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Oireachtais
Houses of the
Oireachtas

Joint Committee of Inquiry into the Banking Crisis

Witness Statement of

Michael Moynihan

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- “(a) with the prior consent in writing of the committee,
- (b) to the extent necessary for the purposes of an application to the Court, or in any proceedings of the Part 2 inquiry, or
- (c) to his or her legal practitioner.”¹

Serious sanctions apply for breach of this section. In particular, your attention is drawn to section 41(4) of the Act, which makes breach of section 37(1) a criminal offence.

¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

Dear Chairman,

I acknowledge receipt of your letter of July 1st in relation to The Houses of the Oireachtas (Inquiries Privileges and Procedures) Act 2013. I will of course endeavour to assist the Joint Committee of Inquiry into the Banking Crisis. I am happy to provide you with a written statement as per your request.

I have read the documentation outlining the background to the Banking Inquiry, its methods of operation and the procedures applicable in the Memorandum of Procedures. I am also aware that the Committee reserves its rights to seek further written statements, and have the right to request me to attend as a witness.

I was elected Chairman of the Oireachtas Committee on Economic Regulatory Affairs on December 18th 2007, and the elected Vice Chairman was Deputy Ciaran Cuffe TD. Most of the meetings were held in public, there was televised coverage of the meetings in Leinster House and this was made available to RTE and TV3 as well.

We published annual reports and these are still available on the Oireachtas web site. The 2009 Annual Report refers to the work of the Committee in relation to internal audit functions of Anglo Irish Bank and the role and function of the Irish Auditing and Accounting Supervisory Authority. I attach this report for ease of reference in Tab 3.

I attach for ease of reference Tab 1 a list of the press releases that indicate the diversity of the responsibilities of the Committee.

The Joint Committee on Economic Regulatory Affairs was agreed by Dáil Eireann on 13th December 2007 by order. The Committee consisted of eleven members of Dáil Eireann and it was joined by a Select committee from Seanad Eireann. The Joint Committee was appointed to consider the operational efficiency, value for money and the effectiveness of consultation and accountability procedures.

We were obliged to consider Statements of Strategy, Annual Output Statements, Public Interest Statements of regulatory bodies in the following sectors:

- Communications
- Energy
- Financial Services
- Health and Safety and Transport

Other reports could have been referred to the Committee to be reviewed, or we could select others as well if there was agreement by the Committee. I attach Tab 2 the Orders of Reference for convenience.

In relation to Document 1 and the questions therein I wish to reply as follows:

Question 1

The role of our Committee as outlined previously above was to review and consider statements of strategy and public interest statements of regulatory bodies, not just in Finance Services but in Communications, Energy, Transport and Health and Safety.

While we did not have a specific responsibility in relation to the operation of the Department of Finance, we did request Mr William Beausang, Assistant Secretary in the Department of Finance to attend our Committee meeting of July 8th 2009 to discuss matters relating to financial regulation. Mr Kevin Cardiff, Second Secretary also attended. This is recorded in the 2009 annual report.

Question 2

The role of our Committee in relation to the operation of the Central Bank and Financial Regulator was to review and consider statements of strategy and public interest statements.

Following the Bank Guarantee in September 2008, concerns were raised about the role of the regulator in supervising the banking system, whether the regulators checks and balances were adequate to deal with the sector, and whether it failed to curb excessive and reckless lending by the banks. We asked the Financial Regulator to appear before the committee in December 2008, and he did so on January 7th 2009 .This is outlined in the 2009 Annual Report.

We also requested the Governor of the Central Bank to address the Committee and he did so on December 15th 2009. Debate in the Dáil was dominated by the consumer side of financial services.

Question 3

In my opinion the present system is better than what was in place before the global economic crisis and since the Irish crisis as well, but we can never again be complacent. Changes have been made at EU level and in the USA and these need to be closely monitored to prevent another crash, particularly one as extensive as the one experienced in 2008.

At least now that the ESM is in place, EU states are in more of a secure system than before but nothing is so robust to prevent the markets reacting negatively to the Greek situation or China for that matter. There is always a risk with the interconnectivity that comes with a global economy. It is up to Eurozone governments in particular to learn from the lessons of the past and before the ESM was put in place.

Both the Honohan and Nyberg reports dealt extensively with the role of domestic authorities but unfortunately did not deal with the European authorities, and the latest debt crisis exposed fundamental flaws in the design and the implementation of the euro area regulatory architecture.

