MINUTES[1] OF MEETING NO. 85 OF
THE CENTRAL BANK COMMISSION
OF 28 NOVEMBER 2017

In attendance[2]: Governor Philip R. Lane, Alan Ahearne, Patricia Byron, Blanaid Clarke, Ed Sibley, Sharon Donnery, John FitzGerald, Des Geraghty, Derek Moran (Items 1-7, 10, 12-13), Michael Soden, Neil Whoriskey (Secretary).

1. Procedural Items

The Governor opened the meeting and noted it was quorate. The agenda was adopted. He asked if members had any interests to declare. There were no declarations of interest.

2. Minutes of Commission Meeting No. 84 (18 October 2017)

The minutes of the meeting held on 18 October 2017 (Meeting No. 84) were agreed, subject to two amendments.

3. Matters Arising

It was noted that the Commission had approved, by written procedure on 21 November 2017, the appointment of suitably qualified person to perform Fitness and Probity functions under the Central Bank Reform Act, 2010.

[1] These minutes are published as a record of the meeting. The Commission may decide to omit information from the published record that is legally or commercially confidential, where it contains confidential supervisory information, relates to matters under deliberation or where it is in the public interest to do so.

[2] Also present: Eadaoin Rock (General Counsel), Gerry Quinn (Chief Operations Officer) (items 4 – 11, 13 - 20), Derville Rowland (Director General (Financial Conduct) (items 4 – 11, 13 - 20), Bernard Sheridan (Director Corporate Affairs – Item 10), Jill Forde (Head of Communications– Item 10), Grainne McEvoy (Head of Securities and Markets Authorisation – Item 10), Mark Cassidy (Head of Financial Stability– Items 11 and 12), Martin O'Brien (Head of Macroprudential Policy, Financial Stability Division – Item 12), Paul Lyons (Financial Stability Division – Item 12), Derval McDonagh (Head of Human Resources – Item 13), Fergal Power (Head of Financial Control – Item 13), Tom Galvin (Head of Management Accounting, Financial Control Division – Item 13), Bernie Mooney (Head of Function Consumer Protection - Policy and Authorisations – Item 14), Colm Henry (Consumer Protection Policy and Authorisation Division – Item 14), Linda Kenna (Markets Policy Division – Items 15 and 16), Martina Kelly (Head of Markets Policy Division – Item 15), Andrew Whitty (Legal Division - Item 16). Those members of management and staff attending for items that are for decision, are only present when the item is being discussed by the Commission, and are not present when the decision is taken.

It was noted that the revised Commission Code of Conduct and Ethics had been amended, as agreed at the previous meeting, to reflect the statutory responsibilities of Commission members.

The other follow-up items from the meeting on 18 October 2017 were noted.

4. Governor's Report

The Governor had attended the recent ECB Governing Council monetary policy meeting. Purchases under the Asset Purchase Programme (APP) would continue at the current monthly pace of €60bn until the end of December 2017. From January 2018 the net asset purchases were intended to continue at a monthly pace of €30bn until the end of September 2018, and beyond, if necessary, and in any case until there was a sustained adjustment in the path of inflation consistent with the inflation aim. There was also a continuing commitment to maintain interest rates at their current levels for an extended period of time, and well past the horizon of the net asset purchases.

The Commission noted the Governor's Report.

5. Brexit Update

The Governor noted that the Brexit process was entering a crucial phase over the coming few months in relation to the EU/UK negotiations. The Bank was preparing for all potential pathways, both in its own right and with the institutions it supervises. Mr Sibley confirmed that there continued to be ongoing progress on authorisation activity; further engagement with existing firms on their Brexit planning; and continued effective engagement on policy and supervisory stance development, both internally and across the European supervisory framework. Ms Rowland also confirmed that there was a number of Brexit-related applications for authorisation in the Financial Conduct Pillar, in particular under the forthcoming Payments Services Directive (PSD). In response to a query from a member, Ms Donnery informed the meeting that the Bank was continuing to engage with key stakeholders in finding a solution to settle Irish securities post-Brexit.

