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Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Report on Scrutiny of the Flood Insurance Bill, 2016

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1. INTRODUCTION

The [Flood Insurance Bill 2016](#) was published on 8 January 2016¹ and introduced in Dáil Éireann by the Deputy Michael McGrath, proposer of the Bill, on 13 January 2016. The Bill was debated by the Dáil at second stage on 29 November 2016, and was referred to the Select Committee by order of Dáil Éireann of 30 November 2016.

The purpose of the Bill is to provide for fairness in the market for property insurance by prohibiting insurers from discriminating between 'affected persons' and 'unaffected persons', as defined in the Bill, in offering insurance cover in respect of a residential or commercial property located in an area at a low or medium risk of flooding (following the installation of flood defences to a required minimum standard), and to provide for related matters.

The Joint Committee agreed to undertake scrutiny of the Bill prior to formal consideration of the Bill at Committee Stage and the Committee held one public hearing on [23 November 2017](#) with five stakeholders in that regard.

¹ Fianna Fáil (2016) '[FF publishes Bill to ensure flood insurance where OPW schemes completed – McGrath](#)', 8 January 2016.

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2. RATIONALE AND OBJECTIVE OF THE BILL

In outlining the rationale for the legislation, the proposer of the Bill stated that the Bill "is built on the premise that householders and businesses should be able to avail of flood insurance cover once an Office of Public Works (OPW) flood relief scheme has been completed to the required standard".

The principal objective of the Bill is to ensure that both residential and commercial property owners can access insurance in locations where the OPW has completed a flood relief scheme to the required EU standard or where the OPW has certified the flood risk to be low or medium (1 in 100 year risk, or better).

The Bill provides for the following:

- i. It **Prohibits** insurance companies from:
 - Unreasonably refusing to provide insurance cover to residential and commercial property owners in areas which are at risk of flooding; and/or
 - Discriminating against persons in relation to the cost of providing insurance cover or the terms under which it is provided.
- ii. It **Empowers** the Central Bank of Ireland (CBI) to regulate compliance with the Bill's provisions (in general) and **expands** the CBI's consumer protection-related mandate to provide for it to issue directions to insurers as it considers appropriate. In particular, the Bill proposes to give the CBI the power to carry out assessments of the manner in which insurers deal with applications for insurance. This will extend the CBI's current supervisory responsibilities in relation to insurers.
- iii. It **Establishes** an appeals mechanism for consumers through the Financial Services Ombudsman (FSO) and also provides power to the FSO to direct an insurer to offer insurance to the affected person at a fair price and on reasonable terms.

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3. MAIN PROVISIONS OF THE BILL

The main elements of the proposed legislation are summarised below:

Section	Heading	Detail (summary)
1	Interpretation	Provides a glossary of definitions relevant to the Bill.
2	Classification of geographical area	A geographic area shall be a: (a) "Geographical area" as designated by an OPW flood hazard map issued under the EU Floods Directive to be an area which floods with a low or medium probability, with a probability of flooding of equal to or greater than a 1 in 100-year risk; (b) "High flood risk area" as designated by an OPW flood hazard map (or certified by the OPW) to be an area which floods with a high probability; (c) "Unaffected area" where it is neither (a) nor (b).
3	Insurance policies	Prohibits a property insurance provider / insurer from discriminating against affected and unaffected persons in terms of offering property insurance, charging an unreasonable / unjustified price for this insurance or providing insurance on different terms. However, under Section 3(c), an insurer shall retain the ability to charge a premium for such insurance.
4	Policy criteria	A property insurer shall not (a) "unreasonably" refuse to offer insurance to an affected person (b) offer insurance at an unreasonable price or (c) offer insurance on unreasonable terms.
5	Complaint procedure / Powers of the Financial Services Ombudsman	Complaints by consumers regarding an insurers' behaviour detailed in Section 3 and 4 shall be made to the Financial Services Ombudsman.
6		A complaint to the Ombudsman shall follow existing procedures.
7		The Ombudsman shall have the power, following consideration of a complaint, to direct an insurer to offer insurance to the affected person at a price and on terms it considers "fair, reasonable and appropriate".

