



Tithe an
Oireachtais
Houses of the
Oireachtas

Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Paul Gallagher

Session 47a

16 July 2015 (a.m.)

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¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

BANKING INQUIRY

STATEMENT OF PAUL GALLAGHER

INTRODUCTION

1. It will be obvious to the Committee, that in appearing before it, I am not invoking the exemption from attendance before the Committee provided for in respect of the Attorney General by Section 67(6) of the Act. I have adopted this course of action having regard to the unique importance of this Inquiry. I emphasise this at the outset, because – as I know the Committee will understand – the exemption conferred by section 67(6) has been stipulated by the Oireachtas for good and important reasons having regard to the very particular position of the Attorney General and the Office of the Attorney General, under the Constitution and the law. I am therefore anxious to make clear that I appear expressly without prejudice to any future Inquiry which may request the attendance of any Attorney General or former Attorney General who cannot be the subject of a direction.
2. I will endeavour to provide assistance to the Committee in respect of the lines of inquiry specified in the Committee's letter to me of 29th April 2015.
3. The Committee is also aware that I am subject to a general obligation to observe legal professional privilege when providing this statement. I note that the Government has decided to make a particular limited waiver of its legal privilege. I have not seen the Government decision but it appears I will be allowed to answer any questions posed to me with regard to my advice to the Government, when I appear before the Committee. I am of course subject to an obligation to respect Cabinet confidentiality.

CATEGORY C2(b)

ROLE OF ADVISORS IN ANALYSING THE CRISIS (TO INCLUDE CRISIS MANAGEMENT OPTIONS)

4. I am not in a position to comment on the role of advisors in recommending or analysing policy options. Advisors on such matters liaised and interacted directly with the Department of Finance and/or the relevant government departments and

not the Office of the Attorney General ("AGO"). The policy options being considered or chosen by the Department of Finance were referred to the AGO when legal issues arose in connection with those options. Many of the policy options were formulated following consideration by the Department of Finance of advice received from external advisors. My role as Attorney General and the role of the AGO was to provide the legal support necessary to ensure that the required legal advice or legislation was prepared for the implementation of the chosen policy options (assuming there was no legal impediment to so doing) and to ensure that the correct legal framework and language were used to fulfil the intentions behind the Government's policy decisions.

CATEGORY C3(a)

APPRAISAL OF THE CONDITIONS PRIOR TO INCREASING THE DEPOSIT GUARANTEE SCHEME

5. On 20th September 2008 the Government decided to increase the statutory limit for the Deposit Guarantee Scheme for banks and building societies from €20,000 to €100,000 per deposit and to provide coverage in respect of 100% of the deposit. The Government issued a statement to that effect on the same day. I was not involved in any appraisal of the conditions prior to the decision to increase the coverage provided by the Scheme.
6. The Financial Services (Deposit Guarantee Scheme) Bill 2009 was approved at a Government meeting on the 28th April 2009 and the legislation was enacted on the 18th June 2009. The Act provided for the making of regulations regarding the amount payable to a person maintaining eligible deposits with a credit institution.
7. The legislation empowered the Minister after consulting with the Central Bank, if he considered it necessary in the public interest, and in the interest of the proper and orderly regulation of credit institutions, to make regulations providing for a guarantee in excess of the minimum amount required by Directive 94/19/EC of 30 May 1994 on Deposit Guarantee Schemes or any directive amending or replacing that directive.

8. In March 2009 Directive 2009/14/EC amended Directive 94/19/EC and required each Member State to increase its cover for the aggregate deposits of each depositor to €100,000 from 31st December 2010.

CATEGORY C3(b)

APPROPRIATENESS OF THE BANK GUARANTEE DECISION

A. Introduction

9. Before describing the events of the night on which the Government decided to introduce the Bank Guarantee, it may be helpful to the Committee if I outline some features of the relevant legal framework:-

a. Legal Framework

10. The Credit Institutions (Financial Support) Act, 2008 ("The CIFS Act") authorising the Minister for Finance to provide financial support by way of guarantee or otherwise was enacted by the Oireachtas on the 2nd October 2008. The Act permitted the Minister to provide financial support either by way of individual agreement or by way of a scheme. The Act provided that when the Minister proposed to make a scheme, which he did to implement the Bank Guarantee, he was obliged to cause a draft of the proposed scheme to be laid before the Houses of the Oireachtas and was not permitted to make the scheme until a resolution approving the draft had been passed by each House. This provided the legal basis for the Guarantee Scheme until its expiration at the end of September 2010.
11. Section 2 of the Act set out the policy reasons that would justify the provision of financial support.
12. Separately, it is of importance to emphasise that in order for any financial assistance (including the financial assistance intended to be provided by way of

