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## **After the referendum, what next?**

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So the negotiations have broken down, British and Dutch “bullying” (FT 27 February, 2010) continues and the referendum goes ahead. What next?

We emphasize that this is not a sovereign debt crisis, even if the British and Dutch want us to think it is.

It is a crisis of EU regulatory failure, and of the Anglo-American economic model.

The people of Iceland have a deep democratic tradition, and through the referendum have the opportunity to assert their sovereignty and autonomy.

Their leadership and example will encourage people in other democracies to reject harsh cuts in public services and living standards made at the behest of the very people and institutions responsible for the crisis. For through the wholesale nationalisation of private losses, we are all – not only in Iceland – asked to pay the price of private, reckless risk-taking.

### **Co-responsibility**

A key principle in resolving the dispute is co-responsibility. President Grímsson has made a similar point, referring to “a shared international responsibility”.

The previous Icelandic government allowed a deregulated financial sector to run wild.

The subsequent collapse of Iceland’s banking sector was not a sudden bolt from the blue. The risks were visible and widely reported, including by one of the authors of this article. <sup>1</sup>

And the deposit guarantee scheme was totally under-resourced to deal with a systemic meltdown.

So Iceland cannot escape some share of political responsibility for the Icesave fiasco.

But Iceland was far from alone in this negligence. The political establishments of Britain and the Netherlands – indeed those of the European Union and EEA as a whole – encouraged financial deregulation and a more extensive Single Market in financial services, without almost any regard for the wholly predictable risks of large-scale economic failure.

### **The EU and Deposit Guarantee Schemes**

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1 “The coming first world debt crisis” by Ann Pettifor, Palgrave, 2006

The UK and Dutch authorities also failed in their duty of supervision under EU law. Icesave in Britain was a *branch* not a subsidiary of Landsbanki. The European Union Directive 94/19/EC, whose inadequacy is now obvious to all, requires that EU states:

“... shall check that branches established by a credit institution which has its head office out with the Community have cover equivalent to that prescribed in this Directive.”  
(Article 6.1)

Iceland may be a member of the EEA, but it is still “outwith” the European Community, and neither Britain nor the Netherlands fulfilled this supervisory duty.

So whether one sees the obligations as moral, political or legal, there is a heavy responsibility on the part of the British and Dutch governments.

### **Proportionality**

Proportionality is a key principle of EU law – but one ignored by the British and Dutch governments.

In our letter to the Financial Times (7th January) we pointed out that the combined population of the UK and Netherlands is 76 million, compared to Iceland’s 317 000, and that:

“repayment of the nationalised losses of a private bank amounts to  $\pounds$ 12 000 per Icelandic citizen...By contrast, the cost to Dutch and British tax-payers of the bail-out will be about  $\pounds$ 50 per capita.”

### **Not a sovereign debt crisis**

The British and Dutch governments have, by political sleight of hand, given the world the impression that this is an issue of sovereign debt default.

This is quite false.

These governments chose for understandable reasons, to compensate domestic Icesavers whose deposits were at risk. They did this without consulting the government of Iceland. But from the start, they used economic and political force majeure to try to place the whole burden of compensation on to the state and people of Iceland. Only retrospectively, and through duress, was an agreement made with Iceland’s Depositors and Investors Guarantee Fund to compensate the British and Dutch governments for the cost of bailing out their own citizens.

This retroactive arm-twisting is now defined as a loan contract – even though the “loan” was not contracted at the outset by the borrower, but forced on it by the “lenders”. And the UK and Dutch governments’ fiercely desired, but missing, link of an onerous sovereign guarantee is still.... missing!

### **The terms**

The proposed interest rate of 5.5% is particularly unfair, given that the UK’s Financial Services Compensation Service has, according to the UK Treasury, “financed its payout [to UK depositors] through a loan from the Bank of England.”<sup>2</sup> The Treasury does not disclose the rate of interest on this loan - a rate over which it had absolute discretion. The Bank of England’s base rate is today 0.5% (1.5% in January, 2009). The ECB’s base rate was 2.0% in January 2009, yet the Netherlands government had even greater audacity in seeking, initially, interest at 6.7%!

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2 HM Treasury Press Release, 9 October, 2009: “Landsbanki, Heritable, and Kaupthing Singer and Friedlander”.  
[http://www.hm-treasury.gov.uk/press\\_103\\_08.htm](http://www.hm-treasury.gov.uk/press_103_08.htm)

## **What are the strategic options for Iceland and its people?**

One option in the referendum is to accept the proposal based on force majeure, to pay the full price demanded (cuts in public services, unemployment, widespread emigration...) and hope to slowly rebuild the fabric of the economy. However this strategy will make recovery and reconstruction in the short run well nigh impossible. And in the long run, as JM Keynes argued, we are all dead!

All other options would be enhanced by a strong rejection of the UK/Dutch proposal, since the bigger the turnout for a 'no' vote, the stronger Iceland's negotiating position will be, whichever option is adopted.

The dispute could be referred to the courts, to arbitration or (preferably) mediation. It is a striking feature of the story so far that the UK and Dutch governments have gone to great lengths to avoid legal resolution of the dispute, despite the Icelandic government's constant denial of legal liability. This may be sensible, since the 1994 Directive is badly drafted, and the outcome unpredictable for all.

## **Winning hearts and minds**

After the referendum it will be vital that the government and people of Iceland inform and win over public and official opinion in Britain and the Netherlands, and the EU.

To date, the issues have not been clearly explained to the British and Dutch publics.

As a result, the two governments are under little public pressure to change their strong-arm tactics. The voices of the Icelandic government and of Icelandic civil society need to be heard more loudly in more targeted campaigns in the UK, the Netherlands and EU. Coming general elections in both countries will make this difficult in the short-term, but in the long-term the Icelandic position is bound to prevail – if put across coherently.

Now is the time to spread more understanding of the issues - the shared responsibility, the flawed and excessive nature of UK and Dutch government demands, their impact on ordinary Icelandic citizens, and the positive ideas and proposals that emerge as a result of democratic debate in Iceland.

In this way we can lay the foundation for a just resolution of the dispute.