Bille an Bhainc Ceannais (Morgáistí Ráta Athraithigh), 2022
Central Bank (Variable Rate Mortgages) Bill 2022

Meabhrán Míniúcháin
Explanatory Memorandum

BILLE AN BHAINC CEANNAIS (MORGÁISTÍ RÁTA ATHRAITHIGH), 2022

CENTRAL BANK (VARIABLE RATE MORTGAGES) BILL 2022

EXPLANATORY MEMORANDUM

Purpose of Bill

The purpose of this Bill is to provide for measures to address market failures in the market for principal dwelling house mortgage loans, and to provide for related matters.

Provisions of Bill

Section 1 is the definition section and provides in particular for definitions of “lender”, “principal dwelling house mortgage loan” and “variable interest rate”.

Section 2 requires the Central Bank to carry out assessments (“Section 2 Assessments”) on the state of competition in the market for principal dwelling house mortgage loans on at least a quarterly basis.

Section 3 lists the factors to which the Bank must have regard in carrying out a Section 2 Assessment:

- the variable interest rates being charged by lenders;
- the ease with which borrowers can switch their principal dwelling house mortgage loans between lenders or between products offered by the same lender;
- the extent to which borrowers are switching their principal dwelling house mortgage loans between lenders or between products offered by the same lender;
- the relationship and proportionality between the variable interest rates being charged by each lender and the cost of funds of that lender;
- the trend in variable interest rates being charged in the principal dwelling house mortgage loan market over time;
- lenders’ cost of funds and the trend in lenders’ cost of funds over time;
- lenders’ weighted average cost of capital and the trend in lenders’ weighted average costs of capital over time;
- the risk profiles of individual lenders in respect of variable interest rate principal dwelling house mortgage loans;
- lenders’ reasonable profit expectations in the prevailing market conditions;
- the proportion of the principal dwelling house mortgage loan market accounted for by each lender; and

- such other matters as the Governor of the Central Bank may certify as being of relevance.

Section 4 provides that, on completing a Section 2 Assessment, the Bank must form a conclusion as to whether the state of competition in the market for principal dwelling house mortgage loans is such that a market failure exists. “Market failure” is defined as meaning a situation in which market conditions are such that lenders are charging variable interest rates for principal dwelling house mortgage loans which are higher than the Central Bank considers can be reasonably and objectively justified by reference to the factors set out in *section 3.*

By *section 5*, where the Bank forms a conclusion that a market failure exists, it may issue a direction to a specific lender or lenders (or lenders in general) not to charge a variable interest rate in respect of principal dwelling house mortgage loans generally, or specific principal dwelling house mortgage loans or categories of principal dwelling house mortgage loans, which exceeds—

a rate specified by the Bank,

a margin specified by the Bank above that lender’s cost of funds,

a margin specified by the Bank above a rate set by the European Central Bank,

a specified proportion (not more than one-third) above the average variable interest rate charged in the market for comparable principal dwelling house mortgage loans.

Section 6 provides that a direction must state the duration for which the direction remains in force, which may be an indefinite period, but the direction may subsequently be extended, varied or brought to an end by the Bank at any time.

A lender must comply with a direction (or any variation of a direction) within 56 days, and must thereafter continue to comply with the direction until such time, if any, that it is varied or brought to an end by the Central Bank.

Where the Central Bank believes that a lender is in breach of this requirement, it may apply to the High Court for an enforcement order requiring the lender to comply with the direction. The High Court must grant an enforcement order if it determines that the lender in question is in breach of the relevant direction.

Where the High Court makes an enforcement order, it must also impose a fine on the lender in the sum of twice the amount that the court determines the lender derived in profits in breach of the relevant direction, unless the court determines that it would be unjust to impose such a fine; in such a case, it may impose a lesser fine, or dispense with the requirement to impose a fine.

Section 7 provides that, in setting a variable interest rate for a group, class or category of principal dwelling house mortgage loans, a lender must not discriminate between existing borrowers and new borrowers.

Where the Central Bank believes that a lender is in breach of this requirement, the Bank may under *section 8* apply to the High Court for a rectification order requiring the lender to cease the discriminatory practice prohibited by that section.

On hearing such an application, the High Court must, if it determines that the lender has acted in breach of *section 7*, grant a rectification order in such terms as the court deems appropriate. Where the High Court makes a rectification order, it must also make a compensation order, in such terms as the court considers appropriate, requiring the lender to compensate any borrower or former borrower (or class of borrowers or former borrowers) of the lender affected by the discriminatory practice in question, unless the court believes it would be unjust to do so.

The court must also impose a fine on the lender in the sum of twice the amount that the court determines the lender derived in profits on foot of the discriminatory practice in question, unless the court determines that it would be unjust to impose such a fine, in which case it may impose a lesser fine or dispense with the requirement to impose a fine.

Section 9 provides that a lender shall not be regarded as discriminating between existing borrowers and new borrowers simply as a consequence of providing new borrowers with a once-off payment or discount for the purpose of defraying on a bona fide and vouched basis—

- the borrowers' legal costs in taking out the loans in question or switching between loan products, or
- the borrowers' liability for stamp duty in the purchase of the principal dwelling house in question.

Section 10 provides that the Central Bank must publish each Section 2 Assessment publicly in such a manner as it considers appropriate.

By *section 11*, notwithstanding any other enactment, no appeal shall lie to the Irish Financial Services Appeals Tribunal or to the High Court in respect of a Section 2 Assessment, a direction pursuant to *section 5* or a decision by the Central Bank to seek an enforcement order or a rectification order.

Section 12 provides in standard from for the short title of the Bill when passed.

Ged Nash, TD,
Meitheamh, 2022.

Wt. 107347. 145. 6/22. Essentra. (93014). Gr. 30-15.