



**An Comhchoiste Fiosrúcháin i
dtaobh na Géarchéime
Baincéireachta**

**Joint Committee of Inquiry into
the Banking Crisis**

**RELEVANT PROPOSAL TO THE COMMITTEES ON PROCEDURE
AND PRIVILEGES OF DÁIL ÉIREANN AND SEANAD ÉIREANN**

**FOR THE CONDUCT OF AN INQUIRY IN ACCORDANCE WITH THE
HOUSES OF THE OIREACHTAS (INQUIRIES, PRIVILEGES AND
PROCEDURES) ACT 2013**

INTO CERTAIN ASPECTS OF IRELAND'S BANKING CRISIS

REPORT OF THE JOINT COMMITTEE

TABLE OF CONTENTS

- 1. CHAIRMAN'S OVERVIEW *PAGE 3***
- 2. ISSUES CONSIDERED BY THE JOINT COMMITTEE *PAGE 5***
- 3. RELEVANT PROPOSAL *PAGE 12***

APPENDICES

- A. INQUIRY FRAMEWORK *PAGE 19***
- B. INQUIRY PLAN AND PHASES *PAGE 20***
- C. DRAFT TERMS OF REFERENCE RESOLUTION *PAGE 21***
- D. MOTIONS TO AMEND THE COMMITTEE'S ORDERS OF REFERENCE *PAGE 26***
- E. MEMBERS AND MEETINGS OF THE JOINT COMMITTEE *PAGE 29***
- F. TEXT OF STANDING ORDER 107C (Dáil) / 103H (Seanad) *PAGE 30***

PART 1 - CHAIRMAN'S OVERVIEW

As Chairman of the Joint Committee of Inquiry into the Banking Crisis, I am pleased to submit this proposal to the Committees of Procedure and Privileges of Dáil Éireann and Seanad Éireann for their consideration.

The Orders of both Houses¹ appointing the Joint Committee tasked it with the development of a relevant proposal for a Part 2 Inquiry into certain aspects of the banking crisis for submission to, and evaluation by, the Committees on Procedure and Privileges of both Houses. In developing the relevant proposal, the Committee was asked to consider –

- (1) the appropriate scope and terms of reference for the inquiry, including the method of initial investigation of the inquiry subject matter;
- (2) the functions and powers required to be delegated to the Committee to allow it to conduct the inquiry;
- (3) any other related matters which the Committee considers necessary.

In developing this proposal, under Standing Orders, the Committee was required to determine, *inter alia*–

- the matter or matters the subject of the proposed inquiry,
- as far as is practicable, the conduct, events, activities, circumstances, systems, practices or procedures to be inquired into,
- the persons to whom that conduct or those events, activities or circumstances relate, or whose activities, systems, practices or procedures are to be inquired into, and
- the anticipated time schedule for the proposed inquiry, including whether it is proposed to conduct the proposed inquiry in a single period or in phases.

The Committee is very much aware that this proposal is critical to the success of the Banking Inquiry and has taken significant care in its development. In so doing, the Committee agreed to the following guiding principles:

- the aims of the inquiry should be realistic and achievable,
- the inquiry should be capable of completion within a realistic timeframe and take account of the lifetime of the current Dáil and Seanad,
- risks should be minimised as far as possible,
- the inquiry should be cost-effective,
- should have a clear purpose, and
- be flexible within its focus and scope.

¹ Orders of Dáil Éireann and Seanad Éireann of 14 May 2014

The Committee was assisted in its work by an advisory group with relevant knowledge and expertise to the subject matter of the inquiry, with membership as follows:

Pat Casey, Principal Officer (Department of Finance), Paul Gorecki, Research Affiliate ESRI, Megan Greene, Economist, Maverick Intelligence, Cathal Guimard, Economist, former Aviation Commissioner for Ireland, Conor McCabe, Research fellow, UCD School of Social Justice, Colm McCarthy, Economist, Seamus McCarthy, Comptroller and Auditor General, Rafique Mottiar, Consultant Economist (Central Bank), and John Shaw, Assistant Secretary (Department of the Taoiseach).

On behalf of the Committee, I would like to acknowledge the valuable input of the group to the Committee's consideration of the relevant proposal, and to sincerely thank all members of the group for their significant time commitment to this process on a *pro bono* basis. I would also like to express my appreciation to the Members and staff of the Joint Committee for their work.

In the current economic climate, parliamentary inquiries must be seen to be cost-effective in comparison to other forms of inquiry. The Committee has considered the question of costs directly attributable to the Inquiry and is committed that the costs will be kept to an absolute minimum. In the interests of transparency, the Committee will publish the inquiry running costs on a quarterly basis.

It is proposed to publish the final report of the inquiry by the end of November 2015, which the Committee acknowledges is an extremely challenging timescale given the scope and subject matter proposed for the inquiry. The Committee is committed to a disciplined and focussed approach to the inquiry process and will agree an evidence strategy at an early stage with the objective of ensuring the most efficient conduct of the inquiry within the time available and taking account of the legal framework.

In conclusion, this will be the first Inquiry carried out under the provisions of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013. While the inquiry set out in this proposal will be challenging, I believe that we have a real opportunity to demonstrate that the Houses of the Oireachtas can carry out fair and balanced inquiries and, in so doing, can provide a valuable public service in improving public understanding into key events such as the banking crisis, which impacted so heavily on Ireland and the Irish people.



Ciarán Lynch, T.D,
Chairman of the Joint Committee,
24 September 2014.

PART 2 - ISSUES CONSIDERED BY THE JOINT COMMITTEE

1. THE APPROPRIATE SCOPE FOR THE INQUIRY AND TERMS OF REFERENCE FOR THE INQUIRY

Ireland's banking crisis was unprecedented in terms of its scale and impact on the State. The crisis cannot be characterised as a simple banking systems failure but rather a crisis borne of a wider systemic failure. It cannot be looked at strictly through one lens, but must take account of the relationships between the various actors and the wider context for their actions.