guarantee) to comply with European law, it was necessary to notify the proposed Guarantee Scheme to the European Commission pursuant to Articles 87 and 88 of the EC Treaty. These Articles relate to the grant of state aid. Upon such notification, the European Commission is required to consider and decide whether the notified aid constitutes state aid and if so, whether it is compatible with the EC Treaty.

13. A notification of the proposed Guarantee Scheme was made to the European Commission in accordance with these provisions. The European Commission approved the Guarantee Scheme on the 13th October 2008. It did so on the express basis that the Guarantee Scheme was necessary to remedy a serious disturbance in the economy of a Member State, namely, Ireland. In its assessment of the Guarantee Scheme insofar as compatibility with the EC Treaty was concerned, the European Commission was obliged to consider various questions including whether the Guarantee Scheme was limited to the minimum necessary in scope and time having regard to the current exceptional circumstances. The European Commission delivered a favourable assessment of the Guarantee Scheme in relation to these issues. It noted the liabilities covered by the Guarantee Scheme and concluded that it was necessary and proportionate. The European Commission acknowledged that two years was the minimum period necessary for the Guarantee Scheme to safeguard financial stability and its decision required that the Guarantee Scheme be reviewed every six months in order to assess the continued requirement to maintain it.
14. On 15th October 2008 the terms of the Guarantee Scheme were published by the Government and it was formally approved by both Houses of the Oireachtas on the 17th October 2008.
15. On 20th October 2008 the Guarantee Scheme was introduced by way of Statutory Instrument (S.I. 411 of 2008) which set out the terms and conditions of the guarantee provided to the commercial banks.

16. On 29th October 2008 the Minister by Statutory Instrument, (S.I. No. 416 of 2008) specified the banks covered by the Guarantee Scheme.

b. The Events of 29th/30th September

17. I was present at a number of meetings in Government Buildings on the 29th September 2008 leading to, and resulting in, the decision of the Government to provide the Bank Guarantee. In the following paragraphs I set out a summary of my recollection of events at those meetings.

18. On the afternoon of the 29th September the Minister for Finance informed me that Allied Irish Banks ("AIB") and Bank of Ireland ("BOI") ("collectively the Banks") had requested an urgent meeting with him and the Taoiseach that night. The Minister asked if it would be possible for me to be present and I confirmed that I would attend.

19. I believe that I arrived at Government Buildings sometime after 8pm. I do not believe that I was present for the entire duration of the initial meeting between officials, advisors, the Minister for Finance and the Taoiseach and I do not know the time when those meetings began. I remember being present when the representatives of the Banks joined the meeting for the first time. I remained in Government Buildings until the conclusion of all the meetings. The only meetings which I attended were those which took place in the Taoiseach's Meeting Room. I remember leaving that room on a number of occasions during the night. In particular I left it on one occasion having been requested to ascertain the identity of the BOI subsidiaries which were to be considered for inclusion in the proposed guarantee. I was not present at any of the discussions which I understand took place between the Minister and the Taoiseach, (apart from those in the Taoiseach's Meeting Room), and which I believe took place in the Taoiseach's office.

20. I should record that the Minister and Taoiseach had the benefit of substantial briefings and advices provided by the Department of Finance, Merrill Lynch, the

Governor of the Central Bank, Mr. Hurley, the Financial Regulator, Mr. Neary and the NTMA in the days and weeks prior to the meeting. I had attended one relatively short meeting with the Minister, advisers and departmental officials a few days prior to the 29th September. Apart from what I learnt at that meeting, I had seen none of the expert advices and was not privy to the content of such advices, although I was aware of serious concerns about the commercial banks. I also attended the Cabinet meeting on the 28th September 2008.

