



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 (Recovery and Resolution of Central Counterparties) Regulations 2022 (S.I. No. 547/2022).

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1. Overview

The CCP Recovery and Resolution Regulation (Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 “**CCPRRR**”), which applies in the 27 Member States of the EU, entered into force on 12 February 2021 to establish a common framework for the recovery and resolution of central counterparties (“**CCPs**”) throughout the EU.

Ireland completed its transposition¹ of certain necessary elements of the CCPRRR on 13 December 2022 through the introduction of the European Union (Recovery and Resolution of Central Counterparties) Regulations 2022 (SI No 547 of 2022) (the “**CCP Regulations**”). In the 2022 Regulations, the Central Bank of Ireland (the “**Central Bank**”) is designated as the resolution authority in the State and, pursuant to the European Market Infrastructure Regulation² (“**EMIR**”) the Central Bank is already designated as the competent authority responsible for carrying out the duties for the authorisation and supervision of CCPs established in the State.

Under Article 3(6) of the CCPRRR, 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.

The purpose of these internal rules (the “**Internal Rules**”) is to delineate the respective roles and responsibilities in relation to the CCPRRR and CCP 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 CCPRRR and CCP 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.

¹ Further amendment to domestic legislation may be required in the event of a CCP being granted authorisation in the state.

² Regulation (EU) 648/2012 of 4 July 2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories. The Central Bank was designated national competent authority for EMIR in the State by Statutory Instrument No. 443 of 2014.

Finally, it must be noted that there are currently no EU CCPs authorised in the state, therefore these internal rules do not aim to set out the Central Bank of Ireland's approach to how it would meet its obligations in a scenario where a CCP was authorised within the State. A number of divisions would be involved in carrying out the functions of the Central Bank under the CCP Regulations and this would include the Resolution and Crisis Management Division.

2. Purpose of the CCP Regulations

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

It is clear from the purposes of the CCPRRR that the framework is designed to deal with matters that could have very serious consequences for the State, including in terms of fiscal responsibility, if a CCP were to be established in the State and then pose the risk of deterioration or disorderly failure. 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 relevant Functional Areas, and the management of professional secrecy and information exchanges between same in the context of functions under the CCPRRR and CCP Regulations.

The use of powers under the CCPRRR would represent a significant response to the difficulties of a CCP. In circumstances that a CCP were to become authorised in the State, 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 may be cases where the avenues available under the supervisory process have been exhausted and resolution intervention will be the only viable or appropriate option.

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 remove conflicts of interests

Where the competent authority and resolution authority are established within the same entity, Member states are required by Article 3(3) of the CCPRRR to ensure that certain specific arrangements, including separate staff and reporting lines, are in place to avoid conflicts of interest between the staff carrying out the functions of the relevant authorities and other functions. However, in the circumstances where there are no CCPs authorised in the State, Article 3(7) of the CCPRRR limits the above-mentioned obligations to ensuring that adequate structural arrangements are in place to avoid conflicts of interest between authorities and other functions, without prejudice to necessary and permissible exchanges of information³.

In order to comply with the relevant obligations under the CCPRRR the resolution authority and the competent Authority are located in separate pillars of the Central Bank. The structural separation that is operated between the Central Bank's functions as resolution authority and competent authority for CCPs is key for the avoidance of any conflicts of interest that could arise. This structure also ensures that no employee in any relevant Functional Area should be exposed to conflicts of interest between the resolution authority functions and other functions of the Central Bank under prevailing circumstances. 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 CCPRRR and CCP Regulations.

In this way the CCP resolution authority carries out the day-to-day tasks of the resolution authority under the CCPRRR in a manner that is adequately structurally separate from the day-to-day functions of the Competent Authority and other relevant Functional Areas in the Central Bank.

³ E.g. Article 8 of the CCPRRR 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.

Decision maker under the CCP Regulations:

Under Regulation 7(1) of the CCP Regulations, the Governor is responsible for exercising the functions of the resolution authority. Under Regulation 7(2) of the CCP Regulations, the Governor can delegate any of those functions to, amongst others, an employee of the Central Bank.

4. Confidentiality and Professional Secrecy

Article 73(2) of the CCPRRR provides that for the purposes of ensuring that the confidentiality requirements in the CCPRRR 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.

In keeping with the confidentiality requirements under Article 73 of the CCPRRR, 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 may include, and is not limited to, (whereso and whenever applicable) financial information of CCPs subject to the CCPRRR, resolution planning and recovery planning materials of CCPs subject to the CCPRRR.

Where the resolution authority considers that any information it may intend 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 CCPRRR.

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

Notwithstanding the structural separation between the Central Bank's supervisory and other relevant functions and its resolution functions, and the confidentiality requirements set out under Article 73 of the CCPRRR, the CCPRRR 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 CCPRRR (including the preparation, planning and application of resolution decisions).

Where necessary, information exchanges between the resolution authority, the competent authority and all other Functional Areas for the purpose of performing functions under the CCPRRR and CCP 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 CCPRRR and CCP Regulations (including the preparation, planning and application of resolution decisions).

6. Signatory:



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