

DÁIL ÉIREANN

AN ROGHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

SELECT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Déardaoin, 7 Iúil 2016

Thursday, 7 July 2016

The Select Committee met at 11 a.m.

MEMBERS PRESENT:

Deputy Peter Burke,	Deputy Eoghan Murphy (<i>Minister of State at the Department of Finance</i>),
Deputy Michael D'Arcy,	Deputy Paul Murphy,
Deputy Pearse Doherty,	Deputy Frank O'Rourke.*

* In the absence of Deputy Michael McGrath.

In attendance: Deputy Joan Burton.

DEPUTY JOHN MCGUINNESS IN THE CHAIR.

Single Resolution Board (Loan Facility Agreement) Bill 2016: Committee Stage

Chairman: This meeting has been convened for the purpose of consideration by the select committee of the Single Resolution Board (Loan Facility Agreement) Bill 2016 which was referred to it by order of the Dáil on 29 June. Apologies have been received from Deputy Michael McGrath and Deputy Frank O'Rourke has been formally nominated to attend in his place. I welcome the Minister of State, Deputy Eoghan Murphy. There are ten amendments to the Bill. It is intended that we consider the Bill until we conclude Committee Stage. Is that agreed? Agreed. A list of amendments which have been grouped for the purposes of debate has been circulated.

SECTION 1

Chairman: Amendments Nos. 1 to 3, inclusive, are related and will be discussed together.

Minister of State at the Department of Finance (Deputy Eoghan Murphy): I move amendment No. 1:

In page 3, line 27, to delete “this Act” and substitute “any of *sections 2 to 6*”.

These are minor formatting changes to ensure the consistency of the Bill with the market abuse amendment.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 2:

In page 3, line 28, to delete “this Act” and substitute “the section concerned”.

Amendment agreed to.

Deputy Eoghan Murphy: I move amendment No. 3:

In page 3, line 31, to delete “this Act” and substitute “the section concerned”.

Amendment agreed to.

Section 1, as amended, agreed to.

SECTION 2

Question proposed: “That section 2 stand part of the Bill.”

Deputy Pearse Doherty: My comments on section 2 will connect with amendment No. 5 to section 3 for the purpose of following the debate. The concern which I raised on Second Stage is that section 2 confers on the Minister the ability to do “[a]ll such things as are necessary or expedient to be done for the purposes of the State’s performing its functions under the Loan Facility Agreement”. Section 3 states very clearly that the funds paid from the Central Fund shall not exceed, in aggregate, a sum of €1.815 billion. There are, therefore, two sections referred to and I am not sure which is the most dominant. One states we cannot pay out more than €1.8 billion, while the other states the power to do everything the Minister needs to do to fulfil the agreement is conferred on him by virtue of section 2.

Regarding the agreement which is tagged onto the Bill in section 24.2 of the Schedule, it is stated clearly under the heading “Specific review” that “a specific review of the Key [where the €1.815 billion the State must or may pay is calculated] and the maximum aggregate amount made available by all Participating Member States under their respective loan facility agreements shall occur at the latest by the end of 2017, and in any case if a Member State not referred to in Schedule 2 ... becomes a Participating Member State”. A review of the Key is, therefore, built into the agreement. What we do not know is whether the Key will go up or down. It is likely that it will only go one way, given the common view that there will not be enough money if any bank gets into trouble. If the Key were to increase, however, section 2 would confer on the Minister, as is stated, the power to do “[a]ll such things as are necessary or expedient to be done for the purposes of the State’s performing its functions under the Loan Facility Agreement”? That is my concern about this section. The Minister of State will see that amendment No. 5 would introduce another safety mechanism to make sure any amendment to the Key would require Oireachtas approval.

Deputy Eoghan Murphy: I recall that the Deputy raised this issue during the debate on Second Stage. I have consulted officials to make sure the powers conferred on the Minister in section 2 are not so wide-ranging that they give him scope to increase the amount of €1.815 billion in the loan facility agreement. I can confirm again that there is nothing in section 2, even when linked with the review clause, to give the Minister the power to raise the amount specified in section 3. If there were to be any change to the figure of €1.815 billion, it would require the approval of the Oireachtas, probably in primary legislation. That safeguard is already provided in the legislation we are considering.

Deputy Paul Murphy: On reading it, I agree with Deputy Pearse Doherty that there seems to be a certain contradiction in that it is not clear from the legislation whether section 2 which refers to “all the powers necessary” and which is very expansive, or section 3 which refers to a maximum amount takes precedence. Even since we had the debate on Second Stage, things have moved on in terms of the potential for another European banking crisis, the situation in Italy and Matteo Renzi’s comments on Deutsche Bank which has \$75 trillion in derivatives and his arguing that other European banks have much bigger problems than their Italian counterparts. Obviously, we disagree with this legislation to start with, but the prospect of a further increase in the sum is quite a problem. Do the Minister of State and his experts not feel there is a need to amend this section, or to make section 3 stricter, to make it clear that the specified sum takes precedence over “all the powers necessary”? I am not sure if other members have a different reading of clause 24.2, but I think Deputy Pearse Doherty is right in reading it the way he has. I do not see how it can be disputed. If we sign up to an agreement with a specific clause which refers to a review - clearly, it is not specified that one cannot move upwards in the review - I do not see how we do not potentially have a problem. How are the Minister of State’s officials in the Department so sure there is not a potential problem?

Deputy Eoghan Murphy: I know that the Deputy also made this connection on Second Stage. It is not a question of a feeling; section 3 does trump section 2 in that the amount cannot be raised. If there were a need to increase the amount, in so far as the review is concerned or in any other situation, it would require Oireachtas approval and, more than likely, primary legislation. Deputy Pearse Doherty has tabled amendment No. 5 to a later section, which attempts to include an additional layer of protection or a fail-safe mechanism in the legislation. We can debate it now if it is appropriate, but I am not sure whether we can jump to a later amendment at this point. Section 3 trumps section 2 and we can look at the fail-safe mechanism proposed by the Deputy when we reach amendment No. 5 if that is convenient.

Deputy Pearse Doherty: We are focused on the quantum of money and how sections 2 and 3 interact. Obviously, there is a bigger issue which goes beyond the amount of money that could be paid by the State from the Central Fund. This relates to whether any of the other articles in the agreement could be reviewed or amended without prior notice or the consent of the Oireachtas. If we take the word of the Minister of State that section 3 trumps section 2 in terms of the quantum of money laid out, this was supported on Second Stage by the Oireachtas on the basis it is tied to an agreement. We have an agreement containing 22 articles and we know what the money is for. A number of the articles state that any part of the agreement can be reviewed with the consent of the other member states. Will the Minister of State clarify whether any review of the conditions of paying this money, which is what the agreement is, would require the consent of the Oireachtas? Is it just at the discretion of the Minister?

Deputy Eoghan Murphy: Is what at the discretion of the Minister?

Deputy Pearse Doherty: All of the articles of the agreement, for example, those on the payment of interest, fees, information undertakings, payment mechanisms and the calculations, can be changed with the consent of the member states and with the consent of the Minister at that point in time.

Deputy Eoghan Murphy: We probably should not underestimate the difficulty involved in changing any of this because it would require a change not just with regard to the single resolution board but also with each participating member states in the eurozone. Putting in place the Single Resolution Fund, notwithstanding the loan facility we are trying to agree today which is part of it but also separate to it, is an incredibly complex arrangement. With regard to the resolution waterfall, consider the various things that may or may not need to happen before even getting to the loan facility agreement coming into action. Much needs to happen and it is quite complex. Changing any of the terms is not foreseen. There is a review clause in the legislation because it is appropriate and prudent, but the complexity involved in changing any element of it would probably mean it is highly unlikely.