21. The situation on that night was extremely grave. During that night the United States Congress had rejected the US bail-out plan (the Troubled Assets Relief Programme known as TARP) and financial and stock markets in the United States had gone into freefall. This was reflected in markets across the world and followed a week of major financial turmoil for very large and long-established credit institutions in the United States and across Europe. During the day Irish bank shares had been hit extremely hard. The financial markets in Ireland, Europe and elsewhere were extremely volatile. The substance of the conversation at the initial meeting before the Banks' representatives arrived, related to the fact that a general financial meltdown was then perceived as a real possibility. The Taoiseach and the Minister were apprised by Governor Hurley, and the Financial Regulator of their concerns about three financial institutions and about the imminent risk of systemic failure in the Irish banking system.

22. Governor Hurley reported that President Trichet had acknowledged to him that Europe was in completely uncharted waters. President Trichet had evidently made it clear that the Government should stand behind its banks, and that the banks were the State's responsibility. He confirmed that there was no European initiative which might remedy the position. Ecofin (Council of Finance Ministers) had declined to act and the European Central Bank ("the ECB") did not intend to take any initiative. While the ECB was due to meet on the 1st October, there was no basis for believing it would take any initiative that would alleviate the urgent crisis which had emerged. The advice of Governor Hurley and the Financial Regulator was that it was not possible for the Government to await the ECB meeting before taking action.

23. Thus the Taoiseach and the Minister explored with Governor Hurley and the Financial Regulator whether the Government could delay any policy response and in particular whether it would be possible to await the outcome of the ECB meeting on the 1st October before making a decision. Governor Hurley and the Financial Regulator made it clear that this was not an option and that decisive action needed to be taken immediately. The liquidity problem was not only real but enormous and if not addressed would, in their view, have devastating consequences for the economy.
24. The Taoiseach and the Minister were informed that the State was facing the prospect that the collapse of any of the Irish banks could lead to a systemic collapse of the Irish banking system with a consequent devastation of the Irish economy. Very serious concern was expressed about the social effects of any bank collapse. There was a particular fear of a run on the banks which obviously would have had disastrous consequences.
25. Later in the night Governor Hurley 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.
26. The problem was presented to the Taoiseach and the Minister in a context where it was the Irish banks which were experiencing specific and fundamental difficulties, quite different from those being experienced by banks elsewhere. The international perception of the Irish banks was reflected in the difficulties they had in obtaining money on the money markets. In particular it was stated that there had been huge financial outflows of deposits from the Irish banks.
27. At approximately 9:30pm the representatives of the Banks joined the meeting and confirmed that the position was as bad as the Government believed and indeed was worse in specific respects. It was stated that if immediate action were not taken before the opening of the stock markets on the following morning the consequences could be horrific. They also explained that the Banks were, for

the first time, experiencing difficulty in getting overnight funds and that the international money markets had decided that Irish banks were to be avoided. The meeting was informed that the message from the money markets was that Ireland should be scrubbed from the list (of countries to invest in) and that investments should be made elsewhere. The money markets were, according to the Banks, saying "*no quote for Ireland*".

28. The Banks suggested that Anglo Irish Bank Corporation ("Anglo") and Irish Nationwide Building Society ("INBS") should be nationalised. The Banks also sought a Government guarantee. The Banks expressed a concern that extending the guarantee to the other weaker banks would undermine the credibility of the guarantee. There was however a real concern about the effects of nationalisation on the other banks in a context where there was a fear that the financial markets would not sufficiently differentiate between Anglo and the other Irish banks. The basis for that concern was 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.
29. After the Banks left the first meeting the position was considered further. In this context the possibility of nationalising Anglo with a guarantee for the remaining credit institutions was discussed. However there remained a real concern about the contagion effect of nationalising Anglo. The very negative consequences which had flowed from the decision by the United States Government not to support Lehmans were obvious to all present. 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. The use of Emergency Liquidity Assistance (ELA) was also discussed and considered.
30. The possibility of giving a less extensive guarantee was explored at some length and in particular the possibility of not extending the guarantee for two years was considered. The draft of the guarantee prepared on behalf of the Government did

not provide for a two-year guarantee. The Banks however made clear their belief that anything short of a two-year guarantee would not have the desired effect.