The Central Bank intends that reform of its regulatory and supervisory framework (2012 -2015) will be deepened over the term of the plan to minimise future risks to financial stability and enhance consumer protection, while continuing to promote a better functioning financial sector.

Interest rates are now predicted to rise in the autumn and I don't believe there is enough protection for householders at the moment, and already there are 300,000 customers who are paying 2% more than other European customers. The Commission recently stated the importance of the independence of the Banks and this allowed the Central Bank in Ireland to deny legislation was needed to pass on interest rate reduction. This is most unfortunate.

The possibility of Greece leaving the Euro would pose major problems for the Euro zone area and I believe every effort should be made to ensure that debt restructuring is agreed to allow the Greek people to experience a recovery. There is 50% youth unemployment and this carries huge social risk as well as economic risk.

Greek debt is 175% of GDP and will take many decades to pay back. There needs to be as much solidarity with the Greek people as possible to assist them back to growth. It is reported that changes are being prepared in the event that Greece have to exit. I am presuming that this is the case.

Question 4

From 2008 onwards the Oireachtas was subsumed with debates on the various budgets that had to be introduced to try and correct public expenditure. FEMPI legislation was extensive as well as the introduction of NAMA.

The Central Bank published this paper in June 2010 which set out the path to a new approach to banking regulation.

<http://www.finfacts.ie/biz10/Ireland-Future-of-Banking-regulation.pdf>

http://www.finfacts.ie/irishfinancenews/article_1019968.shtml

As of June 2010 the Central Bank said it plans to recruit 150 extra staff this year, bringing overall staff there to 1,300. It also planned to increase regulatory staff by as much as another 200 over the following two years. It was seeking to have a minimum of 10 supervisory staff per firm for major banks and building societies and improve specialist expertise by recruiting staff with director business/banking experience. A compulsory training programme for all new and many existing Central Bank staff will also be introduced.

It is both understandable and necessary that the planned inquiry focus on the major mistakes of the past. However I believe the inquiry can and should highlight to the public at large that the failures went beyond those of a few individuals and reflected broader and longstanding institutional and “cultural” shortcomings (which were also present during the earlier mid-80s crisis).

The inquiry has the opportunity to provide important momentum to translate the errors of the past into specific reforms that could better support and protect the economy in these challenging and uncertain times. The external economic environment was getting more hostile and this has already been addressed at the Banking Inquiry by various witnesses. The government at the time agreed that extra staff had to be recruited for the Central Bank as well as recruiting personnel with particular economic expertise in the Department of Finance.

This was all being done against the background of the Commission demanding a commitment to reduce the deficit towards the maximum level of 3% of GDP permitted under the Stability and Growth Pact. These requirements were extended a few times during the 2010 period.

Government decisions were not the remit of our Committee, but we did invite various experts to the Committee to address the regulation issue and as stated earlier this is in the 2009 annual report.

Question 5

Witnesses to the inquiry have outlined that there was very little discussion or calls for more regulation in the Oireachtas. In fact very few parliamentary questions from 2000-2008 actually asked for this from the Minister(s) of Finance.

The Regulator did attend our Committee in January 2009 and did say that regulation needed to be tightened and there was legislation brought in by the government at the time as mentioned earlier.

It is a matter of record that the Financial Regulator reported in September 2008 to the Minister for Finance that there was no cause for significant concern regarding the Irish Banking system. He also insisted up to and after the guarantee that the Irish Banking problems were to do with liquidity.

The Nyberg and Honohan Reports dealt with this extensively and actually concluded there was (1) excessive reliance on procedures rather than substance,(2) a reluctance to take decisive action when problems were highlighted, and (3) broader factors that appeared to constrain the ability and willingness of the regulator to adopt a more aggressive approach.

A specific example of this was given in the Nyberg Report of how the Irish regulator never approached or contemplated contacting the UK regulator or the European Committee of Bank Supervisors to alert them on how their institutions could be occurring losses following changes in the Irish Banking system.

It is accepted that the system of regulation was seriously deficient, deferential to the banks and lacked teeth. There was also an unwillingness to act within senior levels of the regulatory system. Some reforms have already been put in place. One of the main reforms was the **Central Bank Reform Act 2010**.

This Act created a single unitary body - the Central Bank of Ireland - responsible for both central banking and financial regulation. The new structure replaced the previous related entities, the Central Bank and the Financial Services Authority of Ireland and the Financial Regulator. The Central Bank Commission was established by the Central Bank Reform Act 2010 and is responsible for ensuring that the statutory functions of the Central Bank are properly discharged.