Deputy Pearse Doherty: It might be highly unlikely but we have seen dramatic changes. We even see what is happening in Italy, where there would be an undermining of what we are discussing if the authorities in that country bail out their banks as opposed to bailing them in, which is now commonly accepted as what would happen in Europe. All of this is in flux. There have been amendments and changes as issues have developed. The Oireachtas is being asked to consent to making available €1.8 billion of funds on the basis European leaders have now accepted what Sinn Féin has been saying from the outset, namely, that there should be a bail-in of bondholders in a process where a bank goes bust. We are not sure what would happen if European leaders, in their wisdom, decide, because of other circumstances such as the ECB turning off the tap whereby we would have a problem in the bond markets, to change the structure and the waterfall. This can be done with the consent of all of the other member states or parties to the agreement without any recourse to the Parliament, but we are on hook through this legislation for paying out €1.8 billion in respect of something that may not occur. We may not have the type of bail-in envisaged now, as the legislation is going through the Parliament. My question is what are the safety mechanisms. What recourse will the Oireachtas have?

Deputy Eoghan Murphy: The safety mechanism is the quantum of money. It would require the approval of the Oireachtas if the approximately €1.8 billion needed to be increased. An amendment could not be made to change the substance of what has been agreed in the loan facility agreement. This is mentioned in paragraph 21 of the agreement on amendments and waivers. It states none of the aforementioned amendments shall change the substance of the

agreement compared to the loan facility agreements entered into with other participating member states. If Italy wanted to take a particular course, it could not alter the resolution waterfall into which we and other eurozone members are entering with regard to the Single Resolution Fund. Neither would it alter the terms on which we will make the loan facility available to the Single Resolution Mechanism.

Deputy Paul Murphy: Paragraph 21 refers to this agreement, which is a draft agreement between Ireland and the Single Resolution Board. It states, “None of the aforementioned amendments shall change the substance of this Agreement compared to loan facility agreements entered into with other Participating Member States.” Ireland’s agreement could not be changed to something out of whack with the agreements relating to other member states but if the substance of it was changed in each agreement, I am not sure whether paragraph 21 would prevent that to which I refer. We are speaking about exceptional circumstances. However, we are operating in fairly exceptional circumstances.

Deputy Eoghan Murphy: To clarify, we are speaking about the backstop. It is the very last line, which is what the credit line would be, and no one can stop it. This loan facility is the last call which could possibly be made on the State. It is only a loan from the State which would be paid back by the banks. It is not even a call on the sovereign, either necessarily or directly. Nothing can be changed in so far as this legislation is concerned by another member state to stop what we are agreeing today, which is the loan facility being the backstop until such time as the fund comes into full effect in 2024 and the permanent backstop is agreed. Anything that might change the course of placing a charge on the State would come back to the Oireachtas for agreement. That still stands regardless.

Deputy Pearse Doherty: Does the Minister of State understand the concern we have about this? Setting aside the fact the quantum of money cannot increase, but with the agreement of the European partners who are signed up to the agreement the terms can change. They could change substantially with agreement at a meeting in Brussels or Frankfurt. All of the agreement upon which the legislation hinges could be altered dramatically. The quantum of money we are making available in respect of the backstop cannot be changed or increased, particularly in view of the Minister of State’s earlier undertakings, but the agreement which underpins it could be changed by consent of all the other parties. It is a concern that the Oireachtas is being asked to make available €1.8 billion on the basis of an agreement that can change without any approval of the Parliament.

Deputy Eoghan Murphy: The Deputy’s concern is about how the agreement on how the Single Resolution Mechanism or fund would be implemented in terms of the resolution waterfall could be changed. Is this the Deputy’s concern? This is about the loan facility, which is a temporary arrangement until the fund is in place.

Deputy Pearse Doherty: No, it is actually about the areas contained in the agreement itself, which can be changed as allowed for by Article 24. The conditions of utilisation could completely change. The interest could completely change. The repayments could completely change overnight, without any question coming back to the Dáil or Seanad. We have committed €1.8 billion on the basis of this.

Deputy Eoghan Murphy: The Minister would have a veto on any change. There would have to be complete agreement of all eurozone Ministers to any change that might happen, and whoever the Minister for Finance might be in three, four or six years’ time would be able to veto any decision which might have a negative impact on the State. The Minister would not be

able to enter into any decision that might incur an additional cost to the Exchequer without the approval of the Oireachtas. A change to the resolution waterfall which might change rates and incur an additional cost would not be able to be agreed.

Deputy Pearse Doherty: There would not be a net cost to the Exchequer. Parties like me would support the legislation because we have argued in favour of bailing in bondholders and a backstop. While we do not agree with this formulation, the ECB should provide a backstop and there should be a separation of sovereign debt. At least we are getting somewhere, but all of this could change without reverting to Parliament. Yes, the Minister will have a veto, but an opinion poll shows that only 24% of people support his party. What about the other 76%? The Minister does not necessarily represent all views. Given the amount of money involved, should any change to what has been agreed to by consensus between the Minister and the other member states not require Oireachtas approval? That is a basic principle. I will introduce an amendment on Report Stage to move matters along. If a change is minor or straightforward, a motion could be tabled and passed by the Houses, but if it is substantial, it should be debated. The principle we are being asked to endorse does not just concern the legislation but the legislation dealing with the agreement. If it changes, the Government's original decision could be altered dramatically also.

Chairman: Before the Minister of State answers, I wish to clarify Deputy Pearse Doherty's remarks. Is he asking whether the basic agreement can be altered because there are no guarantees within the legislation to prevent same?

Deputy Pearse Doherty: Yes, and there is no requirement for a change to be approved by the Houses.

Chairman: To revert to the Houses.

Deputy Eoghan Murphy: To be clear, we are discussing a loan facility that is being put in place as a temporary backstop to the Single Resolution Fund, SRF, which has already been agreed to and into which money is being transferred. Progressive mutualisation has begun. Nothing in the Bill grants the Minister power to change the terms of the SRF.

Deputy Pearse Doherty: We are dealing with section 2 which reads:

Minister may perform functions for purposes of Loan Facility Agreement

2. All such things as are necessary or expedient to be done for the purposes of the State's performing its functions under the Loan Facility Agreement may be done by the Minister and there is conferred, by virtue of this section, on the Minister all the powers necessary in that behalf.

The Minister of State is asking us to support this. As we can read the loan facility agreement, we can examine the 24 articles and determine whether the agreement is okay. However, the problem is that a clause in the Bill allows the loan facility agreement to be changed without any requirement for Dáil approval. There could be additions, deletions and amendments that would not require the approval of the Houses, yet the Oireachtas is giving the Minister the necessary power in law to implement all of this. That is a wide-ranging power.

Deputy Eoghan Murphy: That section of the Bill cannot change the substance of what is being entered into.

Deputy Pearse Doherty: Of course, it could.

Deputy Eoghan Murphy: No, it is not allowed.

Deputy Paul Murphy: It could if the agreement was changed with the agreement of other member states. It would require the consent of all of them. The substance would not be changed compared with loan facility agreements entered into with other participating member states. The point is not that a substantial change cannot be made to this provision but that it cannot be made unless it is also made by the other member states. This could be the entry point to the facility becoming something that it is not. I agree that it is hypothetical, but there would be no requirement to revert to the Houses, as we will have given the Minister the power to perform all of the functions.

Deputy Eoghan Murphy: It would be a decision made by the Government if agreement among the eurozone member states could be reached to make a substantive change to each of the agreements made by those states on the SRF, be it a change in respect of the resolution waterfall or something else. As the Government has a veto, the decision would fall to it.

