

THE SUPREME COURT

Record No.339/2012

BETWEEN

THOMAS PRINGLE

Plaintiff/Appellant

and

THE GOVERNMENT OF IRELAND,

IRELAND AND THE ATTORNEY GENERAL

Defendants/Respondents

Reference by the Supreme Court to the Court of Justice of the question of the validity of European Council Decision 2011/199/EU and the question of the entitlement of a Member State to enter into an international agreement such as the Treaty establishing the European Stability Mechanism

The Supreme Court has decided to refer to the Court of Justice pursuant to Article 267 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”) the question of the validity of European Council Decision 2011/199/EU of 25th March 2011 (hereinafter the “European Council Decision”) and the question of whether Ireland, by entering into and ratifying the Treaty establishing the European Stability Mechanism done at Brussels on 2nd February 2012 (hereinafter “the ESM Treaty”), would undertake obligations incompatible with the Union Treaties.

I. The Proceedings

The plaintiff, the appellant in the appeal pending before the Supreme Court, (hereinafter “the appellant”) is a citizen of Ireland and a member of Dáil Éireann, one of the Houses of the Oireachtas, the national parliament.

The appellant opposes participation by Ireland in the ESM Treaty. He claims that that Treaty would transfer to a new international institution sovereign monetary powers and powers of monetary policy of the State and any ratification would be unlawful and unconstitutional in the absence of approval of the people in a referendum pursuant to Article 46 of the Constitution.

The Issues before the National Court

By reason of his opposition to the ESM Treaty, the appellant on 13th April 2012 commenced an action in the High Court against the Government of Ireland, Ireland and the Attorney General. In that action the appellant claims:

1. that participation by the Government on behalf of the State in the adoption and proposed ratification of the ESM Treaty is contrary to the Constitution of Ireland and involves a delegation of the sovereignty of the State and an excessive exercise by the Government of its executive powers in conducting the external relations of the State ("the sovereignty claim");
2. that the legislative measure by which effect is sought to be given to the ESM Treaty in Ireland (the European Stability Mechanism Act, 2012) involves a constitutionally impermissible transfer of power from the national parliament to the Minister for Finance ("the power transfer claim").
3. that by adopting the ESM Treaty, Ireland would undertake obligations which would be in contravention of provisions of the Treaty on European Union (hereinafter “TEU”) and the TFEU concerning Economic and Monetary policy and would directly encroach on the

exclusive competences of the Union in the matter of the euro and related policies ("the ESM Treaty claim");

4. That the European Council Decision:
 - a. Was not lawfully adopted pursuant to the simplified revision procedures provided by Article 48(6) TEU because it entails an alteration of the competences of the Union contrary to the third paragraph of Article 48(6) TEU;
 - b. Is inconsistent with provisions of the Treaties concerning economic and monetary union and general principles of the law of the European Union, in particular the principle of legal certainty ("the European Council Decision claim").
5. orders restraining the Government from ratifying the ESM Treaty pending the finalisation of these proceedings ("the injunction claim").

This reference concerns the third and fourth of the above claims.

It should also be noted that the appellant further argues that in the event that participation in the ESM Treaty would amount to a breach of obligations under the Union Treaties, an independent breach of the Irish Constitution would occur.

II. The European Council Decision

Article 48(6) TFEU, under the heading, *simplified revision procedures*, provides as follows:

6. The Government of any Member State, the European Parliament or the Commission may submit to the European Council proposals for revising all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union relating to the internal policies and action of the Union.

The European Council may adopt a decision amending all or part of the provisions of Part Three of the Treaty on the Functioning of the European Union. The European Council shall act by unanimity after consulting the

European Parliament and the Commission, and the European Central Bank in the case of institutional changes in the monetary area. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The decision referred to in the second subparagraph shall not increase the competences conferred on the Union in the Treaties.