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8		The Central Bank may carry out an assessment of an insurers dealing with an affected person, including compliance with Sections 3 and 4.
9	The role and power of the Central Bank of Ireland	The Central Bank shall have the power, following completion of an assessment, to direct an insurer to take correction action to ensure compliance with Sections 3 and 4.
10		Refers to the particulars applicable to any direction issued by the Central Bank, including procedures regarding Enforcement Orders and power of the High Court to impose fines on insurers.
11	Appeals	In respect of a Central Bank assessment (Section 8), Central Bank direction (Section 9) or a decision by the Bank to seek an enforcement order (Section 10), no appeal by an insurer shall be possible to the Financial Services Appeals Tribunal or the High Court.
12	Short title	The Act shall be cited as the Flood Insurance Act, 2016 and shall come into effect immediately.

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4. OPINION OF THE EUROPEAN CENTRAL BANK (ECB)

The Ceann Comhairle concluded in January 2017 that the Bill falls within the competence of the European Central Bank (ECB), as the national central bank (NCB) and as a member of the Eurosystem and the European System of Central Banks (ESCB), under Standing Order 148 for the following reasons:

- i. the potential impact on the role of the Central Bank of Ireland (CBI), and
- ii. it relates to rules applicable to financial institutions insofar as they materially influence the stability of financial institutions and markets.

The ECB was consulted by the Chairman of the Committee on 28 February 2017 and delivered its advisory opinion on 7 April 2017.

Summary of the ECB Opinion

The ECB advisory opinion relates to two specific areas, as follows:

1. **Independence of the CBI** – it is the opinion of the ECB that the draft law does not affect the CBI's institutional, financial and personal independence. The CBI is already solely responsible for the authorisation and prudential supervision of insurers as well as supervision of their business conduct. It also has a broad consumer protection mandate in this area and has a role in ensuring compliance with relevant legislation (e.g. the *Consumer Protection Act, 2007*).
2. **Prohibition on monetary financing** - The proposed new powers of the CBI to carry out assessments of insurance applications of "affected" persons complement the CBIs existing mandate for consumer protection in financial services.

The Central Bank Acts 1942-2015 provide the CBI with investigatory, supervisory and enforcement powers designed to ensure that it can carry out its prudential and consumer protection mandates and can both monitor and take action in relation to insurers' conduct, including potential discrimination

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or unreasonable actions. As such, the proposed new powers may be argued not to be atypical of a Central Bank. Therefore, the tasks conferred by the draft legislation would result in the overall objectives and interests of the CBI remaining largely unchanged and would therefore not be regarded as being discharged in the exclusive interest of the government.

The opinion notes that the principle of financial independence requires that the Member States may not put their national central banks in a position where they have insufficient resources (financial and personnel) to carry out their Eurosystem-related tasks, and also their national operational and financial tasks.

Though the ECB notes that the Bill does not specifically address how to finance additional expenses resulting from the CBI's proposed new tasks / powers, it concludes that it is its understanding that additional resources would be provided through the existing regulatory framework and, as such, this Bill will be required to be categorised as a "designated enactment"² for the purposes of the *Central Banks Acts, 1942-2015*.

The ECB Opinion is at Appendix I.

5. FINANCIAL PROCEDURE FOR BILLS - MONEY MESSAGE

Standing Order 179(2) of Dáil Éireann provides that Committee Stage of a Bill which involves the appropriation of revenue or other public moneys, including incidental expenses, cannot be taken unless a Money Message recommending the purpose of the appropriation has been received from the Government and printed on the Order Paper.

On 3 October 2017, the Ceann Comhairle confirmed in correspondence to the Committee that the provisions of Standing Order 179(2) apply to Flood Insurance Bill and that a request to Government had been made in respect of this Bill.

The Money Message must be printed on the Order Paper prior to Committee Stage consideration of the Bill.

² 'Designated enactment' means an enactment specified in Part 1 of Schedule 2 to the [Central Bank Act, 1942](#).

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6. EXPLANATORY MEMORANDUM OF THE BILL

The Explanatory Memorandum accompanying the Bill states that any administrative costs arising will be borne by the realignment of existing resources available to the CBI and the Financial Services Ombudsman. The ECB, in its advisory opinion (*reference 3.4.3.4*), concludes that the CBI does not appear to be exposed to substantial financial risks for the following reasons:

- i. Specified officers and employees of the CBI are not liable for damages for anything done or omitted in the performance or purported performance of exercise of any of its functions or powers under existing legislation (Section 33AJ(2) of the Central Bank Act, 1942);
- ii. Appeals cannot be made to the Irish Financial Services Appeals Tribunal or the High Court regarding (a) CBI assessments (b) directions issued by the CBI, or (c) decisions by the CBI to seek an enforcement order.