It is in this context that the Committee proposes the following purpose and subject matter for the inquiry:

“To inquire into the reasons Ireland experienced a systemic banking crisis, including the political, economic, social, cultural, financial and behavioural factors and policies which impacted on or contributed to the crisis, by investigating relevant matters relating to banking systems and practices, regulatory and supervisory systems and practices, crisis management systems, and policy responses and the preventative reforms implemented in the wake of the crisis.”

On the scope of the inquiry in terms of the time period to be covered, the Committee is proposing a start date based on the effective implementation date of Basel I at the beginning of 1992, and an end date of end of 2013. As precise dates must be specified in the terms of reference agreed by the Houses of the Oireachtas, this timeframe is appropriate to the comprehensive purpose and stated objective of the inquiry.

The rationale for proposing Basel I is that this set out the changes to capital requirements for banks; and as such formed the genesis of the changes that were to take place in banking regulation in the following years. The rationale for proposing end 2013 is that this allows the Committee an adequate timeframe to address the stated objective of assessing the implementation of previous report recommendations and preventative reforms in the wake of the crisis. Equally, it is important that the inquiry follows completely the implementation and consequences of the policy decisions in response to the crisis in order to form a view on their impact and effectiveness, while also acknowledging that current day events, in terms

of policy and legislation, are a matter for the relevant Oireachtas Committee (s).

The draft Terms of Reference Resolution proposed by the Committee is at **Appendix C**.

The Committee proposes a conceptual framework for the inquiry with 2 distinct Inquiry Phases – a Context Phase and a Nexus Phase. The framework proposed by the Committee is set out in **Appendix A**. It describes the purpose of the inquiry, the two phase approach recommended and the steps in each phase. The Inquiry Plan and Phases is set out at **Appendix B**.

Inquiry Phase: Context

The objective of this phase is to frame the broad context for the inquiry and set out the background to the banking crisis; and to prepare the ground for further public hearings later in 2015. A guiding principle will be that the inquiry report finds new information and connects it, and gives wider context, to the findings of existing reports.

This phase will consist of technical briefings for the Committee in areas such as bank lending and liquidity management, mortgage exposures, and the nature, cost and scope of the guarantee decision. This will ensure members are fully briefed on key technical issues. Following this, there will be public hearings with relevant witnesses, for the purpose of information-gathering to inform the Nexus Phase. Following the Context Phase, the Committee will publish an interim report, which can form the basis for the introductory/context Chapter/s of the final report.

Inquiry Phase: Nexus

The objective of this phase is to identify the key questions to be addressed in the public hearings and the inquiry report; to identify and direct the provision of relevant evidence (written and oral) on this basis, and to analyse all evidence and report on this analysis in the form of a final report. The subject matter for this phase has three broad elements:

- Banking Systems & Practices,
- Regulatory and Supervisory Systems & Practices, and
- Crisis management systems and policy responses.

There will be three steps in this phase (1) an investigation process, (2) public hearings and (3) final report.

2. THE METHOD BY WHICH THE INITIAL INVESTIGATION INTO THE INQUIRY SUBJECT MATTER SHOULD BE MADE

During the Context Phase, the Committee will meet with relevant witnesses to inform the Nexus Phase. These will include previous report authors, in order to discuss their findings and hear their views on changes made/weaknesses remaining. The Committee will consider reports from international monitoring agencies on the subject matter of the inquiry, and relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector, and the role of the media, and will engage with relevant persons, including those who gave warnings or expressed divergent views to the prevailing consensus.

The Nexus Phase will include a preparatory investigation process, which will run in parallel to the Context Phase and will continue alongside public hearings. Very considerable work will be involved in identifying, collecting, reviewing, and analysing written evidence to underpin the public hearings in this phase. The Committee will therefore require the support of a number of persons with relevant expertise in banking, financial services, regulation, governance, etc². It envisaged that these persons will work in investigatory teams on behalf of the Committee and in close consultation with the Committee who will be briefed on progress on a regular basis (for example, the Committee must approve the issuing of all directions seeking evidence). As the investigation process will continue in parallel with the Context Phase, it will be important to have good lines of communication to the investigation team on key issues arising in the Context Phase.

The main steps in the investigation process are as follows:

- Identify the main issues to be investigated within each system (i.e. banking; regulatory and supervisory; and crisis management and policy responses)
- Identify types of written evidence required, and draft notices for issue by the Committee. Liaise with evidence-providers and legal team to clarify and finalise directions for written evidence.
- Receive evidence and categorise on document management system.
- Prepare scoping report for oral hearings on basis of analysis, identifying information gaps to be addressed in questioning and recommending witness list.
- Review and analyse all evidence received, identify information gaps and issue further directions if required.

² The approval of the Houses of the Oireachtas Commission is required under section 67(2) of the 2013 Act in order to recruit technical expertise, and the approval of the Department of Public Expenditure and Reform is also required in relation to pay, terms and conditions of employees of the Commission (including those on fixed-term contracts).

3. THE FUNCTIONS AND POWERS REQUIRED TO BE DELEGATED TO THE JOINT COMMITTEE TO ALLOW IT TO CONDUCT THE INQUIRY

The Committee requires the following powers under Standing Orders in order to conduct the inquiry:

- power to take oral and written evidence and to print and publish minutes of evidence taken in public (and related documents): **Dáil SO 83(1); Seanad SO 71(1).**
- power to invite and accept written submissions from interested persons or bodies: **Dáil SO 83(2); Seanad SO 71(2).**
- power to send for persons, papers and records: **Dáil SO 83 (2A); Seanad SO 71 (2A).**
- power to appoint sub-committees and refer matters to them and to delegate powers to them: **SO 83(3); Seanad SO 71 (3).**
- power to draft recommendations for legislative change and for new legislation **Dáil SO 83(4); Seanad SO 71(4).**
- power to require a Minister or Minister of State to attend a meeting to discuss policy for which he or she is officially responsible: **Dáil SO 83(5); Seanad SO 71(5) .**
- power to require principal office-holders in State agencies or bodies to attend a meeting to discuss their official responsibilities: **Dáil SO 83(7); Seanad SO 71(7).**
- power to engage specialist or technical knowledge, subject to the consent of the Houses of the Oireachtas Commission: **Dáil SO 83(8); Seanad SO 71(8).**
- power to travel, subject to recommendations of the Working Group of Committee Chairmen and the consent of the Houses of the Oireachtas Commission: **Dáil SO 83(9); Seanad SO 71(9).**

4. OTHER RELATED MATTERS AS THE COMMITTEE CONSIDERS NECESSARY

The Committee has considered the risks and constraints on the Inquiry and highlights the following in particular.

