

**MINUTES<sup>1</sup> OF MEETING NO. 84 OF  
THE CENTRAL BANK COMMISSION  
OF 18 OCTOBER 2017**

**In attendance<sup>2</sup>:** Governor Philip R. Lane, Alan Ahearne, Blanaid Clarke, Ed Sibley, Sharon Donnery, John FitzGerald, Des Geraghty, Derek Moran, Michael Soden, Neil Whoriskey (Secretary). **Apologies:** Patricia Byron.

**1. Procedural Items**

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

**2. Minutes of Commission Meeting No. 83 (29 September 2017)**

The Commission approved the minutes of its meeting held on 29 September 2017 (Meeting No. 83).

**3. Matters Arising**

The follow-up items from the September 2017 meeting were noted.

**4. Governor's Report**

The Governor acknowledged the work of staff on a number of matters. These included the recent resolution of Charleville Credit Union and the efficient process followed for ensuring

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<sup>1</sup> These minutes are published as a record of the meeting. The Commission decides 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.

<sup>2</sup> Also present: Eadaoin Rock (General Counsel), Derville Rowland (Director General, Financial Conduct – items 4-18), Gerry Quinn (Chief Operations Officer - via videoconference – items 4-9,11), Maurice McGuire (Director, Financial Stability – Item 9), Domhnall Cullinan (Head of Anti-Money Laundering Division – Item 10), Seana Cunningham (Head of Enforcement Advisory Division – Item 10, 14 and 16), Louise Gallagher (Head of Function Enforcement Investigations Division – Item 10), Kevin Garland (Chief Information Officer – Item 11), Shelia O'Sullivan (Project Management Office – Item 11), Grainne McEvoy (Head of Securities and Markets Authorisations Division - Item 11), Rory McElligott (Head of Function, Statistics Division – Item 11), Deirdre McKenna (General Secretariat Division – Items 12 and 13), Bernie Mooney (Head of Function, Consumer Protection – Policy and Authorisations Division – Item 15), Feidhlim Lenehan (Consumer Protection Division – Item 15).

Those members of management and staff in attendance 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

members of the credit union received their payments via the Deposit Guarantee Scheme; and the business continuity arrangements that were put in place and that operated well during the recent Storm Ophelia event.

The Governor had recently attended the IMF Annual Meetings in Washington. Among the themes of the meetings was that the world economy was in a phase of expansion. This allowed for a window of opportunity to pursue various reforms. However, there were clear and material downside risks, primarily geo-political. In relation to the ECB policy agenda, he noted that the Governing Council monetary policy meeting would be held in the coming week.

**The Commission noted the Governor's Report.**

## **5. Brexit Update**

The Governor introduced this item. He outlined that there was a continuous stream of enquiries to the Bank in relation to potential authorisations, while some authorisations were in progress.

In relation to the preparedness of regulated entities, Mr Sibley said that there were still some sectors that were under-prepared for Brexit. He noted that the Bank was particularly pushing the insurance sector on the matter.

The Governor informed the meeting that in the coming week he was due to host a Roundtable event with industry experts to discuss the issue of Brexit supply chain disruption and its impact on Irish imports.

**The Commission noted the Brexit Update.**

## **6. Chief Operations Officer's Report**

*This minute is partially omitted as it contains material that is security related and material that is subject to a deliberative process.*

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

There remained a significant IT demand profile against a backdrop of resourcing challenges; while considerations were underway in relation to proposing some changes to the current ratio of contractors to staff in IT.

Mr Quinn also updated the meeting on industrial relations matters.

### **The Commission noted the Chief Operations Officer's Report.**

## **7. Director General, Financial Conduct Report**

Ms Rowland introduced this item. She had attended the IMF Annual Meetings which included discussions on Fintech and the potential impact that emerging technologies would have on the financial sector, together with the regulatory challenges they present. Fintech was listed among the Bank's top strategic risk issues, and therefore cross-organisation coordination would be important to advance the Bank's thinking in this regard; this was being progressed through a Fintech Task Force. At a national level, in order to foster the development of Fintech, Ireland was required to transpose the second Payment Services Directive (PSD2) by 13 January 2018. The Consumer Protection Directorate (CPD) was leading on this area, having completed significant work to advance preparedness.

