



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Gabriel Makhoul
Gobharnóir / Governor

Ms Mairéad Farrell T.D.
Cathaoirleach
Joint Oireachtas Committee on Finance, Public Expenditure, Public Service Reform and
Digitalisation, and Taoiseach
Houses of the Oireachtas
Leinster House
Kildare Street
D02 XR20

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Dear Chair,

Thank you for your letter of 10 November outlining the additional information that the Joint Committee has requested following our appearance of 22 October. I have set this out in the Appendix.

As has been the case since our first engagement with the Committee on this issue in October 2024, we continue to support your examination of it to the fullest extent possible.

I hope this information is helpful in your continued deliberations.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Makhoul'.

Gabriel Makhoul

Appendix

1. The Joint Committee is aware that the Central Bank received €38,950 in fees from Israel from January 2020 to September 2025 associated with hosting the prospectus. Acknowledging that Luxembourg is now responsible for hosting the prospectus, will there be any further payment for services to the Central Bank?

The Central Bank did not receive any payments in respect of the transfer of the approval.

The Central Bank will not receive any fee payments for the approval of 2025 prospectus or for any filings of final terms thereunder as the prospectus has been approved by the competent authority in Luxembourg (the CSSF) and any filings of final terms will have to be made to the CSSF.

In general, the Central Bank charges fees for the prospectus approval and for filing of final terms. Approval and final terms filing fees are set out in the S.I No.135 of 2022 - Central Bank Act 1942 (Section 32E) Prospectus and Related Documents Fee Regulations 2022.

2. With regard to the Central Bank's obligations under the Genocide Convention and accompanying due diligence, the Joint Committee understands that the Central Bank carried out analysis and sought internal and legal advice in relation to ensuring that it has met those obligations. The Central Bank has concluded that it is meeting those obligations and while the Committee understands that the Central Bank cannot share legal advice, the Committee would appreciate if the Central Bank could provide detailed written analysis as to how it concluded that its obligations under the Genocide Convention have been met.

Overview

The Convention on the Prevention and Punishment of the Crime of Genocide is an international treaty under which the contracting State parties confirm that genocide is a crime under international law and undertake to prevent and to punish it. The State of Ireland is a contracting party to the Convention, having acceded to it in 1976. The Genocide Convention was originally given effect in Irish law by the Genocide Act 1976, which was repealed and replaced by the International Criminal Court Act 2006. In accordance with the 2006 Act, it is an offence for any person, including the Central Bank, to commit genocide or a crime ancillary to genocide.

The South Africa case against Israel that was referred to the International Court of Justice in December 2023 alleges breaches of the Genocide Convention (with regard to Israel's actions in Gaza). That case is ongoing and remains to be determined. The International Criminal Court's investigation into the situation in the State of Palestine, which also includes an allegation of genocide, is also ongoing and remains to be determined.

Under the EU Prospectus Regulation, we cannot refuse a transfer of prospectus approval on the basis of ongoing International Court of Justice (ICJ) or International Criminal Court (ICC) processes. It falls outside the competencies of the Central Bank to make a determination of genocide under the Genocide Convention.

Moreover, if there is a finding of genocide against the State of Israel in these processes, it would be for the EU and individual States to decide on the measures to be taken and relevant laws to be introduced, which the Central Bank would comply with. That could, depending on the circumstances at the relevant time and decisions taken at the EU level, lead to EU sanctions being imposed upon the State of Israel, which could provide a legal basis to refuse to approve prospectuses issued by the State of Israel.

The EU Prospectus Regulation (which is EU law made by EU Member States) provides that the national competent authority must approve a prospectus where it meets the required standards of completeness, consistency and comprehensibility. Restrictive measures, or sanctions as they are generally referred to, are a Common Foreign and Security Policy (CFSP) tool utilised by the EU under the Treaties, and directly applicable in Member States.

The EU could impose sanctions such as those imposed against Russia after its invasion of Ukraine. The Central Bank would, of course, implement any sanctions adopted by the EU that are applicable to our functions (as we have with Russia).

In reaching our conclusions we have relied on the legal expertise and advice available to the Bank as described in our answers to these questions.

Transfer of Approval of 2025 Prospectus

As has been outlined, Article 20(8) of the EU Prospectus Regulation provides that, on the request of an issuer of securities, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State. Any such transfer is subject to prior notification to ESMA and the agreement of the competent authority to whom the approval function is to be transferred.

In accordance with the EU Prospectus Regulation, the competent authority of the home Member State only approves the transfer to the competent authority of another Member State but does not approve the prospectus. The competent authority of the other Member State then reviews and approves the prospectus.

The Central Bank's Guidance on the Prospectus Regulatory Framework sets out the factors that the Central Bank considers in assessing a request to transfer a prospectus which include:

- the domicile of the issuer;
- the country where the issuer's securities are admitted to trading; and
- the location of any offer proposed by the issuer.

In summary, agreement to the request to transfer is grounded in the connectivity of the relevant jurisdiction with the relevant prospectus.

