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YEARS OF PUBLIC SERVICE

Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

Philip R. Lane *Gobharnóir/Governor*

T +353 (0)1 224 6001

Bosca PO 559
Baile Átha Cliath 1

PO Box 559
Dublin 1

www.centralbank.ie

Mr John McGuinness TD
Chairman
Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach
Leinster House
Dublin 2

Your ref: I 2018/406

1 May 2018

Dear Chairman,

Further to the Central Bank's appearance before the Committee on 18 January 2018, and the subsequent letter from the Committee on 9 February 2018 seeking supplementary information, please find the Central Bank's responses to these issues attached to this letter at items 1 – 8, together with associated appendices.

As you are aware, additional information was sought from Committee members during their visit to Central Bank headquarters at North Wall Quay on 14 February 2018 and these issues are addressed at items 9 to 15.

The Central Bank is grateful to the Committee for its continued support in this matter of public importance and trusts that this response will assist the Committee members in their work.

Yours sincerely,

Philip Lane

Central Bank of Ireland responses to the Joint Oireachtas Finance Committee on outstanding issues following the January Committee hearing and the February fact-finding visit

Item 1: Inform the Committee of the costs incurred by the Central Bank to date in the Tracker Mortgage Examination[1]

The costs incurred by the Central Bank in completing the Examination to end December 2017, amount to approximately €8.4m. This is an estimate of internal labour costs of €4.5m (directly attributable internal labour) and does not include an apportionment of indirect costs (e.g. support staff, premises, IT costs etc). Directly attributable external costs are estimated at €3.9m.

Since 2016, third party external costs incurred by the Consumer Protection division of the Central Bank, which relate to the Examination, have been ring-fenced and are recoverable, in full from the entities involved. It is worth noting that through the Central Bank's annual Industry Funding Levy process, the costs of financial regulation are aggregated and recharged in accordance with defined recovery rates. The rates set out in the annual Funding Regulations reflect the recovery rates agreed with the Minister of Finance.

Item 2(a): Inform the Committee of AIB's turnover at this point in time

Specific information or details regarding AIB's turnover is a matter which might be raised directly with AIB. The information that the Central Bank is able to provide is based on publicly available financial information published by AIB in its Annual Financial Report 2017, which states that its total operating income for 2017 was €3,001 million (2016: €2,919 million). The relevant Consolidated Income Statement is attached at **Appendix 1**.

Item 2(b): Are "AIB plc" and "AIB, plc" separate entities?

The Central Bank confirms that "AIB, plc" and "AIB plc" are the same company. The company was listed as Allied Irish Banks plc (i.e. without a comma) on the Central Bank's Register of Credit Institutions in error. All references to "AIB plc" (omitting a comma in error) refer to "AIB, plc". The Central Bank confirms that the company is now listed correctly as "Allied Irish Banks, Public Limited Company" (i.e. "AIB, plc"). Furthermore it is correctly recorded on the European Central Bank's Register of Credit Institutions.

Item 3: Inform the Committee of information on Credit Servicing Firms/Retail Credit Firms:[2]

(i) Distinction between Credit Servicing Firms and Retail Credit Firms

Retail Credit Firms are authorised to provide credit (in the form of cash loans) directly to individuals whereas Credit Servicing Firms are not authorised to provide such credit.

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[1] Wording of Committee request: "To revert on the costs the Central Bank has incurred to date in the Examination regarding money being paid in redress and compensation and the associated costs".

[2] Wording of Committee request: To revert with certain information on credit servicing firms/retail credit firms etc.

Credit Servicing Firms are authorised to manage or administer loans on behalf of unregulated loan owners. 'Credit servicing' includes all interactions with consumers in respect of their loans, including:

- Notification of changes in interest rates or payments due;
- Collection of repayment on the loans;
- Management of complaints; and
- Assessment of a consumer's financial circumstances in cases of financial difficulties.

A copy of the Central Bank's Frequently Asked Questions in respect of credit servicing is attached for information at **Appendix 2**.

(ii) **How many Credit Servicing Firms are registered with the Central Bank?**

There are 11 Credit Servicing Firms on the Central Bank's Register.[3] The details of these firms are provided at **Appendix 3**.