Deputy Pearse Doherty: We are giving the Government a blank cheque.

Deputy Eoghan Murphy: It is not a blank cheque.

Deputy Pearse Doherty: Look at it----

Deputy Eoghan Murphy: Any change to the fund or the amount must be referred to the Oireachtas.

Deputy Paul Murphy: Only the amount.

Deputy Pearse Doherty: That is the problem.

Deputy Eoghan Murphy: I am sorry; it is not a blank cheque.

Deputy Pearse Doherty: Will the Minister of State let me finish?

Deputy Eoghan Murphy: I am sorry.

Deputy Pearse Doherty: The Minister of State got very defensive. It is a blank cheque in all matters, except the amount of money that we will make available to the facility. There are likely to be more problems in Europe in the future and people will consider how we should address them. One of the ways to do so would be by amending the loan facility agreement. The Government would not have to revert to Parliament because Parliament would already have conferred on the Minister in law all of the powers necessary to implement the loan facility agreement. It is a blank cheque because, although we can see what it says, we are introducing this Trojan Horse, in that the agreement can be changed at any time as long as all of the parties who signed up to it agree. That is okay if one believes the Minister's veto is robust enough or that he is fine, but he does not have a majority in the Dáil. Passing a provision that gives a large number of powers to the Minister to implement everything in the loan facility agreement is not problematic at this time, but it could be if other articles not debated by the Oireachtas were to be introduced.

I am conscious of the time, section 2 and the fact that we are nearing Report Stage, but I am signalling that I wish to table an amendment on this matter on Report Stage. I cannot see why

the Government would not support the idea of introducing amendments. It is hypothetical and may be unlikely to happen, as there would have to be consensus among all member states, but in the event of there being amendments to the loan facility agreement, they should revert to the Dáil so as to ensure the powers conferred under section 2 only relate to this agreement, not any future addition, amendment or deletion.

Deputy Eoghan Murphy: If the Deputy's concern is about protecting the bail-in element of the agreement and ensuring the principle is not undermined, it is imperative that we protect this part of the resolution waterfall, as it is important. The Deputy argued for it because of what had happened during the crisis. The complexity of putting the SRF agreement together across the eurozone member states should not be underestimated, nor should the difficulty of making a substantive change to any aspect of same. We have Government oversight via the Minister should there ever be a need to make a change. The loan facility is a temporary backstop until the fund is in place, after which time the loan facility will no longer be available.

Deputy Pearse Doherty: I will conclude on this point. The Minister of State has championed political reform previously and I am sure he still holds those views. Given all of the difficulties, why would he be opposed to any amendment to the loan facility agreement being laid before the Houses for its approval? That is democracy. That represents proper parliamentary oversight in the best way possible. If it is not a concern, why not allow for any amendment to the agreement to be approved?

Deputy Eoghan Murphy: It is democracy in terms of Oireachtas oversight, but democracy is also about vesting certain powers in the Minister of the day and giving the Government the authority to enter into agreements and, where necessary, change them on behalf of the State where it believes doing so is in the best interests of the people. If the Deputy intends to table an amendment on Report Stage, we can revert to this matter then.

Deputy Pearse Doherty: Okay.

Chairman: That is the communication to the Deputy.

Deputy Michael D'Arcy: In how many jurisdictions has this measure been passed? Has what Deputy Pearse Doherty is seeking been consented to elsewhere?

Deputy Eoghan Murphy: This is one of the last five or six countries to enter into the agreement. Various countries have provided for different forms of oversight of the agreement as a whole. Some have forgone the opportunity to provide for national oversight completely and opted for the commitment fee, whereby the fund would pay a standing amount of money each year. They have forgone the opportunity to provide for the national oversight we will introduce at a later stage in the Bill. There are different levels of implementation.

Deputy Michael D'Arcy: Is the Minister of State aware of any jurisdiction where the mechanism proposed by Deputy Pearse Doherty has been introduced?

Deputy Eoghan Murphy: Is the Deputy referring to this section?

Deputy Michael D'Arcy: I am referring to having changes to terms and conditions brought before the national parliament in any other jurisdiction.

Deputy Eoghan Murphy: I am not aware of any such arrangement in respect of this section. I am aware that other governments have forgone providing for the national oversight we

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are seeking in the legislation.

Deputy Michael D’Arcy: What I am trying to find out is whether any other jurisdiction has established the type of arrangement Deputy Pearse Doherty is requesting.

Deputy Eoghan Murphy: I am not aware of any such arrangement in respect of this section.

Deputy Pearse Doherty: Has any other jurisdiction conferred on its Minister for Finance all of the powers necessary to implement the loan agreement and the reviews and amendments, as provided for in this jurisdiction under section 2? These are expansive powers.

Deputy Eoghan Murphy: While I am not aware if that is the case, our reading of the section may be that it is not as expansive as the Deputy suggests.

Deputy Michael D’Arcy: It would be helpful if the Minister of State reverted to us on the matter on Report Stage.

Deputy Eoghan Murphy: That will not be a problem.

Question put and declared carried.

SECTION 3

Chairman: Amendments Nos. 4 and 5 are related and may be discussed together.

Deputy Pearse Doherty: I move amendment No. 4:

In page 4, line 7, to delete “Minister” and substitute “Oireachtas”.

The amendment also deals with the issue of whether ministerial or Oireachtas approval should be required. Section 3, as presented, provides that, on the approval of the Minister, payments up to a sum of €1.815 billion may be made from the Central Fund, as required. The amendment proposes that the Oireachtas must approve such payments. A payment from the Central Fund will be triggered when a bank or financial institution experiences difficulty. If something of this nature were to occur, the Oireachtas would be in session and debate the relevant issues. There is no reason, therefore, that it should not be asked to consent to making available a portion of the fund for the required purpose. The decision should be at the discretion of the Oireachtas rather than the Minister. This issue also raises the fundamental question as to who should have oversight and the final decision in these matters. I do not see any reason a provision requiring Oireachtas approval should be a problem, given the seriousness of the issue and the quantum of money involved.

Amendment No. 5 proposes to insert, between lines 11 and 12 on page 4, the following line: “(2) Notwithstanding the provision of *section 2*, any decision under the terms of the Loan Facility Agreement to vary the sum specified in *section 3(1)* shall be subject to a vote of the Oireachtas”. This flows from our discussion on section 2 and the clause in the agreement that provides that the Key, as it is described, will be reviewed at the end of next year. This could result in an increase in the Key, thus requiring a greater contribution from Ireland. While the Minister of State has indicated that section 3 trumps section 2, we have countless examples of legal opinion not being the best opinion or standing the test of time. In some ways, I am the product of wrong legal information being given to a previous Government on whether a by-election was required in County Donegal because I took the Government of the day to the High

Court on the issue and won my case. The purpose of the amendment is to provide an additional safeguard to ensure any additional sum of money beyond the figure provided will require a vote in the Houses of the Oireachtas.

Deputy Eoghan Murphy: I thank the Deputy for tabling the amendments. As they have been grouped together, I will speak, first, to amendment No. 5 because it flows directly from section 2. The Office of the Parliamentary Counsel does not believe the amendment would necessarily add any additional layer of protection to the legislation. Section 3 is clear that if the amount were to be increased by way of a review or in any other circumstance, another Act would be required. The Deputy has expressed concerns about Oireachtas oversight and interpretation. It is not considered good drafting to include the amendment as it would create an unnecessary complication to have to specify everything in legislation. However, if he were to press the amendment, the Government could accept it.

Deputy Pearse Doherty: Is the Minister of State referring to amendment No. 4?