Similarly, the ECB concludes that the legislation does not appear to expose the CBI's decision-making bodies to disproportionate political risk or jeopardise its independence considering its existing supervisory consumer protection obligations (*reference 3.4.3.5 ECB opinion*).

However, the opinion notes that it is for the Irish authorities to assess whether the draft law complies with Irish legal and constitutional principles in this regard (*reference 3.4.3.4 ECB opinion*).

The ECB opinion notes in Section 3.4.3.2 that "the draft law does not specifically address how to finance additional expenses resulting from the CBI being granted additional powers. The ECB understands that the additional resources required ...would be financed by the existing framework..ie. by way of industry levies...It is understood that in order to fall within the existing framework...the draft law will need to be categorised as a 'designated enactment' for the purposes of the Central Bank Acts 1942-2018."

The Explanatory Memorandum also highlights a number of 'implementation issues and considerations' for key stakeholders which are set out below:

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Implementation issues and considerations (*Explanatory Memorandum*)

The State: No significant implementation issues.

The Central Bank/Financial Services Ombudsman: Need to scope out assessment parameters; Need to publish a Code of Conduct for insurance companies; Need to align resources to meet administrative requirements (with the Financial Services Ombudsman).

The Insurance industry: Incur additional risk assessment costs (Insurers will be required to price policies it previously did not price for affected customers).

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7. GOVERNMENT OBSERVATIONS ON THE BILL

The Committee sought and received observations from the Government on the Bill. The Government notes a number of concerns relating to the Bill, principally that it will not achieve its objective of improving insurance provision. Below is a summarised list of risks identified by the Government in response to the Bill, categorised under five headings³:

➤ Financial

- The Bill potentially interferes in the commercial operation of the private insurance market for minimal / uncertain gain;⁴
- It is not feasible to require insurers, through legislation, to provide cover, for example through compulsory flood cover or a declined cases-type agreement. To do so would result in prohibitively high premiums for risky properties, increased premiums for other property, or in insurers leaving the market.
- The Bill increases risk exposure for the exchequer as companies may seek compensation for losses if compelled to cover certain properties;

➤ Legal

- The Bill potentially contravenes EU rules (EU legislative framework for insurance insolvency, as per Central Bank view), i.e. the Solvency II Directive;⁵
- It potentially contravenes the Irish Constitution due to (a) absence of an appeal mechanism for the regulated financial service providers targeted

³ Source: Oireachtas (2017) '[Flood Insurance Bill 2016: Second Stage \[Private Members\]](#)', 29 November 2016, RTÉ (2016) '[Government opposes FF insurance Bill to cover flood prone areas](#)', 29 November 2016, and the Opening Statement by the Minister of State, Michael D'Arcy T.D., 23 November 2017.

⁴ Though the Minister for Finance has a responsibility for the development of a legal framework governing financial regulation, the Minister emphasised that neither he, nor the Central Bank, can "*interfere in the provision or pricing of insurance products or have the power to direct insurance companies to provide flood cover to specific individuals or businesses*". This, the Minister states, is reinforced by the EU Framework for Insurance which prohibits Member States from adopting rules which require insurance companies to obtain prior approval of the pricing or terms and conditions of insurance products. See: Oireachtas (2017) '[Flood Risk Insurance Cover Provision](#)' – Dáil Éireann debate, written responses, 12 July 2017.

⁵ *Ibid.*

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in the legislation / lack of access to the courts, and (b) concerns as it forces insurers to price policies at a loss;

➤ **Regulatory**

- The Bill undermines existing flood relief efforts by reducing incentive on the Government to prioritise expenditure on flood relief schemes;⁶
- It undermines the existing market system of insurance cover;

➤ **Consumer**

- The Bill raises premiums for existing customers (low risk policies subsidise higher risk policies);
- It could result in lower quality insurance policies for existing customers;
- It could reduce choice for consumers (withdrawal of international companies from the insurance market);

➤ **Other**

- The Bill would make Ireland an unattractive location for non-life insurance providers;
- It would impede Ireland's ability to attract relocating 'Brexit' firms;
- There could be a lack of expertise / relevant knowledge on the part of the Financial Services Ombudsman to perform the role as set out in the Bill in determining reasonable pricing (and therefore assessing the risk profile) for affected persons.