(a) Central Bank Act 1942 (as amended)

Section 33AK of the Central Bank Act 1942 (as amended) prohibits listed categories of persons within the Central Bank from disclosing certain confidential information. This section may therefore prove problematic for the banking Inquiry when it seeks this information, which may in many cases be vital to the progression of the Inquiry. Having taken legal advice on this point, the Committee is of the view that it is

necessary to amend section 33AK to overcome this issue and allow disclosure to parliamentary inquiries. Ancillary amendments to the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 and the Standing Orders of Dáil Éireann and Seanad Éireann will also be required to put in place a process for how the Houses of the Oireachtas deal with confidential information, and providing sanctions for Members and staff who disclose such information without authorisation.

(b) Perception of bias

It is open to any person to make a submission to CPP claiming that a perception of bias might arise in a reasonable person in relation to a member appointed to take part in a Part 2 Inquiry, which could ultimately result in the removal of such member from the Committee and compromise the Inquiry. Members of the Committee should therefore exercise caution in their public utterances and behaviour during the inquiry, including public hearings.

(c) Criminal Proceedings and Investigations

The Committee cannot compel evidence if the evidence or document could, if given to it, reasonably be expected to prejudice any criminal proceedings that are pending or in progress in the State or any criminal investigations currently being conducted in the State³.

Given that there are ongoing criminal proceedings and further prospective criminal proceedings on some of the potential subject matter of the banking inquiry, this could prove particularly problematic. Ongoing criminal proceedings may also affect what information can eventually be included in any report. The Committee will liaise on an ongoing basis with the DPP and the Office of the Director of Corporate Enforcement in this context.

(d) Cabinet confidentiality

Cabinet confidentiality is provided for in Article 28.4.3 of the Constitution and is a binding obligation which cannot be waived either by individual members of the Government or by a later subsequent Government.

³ Section 71(1)(c)

The Committee had concerns that Cabinet confidentiality and the provisions of the Act relating thereto⁴, could restrict the extent to which the Committee could consider certain matters relevant to the Inquiry. Having taken legal advice, the Committee is satisfied that, while Cabinet confidentiality protects the contents and details of discussions at meetings of the Government, it does not extend to the actual decisions made, or the documentary evidence used in the run up to the decision. Documents which were created for another purpose and which were used by Cabinet in making its decision are, in a similar vein, not covered by Cabinet confidentiality.

(e) Protecting the good name of individuals

The Committee will not make adverse findings of fact other than in accordance with law. The Committee will work closely with its legal advisors to ensure that at all times it acts in accordance with law.

(f) Dissolution of the Dáil before completion of the Inquiry

Mindful that, by law, the latest date for dissolution of the current Dáil is March 2016 and that any inquiry which is ongoing at the dissolution of the Dáil automatically dissolves at that point and cannot report subsequently, the Committee has committed to publishing its final report no later than 30 November 2015. The Committee will also consider the feasibility of publishing interim reports at key points in the process (for example, following the context module).

Unanticipated dissolutions cannot be planned for, however all public hearings of the Committee will be published in the Official; Report of Debates, as is the case for the Houses and all Committees, and so the oral evidence taken will be placed on the public record as the inquiry proceeds.

(g) Scope of inquiry having regard to the size of the Committee, the number of witnesses and the time available

The Committee will agree an evidence strategy at an early stage in consultation with the investigation team once they are in place, and as part of detailed inquiry planning. The objective will be to ensure the most efficient conduct of the inquiry within the time available and taking account of the legal framework. As part of this

⁴ Section 71(1)(a) and (b) prohibit the compelling of evidence or documents which, in general terms, would be protected by Cabinet confidentiality. The prohibition in these subsections is broader than Cabinet confidentiality in the sense that they also prohibit the compelling of evidence or documents from certain committee meetings of Government.

strategy, The Committee may use a number of mechanisms to streamline evidence-taking, such as the nomination of lead questioners for oral evidence-taking, and the use of written witness statements and interrogatories as appropriate. The issues of whether some of the inquiry work could be carried out by sub-committee(s) of the Inquiry Committee will be examined by the Committee's legal team.

(h) Preparatory investigatory process underpinning parliamentary inquiries

A key element of a parliamentary inquiry carried out under the Act is the preparatory investigation process to identify, collect, review, and analyse written evidence to underpin the public hearings. For complex inquiries such as the present one, it would be extremely helpful to have a clear legal structure for the carrying out of an investigation, in particular allowing for the delegation of certain tasks to a sub-committee or special investigator. At present, the Inquiries Act does not adequately recognise or facilitate this important investigative process.⁵ Given the limited time available to conduct the inquiry and the need to embark on the investigative process immediately on agreement of the Terms of Reference Resolution, the Committee is not seeking legislative amendments for the current inquiry. The Committee will however suggest appropriate amendments to the Inquiries Act to put in place a clear structure for future investigations in the light of its experience of the current inquiry.

⁵ The sole exception being the power to engage a person with technical knowledge or expertise in s.67(2).

PART 3 - RELEVANT PROPOSAL

The Orders establishing the Joint Committee require it to develop a relevant proposal for conducting a 'Part 2 Inquiry' into certain aspects of the banking crisis for submission to, and evaluation by, the Committee on Procedure and Privileges of each House under Standing Orders **107B** and **107D**⁶. Standing Order **107C**⁷ requires that such a proposal address or contain, insofar as is practicable, the matters set out below:

- **The type of Part 2 inquiry proposed pursuant to sections 7 to 11, inclusive, of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013**

It is proposed to conduct a Part 2 inquiry pursuant to section 7 of the 2013 Act.