Ireland is not one of the jurisdictions to which the 2025 Prospectus has been passported to and is not named as an offer jurisdiction in the 2025 Prospectus. The bonds are only offered to the public in Austria, France, Germany, Luxembourg and the Netherlands. It is on this basis that the Central Bank approved the transfer of approval of the 2025 Prospectus to the CSSF.

While the Central Bank's guidance on the transfer of prospectus approvals speaks of absolute discretion in the Central Bank's decision, as with all public bodies, the Central Bank is constrained in the exercise of its discretion and must act reasonably and with proportionality in exercising its discretion. For a proportionate exercise of its discretion, the Central Bank must adhere to its own published guidance.

In addition, where the Central Bank is a competent authority subject to the laws of the EU Prospectus Regulation and the request to transfer arises under the EU Prospectus Regulation, the Central Bank must exercise its discretion in line with those laws. The framework of the EU Prospectus Regulation supports approval of prospectus decisions being taken by a competent authority with the relevant connectivity to the prospectus.

Article 20(8) of the EU Prospectus Regulation only allows for the transfer of approval of a particular prospectus. Upon completion of the transfer of the approval, the competent authority to whom the approval of the prospectus has been transferred shall be deemed to be the competent authority of the home Member State for that prospectus for the purposes of the EU Prospectus Regulation.

To summarise, there are, therefore, two distinct and separate steps in the transfer of approval process. The first is the transfer of approval of the prospectus to another competent authority. The second is the review and approval of the prospectus by that other authority. In carrying out its role of reviewing and approving the relevant prospectus, the CSSF is entirely independent of the Central Bank of Ireland, and the CSSF approved the 2025 prospectus.

Sanctions

It has been said that the Central Bank should have sanctioned the State of Israel and refused to approve the transfer process relating to the 2025 Prospectus to the CSSF. The Central Bank is not empowered under EU law to impose sanctions for breaches or alleged breaches of international law. The EU imposes sanctions in those circumstances.

Even if the Central Bank had refused to approve the transfer of the approval process for the 2025 Prospectus to the CSSF, it does not follow, as has been suggested, that the State of Israel would not then have been able to issue a prospectus in the EU for 2025. In those circumstances, the State of Israel could have submitted that prospectus to the Central Bank for review and approval.

The Central Bank would then have needed to go through the review and approval process, described in question 3 below, for the 2025 Prospectus. In addition, the State of Israel could have issued a 2025 Prospectus for bonds with a denomination of at least €1,000 in any EU Member State without needing to obtain the approval of the Central Bank.

The Central Bank's assessment was that it did not have a legal basis to refuse to approve the transfer of approval of the 2025 prospectus.

The Central Bank considered the arguments that have been made that Recital 88 of the EU Prospectus Regulation provided a legal basis to refuse the transfer of approval. The Central Bank does not agree with that analysis. There is nothing contained within Recital 88, which would provide the Central Bank with a legal basis to refuse the transfer of approval.

Recitals of EU Regulations set out the reasons for EU regulations. Recitals are not operative provisions of those Regulations. The European Court of Justice does allow recitals to be used as an interpretative legal tool, in circumstances where the operative provision of the relevant EU Regulation is ambiguous and the recital assists to clarify that provision. In the case of the EU Prospectus Regulation, it is clear that the Central Bank must approve a prospectus where that prospectus meets the standards of completeness, comprehensibility and consistency as

prescribed in the EU Prospectus Regulation. It is also clear that prospectus approvals may be transferred to competent authorities with the relevant connectivity to the prospectus. There is no ambiguity in this regard and the recital does not provide any clarity in relation to these particular provisions.

Impact of international law rulings and opinions

It has been stated that the Central Bank could refuse to approve the transfer of approval of the 2025 Prospectus to the CSSF and/or the approval of the prospectus itself on the basis of certain international law rulings and opinions, namely on the basis of the ICJ provisional rulings in the ongoing South Africa – Israel case and/or on the basis of the ICJ opinion on the Occupied Palestinian Territory. This is incorrect. As stated above, the Central Bank cannot decide to impose sanctions or otherwise avoid to follow the requirements of the Prospectus Regulation on the basis of breaches or alleged breaches of international law.

The South Africa case against Israel referred to the ICJ in December 2023 alleges breaches of the Genocide Convention, with regard to Israel's actions in Gaza. In that case the ICJ has found that the rights claimed by South Africa were plausible. On that basis, the ICJ issued certain provisional measures to Israel between January and May 2024. This case, which Ireland has filed a declaration of intervention in, is ongoing and remains to be determined. The ICC's investigation into the situation in the State of Palestine, which also includes an allegation of genocide, is also ongoing and remains to be determined.

If there is a Court finding of genocide against the State of Israel, it would be for the EU and individual States to decide on the measures to be taken and relevant laws to be introduced, which the Central Bank would comply with. That could, depending on the circumstances at the relevant time and decisions taken at the EU level, lead to EU sanctions being imposed upon the State of Israel, which could provide a legal basis to refuse to approve prospectuses issued by the State of Israel.

Separately, in an advisory opinion, from July 2024, the ICJ found that Israel's continued presence in the Occupied Palestinian Territory is unlawful. The ICJ opinion is not legally binding. It is addressed to Member States of the United Nations, other States and international organisations and not to the Central Bank. The ICJ opinion of July 2024 is not a basis upon which the Central Bank could refuse to approve the transfer of the 2025 Prospectus to the CSSF.