(iii) **How many Retail Credit Firms are registered with the Central Bank?**

There are 21 Retail Credit Firms on the Central Bank's Register. The details of these firms are provided at **Appendix 4**.

(iv) **Is a Retail Credit Firm authorised to carry on the business of credit servicing? Does a Retail Credit Firm need to appear on both the Register of Retail Credit Firms and the Register of Credit Servicing Firms?**

A firm authorised as a Retail Credit Firm will appear on the Register of Retail Credit Firms but will not be included on the Register of Credit Servicing Firms.

A Retail Credit Firm may carry on the business of credit servicing by virtue of its authorisation as a Retail Credit Firm. Section 28(3) of the Central Bank Act 1997 states that a regulated financial services provider authorised to provide credit in the State "is taken to be authorised to carry on the business of a credit servicing firm".

(v) **The Committee requested that the Central Bank convey to the Credit Servicing Firms it regulates that they should appear before the Committee**

The Central Bank issued letters to the 11 firms listed on its Register of Credit Servicing Firms on 9 February 2018 setting out the Central Bank's expectation that Credit Servicing Firm representatives should attend before the Committee and cooperate fully in order to facilitate the Committee's consideration of relevant issues when requested to do so.

[3] Nine Credit Servicing Firms have been authorised and two Credit Servicing Firms have a status of "transitional" as of 20 March 2018.

Item 4: Inform the Committee of how the Central Bank assessed the prevailing rate issue, to include the factors the Central Bank took into account, in concluding that the interpretation of "prevailing rate" as being the rate which applied, at the time that a person came off the fixed rate.[4]

In line with our regulatory engagement via the Examination, the Central Bank has intervened on prevailing rate issues. This intervention is aligned with the Central Bank's functions as part of the Examination to rigorously test and challenge, from a systemic perspective at the macro level, the position adopted by lenders to try and achieve the best result for all customers within a group, which involves the assessment of vast quantities of information and documentation as well as detailed and considered analysis.

As part of the Examination, the Central Bank requires that robust assurance work is undertaken by lenders' external independent parties, which excludes the lenders' external auditors. This assurance work involves the assessment of thousands of documents and details the methodology for the identification of affected and non-affected customers which is then assessed by the Central Bank's own authorised officers. The assessment of this assurance work often involves detailed information requests from the Central Bank and its authorised officers to determine the accuracy and veracity of the information.

Where the Central Bank has concerns about the determination of customers as being "non-affected" for the purposes of the Examination, all relevant documentation and information is requested and scrutinised by teams of skilled professionals across various divisions in the Central Bank. We conduct our own independent legal analysis on foot of this. All scenarios are rigorously considered and tested before a final determination is made. All issues are assessed from a systemic perspective at the macro level. The sheer scale of this process means that the exercise can take weeks depending on the complexity or number of issues involved.

As the Committee is aware, the Central Bank is bound by strict confidentiality rules both at national level (by way of s.33AK of the Central Bank Act, 1942), and at EU level. The Central Bank cannot publicly disclose details of its supervisory engagement with individual firms. In general, the Central Bank is only permitted to disclose "aggregate" information so that an individual firm cannot be identified from that disclosure.

We can confirm that the AIB prevailing rate customers have, directly as a result of the Central Bank's intervention, been admitted to the Examination and will receive a compensation payment as well as an offer of the current prevailing rate, as opposed to the prevailing rate at the time their fixed rate expired. Importantly, this ensures that those customers have the opportunity to utilise, to the full extent, the Examination's appeals processes should they be dissatisfied with any aspect of their redress and compensation offer.

In addition, customers can pursue their case, based on their own unique circumstances, with the Financial Services and Pensions Ombudsman and/or the courts without being limited by Statute of Limitations arguments, their rights having been protected by the Central Bank under the Framework for the Examination.

