



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

## **Internal Rules of the Central Bank of Ireland as Resolution Authority:**

Regarding professional secrecy and information exchanges between the Resolution Authority and the other Functional Areas of the Central Bank for the purposes of the European Union (Bank Recovery and Resolution) Regulations 2015, as amended

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## 1. Overview

The Bank Recovery and Resolution Directive (**BRRD**), entered into force on 2 July 2014 to establish a common framework for the recovery and resolution of credit institutions and certain investment firms (**Institutions**) throughout the EU.

Ireland completed its transposition of the BRRD on 15 July 2015 through the introduction of the European Union (Bank Recovery and Resolution) Regulations, 2015 (SI No 289 of 2015) (the **BRRD Regulations**). The BRRD Regulations have since been amended and all further references to the BRRD Regulations in this document can be interpreted as incorporating any and all amendments as of the date they became effective.

In the BRRD Regulations, the Central Bank of Ireland (the **Central Bank**) is designated as the resolution authority and the macro-prudential authority in the State and, subject to the Single Supervisory Mechanism (the **SSM**), the Central Bank is also the competent authority.<sup>1</sup> A number of divisions are involved in carrying out the functions of the Central Bank under the BRRD Regulations. These divisions include: the Resolution and Crisis Management Division (**RES**); the Banking Supervision Division; the Investment Banking and Broker Dealer Supervision Division; the Consumer Protection: Investment Firms & Client Assets Division; Markets Supervision Division; Funds Supervision Division; the Risk Analysis, Data Analytics and Reporting Division; the Financial Risks Division; the Financial Control Division; the Macro Financial Division; the Payment and Securities Settlements Division, (together the **Functional Areas**). Where appropriate, the European Central Bank will also be involved to the extent that it is acting as the competent authority, and the Single Resolution Board will be involved to the extent that it is considered to be the resolution authority in accordance with the SRM Regulation.<sup>2</sup>

Under Regulation 4(4) of the BRRD Regulations, the resolution authority is required to adopt and publish any necessary relevant internal rules, including rules regarding professional secrecy, on information exchanges between it and other Functional Areas of the Central Bank.

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<sup>1</sup> Pursuant to Council Regulation (EU) No 1024/2013 (the SSM Regulation) the Central Bank exercises the functions and powers of the competent authority for less significant credit institutions and the European Central Bank exercises same in relation to significant credit institutions.

<sup>2</sup> Pursuant to Regulation (EU) No 806/2014 (the SRM Regulation), the Single Resolution Board is responsible for significant credit institutions (within the meaning for the SSM Regulation) and cross border groups (within the meaning of the SRM Regulations).

The purpose of these internal rules (the **Internal Rules**) is to delineate the respective roles and responsibilities in relation to the BRRD Regulations, and to facilitate the performance of functions and exercise of powers of the resolution authority in order to ensure the fulfilment of responsibilities as resolution authority under the BRRD Regulations. The Internal Rules set out the principles, including in relation to professional secrecy and information exchanges, which have been agreed to by the Governor of the Central Bank (the **Governor**) on behalf of the resolution authority.

The Internal Rules should not be interpreted as limiting the cooperation or interaction to the areas that are covered by the Internal Rules. The Internal Rules are not intended to be exhaustive but rather set out the general parameters that are expected.

## 2. Purpose of the BRRD Regulations

The purpose of the BRRD Regulations is to provide authorities with a credible set of tools to intervene sufficiently early and quickly in an unsound or failing institution so as to ensure the continuity of the institution's critical economic functions while minimising the impact of an institution's failure on the economy and financial system.

It is clear from the purposes of the BRRD Regulations that the regulations are designed to deal with matters that could have very serious consequences for the State. As such, it is acknowledged that effective internal procedures should exist to facilitate the operational independence of the resolution authority, the avoidance of any potential conflicts of interest between the resolution authority and the other Functional Areas, and the management of professional secrecy and information exchanges between same in the context of functions under the BRRD Regulations. The use of powers under the BRRD Regulations is a significant response to the difficulties of an Institution; to the extent that it is possible to address those difficulties through the supervisory process, the competent authority will endeavour to do this in the first instance. While acknowledging this, it is clear that there have been and there will continue to be cases where the avenues available under the supervisory process have been exhausted and resolution intervention will be the only viable or appropriate option.

## 3. Structural Arrangements to ensure Operational Independence of the Resolution Authority

The BRRD Regulations establish the Central Bank as the resolution authority. The Central Bank is, subject to the SSM, the competent authority in the State for the prudential supervision of the Institutions within the scope of the BRRD Regulations. Under Article 3(3) of the BRRD, where

the resolution authority and the competent authority are the same entity, adequate structural arrangements shall be put in place to ensure operational independence and to avoid conflicts of interest, without prejudice to the necessary exchange of information between the areas.