The Government believes that its existing policy and investment in relation to flooding, which is focused on the development of a sustainable, planned and risk-based approach to dealing with flooding problems, is the best way forward. The Memorandum of Understanding between the OPW and Insurance Ireland, which facilitates the transfer of flood defence schemes to the industry, is an important complement to this investment. In addition, the quarterly working group meetings between the OPW, the Department of Finance and the insurance industry support the flow of information and improving the understanding of issues between both parties.

Engagement with the insurance industry is continuing in relation to a *baseline flood cover pilot project*, and schemes relating to demountable

⁶ This argument was put forward by an academic in respect of the Flood Re insurance fund, rather than in relation to the more limited proposal in this Bill. However, a similar risk may pertain to this Bill.

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defences, and action has been included in the revised Climate Act Plan, 2019.

8. FLOOD INSURANCE – POLICY CONTEXT

8.1 Flooding damage in Ireland

Damage caused by flooding has increased since the turn of the century, with flooding becoming Ireland's natural disaster of primary concern. Of 14 major weather events in Ireland since 2000, 8 were floods.⁷ The estimated cost of flooding in the period 2000-2015 was approximately €700m.⁸ The probability of the occurrence of extreme weather events is predicted to increase in the future. Met Éireann also forecasts an increased risk of winter and 'flash' flooding as a consequence of climate change, which puts low lying coastal areas at particular risk. Ireland's Environmental Protection Agency (EPA) predicts that river and coastal flooding are also likely to increase as a result of higher precipitation intensities, and for pluvial flooding to increase.⁹

8.2 Provision of flood insurance

Flood insurance provision via private insurance systems is the most common approach to flood insurance in most European countries, including Ireland.¹⁰ As such, flood insurance in Ireland is bundled as part of more comprehensive household (building / contents) insurance policies in 98% of cases.¹¹ This compares to a penetration rate of 50% in other EU Member States including Austria, Czech Republic, Finland, Germany, Greece, Italy, Poland and Slovakia. However, not all households have insurance. Citing the CSO's 2010 Household Budget Survey, a Department of Finance report (May 2016) estimates that up to 33% of all households (c570,000 of 1.7m) lack household insurance. Surminski

⁷ Oireachtas (2015) [Report on hearings in relation to the provision of insurance in areas at risk of flooding](#) – Joint Committee on Finance, Public Expenditure and Reform, May 2015.

⁸ *Ibid.*

⁹ Surminski (2017) '[Fit for the future? The reform of flood insurance in Ireland: resolving the data controversy and supporting climate change adaptation](#)', The Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science / University College Cork.

¹⁰ Office of Public Works (2016) [Interim Report to Government - Interdepartmental Flood Policy Co-ordination Group](#), 8 November 2016.

¹¹ However, [Surminski](#) (2017) contends that it is unclear how many property (buildings/contents) insurance policies specifically cover flooding, with estimates ranging from 78% to 89%.

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(2017) also identified that there is no specific evidence relating to coverage for SMEs.¹²

When assessing risks, insurance companies analyse the history of the property and any flood prevention measures put in place by the Office of Public Works (OPW) or Local Authority. Some policyholders will pay a higher premium because the flood risk is higher, while others have a higher flood excess on the policy. Exclusion of cover is generally a last resort and usually arises where a property has suffered previous flood damage and it is overwhelmingly likely that future flood loss will occur. As stated by Insurance Ireland in its appearances at Oireachtas Committee hearings, insurance offers protection against a risk, not against a certainty. Hence, if the industry was to insure against inevitable losses, premiums would increase for all policy holders.¹³ Underwriting decisions and pricing are matters for individual insurance companies.

Key Statistics on flood insurance in Ireland are in Appendix 2.

8.3 Current Government policy on flooding

In March 2014, a Memorandum of Understanding (MoU) was signed between Insurance Ireland, the representative body for the insurance industry in Ireland, and the Office of Public Works (OPW). This MoU came into effect on 1 June 2014. Insurance Ireland represents 95% of the domestic insurance and 85% of the international life insurance market.