The Central Bank is now organised into directorates which report to the Deputy Governor (Central Banking), the Deputy Governor (Financial Regulation) or the Chief Operations Officer. The Central Bank Reform Act commenced on 1 October 2010. In recognition of the role of corporate governance, on 8 November 2010 the Central Bank of Ireland issued its Corporate Governance Code for credit institutions and insurance firms in Ireland which sets out new statutory rules to ensure that robust governance arrangements are in place so that appropriate oversight exists to avoid or minimise the risk of a future crisis.

This Code sets out provisions on the membership of the Board of Directors, the role and responsibilities of the Chairman and other directors and the operation of various board committees. Where institutions fail to adhere to the Codes requirements, the Central Bank has the power to take sanctions against an institution, including the removal of directors. As the Inquiry are aware Fine Gael and Labour voted against the Bill.

Question 6

I have read Professor Fitzgerald's comments, and I also have read officials responding to this denying that there was any increased politicisation in the Department. Ireland's civil service have always had a proud record and I would not agree with Professor Fitzgerald. If it was the case he had less interaction, I presume he brought this up with the Department and it was addressed at the time. It is important that the Banking inquiry make recommendations to ensure that the Department of Finance interact with the ESRI on a very regular basis.

Question 7

I do not recollect any situation where issues were identified that could not be investigated due to limitations in the terms of reference.

Question 8

This legislation went through the Oireachtas before our Committee was set up. I am unaware if concerns were discussed at other committees, and I presume the inquiry will have asked the Chair of the Finance Committee where this legislation would have been debated.

Question 9

There were predictions by the EU/IMF that Ireland's growth rate would continue to be buoyant right up to May 2008. No one knew the extent of the exposure to the exchequer in my opinion in early 2008.

Things did dramatically begin to change after the Bank collapses in other jurisdictions. The National Competitiveness Council did make some warnings about wages being too high and Ireland's costs being anti-competitive. Most of these comments would have been made in the heat of political debate in the Dáil.

Question 10

The Nyberg and Honohan Reports deal with this issue substantially as does the book written by Donal Donavan, formerly with the IMF, and Antoin E Murphy, Professor of Economics (Trinity College Dublin) "The Fall of the Celtic Tiger". In my own personal opinion and with the benefit of hindsight, I don't believe the regulatory supervisory bodies dealt with the financial institutions adequately. I believe we have to learn lessons from this, as I have said earlier changes to legislation and codes of conduct were made in 2010 and the Oireachtas can never again be complacent.

Question 11

In the past few decades Irish Banks have been part of a national scandal. In 1999 there was national disquiet as Banks were overcharging and facilitating tax evasion. Changes were introduced then. It is difficult for the Central Bank to be promoting Irish Banks on the one hand and then be in charge of supervising them on the other hand. This is a model used in the UK as well, our main competitors in banking.

The Central Bank Reform Act 2010, which commenced on 1 October 2010, is the first step in a substantial legislative reform programme and establishes a new fully-integrated structure for financial regulation and enhances the powers and functions of the Central Bank. I believe this will make a significant difference going forward.

I am satisfied that these measures will ensure that there will be no repetition of the banking practices which have given rise to very substantial costs for the State.

Question 12

Our committee was given a specific remit in the context of annual reports and public interest statements. We fulfilled this remit but it is obvious in retrospect that the remit of the Committees should and could have been wider, and then expertise could be requested. I do not recollect being asked to bring in expert advice and I am quite confident if the need was there it would have been supplied.

There was more expertise needed and identified in the Department of Finance and the Central Bank, and I have outlined what was agreed at the time to address these inadequacies. Legislative reforms have been supplemented by a significant increase in regulatory activity by the Central Bank with a corresponding increase in staff numbers and skill levels.

In 2012, the Central Bank published its three-year Strategic Plan for the period 2013-2015 which sets out a strategy of assertive risk-based supervision, underpinned by a credible threat of enforcement, in order to deliver on its key strategic priorities over the coming years.

Question 13

I do believe and agree that Oireachtas Committees are a key tool to assist with holding government to account and scrutinising legislative proposals. The Seanad if reformed could also play a key role in adding to this scrutiny. They would of course have to be resourced properly and be able to seek advice in legally complex areas.

Question 14

Obviously the Oireachtas members are aware of various views contrary and otherwise through the media .It has been discussed at the inquiry already that contrarian views were few and far between. I believe these views are only sought in exceptional basis but that depends on the Committee.