- **The matter or matters the subject of the proposed inquiry, to specify, as far as is practicable, the conduct, events, activities, circumstances, systems, practices or procedures to be inquired into**

The subject matter is set out in the draft Terms of Reference Resolution (Part A of the Schedule) at **Appendix C**. It is proposed [in paragraph (9)] that matters outside of those specified may be inquired into where relevant to the overall focus of the inquiry as set out in paragraphs **2 and 3**. The subject matter is repeated below for ease of reference.

Table 1: Subject matter for Inquiry Phase

Conduct, events, activities, circumstances, systems, practices, procedures relating to the following:

Context

1. Findings and recommendations of previous reports on Ireland's banking crisis.
2. International, EU and domestic policy context, including key findings of reports of international monitoring agencies.
3. Relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector.
4. Early warnings, divergent and contrarian views.
5. The role of the media.

Banking systems and practices

6. Corporate Governance and Business Model.
7. Lending Policy and Credit Control.

⁶ Standing Orders 103G and 103I of Seanad Éireann apply

⁷ Standing Order 103H of Seanad Éireann applies

8. Risk Management (including Internal Audit, Audit Committees).
9. Funding and Liquidity Management.
10. External Audit Reports and Communications.
11. Board and executive remuneration.

Regulatory and Supervisory systems and practices

12. Structure and conduct of Regulatory and Supervisory Systems.
13. Monitoring and supervision of the Financial Industry, including enforcement.
14. Role of the Central Bank including Financial Stability.
15. Role of the Department of Finance.
16. Role and influence of International Organisations.
17. Role of the Houses of the Oireachtas.

Crisis management systems and policy responses

18. Crisis Management Arrangements in the lead-in to, and following, the Guarantee decision.
19. The Bank Guarantee decision of 30 September 2008, including the lead up to and the decisions taken regarding its implementation afterwards.
20. Direct policy responses to the crisis, including the National Asset Management Agency, bank nationalisation, recapitalisation, the use of Emergency Liquidity Assistance, the Special Liquidation of IBRC, the issue of promissory notes and the EU-IMF programme of assistance.
21. Legislative and regulatory – national and EU – measures taken since the crisis, particularly in relation to bank resolution and creditor preference.
22. Impact of the banking crisis on bank creditors, including any efforts to achieve burden sharing with creditors and the role and influence of the European Central Bank on the question of burden sharing with creditors.

- **To specify, as far as is practicable, the persons to whom that conduct or those events, activities or circumstances relate, or whose activities, systems, practices or procedures are to be inquired into**

Categories of persons to be inquired into are set out in the draft Terms of Reference Resolution (Part B of the Schedule) at **Appendix C**. It is proposed [in paragraph 9] that persons outside of those specified may be inquired into where relevant to the overall focus of the inquiry as set out in **paragraphs 2 and 3**. The relevant part of the Schedule is repeated below for ease of reference.

Table 2: Categories of persons to whom the subject matter in Table 1 relates⁸

1. Persons⁹ employed by or contracted to –
 - (a) credit institutions specified by Order of the Minister for Finance pursuant to section 6 of the Credit Institutions (Financial Support) Act 2008, including but not limited to: Chairpersons, Chief Executives, board members, other relevant executives and advisors;
 - (b) other credit institutions licensed by the Central Bank to operate within the State, including but not limited to: Chairpersons, Chief Executives, board members, other relevant executives and advisors.
2. Persons who were the recipients of commercial loans, including for commercial property, from the credit institutions within the scope of this Schedule.
3. External auditors for credit institutions within the scope of this Schedule.
4. Central Bank: Governors, Directors, Director Generals, Prudential Directors, board members, relevant managers and advisors.
5. Irish Financial Services Regulatory Authority / Financial Regulator: Chairpersons, CEOs, members of the Authority, relevant managers and advisors.
6. Domestic Standing Group members¹⁰.
7. Cabinet¹¹: Members of Cabinet, Attorneys General, and advisors to Government.
8. Department of the Taoiseach: Secretaries General, relevant Assistant Secretaries, other relevant officials and special advisors.
9. Department of Finance: Secretaries General, Second Secretaries, relevant Assistant Secretaries, other relevant officials and special advisors.
10. Members of the Houses of the Oireachtas, members of the European Parliament and members of local authorities.
11. Political Parties: General Secretaries, Officers at national level and other relevant officials.
12. European Central Bank: President and relevant officials.
13. ECOFIN and constituent bodies, including but not limited to, the Economic and Financial Committee¹⁰.
14. Relevant persons employed by or contracted to the European Commission.
15. Relevant persons within special purpose mechanisms to deal with the crisis at European Union level, including but not limited to the European Financial Stability Fund (EFSF) and the European Stability Mechanism (ESM).
16. Relevant persons employed by or contracted to the International Monetary Fund.
17. National Asset Management Agency: Chairperson, Chief Executive and other relevant officials.
18. National Treasury Management Agency: Chief Executive and other relevant officials.

⁸ For the avoidance of doubt, the categories of persons listed are subject to the general principle that no person in any organisation listed will be called as a witness where they are not relevant to the inquiry. Further, the categories and persons mentioned in this list should be interpreted to include any persons who are seconded or in any other type of atypical employment in relation to the role or organisation in question and any persons formerly in the particular role or organisation within the time frame of the inquiry (namely 1.1.1992 to 31.12.2013).

⁹ In particular, subject to section 71 (c) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013.

¹⁰ May overlap with persons specified at paragraphs 4, 5 and 9.

¹¹ In particular, subject to section 71 (a) and (b) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013.

19. National Pension Reserve Fund: Chief Executive and other relevant officials.
20. Persons who expressed divergent or contrarian views, including but not limited to persons employed by or contracted to the credit institutions within the scope of this Schedule, the Central Bank, the Irish Financial Services Regulatory Authority / Financial Regulator and the Department of Finance.
21. Media: Senior Editors, Board Members and Financial Controllers in media organisations.
22. Junior and Senior Bond-holders of credit institutions within the scope of this Schedule.
23. Any other relevant persons solely and exclusively where such persons are deemed by the Joint Committee to be directly relevant to the subject matter of the inquiry.