Deputy Eoghan Murphy: I am referring to amendment No. 5, which provides the additional layer of protection the Deputy seeks. I reiterate that I am informed that the amendment is not necessary and would not make for good drafting from a legislative point of view. However, if the Deputy proposes to press it, the Government will be in a position to accept it.

On amendment No. 4, it is important to note that different countries have entered into this arrangement in different ways. What was offered was what is known as a commitment fee, whereby the State would be in receipt of an amount of money each year - I believe the sum is €1.8 billion - if it were to forgo national approval of the loan facility if it was ever called upon. We decided to forgo the commitment fee to have flexibility in terms of the repayment in tranches and to provide for national approval by the Minister and the Government, if required. This is a good approach which provides an extra layer of protection in the legislation and the Government seeks the support of the Oireachtas for this provision.

In so far as amendment No. 4 is concerned, it proposes to transfer responsibility from the Minister to the Oireachtas in circumstances where the resolution waterfall has been exhausted. This refers to circumstances in which one has a bail-in of at least 8% and one then moves to the mutualised national compartment and thereafter to the mutualised compartments of other states before reverting to our national compartment. At that point, the single resolution fund will attempt to borrow and that is the point at which one seeks the credit line. In that circumstance, it is necessary that certainty is given in the agreement to the other participating member states in respect of a quick turnaround for achieving agreement, in this case within four days. In that regard, it is appropriate to give this oversight power to the Minister and the Government.

Deputy Pearse Doherty: I welcome the decision of the Minister of State to accept amendment No. 5 which is, as I indicated, another fail-safe mechanism or safeguard which addresses my concerns about one element of section 2, namely, the sum of money involved.

Amendment No. 4 proposes to confer the power of decision making on the Oireachtas as opposed to the Minister. If I understood the Minister of State correctly, the need for a quick turnaround is the only argument in favour of conferring this power on the Minister as opposed to the Oireachtas.

Deputy Eoghan Murphy: That is not necessarily the case. I will correct my statement. The argument is that certainty is required such that a decision could be made when the loan was

called upon. Given the dire straits one would expect an institution to be in at that point, any risk of a delay could make matters worse and would risk contagion in other areas. The idea is that certainty will be provided by the Oireachtas giving approval in respect of oversight and that if we were to find ourselves in such circumstances again, however unlikely that may be, there would be certainty that a decision could be made within four days.

Deputy Pearse Doherty: Where a financial institution has gone bust to some degree or another, all of the steps set out as part of the resolution waterfall must be taken. It is not, therefore, the case that institution X would be in serious trouble and that we would need to trigger this mechanism within a couple of days. A number of steps have to be taken and the process relating to them will take quite some time. At that point, the Oireachtas will be debating these matters. If one of our banks goes bust, we will be back here discussing this issue. It will be the dominant issue of the day.

The section does not make it automatically certain that the Minister will make the funds available because it refers to “the approval of the Minister”. The section allows for the Minister not to approve, however unlikely that may be. The only issue in this context relates to whether the Minister can make a decision more quickly than the Houses of the Oireachtas. Of course he can because he does not have to consult individuals. Dictators can make decisions more quickly than democracies, although I am not suggesting that the Minister is a dictator. When a decision is left to one individual, of course he or she can make it more quickly. Let us remember that if the Houses approve this measure, they are approving of the concept that the mechanism would be triggered at a point in time. However, it is always important to vest the power in the Houses where possible, particularly given the quanta of money involved. This could be a single decision on a certain day that would provide €1.815 billion from the Central Fund to this mechanism, having due regard to what has happened elsewhere. Decisions like that are best made by the Houses or the Houses’ approval is best sought in respect of them. We have learned lessons from the promissory notes, in which respect power was granted through various items of legislation and the Minister ended up making similar commitments without Oireachtas approval. We know where that got us.

I do not agree with the idea that we cannot make a decision within four days. I do not know from where that timeframe is coming. Is it set down somewhere that a Minister must make a decision within four days? I do not know why the Houses cannot debate and pass a resolution in the same period. How long would it take? It would not require legislation. I presume that it would just be a motion.

Deputy Eoghan Murphy: To repeat that-----

Deputy Paul Murphy: May I intervene for a moment?

Chairman: The Minister of State is responding to Deputy Pearse Doherty. I will call Deputy Paul Murphy afterwards.

Deputy Eoghan Murphy: This is a loan facility that will be paid by the banks. It may never be drawn down or only drawn down in part. This is not a question of the Oireachtas giving approval now to agree to the bailing out of an institution using sovereign funds. It is an assumption to say that we will definitely be able to debate the failure of a bank as it is happening. As we both know, such failures can happen quickly. The point of having the bail-in provision at the beginning point of the resolution waterfall is to allow for it to happen quickly, for example, in a day or over the course of a weekend. There would need to be movement and the Govern-

ment could be called upon to make a part of the loan facility available. So as not to create doubt in the markets or risk for depositors, a decision on the 50%, which is what we have agreed to, would be made by the Minister within four days. The further amount would be provided in tranches in subsequent weeks. This is a layer of oversight that other countries do not have but for which we have decided to opt because we believe it to be important.

Deputy Paul Murphy: We support both amendments and are happy to see the Government accepting No. 5, which provides clarity on the position outlined by the Minister of State.

Regarding amendment No. 4, the word “certainty” gets to the heart of the matter. The Minister of State just made a point about not creating doubt in the markets. The difference between the proposal as it stands and as it would be if Deputy Pearse Doherty’s amendment were accepted is that the power would transfer from the Minister to the Oireachtas. The point is valid in that there is no certainty for the banks, full stop. There could be a new Government, for example, or the current Government may decide not to provide the money, which means that there would be no guarantee. The banks cannot just cash the cheque because the Minister must agree to provide it. However, it is clear - it is not implied, but is effectively said - that the problem is the extra uncertainty added by an element of democratic oversight in the Oireachtas and the need for a vote. I do not accept that timing is an issue. The danger is that this will happen in a time of major crisis, with a significant discussion in society about it and people potentially saying that they do not want to give €1.8 billion to bail out banks. Pressure will come on Deputies and there is the potential of the vote not passing. Fundamentally, is this not what is being said? Although it should be a basic matter for the Oireachtas to get to vote on transferring such a large amount of money effectively to bail out banks, the Government does not want to allow that out of fear that this democratic stage would not provide the markets with certainty and, therefore, it is easier to keep the decision in the hands of the Minister. The markets would be more confident in him transferring the money because they are less subject to democratic pressures, but is that not precisely the problem that means the amendment should be supported?

Deputy Michael D’Arcy: Before the Minister of State comments, I wish to add something.

Chairman: Is it on the same point?

Deputy Michael D’Arcy: Yes. The quantity of money that we are discussing is not the entire amount that we are committing. Our percentage would be the percentage that we were liable for within the fund. It should be clarified. Are we liable for 7% of the fund?

Deputy Eoghan Murphy: We are not liable for anything in the fund.

Deputy Michael D’Arcy: Sorry.

Deputy Eoghan Murphy: The banks take on that liability and are paying into it at the moment. Some 3.3% is the allocation key that our banking system pays into the fund. The loan facility amount, which is a temporary arrangement until the fund has been fully mutualised, is calculated in the same way.

Deputy Paul Murphy is right. This is about greater certainty. There is less certainty if a decision is left to the Oireachtas. The Oireachtas approving this power for the Minister now means that we will be able to protect the banking system should we ever get to the stage where we are calling for this backstop between now and 2024, which is unlikely but not impossible. This is about protecting depositors and people’s access to finance. One can imagine situations in which one is not able to convene the Oireachtas in the necessary time to get approval, should

the Minister be minded to give that approval. For whatever reason, people have been discussing the uncertain political climate in Ireland for the past two days. There was quite an amount of uncertainty after the recent election as to when the next election would be.