This Memorandum sets out principles of how the two organisations will work together to ensure that appropriate and relevant information on completed OPW flood defence schemes is provided to insurers to facilitate, to the greatest extent possible, the availability to the public of insurance against the risk of flooding. Insurance Ireland members have committed to take into account all information provided by OPW when assessing exposure to flood risk within these areas. However, a 2015 [report](#)¹⁴ by the Joint Committee on Finance, Public Expenditure and Reform concluded the following:

¹² *Ibid.*

¹³ Oireachtas (2016) [Report of the Committee on Flooding and Property Insurance in Ireland, Joint Committee on Environmental, Culture and the Gaeltacht](#), January 2016, p. 35.

¹⁴ Oireachtas (2015) [Report on hearings in relation to the provision of insurance in areas at risk of flooding – Joint Committee on Finance, Public Expenditure and Reform](#), May 2015.

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- That expenditure on flood risk management, at €28m per annum, remains inadequate;
- That flood insurance would be more widely available in areas benefitting from flood defences built to the desired standard of 1:100 year (i.e. assessed by the OPW to having a one-in-100-year flood risk).

The current Government policy prioritises expenditure in three key areas¹⁵:

1. Flood relief/defence measures by the OPW and relevant Local Authorities;
2. Development and implementation of flood relief/defence schemes by the OPW; and
3. Improvement of communications/transfer of data in relation to completed flood defence schemes to the insurance industry by the OPW to reach a better understanding about the provision of flood cover in marginal areas.

8.4 Oireachtas Reports on Flood Insurance

A number of Oireachtas Joint Committee reports have been published with reference to (or focused on) the topic of flood insurance, as follows:

- Joint Committee on the Environment, Heritage and Local Government - [Fourth Report of the Joint Committee: The Management of Severe Weather Events in Ireland and Related Matter \(July 2010\)](#)
- Joint Committee on Finance, Public Expenditure and Reform - [Report on hearings in relation to the provision of insurance in areas at risk of flooding \(May 2015\)](#)
- Joint Committee on Environment, Culture and the Gaeltacht - [Report of the Committee on Flooding and Property Insurance in Ireland \(January 2016\)](#)

The latter two reports refer specifically to the provision of flood insurance. The May 2015 report by the Joint Committee on Finance, Public and Expenditure and Reform, and Taoiseach concluded the following:

- There is no perfect solution to this issue;
- Businesses in flood-hit areas (Cork is specified) remain in a precarious position which impacts on the attraction of new retailers and international investment;

¹⁵ Oireachtas (2017) '[Flood Risk Insurance Cover Provision](#)' – Dáil Éireann written responses, 12 July 2017.

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- The State is providing significant investment through the OPW to finance and build flood defences;
- This investment is, however, not evidenced by increased insurance provision and there is no certainty that when all current flood defence works are complete in 2020 the situation will be any different;
- The MoU between Insurance Ireland and the OPW provides for the sharing of information by the OPW to Insurance Ireland regarding completion of flood defence works to optimal standards, but not for Insurance Ireland to provide information regarding impact on those in need of insurance;
- Insurance Ireland should specify the optimal standards / criteria it requires of a residence or business to access insurance;
- Insurance Ireland should consider the Declined Cases Agreement which operates for young drivers seeking car insurance to spread risk amongst all insurance companies and improve insurance provision;
- The State must recognise that it has some responsibility for insurance. Various models already in place in other countries should be examined by proper authorities;
- If after examining best practice models in other countries, and no adequate solution is found, the State should consider the merits of introducing legislation that would compel insurance providers to provide flood insurance cover.

Similarly, the report by the Joint Committee Environment, Culture and the Gaeltacht (January 2016, but based on an earlier publication consultation and hearings held in September 2012 and April 2013) recommended the following in relation to flood insurance and the existing Government policy:

- Better exchange and cooperation between the Industry and the OPW / Local Authorities on flood mapping and design of flood remediation works. However, the Committee noted that the MoU agreed between Insurance Ireland and the OPW commits insurers to take full account of the information provided by the OPW on completed flood defence schemes when assessing exposure to flood risk;

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- A partnership between the Government and the insurance industry might merit consideration, modelled on the UK's *Flood Re* non-profit making insurance fund, but that an increase in levies (to, in that case, fund an Irish equivalent fund) would not be sustainable;
- Alternative models, such as the Belgian National Disaster Fund scheme or the French Caisse Centrale de Réassurance (CCR) / Central Reinsurance Fund, merit consideration as interim solutions.