Article 136 TFEU provides in its version prior to the amendment proposed by the European Council Decision:

- “1. In order to ensure the proper functioning of economic and monetary union, and in accordance with the relevant provisions of the Treaties, the Council shall, in accordance with the relevant procedure from among those referred to in Articles 121 and 126, with the exception of the procedure set out in Article 126(14), adopt measures specific to those Member States whose currency is the euro:
 - (a) to strengthen the coordination and surveillance of their budgetary discipline;
 - (b) to set out economic policy guidelines for them, while ensuring that they are compatible with those adopted for the whole of the Union and are kept under surveillance.
2. For those measures set out in paragraph 1, only members of the Council representing Member States whose currency is the euro shall take part in the vote.

A qualified majority of the said members shall be defined in accordance with Article 238(3)(a).”

The European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro recites that at “the meeting of the European Council of 28 and 29 October 2010, the Heads of State or Government agreed on the need for Member States to establish a permanent crisis

mechanism to safeguard the financial stability of the euro area as a whole and invited the President of the European Council to undertake consultations with the members of the European Council on a limited treaty change required to that effect.”

The European Council Decision also recites the proposal of the Belgian Government and the opinions of the European Parliament, the Commission and the European Central Bank and states that the amendment does not increase the competences conferred on the Union in the Treaties.

The European Council Decision provides, at Article 1, that the following paragraph is to be added to Article 136 TFEU, namely:

"3. 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."

The European Council Decision provides, finally, at Article 2:

“Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the approval of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on 1 January 2013, provided that all the notifications referred to in the first paragraph have been received, or, failing that, on the first day of the month following receipt of the last of the notifications referred to in the first paragraph.”

The European Council Decision was published in the Official Journal of the European Union on 6th April 2011.

Ireland has, by passing the European Communities (Amendment) Act 2012, enacted into law on the 3rd day of July 2012, commenced the process of giving approval to the European Council Decision. That Act was passed following the hearing of the present proceedings in the High Court. The Act will come into operation on such day or days as the Minister for Foreign Affairs and Trade may appoint in accordance with

section 2(3). The appellant, by an amendment to his statement of claim, seeks a declaration that that Act is unconstitutional.

III The proceedings before the national courts to date

The case was heard over seven days in the High Court by Laffoy J, who delivered her judgment on 17th July 2012. She dismissed the appellant's claims under all headings.

It should be noted that Laffoy J rejected the argument of the State to the effect that the appellant's claim was commenced outside the two-month time-limit laid down in Article 263 TFEU for annulment actions and applied by analogy (Case C – 188/92 *TWD Textilwerke Deggendorf GmbH v. Germany* [1994] ECR I – 833) to proceedings commenced in the national court and referred by way of request for preliminary ruling to the Court of Justice pursuant to Article 267 TFEU. The learned trial judge was not satisfied that the European Council Decision would have been of individual concern to the appellant. There is no appeal to the Supreme Court against that determination and the Supreme Court does not find it necessary to address the matter.

It should also be noted that the High Court declined to refer to the Court of Justice for preliminary ruling the question of the validity of the European Council Decision. In accordance with the decision of the Court of Justice in Case 314/85 *Foto-Frost v. Hauptzollamt Lübeck-Ost* [1987] ECR 4199, the learned judge held that the European Council Decision is “*completely valid.*” The judge did, however, decide that a reference was necessary concerning the effect of the failure of one or more Member States to give notice of ratification of the European Council Decision in accordance with Article 2 and its effect on the coming into effect of the ESM Treaty.

The appellant appealed immediately to the Supreme Court against the High Court decision. Counsel for the parties appeared before the Court. Due to the exceptional urgency and public importance of the matter, the Court decided to grant an early hearing of the sovereignty claim, the question of whether, and if so in what form, issues arising out of the ESM claim and the European Council Decision claim should be referred to the Court of Justice and the injunction claim.

The Decision of the Supreme Court

Having heard argument the Supreme Court decided, on the 31st July, 2012 to:-

- (a) reject the sovereignty claim;
- (b) refer the questions herein contained to the Court of Justice; and
- (c) reject the injunction claim;

The remaining issues have been deferred pending the result of this reference.