- **To specify, as far as is practicable, the dates on which, or the periods during which, the conduct or events occurred, the activities were undertaken, the circumstances arose, or the systems, practices or procedures were in operation**

The proposed time period for the inquiry is 1 January 1992 to 31 December 2013.

- **To specify, as far as is practicable, the location or area where the conduct or events occurred, the activities were undertaken, the circumstances arose, or the systems, practices or procedures were in operation**

The location proposed for the purposes of the inquiry is the European Union and other relevant jurisdictions.

- **Whether the matter or matters relate to a function of the Dáil**

The subject matter is relevant to the role of both Houses of the Oireachtas in enacting relevant legislation during the proposed time period.

- **The reason the matter or matters ought to be the subject of a Part 2 inquiry, rather than being examined through other forms of parliamentary investigation**

Overall it is the scope and complexity of the subject matter of this inquiry - the banking crisis - that makes it more appropriately the subject matter of a parliamentary inquiry rather than an investigation by a committee in "other committee business".

The Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 places certain obligations on the Committee as well as providing for rights for witnesses. In particular Part 3 of the Act has strong express provisions which provide for fair procedures in the running of a Part 2 Inquiry. The banking crisis arose from decisions that were often made in private and some of these decisions involved Members of the Oireachtas. The Committee therefore feels that it is highly important from a public perception perspective that this investigation is seen to be transparent and carried out without bias. Having a Part 2 Inquiry ensures that provisions providing for a presumption that proceedings are held in public¹² and that members must not be biased¹³ are in force.

¹² See s.31 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

¹³ See s.21 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

There are numerous other statutory provisions under the Inquiries Act which only take effect in the context of a Part 2 Inquiry. These provisions give the Committee certain powers and place certain obligations on witnesses which are particularly important given the subject matter of this Inquiry. By way of example, given the very sensitive nature of the banking inquiry, it is likely that some witnesses may not wish to cooperate with any parliamentary investigation. If this Committee holds a Part 2 Inquiry it means that the provisions on relevant misbehaviour, which provide for sanctions in the event of non-cooperation by witnesses, apply.

The net effect of these statutory powers and obligations for the Committee, in conjunction with the rights and responsibilities for witnesses, mean that a Part 2 Inquiry is appropriate in this instance.

- **In relation to the Committee proposing to conduct the inquiry, the reason that it, further to its existing orders of reference, considers that it ought to conduct the inquiry**

The Orders of Reference of the Joint Committee of Inquiry into the Banking Crisis appointed by the Dáil and Seanad on 14 May 2014 should be amended to enable this Committee to conduct the Part 2 inquiry, including conferring the necessary powers to conduct the inquiry on the Committee, such as the power to send for persons, papers and records (See **Appendix D** for draft Orders).

The members of the Joint Committee have been actively involved in the preparation of the relevant proposal and the consideration and selection of the subject matter and categories of persons to be the subject of the Inquiry. A continuity of membership will avoid delay in commencing the inquiry, which must be concluded in a challenging timeframe.

- **In relation to the Committee proposing to conduct the inquiry, the changes, if any, to its existing orders of reference, which are, in its opinion, necessary for it to conduct the inquiry**

It is proposed that the Orders of Dáil Éireann and Seanad Éireann of 14 May 2014 be amended as set out in **Appendix D**.

- **The anticipated time schedule for the proposed inquiry, including whether it is proposed to conduct the proposed inquiry in a single period or in phases**

The reporting date will be no later than 30 November 2015, as set out in **paragraph (8)** of the draft Committee establishment Orders at **Appendix D**. Inquiry Phases and a time schedule are set out at **Appendix B**.

- **The changes, if any, to statute law, which are, in the opinion of the Committee proposing to conduct the inquiry, necessary to conduct the inquiry**

Prohibition on Central Bank from disclosing certain confidential information

As stated earlier (at page 8), section 33AK of the Central Bank Act 1942 (as amended) prohibits listed categories of persons within the Central Bank from disclosing certain confidential information. This section may therefore prove problematic for the banking Inquiry when it seeks this information, which may in many cases be vital to the progression of the Inquiry. Having taken legal advice on this point, the Committee is of the view that it is necessary to amend section 33AK to overcome this issue and allow disclosure to parliamentary inquiries. Ancillary amendments to the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 and the Standing Orders of Dáil Éireann and Seanad Éireann will also be required to put in place a process for how the Houses of the Oireachtas deal with confidential information, and providing sanctions for Members and staff who disclose such information without authorisation.

- **A draft Terms of Reference Resolution**

See ***Appendix C*** for draft.

Appendix A

Inquiry Framework

PURPOSE OF THE INQUIRY: To inquire into the reasons Ireland experienced a systemic banking crisis, including the political, economic, social, cultural, financial and behavioural factors and policies which impacted on or contributed to the crisis, by investigating relevant matters relating to banking systems and practices, regulatory and supervisory systems and practices, crisis management systems, and policy responses and the preventative reforms implemented in the wake of the crisis.