It is important to note that customers in this group never had a tracker interest rate applied to their account from inception. As indicated to the Committee in January, the Central Bank did

[4] Wording of Committee request: Revert to Committee setting out its assessment of the prevailing rate issue and the factors it took into account in arriving at the broad conclusion that the approach of the institutions was to interpret the prevailing rate as being that which applied at the time a person came off the fixed rate.

consider the model used by AIB to determine its then prevailing rate and concluded that it was reasonable. It should also be noted that customers in this group are being offered the current prevailing rate, which is lower, as opposed to their contractual entitlement of the then prevailing rate at the time they rolled off their fixed rate period.

All relevant legal issues and applicable legislation were considered by the Central Bank in coming to its conclusion on this issue. Furthermore:

(i) In addition to considering the contractual obligations contained within customers mortgage documentation, lenders are required under the Framework to also consider influencing factors particular to customers' mortgage journeys;

(ii) The Central Bank considered all available information, influencing factors and documentation arising from the Central Bank's supervisory engagement with AIB in relation to the prevailing rate issue to determine the degree to which it could challenge AIB's view in relation to the relevant prevailing rate;

(iii) In particular, the Central Bank examined, at a macro level, whether sufficient legal grounds existed to challenge AIB's interpretation of the term "*prevailing rate*" contained within AIB's terms and conditions. This was tested through rigorous and robust legal analysis and all arguments were fully considered;

(iv) On the basis of this extensive assessment, which of legal necessity remains confidential, the Central Bank formed the view that, at a macro level, the Central Bank could not mount a legal challenge on behalf of all customers in the relevant group, that a rate other than the then prevailing rate should be offered; and

(v) In relation to prevailing rate issues in general, the Examination has identified that wording of customers' mortgage contracts i.e. the terms and conditions attached to their mortgages, vary widely both within and between lenders. Given the variance in the contractual terms identified, not all cases may be treated the same for the purposes of the Examination in respect of determining affected customers for the purposes of redress and compensation or for the assessment of the prevailing rate issue. The consideration of the prevailing rate issue by the Central Bank varies across all lenders and is dependent on the relevant contractual documentation, the influencing factors for the group as a whole, and the specific regulatory and legal analysis conducted by the Central Bank based on the particular circumstances of the group in question. The consideration is unique to each lender.

In conclusion, the Central Bank's primary focus in this unprecedented industry-wide Examination is, and always has been, to ensure that every lender involved identifies affected customers, stops the harm and pays appropriate redress and compensation. This is a key supervisory and policy focus for the Central Bank. The Central Bank's mandate is to ensure that the best interests of consumers are protected. Whenever a group of potentially affected persons are excluded by lenders from the Examination, the Central Bank's role is to robustly challenge this exclusion on behalf of those affected persons as a group through rigorous analysis and intensive regulatory engagement. This has resulted in an additional c.13,600 customers being included between October 2017 and January 2018, including the c.4,000 customers at AIB as in the December update, who have or will receive a compensation payment and an offer of the current prevailing rate.

The Examination is unique in its scale and has required an equally unprecedented regulatory response. The Central Bank's pursuit of lenders continues to ensure that they include all affected customers and discharge their responsibilities under the Framework. This will involve intrusive supervisory scrutiny, which means the Central Bank will continue to review, challenge and verify the work undertaken by the lenders and complete our own multi-faceted inspection programme in parallel with the enforcement investigations, which are ongoing.

Item 5: Inform the Committee as to whether the Central Bank's Consumer Protection Framework should be expanded to include small and medium-sized enterprises ("SMEs") of a higher value

It is understood that this question was asked in the context of the manner in which SMEs are defined in Europe and the right of customers of regulated entities to refer individual complaints to the FSPO. The question raised addresses the desirability for the expansion of the remit of the FSPO, to give the Office power to investigate complaints from SMEs with a turnover in excess of €3 million.

The Central Bank's Code of Conduct for Business Lending to Small and Medium Enterprises (SME Code) was reviewed and subject to a consultation in 2015. On completion of the 2015 review, the SME Code was replaced by Regulations issued under Section 48 of the Central Bank (Supervision and Enforcement) Act 2013.