IV The appellant's arguments

(a) The European Council Decision

The appellant advances arguments under two headings in his claim that the European Council Decision is invalid:

1. Use of the simplified revision procedure is incompatible with Article 48(6) TEU; the amendment proposed should have been carried out by means of the ordinary revision procedure, which, it is claimed, would have necessitated a referendum in Ireland.
2. The European Council Decision is contrary to the Union Treaties and to the General Principles of European Union Law, in particular, the principle of legal certainty.

Use of simplified revision procedure

The appellant submits that the proposed amendment of Article 136 TFEU constitutes an impermissible and unlawful amendment of that Treaty in that it fundamentally alters the basic law and principles of the European Union without using the ordinary revision procedure provided by Article 48 (1) to (5) TEU. He says that any instrument adopted on the basis of Article 48(6) must comply with the conditions governing the use of the simplified revision procedure. Some of the appellant's submissions under this heading are illustrated by reference to the actual provisions of the ESM Treaty.

They are as follows:

1. the amendment proposed purports to confer on Member States whose currency is the euro the power to establish a stability mechanism to safeguard the stability of the euro area as a whole and thus to confer a competence in the area of monetary policy, a subject in which the Union has exclusive competence by reason of Article 3 TFEU;
2. the proposed amendment increases and/or reduces the competences of the Union and thus extends beyond the limitation provided for in the third paragraph of Article 48(6) TEU;
3. the amendment proposed purports to authorise Member States to establish a European stability mechanism, participation in which is reserved to Member States whose currency is the euro, and which is designed to safeguard the stability of the euro area as a whole; this constitutes a provision for the formation of a closer economic union;
4. the creation of such a mechanism entails the creation of new competences in connection with such a closer Union which are to be implemented or exercised through a body and pursuant to treaty rules which are outside and detached from the framework of the European Union.
5. the stability mechanism described in the European Council Decision would in essence be an institution of euro Member States; its functions concern euro zone Member States only, and its objective is to support the euro currency, whereas the definition and conduct of the single currency is within the exclusive competence of the Union.
6. the proposed Article 136(3) TFEU would confer on such a mechanism new powers not at present provided by the Treaties: to grant financial assistance subject to strict conditionality.
7. the appellant says that his concerns are not merely theoretical but are clearly reflected in the actual text of the ESM Treaty; that treaty

expressly refers to the proposed amendment in its second recital and confers new powers on the ESM Institution that are incompatible with the express provisions of Part Three, Title VIII of the TFEU.

8. any stability mechanism designed to provide financial assistance to euro-zone Member States is necessarily acting in an area that falls within exclusive Union competences.
9. furthermore, any functions which would be performed by the Commission and the European Central Bank in the context of the ESM Treaty have no legal basis in the Treaties, and are liable to be incompatible with the Union Treaties. At least they would amount to new roles and competences for those Union institutions.

Arguments that the European Council Decision is contrary to the existing treaties and primary norms of Union law

The European Council Decision constitutes an “act of the institutions” within the meaning of Article 267 TFEU. Assessment of its validity pursuant to that Article implies an evaluation of its conformity with primary norms, such as the Union Treaties, the Charter of Fundamental Rights and the General Principles of Union law.