She noted the Bank's recent successful defence of the Quinn Insurance Limited (under Administration) (QIL) case, which involved judicial review proceedings against the Bank. The positive result of this case reinforced the strength of the Bank's enforcement architecture, and represented a comprehensive endorsement of the Bank's Administrative Sanctions Procedure.

She updated members on the Tracker Mortgage Examination. A progress report had been published on 17 October 2017 and the Bank was due to appear before the Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach on 19 October 2017.

By end-September 2017, lenders had identified approximately 13,000 affected accounts; this was in addition to 7,000 accounts where lenders had already rectified the interest rates applied. The total number was, however, likely to rise. The Bank was continuing to challenge the lenders strongly in order to ensure that all impacted accounts were identified. The on-site assurance work conducted by the Bank had identified significant gaps, and some lenders were pursuing those issues. Issues had also been identified with two lenders that would require significant follow-up. Lenders were also being pushed to progress compensation programmes, and it was anticipated that three lenders would have these well progressed by the end of Q4

2017. The Bank was examining the use of its available supervisory tools and powers, up to and including enforcement, in order to address these and other issues identified across the lenders.

In the discussion that followed, members expressed strong concerns around the treatment of customers by their banks, evidenced by the tracker issue, particularly around the need to continuously push the institutions to address this, and that this raised questions around the culture in banks. The need to be fully prepared for the Oireachtas Committee including the need to address potential questions as to why there was no ‘naming and shaming’ of institutions that were non-cooperative was also referenced. There were queries as to whether the Bank was utilising all its powers to ensure this was pursued fully and, where it did not have the relevant powers, whether the Bank could provide assistance to other State agencies that did, such as with the Financial Services Ombudsman. The ultimate total bill for the banks, and the impact this might have on their balance sheets, was also questioned.

Mr Sibley said that, while the total financial cost to the banks would run into the hundreds of millions, this was provisioned for in their accounts and was not significant enough to have a seriously adverse effect on their balance sheets. In terms of the Bank’s powers, the Governor noted the Bank was limited as the relevant powers extended back only to 2013. The Bank was therefore utilising a wider set of influencing factors in pursuing the lenders on issues such as redress and compensation and had made its expectations clear. The Bank, through its work, had added to the range of solutions that were available to impacted customers. Ms Rowland added that the Bank was pressing the banks hard to expand the numbers receiving redress and to increase the level of payments. She noted that the banks were trying to minimise expenditure and that they may attempt to continue with this approach, but the current Oireachtas hearings would help shine a public spotlight on it.

In relation to enforcement powers on this matter, two enforcement cases were open, two more were in train, and more were expected to follow. In relation to ‘naming and shaming’, the Bank was constrained under EU professional secrecy laws and there were also risks around potentially undermining future enforcement cases; these points would be made to the Committee. Ms Rowland added that the Bank was working closely with the Financial Services Ombudsman and would look at the scope of providing information and assistance in a wider context.

As regards culture, Mr Sibley said that there were clearly cultural issues, and the extent of this differed across banks. Some banks had dealt with this issue in a more determined way than others. There was a need for the Bank to continually drive the issue of culture with the sector.

**The Commission noted the Director General, Financial Conduct, Report.**

## **8. Deputy Governor, Prudential Regulation, Report**

*This minute is partially omitted as it contains supervisory information.*

Mr Sibley introduced this item. He informed members that the Head of Banking Supervision, Supervision Division, had tendered her resignation earlier in the week in order to take up an external position. In accordance with the Bank's cooling-off policy, she had been taken off all banking supervision-related work and would work in other areas until her notice period was served.