We are committed to the SRF because it is the best way of protecting taxpayers from banking problems. This loan facility agreement is an important backstop, but it is only a temporary measure until the European Stability Mechanism, ESM, is in place. We want to send the signal now that we are going to provide this loan facility if it meets the approval of the Minister. That is the national oversight that we have opted for and that other countries have not.

Deputy Paul Murphy: Would there be a problem with the Single Resolution Board, SRB, were we to change that? Has there been any indication from Europe that giving oversight to the Oireachtas as opposed to the Minister would be problematic?

Deputy Eoghan Murphy: No.

Chairman: How stands the amendment?

Deputy Pearse Doherty: I do not see from where the Minister of State is coming. There is no way that this would happen overnight. Unfortunately, we have been there and done that. The Minister of State and I sat on the banking inquiry. The Houses of the Oireachtas were convened and a guarantee was introduced basically overnight. Regardless of whether that needed to be done, it was a scenario in which, in the Government's view, it needed to be done immediately. In comparison, we are discussing something that is at the end of a process and only involves making money available to the board, which itself will only make money available to the banks. How could an institution even know within a day what call it would make on the SRB, given the different levels it would have to go through beforehand, for example, the waterfall?

Deputy Eoghan Murphy: This is about ensuring that if a decision is to be made, it can be made within four days.

Deputy Pearse Doherty: Why four days? The Minister of State has not explained that.

Deputy Eoghan Murphy: That is the period in the existing loan facility agreement. It is not necessarily arbitrary. It is the period required by the European Financial Stability Facility, EFSF.

Deputy Pearse Doherty: Is it four days from the request?

Deputy Eoghan Murphy: Exactly.

Deputy Pearse Doherty: The request will not be made on the day that the bank says that it is in trouble.

Deputy Eoghan Murphy: Delays that happened in the past were necessary because Oireachtas oversight was needed. We could be in a situation where we might not have the Oireachtas sitting for four weeks for whatever reason. If there was an election scenario it would be impossible to recall the Dáil because there would not be one. At the core of this is protecting taxpayers from any negative implications of a bank going into resolution. We need to be able to make a decision for only 50% of the funds in the first four days. Unless it is an extraordinary circumstance, 50% of the funds need to be made available in those four days. To be sure that we can do that or be in a situation to do that, we give national oversight to the Minister. Again, that has not happened in other countries.

Deputy Pearse Doherty: Okay, I signal that I want to withdraw the amendment, but I reserve the right to retable it on Report Stage. The Minister made a valid point on elections, when the Oireachtas does not sit, but beyond that I do not agree with the points made. I will table an amended version of this that will take into account times when the Oireachtas is not sitting when the decision can be triggered. Outside of elections, I cannot imagine circumstances where we could not recall the Dáil, regardless of where people are. If the banks are in trouble we will know about it beforehand. People would be recalled from their holidays or whatever, if the House is in recess. We will deal with the issue. I will withdraw the amendment and bring back an amended version.

Deputy Joan Burton: I want to ask about the context of current events, with the difficulties that a lot of Italian banks are experiencing and the difficulties we face in the context of Brexit. Will the Minister comment on where this kind of architecture fits into that?

Deputy Eoghan Murphy: I thank the Deputy for the question. I will not confuse the BRRD with the Single Resolution Mechanism, which is separate. The SRM rulebook is based on the BRRD rulebook. I need to be careful with my language. The Italians want to avoid the bail-in of certain entities. The motivations for that are not quite clear. It is causing problems over there. That will be different from the approach we want to take here relating to the SRM and the Single Resolution Fund, but we are continuing to monitor developments to see what impact this might have.

Deputy Joan Burton: Maybe some of the officials will be familiar with this, but last weekend a lot of people commented, understandably very negatively, on a certain group of countries meeting. The real purpose of that meeting was the difficulties in the Italian banks. In that context, a number of the other member states involved in that meeting, which were leading, founding member states, indicated that they were not willing to be terribly helpful to the proposals being put forward by the Italian Prime Minister.

Deputy Eoghan Murphy: Obviously, if those six nations wanted to meet and have discussions they were entitled to.

Deputy Joan Burton: I am not questioning that. It seemed a very exclusive kind of meeting, which a lot of people understandably criticised. One of the key purposes of the meeting was the enormous difficulties in a number of Italian banks. Unless that issue is addressed, it will have serious knock-on consequences for everybody else down the road. We are now in a more uncertain situation because of the Brexit vote in the UK. The difference between this and the bank guarantee which, except for ourselves, everybody else here would have voted for, is that this allows single banks to be addressed, rather than a blanket bank guarantee, as was done previously. Obviously, this would have to come before the Dáil to be discussed in the case of the failure of a significant bank at a significant level. Now we are entering into a period of uncertainty caused by Brexit, with a high-level meeting dealing with really difficult issues in the Italian banks.

Deputy Eoghan Murphy: There are some legacy issues in the Italian banks that we have been working very hard to address, such as non-performing loans. The kind of progress one would like to see in the Italian banking system has not been made. They are now looking at a proposal where no liabilities will be bailed in first. That is not the approach we want to take. We believe it is part of a resolution. Part of the Single Resolution Fund is that there would be at least 8% bail-in of certain liabilities before we moved to any kind of drawdown of funds from the national compartment to the mutualised element of those. That is what we are looking for

here. Obviously, one has to be cognisant of banking systems in other jurisdictions getting into difficulties and what they are trying to do to address that. In the context of Brexit there have been difficulties for Irish banks operating in the UK because of the amount of work they do there. That poses challenges to us, of course. The Minister for Finance, Deputy Noonan, would have spoken about this last week in relation to the work that the NTMA and the Central Bank had done to prepare for the outcome of Brexit and have been doing since in terms of monitoring developments.

Amendment, by leave, withdrawn.

Deputy Pearse Doherty: I move amendment No. 5:

In page 4, between lines 11 and 12, to insert the following:

“(2) Notwithstanding the provision of section 2, any decision under the terms of the Loan

Facility Agreement to vary the sum specified in section 3(1)* shall be subject to a vote of the Oireachtas.”.

Amendment agreed to.

Section 3, as amended, agreed to.

Sections 4 and 5 agreed to.

SECTION 6

Deputy Pearse Doherty: I move amendment No. 6:

In page 5, between lines 4 and 5, to insert the following:

“or

(c) within one month of any payment made under section 3.”.

This is a simple amendment. The legislation currently states that the Minister shall report within a year or at the end of each year on the payments made. This amendment would include the option of the Minister reporting within one month after making any payments, so if a payment or a loan was made to the Single Resolution Board, a report would be required in a period of one month. It is a straightforward amendment and I look for the Minister’s views relating to it.

Deputy Eoghan Murphy: This is a good amendment. I note that to be able to accept it there would need to be an administrative change to the text. The “or” between sections 6(2)(a) and 6(2)(b) would need to be removed.

Deputy Pearse Doherty: Subject to that provision, is the amendment agreed?

Deputy Eoghan Murphy: Yes.

Amendment agreed to.