Most Committees should be open to discussing any view put to them. I suggest that the Oireachtas should play its part here by publicising what the Oireachtas Committees actually do. Maybe the Inquiry should make a recommendation in relation to this issue.

Question 15

No .The Finance Committee would have played its part in the legislative process to the legislation brought in at the time. As Oireachtas members we would have been aware of any legislation being introduced and would have taken part in debate in the Dáil or the Seanad.

Question 16

The process of how government memos are produced and discussed is naturally a secretive process. It would not involve consultation with Oireachtas Committees then or now. Ministers normally outline the rationale of particular sections of legislation when introducing the Bill and at Committee stage. This may also include reference to the groups/stakeholders who have requested changes to the legislation.

Normally stakeholders would either address the committee or request meetings with Oireachtas spokespeople prior to second stage. Parliamentary questions are also a tool to seek information from various Ministers if information is not forthcoming during question time. The budgetary legislation process has always been treated differently in the Oireachtas.

Question 17

This question has been dealt with extensively from various witnesses before the inquiry. I believe the advice given to government is sound advice and lessons have been learnt from the past and if outside expert advice is required it is sought. It is up to governments to make decisions on the advice that is given to them and normally it is a collective decision.

The Department of Finance has undergone an important cultural shift as regards enhancing its technical expertise, being more open to debate internally and with stakeholders, and promoting greater transparency.

Similarly under Governor Patrick Honohan, the Central Bank/Regulator has undergone major change aimed at addressing previous systemic weaknesses. But it is essential that reforms are not dependent on the presence of one person, but become embedded in the framework and incentive structure of our key economic institutions. By focusing attention on the importance of governance aspects, the inquiry can play a useful catalytic role in helping to mainstream institutional reforms.

It is interesting to note that the UK Banking Commission report recommended giving regulators new powers to halt bonus pay-outs and pensions for bosses of any banks that have to be bailed out by the taxpayer in the future. It also proposed a new law to jail bankers for "reckless misconduct". No similar proposals have been made here. The inquiry should draw up proposals for similar actions in Ireland.

Question 18

Our committee did not have a role in budgetary policy. Expert witnesses have given their opinion about being overly reliant on pro cyclical policies or once off taxes. This was also dealt with extensively in the Honahan and Nyberg Reports.

Question 19

Social Partnership was discussed by many witnesses to the inquiry. I believed in the benefits of social partnership and thought it was a good model that overall benefitted Irish society since it was first introduced in 1987. In retrospect some of the spending should have been curtailed and that was said by previous Ministers – that if they knew then what they knew now, some of the deals would not have progressed.

There was in hindsight little debate, but even with the recent 'social partnership' agreement this government have not debated it much either before agreement was finalised. It would be productive for the Inquiry to make recommendations on how this should be changed in the future. Industrial relation deals are by their nature secretive until a full deal is signed off and given our lessons from the past maybe it is time for this to change.

Question 20

Yes I would accept this hypothesis. It is the function of government on the one hand with the whip system and they are under pressure to deliver the programme for government. Oireachtas reform is normally a slow process and I expect that the inquiry will be making recommendations on how the balance can be refocused. This will I believe require significant resources as parliamentarians need support to pre-empt and adequately supervise and contribute to legislation if it is to be properly scrutinised and debated.

I hope this clarifies the questions for you and if I can be of any further assistance please contact me at michael.moynihan@oireachtas.ie.

Sincerely,

Michael Moynihan TD

Tab 1 Press Releases

Please click on the link below to view Press Releases:

2010

[Economic Regulatory Affairs Committee to discuss regulation with Irish Taxation Institute](#) - 29 November 2010

[Economic Regulatory Affairs Committee to discuss regulation with Vintners' Federation](#) - 15 November 2010

[Central Bank Governor Patrick Honohan to appear before the Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 9 November 2010

[Cancellation of meeting of Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 1 November 2010

[Economic Regulatory Affairs Committee to discuss regulation with Irish Taxation Institute](#) - 1 November 2010

[Taxi regulator to appear before the Committee on Economic Regulatory Affairs](#) - 18 October 2010

[Financial Regulator to appear before the Committee on Economic Regulatory Affairs](#) - 5 October 2010

[Energy Regulator to discuss electricity price hike and disconnection of customers with Committee on Economic Regulatory Affairs](#) - 31 August 2010