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

**The Commission noted the Deputy Governor, Prudential Regulation, Report**

## **9. Deputy Governor, Central Banking, Report**

*This minute is partially omitted as it contains market sensitive information and refers to matters under deliberation.*

Ms Donnery introduced this item. She informed the meeting that there had been a further sale of €500m of the Floating Rate Notes (FRNs) to the NTMA during September 2017. This brought the total sales in the year-to-date to €3bn.

One member noted the Report referenced a property market Roundtable event recently and asked what the outcome from it was. The Governor said there had been a very helpful exchange and that the Commission would be provided with a note of the meeting, which was also due to be published on the Bank's website.

Mr McGuire joined the meeting to update members on the liquidation of Charleville Credit Union. Mr Sibley noted that problems in the credit union were long standing and that there had been very poor lending practices leading up to the financial crisis period. He noted that the credit union had been very slow to recognise the scale of its problems. It had been under reserved and had not been able to trade out of difficulty. Ms Donnery noted that €8m had already been provided by the Irish League of Credit Unions to Charleville Credit Union but that this did not prove sufficient. It became necessary to engage the Bank's Resolution Division, which had been working on the issue since June 2017. The Bank now stood ready to invoke the Deposit Guarantee Scheme to ensure that speedy payments were made to the members of the credit union. She emphasised that the Bank's focus was on protecting those members. The Governor noted the downsides of CCU being put into liquidation, in particular the staff losing their jobs, but noted that the Bank was required to act when it recognised the reality of an operation not being sustainable. He noted that the work done by the Bank staff was undertaken carefully and that all proper procedures had been followed. Responding to a question from a member Ms Donnery noted that there had been engagement with another credit union, with a view to providing credit union services to the Charleville area.

### **The Commission noted the Deputy Governor, Central Banking, Report.**

## **10. Enforcement**

Mr Cullinan introduced this item by summarising the Bank's key ongoing priorities around anti-money laundering / countering financing of terrorism (AML / CFT), and progress on same. A significant achievement concerned the recent Financial Action Task Force (FATF) Mutual Evaluation Report that was published in September 2017. He noted the support the Commission had shown in ensuring the necessary investment was put in place in order to allow the Bank to be well placed to address AML/CFT issues. There had been significant engagement with firms to ensure their obligations were being met, including enforcement actions. There remained a strong focus on this area, both within the Bank and internationally, as significant risks and threats were emerging all the time. New EU Directives were also being developed. The members welcomed the positive developments. One member noted, according to the FATF Report, that Ireland had failed to prosecute certain AML cases and queried whether the relevant powers were in place to prosecute via the courts or whether the Bank's Administrative Sanctions Procedure (ASP) may be a potential route. Mr Cullinan noted that

prosecution of AML cases was a matter for the Director of Public Prosecutions (DPP) and not for the Bank. The Bank did, however, have a role as regards appropriate systems and controls being in place and had taken relevant enforcement actions in that regard.

Ms Gallagher provided an update on the various Enforcement Investigations work streams. She provided a brief overview of the recent judgment in relation to the QIL case, which may yet be appealed. Ms Cunningham outlined the implications of harmonising sanctioning provisions in EU directives such as CRDIV and MiFID II and noted that there were now five different procedures in legislation for imposing sanctions. Ms. Cunningham noted that the Bank was engaging with the Department of Finance with a view to potentially consolidating the processes within the ASP regime.

Members congratulated the team on the recent judgement and noted the hard work of the teams.

**The Commission noted the Enforcement Update.**

## **11. Unity Programme Proposal**

At its meeting on 29 September 2017 (Meeting No. 83), the Commission considered proposals around the Unity Programme, which was designed to address the multi-year design and implementation of a new target data architecture. At that meeting, the Commission had requested further details concerning the capacity to deliver the Programme, detailed costings, and accessibility of and access to the relevant data.

Members indicated they were satisfied with the additional detail and reassurance provided in relation to these issues and as set out in the accompanying paper (Paper No.237 of 2017).