NEW SECTION

Deputy Eoghan Murphy: I move amendment No. 7:

In page 5, between lines 4 and 5, to insert the following:

“Amendment of Companies Act 2014 with respect to market abuse matters

7. The Companies Act 2014 is amended—

(a) by the substitution of the following section for section 1365:

“1365.(1) In this Chapter—

‘Commission Implementing Directive’ means Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No. 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation;

‘CSMA Directive’ means Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive);

‘Irish market abuse law’ means—

(a) regulations for the time being in force under section 3 of the European Communities Act 1972 made for the purpose of giving—

(i) full effect to provisions of the Market Abuse Regulation, or

(ii) effect to provisions of the Commission Implementing Directive or the CSMA Directive,

or both,

(b) any other enactment (other than, save where the context otherwise admits, this Chapter) enacted for the purpose of giving—

(i) full effect to provisions referred to in paragraph (a)(i) of this definition, or

(ii) effect to provisions referred to in paragraph (a)(ii) of this definition,

or both,

(c) any measures directly applicable in the State in consequence of the Market Abuse Regulation, and

(d) any supplementary and consequential measures adopted for the time being by the State in respect of the Market Abuse Regulation or either of the foregoing Directives;

‘Market Abuse Regulation’ means Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC; ‘Minister’ means the Minister for Finance.

(2) A word or expression that is used in this Chapter and is also used in the Market Abuse Regulation, the Commission Implementing Directive or the CSMA Directive shall have, in this Chapter, the same meaning as it has in that Regulation or either of those Directives, unless—

(a) the contrary intention appears, or
(b) Irish market abuse law provides otherwise.”,

(b) by the deletion of sections 1366 and 1367,

(c) by the substitution of the following section for section 1368:

“**1368.**(1) In this section ‘offence created by Irish market abuse law’ means an offence created by regulations falling within paragraph (a) of the definition of ‘Irish market abuse law’ in section 1365(1).

(2) A person who is guilty of an offence created by Irish market abuse law (being an offence expressed by that law to be an offence to which this section applies) shall—

(a) without prejudice to any penalties provided by that law in respect of a summary conviction for the offence, and

(b) notwithstanding section 3(3) of the European Communities Act

1972,

be liable, on conviction on indictment, to a fine not exceeding
€10,000,000 or imprisonment for a term not exceeding 10 years or
both.”,

(d) in section 1369—

(i) in subsection (1) by the substitution of “Article 14 of the Market Abuse Regulation” for “a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 2, 3 or 4 of the 2003 Market Abuse Directive)”, and

(ii) in subsection (2) by the substitution of “Article 15 of the Market Abuse Regulation” for “a provision of Irish market abuse law (being a provision the purpose of which is expressed by that law to be for the implementation of Article 5 of the 2003 Market Abuse Directive)”,

(e) in section 1370—

(i) in subsection (5) by the substitution of “the Market Abuse Regulation, the Commission Implementing Directive or the CSMA Directive” for “the Market Abuse Directive or the supplemental Directives”, and

(ii) by the deletion of subsections (3) and (8),

(f) in section 1371(1) by the substitution of “Market Abuse Regulation” for “2003 Market Abuse Directive”, and

(g) in paragraph 5(1) of Schedule 6 by—

(i) the substitution of “section 1355 or” for “section 1355, 1367 or”,

(ii) the deletion of clause (b), and

(iii) the substitution of “section 1354 or” for “section 1354, 1366 or”.”.

I will lay out exactly what is happening here to be clear for the committee. I note that amendment No. 7 has been circulated to the committee. The Department of Finance transposed the 2014 European Union market abuse regulation and directive on 30 June, ahead of the 3 July deadline.

The EU’s market abuse regime has been extended and developed since the first directive in 2003 to take into account new technologies and market developments. The investigative and sanctioning powers of regulators have been reinforced, while persons reporting potential

infringements will be encouraged and protected. Insider dealing and market manipulation have been redefined in the market abuse regulation to, in effect, create new offences.

Prior to 30 June, Irish market abuse law punished market abuse crimes with fines of up to €10 million and imprisonment of up to ten years. The new criminal sanctions under the market abuse directive establish minimum rules for criminal sanctions for those offences and provide for a term of imprisonment of at least four years. However, under section 3(3)(b) of the European Communities Act 1972, a statutory instrument is inappropriate for the introduction of a new offence with fines of more than €500,000 and imprisonment over three years. To maintain the high tariffs, the Department was advised to amend section 136(5) of the Companies Act 2014 by changing the definitions from the 2003 market abuse directive to the 2014 market abuse directive via primary legislation. The amendment ensures that we comply with the new market abuse regulation and directive and will increase the penalty for market abuse up to €10 million and up to ten years imprisonment.

Amendment No. 7 amends section 136(5) to change the definitions in the Companies Act to account for developments in Irish market abuse law and to refer to the relevant EU regulations and directives. The deletion of sections 136(6) and 136(7) is due to their explicit referral to the 2003 market abuse directive. These provisions are no longer necessary due to the amendments to section 136(5). The amendments to section 136(8) ensure that offences under market abuse law are punished by fines of €10 million and imprisonment up to ten years. The amendment to section 136(9) relates to civil liability for breaches of market abuse law and points to the articles listing the offences in the market abuse Regulation No. 596/2014 EU. The amendment to section 137 continues the provision for supplementary rules to be made by the Central Bank which are published as its market abuse rules and the rules are based on Irish market abuse law. The amendment to Schedule 6 updates the wording to reflect the new market abuse regulation and directive.

Deputy Paul Murphy: I do not have any objection to the substance of the amendment. Procedurally, however, it is not best practice to shoehorn this into a completely unrelated Act. Why has it been decided to do it this way as opposed to introducing separate legislation?

Deputy Eoghan Murphy: It is not ideal, but we were up against a particular deadline. We were not aware that it needed to be primary legislation in the first instance and when that was brought to our attention, we felt we needed to work quickly so that there would be no potential period whereby the previous provisions applied, which involved far lower financial and imprisonment penalties. It was just to make sure there was no gap in the law as it stands in terms of transposing the directive.

Deputy Paul Murphy: When does it have to be completed?

Deputy Eoghan Murphy: The transposition date was 3 July. We need to get this into effect.

Deputy Joan Burton: Will it be ready then? Most other countries have brought it in. Why are we behind?

Deputy Eoghan Murphy: The transposition is done and we have the offence, but we want to bring the penalties up to this higher level. We have to do that as soon as possible. That is why, as Deputy Paul Murphy says, it is being shoehorned into this legislation which, of course, is not ideal. The important thing to achieve is to prevent there being a gap in the law.

Deputy Pearse Doherty: There is a gap at the moment. The penalties are €500,000 and three years as opposed to the €10 million.

Deputy Eoghan Murphy: To bring it up to the higher level is the intention.

Deputy Pearse Doherty: I support that and I agree with the points Deputy Paul Murphy has made. As I said on Second Stage, it is not the best way to do this. I am not sure why primary legislation was not drafted to deal with this but we are where we are and it needs to be introduced. There is a gap. I thank the Minister of State for the note on this. I have questions as to the advice the Minister received in relation to the transposition by way of statutory instrument to deal with this issue. Was it legal advice from the Attorney General? How did it materialise that this could not happen that way putting us, therefore, up against this deadline? I have raised concerns about important legislation, including the implementation of the mortgage credit directive by way of statutory instrument, which in my view warranted a full discussion. I am interested to know how decisions are made as to whether to draft a statutory instrument or a Bill. This is a bit of a mess. Some advice was given that was wrong. While I appreciate that we all make mistakes, we think that this is the way to do it. There is a mistake here which has forced us to put two pieces of unrelated legislation together. In the meantime, the penalties are at the lower level. Can the Minister of State tell the committee if any case is pending which might sneak in under the period where the penalties have reverted to the older, lesser ones?