1. If the Member States wish to introduce changes to the Union Treaties that contravene general principles of Union law, then such amendment could not be adopted by means of the simplified revision procedure.
2. The European Council Decision purports to authorise Member States to take actions that are in contravention of existing Treaty provisions, namely, in Part Three, Title VIII of the TFEU and, in particular, Articles 122, 123, 125, 126, and 127 TFEU, including the object and spirit underlying such provisions as a whole. Those provisions regulate and limit the conditions under which financial assistance may be granted to Member States, and the extent to which one Member State may assume the financial commitments of another Member State. In particular, as can be illustrated by reference to the actual terms of the ESM Treaty:

- a. the stability mechanism purportedly authorised by the amendment would circumvent prohibitions contained in the Treaty by way of an intergovernmental agreement that is at odds with the Union Treaties and in breach of the duty of sincere co-operation enshrined in Article 4(3) TEU.
 - b. it would conflict with Article 121(2) TFEU, which provides that “the Council shall, on a recommendation from the Commission, formulate a draft for the broad guidelines of the economic policies of the Member States and of the Union.”
 - c. it would contravene in particular Articles 122(2), 123, and 125 TFEU, whose objective is to regulate and limit the granting of financial assistance, directly or indirectly, to other Member States.
 - d. by establishing a mechanism parallel to TFEU to facilitate Member States offering financial assistance to other Member States, it would contravene the prohibitions in Articles 123 and 125 TFEU.
 - e. such a stability mechanism would make contracting Member States liable to put up funds *precisely* to enable recipient Member States to meet their obligations and thereby safeguard the stability of the euro, which is contrary to Article 125(1) TFEU, known as the “no-bail” out clause.
 - f. such a mechanism would be a conduit by which Member States would be liable to assume commitments of public undertakings and central governments of other Member States and therefore is manifestly incompatible with Article 125 TFEU. It would involve one Member State advancing finance to another Member State in order to allow it to comply with its financial commitments, which is prohibited by Article 125 TFEU.
3. Furthermore, the amendment proposed by the European Council Decision provides a vague and open-ended amendment that enables the

granting of financial assistance without limitations or restrictions as provided for in the Union Treaties. The appellant cites Case C-540/03 *Parliament v. Council* as authority for the proposition that a provision of secondary EU law that would expressly or impliedly authorise Member States to act in contravention of primary norms would itself violate Union Law.

(b) The ESM Treaty

The appellant advances arguments under five headings in his claim that the ESM Treaty entails obligations that are incompatible with obligations under the Union Treaties. They are as follows:

1. The ESM Treaty entails a direct and substantive breach of the “no bail-out” principle reflected in Article 125 TFEU and in the provisions of Part Three, Title VIII of the Treaty on the Functioning of the European Union.
2. In establishing the ESM as provided for in the Treaty of 2 February 2012, the Member States whose currency is the euro will have created for themselves a permanent autonomous international institution with the purpose of evading the strictures, prohibitions, and restrictions of Part Three, Title VIII of the TFEU which are intended to be of general application to all EU Member States. The ESM Treaty entails Member States circumventing prohibitions contained in the EU Treaties by way of an intergovernmental agreement outside the Union legal order that is in conflict with the Union Treaties and in breach of the duty of sincere co-operation enshrined in Article 4(3) TEU.
3. The ESM Treaty breaches the allocation of competences between the national and Union legal orders as defined in the Union Treaties.
4. The ESM Treaty confers new competences on Union Institutions and entails performance by them of tasks that are incompatible with their functions as defined in the EU Treaties.

5. The ESM Treaty is incompatible with respect for the general principle of effective judicial protection as enshrined in the European Convention on Human Rights and in the Charter of Fundamental Rights and as recognised as a General Principle of EU law and the general principle of legal certainty.

V Submissions of the Government, Ireland and the Attorney General

(a) The European Council Decision

The respondents on the appeal (hereinafter “the State”) fully support the decision of the High Court, in particular the finding of the learned High Court judge that it is clear that that the effect of the European Council Decision “*will not be to increase the competences of the Union in the Treaties.*”

The State submits that the effect of the European Council Decision is that the Treaty will recognise that Member States whose currency is the euro may establish a stability mechanism the purpose of which is to safeguard the stability of the euro area as a whole. However, the stability mechanism may be activated only if it is indispensable to achieve that purpose.

The stability mechanism is an intergovernmental mechanism, in which the participants are the Member States whose currency is the euro.