[Committee on Economic Regulatory Affairs to invite energy regulator to emergency meeting to discuss electricity price hike and disconnection of customers](#) - 24 August 2010

[High Level Group on Business Regulation to discuss cost of red tape for SMEs with Committee on Economic Regulatory Affairs](#) - 1 June 2010

2009

[Financial Regulator to appear before Oireachtas Committee on Economic Regulatory Affairs](#) - 12 January 2009

[Financial Regulator must ensure that excessive and reckless lending must never happen again](#) - 13 January 2009

[Anglo Irish Bank's internal auditors to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 29 January 2009

[Regulatory consultant Robert T Moynihan to appear before the Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 4 March 2009

[Central Bank Governor to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 9 March 2009

[Financial Regulator to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 8 April 2009

[Energy Regulator to appear before the Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 27 April 2009

[AIB chief executive Eugene Sheehy to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 20 May 2009

[Aviation regulator to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 25 May 2009

[Chairman of Friends of Banking Ireland to appear before Oireachtas Joint Committee on Economic Regulatory Affairs](#) - 15 September 2009

2008

[Financial Regulator to appear before Oireachtas Committee on Economic Regulatory Affairs on 7 January 2009](#) - 22 December 2008

Tab 2 –Orders of Reference.

Dáil Éireann on 13 December 2007 ordered:

(1) That a Select Committee, consisting of eleven members of Dáil Éireann, be joined with a Select Committee to be appointed by Seanad Éireann to form the Joint Committee on Economic Regulatory Affairs to consider:—

(a) the operational efficiency, value for money and the effectiveness of consultation and accountability procedures, and

(b) Statements of Strategy, Annual Output Statements, Public Interest Statements and such other reports as it may select, of regulatory bodies in the following sectors Communications, Energy, Financial Services, Health and Safety and Transport;

(c) common matters arising from consideration of the above;

(d) such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas; and to report thereon to both Houses of the Oireachtas.

(2) The Joint Committee shall have the powers defined in Standing Orders 83(1) to (4) and 83(7) to (9) inclusive.

(3) The Joint Committee shall not, at any time, consider any matter relating to such a body which is, which has been, or which is, at that time, proposed to be considered by the [291] Committee of Public Accounts pursuant to the Orders of Reference of that Committee and/or the Comptroller and Auditor General (Amendment) Act 1993.

(4) The Committee shall further refrain from:—

(a) enquiring into in public session, or publishing confidential information regarding, any related matter if so requested either by the body or by the relevant Minister; and

(b) enquiring into the merits of specific sectoral policy or policies of the Government or the merits of the objectives of such policies.

(5) The quorum of the Joint Committee shall be five, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.

(6) The Chairperson of the Joint Committee shall be a Member of Dáil Éireann.

Seanad Éireann on 13 December 2007 ordered:

(1) That a select committee, consisting of four members of Seanad Éireann, be joined with a select committee to be appointed by Dáil Éireann to form the Joint Committee on Economic Regulatory Affairs to consider:—

a) the operational efficiency, value for money and the effectiveness of consultation and accountability procedures, and

- b) statements of strategy, annual output statements, public interest statements and such other reports as it may select, of regulatory bodies in the following sectors — communications, energy, financial services, health and safety and transport;
 - c) common matters arising from consideration of the above;
 - d) such other matters as may be jointly referred to it from time to time by both Houses of the Oireachtas;
- and to report thereon to both Houses of the Oireachtas.
- (2) The joint committee shall have the powers defined in Standing Orders 70(1) to (4) and 70(7) to (9) inclusive.
- (3) The joint committee shall not, at any time, consider any matter relating to such a body which is, which has been, or which is, at any time, proposed to be considered by the Committee of Public Accounts pursuant to the [208]Orders of Reference of that Committee and-or the Comptroller and Auditor General (Amendment) Act 1993.
- (4) The committee shall further refrain from:
- a) enquiring into in public session, or publishing confidential information regarding, any related matter if so requested either by the body or by the relevant Minister; and
 - b) enquiring into the merits of specific sectoral policy or policies of the Government or the merits of the objectives of such policies.
- (5) The quorum of the joint committee shall be five, of whom at least one shall be a Member of Dáil Éireann and one a Member of Seanad Éireann.
- (6) The Chairperson of the joint committee shall be a Member of Dáil Éireann.

Tab 3 Annual Report 2009



[Joint Committee on Economic Regulatory Affairs - Annual Report 2009](#)
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