to an EU body, the ECB. And secondly, with regard to the resolution, there was very serious political concern. So I think it was known but I’m not sure there was the willingness to address it and I think that there may have been a failure of imagination because I don’t believe that people really envisaged the sort of situation that did in fact arise here and throughout Europe and the United States in September 2008.

Senator Sean D. Barrett: Well, after the guarantee, did you get reactions from Europe?

Mr. Paul Gallagher: Yes, and-----

Senator Sean D. Barrett: And can you tell us those?

Mr. Paul Gallagher: I will. And I think those are very interesting. I think you have already heard that Prime Minister Brown was on and he was very annoyed, I think because they said this ... they were all worried about its effectiveness, in other words, that it would be so effective it would take deposits from their banks into Ireland. And this was said at a time when the UK, unknown to us at the time, put in I think something like £30 billion into RBS and was putting a huge amount of money into HBOS. So every country was taking steps and that wasn’t an-

nounced at the time. So while they were complaining about Ireland taking steps to protect its financial system, they were busily off doing it and it wasn't announced. So there was a concern in relation to that. The EU Commissioner, Ms Kroes, was concerned about its competition effects, and that for me was a real concern of ensuring that we could convince the Commission that this was consistent with the state aid provisions and wasn't anti-competitive. And fortunately we were able to do that within a very short period of time, by 13 October. So while other countries were giving out ... you'll remember that the G7 meeting, I think, took place in early October and following that there was an announcement that all countries were going to stand behind their banks. Chancellor Merkel announced it. They announced it in France and they announced it in Denmark.

Chairman: Can I just come in on one aspect of that, if you don't mind, Senator?

Senator Sean D. Barrett: Of course, Chairman.

Chairman: And I'll just hold over time for you. And that brings us to a particular area. They had given political guarantees. We had given a political guarantee on the night of the guarantee, but we were moving towards now a legislative-----

Mr. Paul Gallagher: Yes.

Chairman: -----written guarantee that was going to enshrine this and make it a sovereign debt-----

Mr. Paul Gallagher: Yes.

Chairman: -----through legislation. Was there any commentary with regard to maybe colloquially or seriously, says, "Listen, guys, you made a political guarantee, but we're not too sure whether you need to be going into this written guarantee"?

Mr. Paul Gallagher: No, there wasn't any such commentary. And I think the view was taken in Ireland was that you needed, if you were going to try and save the system, you needed to have people certain that the guarantee means that it's a guarantee. These are ... these other countries are ... have enormous resources, the UK and Germany, and a political guarantee in those circumstances ... in fact, they also brought in various forms of guarantee that were ... but a political guarantee has a particular status. Ireland was concerned to ensure that what it did had credibility and the advice given was that you needed a guarantee that had legal effect, and that's what was done.

Chairman: Senator Barrett, thank you.

Senator Sean D. Barrett: Thank you, Chairman.

Chairman: No, you've another minute or two.

Senator Sean D. Barrett: And did that delay the implementation of the legislation, those kind of representations coming from abroad?

Mr. Paul Gallagher: No, because we had the legislation. It was introduced in the Oireachtas on 30 October. We just went ahead and finalised that. One of the things that we were very concerned about was to ensure that it was watertight and in particular that it terminated as of the end of September 2010 and didn't extend beyond what was intended at that time. And that was prepared and went ahead, and we also went ahead with our submission to the European

authorities.

Senator Sean D. Barrett: On the night of the guarantee were stronger measures thought of, or would we think of them in the event of any recurrence, such as going into the banks and not allowing the same boards and management to go back? After all, if they're presenting the State with this huge burden, could the State not take it on on its terms? And I'd be concerned about how much the cost escalated from what we thought at the beginning to the eventual.

Mr. Paul Gallagher: Yes. I suppose there's two things to bear in mind. Firstly, the guarantee did provide very significant conditions with regard to the commercial activities of the bank and for the public interest directors. And of course that ensured that other banks didn't regard - that didn't need help - didn't regard the guarantees as desirable. You heard evidence that various other banks were looking to be included in it, but the conditions were tough and they were stringent, which made it non-attractive.

Secondly, the issue as presented was that before the markets opened you had to have a solution. Thirdly, people talk about the €64 billion hole but, as the committee has heard, that no matter what investigation had been done by the banks, wouldn't have been apparent on 30 September. The extent of the losses increased over time, as I think some of the witnesses have said, because you not only had the liquidity issue but you had the great recession which continued far longer. The market disappeared. You then had the valuations in NAMA. And you had a series of attempts to get to the bottom of the hole but the hole was deepening the whole time. I think Mr. Corrigan graphically described it as a "falling knife". So at a point in time that wasn't the deficit.

Senator Sean D. Barrett: Did the delay in any way result in the shortages of documentation which NAMA reported when they took over some of those loans? Were there never any documents or would they have been removed between the guarantee and the time that NAMA took them over?

Mr. Paul Gallagher: Documents on the part of the bank, is it?

Senator Sean D. Barrett: Yes, indeed?

Mr. Paul Gallagher: No, in fairness, the documents were there. But, I mean, I think as NAMA said, one of the problems was a lot of the security documents were just never there. They weren't in place, they hadn't been properly signed off and that, of course, had a big impact on the value of the assets NAMA was purchasing. And that is part of the explanation for the larger haircut than was anticipated.

Senator Sean D. Barrett: Thank you very much, Mr. Gallagher.

Chairman: Thank you very much.

Senator Sean D. Barrett: Thank you, Chair.

Chairman: Deputy Pearse Doherty.

Deputy Pearse Doherty: Go raibh maith agat. Can I ask you were there any risks to the State if the Government materially changed the Government's decision or chose a different policy option during the period necessary to draft the legislation and the scheme?

Mr. Paul Gallagher: I suspect those are ... really I'm not in a position to respond to that.

That would be ... involve a financial assessment and an assessment of the financial advisers as to whether that would have had a significant effect, Deputy.

Deputy Pearse Doherty: Okay. Do you know if any financial institutions had concern or sought reassurance before signing up to the scheme on the ... I think on 24 October?

Mr. Paul Gallagher: I wasn't involved in any interaction with the financial institutions, with one exception that I think I mentioned. I ... the Minister asked me one evening to come to a meeting with Ulster Bank, who were trying to be included, but they weren't. And one of the decisions the Government took, and it's provided for of course in the legislation, that if a bank had the basis of support from its parent, as Ulster Bank had, there was no way the Irish State was going to provide the guarantee.

Deputy Pearse Doherty: And in relation to ... you mention in your statement, on page 4 and page 5, that on 29 October the Minister, by statutory instrument, specified the banks covered by the guarantee scheme. You go back then on 20 October, the guarantee scheme was introduced by way of statutory instrument and three days before that the guarantee scheme was approved by the Houses of the Oireachtas, and prior to that the legislation that allowed for a scheme to be introduced was approved, about two weeks before that. So can you tell me, when the banks signed up to the scheme, the deed, the deeds, which was the 24th, which was in between the scheme being introduced by way of statutory instrument and the Government specifying the banks, was the assets of the banks and liabilities of the banks guaranteed at that stage?

Mr. Paul Gallagher: Well, the ... it seems to me that, as a matter of law, until they became actually members of the scheme - it was the scheme that provided the financial support. The Act provided that provided that financial support could be provided individually or through a scheme. The Government opted for a scheme. That was approved. And to avail of the scheme you had to become a participating institution. And to be a participating institution you had to be designated. So that's when the legal effect of the scheme-----

Deputy Pearse Doherty: Okay. So just to clarify that now, the ... we understand that the institutions signed the deed of acceptance on the 24th and returned it to the Department as such. Would that have been when they were legally covered by the guarantee? I know it took a ... it was backdated but that's the day that they were legally bound. Or was it 29 October when, by statutory instrument, the Minister specified the banks covered by the scheme?

Mr. Paul Gallagher: It seems to me - I haven't thought about that closely - but it seems to me it's the designation by the Minister. The acceptance was a preliminary step to the designation.

Deputy Pearse Doherty: Okay.

Mr. Paul Gallagher: They had to accept and then they're designated.

Deputy Pearse Doherty: So 29 October?

Mr. Paul Gallagher: I think that would be so, yes.

Deputy Pearse Doherty: Okay. And it's ... if you ... in terms of your thoughts, it would be either the 24th or the 29th?

Mr. Paul Gallagher: Or the 29th, but I think it was the 29th.

Deputy Pearse Doherty: Okay.

Mr. Paul Gallagher: It's just something I haven't particularly focused on.

Deputy Pearse Doherty: Can I ask you what would have happened ... so there's a lot of focus in terms of the night of the guarantee, 29 September, 30 October, and now we have that it was actually one month later where they were legally covered by the guarantee. So what possibly could happen in terms of law if the Minister decided in that four weeks that, "Look, I think this is a bad idea, there may be more loan losses", or whatever, and decided we're not proceeding with that? Would the banks have a call, given that the Government made a commitment, a political commitment to introduce this?