The Commission noted the Brexit Update.

6. Deputy Governor's Report, Prudential Regulation

This minute is partially omitted as it contains supervisory information.

Mr Sibley introduced this item. In relation to current issues, Banking Supervision was working to support the Tracker Mortgage Examination, through provision of additional analytical support and inspection resources. Banking Supervision had also been engaging with ECB staff to ensure Single Supervisory Mechanism (SSM) senior management are aware of the issue.

He updated the meeting on a number of firm-specific items.

He noted the European Banking Authority (EBA) had confirmed that the 2018 EU-wide stress test would be launched in January 2018 with results published in November 2018.

A member enquired as to the proposed changes to the investment framework for credit unions and whether holding less in the way of bank bonds might be a riskier proposition. Mr Sibley said that concentration levels in bank-related investments was extremely high; the proposals were with a view to creating greater diversity but with a high degree of controls.

The Commission noted the Deputy Governor's Report, Prudential Regulation.

7. Director General's Report, Financial Conduct

Ms Rowland noted that the main focus of the Financial Conduct Pillar currently was on the Tracker Mortgage Examination, and this was the subject of a separate item at this meeting.

In relation to some organisational issues, she reported that the application period for the positions of Director of Enforcement and Director of Consumer Protection had closed and would be progressing to interview and selection phases. She updated on a number of cross-directorate projects, including on the implementation the PSD; a pilot exercise concerning product intervention; and a review of the PRISM model.

She noted that a judgment from the Court of Appeal was expected in the coming weeks following the hearing, on 20 June 2017, of Mr Michael Fingleton's appeal of the High Court's decision in January 2016 to dismiss his judicial review proceedings.

She also informed the meeting that the Director of Policy and Risk, Gerry Cross, was due to appear before the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach to discuss the European Commission's proposed package of measures on the European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB).

The Commission noted the Director General's Report, Financial Conduct.

8. Deputy Governor's Report, Central Banking

This minute is partially omitted as it contains market sensitive information

Ms Donnery informed members that a further disposal of €500m of the Floating Rate Notes from the Special Portfolio to the NTMA took place on 15 November 2017, bringing disposals for the year to date to €3.5bn. A further €500m disposal was anticipated before year-end.

She reported that nine days following the invocation of the Deposit Guarantee Scheme resulting from the appointment of provisional liquidators to Charleville Credit Union, the Bank had administered compensation payments of approximately €39.2m to approximately 10,900 depositors. This represented a pay out to more than 99 per cent of the depositors of the credit union. The Bank was working with various external stakeholders ahead of the transfer of the administration of the Insurance Compensation Fund (ICF) from the control of the President of the High Court, acting through the Accountant of the High Courts, to the Bank.

She updated members on the General Data Protection Regulations (GDPR) project. This had been re-focused with a revised project governance structure. In order to support the project, the Bank had gone to the market seeking an external partner. She noted that the Risk Committee was being kept informed on the matter.

The Commission noted the Deputy Governor's Report, Central Banking

9. Chief Operations Officer's Report

This minute is partially omitted as it contains commercially sensitive information.

Mr Quinn updated the meeting on the remediation programmes that were being scoped or underway to achieve the necessary risk profile across all operational areas.

As regards resourcing, he noted that there had been a net increase of three full-time equivalents (FTEs) in October 2017 and 116 year-to-date. The end-year projection was for the Bank to have approximately 1,730 FTEs, about 120 short of complement.

The Commission noted the Chief Operations Officer's Report.