31. The Taoiseach and the Minister very carefully considered the option of providing a much shorter guarantee. They specifically considered the possibility of providing for the termination of the guarantee by giving six months notice. However there was a concern that this would impair the effectiveness of the guarantee. The advice given to the Taoiseach and the Minister was that the time period proposed by the Banks was probably the minimum required to facilitate the obtaining of money in the markets. There was a concern that the "one shot", which they were advised they had, might miss its target. The Banks' representatives had expressed the view that if the Government statement provided for a termination of the guarantee when it was no longer necessary, or following a notice period, this would not allay the fears of the market. In practical terms, the market would be left with uncertainty which would arise because the Government would be declaring an intention to terminate the guarantee when it was no longer necessary, and the market would have no idea as to when the Government might consider that it was no longer needed. The concern was that any deviation from certainty carried unquantifiable and enormous risks and that if the attempted solution did not work, there might not be another opportunity to save the financial system.

32. It was emphasised by Governor Hurley and the Financial Regulator that the Government would get one shot at reassuring the markets. If that failed, not only would the immediate consequences be devastating but it would be difficult to fashion any later solution that could remedy the situation in an acceptable manner. The Taoiseach and Minister were advised that it was not an option to test the market with a more restricted guarantee and then, if that did not work, to attempt to strengthen the guarantee. The advice was that such action would have destroyed the credibility which was essential to the success of the proposed measure.

33. The Banks had also expressed concern about the difficulty in taking action which would reassure the market and stressed (as did Governor Hurley and the Financial Regulator) the importance of making sure that whatever action was taken was effective.
34. It was also very clear from the advice provided by Governor Hurley and the Financial Regulator that if the desired effect was not achieved Ireland would be left in an even more precarious position. They were of the view that the matter had to be given the Government's best shot and the Financial Regulator even talked about a possibility, rather than a probability, that the proposed action would be effective. It was pointed out that there was no option which did not carry serious risks and the State could not walk away from the problem.
35. The Banks' views with regard to the type of guarantee that would be required to reassure the market were discussed and these views were taken into account in the statement prepared for issue to the markets.
36. There was a further meeting with the Banks later that night. I believe that it was at a later meeting that the Banks were requested to provide a loan to Anglo and agreed to do so. I cannot be certain at which of the meetings with the Banks the discussion on a number of the matters referred to above took place. I believe however that the financial market conditions, the extent and nature of the threat to the financial system and the consequent risks, were discussed at the first meeting with the Banks.
37. During the night there was a discussion about the inclusion of dated subordinated debt (Lower Tier 2) within the suggested guarantee. Concern was expressed about the inclusion of such debt. I remember in particular such concern being expressed by Governor Hurley and by officials in the Department of Finance. I believe BOI favoured its inclusion. Following a consideration of the matter it was decided that it was, on balance, safer to include this debt in the guarantee, largely because of a fear that if there were any uncertainty as to the extent of the guarantee, it might not have the desired effect. There was also a

discussion of what other debt should be covered by the guarantee. The consideration of these matters took place against the background of a very real fear that if the option chosen were not effective there could be a bank run which, once started, might be impossible to stop.

38. Central to all discussion was the difficulty in predicting the reactions of financial markets which were outside of everybody's control. The predominant concern was that once the markets opened the following morning things would get out of control, there would be a run on the banks and it would be too late for the Government to intervene to save the financial system.
39. Ultimately a decision was made to provide a guarantee and a decision was also made about the debt to be covered by the guarantee. Once these decisions were made it was necessary to prepare the announcement to the markets which would reflect these decisions. There was a particular concern to ensure that the tone and content of the announcement would achieve the Government's objective and that it was absolutely clear from the announcement that the guarantee would be subject to terms and conditions to protect that taxpayers' interest.
40. Early on the morning of the 30th September at the conclusion of the meetings, discussed below, the Taoiseach and Minister for Finance recommended to an incorporeal Cabinet Meeting that the Government should make an announcement prior to the opening of the markets later that morning, saying that it had decided to put in place a guarantee to safeguard the Irish banking system. Following a Government decision to that effect, the statement was duly issued. The legislation referred to earlier above was then introduced.

CATEGORY C4(a)

DECISION TO NATIONALISE ANGLO IN 2009. A REVIEW OF THE ALTERNATIVES AVAILABLE AND/OR CONSIDERED.

41. Some months after the Guarantee, in January 2009, following a decision not to go ahead with a proposed investment of €1.5 billion in preference shares, the

AGO received instructions that Anglo was to be nationalised. Nationalisation provided the State with full control over Anglo in circumstances where an injection of capital was required and serious governance issues had emerged. The European Commission raised no objections, under the EC Treaty state aid rules, to the change of ownership of Anglo because it took the view that no further aid was being granted to Anglo beyond the guarantee already in place.