As part of the review, the Central Bank considered whether certain requirements which applied in respect of 'smaller enterprises' only should be applied in respect of all SMEs.[5] In response to the Central Bank's consultation, one Government Department agreed that there was merit in extending the 'Smaller Enterprises' provisions to all SMEs. Feedback from other stakeholders (including industry stakeholders and another Government Department) included:

(i) That the protections should be proportionate to the size of the loan and that larger SMEs are a highly sophisticated cohort and financially astute;
(ii) A concern about the 'one size fits all' approach; larger SMEs may not need the same level of protections as proposed; and
(iii) That the three SME categories, micro, small and medium-sized enterprises, have very different characteristics and the proposed regulations should apply to micro enterprises only.

In the final SME Regulations, the Central Bank adjusted the scope of the Regulations such that:

(i) The full protection of the SME Regulations apply in their entirety for the benefit of micro and small enterprises;
(ii) The high-level protections of the previous SME Code will continue to apply for the benefit of medium-sized enterprises; and

[5] Under the SME Code, 'smaller enterprises' is the following sub-category of small and medium enterprises:
a) a natural or legal person or *group* of natural or legal persons, but not an incorporated body with an annual turnover in excess of €3 million in the previous financial year, acting within their business, trade or profession (for the avoidance of doubt a group of *persons* includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate) or
b) incorporated bodies having an annual turnover of €3 million or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said €3 million)

(iii) The 'Smaller Enterprises' provisions of the previous SME Code apply for the benefit of micro and small enterprises.

The Central Bank has therefore recognised that it is appropriate to extend a higher level of protection for SMEs coming within the 'micro and small enterprise' category. Indeed, the Central Bank had already recognised under the SME Code that it is appropriate to extend a different level of protection to different groups of enterprise, given that these requirements do not apply to large enterprises.

Item 6: Inform the Committee whether the Central Bank has confirmed that the correct rate is being applied in the additional 900 cases, and the reason for delays in reverting customers' accounts to the original rates in these cases

The circa 900 AIB customers to whom the Chairman referred, will be placed on the tracker rate that they were on prior to entering into the fixed rate period. As this cohort was identified in Q4 2017, AIB commenced identifying customers within this cohort in January 2018 and rate rectification is ongoing and is expected to be completed in Q2 2018.

Item 7: Inform the Committee of an answer to the following question:

"***Where a client has:***

(i) ***been refused a loan by a bank in Ireland;***

(ii) ***sought the loan from a bank in receipt of funding from the European Investment Bank and was refused;***

(iii) ***appealed the decision and the Appeals Office decides that the person should have received the loan; and***

(iv) ***ongoing disagreement in relation to the matter with the Bank.***

Does the European Investment Bank request performance indicators from various banks for the loan?[6]

In line with the European Investment Bank's ("EIB") mandate, the EIB provides funding directly to relevant intermediaries (i.e. Credit Institutions). The purpose of the funding and the stated goals of the EIB include the provision of finance and expertise for sustainable investment projects that contribute to EU policy objectives.

Each provision of funding by the EIB is completed on a bilateral basis with specific contracted terms and conditions agreed between the EIB and the relevant intermediary. The ultimate aim of the EIB funding is to provide the underlying borrower (for example the SME) with access to finance, at a cheaper rate and / or over a longer term than might be typically available. On-lending[7] decisions remain with the intermediary institutions, which also retain the financial risk of the on-lending. Under intermediated loans, the EIB has no contractual relationship with final

[6] Wording of Committee request: "Where a client has been refused a loan by a bank in Ireland but one that deals with the fund given by the European Investment Bank and the appeals office decides that the person should have received the loan and the disagreement rumbles on. In that case does the European Investment Bank request performance indicators from various banks for the loan?"

[7] When an organisation lends money that they have borrowed from another organisation or person

beneficiaries (SME borrower), although final beneficiaries need to be informed about EIB involvement.

The Central Bank has no involvement in EIB funding, either from an initial approval stage or in monitoring the performance of the funding. With respect to the element of the question that deals with refusal of credit, the Credit Review Office remains an avenue for any borrower refused credit by a participating institution.

Item 8: Inform the Committee of the Central Bank's views on the Committee Credit Union Report.

A response in relation to this item was provided to the Committee on 7 February 2018.

Item 9: The number of companies passporting into Ireland and whether the majority of such passporting is between the UK and Ireland?

