Fiscal Treaty, ESM Treaty and the EU Treaties

The Fiscal Treaty and the European Stability Mechanism (ESM) Treaty were described in the May 2012 issue of EU Supplement.

Fiscal Treaty

The referendum on the Fiscal Treaty has been passed. The Government now has the power to ratify this Treaty and is expected to do so before 1 January 2013. The Treaty will come into effect when at least 12 euro area countries ratify it.

If the Treaty comes into effect, Ireland will then be obliged to introduce the legislation on fiscal stability that is required by it. The Government has published the general scheme of a Fiscal Stability Bill which outlines how it is proposed to implement the Treaty in Irish law. This proposed legislation is not expected to come before the Oireachtas until after the Fiscal Treaty comes into effect.

European Stability Mechanism (ESM) Treaty

The European Stability Mechanism Bill 2012 provides for Ireland to participate in the European Stability Mechanism (ESM). Among other things, it gives the Minister for Finance the power to make payments to the ESM as set out in the ESM Treaty. The ESM Treaty is expected to be ratified and the ESM established by July 2012.

Change to EU treaties

The European Council has agreed a change to the EU treaties to facilitate the setting up of the ESM. (There is legal disagreement as to whether or not this change is required to enable the ESM to be established.) This agreement is recorded in Decision 2011/199/EU of 25 March 2011. The change involves an amendment to Article 136 of the Treaty on the Functioning of the EU (one of the two main treaties governing the EU) by introducing a new paragraph: "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial assistance under the mechanism will be made subject to strict conditionality."

This change is in the process of being ratified and cannot come into effect unless ratified by all 27 member states of the EU. It is expected to be ratified by 1 January 2013. Some changes to the EU treaties require a referendum in Ireland but the Government does not consider that this change requires a referendum. (The Government’s decision in this respect is the subject of a court challenge.) The Government proposes to bring this change into Irish law by means of the European Communities (Amendment) Bill 2012. The European Communities Act 1972 is the original legislation providing that EU law would have effect in Ireland. The 2012 Bill amends the 1972 Act to include the amendment to Article 136 as part of the governing treaties.
The 2012 Bill also proposes to bring a number of other EU treaty changes into Irish law.

**Number of MEPs**

It provides that a protocol on membership of the European Parliament becomes part of Irish law. This protocol was agreed in 2010 and came into force in December 2011. It makes some changes in the number of members of the European Parliament. The number of MEPs which Ireland elects remains unchanged.

**Accession of Croatia**

The Bill provides that the relevant parts of the treaty on the accession of Croatia to the EU will become part of Irish law when Ireland ratifies that treaty. The Accession Treaty was agreed in December 2011. Croatia is expected to join the EU on 1 July 2013.

**Lisbon Treaty and Irish concerns**

The Bill also provides for bringing into Irish law the protocol on Irish concerns on the Treaty of Lisbon which was agreed in May 2012.

In June 2009, the European Council made a decision setting out the effects of the Treaty of Lisbon on certain Irish laws and policies. These relate to:

- The right to life, family and education
- Taxation
- Security and defence

This decision is contained in an international treaty which came into effect at the same time as the Lisbon Treaty. It was agreed at the time that a protocol would be added to a later EU treaty to give full effect to this decision in EU law. (The main difference between an international treaty and a protocol to an EU treaty is that an international treaty, while binding on the parties who have signed it, does not have an enforcement mechanism. An EU treaty and any protocol to it becomes part of EU law and is enforceable by the Court of Justice of the EU in the same way as other EU laws.)

As part of the process of drawing up the Treaty of Accession for Croatia, such a protocol was agreed in May 2012. It is expected to be ratified by all member states by June 2013.

**Employment and social policy**

**Posted workers**

The Commission has published proposals for increased protection for workers who are temporarily posted abroad. The proposed Directive would not change the basic rules governing posted workers but does aim to improve the enforcement of their rights. The existing rules provide that posted workers are entitled to broadly the same rights as workers in the country to which they are posted. The proposed new Directive requires the provision of more information to the workers concerned and provides for greater co-operation between national authorities in enforcing the rules. Posted workers are most commonly used in the construction sector.

Web: [ec.europa.eu/social/posted-workers](http://ec.europa.eu/social/posted-workers)

**Justice and Home Affairs**

**Ireland opt-ins**

Ireland has decided to opt in to proposals for:

- A Directive on criminal sanctions for insider dealing and market manipulation
- A Regulation establishing the Justice Programme for the period 2014 to 2020
- A Regulation establishing the Asylum and Migration Fund
- A Regulation laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police co-operation, preventing and combating crime, and crisis management
- A Directive on the freezing and confiscation of proceeds of crime in the EU

Ireland has decided not to opt in to the Directive on standards for the qualification of third-country nationals or stateless people as being eligible for refugee status or for protection (Directive 2011/95/EU).

**Passenger name records (PNR)**

The Council has agreed a new EU-US Passenger Name Record (PNR) agreement which replaces the agreement in place since 2007. The 2007 agreement was renegotiated because of concerns about data protection and data security.

The Irish Government has decided to opt in to this Council decision. The aim of the agreement is to provide a legal framework for the transfer of PNR data by carriers operating passenger flights between the EU and the United States to the US Department of Homeland Security (DHS) and the subsequent use of that data by that department.