Use of the simplified revision procedure

The State submits that the use of the simplified revision procedure was appropriate.

The State says that the High Court acted entirely appropriately in having regard to the opinions, respectively of the Commission of 15th February 2011, of the European Central Bank of 17th March 2011 and of the European Parliament of 23rd March 2011. The European Council was required by Article 48(6) TEU to consult those institutions and each of them had expressed the opinion that the amendment proposed by the European Council Decision would not have the effect of increasing the competences conferred on the Union in the Treaties. Such opinions cannot be regarded as not having legal effect and national courts may, in certain circumstances, be required to take them into consideration. (Case C-322/88 *Grimaldi v Fonds des Maladies*

Professionnelles [1989] ECR 4407). In view of the fact that these opinions are expressly envisaged by Article 48(6) TEU, they have a treaty status which entitles them to particular respect. [at paras 125 to 131 of the State’s written submissions]

The State further submits that the functions conferred on the Union institutions by the ESM Treaty have clear legal bases in the Union Treaties:

- The State submits that the Commission has power to perform the tasks conferred on it by the ESM Treaty by virtue of Article 17 TEU and notes that the Commission is already performing similar tasks in the context of the so-called “Six Pack” legislation.¹
- Having regard to Article 282 TFEU, the State submits that the ESM Treaty does not confer any function on the European Central Bank in breach of Union law, while a similar role to that envisaged by the ESM Treaty for the European Central Bank is already performed by it in the context of the “Six Pack” and in the context of Articles 126 and 127 TFEU.
- The State submits that the Court of Justice has power to accept referrals from the ESM pursuant to Article 273 TFEU given that (1) a referral would entail a dispute between ESM Members or arise where one ESM Member contests the view taken by the others on the ESM Board of Governors; (2) the subject matter of the ESM Treaty is related to the subject matter of the Union Treaties; and (3) the provision in the ESM Treaty conferring jurisdiction on the Court of Justice constitutes a “*special agreement*” between the parties.

¹ See Regulation (EU) 1173/2011 (based on Articles 136 and 121(6) TFEU); Regulation (EU) 1174/2011 (based on Articles 136 and 121(6) TFEU); Regulation (EU) 1175/2011 (based on Articles 121(6) TFEU); Regulation (EU) 1176/2011 (based on Article 121(6) TFEU); Regulation (EU) 1177/2011 (based on Article 126(14) TFEU, second sub-para); and Directive 2011/85/EU (based on Article 126(14), third sub-para).

Alleged incompatibility with Union Treaties and general principles

The State responds to the appellant's submissions that the establishment of a stability mechanism (many of which are made by reference to the ESM Treaty). The State submits:

1. Insofar as the appellant argues that the establishment of a stability mechanism violates the exclusive competence of the Union in monetary policy for Member States whose currency is the euro pursuant to Article 3(1)(c) TFEU, the State says that monetary policy is part of broader economic policy dealing with interest rates and money supply. A funding mechanism cannot be engaged in any way with monetary policy.
2. Article 121 TFEU: is concerned with the Council's function in formulating the broad outlines of the economic policies of the Member States. The State, referring to the text of the ESM Treaty,— and in particular to Article 13(3) of the ESM Treaty which provides that any conditions set by the ESM, as negotiated by the Commission and the European Central Bank, must be "*fully consistent*" with any measure of economic policy coordination provided for in the TFEU— says that the High Court was correct to conclude that there is no scope for conflict with this Article.
3. Article 122(2) TFEU provides for Union financial assistance to Member States which are "*in serious difficulties or...seriously threatened....*" The State says that: firstly, this Article relates to Union competence via the Council and is irrelevant to the grant of funding to Member States pursuant to an international agreement under which an international financial institution would grant funding; secondly, the far-reaching submission of the appellant is unsustainable, as, to quote the High Court, "*the Union does not have exclusive competence to grant financial assistance to Member States embroiled in financial difficulties;*" thirdly, both the European Parliament and the Commission, in their opinions, considered that such a stability mechanism would involve no reduction in the competences of the Union.