Financial services firms benefit from the right under European Directives to establish in one Member State and provide financial services across borders. This can be done via:

- Freedom of Establishment (FOE) - the establishment of a branch in another Member State (subject to notifying the home Member State); or
- Freedom of Services (FOS) - the provision of services in another Member State (i.e. services are provided in another Member State but no physical presence is established in that State), also subject to notification requirements.

In general, and in line with the specific Directives, firms' wishing to exercise the freedom to provide services within another EEA Member State shall notify the competent authorities of the home Member State of their intention to do so.

These firms are typically subject to prudential regulation in their home state and conduct regulation in the host state.

It should be noted that a notification received from a firm of its intention to provide services under the passporting regimes does not mean that the firm will actively provide services in the state - many firms apply for the rights to provide services but may not use those rights.

Taking the Insurance Undertakings sector as an example, as the table below shows, there are 1,021 Insurance Undertakings currently passporting into Ireland. Of these, 979 have notified the Bank of their intention to provide services on a FOS basis, while the remaining 42 have established branches in the state on an FOE basis. Of these, 302 are passporting from the UK and Gibraltar (26 FOE, 276 FOS). In 2016, 81 (15 Life/66 Non-Life firms) of the 302 firms were actively providing services. This accounted for 72% (€2.5bn) of the total FOE/FOS written premium in 2016 (€3.4bn) in this sector.

Please see chart below for a detailed breakdown of firms passporting into Ireland, across the sectors that the Central Bank supervises. This data is set out an FOE/FOS basis (data provided is the most up to date available in each sector):

	Freedom of Establishment		Freedom of Services	
Sector	FOE	of which UK	FOS	of which UK
AIFMs	114	96	260	141
Credit Institutions	34	12	441	97
Electronic Money Institutions	2	2	172	112
EuVECA Funds	-	-	17	11
Insurance Intermediaries	60	53	7,529	2,209
Insurance Undertakings	42	26	979	276
MiFiD Investment Firms	1	1	187	117
Mortgage Credit Intermediaries	2	1	29	21
Payment Institutions	20	16	411	283
UCITS Management Companies	2	0	18	5
UCITS Investment Funds[8]	-	-	2,632	248

AIFM – Alternative Investment Fund Manager
EuVECA – EU Venture Capital Fund
MiFID – Markets in Financial Instruments Directive
UCITS – Undertakings for Collective Investment in Transferable Securities

Item 10: Inform the Committee, in relation to the issue of lenders, and in particular Ptsb, writing to elderly customers seeking "credentials" to confirm identity – for example, letters to older people seeking confirmation of spouse's identity on joint account but spouse is deceased. JOC members said this was upsetting for many older people and asked if the Bank had a role in getting lenders to change their approach

In general, obtaining and maintaining customer information/documentation is necessary in order to ensure that firms know who their customers are and what the nature of the business relationship is over the lifetime of that relationship. Firms are required under Chapter 11 of the Consumer Protection Code to maintain up to date records of all documents required for consumer identification and profile. In addition, if the nature of the business relationship changes, firms may have to investigate if this gives rise to a suspicion of money laundering or terrorist financing, and if so, report this suspicion to An Garda Síochána and the Revenue Commissioners. Ultimately these measures are aimed at preventing bank accounts from being used by anyone other than the legitimate bank account holder and help prevent criminals setting up anonymous bank accounts to launder criminal proceeds, or individuals using their bank accounts (or other bank accounts controlled by them) to finance terrorist operations. When requesting updated information/documentation from customers, firms are not acting on the instruction of the Central Bank, they are seeking to comply with the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010, as amended, ('the Act'), which sets out specific requirements to combat money laundering and counter terrorist financing.

The Act requires firms to identify customers upfront (for example, when a bank account is opened) and to keep information/documentation on customers up to date throughout the

[8] Freedom of Services is the right to provide business services or to market investment funds on a cross-border basis within the EU

business relationship with that customer. The Central Bank's role is to monitor firms' (not just banks, but other sectors too) compliance with the Act.