Mr. Paul Gallagher: No, the guarantee was subject to terms and conditions. I suppose what you would have is you'd have people who lent money perhaps making claims against the Government on the basis they did so on foot of representations. But, more particularly, I think the issue always was what would be the effect on the financial system. And for a Government to renege on what was clearly a statement intended to quieten the markets would have had very serious consequences and presumably, though it's not a matter for me to say, the very consequences that were sought to be avoided on the night of the guarantee.

Deputy Pearse Doherty: There's been a lot of talk in the State about ... that senior bondholders couldn't be burned because they ranked *pari passu*, of equal nature, with depositors, and if you burnt senior bondholders you would burn depositors. How confident are you, given the earlier testimony, that we could have ... the State could have, under law, protected depositors while at the same time burning senior bondholders?

Mr. Paul Gallagher: Firstly, and I'm sorry, it's a question that Deputy O'Donnell raised, there was no issue that night, nor was any legal advice sought, on the ranking of depositors and senior creditors. And the reason was that it wasn't a legal issue about burning, because of course they didn't want to burn the senior creditors, they wanted the senior creditors to provide liquidity to the banking system. So that wasn't an issue at all. What was made clear, consistently, is that if you wanted to differentiate between and senior creditors and the depositors, you would have to change the law. That was not without complication, but I believed it could have been done. Interestingly, when the Europeans brought in what is now the legal obligation, in the 2004 directive, they don't distinguish between the depositors and senior creditors, as such. The eligible deposits are protected, but depositors and senior creditors, as such, are not differentiated against, and the critical limitation on burning there was that nobody should be worse off than they would be in a liquidation situation.

Deputy Pearse Doherty: Okay. Can I ask you, in relation to the night of the guarantee and your attendance at that meeting, you talk about, in your statement, in relation to, on page 8, "There was a basis for the concern that the fact that the six Irish domestic banks were perceived by the market as having a very significant and, in some cases, enormous property exposure and consequently were perceived to carry a very high bad debt risk." Was there any discussion during that meeting as to serious debts that would have materialised in the future in relation to the banks?

Mr. Paul Gallagher: No, there was no, well ... sorry, there was no specific discussion about significant debtors. There was, of course, the realisation that if you give a guarantee, you have an exposure. But the belief was that these banks were solvent. It was hoped that this would solve the liquidity situation, and it was hoped that there wouldn't be a call on the guarantee.

But, of course, that risk couldn't be excluded.

Deputy Pearse Doherty: But was there any discussion in relation to serious potential, losses in any of the institutions in ... for coming ... in the months that were to come? You know, while the Financial Regulator stated at this position they were solvent - and we've had a lot of discussion in relation to not being able to look at expected losses - was there any concern raised that some of these banks may have major losses in the future?

Mr. Paul Gallagher: I don't remember a specific discussion, but, let me say, Deputy, I want to be very careful. The meeting started at 6.30 p.m. I think I must have arrived certainly no earlier than 8 o'clock. I had to go home for a personal family reason and came in at that stage, and my recollection is the Minister asked me to be there when the banks arrived in case some issue arose. So, there could well have been a discussion, I don't want to say there wasn't-----

Chairman: Just relay a supplementary to that and then we'll move on.

Deputy Pearse Doherty: Yes. The last wee question I have is: was it possible, in your opinion, to wind down Anglo prior to the original guarantee terminating on the ... in 2010? Did the original guarantee prevent an effective wind-down of Anglo Irish Bank?

Mr. Paul Gallagher: Well, the effect of the guarantee was that the debts that were guaranteed would have to be paid if there was a wind-down.

Deputy Pearse Doherty: So, just, it would cost us a lot more money.

Mr. Paul Gallagher: Yes. It would cost ... yes, exactly.

Chairman: Thank you very much. I'm going to bring in Senator MacSharry and then I'll deal with one issue and I propose we might take a break for a few moments at that ... after which. Senator MacSharry.

Senator Marc MacSharry: Thanks very much, and welcome, Mr. Gallagher. Thank you. What was your legal advice to the Government in the event of the guarantee not being successful in stemming the outflow of funds in the event of the European Commission not agreeing that the provision of the guarantee was compatible with the EC treaty?

Mr. Paul Gallagher: Thankfully, that didn't raise a legal issue, but it raised a very, very serious issue, and, my concern was very focused on ensuring that so far as the legal issues were concerned, that we could deliver what was required, namely, the legal validity of the guarantee that had been decided upon by the Government. And, therefore, the focus was very much on ensuring that we got state aid approval, because this was absolutely vital. But it wasn't a legal issue, as such, that would have arisen if it hadn't been approved, but a very serious policy issue would have arisen at that stage.

Senator Marc MacSharry: And, would the ... was there a plan B, or, was that, kind of, too much to countenance at that point, or-----

Mr. Paul Gallagher: I think it was too much to countenance at that point. I think you'd have had to look at ... start looking at nationalisation of banks. I'm sure that others gave consideration to that, but I wasn't involved in that consideration. My focus was on delivering the legal implementation in the days following the announcement.

Senator Marc MacSharry: In your statement you said, "Later in the night Governor Hur-

ley indicated that a failure to act, or a decision to allow any bank to collapse would set Ireland back 25 years and that it could take that period to recover from the setback.” Just, on this 25 years and we had heard it suggested on the ... did he elaborate on the setback of 25 years? What in particular ... can you tell us more about that?

Mr. Paul Gallagher: Yes, I’m not sure he particularly elaborated, but I think it was very obvious to everybody in the room, the concern the following day, unambiguously stated, was that the financial system could break down. And, if the financial system of a developed economy like Ireland, so dependent on financial transactions and investment, collapsed, then you are back to the 1980s. That was how I understood it, and, I assume everybody else understood it in that way, but I remember it because it was such a bleak and unforgiving picture.

Senator Marc MacSharry: And, you know, did you have a sense ... was this, in any way, an exaggeration on the basis that, I mean, surely, you know, we have technology now that isn’t in the 1980s? I mean, was it just a figure of speech, this 25 years, or, in real tangible terms, you know, were we going back 25 years?

Mr. Paul Gallagher: I’m sure there’s always an element of a figure of speech, but Governor Hurley is very measured, and, I think what he was really saying is, “If this doesn’t work, recovering your position, because of the damage that will be done, is going to be so difficult.” That’s what it conveyed to me, and in my mind, whether accurately or not, I had the picture of the 1980s and a different Ireland because, without a financial system ... and also, I think ... I don’t think it was explicitly said, but I think everybody had a very serious image in their mind of social cohesion. If the financial system were to break down, was society going to survive this? And, I don’t think anybody stated that; I don’t think it needed to be stated. You had very experienced people there. That’s, I think, the image that people had.

Senator Marc MacSharry: Very good. Can I ask, you said also that, on one occasion, I’m quoting from your statement, “Having been requested to ascertain the identify of the subsidiaries which were to be considered for inclusion in the proposed guarantee. I was not present [for] the discussion.” Can I just ask, on, on the ... what was your opinion of the including of subsidiaries? Or can you tell us more about that? Was there consensus on it?

Mr. Paul Gallagher: Yes, I think that wasn’t problematic, because once you gave the guarantee, you had to make sure that all companies within the group were covered. Otherwise, if any one of those defaulted, the group couldn’t let a subsidiary default because that would ultimately ... might well result in a default for the group, but, certainly, would pose an enormous risk for the group. So, I think that followed.

Senator Marc MacSharry: And so there was no ... or, is it fair to say that there was no contrarians that consensus was arrived at reasonably easily that night?

Mr. Paul Gallagher: Absolutely. I think the concern was to identify where the subsidiaries were located, and the numbers of them, so that we had some picture of that.

Senator Marc MacSharry: Just from a legal perspective, can you advise - we, obviously, have the letter of 19 November from Jean-Claude Trichet, threatening to turn off ELA. Do you believe it was legally possible for the ECB to do that?

Mr. Paul Gallagher: Absolutely, the ... and, in fact, it was a really serious concern, because the ... it’s written into the statutes and, in fact, on their website, you’ll see with their explanation of ELA, that, if they think it involves monetary financing, then they are prohibited. And,

therefore, if they are effectively supporting banks that should have been supported by the State, that is equivalent to monetary financing. That was a very big issue in relation to Anglo and the whole resolution of the promissory note issue, and the very beneficial deal that was, ultimately, achieved by this Government in relation to the promissory notes and the replacement with the government bonds. So, legally, he was absolutely correct.

Senator Marc MacSharry: Governor Honohan, who I questioned, and we all questioned, about these issues, posed the question to me, when I asked him would they have turned off ELA, and he said, "But would they?", so as to suggest, perhaps, that his view was, arguably, that they may not.