4. Article 123 TFEU prohibits the provision of credit by the European system of banks to governments of the euro area and other public bodies. The State fully supports the conclusion of the High Court, which was that:

“The prohibition on the provision of credit in Article 123 binds the European Central Bank and the central banks of Member States. It does not bind the ESM institution which is a distinct entity, which is funded by capital contributions from its Members and borrowing on international capital markets.”

The State also submits that the fact that a Member State undertakes to subscribe to the authorised capital stock of a stability mechanism would not mean that the Member State was providing overdraft facilities or any other type of credit facility as envisaged by Article 123 TFEU.

5. Article 125 TFEU prohibits the Union from assuming the commitments of central governments or other public bodies of the Member States. For several reasons the State says that a stability mechanism does not involve any commitment prohibited by this Article. It is addressed to the Union and to Member States, but not to an international organization such as that to be established under the stability mechanism provisions. Like the argument related to Article 122(2), this argument would have the far-reaching consequence that a Member State such as Ireland could not participate in any international funding mechanism (including the International Monetary Fund). The Article prohibits assistance by Member States and not by an international organisation with legal personality distinct from its Members such as is envisaged. In the particular context of the ESM Treaty, the State adds that none of the financial instruments available to the ESM entails liability or assumption of commitments within the meaning of Article 125 TFEU.
6. Article 126 TFEU obliges Member States to *“avoid excessive Government deficits...”* As was held by the High Court, there is again *“no scope for conflict”* with this provision. In the context of the ESM

Treaty, the State submits that Member States are free to decide whether or not to accept financial assistance on the conditions imposed by the ESM and that, as observed above, Article 13(3) of the ESM Treaty requires any conditions imposed by the ESM to be “*fully consistent*” with any measures of economic policy coordination adopted by the Union.

7. Article 127 TFEU deals with monetary policy. The State says that the argument that a stability mechanism would violate this provision must fail for the same reasons as the argument relating to Article 3(1)(c) TFEU. It supports the finding of the High Court the stability mechanism is not concerned with the definition or implementation of monetary policy and does not encroach on the policy area governed by Article 3(1)(c), Article 119(2), or Article 127 or the TFEU.
8. Article 4(3) TEU: the State submits that the proposed stability mechanism could not involve Ireland in a breach of its obligation of sincere cooperation pursuant to this Article. The mechanism would not involve any breach of the Treaties. The State further submits that participation in a stability mechanism which aims to preserve the euro would involve fulfilment of the State’s Article 4(3) TEU obligations as it would involve participating in activities “*which flow from the Treaties*”.
9. The Charter of Fundamental Rights/General Principles of Union Law: the State contends that, in addition to its general observation that it is difficult to envisage circumstances in which a stability mechanism would violate human rights, in the particular context of the ESM Treaty, given the record of the Court of Justice in upholding human rights, the review role accorded to the Court of Justice would ensure that human rights are fully protected within the ESM legal order.

(b) The ESM Treaty

The State’s submissions on the ESM Treaty are largely already summarised above. In particular, the State submits that the ESM Treaty provides for a funding mechanism with a clearly–stated purpose and limited powers, which would neither give the ESM

Institution any role in defining or implementing the monetary policy of the Union, nor any role in the coordination of the economic policies of the Member States. Moreover, participation in the ESM Treaty would not violate the “*no bail-out*” principle reflected in either Article 125 TFEU or in other provisions of Part Three, Title VIII TFEU. The State also submits that the ESM Treaty does not purport to confer any new competences on the EU Institutions and agrees with the High Court’s finding that “*the ESM Treaty does not purport to affect the allocation of responsibilities as defined in the Union Treaties*” (at para. 78 of High Court judgment). The State contends further that the principle of effective judicial protection is fully protected by virtue of Article 37 of the ESM Treaty which provides that disputes may be submitted to the Court of Justice.