It is for international bodies such as the UN or EU or individual States to determine how to respond to breaches or alleged breaches of international law, including to determine whether sanctions are necessary. The Central Bank cannot impose sanctions on Israel – for example by refusing to approve the transfer of the 2025 Prospectus to the CSSF (and then refusing a prospectus approval application from the State of Israel if it meets the necessary conditions) – in circumstances where the EU has not imposed any such sanctions itself.

Again, as stated above, the Central Bank is not empowered under EU law to impose sanctions for breaches or alleged breaches of international law. The EU imposes sanctions in those circumstances.

3. The Joint Committee would appreciate if a written response could be provided that outlines in general, what the due diligence process consists of in terms of its consideration of national and international law.

EU Prospectus Regulation Review and Approval Process

The Central Bank is designated as the competent authority in Ireland for the approval of securities prospectuses under the EU Prospectus Regulation.

The EU Prospectus Regulation is implemented into Irish law by way of the European Union (Prospectus) Regulations 2019 [S.I. No. 380 of 2019].

Under the EU Prospectus Regulation, a prospectus must be drawn up, approved and published when securities are to be offered to the public or admitted to trading on a regulated market in the EU. The EU Prospectus Regulation covers a variety of different securities, such as shares, bonds, structured products but also government bonds for third countries. Government bonds issued by EU Member States are exempt from the requirement to publish a prospectus under the EU Prospectus Regulation.

The EU Prospectus Regulation makes clear that the regulation constitutes an essential step towards the completion of the Capital Markets Union and harmonises the approach to the approval of prospectuses. The EU Prospectus Regulation recites that divergent approaches would result in fragmentation of the internal market since issuers, offerors and persons asking for admission to trading on a regulated market would be subject to different rules in different Member States and prospectuses approved in one Member State could be prevented from being used in other Member States. It further recites that to ensure the proper functioning of the internal market and to improve the conditions of its functioning and to guarantee a high level

of consumer investor protection it is appropriate to lay down a regulatory framework for prospectuses at Union level. Accordingly, a decision under the EU Prospectus Regulation must be made in accordance with EU law.

As competent authority under the EU Prospectus Regulation, the Central Bank is responsible for assessing whether a prospectus in respect of which Ireland is the ‘home Member State’ has been drawn up in compliance with the requirements of the EU Prospectus Regulation.

The Central Bank is established by statute to fulfil legal responsibilities and obligations including in relation to the Prospectus Regulation. In carrying out these responsibilities we are at all times required to assess and understand the nature of our legal obligations and responsibilities. We do this on the basis of robust analysis relying on the legal expertise available to us. This takes the form of both internal legal and subject matter expertise and, where necessary and appropriate, of access to external legal advice.

Our assessment of a prospectus is based solely upon the completeness, comprehensibility and consistency of the information in the prospectus, which are assessed against the prescribed requirements in the EU Prospectus Regulation (as further supplemented by Commission Delegated Regulations).

Article 20 of the EU Prospectus Regulation and Chapter V of Commission Delegated Regulation (EU) 2019/980 (Scrutiny and Approval of the Prospectus and Review of the Universal Registration Document) set out the process to be adopted by a competent authority under the EU Prospectus Regulation in the scrutiny and approval of a prospectus.

Where the disclosure in a prospectus complies with the requirements of the EU Prospectus Regulation, it must be approved unless there is a valid legal basis for not doing so. For example, under the EU’s financial sanctions against Russia (Council Regulation (EU) 2022/262 amending Council Regulation (EU) No 833/2014), it is prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities issued after 9 March 2022 by Russia, its government, or the Central Bank of Russia.

The Central Bank does not endorse the issuer or the securities by way of the prospectus approval. To clarify the scope of the approval by national competent authorities, the EU Prospectus Regulation prescribes that each prospectus should include a statement that the competent authority only approves the prospectus as meeting the standards of completeness,

comprehensibility and consistency imposed by the EU Prospectus Regulation and that such approval should not be considered as an endorsement of the issuer and the securities that is the subject of the prospectus.

The Central Bank has adhered to the law in the approval of prospectuses issued by the State of Israel.

Please refer to our response to question 2 above for our analysis of the impact of international law rulings and opinions on our prospectus processes.

Sanctions

While central banks have many powers and functions, their roles are still limited to their mandate. Under the EU legal framework, the EU Commission is responsible for trade policy and trade relations with third countries. The Central Bank has no mandate to impose sanctions on any State or person for breaches or alleged breaches of international law.

The EU implements sanctions adopted by the UN and adopts its own sanctions in certain circumstances. As Committee members know, unlike the EU sanctions against Russia after its invasion of Ukraine, the EU has not, at this time, adopted sanctions against the State of Israel.

The Central Bank would of course implement any sanctions adopted by the EU that are applicable to the Central Bank's functions, as we have with Russia.

The analysis described in the responses to these questions sets out a synopsis of the Central Bank's legal assessment of these matters.