INQUIRY PHASE: CONTEXT

PREVIOUS
REPORTS ON
IRELAND'S
BANKING
CRISIS

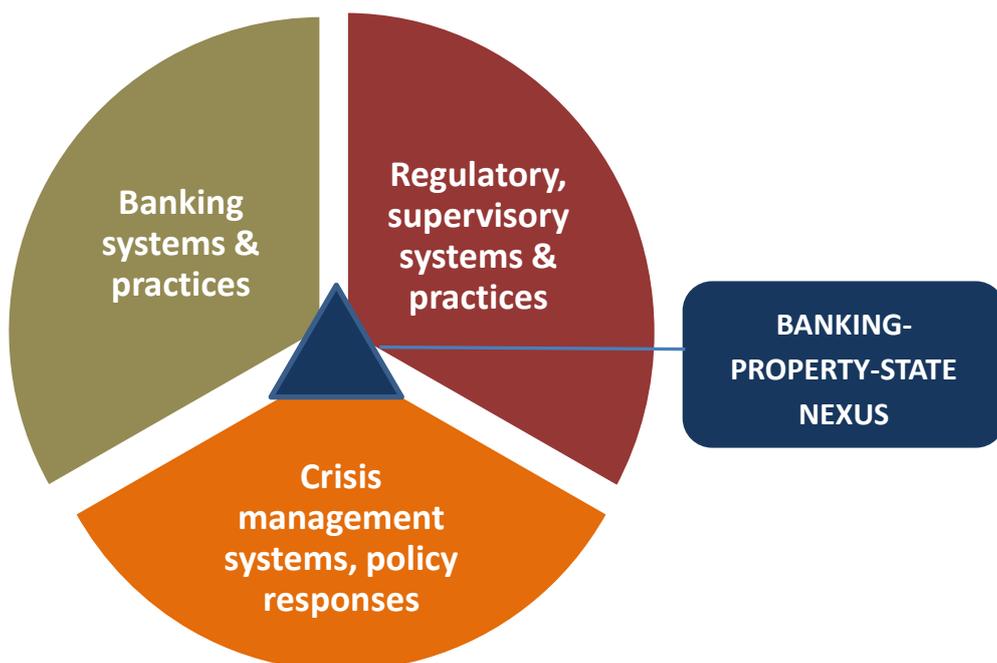
INTERNATIONAL
EU & DOMESTIC
POLICY CONTEXT,
INCLUDING
REPORTS OF
INTERNATIONAL
MONITORING
AGENCIES

RELATIONSHIPS
BETWEEN STATE
AUTHORITIES,
POLITICAL PARTIES,
ELECTED REPS,
SUPERVISORY
AUTHORITIES,
BANKS AND THE
PROPERTY SECTOR

EARLY
WARNINGS,
DIVERGENT
AND
CONTRARIAN
VIEWS

THE ROLE
OF THE
MEDIA

INQUIRY PHASE: NEXUS



Appendix B: Inquiry plan and phases

	2014			2015										
	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV
CONTEXT PHASE														
Preparation	█													
Public hearings			█	█										
Context report					█									
NEXUS PHASE														
Investigation	█			█										
Public hearings							█					█		
Final report													█	

Appendix C: Draft Terms of Reference Resolution

- (1) The Joint Committee of Inquiry into the Banking Crisis appointed by Order of Dáil Éireann of **[date]** and Order of Seanad Éireann of **[date]** shall conduct an inquiry under section 7 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013 (hereinafter referred to as “the 2013 Act”) in accordance with this Terms of Reference Resolution.
- (2) The subject matter of the inquiry shall be to inquire into the reasons Ireland experienced a systemic banking crisis, including the political, economic, social, cultural, financial and behavioural factors and policies which impacted on or contributed to the crisis, by investigating relevant matters relating to banking systems and practices, regulatory and supervisory systems and practices, crisis management systems, and policy responses and the preventative reforms implemented in the wake of the crisis.
- (3) In conducting the inquiry, the Joint Committee –
 - (a) may investigate and scrutinise the actions of banking institutions, and authorities responsible for the supervision of such institutions and for laws on such supervision, as set out in the Schedule to this Resolution; and
 - (b) shall have regard to the domestic and international background context for the banking crisis and the inquiry and may inquire into, including, but not limited to, the following:
 - i. the findings and recommendations of previous reports into the crisis, whether they have been implemented, and if so, their effectiveness and long-term impact;
 - ii. relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector, and
 - iii. reactions to early warnings of the impending crisis, and divergent or contrarian views on the prevailing consensus.
 - iv. the role of the media.

- (4) The matters which may be covered by the inquiry shall be as specified in Part A of the Schedule to this Resolution.
- (5) The categories of persons to which the matters which may be covered by the inquiry relate shall be as specified in Part B of the Schedule to this Resolution.
- (6) The time period for the inquiry shall be 1 January 1992 to 31 December 2013.
- (7) The European Union and other relevant jurisdictions shall be the location for the purposes of the inquiry.
- (8) The Joint Committee shall have the power to send for persons, papers and records under Standing Order 83(2A) of Dáil Éireann and/or Standing Order 71(2A) of Seanad Éireann and/or pursuant to part 6 of the Act of 2013 and in particular, sections 67, 68, 70, 72 and 73 of the said Act.
- (9) The Joint Committee may inquire into matters, persons and time periods in addition to those specified in this Resolution, solely and exclusively where such are deemed by the Committee to be directly relevant to the subject matter of the inquiry as set out in paragraphs (2) and (3).
- (10) The Joint Committee shall have the powers referred to in section 7(1)(c) and (d)(i) and (ii) of the 2013 Act and any findings of fact made in this Part 2 Inquiry may be used in other Part 2 Inquiries.
- (11) The Joint Committee may make a finding that any matter in relation to systems, practices, procedures or policy or arrangements for the implementation of policy ought to have been carried out in a different manner in accordance with section 17(3) of the 2013 Act.
- (12) The Joint Committee may, in accordance with section 17(3)(b) of the 2013 Act, make recommendations arising from any findings of fact, and such recommendations may include recommendations for legislative change and for new legislation.

SCHEDULE

Part A: Matters which may be covered by the inquiry

Conduct, events, activities, circumstances, systems, practices, procedures relating to the following:

Context

1. Findings and recommendations of previous reports on Ireland's banking crisis.
2. International, EU and domestic policy context, including key findings of reports of international monitoring agencies.
3. Relationships between State authorities, political parties, elected representatives, supervisory authorities, banking institutions and the property sector.
4. Early warnings, divergent and contrarian views.
5. The role of the media.

Banking systems and practices

6. Corporate Governance and Business Model.
7. Lending Policy and Credit Control.
8. Risk Management (including Internal Audit, Audit Committees).
9. Funding and Liquidity Management.
10. External Audit Reports and Communications.
11. Board and executive remuneration.