Mr. Paul Gallagher: And, that is absolutely so. I suppose it's the huge question ... it's a matter for Government, but, I suspect most governments would say, "We don't actually gamble with our country's fortunes", and it would have been an extraordinary step, I would have thought, but that's for others to judge, it's not a legal matter, to say, "We'll call your bluff". And, the difficulty - and I do mention this ... I mentioned it today - the ECB was concerned, and very understandably and rightly concerned, of the legal constraints. And, if it took a legal view it couldn't do it, and we see an example in relation to Greece at the moment, whether they could continue ELA no matter what the consequences. So, I think the Government decided that's a bluff, if it is a bluff, that we won't call. But, that's what was at stake.

Senator Marc MacSharry: Was it reasonable to take that view or would it have been equally reasonable to say, "Let's call the bluff"?

Mr. Paul Gallagher: Well, that's a matter for others, but I would have thought a responsible government, looking at it from a lawyer's point of view, that's only my view. I don't see how responsible----

Senator Marc MacSharry: It is your view that I am interested in.

Mr. Paul Gallagher: I do not see how a responsible government would do that. I mean, if ELA was withdrawn, all of the banks were gone so you were back to the same situation. So it's a very big bet and my experience of dealing with the institutions - and I dealt with them in the Lisbon treaty and the guarantees - they take a very legalistic view and the other countries ... and this is why I said you have countries sympathetic to Ireland saying Ireland is a great country and you've done very well, but every one of them will, ultimately, look after their own interests and they are not people that can be easily beaten down in negotiations. Every country is looking after its own interest. There is the Community spirit and the Union spirit and that will be adhered to. And I think that's all very positive but, at the end of the day, in critical matters, they will look after their own interests and that is certainly the position with the ESB because I had a subsequent involvement for another client in relation to dealing with ECB - and I do not want to say anything for client confidentiality - and my experience of the ECB is they took the legal situation enormously seriously, as they were bound to do, no matter what the consequences.

Senator Marc MacSharry: Thank you very much.

Chairman: Thank you, Senator. Can I just deal with one or two matters and then we will go for a break? Earlier you were talking in regard to the shelf life of the guarantee and why not four years, five years in others because I think this relates to the conversation you just had with Senator MacSharry. Why was a different timeframe not put on it?

Mr. Paul Gallagher: Deputy O'Donnell asked me that as one of his questions and, sorry,

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Deputy, I didn't respond to it. That was teased out very, very carefully. There was considerable concern in giving a guarantee for two years and six months was mooted, a year was mooted. And, as I explain in my statement, a judgment call was made because they were told and the banks were also ... about this said, "We have to reassure the money markets and we're not sure a shorter guarantee will do." In the event, it transpired, even when the position was known with much better clarity regarding the losses in the banks, this guarantee was, ultimately, extended to December 2013, albeit with a narrower focus with regard to the instruments to be covered.

Chairman: And in that regard because it was two years, Dermot McCarthy when he was in before us yesterday afternoon suggested that the duration of two years contributed towards the funding cliff that led to a bailout.

Mr. Paul Gallagher: Yes, I think he also said ... and you have raised that ... I'm not sure I would agree with that, Chairman, in the sense that that seems to me ... whenever you stop the guarantee, if you just leave it there, you will have a funding cliff, unless everything has righted itself. Everything hadn't righted itself but, as of middle of 2009, as you know, legislation was brought in to enable the period to be extended. As of December 2009, you had the ELG; 2010 they extended the period; 2011; 2013. So the fact that the funding would stop as of September 2010 was anticipated far in advance and measures were put in place to ensure a continuation of funding. And, in fact, the CIFS scheme itself, as you heard, was extended I think until December, and the application for that was made in good time, so measures were taken to avoid the funding cliff.

Chairman: Can I just ask one other final question? If Anglo was just left to go bust on the night and was kept outside of the guarantee, what would the legal considerations have been? Would this have been very, very complex, very, very messy or would it have been, "Here's a legislation; let's make it happen"?

Mr. Paul Gallagher: No, you could have let Anglo go on its own, you didn't have to do anything, but the judgment was made that leaving a bank that, I think Governor Honohan in his report says was "of systemic importance", systemic not that we needed this bank but systemic importance in terms of the consequences. And one of the things that was apparent from the information given to the Government by the other banks was the other banks were distinguishing between Anglo and INBS and themselves and understandably so. But the report that they gave us of the reactions from the money markets was Ireland was untouchable. And if you have one bank go, given what was known as the overexposure to property, the ready consequence I assume - and others are better positioned to advise on this - was they'd say, "These other banks have huge exposure to property. There may be distinctions but we're not convinced and the whole lot goes." And that was the calculation made with regard to Lehman Brothers and it went so badly wrong and I think there was a huge fear that if that gamble is taken, that things would just be out of control. And those are the judgments that have to be made and were made.

Chairman: Thank you very much. I now propose that, as it is 11.15 a.m., that we will suspend until 11.30 a.m. to return at that time to continue our engagement with Mr. Gallagher. Before members leave, I just need to deal with the formalities of that and to remind Mr. Gallagher that he remains under oath. He can deal with his own legal people if he has them with him here this morning and so forth, and to now propose that we return at 11.30 a.m. Is that agreed? Agreed. Thank you.

Sitting suspended at 11.16 a.m. and resumed at 11.38 a.m.

Chairman: We're still in private session. Okay, we now ... sorry ... the monitors. My apologies, Deputy. We're actually in public session. Sorry, continue.

Deputy Michael McGrath: My question is: over the course of the evening was any reference made to correspondence that had been sent a few days earlier, on 25 September, from Alan Gray to Kevin Cardiff? Did any issue around that come up, to your recollection on the night?

Mr. Paul Gallagher: Yes, not to my recollection I couldn't-----

Deputy Michael McGrath: Yes.

Mr. Paul Gallagher: -----swear because I couldn't pretend to remember every detail and even if something was said, it mightn't have impact, but I don't remember that-----

Deputy Michael McGrath: You don't believe Alan Gray was mentioned?

Mr. Paul Gallagher: I don't believe so.

Deputy Michael McGrath: You don't? Okay. That's fine.

Mr. Paul Gallagher: Yes.

Deputy Michael McGrath: Yes. Can I just clarify one thing? The ... it's often stated that the guarantee was a €440 billion guarantee. The Nyberg report, on page 77, gives a breakdown of the guarantee. The guarantee was €375 billion. Is that your understanding as well?

Mr. Paul Gallagher: I think that is so, yes.

Deputy Michael McGrath: That was the actual-----

Mr. Paul Gallagher: Those are the figures I've seen subsequently, yes.

Deputy Michael McGrath: Okay. Thank you very much. You refer to the issue of dated subordinated debt being included, and you state that some concerns were raised on the night of the guarantee by Governor Hurley and by some officials in the Department, but the overall view taken was that sub debt should be included.

Mr. Paul Gallagher: Yes.

Deputy Michael McGrath: How strong were those concerns that were raised? Can you recall the nature of them?

Mr. Paul Gallagher: Well, strong in the sense that, I think, the banks mentioned this. There was a very careful consideration as to whether that was appropriate. There would have been a desire not to include it, if that were possible. And in the end a judgment was made if we omit that, is that going to impair the effectiveness of the guarantee? There's also, I've seen subsequently but I didn't see it, the e-mail which the committee has seen from Mr. McDonagh, I think on 6 October, explaining why it was important to have that included. But I don't remember that particular consideration being raised that night. My recollection is it went more to the effectiveness of the guarantee and people understanding what was included, and also this was a method of providing funding for the banks. That's my understanding.

Deputy Michael McGrath: Do you recall why the Governor was possibly against it or raised some concern?

Mr. Paul Gallagher: Well, because normally people say ... well, you know, subordinated debt is in a different category-----

Deputy Michael McGrath: Yes.

Mr. Paul Gallagher: -----so you wouldn't, ideally, include it if you had a choice, if you thought that you could get away without doing it, but the judgment was made that it was better to err on that side by including it rather than omitting it and taking the risk.

Deputy Michael McGrath: Okay. The issue of the promissory notes for Anglo Irish Bank. To what extent was the sovereign fully standing behind those promissory notes? Would they have had the same legal standing as sovereign bonds, for example? Can you just give us a legal perspective on the status of those promissory notes?

Mr. Paul Gallagher: Yes. The State was the obligor under the promissory notes and, therefore, they were the equivalent, in my view, as bonds. I think the reason why they were chosen was - and I think the committee have heard this - it enabled capital to be put in, on a staged basis, to the banks. It provided the banks with the necessary injection of capital but the cost would be met on a staged basis and that was what was behind it.

Deputy Michael McGrath: Okay. If, on the night of the guarantee, there was knowledge that ... that a bank had essentially failed and the decision was made to just let it go, in the absence of specific legislation, a bank would just then have been liquidated under the Companies Acts in the normal way.

Mr. Paul Gallagher: Yes. And that, remember, is the position as of now - under the 2013 Act, the bank is liquidated in the normal way under the Companies Act. The Central Bank has to be informed in advance of an application.

Deputy Michael McGrath: Okay. And in that normal liquidation scenario then, senior bondholders and depositors would rank equally.