10. Tracker Mortgages Update

The Governor introduced this item. He recalled the Commission had considered, at a seminar on 2 November, developments around the Tracker Mortgage Examination. At the time, it was agreed the Commission would be updated on the matter at this meeting, including related communications issues. He noted that there had been considerable public and political focus on tracker mortgages and on the role of the Bank in addressing this, since the Bank appeared before the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on 29 October. He said that while that wave of publicity had reflected negatively on the reputation of the Bank, it was important to stress that, at the core of this, was the fact the Bank had been, and continued to be, working hard to ensure the matter was pursued and that impacted customers received redress and compensation. He acknowledged the work of management and staff in the Bank to that end. He said that the Bank would next publicly report on the Examination in mid-December and would appear before the Oireachtas Committee again in January 2018. The Bank would also produce a report on culture issues in the banking sector by mid-2018.

Ms Rowland updated the meeting on various aspects of the Examination programme, including governance arrangements and resourcing. She noted that an extensive programme of engagement with the five main lenders had taken place in recent months and this had resulted in considerable progress being made on disputed cohorts, the details of which were set out for the Commission. She provided details of current and anticipated enforcement investigations. She also presented an overview of the evolution of the Examination and developments over recent years around the Consumer Protection Code.

Ms Forde presented on the communications strategy that had been developed around the Examination, and more generally concerning financial conduct matters. She said that the Bank had been communicating regularly and transparently since 2015 on the work it was undertaking in this area. She noted that it was a reasonably complex issue with many narrative strands that had evolved over time. There had been a significant uptake in media, public and political engagement on the issue in the recent past and the Bank was very active in communicating with its various stakeholders on the issue. Among the key messages was that the Bank's intervention was critical to the best outcome for consumers; the voluntary scheme was the best and quickest way to address consumer concerns with more than €163m already paid; and that the Bank was demanding that all banks address all cases.

In the discussion that followed, members noted the level of resources devoted to the Examination had increased only in very recent times, and emphasised the importance now to fully identify the extent of the issue and ensure it was addressed in as thorough and timely a fashion as possible. Notwithstanding this, members acknowledged the high quality work that was being put into this by the staff; the focus the Bank had on consumers; and the challenging communications environment. In relation to communications, members considered that the strategy was flawed and queried whether in retrospect a different strategy might have been deployed based on what subsequently emerged; particularly post the Oireachtas Committee appearance. Other members referenced the importance of the Bank communicating in different ways to a wide range of stakeholders and through local as well as national media and via social media. It was also considered important to emphasise the data around the issue and the fact that the Bank was delivering a positive outcome for consumers. Clarity in messaging and the channels utilised was also emphasised. On the progress of the Examination itself, among the issues raised by members were, whether the Bank could assist consumers in pursuing redress in disputed cases, for example by providing certain information to them; what role the SSM had to play in the issue; the levels of provisioning being applied in the lenders to address this; issues concerning enforcement actions; the need for any further legislative change; and the ability of the Bank to ensure appropriate redress and compensation was paid.

The Governor noted that the communications approach adopted in October was similar to that when the Bank previously appeared before the Oireachtas Committee in April when there was far less of a negative reaction. However, the sequencing of some of the recent Oireachtas committees, with the Bank coming in after the lenders had appeared, was not optimal in terms of communication. As more progress was made on the issue, the Bank would communicate that. Ultimately, the work being undertaken and the outcome for consumers would speak for itself. He agreed with comments on the need to focus on local as well as national media and on clarity of messaging. Ms Forde said that the Bank had a regional programme that it was continuing to develop and noted the Bank’s evolving social media presence. Ms Rowland said that all of the points around communications were valid and that there was a stronger focus now being put on that, with the Communications function being brought into the centre of the Tracker Mortgage Examination programme in the Bank.