Item 11: Inform the Committee of the percentage of regulatory reserves and the overall amount of funding (implied from the current level of regulatory reserves) which credit unions are permitted to invest in Tier 3 Approved Housing Bodies (AHB) for the provision of social housing under revised regulations

Since 1 March 2018, investments in Tier 3 AHB through a regulated investment vehicle are a permitted class of investment for credit unions. This investment class will be subject to the following limits:

(i) Tiered concentration limit as follows:
- 25% of regulatory reserves for those credit unions with total assets less than €100 million; and
- 50% of regulatory reserves for those credit unions with total assets of at least €100 million.

(ii) Maximum maturity of 25 years.

The table below sets out the maximum exposure to Tier 3 AHB that would be permissible under these concentration limits calculated by applying the concentration limit to the current regulatory reserve of each individual credit union and aggregating for all credit unions.[9]

Total Sector Exposure to Tier 3 AHB	€ 698 m
Tier 3 AHB Investment represented as a % of Total Assets (average)	3.2%
Tier 3 AHB Investment represented as a % of Total Investments (average)	4.9%

Item 12: Inform the Committee whether the Bank believes it feasible/desirable to enact legislation that would enable the Bank to regulate directly so-called "vulture funds" which have an Irish footprint (rather than regulating the Credit Servicing Firms alone, as is currently the case)

The Central Bank understands that engagement is ongoing between the author of the Bill and the Department of Finance in relation to potential amendments, and will respond in due course.

[9] This table was published in the Feedback Statement on CP109 Consultation on Potential Changes to the Investment Framework for Credit Unions **(Appendix 5)** in February 2018. Exposures are calculated by applying the concentration limit to the regulatory reserve of each individual credit union and aggregating for all credit unions (based on June 2017 Prudential Return Data submitted by credit unions).

Item 13: To inform the Committee how the regulation of Credit Servicing Firms works, specifically the distinction between desk-based supervision and onsite supervision, and whether onsite supervision applies in the case of Credit Servicing Firms

The Central Bank since assuming supervisory responsibility for the credit servicing sector has developed and published a Register of Credit Servicing Firms to enable consumers to verify whether the firm servicing their loan is regulated by the Central Bank. It has also set appropriately high requirements on firms, further to public consultation.

The Central Bank has also updated its statutory codes of conduct to ensure that Credit Servicing Firms are subject to these codes directly. The activity of credit servicing is now explicitly a 'regulated activity' within the meaning of the Codes and firms carrying out that activity are regulated entities in their own right with respect to that activity. The Central Bank places applicant firms through a rigorous application process to ensure that only firms that demonstrate compliance with our authorisation standards are authorised.

Nine Credit Servicing Firms have been authorised to March 2018, with two remaining with a status of transitional on the Register of Credit Servicing Firms. In addition to compliance with Central Bank codes of conduct, Credit Servicing Firms are required to demonstrate to the Central Bank that they have:

(i) Robust governance and adequate resources to ensure compliance.
(ii) Agreements with loan owners that enable the Credit Servicing Firm to fully comply with its obligations under Irish financial services legislation.
(iii) Adequate and effective control of loan servicing in the State to enable Central Bank oversight.

For Credit Servicing Firms, the Central Bank's approach to regulation is the same as for the existing categories of regulated lenders. This includes the full application of consumer protections in the context of Credit Servicing Firms' regulated activities, underpinned by an expectation of high standards and a professional and consumer-focused approach to compliance consistent with the Bank's Consumer Protection Framework. In this regard, it should be noted that, under the Credit Servicing Act, Credit Servicing Firms cannot implement an instruction from the loan owner inconsistent with the requirements of Irish financial services legislation as it applies to regulated lenders.

The primary supervisory tools used include both onsite and offsite supervision such as analysis of key financial and other data, thematic inspections and trigger-based supervision. The Central Bank adopts a risk and evidence-based approach in prioritising our work across all retail sectors, including credit servicing. This ensures that we are focusing our resources on those areas where we consider there to be a significant threat to our consumer protection objectives. This includes carrying out a comprehensive annual consumer risk assessment, whereby we examine each of the retail sectors regulated by the Central Bank to identify current and emerging risks. This assessment is informed by intelligence from a number of sources, including:

(i) our supervisory work and experience, including analysis of consumer data submitted by firms;

(ii) external and internal market research and analysis;

(iii) developments at a European and international level;

(iv) advice from the Consumer Advisory Group; and

(v) our engagement with stakeholders, including consumer groups and statutory consumer bodies.