Mr. Paul Gallagher: Yes.

Deputy Michael McGrath: Okay. So just going back to that issue of special resolution legislation and, as you said, there are different types of resolutions and some resolution-type options were available on the night of the guarantee. But the scenario I want to raise is if ... if a decision had been reached that a bank had essentially failed and instead of having a disorderly wind-up of a bank ... just collapsing the following day, that the decision was to have an orderly wind-down of that bank, what legislation would have been used in that scenario - that if you wanted to, let's say, let Anglo go, but in an orderly way and in a way in which we will seek to separate the depositors from the senior bondholders, to give preference to depositors and bail in other creditors such as senior bondholders?

Mr. Paul Gallagher: I think that would have been a very difficult thing to do. The law at that stage was they ranked equally but I don't think that was even impinging on people's consideration because the view was taken - and governor Trichet had said "Save the banks" - and the view was taken that any wind-down, orderly or otherwise, would have a contagion effect that might not be capable of being controlled.

Deputy Michael McGrath: So in the months leading up to September 2008, was any serious consideration given to having legislation in place for the orderly wind-down of a bank?

Mr. Paul Gallagher: No consideration ... or no proposal was put to my office for any form of liquidation that would be done under the Companies Act. They were ... the measures that were put forward were those that I've identified that would hopefully address the situation.

Deputy Michael McGrath: Okay. So you were never asked - just to clarify - to prepare any such legislation for ... for winding up a bank in an orderly fashion-----

Mr. Paul Gallagher: No.

Deputy Michael McGrath: -----and seeking to prioritise certain-----

Mr. Paul Gallagher: Yes.

Deputy Michael McGrath: -----creditors over others.

Mr. Paul Gallagher: Yes, that's correct.

Deputy Michael McGrath: That was not requested. So, we have heard in evidence over the last number of weeks that there were potential constitutional issues, that there were legal difficulties around the whole area of property rights and that that's why that option was not pursued.

Mr. Paul Gallagher: I think there's a confusion of perhaps-----

Deputy Michael McGrath: Yes, types of resolutions.

Mr. Paul Gallagher: -----the fact that there are, of course ... and the Department is very experienced ... would know that there are legal issues. But that was never put as a proposal and they were never told that there was a legal impediment to doing so and, as I say, even as of today there are legal issues surrounding that. I believe, ultimately, those legal issues can be overcome but, in fact, the 2014 directive explicitly refers to the legal issues and refers ... because the charter, the European Charter and the European Convention of Human Rights create similar problems to our Constitution. So the constitutional issues, if I can put it that way, are recognised at a European level.

Deputy Michael McGrath: And just to clarify - the bailing in of subordinated bondholders, what legislation provided for that?

Mr. Paul Gallagher: The Credit Institutions (Stabilisation) Act and the effect of-----

Deputy Michael McGrath: 2010?

Mr. Paul Gallagher: 2010. And the effect of that, if I can just clarify, because, I think, Mr. Corrigan said correctly that, in fact, most of them were bailed in through liquidity management exercises, but it was the fact that the legislation was there which enabled the State to bail them in, that encouraged them to accept voluntarily, as part of the liquidity management exercise, a very substantial writing down of their entitlements. There was only one case where the Act had to be used. That was in the case of AIB. There was a legal challenge. That was compromised -I don't want to say the detail of it - but on a very satisfactory basis for the State. So it was the existence of the powers and the tools that were critical.

Deputy Michael McGrath: Yes. And, very finally, you said that the ECB had the power and the right to withdraw ELA support for the Irish banks. But when you saw the letter of 19 November 2010 to Minister Lenihan, when the ECB linked the continuation of ELA to the

introduction of fiscal consolidation, structural reforms, financial sector restructuring, did you have any concern that in making that link between ELA and issues that would be perhaps outside the mandate of the ECB, that it had extended its reach too far?

Mr. Paul Gallagher: I think that's an important question. I don't believe so for this reason: as you know, when the ECB subsequently introduced the outright monetary transactions, in ... I think it was 2013, which had a great effect on stabilising the markets, what saved them from legal challenge - and the European Court has pronounced on it recently - is the conditionality that is involved. So, in other words, the ECB said "We will continue to lend to you but you must put your house in order and you must agree to fiscal conditions to set the legal basis, otherwise it'll be monetary financing". And that has been the consistent position of the ECB and ... from day 1-----

Deputy Michael McGrath: Thank you.

Mr. Paul Gallagher: -----and its position as of today.

Deputy Michael McGrath: Thank you.

Chairman: Thank you very much. Deputy John Paul Phelan.

Deputy John Paul Phelan: Thank you, Chairman. Good morning still, Mr. Gallagher. I've a few brief questions. Most of what I wish to ask has been asked already. In response to Senator Barrett earlier you said that because Ireland didn't have huge resources, it needed to give a legal guarantee to make it credible. Do you accept the view that some people would hold that, ultimately, perhaps because of the nature of the guarantee, that the markets passed a judgment on it that it ultimately was incredible?

Mr. Paul Gallagher: I think that ... I think it lost its credibility over a period of time. I think it did and I think - this has already been identified by other witnesses - as problems emerged in the banks and as it was clear that it was difficult to get to the bottom of what the deficit was ... so while there's uncertainty as to what the deficit is, there is uncertainty in the markets and they became very concerned about the contingent liability of the State on foot of the guarantee. But the point I wanted to make was, it seems to me ... and, again, it's the financial experts whose views on this matter but if you are Germany, you have enormous resources, you can pour €50 billion into the banks. And I think it announced - Germany - a €500 billion package for its banks very shortly afterwards. The UK did the same in terms of its support of its banks and it was in a different position, it was outside the euro. Ireland wasn't in that position.

Deputy John Paul Phelan: Okay. Well, isn't ... doesn't that really go to the heart of, ultimately, the weakness that some would argue ... I can't ask, perhaps, a leading question ... but ... of the guarantee, that the nature of it was such ... and the failure on the night to have full information as to the possible exposures in most of the institutions, or certainly a couple of them, meant that the liability opened on the sovereign was such that the markets deemed that it was incredible? Did you ... what I really want to ask is, did you offer, on the night, a view as to an investigation that should be carried out immediately into the exposure that possibly the sovereign was being opened up to by the nature of the terms of the guarantee, as agreed?

Mr. Paul Gallagher: Firstly, I think the Merrill Lynch report, which you have seen, made it clear to everybody that there was the exposure of the sovereign. So that was well known. Secondly, the Government was in the position ... it had to make a decision on the basis of the information that was available and the advice was "You can't postpone this decision." And, as I say,

the Taoiseach repeatedly asked “Is it possible to defer this - not to make a decision?”, and was told “No.” But it’s not just the guarantee. Anything that I’ve read subsequently ... and, indeed, the whole structures that have now been introduced for bank resolution are to deal with the fact that even those countries that didn’t give a guarantee, because they ultimately had to save their banks and put the money in, the whole banking crisis is regarded as a strain on the sovereign. So, even if you haven’t given a guarantee, if you have a banking crisis, the markets know you must solve that because I may be wrong in this and the committee will know better but I’m not aware of any country that allowed, in this period, a systemic bank to fail and, therefore, so far as the markets are concerned, you’re behind your banks. If your banks are in trouble - that’s what happened in Spain - that impinges on the sovereign and then the cost of borrowing goes up. So unfortunately, you’re presented with a difficulty that the banks are in a mess. It has to be addressed and ultimately the cost to the sovereign is unavoidable.

Deputy John Paul Phelan: On the night in question did you offer an opinion as to the absence of direct input from the NTMA at the meeting as to the possible implications on the sovereign? They have given ... several members of the NTMA have given evidence to the inquiry that they had serious concerns and wouldn’t have gone down the route of the guarantee which was ultimately chosen. Did you inform the meeting that perhaps that evidence should be directly given rather than through a third party?

Mr. Paul Gallagher: I didn’t, and I didn’t know that Mr. McDonagh was there but ... sorry, I didn’t see the Merrill Lynch but it was obvious to me that the room understood that. Governor Hurley understood it, the Taoiseach was a very experienced Minister, Minister for Finance, he could not but have known it. I think it was obvious to everybody that that was a risk and I think the judgment was made, whether right or wrong, that this is the best ... I think somebody has said the least worst option.

Deputy John Paul Phelan: Okay. Briefly, I want to turn to a book that was published by former Green Party Member of the Oireachtas, Dan Boyle, where he issued ... levelled a number of criticisms at ... indirectly, I suppose, and perhaps directly at yourself in your role in the Government which you were Attorney General. The book was called *Without Power or Glory: The Greens in Government (2007-2011)*. One of the quotes I want to put to you----

Chairman: First of all, Mr. Gallagher, are you familiar with the publication?

Mr. Paul Gallagher: I’m afraid I am because it was drawn to my attention when Senator Boyle thought it appropriate to make it. I’m happy to answer it and deal with it.

Chairman: Okay. Okay, thank you very much, Mr. Gallagher.