Ms Rowland agreed that the sooner a line could be drawn under the issue, the better. The extent and complexity of the Examination was very significant and by definition was taking time and resources to ensure it was undertaken in a complete and thorough way. There had been a significant increase in resources applied by the Bank in recent times and there was strong cross-Bank input and support to the work. The December update would provide further detail on the number of cases, redress and compensation information up to end-November. This would not likely be the final picture but should be very close to it. In relation to assisting consumers with further information, she said the best way to address that was through co-operating with the Financial Services Ombudsman (FSO). The FSO would adjudicate on individual cases where they arose and the Bank would provide all necessary information to assist in that process. There was a good relationship with the FSO. Mr Sibley confirmed there had been close contact at the highest levels with the SSM on the issue. The SSM, which had a prudential regulatory focus, was primarily concerned with provisioning arrangements but it also recognised the importance of the issue in general and was supportive of the Bank’s approach. As regards provisioning, he noted that this also covered the costs to the banks of the resources required to deal with the issue, with hundreds of staff members involved across the lenders. In relation to enforcement, Ms Rowland said this was a key element of the Examination; the Bank was pursuing a number of enforcement investigations and there would likely be more to come. As regards legislation, the Bank was currently working to the very limits of its powers to ensure lenders dealt with their customers in the correct way. There was consideration around potential legislative changes arising from this work and there would be an opportunity to feed some of this into the Law Reform Commission.

The Governor thanked the Commission for the very detailed discussion on the issue. He said the executive would continue to provide a strong focus on this and allocate the necessary resources to ensure it was continually receiving sufficient priority in order to bring the Examination to a successful conclusion. The Commission would be kept fully updated on progress.

The Commission noted the Tracker Mortgage Update.

11. Macro Financial Update

The second Macro-Financial Review for 2017 was scheduled for publication on 12 December 2017. Since the previous report in June, further improvements were evident in domestic and international macroeconomic environments. External risks to growth and financial stability remained to the downside, with Brexit as the main risk for the Irish economy. Domestic risks included potential overheating pressures. Credit growth remained subdued overall but was continuing to pick up. The counter-cyclical capital buffer rate remained set at 0 per cent. While a steady increase in housing output was expected over the medium term, supply was likely to remain below demand. Deleveraging was continuing across all sectors and indebtedness ratios continued to decline.

The Commission noted the Macro Financial Update.

12. Annual Review of Residential Mortgage Lending Requirements

The Governor introduced this item. He recalled the Commission had considered, at a seminar in September, the analytical work that had informed the annual review of residential mortgage lending requirements. The review that had now been completed was based on a joint examination of both the credit and housing markets. On balance, the evidence did not point to unsustainable developments in the joint dynamics of credit and house prices at this time. The risk characteristics of new mortgage lending had evolved in-line with market developments since the last review in 2016. The level of house prices was broadly consistent with current economic developments but it remained important to mitigate the risks for households and banks in the event of a future decline in house prices.

On this basis, it was proposed that the core elements of the measures - the loan to income (LTI) and loan to value (LTV) limits - would remain unchanged in 2018. However, he noted that the analysis indicated that the measures could operate more effectively by introducing separate LTI allowances, similar to those introduced for LTV allowances following the 2016 review. From January 2018, it was proposed that there would be separate LTI allowance pools for first time buyers (FTBs) and for second and subsequent buyers (SSBs): up to 20 per cent of the value of new lending to FTBs and up to 10 per cent of the value of new lending to SSBs would be permitted above the 3.5 LTI limit under these proposals. He noted that these allocations broadly reflected current lending patterns in excess of the LTI limit to FTBs and SSBs.

A technical amendment on the collateral valuation for mortgage loans issued for construction purposes, such as renovations, was also proposed. Neither change was expected to alter materially current lending practices, which remained consistent with the overall objectives of the measures.

In the discussion that followed, one member queried whether the practice of 'cash back' incentives being offered by banks was a way of getting around such measures and whether this could potentially distort the market. The same member asked how sustainable the measures might be were interest rates to increase. In relation to the latter question, the Governor said that the measures were pitched at a level, particularly around the LTI ratio, to protect borrowers. He noted that, in other jurisdictions, such ratios were higher, but in Ireland there was a potential for greater economic volatility and the measures took cognisance of that. As regards the 'cash back' offers, Mr Sibley said that these were somewhat over-played; however, there were risks associated and the Bank was mindful of that.