42. Nationalisation had to be effected in a manner which did not trigger an event of default under any of the bonds. That would have had very serious consequences for Anglo and ultimately the State (on foot of the Guarantee Scheme).
43. It was also necessary to ensure, in order to protect the State's finances, that there were elaborate and detailed procedures for the assessment of any compensation that might be due to shareholders. In particular, it was necessary to ensure that any assessment of compensation would take account of Anglo's true financial situation and would not reflect any value arising from State support.

CATEGORY C4(b)

ESTABLISHMENT AND OPERATION AND EFFECTIVENESS OF NAMA

44. I was requested on the 2nd April 2009 to advise on any legal impediments to the setting up and operation of the proposed National Assets Management Agency ("NAMA") and also on the legal issues that would arise if NAMA were set up. I provided those advices on the 6th April 2009. Following the decision of the Government to set up NAMA, my office was required to produce the legislation as a matter of urgency. There were no legal precedents for the establishment of NAMA.
45. The Government decided that there should be a public consultation on the proposed legislation in order to afford interested parties an opportunity to comment on it. To enable such consultation to take place I was requested to have a draft of the Bill available by the end of July. It was intended that the

consultation would take place during August. The draft Bill was published on the 30th July.

46. Subsequent to the expiration of the consultation period, the legislation was finalised and introduced into the Oireachtas on the 8th September 2009. It was enacted on the 22nd November 2009.
47. The NAMA legislation had to address many complex and novel matters. In particular the legislation had to ensure that, the legal structures would facilitate NAMA's efficient operation; the protection of the taxpayer; that NAMA had sufficient powers to acquire the bank assets intended to be covered by the legislation, together with all relevant securities in relation to the loans being acquired. From a legal perspective I believe NAMA's objectives were achieved.

CATEGORY C4(c)

DECISION TO RECAPITALISE ANGLO, ALLIED IRISH BANKS ("AIB"), BANK OF IRELAND ("BOI"), EDUCATIONAL BUILDING SOCIETY ("EBS"), PERMANENT TSB ("PTSB") AND THE ALTERNATIVES AVAILABLE AND/OR CONSIDERED

48. The decisions to recapitalise were made by the Government following the inability of the credit institutions concerned to raise capital. The CIFS Act, 2008 initially provided the necessary legal authority to effect such recapitalisation. Later recapitalisations were done pursuant to the Credit Institutions Stabilisation Act 2010 ("the CISA Act").
49. So far as the Anglo Promissory Notes are concerned, the mechanism was used to provide the necessary capital to Anglo to enable it to meet its capital requirements. The use of Promissory Notes enabled the Government to provide the necessary financial support without an immediate cash injection.
50. From a legal perspective, if no financial support had been provided, Anglo could not have met its capital requirements and would almost certainly have defaulted in its obligations, thereby triggering the guarantee.

CATEGORY C4(d)

CISA - EFFECTIVENESS OF THE ACTIONS TO MERGE AIB AND EBS, ANGLO AND INBS AND DEPOSIT TRANSFERS

51. From a legal perspective these actions were fully effective. The CISA Act provided the legal basis for the actions to be taken. The legislation provided for the involvement of the Court in making the orders required to effect all transactions and resolution measures provided for under the CISA Act. The CISA Act also conferred certain limited powers on the Minister, such as the power to impose a requirement on a credit institution to achieve the purpose of the CISA Act, which could be exercised without a court order.
52. The CISA Act addressed the risk that resolution actions (and other actions provided for therein) would trigger an event of default under the bonds or be claimed to have so triggered such an event.
53. In particular section 61 of the CISA Act addressed this issue in conjunction with sections 7(3) and 9(3). The effect of these provisions was that if the Court were satisfied that the Minister made the proposed order or part of it, with the intention of preserving or restoring the financial position of a credit institution, the Court could declare that the relevant order or the relevant part of it, was a reorganisation measure for the purposes of Directive 2011/24/EC on the reorganisation and winding up of credit institutions (the "*CIWUD Directive*"). The *CIWUD Directive* facilitates reorganisation measures by providing for their legal effectiveness in other Member States.
54. The inclusion of such a declaration in a court order meant that the protection of the *CIWUD Directive* could be obtained because the courts of other Member States would be bound to respect the reorganisation measure. These statutory provisions therefore were essential for protecting the relevant credit institutions and ultimately the State, (so far as the guaranteed obligations were concerned), from the consequences of an event of default.