Deputy Eoghan Murphy: I cannot speak to the advice the Minister was given directly at the time, but it came late in the drafting process. I am informed that it was around the uncertainty that might be there if a statutory instrument was used. That is why that was not done. We wanted to be certain we could impose what needed to be imposed. It is a large item of legislation involving complex interactions. That would present its own difficulties if we were coming down the road with primary legislation in this regard. This was suggested as the way to ensure that we were able to achieve this. I remember the Deputy made the point on Second Stage and elsewhere about how we bring legislation through the Dáil and the need to do so in an appropriate way. I take that point completely. This is not the ideal situation, but it is something that we felt we needed to do. We took this opportunity to do it.

Deputy Pearse Doherty: There is a wider issue here that goes beyond the Minister of State's remit. Advice was given to the Minister by someone. I am not sure if it was departmental officials or the Attorney General. The advice was that transposing by way of statutory instrument would have dealt with this issue. At a very late stage in the drafting process, it was discovered that it was not possible to do that or that it would not be robust enough. As such, we have scrambled to find a piece of legislation we could fit this into. Just before the last election, the Supreme Court ruled against the Government to strike down a statutory instrument on fisheries penalty points. The court said that could not be introduced by way of statutory instrument and needed to be done by way of primary legislation. In fairness, the Minister has now agreed to annul the statutory instrument. However, it seems that there is a default position to, where possible, transpose by way of statutory instrument. Is that a way to avoid parliamentary scrutiny or is there a wider issue with difficulties in finding slots to bring legislation forward? The mortgage credit directive should have been transposed by way of primary legislation but it has been brought in by way of statutory instrument. There seems to be a default approach to transposition by way of statutory instrument. If the Minister of State could speak to the last point I raised, are there any cases which could sneak in during this period and be addressed, therefore, under the lesser penalties?

Deputy Eoghan Murphy: The use of a statutory instrument is not an attempt to avoid

proper scrutiny by Parliament. It is just that in certain circumstances it is the preferred route. In so far as what happened in terms of the interactions in drafting where the statutory instrument was seen to be the more efficient route and that advice changed and at what stage, I would have to provide the Deputy with further information at a later date. I am sorry but I do not have it to hand. Given the political reality and the timing situation, we needed to use a Bill that was coming through and which was, of itself, also largely technical in nature in order to get this done efficiently. However, I agree with Deputies Pearse Doherty and Paul Murphy about the best way to bring legislation through - primary legislation - and trying to achieve that in every circumstances.

Deputy Pearse Doherty: I am going to ask this question for the third time, which makes me suspicious. I appreciate the comments the Minister of State made and his provision of the note. Are the Minister of State or his officials aware of any pending cases which may come under the lesser penalties as opposed to the penalties that would be incurred under this legislation?

Deputy Eoghan Murphy: There are none of which I am aware. I can double check that for the Deputy.

Deputy Pearse Doherty: I appreciate that.

Deputy Joan Burton: I want to ask about the section dealing with the penalties. The penalty of €10 million is very small for the size of some of the entities involved that have been guilty of market abuse. Irish courts are not going to sentence anybody to ten years in respect of a market abuse offence. I am not aware that there have ever been comparable convictions in Ireland which resulted in prison sentences and certainly not of that length. Given the fines that now apply in the US, the UK and quite a lot of continental countries, is €10 million not a very small amount? I know it is big in terms of small domestic businesses, but should there not be a percentage element to give significant variation to reflect the size of the entity which might be guilty of market abuse or the size of the entity for which the individual may be working?

Deputy Eoghan Murphy: I appreciate the Deputy's view that €10 million might be low, but actually it is higher than the amount being implemented in other EU countries. We can go higher if it is an administrative sanction. In such an instance it can be as high as €15 million, or 15% of the total annual turnover of the legal person according to the last available accounts it provided approved by the management body. This is higher than €10 million, and 15% could be higher still. The questions of whether €10 million is the appropriate amount, whether ten years is an appropriate term or whether this term would ever even be invoked are worth pursuing as a discussion. We have gone with €10 million, which is a higher figure than in other EU countries, and €15 million or 15% will apply if it is an administrative section.

Deputy Joan Burton: Can we express the 15% specifically?

Deputy Eoghan Murphy: The 15% is for the administrative sanction of a legal person. It is stated specifically in section 41(1)(l) of SI 349 of 2016 on the European Union market abuse regulations of 2016. Section 41(1)(l) states:

subject to Regulation 47(2), where the assessee is a legal person, a direction to pay to the Bank a monetary penalty not exceeding—

(i) in the case of a contravention of Article 14 or 15 of the Market Abuse Regulation, €15,000,000 or 15 per cent of the total annual turnover of the legal person according to the last available accounts approved by the management body

It is already there in writing in the statutory instrument we have.

Deputy Joan Burton: Why would we not reintroduce it in this legislation?

Deputy Eoghan Murphy: This is for an administrative sanction covered by the statutory instrument whereas the Bill is for criminal sanctions.

Deputy Joan Burton: Post-Brexit we are moving into a different era and market regulation in Ireland is much softer in practice than in most countries. We have very little prosecution of white collar crime in this country. I would appreciate if the Minister of State would send a note to me, and on Report Stage I will certainly consider that it should be stated explicitly. After all, we will be trying to compete with mobile investments which may leave the City of London. It is very important that our regulation should be as tough as that of anyone else. It should be a percentage and not a fixed amount, and this should be specifically stated.

Deputy Eoghan Murphy: I will make the information available on whether it is possible to bring these elements into the criminal sanctions.

Amendment agreed to.

Chairman: Amendment No. 8 is out of order as it is not relevant to the provisions of the Bill.

Deputy Pearse Doherty: May I speak to the amendment for a minute? I appreciate the letter the Chairman gave me on this, and I am familiar with the practice that while it is the Chairman who signs the letter it is usually not the chairperson who makes the ruling. I met the Clerk of the Dáil on other interpretations of this. It is deeply frustrating for Members who have a role in financial matters. The idea the amendment has been ruled out of order as it is not relevant to the provisions of the Bill is absolutely ludicrous. I question how the ruling has been made. The legislation is about the capitalisation of financial institutions. This is what the primary legislation is about.

We have just introduced an amendment to the Companies Act, which we have all, including the Minister of State, acknowledged is unrelated to this legislation. The Minister mentioned on Second Stage that he was going to bring forward that amendment. On Second Stage I, the Fianna Fáil spokesperson and, I am sure, others including the Minister of State, all raised the issue of retrospective recapitalisation, which is central to the legislation. Commencement orders are central to any legislation, but a commencement order tied to the issue of retrospective recapitalisation has been ruled out of order. Despite the substance of whether it should be in or not, the issue should be allowed to be debated. The ruling is completely out of order and I ask the Chair, who has signed the letter, to interrogate how such a ruling was made. It is frustrating the work of the committee.

I agree we must facilitate the Government with regard to the amendment to the Companies Act, but that is the amendment which should have been out of order. This amendment is completely in order with the provisions of the Bill. Commencement orders are included in many pieces of legislation and they are standard practice. My amendment was to introduce a commencement order and people could have argued whether we should or should not have one. The commencement order was tied to the Minister reporting on the retrospective recapitalisation of our banks. The Bill as it was initiated originally is about bailing out banks and the issue of their capitalisation through this fund. It is not acceptable.

Chairman: I allowed Deputy Doherty to explain the position, which is not usual, because the amendment is out of order, but I accept his request that we get further information, which is what he requires, and that we interrogate the decision, as he put it. As of now the amendment is ruled out of order.

Deputy Pearse Doherty: I appreciate that. I ask that the interrogation happen prior to the deadline for tabling amendments on Report Stage.