Deputy John Paul Phelan: One of the quotes that he said was “At cabinet level we were coming up against a further obstacle in the form of the attorney general Paul Gallagher.” Were you aware at the time that you were viewed by a component part of the Government as an obstacle?

Mr. Paul Gallagher: Well, I’m certain, and you’ll have Minister Gormley here and you can ask him, that I was not so viewed either by Minister Gormley or by Minister Ryan and they both told me so. When I was alerted by a member of the press that Mr. Boyle was going to say this, I contacted Mr. ... Minister ... Mr. Ryan, as he was then, to say that I was very surprised by that and he assured me it was not so. In the publication in *The Irish Times* commenting on the book, it specifically said that senior Green Party sources said this was not the case. I take the greatest

of exception to that, because I prided, above all, my independence. I had no political connection and have no political connection. I've never been a member of the party and I didn't know what constituency any member of the Government was from. So I took the gravest exception and I gave, I believe equally, but I'm happy to be judged by Minister Gormley when he came in, whatever assistance I could to every party to try and assist them with the legal solution to problems that arose.

Deputy John Paul Phelan: Briefly then, finally, I want to ... I won't go any more into that particular publication. Paragraph 58 was referred to by Deputy Higgins earlier, of your opening statement, where you said that there was no "constitutional impediment to introducing [further] legislative measures to provide for further burden-sharing". Was your opinion ever sought on the introduction of legislation to impose burden-sharing on senior bondholders and if so, when was it first sought and by whom?

Mr. Paul Gallagher: Well, the issue was considered as soon as the guarantee expired in September 2010 by Minister Lenihan and we discussed it, it was absolutely clear, and I made clear you couldn't do it under the existing legislation and you'd have to do it under new legislation. It came to the fore again, as I said, at the time of the bailout and on 29 November 2010 I confirmed in writing it could be done. It wasn't done in the meantime, I think, because of the NTMA view. I had meetings with IMF people and I think that I should make clear to the committee my understanding of the IMF, and certainly the people I met, they were very much in favour of it and thought it was appropriate. That is, the people at the lower lever, there were obviously people, different people, but they were very supportive and took the view Ireland needed to do this because of the debt burden. I had meetings again in February before I left office and we went through what could be done. Doing that, of course, is a very specialist exercise and we had our own ideas but we also had the benefit of a specialist lawyer, whose name I cannot remember, that the IMF very helpfully sent over to meet me, who had done a lot of debt restructuring and his services were available to us as to how that might best be done so as to avoid legal challenge.

Deputy John Paul Phelan: And it just fell because-----

Chairman: Final question, Deputy.

Deputy John Paul Phelan: -----because the Government changed and it was at that-----

Mr. Paul Gallagher: The Government changed and the new Government was under the same stricture, that the troika would not allow it to be done. That was very much a decision of the troika.

Chairman: Thank you. Senator Michael D'Arcy. Senator, seven minutes.

Senator Michael D'Arcy: Thank you, Chairman. Mr. Gallagher, you're welcome. Who were the most experienced, most capable people dealing with the markets and finance in the State from the public sector side?

Mr. Paul Gallagher: I wouldn't have had direct interaction with them but one of the obligations on the NTMA is not only to invest the money on behalf of the State but they also have a duty in relation to advising on financial markets. So the NTMA, certainly, and their reputation is such that they would have had a very great understanding of that. Whether anybody else had a better understanding, I don't know. People in Finance who would have been interacting with them and who would have been involved in this would have had a good knowledge, as would

of course Governor Hurley, because one of the functions of the ECB was financial stability so they would all have an understanding of these matters.

Senator Michael D’Arcy: Why do you think the representatives from the NTMA were called to Government Buildings and then left outside the room?

Mr. Paul Gallagher: I didn’t know they were called, I think you heard Secretary General Cardiff. It wouldn’t surprise me and it was a prudent thing. If an issue arose on which assistance was required that hadn’t already been addressed, then they were readily available to Government. That frequently arises, people are asked to be available so if some unexpected issue arises. So far as the issue of their opposition to our preference for nationalisation was concerned, and concern about the sovereign rating, that, I believe, was well known and is recorded in the Merrill Lynch report. So I assume, but this is only an assumption because I didn’t know they were out there, that people believed they had the information, understood that, that was clearly inputted into the decision that was made, taken account of, and as I said, had to be balanced and a judgment made.

Senator Michael D’Arcy: Okay. Thank you. The markets had come to a position in relation to the liquidity in relation to Irish banks. The Morgan Kelly theory is that it wasn’t anything to do with the US sub-prime, or the freezing of the liquidity markets, that it was a matter that the markets had decided that the exposure to property, in particular commercial real estate, that the Irish balance sheets of financial institutions were compromised.

Mr. Paul Gallagher: Well I wouldn’t pretend to be in a position to second-guess anything Professor Kelly said but I don’t think the two are incompatible. What is a documented fact in anything that I’ve read is that the money markets froze after Lehman. Nobody was prepared to invest. So you look at Ireland and you say “There is a problem there, they are overexposed to property.” So you’re not going to invest anywhere and you’re certainly not going to invest in Ireland so I don’t think they’re incompatible.

Senator Michael D’Arcy: Can I ask, Mr. Gallagher, you’ve quoted the term “one shot at it”.

Mr. Paul Gallagher: Yes.

Senator Michael D’Arcy: This was said on the night. The deposit guarantee scheme went from €20,000 to €100,000, a fivefold increase. Was there over-exuberance in terms of the attempts to deal with matters? Very few deposit guarantee schemes were increased by fivefold internationally. And then, just to follow on from that is, was there an over-exuberance in relation to banking, in relation to guaranteeing everything: bonds, deposits, etc.?

Mr. Paul Gallagher: Firstly, I don’t remember being involved because obviously it was a policy decision in raising the guarantee. But I do know that one of the concerns following Northern Rock was that the existing scheme went to €20,000 and 90% of your deposit, and I think it may be in some of the documents. When depositors see that they’re going to get 90% not 100%, well somebody says it’s rational to queue outside banks. So you don’t want to lose your 10%, so you queue. So one of the things was the guarantee was increased from 90% to 100% of the limit. The other view that was taken and in fact, if anything, it seems to me to show foresight, because as of 2009 the EU brought in a directive, and I mentioned this, increasing the cover to €100,000 throughout Europe. Admittedly, that wasn’t to take effect for a while because it’s the form of directives that they don’t take effect for a while, 2010. The view was

taken that, because there had been some queues outside banks, I think it's been mentioned there was a media issue and queues had been forming and I think there was a real concern. Even Dr. Somers said the one thing you don't want to see is a queue outside the bank, so you try and stop that. I certainly, going on to the night of the guarantee, didn't witness exuberance of any sort over ... or any type whatsoever. They were people, so far as I could see looking on, that were being faced with a decision that nobody wanted to be there to have to make and the options were explored, very careful consideration was given to those options, and so far as I could see, a judgment was made on what is the least worst option, on the basis of a fear of what might happen the following day. They may have been right or wrong, but that was what they face. And, in a sense, we'll never know, because nothing happened the following day, but if the guarantee hadn't been given, who can predict what was said, and what I say in my notice, we were told that New York Stock Exchange was expecting the markets in Dublin wouldn't open. Now, if there's a run on the shares of the banks, that affects the shareholders, but as soon as anybody sees that run, it's all over the media and nobody is going to do anything other than queue outside a bank and try and pull their money out because if the shares are tanking, then the bank is about to collapse. So that's what was at issue, but there was certainly no sign of exuberance that I saw; far from it. I think what was impressive was people remained calm in what was a crisis situation and worked through the options.

Senator Michael D'Arcy: To your knowledge, did any other jurisdiction guarantee every bank within its boundaries?

Mr. Paul Gallagher: No other jurisdiction gave as extensive a guarantee; others gave very extensive guarantees. I think there were two issues there. Some people said, "You shouldn't have guaranteed existing indebtedness", and a view can be taken in relation to that, but I'm not sure where that gets you because even if you don't guarantee it, when that indebtedness - and these were all short term, as I understand it, in any event - so if you didn't guarantee the existing indebtedness and next Friday, the debt accrued and became due and had to be paid, well then the bank had to pay it. And if it didn't, that was the problem. And can I just say as well, I'm not clear, but I would defer to experts, that any other country had to deal with a challenge to its entire domestic financial system.

Senator Michael D'Arcy: The "no quote for Ireland" was being said by the domestic banks.

Mr. Paul Gallagher: Yes.

Senator Michael D'Arcy: The two domestic banks were trying to differentiate between their request for a guarantee and nationalising Anglo and INBS, risking further contagion for the whole industry. Could you comment upon that please? Why exclusively were the two main banks, when there was no quote for any Irish bank, why do you think they were attempting-----

Mr. Paul Gallagher: Well, the two main banks, understandably from their perspective, said they were very different from Anglo and INBS and they were causing the problem. A view had to be taken as to whether that was-----

Senator Michael D'Arcy: Were they causing the problem?