Regulatory and Supervisory systems and practices

12. Structure and conduct of Regulatory and Supervisory Systems.
13. Monitoring and supervision of the Financial Industry, including enforcement.
14. Role of the Central Bank including Financial Stability.
15. Role of the Department of Finance.
16. Role and influence of International Organisations.
17. Role of the Houses of the Oireachtas.

Crisis management systems and policy responses

18. Crisis Management Arrangements in the lead-in to, and following, the Guarantee decision.
19. The Bank Guarantee decision of 30 September 2008 including the lead up to and the decisions taken regarding its implementation afterwards.
20. Direct policy responses to the crisis, including the National Asset Management Agency, bank nationalisation, recapitalisation, the use of Emergency Liquidity Assistance, the

Special Liquidation of IBRC, the issue of promissory notes and the EU-IMF programme of assistance.

21. Legislative and regulatory – national and EU – measures taken since the crisis, particularly in relation to bank resolution and creditor preference.
22. Impact of the banking crisis on bank creditors, including any efforts to achieve burden sharing with creditors and the role and influence of the European Central Bank on the question of burden sharing with creditors.

Part B: Categories of persons to whom the matters at Part A relate¹⁴

1. Persons¹⁵ employed by or contracted to –
 - (a) credit institutions specified by Order of the Minister for Finance pursuant to section 6 of the Credit Institutions (Financial Support) Act 2008, including but not limited to: Chairpersons, Chief Executives, board members, other relevant executives and advisors;
 - (b) other credit institutions licensed by the Central Bank to operate within the State, including but not limited to: Chairpersons, Chief Executives, board members, other relevant executives and advisors.
2. Persons who were the recipients of commercial loans, including for commercial property, from the credit institutions within the scope of this Schedule.
3. External auditors for credit institutions within the scope of this Schedule.
4. Central Bank: Governors, Directors, Director Generals, Prudential Directors, board members, relevant managers and advisors.
5. Irish Financial Services Regulatory Authority / Financial Regulator: Chairpersons, CEOs, members of the Authority, relevant managers and advisors.
6. Domestic Standing Group members¹⁶.
7. Cabinet¹⁷: Members of Cabinet, Attorneys General, and advisors to Government.
8. Department of the Taoiseach: Secretaries General, relevant Assistant Secretaries, other relevant officials and special advisors.

¹⁴ For the avoidance of doubt, the categories of persons listed are subject to the general principle that no person in any organisation listed will be called as a witness where they are not relevant to the inquiry. Further, the categories and persons mentioned in this list should be interpreted to include any persons who are seconded or in any other type of atypical employment in relation to the role or organisation in question and any persons formerly in the particular role or organisation within the time frame of the inquiry (namely 1.1.1992 to 31.12.2013).

¹⁵ In particular, subject to section 71 (c) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013.

¹⁶ May overlap with persons specified at paragraphs 4, 5 and 9.

¹⁷ In particular, subject to section 71 (a) and (b) of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act, 2013.

9. Department of Finance: Secretaries General, Second Secretaries, relevant Assistant Secretaries, other relevant officials and special advisors.
10. Members of the Houses of the Oireachtas, members of the European Parliament and members of Local Authorities.
11. Political Parties: General Secretaries, Officers at National level and other relevant officials.
12. European Central Bank: President and relevant officials.
13. ECOFIN and constituent bodies, including but not limited to, the Economic and Financial Committee¹⁷.
14. Relevant persons employed by or contracted to the European Commission.
15. Relevant persons within special purpose mechanisms to deal with the crisis at European Union level, including but not limited to the European Financial Stability Fund (EFSF) and the European Stability Mechanism (ESM).
16. Relevant persons employed by or contracted to the International Monetary Fund.
17. National Asset Management Agency: Chairperson, Chief Executive and other relevant officials.
18. National Treasury Management Agency: Chief Executive and other relevant officials.
19. National Pension Reserve Fund: Chief Executive and other relevant officials.
20. Persons who expressed divergent or contrarian views, including but not limited to persons employed by or contracted to the credit institutions within the scope of this Schedule, the Central Bank, the Irish Financial Services Regulatory Authority / Financial Regulator and the Department of Finance.
21. Media: Senior Editors, Board Members and Financial Controllers in media organisations.
22. Junior and Senior Bond-holders of credit institutions within the scope of this Schedule.
23. Any other relevant persons solely and exclusively where such persons are deemed by the Joint Committee to be directly relevant to the subject matter of the inquiry.

Appendix D: Motions to amend the Committee's Orders of Reference

DÁIL ÉIREANN

That, notwithstanding anything in Standing Orders, the Order of the Dáil of 14th May 2014 relating to the Joint Committee of Inquiry into the Banking Crisis is amended by-

(a) in paragraph (1), the deletion of the words ", having regard to section 12 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 and Standing Order 107C,"; and

(b) the deletion of all words from "to develop a relevant proposal" in paragraph (1) down to and including "may determine" in paragraph (5) and the substitution of the following:

"for the purposes of conducting an inquiry within the meaning of section 7 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, in accordance with, and subject to, the Terms of Reference Resolution for the inquiry"; and

(c) the addition of the following paragraphs:

(2) The Terms of Reference of the Joint Committee shall be as set out in the Terms of Reference Resolution of the Dáil of **[date]** for the Inquiry.

(3) The Select Committee shall consist of seven (7) members of whom –

(a) notwithstanding Standing Order 90, the Chairman of the Select Committee shall be Deputy Ciarán Lynch; and

(b) the other members of the Select Committee shall be Deputies Pearse Doherty, Joe Higgins, Michael McGrath, Eoghan Murphy, Kieran O'Donnell and John Paul Phelan,

and the provisions of Standing Orders 92(2) and (3) shall not apply.

(4) The Chairman of the Select Committee shall be the Chairman of the Joint Committee.