VI The questions referred

Given that the Supreme Court has rejected the sovereignty claim, the questions which will determine these proceedings involve those which arise on the European Council Decision claim and the ESM Treaty claim.

In those circumstances outlined above, one of the issues of law which arises in the appeal pending before the Supreme Court concerns the validity of the European Council Decision.

A further issue of law which arises is whether an EU Member State is entitled, consistent with the Union Treaties, to enter into and ratify an international agreement such as the ESM Treaty, and whether any such entitlement is dependent on the validity and entry into force of the European Council Decision.

The Supreme Court, in the light of the foregoing, and considering that an answer to those questions is necessary for its decision on the appeal before it, refers to the Court of Justice for preliminary ruling pursuant to Article 267 TFEU, the following questions:

- (1) Whether European Council Decision 2011/199/EU of 25th March 2011 is valid:

- Having regard to the use of the simplified revision procedure pursuant to Article 48(6) TEU and, in particular, whether the proposed amendment to Article 136 TFEU involved an increase in the competences conferred on the Union in the Treaties;
- Having regard to the content of the proposed amendment, in particular whether it involves any violation of the Treaties or of the general principles of law of the Union.

(2) Having regard to

- Articles 2 and 3 TEU and the provisions of Part Three, Title VIII TFEU, and in particular Articles 119, 120, 121, 122, 123, 125, 126, and 127 TFEU;
- the exclusive competence of the Union in monetary policy as set out in Article 3(1)(c) TFEU and in concluding international agreements falling within the scope of Article 3(2) TFEU;
- the competence of the Union in coordinating economic policy, in accordance with Article 2(3) TFEU and Part Three, Title VIII, TFEU;
- the powers and functions of Union Institutions pursuant to principles set out in Article 13 TEU;
- the principle of sincere cooperation laid down in Article 4(3) TEU;
- the general principles of Union law including in particular the general principle of effective judicial protection and the right to an effective remedy as provided under Article 47 of the Charter of Fundamental Rights of the European Union and the general principle of legal certainty;

is a Member State of the European Union whose currency is the euro entitled to enter into and ratify an international agreement such as the ESM Treaty?

- (3) If the European Council Decision is held valid, is the entitlement of a Member State to enter into and ratify an international agreement such as the ESM Treaty subject to the entry into force of that Decision?

Accelerated procedure

The Supreme Court requests the Court of Justice to apply to this reference for preliminary ruling the accelerated procedure pursuant to Article 104a of the Rules of Procedure. The Court considers the matter to be one of exceptional urgency. The High Court accepted evidence from the State to the effect that the ESM Treaty Members, including Ireland, and the Member States of the European Union all have pressing interest in Ireland's timely ratification of the ESM Treaty and that the stability of the euro area would be seriously damaged by delayed ratification. The State says that it is essential that Ireland be involved in the ESM Treaty from the outset, in order that it may participate and vote on early decisions of the ESM taken by mutual agreement.

The State says that a range of adverse consequences may ensue if Ireland does not ratify the ESM Treaty in the short term, for example, detrimental impact on Ireland's phased re-entry into the financial markets and a serious set-back to the substantial progress made to date by Ireland towards completing and exiting the EU-IMF programme by 2013. The State says that Ireland's timely ratification of the ESM Treaty is of the utmost importance for other Members of the ESM, and, in particular, the Members who are in need of financial assistance. In evidence placed before the Supreme Court on the injunction issue, it was suggested that a failure to ratify and implement the measures contained within the ESM Treaty at the earliest possible stage would lead to irreparable harm both to the interests of Ireland and those of the euro zone generally.

For these and other reasons, the High Court and the Supreme Court declined to grant an injunction restraining the State from ratifying the ESM Treaty.

The Supreme Court believes that the intention of the State to ratify the Treaty as a matter of urgency justifies the earliest possible determination of all relevant legal issues and the answer of the Court of Justice will inform this Court's determination of the domestic proceedings.