Mr. Paul Gallagher: Sorry?

Senator Michael D'Arcy: Were they causing the problem?

Mr. Paul Gallagher: Anglo and INBS were the ones that were mentioned by the Governor, they were the ones that were mentioned in Merrill Lynch, and the banks said, “These are the ones you should deal with.” A view had to be taken as to whether that level of differentiation was being made by the markets, and, as I say, from what they told us, that wasn’t the case. That’s a judgment call.

Chairman: Thanks, Senator. Okay. Deputy Eoghan Murphy.

Deputy Eoghan Murphy: Thank you, Chairman, and thank you, Mr. Gallagher, you’re very welcome. You were involved in the bailout negotiations in 2010?

Mr. Paul Gallagher: Yes, I suppose that would be to elevate my role too greatly but there were some legal issues arising and I’ve some knowledge of some of the issues that arose and I’ll help if I can.

Deputy Eoghan Murphy: Thank you. Did the ECB get its own legal advice on whether it was constitutional for Ireland to impose burden-sharing with the banks?

Mr. Paul Gallagher: I have no idea of that and that was never communicated, but it was never raised as being a legal impediment, and it was never communicated to me that the ECB felt it couldn’t legally be done.

Deputy Eoghan Murphy: Okay, Mr. Cardiff in his written evidence to us, on page 88, or 188 - it was a long statement - said that the ECB informed him that under Irish law it would be unconstitutional, and his response was to effectively threaten a referendum. Were you made aware of any of these discussions during your time?

Mr. Paul Gallagher: No, and I don’t know how the ... that may have, sorry I don’t want to impute anything to the ECB, that would be quite improper. I would be surprised if the ECB were purporting to advise us on what was or was not constitutional. It was quite clear to me from any interaction I had with Minister Lenihan that the objection was not a legal objection, that the objection was that they were afraid of the contagion of the markets. And I think it was mentioned that ... Secretary ... Geithner in the US was totally against it, and I think he acknowledges that in his book, *The Stress Test*, on the crisis.

Deputy Eoghan Murphy: So if the ECB would have had this discussion with Mr. Cardiff, as he alleges, that would have been improper on their part from a-----

Mr. Paul Gallagher: Well, I don’t want to say “improper” because ... they may have had some view, I just don’t know. But I certainly wouldn’t have agreed with it, and that certainly wasn’t given to me as the basis.

Deputy Eoghan Murphy: Okay, that was never communicated to you. Okay, thank you. You talk then about your concern, in your opening statement on paragraph 55, about protecting “Ireland’s legal autonomy pursuant to the European Union Treaties, in relation to its corporation tax rate”. What was the concern?

Mr. Paul Gallagher: Well, as far as I know, that was a very real concern, and I think it affected the way the matter was handled. That was a matter for the politicians as to whether they said they were in negotiations or not. But I know there was a concern to protect whatever leverage there was. It was felt that if we said, “We’re in negotiations”, then you’re just there for the taking, you can’t negotiate anymore, you’ve said you’re going in and they set the conditions.

And Minister Lenihan told me that there was very considerable pressure for Ireland to forego its tax rate, and the view was taken that, not only was this wrong but the economic revival that the package or the bailout was meant to encourage would itself be undermined, if Ireland had to forego its autonomy over that. That was a very real issue, as I understood it.

Deputy Eoghan Murphy: What was the legal position? I mean, surely-----

Mr. Paul Gallagher: We were absolutely entitled to maintain it under the treaty. They couldn't affect it but people saw this as an opportunity, "You want a bailout, you need a bailout, and we're going to impose this as a condition." So, they could have said, "You will now agree to do this." And that would then have become a term of the bailout.

Deputy Eoghan Murphy: And were you aware of which countries, in particular, were looking for this *quid pro quo*?

Mr. Paul Gallagher: It would be unfair of me to say. I think some of the major countries that have been giving out, if I could say about that, for a long time. And if you go back to the record, I think quite a number of countries, including, I believe, Germany ... but I don't want to say because I can't remember now which countries, and I don't want to create any storm that anybody had any particular animus. But, certainly, people that were competing with us saw this as something very important, and as a *quid pro quo* for giving us the bailout.

Deputy Eoghan Murphy: Okay. And does this explain, perhaps, the delay in willing to agree to enter negotiations?

Mr. Paul Gallagher: Absolutely. My understanding was the view was taken by Minister Lenihan and the Taoiseach that if you say, "Yes, we're now entering negotiations for a bailout.", whatever little leverage - and you've very little leverage in that situation - was gone. And then they start imposing the conditions.

Deputy Eoghan Murphy: So once the Cabinet made the decision on 21 November to enter negotiations, that was off the table?

Mr. Paul Gallagher: As I understood it, we had made it clear. And I think I remember, and I could be wrong in this because things fuse in your mind, I was certainly present when Minister Lenihan spoke to Commissioner Rehn that night, after I think I went over to his office. It may have been mentioned, but there was also some other mention about the IMF were looking for some legal priority that ... I didn't understand how they had it and I wanted to try and understand that, and I spoke with the IMF later that night, and it may have been mentioned then but it was quite clear that was not on the table and that was not something Ireland was going to agree to.

Deputy Eoghan Murphy: Okay, and just in terms of the memorandum of understanding that was agreed, the legal position of that, in terms of if a country fails to meet an objective under-----

Mr. Paul Gallagher: You don't get your money, you don't get any more money.

Deputy Eoghan Murphy: And that was a legal watertight ... So when it comes to then ... January-February 2011, and the agreement that was already in place for the capital injections in the banks, is it a straightforward thing for the Minister to say, "I'm going to wait until the new Government comes in", or did that have to be renegotiated under the MOU?

Mr. Paul Gallagher: I don't want to get involved in a political issue. My understanding is

the Minister spoke to the troika, and indicated that it was appropriate that a new Government should have the opportunity of making a determination on that in democratic terms. That's my understanding.

Deputy Eoghan Murphy: So the MOU allowed us to-----

Mr. Paul Gallagher: Well, there was some flexibility, and I think that's clear. You could talk to them and, indeed, changes were subsequently made. I think the important thing was: you communicated with them, you maintained their trust and support which was vital. And I distinctly remember Minister Lenihan communicating that to the troika, and he did so on the basis that he felt, democratically, it was appropriate that the new Government would have the opportunity of considering that and addressing that.

Deputy Eoghan Murphy: But, in terms of the legal position, are we to understand the MOU, like a contract in a domestic law, that if there is to be a renegotiation, it has to be agreed by both sides?

Mr. Paul Gallagher: Exactly, yes, exactly.

Deputy Eoghan Murphy: Okay, thank you. And just a final question I wanted to ask in relation to the details of what's contained in the MOUs. I mean, I think we're aware with the higher level details, like, for example, that ... sale of State assets, half the proceeds would be used to pay off the debt, you know, trying to find lower costs in the legal services, for example, but one requirement I was interested in - was the requirement in the programme for "an economic analysis of the potential impact on competition and consumer prices, of eliminating or relaxing the floor space cap on retail premises"? Do you remember that? That-----

Mr. Paul Gallagher: I remember that being an issue, yes. I have to say I didn't focus, but I knew that, I think ... certainly, it rings a bell as an issue, Deputy.

Deputy Eoghan Murphy: Do you remember where it was coming from? Was it coming from a particular country?

Mr. Paul Gallagher: It might have been, and, again, it would be unfair for me to say it, but, certainly I think they thought that that was a restriction and, of course, at the end of the day, the Commission had to be satisfied that that was a restriction. That's where it was coming from. Whether it was being influenced by another country or not, I would only be speculating.

Deputy Eoghan Murphy: Did they think it was restriction on certain companies outside of Ireland doing business in Ireland?

Mr. Paul Gallagher: That would be, presumably, one of the ... and just generally in terms of fostering competition, bringing down prices, so the bigger, presumably, the operations, the better opportunity there was for competition. There was a serious concern, of course, that Ireland over the years had lost its competitiveness and this was one of many measures, I think, designed to restore it, so I assume it was in that context but I wouldn't have been involved in that level.

Deputy Eoghan Murphy: And did anyone raise anything about the ability of Irish companies to compete domestically against foreign competitors coming in at such a large size seeing as how we were going to lift the cap on the floor space?

Mr. Paul Gallagher: Well, I suppose if you're ... believe in competition, as people did, they had to compete. I'm sure there were negotiations on a lot of those things. I wasn't privy to

that or what issues were raised or whether issues ... everybody ... I assume the Department was dealing with the detail of that and was doing the best it could.

Deputy Eoghan Murphy: Are you aware of any other requirements-----

Chairman: Final question now, Deputy.

Deputy Eoghan Murphy: Thank you ... any other requirements in the programme for assistance that were being driven by the concerns of countries who wanted their own companies to be able to get into Ireland or benefit from the situation?