- (5) The quorum of the Joint Committee shall be five (5), of whom at least one shall be a member of Seanad Éireann, and that quorum shall be present for the duration of all meetings of the Committee.
- (6) The Joint Committee shall have the powers set out in Standing Order 83(1), (2), (2A) (subject to the agreement of the Terms of Reference Resolution for the inquiry), (3), (4), (5), (7), (8) and (9).
- (7) The Joint Committee shall have the power to nominate persons to assist it in its deliberations; and such persons shall attend meetings as the Joint Committee may determine.
- (8) The Joint Committee shall report, pursuant to Standing Order 107G, to both Houses of the Oireachtas no later than 30 November 2015, and Standing Order 86 shall not apply.”

SEANAD ÉIREANN

That, notwithstanding anything in Standing Orders, the Order of the Seanad of 14th May 2014 relating to the Joint Committee of Inquiry into the Banking Crisis is amended by-

(a) in paragraph (1), the deletion of the words ", having regard to section 12 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 and Standing Order 103C,"; and

(b) the deletion of all words from "to develop a relevant proposal" in paragraph (1) down to and including "may determine" in paragraph (5) and the substitution of the following:

“for the purposes of conducting an inquiry within the meaning of section 7 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013, in accordance with, and subject to, the Terms of Reference Resolution for the inquiry”; and

(c) the addition of the following paragraphs:

(2) The Terms of Reference of the Joint Committee shall be as set out in the Terms of Reference Resolution of the Seanad of **[date]** for the Inquiry.

(3) The Select Committee shall consist of the following four (4) members:

Senators Seán D. Barrett, Michael D’Arcy, Marc MacSharry and Susan O’Keeffe,

and the provisions of Standing Orders 80(1) and (2) shall not apply.

- (4) The Chairman of the Joint Committee shall be a member of Dáil Éireann.
- (5) The quorum of the Joint Committee shall be five (5), of whom at least one shall be a member of Seanad Éireann, and that quorum shall be present for the duration of all meetings of the Committee.
- (6) The Joint Committee shall have the powers set out in Standing Order 71(1), (2), (2A) (subject to the agreement of the Terms of Reference Resolution for the inquiry), (3), (4), (5), (7), (8) and (9).
- (7) The Joint Committee shall have the power to nominate persons to assist it in its deliberations; and such persons shall attend meetings as the Joint Committee may determine.
- (8) The Joint Committee shall report, pursuant to Standing Order 103L, to both Houses of the Oireachtas no later than 30 November 2015, and Standing Order 75 shall not apply.”

APPENDIX E

MEMBERS OF THE JOINT COMMITTEE

Chairman: Ciarán Lynch (Chair) (Lab)

Deputies: Pearse Doherty (SF)
Joe Higgins (Ind)
Michael McGrath (FF)
Eoghan Murphy (FG)
Kieran O'Donnell (FG)
John Paul Phelan (FG)

Senators: Sean Barrett (Ind.)
Michael D'Arcy (FG)
Marc MacSharry (FF)
Susan O'Keeffe (Lab)

Notes:

1. *Deputies appointed to the Committee by Order of the Dáil on 14 May 2014.*
2. *Senators appointed to the Committee by Order of the Seanad on 12 June 2014.*
3. *Deputy Joe Higgins appointed to the Committee by Order of the Dáil on 18 June 2014 (in substitution for Deputy Stephen Donnelly).*

MEETINGS OF THE JOINT COMMITTEE

1. 19 June 2014
2. 25 June 2014
3. 2 July 2014
4. 9 July 2014
5. 23 July 2014
6. 17 September 2014
7. 24 September 2014

APPENDIX F: STANDING ORDER 107C

Standing Order 107C¹⁸ provides what must be addressed in the “relevant proposal”:

“107C. A relevant proposal under Standing Order 107A(2) shall address or contain, insofar as is practicable—

- (a) the type of Part 2 inquiry proposed pursuant to sections 7 to 11, inclusive, of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013;
- (b) the matter or matters the subject of the proposed inquiry, to specify, as far as is practicable, the conduct, events, activities, circumstances, systems, practices or procedures to be inquired into, including—
 - i. the dates on which, or the periods during which, the conduct or events occurred, the activities were undertaken, the circumstances arose, or the systems, practices or procedures were in operation,
 - ii. the location or area where the conduct or events occurred, the activities were undertaken, the circumstances arose, or the systems, practices or procedures were in operation, and
 - iii. the persons to whom that conduct or those events, activities or circumstances relate, or whose activities, systems, practices or procedures are to be inquired into;
- (c) whether the matter or matters relate to a function of the Dáil;
- (d) the reason the matter or matters ought to be the subject of a Part 2 inquiry, rather than being examined through other forms of parliamentary investigation;
- (e) in relation to the Committee proposing to conduct the inquiry—
 - i. the reason that it, further to its existing orders of reference, considers that it ought to conduct the inquiry, or
 - ii. the changes, if any, to its existing orders of reference, which are, in its opinion, necessary for it to conduct the inquiry;
- (f) the anticipated time schedule for the proposed inquiry, including whether it is proposed to conduct the proposed inquiry in a single period or in phases;
- (g) the changes, if any, to statute law, which are, in the opinion of the Committee proposing to conduct the inquiry, necessary to conduct the inquiry;

¹⁸ The equivalent for Seanad Éireann is SO 103H of the Standing Orders relative to Public Business of Seanad Éireann.

- (h) a draft Terms of Reference Resolution, which shall state, inter alia, whether the Committee proposing to conduct the inquiry, in conducting it—
- i. proposes to make findings of fact, including findings of fact that may impugn the good name of a person (depending on the type of inquiry proposed), or in relation to relevant misbehaviour,
 - ii. proposes to make recommendations arising from—
 - I. its findings of fact, or
 - II. the findings of fact made by another Committee in conducting another Part 2 inquiry if the terms of reference for that other Part 2 inquiry expressly state that its findings of fact may be used in other Part 2 inquiries,
 - iii. proposes that its findings of fact, if any, may be used by another Committee in conducting another Part 2 inquiry,
 - iv. has or is to have the power to send for persons, papers or records;
- and
- (i) such other matters in relation to the proposed inquiry as the Committee on Procedure and Privileges considers appropriate.