Another member noted the substantial analytical evidence that had been prepared and presented at the earlier seminar and that this was clearly linked with the proposals that had now emerged. The same member suggested the Commission could usefully hold a seminar on the future of banking at some point in the coming year. Another member asked what factors might trigger a tightening of the requirements at some future point. Mr Cassidy said it would largely be around the dynamics between pricing and credit and whether valuations were broadly related to the prevailing economic conditions. The Governor added that it could be both, or either, factors that would trigger a tightening.

In relation to the market, another member questioned whether cash buyers were beginning to dry up and what impact that might have. The same member said it would be useful to focus on the evolution of mid-range prices. Mr Cassidy said there had been some drop in cash buyers, but they remained quite a high feature of the Irish market. Another member asked why the changes being proposed following this review had not previously been identified as necessary. The Governor said that the focus last time was on LTV and that the LTI change this time around was a natural area of focus, particularly as the landscape for FTBs and SSBs had evolved over the past year. There was a discipline effect in-built to the process.

Following the discussion, the Governor noted that the Commission was unanimous in its support for the revised measures.

The Commission approved the proposed amendments to the Housing Loan requirements Regulations 2015 (S.I. No. 47 of 2015, as amended) to give effect to the following principles from 1 January 2018:

- **the amount of new lending allowable in a given year above the 3.5 LTI limit for primary dwelling home (PDH) mortgages will be considered separately for first-time buyers (FTBs) and second and subsequent buyers (SSBs), with 20 per cent of the value of new lending to FTBs and 10 per cent of the value of new lending to SSBs, respectively, being allowed above the limit; and**

- **when calculating the value of the collateral in the case of all mortgages issued for purchasing land with the intention to construct a building, or issued to fund construction of a building, mortgage providers will be required to take the lower of the estimated market value of the property after completion of all works or the sum of the site cost plus the cost of works, as estimated at the time of entering into the loan agreement.**

13. Budget 2018

This item had also been considered by the Budget and Remuneration Committee at its meeting on 21 November 2018.

Mr Power introduced the item. The proposed Budget for 2018 had been prepared following an extensive process involving review at Directorate and Pillar level. In addition, it was considered by the Operations Committee, Governor's Committee (GovCo), and Budget and Remuneration Committee prior to its submission to the Commission.

Excluding the Investment Envelope, the total operating budget request for 2018 totalled €294m, which represented a 17 per cent increase on the 2017 trend. This was driven by the costs of additional headcount; together with an increase in the non-pay spend, particularly around professional fees and IT costs. The Investment Envelope budget proposal was for €39.9m, representing a significant increase in the non-Fusion related envelope for the coming year.

Ms McDonagh set out the workforce-planning request for 2018. She noted that GovCo had previously approved some additional complement requests throughout 2017 and was recommending these for Commission complement approval for 2018. The complement request for 2018 was 1,891 FTEs. This compared to an end-2017 approved complement of 1,803 FTEs. Additional complement requests were also considered by GovCo for 2018, but were not proceeded with at this point, pending full business case evaluation that would take place over the coming months. The increase over 2017 was accounted for by an earlier Commission approved Brexit and Resolution roles of 36 FTEs, GovCo approved role during 2017 of 36 FTEs, and the replacement of existing contractor staff to 41 FTEs. The latter would represent a cost saving to the Bank due to the higher level of contractor costs.

One member asked if the Bank had sufficient capacity to absorb additional numbers over the coming year. The Governor responded that the capacity was there for the numbers proposed and that there would be careful managing of any ancillary costs.

The Chair of the Budget and Remuneration Committee confirmed that the Committee had considered the proposals in detail and was recommending approval to the Commission.

The Commission approved the 2018 Budget.

This decision was taken under Item 21 – Record of Decisions.

14. Proposed Amendments to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-sized Enterprises) Regulations 2015

Ms Mooney introduced this item. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 provide protections for Small and Medium-Sized Enterprises (SMEs), as defined, relating to their dealings with regulated entities when engaged in 'relevant activities' relating to the provision of credit. The Regulations came into effect on 1 July 2016 for regulated lenders, except credit unions, for whom the Regulations came into effect on 1 January 2017.