Mr. Paul Gallagher: I'm not aware of that but I wouldn't have looked at the detail of all of the conditions which were economic matters or what, so that could be true, Deputy, but I just don't know. I wasn't involved in those negotiations nor did I have to regard to the, sort of, detail of what needed to be done to comply with the troika's terms.

Deputy Eoghan Murphy: Okay, thank you.

Chairman: Thank you very much, Deputy. I'm just going to move to wrap things up. Just a couple of questions for yourself and then I'll invite the two leads back in again, Mr. Gallagher. The first one is: did at any time did you advise on the bond redemption schedule by NAMA?

Mr. Paul Gallagher: No, I didn't.

Chairman: Okay and the other thing: is it your memory that there were two sides in Government Buildings on the night of the guarantee - one nationalisation, the other one, full guarantee?

Mr. Paul Gallagher: That's my memory. A lot of that was done before I arrived but it continued after. It was clear that it was so, that it was being considered.

Chairman: Okay, did you have a position on that?

Mr. Paul Gallagher: I didn't offer any position. I don't think it's my role to do so and I think it would interfere with my independence.

Chairman: All right. Mr. McCarthy gave evidence yesterday that it was the Financial Regulator who wanted to remove the term "solvency" or that part of the official statement when it went out. Is that ... concur with your own recollection?

Mr. Paul Gallagher: That may be so. I genuinely can't remember that, I'm sorry, Chairman.

Chairman: Okay. Also, if I can return to the Credit Institution (Financial Support) Scheme, the Bill of 2008-----

Mr. Paul Gallagher: Yes.

Chairman: -----and in section 8, this allowed for a review of the scheme which allowed the Minister to consider, and ... then the Bill goes on to state "... the continued requirement for the provision of financial support". Did the section allow the Minister to bring an end to the guarantee after six months?

Mr. Paul Gallagher: The EU requirement was that the guarantee always be reviewed and if

the EU thought it was no longer necessary, it would have to be brought to an end.

Chairman: Okay, so whose prerogative, or whose call was it, was it the EU's or the Minister's call ultimately? I just-----

Mr. Paul Gallagher: There's a power to revoke it in the guarantee scheme if, for example, the conditions of the guarantee weren't being complied with, otherwise it was intended to last for two years, subject to a review. And it was conditional on the basis which ... or, sorry, it was conditional on the circumstances which required the giving of the guarantee continued, and if they didn't continue, then the Minister was entitled to bring it to an end and would be required to do so by the EU.

Chairman: And was that ever considered?

Mr. Paul Gallagher: It was but, I mean, the ... I'm sorry, I assume it was but, as I said already, rather than being shortened, it was actually continued and continued post-2010 through the eligible liquidity guarantee scheme, so I assume the decision was taken that even with all of the support of the banks and even with the situation of all the money in the banks, it was still required.

Chairman: And were you privy to any consideration that ... you've stated the factual aspect about what happened but were you privy to any consideration of a review on any six-pack option?

Mr. Paul Gallagher: I wasn't, Chairman.

Chairman: Okay. Just two final questions there, Mr. Gallagher. Were you required to advise the Government on the legal impact of positions taken or representations made from either the Commission or of the ECB in the negotiation of the troika programme?

Mr. Paul Gallagher: No, I wasn't.

Chairman: There was no negotiation or consideration at that time, no?

Mr. Paul Gallagher: There was ... well, there was negotiation of the ... there were no legal issues there were ... sorry, two legal issues that arose. One was I was told IMF was insisting on a priority. I couldn't see that in the IMF rules. We had a conversation late on that Saturday night, on 20 November, about 2 o'clock, with the chief counsel of the IMF, a Mr. O'Hagan, and he explained it wasn't anywhere explicit but that's how the IMF dealt with the matter. And the other issue that I did raise was whether there should be included, or whether there would be agreement to include, what's called a "most favoured nation clause" dealing with interest. Because there was concern the interest rates were high. A most favoured nation clause would mean that if anybody else got a lower interest rate, because the Portugal bailout was something that might happen, we would automatically benefit from that. That had been explored, it was refused but I think you've already been told that there was, at least, an expectation that an improvement would be achieved on the interest rates but they were ... wouldn't put that clause in.

Chairman: Okay, and, just finally, if I could maybe ask you to comment upon whether you or the Government were examining the legal rationale under European law for specific actions taken by the ECB or the Commission or whether queries were raised concerning the basis, under European law for specific actions taken by the Commission or the ECB? And an example of such would be what legal action could the ECB or Commission have taken against Ireland if

we had decided to burn bondholders or let a bank like Anglo go bust?

Mr. Paul Gallagher: They couldn't have taken legal action. They may have complained under, I think, it's title 8 of the treaty where each member state is obliged to contribute to financial stability, but, ultimately, they couldn't, in my view, have taken legal action. Certainly it wasn't an issue that was raised for me to advise on, but my best understanding is they couldn't have.

Chairman: So, on the position that people should be protecting banks and so forth there was no ... and whatever was coming from Europe in that regard, there was no legal clout behind that. Is that what you're saying this morning?

Mr. Paul Gallagher: Exactly, what Europe said is, "Don't allow a bank to fail, because of the financial consequence to your system, but not that you are legally obliged to prevent that happening".

Chairman: And likewise with burnt senior bondholders, yes?

Mr. Paul Gallagher: Exactly.

Chairman: Okay, thank you. Deputy Joe Higgins, three minutes.

Deputy Joe Higgins: Mr. Gallagher, you said earlier that you felt Ireland was isolated as the crisis broke but did you, as Attorney General, were you a regular attendee at international Bilderberg Group conferences during the crisis?

Mr. Paul Gallagher: No, I attended my first Bilderberg conference, Deputy, as you may know, in 2008. I didn't attend in 2009; I attended in 2010 and I attended in 2011 after my term of office expired.

Deputy Joe Higgins: And were you there as an official representative?

Mr. Paul Gallagher: No, I was there in a private capacity.

Deputy Joe Higgins: And were you asked to contribute in relation to the Irish crisis or to give a paper?

Mr. Paul Gallagher: No, I didn't, no I didn't.

Deputy Joe Higgins: Or did discussions take place on the Irish crisis?

Mr. Paul Gallagher: Discussions took place ... I think it's a matter of record. As you know there's a confidentiality with the proceedings, but I think the published record shows that, obviously, the continuing financial crisis, and, ultimately, the sovereign crisis, were matters of discussion, I think, wherever people met that had concerns about these matters.

Deputy Joe Higgins: The Bilderberg Group, Mr. Gallagher, is regarded as being highly secretive. Some say it's also representing the global capitalist elites, if you like. Do you think it's appropriate that the chief law officer of the State would be involved with it?

Mr. Paul Gallagher: Well, that's a matter for others to judge, Deputy Higgins. I wouldn't have gone unless I thought it was so. I informed the Government that I had been invited. I went because this was an opportunity of hearing views on many matters of interest to me and also of interest to the country. I didn't believe that it, in any way, compromised me and I wouldn't

have gone if I did. There is a view about Bilderberg and its proceedings - I don't want to get involved in an argument at this hearing about that - but I certainly am quite satisfied that there was no issue.

Deputy Joe Higgins: Why do you think they would be interested in getting a member of the Irish Government, even if you're not in official capacity?

Mr. Paul Gallagher: I don't believe they were particularly interested in that. I was ... went with Mr. Sutherland and nobody was demanding, I think, that they have a representative of the Irish Government, I suspect least of all somebody of me ... like me, who didn't have the, sort of, positions many people have in that organisation.

Deputy Joe Higgins: Mr. Gallagher, finally ... like Mr. McCarthy yesterday, who was a chief in the Taoiseach's Department previously, you explained the red line issue that corporation tax was for the Government in dealing with the troika, etc. But can I ask you: do you think it's a moral and defensible position that a Government would take that, you know, highly profitable corporate entities should be protected during austerity but, at the same time, €1 per hour can be wiped off the poorest workers' minimum wage?

Mr. Paul Gallagher: Firstly, I didn't get involved in moral issues, neither did I get involved in political issues. The concern of the Government was quite clear to me. It had nothing to do with protecting the industries. The view was taken, whether rightly or wrongly - and it's for others to judge - that this was a very important aspect of Ireland's economic recovery. That's how it was expressed to me ... that if you do anything to interfere with foreign direct investment, you are postponing the recovery for everybody's benefit. And that was the only consideration I was aware of and no moral issue arose that I knew.

Deputy Joe Higgins: But did they express-----

Chairman: Final question now, Deputy.

Deputy Joe Higgins: -----qualms to you about interfering with the wages of the poorest workers at the same time?

Mr. Paul Gallagher: Well, I won't talk about Cabinet but ... my interaction with members of the Government, I never saw anything throughout the period but a concern about the impact this was having on people. That was all I ever heard. So there was a very real concern about the impact of this on people and an attempt - history will judge whether they achieved success or not - to do the best they could for the people. That's all I ever witnessed.

Deputy Joe Higgins: Thank you, Mr. Gallagher.

Chairman: Deputy Kieran O'Donnell.