CATEGORY C5(a)

**EUROPEAN UNION ("EU") INTERNATIONAL MONETARY FUND ("IMF")
EUROPEAN CENTRAL BANK ("ECB") PROGRAMME OF ASSISTANCE**

55. The Government was very concerned about achieving the best possible terms, from the Troika. In particular there was a concern to protect Ireland's legal autonomy pursuant to the European Union Treaties in relation to its corporation tax rate.
56. The EU/IMF Programme of Financial Assistance provided for a significant number of legal measures. The most pressing measure was the CISA Act which was intended to provide a legal basis for altering the rights of subordinate bondholders. The CISA Act was also essential to enable the further urgent recapitalisation of AIB on the 23rd December 2010.

CATEGORY C5(b)

**THE LIQUIDATION OF IRISH BANKING RESOLUTION CORPORATION ("IBRC"),
THE PROMISSORY NOTES, RE-FINANCING AND THE RELATIONSHIPS WITH
THE ECB.**

57. I was no longer in office when these events took place.

CATEGORY C7(a)

OPTIONS FOR BURDEN-SHARING DURING THE PERIOD 2008 - 2013

58. This category raises some issues covered by my obligation of confidentiality. I can say however that the CISA Act provides for a form of burden-sharing, and that there was no fundamental legal or constitutional impediment to introducing legislative measures to provide for further burden-sharing.

CATEGORY C7(b)

**ROLE OF THE EUROZONE AND INTERNATIONAL PARTNERS IN THIS
DECISION.**

59. See response to the preceding category.

CATEGORY R1(a)

APPROPRIATENESS OF THE REGULATORY REGIME

60. Significant lessons have been learned from the financial and sovereign debt crises and undoubtedly the regulatory regime governing credit institutions in Ireland and indeed elsewhere has been changed to reflect those lessons. These changes included the enactment of the Central Bank Reform Act 2010 which created a single fully integrated Central Bank of Ireland Commission.

61. Many countries did not have bank resolution regimes at the start of the financial crisis. By way of example, Denmark introduced resolution legislation in October 2008. The United Kingdom introduced its Banking Act on 12th February 2009. Prior to that the United Kingdom did not have a permanent statutory regime for dealing with failing banks but the Banking (Special Provisions Act) 2008 provided limited resolution powers enabling the UK Government to nationalise high street banks in an emergency and to make provision for the subsequent transfer of a nationalised bank to a buyer. The 2008 legislation was passed as a direct response to the Northern Rock crisis. Germany introduced its Bank Restructuring legislation on 14th December 2010 and it entered into force on 1st January 2011. Ireland introduced the CISA Act on 21st December 2010. Spain adopted laws in August 2012 paving the way for a state owned bank to help clean up the country's banking sector and providing for a framework to wind down failing banks. On 18th July 2013 France adopted Law No. 2013-672 providing for the separation and regulation of banking activities and for various resolution powers.

62. It should be borne in mind that resolution regimes can take various forms including providing for nationalisation, bridge banks, special management and burden-sharing.

63. The crises have disclosed significant deficiencies in the European legal order relating to the issue of financial stability which have only been addressed in recent times.

64. From the outset there was a serious deficiency in the legal architecture of monetary union as provided for in the Maastricht Treaty. Under the European Monetary Union, monetary policy became the exclusive preserve of the European Central Bank (“ECB”) but responsibility for maintaining the stability of the national financial system remained exclusively within each Member State.
65. That division of responsibility at a European level, coupled with the absence of robust European legal structures and arrangements for addressing threats likely to give rise to a financial crisis, and for addressing the consequences of any such crisis ultimately created considerable difficulties. This was particularly so when it might have been foreseen that a financial crisis in one Member State had the potential for contagion across the systems of other Member States.
66. The absence of such European structures and arrangements magnified the difficulties faced by Member States and in particular smaller Member States in dealing with threats to their entire financial system, which were not confined to particular credit institutions.
67. European-wide structures not only provide for legal certainty but also minimise the risk of successful legal challenge to measures which are necessary for addressing the crisis. In addition, the existence of European-wide systems provide ex ante certainty to markets, creditors, and debtors, and provide pre-existing mechanisms to address potential sources of financial instability at an early stage. The existence of a European wide system also helps reduce the risk of unintended consequences from the exercise of resolution powers.
68. It should be noted that back in 2008 the response by European Institutions and Members States was slow. It was not until October 2010 that the Basel Committee on Banking Supervision issued a consultative document on burden sharing. This followed a “Round Table on Debt Write-Down as a Resolution Tool” conducted by the European Commission in September 2010.