Since the Regulations came into effect, issues had been raised with the Bank on the scope of the Regulations, and in particular, seeking clarification on the enterprises that fall within the definitions for 'micro and small enterprise', 'medium-sized enterprise' and 'micro, small and medium-sized enterprise', as contained in the Regulations.

Having considered the issues raised and engaging with relevant stakeholders, it was proposed to publish the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) (Amendment) Regulations 2017 (Amendment Regulations) for legal certainty.

The Commission, subject to consultation with the Credit Union Advisory Committee and the Minister for Finance, approved the Amendment Regulations to be issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013; and delegated to the Director General, Financial Conduct the authority to make the Amendment Regulations for and on behalf of the Central Bank.

This decision was taken under Item 20 – Record of Decisions.

15. **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations (second edition)**

Ms Kenna introduced this item. In March 2017, the Bank published the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017 (the 2017 Regulations). The 2017 Regulations consolidated into one document many of the conditions and requirements that the Bank imposes on certain investment firms. It was now proposed to amend the 2017 Regulations to integrate: the Central Bank Client Asset Regulations with some modifications as a result of MiFID II; the Central Bank Investor Money Regulations; and the capital requirements applied to market operators. It was intended that in future, as the Bank develops additional or revised requirements for investment firms, these would be introduced by way of amendment to the Regulations. In this way, the Regulations would be a single living document, subject to regular amendment over time in the interests of ensuring the clarity, transparency, relevance and enforceability of the regulatory rules applying to investment firms, fund service providers and market operators.

The Commission approved the policy position as outlined in Paper No. 263 of 2017 and reflected in the draft Regulations which are to be made under section 48 of the Central Bank (Supervision and Enforcement) Act 2013; and pursuant to section 18F of the Central Bank Act 1942, delegated to the Director General (Financial Conduct) the authority to approve any final changes to the draft Regulations in advance of being made, and , to make and commence the draft Regulations, with any such final changes, for and on behalf of the Bank.

This decision was taken under Item 20 – Record of Decisions.

16. **Delegation of Regulatory Powers: (1) Regulation (EU) No 600/2014 and (2) European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No 375 of 2017)**

Mr Whitty introduced this item. The European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No 375 of 2017) (the Regulations) designated the Bank as the competent authority for the purposes of Regulation (EU) No 600/2014 (the Markets in Financial

Instruments Regulation or MiFIR) and Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (the Directive).

The Regulations focussed on the activities of investment firms, regulated markets, data reporting services providers and credit institutions in relation to their investment services. The Regulations establish a legal framework for the authorisation and supervision of investment firms, regulated markets and data reporting activities in Member States. MiFIR outlined rules relating to transaction execution, pre trade and post trade transparency and standards and requirements for platforms and investment firms.

The Commission approved the Delegations of Regulatory Powers: (1) Regulation (EU) No 600/2014 and (2) European Union (Markets in Financial Instruments) Regulations 2017 (S.I. No 375 of 2017) as set out in Paper No. 274 of 2017.

This decision was taken under Item 20 – Record of Decisions.

17. Statement of Accounts year to date 30 September 2017

The Commission noted the Statement of Accounts to 30 September 2017.

18. Minutes of Budget and Remuneration Committee

The Commission noted the Minutes of the Budget and Remuneration Committee Meeting of 25 July 2017.

19. Minutes of Risk Committee

The Commission noted the Minutes of the Audit Committee Meeting of 23 October 2017.

20. Record of Decision for Items 13 - 16.

The Commission considered and finalised its decisions on items 13-16. The decisions are recorded under the relevant items.

21. Any Other Business

Mr Whoriskey noted that, in line with the 2016 Code of Practice for the Governance of State Bodies, a questionnaire would be issued to members shortly as part of a review of the effectiveness of the Commission to cover the year 2017.

The meeting concluded.