PNR data is information about passengers’ travel plans that is collected and held by airlines as part of their reservation systems. The agreement requires the airlines to provide some of the information they already collect to the US authorities for the purposes of combating terrorism and serious, transnational crime, for example, trafficking and drug smuggling.
The agreement outlines the rules on the retention of this data. The data must be used only for the purposes of the prevention, detection, investigation and prosecution of terrorist offences or transnational crime. The agreement provides that individuals may access their personal data and correct it if necessary.

The data may be used for up to 10 years to prevent and combat serious transnational crimes and up to 15 years in the case of terrorist offences. The agreement is to remain in force for seven years.

The EU currently also has agreements on the transfer and use of PNR with Australia and Canada.

**Data Protection**

The Commission has published proposals for changes to the data protection legislation. The EU rules on data protection date from 1995 (Directive 95/46/EC). There is a proposed Regulation setting out a general EU framework for data protection and a Directive on protecting personal data processed for the purposes of prevention, detection, investigation or prosecution of criminal offences and related judicial activities. The proposals are particularly concerned with online data.


**Fair trial rights**

The Directive on the defendants’ right to information during criminal proceedings is in effect. It applies in all member states of the EU. This requires that suspects in criminal cases must be informed of their rights in a language they understand. They must be given a Letter of Rights which sets out that the suspect, among other things, has the right:

- To remain silent
- To a lawyer
- To be informed of the charge
- To interpretation and translation in any language for those who do not understand the language of the proceedings
- To be brought promptly before a court following arrest
- To inform someone else about the arrest or detention

Web: ec.europa.eu/justice/criminal/criminal-rights/index_en.htm

**Consumer**

**Alternative dispute resolution**

The Council has agreed the proposed EU legislation on Alternative and Online Dispute Resolution (ADR/ODR). There is a proposed Directive on Alternative Dispute Resolution that aims to ensure that ADR mechanisms are available in all member states to deal with any contractual dispute between consumers and traders. There is also a proposed Regulation on Online Dispute Resolution that aims to establish an EU-wide online platform for the resolution of disputes between consumers and businesses.

**Discrimination in insurance**

The Commission has issued guidelines on the implementation of non-discrimination between men and women in insurance premiums. The Court of Justice of the EU has ruled that different premiums for men and women constitute sex discrimination – See EU Supplement, April 2011. This discrimination must end by 21 December 2012.


**Permitted health claims**

The Commission has approved a list of health claims which food producers are allowed to make. Food producers have until December 2012 to implement the new rules. This new Regulation implements Regulation (EC) 1924/2006 on nutrition and health claims made on foods. The European Food Safety Authority (EFSA) has conducted a scientific assessment of whether the claims made by producers could be substantiated. The Food Safety Authority of Ireland (FSAI) is responsible for implementing these rules in Ireland.

Web: ec.europa.eu/food/food/labellingnutrition/claims/index_en.htm

**Environment**

**Aarhus Convention**


Ireland is also ratifying two additions to the Convention. The Genetically Modified Organisms (GMO) Amendment to the Convention was agreed in 2005 and puts in place requirements for public participation in decisions concerning the deliberate release of genetically modified organisms.
The Protocol to the Aarhus Convention on Pollutant Release Transfer Registers (PRTR) requires the establishment of publicly accessible, national registers that contain information on a range of pollutants. The Environmental Protection Agency (EPA) is the competent authority in Ireland and in October 2011 it launched Ireland’s PRTR which is available at [prtr.ie](http://prtr.ie). This contains information about emissions from more than 300 licensed industrial facilities across the country.

### General

#### European Citizens’ Initiative

The European Citizens’ Initiative came into operation on 1 April 2012.

The Treaty of Lisbon provided for the introduction of a Citizens’ Initiative. Regulation (EU) No 211/2011 sets out the details of how it is to operate and Regulation 1179/2011 deals with the technical details for online registration. These Regulations have been brought into Irish law by SI 79/2012.

The Citizens’ Initiative allows at least one million EU citizens from a number of the member states to ask the Commission to bring forward proposals for legislation. The number of member states involved must be at least one-quarter (currently at least seven).

A Citizens’ Initiative may be organised by a citizens’ committee composed of at least seven citizens who are residents of at least seven different member states. They have one year to collect signatures and the Commission then has three months to examine the proposal and decide how to act on it.

Proposed initiatives must be registered on an online register made available by the Commission. Initiatives will not be registered if, for example, they involve proposals for legislation in areas where the EU has no competence or if they are manifestly contrary to the fundamental values of the EU.

In each of the member states, the minimum number of signatures required is calculated by multiplying the number of MEPs from that country by a factor of 750 – that means that Ireland needs 9,000 signatures. All of the signatures must be gathered within one year of the registration of the proposal and all of the signatories must be of voting age (this is 18 in all countries except Austria where it is 16). Signatures may be collected online or on paper. Each member state must certify the number of signatures and that the signatories are entitled to sign. In Ireland, the Department of the Environment, Community and Local Government has responsibility for this. In Ireland, all the signatories must be people who are on the electoral register with a right to vote in European Parliament elections or entitled to be on it. That means that citizens of any EU member state living in Ireland may be involved and contribute to the required Irish number.

If the required number of signatures is collected, the Commission will meet the organisers to discuss the issues and the organisers will have a public hearing at the European Parliament.

The Commission is not bound to act as a result of a Citizens’ Initiative. It does have to explain its reasons for acting or not acting.

There is no EU funding for a Citizens’ Initiative. Organisers of initiatives will be required to provide information about their sources of funding.

Web: [ec.europa.eu/citizens-initiative](http://ec.europa.eu/citizens-initiative)