Deputy Kieran O'Donnell: Mr. Gallagher, just a quick question. You spoke about Ireland standing alone.

Mr. Paul Gallagher: Yes.

Deputy Kieran O'Donnell: And, two quick questions. Do you believe it's a good idea to make monumental decisions in the middle of the night?

Mr. Paul Gallagher: I think the simple answer to that is nobody wants to make a monu-

mental decision in the middle of the night. The possibility and alternative of not making that decision was explored fully by the Taoiseach on a number of occasions and the advice was, it wasn't possible to delay the decision. I heard what Dr. Somers said in that regard. I mean, that's correct in so far as it goes. Nobody does want to make those decisions but there are times - and I've experienced it in other, far less significant situations - where the decision has to be made. That was the position.

Deputy Kieran O'Donnell: If a decision had been taken ... I notice there was a meeting of the ECB the following day, on 1 October - in your statement, page 6 - if €10 billion was being provided by the banks effectively to fund a liquidity position of Anglo, if the decision had been taken to basically cover that liquidity position, and Governor Honohan had brought up the issue in the ECB meeting the following day, was there any legal impediment to the ECB assisting Ireland in a solution to deal with Anglo and the banking crisis?

Mr. Paul Gallagher: Well, as I indicated, the ECB took the view it had no role in saving the banks. ELA was a matter for the national central bank, subject, of course, to the compliance with the ECB rules-----

Deputy Kieran O'Donnell: Once the blanket guarantee was put in place on 30 September-----

Mr. Paul Gallagher: Yes.

Deputy Kieran O'Donnell: -----by default, basically, the ECB were completely entirely left off the hook in terms of coming up with a solution. So the question-----

Mr. Paul Gallagher: It was made clear that the ECB were not going to address this at the meeting, that the ECB took the view - and, as I said, that was the legal position - that these were matters for the member states. The ECB not only took that position at that time, that continued to be its position right up to the bailout, where the ECB was again saying "You need to solve the problem with your banks, and this time do it through a bailout".

Deputy Kieran O'Donnell: In hindsight, if resolution legislation was available in terms of providing an orderly wind-down of an institution, would it have made a difference on the night?

Mr. Paul Gallagher: The answer to that is no. I think Governor Hurley said that. But I do want to make things clear: resolution legislation was available. When you talk about an orderly wind-down, an orderly wind-down involves a liquidation. It was quite clear to everybody that you couldn't take the risk of winding down a bank in whatever fashion. That was absolutely clear. And nobody was prepared to take that risk because of the consequences for other banks. It was as simple as that. And all of the banks were regarded as being exposed to property ... you see one bank winding down and the concern was that, within a matter of hours if not days, that would be the position of all of the banks. And, as I said, the unique position was you had the six domestic banks - our whole domestic financial system - under threat. That, to my knowledge, was quite unique and certainly that demanded an approach that addressed the threat to the financial system. And that's the decision that was taken.

Chairman: Final question, Deputy.

Deputy Kieran O'Donnell: Final question. Was there a letter from yourself to Taoiseach Cowen on 1 October 2008 around the whole situation?

Mr. Paul Gallagher: Yes, and I've already mentioned that. That was the letter in which I provided advice with regard to how we addressed what was, for me, a very pressing issue and that was getting state aid approval. That was my responsibility. I was asking for help in relation to it, the expert was setting out what the position was and I was very concerned that if that ... if I failed in that task, then the consequences would have been very serious, because you'd have had an announcement of a guarantee, then it being held you couldn't legally do it ... and what was to happen then?

Deputy Kieran O'Donnell: Thank you.

Chairman: I'm going to bring matters to conclusion. Is there anything else you'd like to add, Mr. Gallagher, before I close the session-----

Mr. Paul Gallagher: No ... could I just say something that has been on my mind and it's not ... it's just something I think people should know, the public should know, because it was something that I was impressed by. I did mention, in an article that I wrote for the book on Minister Lenihan, that, as of 23 December 2010, we went over to the Merrion Hotel, and it is something remarkable ... I was constrained in what I could say in the book because of the obligation of confidentiality, but here was a man under the stress and the clear knowledge of what the future had for him, and there was only one thing that concerned him: and that was making sure that the legislation that was required to meet the bailout obligations was enacted before the Government fell. And, in a sense, it's relevant to what Deputy Murphy said, there was that conscious ... that was the only thing that was on his mind. And subsequent to that, I wrote to the Taoiseach and copied it to the Cabinet, and asked that I get every assistance from all of the Departments to prepare for the incoming Government the legislation that was required to make sure that there was no breach of those obligations because of the consequences Deputy Murphy has identified. And I got full support from the Taoiseach and the Ministers in getting that prepared. And I think that was something that was very important.

Chairman: In that regard, given the earliness of those deliberations and the matters you relate to ... by the former Finance Minister, Brian Lenihan, would it be an accurate assumption to say that we were actually bounced into a bailout programme or did it mean that we were inevitably heading in that direction? Or maybe timing was an issue, but we were ... that bouncing wouldn't be a fair reflection of what actually happened?

Mr. Paul Gallagher: Again, I suppose that it's outside my brief but, from what I understood then, and perhaps what I've learned since, both been fused together, I think once Greece went into the bailout, you had then the spread and the sovereign bonds, you had, undoubtedly, the Deauville declaration. And when we're talking about burning bondholders, it's important to remember that they were talking about burning bondholders in the future and the effect on the cost of borrowing rocketed. I think that set the seal for the bailout. I think it was probably then a matter of time. I think the Government was trying not to be bounced into it by saying, "Yes, we're applying for it" because then, as I said, you're locked in but that was the situation. But, so far as I could see, that was what was of concern at the time and those are the matters that immediately precipitated ... of course, you can't isolate, Chairman, as the committee will know far better than I do, any one factor. There was all of these factors coming together.

Chairman: Okay, thank you very much, Mr. Gallagher. I'm going to now take a suspension. Before I do, I'd like to thank you for your participation before the inquiry here today and your engagement with it. It is unprecedented, it is the first time, I think, a former Attorney General has ever spoken before a committee in this House and I'd like to thank you for your

co-operation and assisting in making that actually happen. So with that said, the witness is now excused, and I propose that we return at 12.45 p.m. Is that agreed?

Mr. Paul Gallagher: Thank you, Chairman, and thank you members of the committee. I wish you well. Thank you.

Sitting suspended at 12.28 p.m. and resumed at 1 p.m.

Arthur Cox - Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague

Chairman: We now will return into public session, if that's agreed, and we ... with our next hearing with Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague of Arthur Cox law firm, legal advisers to the Department of Finance. The Committee of Inquiry into the Banking Crisis now resuming in public session, and can I ask members and those in the public Gallery to ensure that their mobile devices are switched off.

At this session we will focus again on the legal advice given to the Government during the crisis period. I would like to welcome two witnesses from Arthur Cox limited firm, Mr. Pádraig Ó Ríordáin and Mr. Eugene McCague. Pádraig Ó Ríordáin is ... was managing partner of Arthur Cox from 2003 to 2011. He led the Arthur Cox team which advised the Irish Government on the Irish banking crisis. Eugene McCague is a partner with Arthur Cox since 1988, he served as managing partner from 1999 to 2003, and served as chairman of the board of Arthur Cox from 2006 to 2013. The witnesses' appearance here today has been facilitated by a decision of the Government to waive legal privilege in respect of their oral evidence to this inquiry, having regard to the exceptional circumstances of the financial crisis and the important mandate of this committee to inquire into the financial crisis. The waiver is limited to advices relating to the bank guarantee provided to the Government during September and October '08. In addition, the waiver does not extend to discussion of legal advice that could prejudice any litigation pending or anticipated regarding matters the committee may seek to inquire into.

Before hearing from the witnesses, I wish to advise the witnesses that, by virtue of section 17(2)(l) of the Defamation Act 2009, witnesses are protected by absolute privilege in respect of their evidence to this committee. If you are directed by the Chairman to cease giving evidence in relation to a particular matter and you continue to so do, you are entitled thereafter only to a qualified privilege in respect of your evidence. You are directed that only evidence connected with the subject matter of these proceedings is to be given. And I would remind members and those present that there are currently criminal proceedings ongoing and further criminal proceedings are scheduled during the lifetime of the inquiry, which overlap with the subject matter of the inquiry. Therefore, the utmost caution should be taken not to prejudice those proceedings. Members of the public are reminded that photography is prohibited in the committee room. To assist the smooth running of the inquiry we will display certain documents on the screens here in the committee room. For those sitting in the Gallery, these documents will be displayed on the screens to your left and right and members of the public and journalists are reminded that these documents are confidential and they should not publish any of the documents so displayed.

The witnesses have been directed to attend this meeting of the Joint Committee of Inquiry into the Banking Crisis. You have been furnished with booklets of core documents. These are before the committee, will be relied upon in questioning, and form part of the evidence of the inquiry. If I can now ask the clerk to administer the oath to both Mr. McCague and Mr. Ó