**The Commission noted the additional information provided on the Unity Programme; approved the necessary budget to proceed with the Programme's Phase 1 implementation; and to define Phase 2 in more detail.**

*This decision was taken under Item 19 – Record of Decisions.*

## **12. Revised Commission Terms of Reference**

Ms McKenna introduced this item. A review of the Commission's Terms of Reference had taken place in the context of the revised Code of Practice for the Governance of State Bodies. Some amendments to the Terms of Reference had been proposed to ensure they were in line with relevant provisions of the Code of Practice.

**The Commission approved the Revised Commission Terms of Reference.**

*This decision was taken under Item 19 – Record of Decisions.*

### **13. Revised Commission Code of Conduct and Ethics**

Ms McKenna introduced this item. Similarly to the Terms of Reference, the Commission Code of Ethics had been reviewed against the provisions of the revised Code of Practice for the Governance of State Bodies. Some amendments to the Code of Ethics were proposed, including re-naming it as the Code of Conduct and Ethics. One member suggested a revised wording in relation to one of the provisions to ensure greater clarity and this was agreed.

**The Commission approved the Revised Commission Code of Conduct and Ethics.**

*This decision was taken under Item 19 – Record of Decisions.*

### **14. Funding: Future Accounting Treatment of Administrative Sanctions Procedure Inquiry Costs from 2018 onwards**

Ms Cunningham introduced this item. At its meeting on 28 February 2017, the Commission approved proposals concerning the treatment of external and internal costs incurred in relation to Administrative Sanctions Procedure (ASP) inquiries in 2016 and previous years. At the same meeting the Commission agreed that further consideration would be given in due course as to the treatment of similar costs in the future. It was now proposed that for future inquiries from 2018 onwards, all costs, including external costs, would be included in the cost of the financial regulation for levy calculation purposes, thereby being funded by Industry using the target recovery rate.

**The Commission approved that internal costs incurred in relation to an Administrative Sanctions Procedure (ASP) continue to be included in the funding levy calculations, and**

**not funded by the Bank via subvention, regardless of whether they relate to an inquiry or a pre-inquiry investigation; that external costs incurred in relation to the ASP inquiries commenced pre 1 January 2018 continue to be fully funded by the Bank via subvention; that for future ASP inquiries, commencing on or post 1 January 2018, external costs incurred be included in the funding levy calculations, and not be funded by the Bank via subvention; and that this policy be implemented with effect from 1 January 2018.**

*This decision was taken under Item 19 – Record of Decisions.*

## **15. Consumer Protection Code 2012 – consequential amendments arising from PAD and the PRIIPs Regulation**

Ms Mooney introduced this item. Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (the Payment Accounts Directive) was transposed into Irish law on 18 September 2016 by the European Union (Payment Accounts) Regulations 2016. Arising from the transposition, a consequential amendment to the Consumer Protection Code 2012 (the Code) was required.

Similarly, due to the application of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (the PRIIPs Regulation) from 1 January 2018, a small number of consequential amendments to the Code were required. As an EU Regulation, the PRIIPs Regulation had direct effect in Member States and would apply from 1 January 2018, without the need for national transposition.

**The Commission approved Consumer Protection Code 2012 – consequential amendments arising from PAD and the PRIIPs Regulation.**

*This decision was taken under Item 19 – Record of Decisions.*

## **16. Annual Report on Protected Disclosures**

Ms Cunningham introduced this item. The accompanying paper (Paper No. 242 of 2017) presented an overview of the 86 reports received during the period 1 September 2016 to 31 August 2017, together with a summary of the various actions taken in respect of the reports received.

**The Commission noted the Annual Report on Protected Disclosures.**

#### **17. Governor's Quarterly Report on Expenses**

**The Commission noted the Governor's Quarterly Report on Expenses.**

#### **18. Minutes of Sub Committees**

**The Commission noted the Minutes of the meeting of the Audit Committee of 24 July 2017.**

#### **19. Record of Decisions for Items 11-15**

The Commission considered and finalised its decisions on items 11-15. The decisions are recorded under the relevant items.

#### **20. Any Other Business**

There was no other business.

**The meeting concluded.**