Item 14: Inform the Committee of the numbers of repossessions by banks, and the numbers of repossessed properties currently held by banks

On 22 March 2018 the Central Bank issued the latest statistical release of the Residential Mortgage Arrears and Repossessions Statistics: December 2017.[10]

The release reports that the total number of private dwelling homes and buy to let residential properties in the possession of banking entities as for end-2017 was 2,997. During 2017, banking entities repossessed 3,224 properties. Of this 2,468 were voluntary surrenders, and the remaining 756 were court orders for repossession. The number of repossessions in 2017 were impacted by an initiative for assisted voluntary surrender of BTL properties. For more information, the referenced statistical release is provided at **Appendix 6**.

Item 15: Inform the Committee of the factual position surrounding regulation of cryptocurrencies (i.e. why they are currently unregulated and whether the Central Bank has any concerns on this front)

The European Central Bank defines a virtual currency as a digital representation of value, not issued by a central bank, credit institution or e-money institution, which in some circumstances, can be used as an alternative to money. Virtual currencies do not have the legal status of currency or money.

Virtual currencies are not currently regulated, as they do not fall within the scope of EU financial services regulatory framework. For example, while some virtual currencies may have features similar to those of products and activities within the scope of the EU Electronic Money Directive, a virtual currency is not a digital representation of a fiat currency[11], and therefore does not fall within the meaning of e-money in the aforesaid Directive.[12]

While virtual currencies are not regulated, firms that enable consumers and other parties to buy, exchange, hold or transfer virtual currencies (custodian wallet providers and virtual currencies exchanges), are soon to be regulated for anti-money laundering and countering the financing of terrorism purposes (AML/CFT) under recently agreed EU AML legislation. The Directive has not yet been adopted at the EU level, however when it is, it will then be transposed into Irish law and such firms will be subject to AML/CFT compliance obligations and will be supervised by a competent authority.

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[10] Under Section 33AK of the Central Bank Act 1942 the Central Bank cannot provide specific information in this regard.
[11] Inconvertible paper money made legal tender by a government decree.
[12] As noted in the EBA Opinion on Virtual Currencies **(Appendix 7)**

There are a number of risks for consumers when they buy or hold virtual currencies or buy products that invest in virtual currencies (set out below). Buying a virtual currency from a firm that is regulated to provide financial services does not protect the consumer from these risks. Virtual currencies are unsuitable for most consumers, including those with a short-term investment horizon, and especially those pursuing long-term goals like saving for retirement.

- **Extreme volatility**

Most virtual currencies are subject to extreme price volatility meaning there is a high risk that the consumer will lose some or all of his/her money.

- **Absence of protection**

Virtual currencies are unregulated under Irish and EU law. If a consumer buys or holds them he/she loses access to the guarantees and safeguards associated with regulated financial services.

- **Misleading information**

Information given to consumers who buy virtual currencies is usually incomplete, difficult to understand and does not properly disclose the risks to which customers are exposed.

- **Money Laundering/Terrorist Financing**

There is a risk that virtual currencies can be used for money laundering and terrorist financing as they can facilitate anonymity.

There have been steps taken to highlight the risks posed by virtual currencies. The risk of money laundering and terrorist financing related to virtual currencies in Ireland was assessed in the National Risk Assessment (NRA) published by the Department of Finance and Department of Justice and Equality in 2016. The NRA concluded that at the time of publication many of the potential risks do not seem to have materialised in Ireland but that the area is being monitored on an ongoing basis at a national law enforcement, state supervisory, and EU level.

The three European Supervisory Authorities issued a warning to consumers in February 2018 setting out the high risks for consumers when buying and/or holding virtual currencies. The Central Bank inputted into this warning. The Central Bank has also published this warning to consumers on the Consumer Hub of its website in relation to buying and/or holding virtual currencies.