69. The recent introduction of Directive 2014/59/EU (establishing a framework for the recovery and resolution of credit institutions and investment firms), (The Banking Recovery and Resolution Directive - "BRRD"); Regulation EU 806/2014 (establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a single resolution mechanism and a single resolution fund) ("SRM"); Council Regulation EU No. 1024/2013 (conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions) and Regulation EU 468/2014 of the European Central Bank (establishing the framework for cooperation within the single supervisory mechanism between the European Central Bank and national competent authorities and with national designated authorities) ("SSM"), go a very long way to remedying the significant deficiencies referred to above.

CATEGORY R4(a)

APPROPRIATENESS OF THE EXPERT ADVICE SOUGHT, QUALITY OF ANALYSIS OF THE ADVICE AND HOW EFFECTIVELY THIS ADVICE WAS USED.

70. I am not in a position to make any specific comments on the appropriateness of the expert advice sought and obtained by the Government in connection with matters of policy. On certain occasions this expert advice (or extracts therefrom) would be furnished to the AGO in conjunction with a request for legal advice or legislation. However no input from the AGO was required in relation to any such expert advice which was merely furnished as part of the Department of Finance's instructions seeking legal advice.

CATEGORY R4(c)

APPROPRIATENESS AND CONSIDERATION OF THE RESPONSE TO CONTRARIAN VIEWS (INTERNAL AND EXTERNAL).

71. This category appears to relate to policy matters which were outside my area of responsibility. Were they matters for which I had responsibility, they would also give rise to issues of client confidentiality. However, I can say that in those

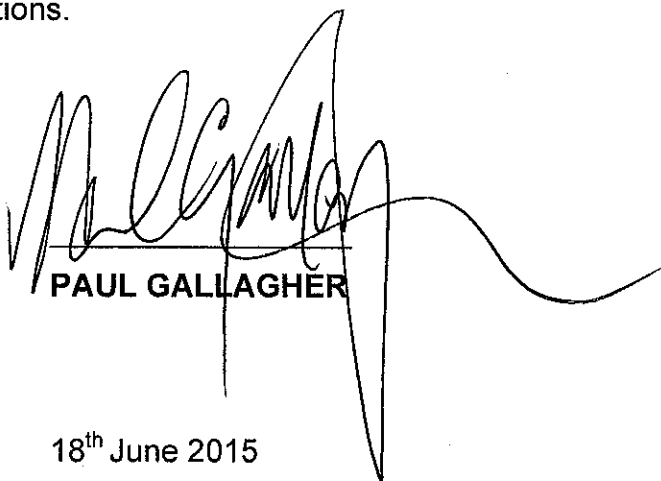
matters in which I had an involvement, I saw no evidence of the dismissal of contrarian views.

CATEGORY R5(b)

APPROPRIATENESS OF ADVICE FROM THE DEPARTMENT OF FINANCE TO THE GOVERNMENT AND THE USE THEREOF BY THE GOVERNMENT.

72. It would not be appropriate for me to comment on policy issues addressed by the Department of Finance in its advice to its Minister and to the Government or on the Government's use of such advice. During this period the AGO had very significant interaction with the Department of Finance in relation to the highly technical legal issues which arose in connection with the Department of Finance's areas of responsibility. I can confirm that throughout the period all necessary information and assistance was, so far as I was aware, provided to the AGO by the Department of Finance. Insofar as I was concerned, the professionalism, cooperation, efficiency and dedication of so many officials in the Department of Finance, so far as it related to such matters, were of a very high standard. In that regard it is important to record also that the lawyers and so many other people in the AGO and Chief State Solicitor's Office performed in a similar fashion and provided extraordinary support to me in the discharge of my functions.

SIGNED:



PAUL GALLAGHER

DATE: 18th June 2015