Regulation 4(5) of the BRRD Regulations requires the resolution authority to cooperate closely with staff of the competent authority involved in carrying out supervision functions, in the preparation, planning and application of resolution decisions. The Central Bank is also required by Regulation 7(4) of the BRRD Regulations to ensure adequate structural arrangements are in place to ensure operational independence and to avoid conflicts of interest between the Central Bank's functions as resolution authority and its other functions (including its supervision functions). In detailing the necessary structural separation further, Regulation 7(1) of the BRRD Regulations requires the staff involved in carrying out the functions as resolution authority to be structurally separate from and subject to separate reporting lines from the staff involved in other functions of the Central Bank, including staff carrying out the supervisory functions.

In order to implement a structural separation, the RES is located in the Central Banking pillar of the Central Bank. RES carries out the day-to-day tasks of the resolution authority under the BRRD Regulations. In this way, the functions of the Central Bank, as resolution authority, are structurally separated from the other Functional Areas.

The structural separation that is operated between the Central Bank's functions as resolution authority and its other functions (including its supervision functions) is key for the avoidance of any conflicts of interest that could arise. This structure ensures that no employee in any relevant Functional Area should be exposed to any conflicts of interest between the resolution authority functions and other functions of the Central Bank.

To the extent that any conflict of interest should arise, the issue will be escalated to the appropriate senior level in the Central Bank to be addressed in accordance with the principles enshrined in the BRRD.

#### *Decision maker under the BRRD Regulations:*

Under Regulation 7(2) of the BRRD Regulations, the Governor is responsible for exercising the functions of the resolution authority. Under Regulation 7(3) of the BRRD Regulations, the Governor can delegate any of those functions to a Head of Function (within the meaning given by section 2 of the Act of 1942) or an officer or employee of the Central Bank.

To the extent that the Central Bank is the competent authority, the functions and powers under the BRRD Regulations vest in the Central Bank Commission, who may delegate any of those functions to, amongst others, an employee of the Central Bank.

#### **4. Confidentiality and Professional Secrecy**

Regulation 146(2) of the BRRD Regulations provides that for the purposes of ensuring that the confidentiality requirements in the BRRD Regulations are met, the resolution authority shall ensure that there are internal rules in place, including rules to secure secrecy of information between persons directly involved in the resolution process. The Internal Rules have been adopted by the resolution authority in service of this requirement.

In keeping with the confidentiality requirements under Regulation 146 of the BRRD Regulations, the resolution authority will ensure that professional secrecy is always appropriately maintained and, where disclosure is not prohibited, that the possible effects of disclosing information on the public interest as regards financial, monetary or economic policy, on the commercial interests of natural and legal persons, on the purpose of inspections, on investigations and on audits, are assessed. The information subject to such professional secrecy requirements includes, but is not limited to, financial information of Institutions subject to the BRRD Regulations, and resolution planning and recovery planning materials of Institutions subject to the BRRD Regulations.

Where the resolution authority considers that any information it intends to share with persons directly involved in the resolution process is subject to professional secrecy, it will clearly identify any correspondence containing such information as subject to professional secrecy to the receiving party.

In addition, Section 33AK of the Central Bank Act, 1942 imposes confidentiality requirements on the Governor and all employees, both past and present, of the Central Bank, providing that such persons shall not disclose confidential information including where such disclosure is prohibited by the BRRD.

#### **5. Information Exchange/Co-operation between the Functional Areas**

Notwithstanding the structural separation between the Central Bank's supervisory and other functions and its resolution functions, and the confidentiality requirements set out under Regulation 146 of the BRRD Regulations, the BRRD Regulations provide that this should not in any way limit the exchange of information necessary for the performance of functions and

exercise of powers under the BRRD Regulations (including the preparation, planning and application of resolution decisions).

All Functional Areas will work closely on resolution planning, in the execution of resolution functions, and in any other functions under BRRD or the BRRD Regulations. Where necessary to facilitate the execution of a resolution action, employees of other Functional Areas may be required to assist RES in carrying out the functions of the Central Bank as resolution authority. Information exchange between the resolution authority and all other Functional Areas for the purpose of performing functions under the BRRD Regulations will take place as soon as practicable after the receipt of a request for any relevant information necessary for the performance of functions under the BRRD and the BRRD Regulations (including the preparation, planning and application of resolution decisions).

#### 6. Signatory:



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