Chairman: I am not good at interrogation but I will try.

Deputy Pearse Doherty: I have seen the Chairman in action and I think he is quite good at it.

Deputy Eoghan Murphy: If I could-----

Chairman: We do not want to debate this.

Deputy Eoghan Murphy: I will not debate it. Obviously the ruling on whether or not the amendment was out of order was not a decision for us to take. I am curious about what the Deputy means by a report. The Minister has already put on record in reply to a parliamentary question his decision this regard. Is the Deputy seeking something further beyond the reply to the parliamentary question?

Deputy Pearse Doherty: Yes. A three line answer from a Minister to state he will not go ahead with retrospective recapitalisation is not sufficient. We need a report to be laid before the Houses of the Oireachtas as to the options on the assets we hold in our financial institutions and why we have closed down one of the options available to us. We had countless debates, and rightly so, on the sale of our shares in Aer Lingus, which were a tiny fraction comparable to the assets we hold in the banks. People no longer view the banks as assets, they see them as liabilities, but they are still assets. However, it has just been stated in reply to a parliamentary question that we will not go down the road of one of the options available to us to get some or all of our money back because it has never been tested. This would require the Minister to lay a report and state the information in a detailed and considered way. In my view the finance committee should discuss all of the options and it should not just be left to the Minister to state we will not go ahead with this and that we might sell shares in the market at a future time.

Chairman: We will try to provide Deputy Doherty with the information he requires on the amendment.

Amendment No. 8 not moved.

SECTION 7

Question proposed: "That section 7 stand part of the Bill."

Deputy Pearse Doherty: May I refer to section 6? On section 6, with regard to the report on the loans made available and the money coming back from the single resolution board, I am interested to know how the funds that will be made available by the State to the board will interact with the fiscal rules. It will not be dealt with as expenditure so it will not impact on the expenditure benchmark, because it is a loan I assume. It will impact on our debt to GDP ratio with regard to the rules on reducing the ratio. I would like to hear how the outworking of all of this would impact on the fiscal rules. If, on a given day, we had to make available €1.815 billion how could it potentially impact on our deficit and the rules on deficit reduction? While

it would not impact on the structural deficit, it is interesting to note that other issues that have not been identified could become a major concern if the loan mechanism were ever triggered.

Deputy Eoghan Murphy: I reiterate that this is a loan. Judging from the Second Stage contributions of some Deputies, albeit not Deputy Pearse Doherty, there may have been some confusion in this regard. This is a loan which would be repaid with interest. In so far as that is concerned, it would not impact on the deficit or the expenditure benchmark.

Deputy Pearse Doherty: It would be the cheapest bailout.

Deputy Eoghan Murphy: It would be treated as a loan to the fund to be repaid to us with interest within two years. The interest would depend on market rates at the time. We would recoup the money that way. The expenditure benchmark is calculated over a ten-year period, which runs from five years previous to the current year to four years after the end of the current year. The loan would be repaid with interest within two years and, as such, would not figure in the expenditure benchmark rule or impact on the deficit.

Deputy Pearse Doherty: In the year the loan is triggered, would it impact on the requirement to reduce the debt to GDP ratio by a certain percentage each year?

Deputy Eoghan Murphy: I do not believe it would impact on the debt to GDP ratio and I do not see how it could impact on it.

Deputy Michael D'Arcy: It would depend on the way in which EUROSTAT calculated the debt to GDP ratio.

Deputy Eoghan Murphy: It would also depend on from where the funds being made available for the loan were allocated.

Deputy Pearse Doherty: That is my point. The country could increase its debt to make the loan.

Deputy Eoghan Murphy: That would not be the case if the loan was classified as an asset, in other words, if it was classified as a loan on which repayments were being made with interest.

Deputy Michael D'Arcy: It would depend on how EUROSTAT treated the funds.

Deputy Eoghan Murphy: Again, it would depend on the amount and way in which the loan was made available, including from where the allocation has been made.

Deputy Michael D'Arcy: If a loan were required, would it become part of the national debt and thus give rise to the issue of the EUROSTAT calculations?

Deputy Eoghan Murphy: As Deputy D'Arcy states, it is an issue of classification in so far as how the loan would be classified on the State's balance sheet. Would it be classified as a debt or an asset, depending on from which stream the money comes? Ideally, one would not want to take it on to the debt position or stock of debt of the State. Again, we are discussing a scenario in which things have got pretty bad for at least one entity and it has entered a resolution process. One would hope that no further problems would arise in the wider economy, the eurozone or anywhere else. However, if one had, for example, the cash on balance that the National Treasury Management Agency, NTMA, has available to it and the NTMA were to make the loan facility available, the debt stockpile would not be affected.

Deputy Paul Murphy: The key question is whether the loan would be classified as an asset in the sense that where the money comes from would have an effect. Will the Minister of State find out in advance of Report Stage whether such a loan would be classified as an asset?

Deputy Eoghan Murphy: I will certainly be able to speak to that issue on Report Stage. It could be still classified potentially as a loan from the NTMA without having any effect on our debt balance because the agency has cash reserves.

Deputy Michael D’Arcy: Correct.

Deputy Eoghan Murphy: It would depend again on the circumstances but I will be able to speak to the classification on Report Stage if that helps clarify the matter.

Deputy Pearse Doherty: The NTMA may not have any cash reserves if the bank that goes bust and triggers the loan mechanism is in Ireland.

Deputy Eoghan Murphy: That is precisely the issue. Given that we are discussing hypothetical and extreme cases, it is difficult to answer the Deputy’s specific questions.

Deputy Pearse Doherty: I did not expect all my questions to be answered today. However, I would like a note on how a loan could potentially interact with the various fiscal rules.

Chairman: I ask the Minister of State to provide the committee with a written note.

Deputy Eoghan Murphy: That will not be a problem.

Question put and agreed to.

SECTION 8

Deputy Eoghan Murphy: I move amendment No. 9:

In page 5, lines 9 and 10, to delete “Single Resolution Board (Loan Facility Agreement) Act 2016” and substitute “Finance (Certain European Union and Intergovernmental Obligations) Act 2016”.

Amendment agreed to.

Section 8, as amended, agreed to.

SCHEDULE

Question proposed: “That the Schedule be the Schedule to the Bill.”

Deputy Paul Murphy: The Schedule includes the agreement. Is that correct?

Chairman: Yes.

Deputy Paul Murphy: I oppose it.

Question put and declared carried.

TITLE

Deputy Eoghan Murphy: I move amendment No. 10:

MESSAGE TO DÁIL

In page 3, to delete lines 6 to 14 and substitute the following:

“An Act to—

(a) make provision in relation to an agreement that is to be entered into between the Single Resolution Board and the State concerning the lending of sums by the State to the Single Resolution Board in circumstances where, after disposal of the latter’s funds in the manner set out in Article 5(1) of the Agreement on the Transfer and Mutualisation of Contributions to the Single Resolution Fund done at Brussels on 21 May 2014, such disposal is not sufficient to meet the costs of a resolution action referred to in that Article;

(b) enable, for the foregoing purpose, the making of payments from the Central Fund or the growing produce of that Fund of sums, not exceeding, in the aggregate, a certain amount, to that Board and to provide for related matters;

(c) amend Chapter 2 of Part 23 of the Companies Act 2014 for the purpose of implementing certain European Union law on market abuse and, in particular, Directive 2014/57/EU of 16 April 2014;

(d) provide for related matters.”.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

Chairman: I thank the Minister of State and his officials for their attendance.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Single Resolution Board (Loan Facility Agreement) Bill 2016 and has made amendments thereto.

The select committee adjourned at 12.30 p.m. *sine die*.