However, as with the Finance Committee's report, the Environment Committee concluded:

- If after examining best practice models in other countries, and no adequate solution is found, the State should consider the merits of introducing legislation that would compel insurance providers to provide flood insurance cover.

8.5 Programme for Partnership Government and Department of Finance Report (May 2016)

Section 6 (Climate Change & Flooding) of the Programme for a Partnership Government, (sub-section H) specifically refers to flood insurance, as follows:

"Following meetings between Government and the insurance industry, an interdepartmental group is examining the issue of households and businesses unable to access flood insurance. Following an examination of best international practice in other countries, it will report to the new Government in May 2016, on the most effective way to ensure that all homes and businesses can access flood insurance where the State has already invested in certifiable flood defences that meet best international standards."

This inter-departmental group (officially the interdepartmental Flood Policy Coordination Group) submitted an [interim report](#) to Government in November 2016. The Report stated (2016: 99) the following:

"The provision of insurance cover and the price at which it is offered is a commercial matter for insurance companies and is based on an

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assessment of the risks they are willing to accept and adequate provisioning to meet those risks.”

However, the insurance industry is expected to show evidence of increased availability and reduced costs of insurance in areas benefiting from enhanced flood defences.

Department of Finance Report on Insurance and Flooding

This report, published in May 2016, analysed three specific options, the existing policy stance and two alternatives, including the proposed compulsory insurance approach proposed under the Flood Insurance Bill. In relation to the compulsory insurance approach, it concluded that :

- It would be very costly, would not control pricing, and may cause insurers to exit market
- It would have limited impact on the availability of insurance;
- It could result in exorbitant pricing for high risk properties;
- The Government are prohibited in EU law from controlling pricing;
- It could lead to higher premiums for low/medium risk properties.

See Appendix 3 for a summary of options analysed.

As such, the Department recommended that the current Government strategy remain in place and that existing efforts continue to improve the availability of flood insurance cover by:

- A. Prioritising expenditure on flood relief measures by OPW / Local Authorities; and
- B. Improving communication between the OPW and the insurance industry in order to reach a better understanding about the provision of flood cover in protected areas.

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8.6 Surminski report

A policy paper on the reform of flood insurance in Ireland, authored by Swenja Surminski, was published in May 2017¹⁶. The paper forms part of a research project conducted jointly by University College Cork and the Grantham Research Institute on Climate Change and the Environment, and funded by the Ireland's Environmental Protection Agency (EPA). Among other findings, the paper concluded that:

- Government efforts to improve the provision of flood insurance and developing a new National Climate Change Adaptation Framework, should be closely aligned;
- A new risk data platform is required to enable a more sustainable, less ad-hoc approach to risk assessment through enhanced data sharing. This should address existing barriers that exist, including a lack of transparency about prevalent risks, and all stakeholders should be informed of its advantages; ;
- The insurance industry, the OPW and the Government need to improve their understanding of risk and risk reduction;
- The Government should provide incentives to insurers and other stakeholders (including Local Authorities) and those tasked with managing current and future flood risk, to participate and use data. Collaboration with the insurance industry is essential to achieve this and to remove disincentives, and to encourage the industry to show, via their underwriting, how they can support current and future flood resilience;
- Ireland could be a front-runner on the issue of data sharing, "given the limited scope and application of efforts by other countries at present".

¹⁶ Surminski (2017) '[Fit for the future? The reform of flood insurance in Ireland: resolving the data controversy and supporting climate change adaptation](#)', The Grantham Research Institute on Climate Change and the Environment, London School of Economics and Political Science / University College Cork.

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9. DETAILED SCRUTINY OF THE BILL – JOINT COMMITTEE PROCEEDINGS

As part of detailed scrutiny of the Bill, the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach in public session heard evidence on the Bill on 23 November 2017. In two sessions, the Joint Committee heard from the Bill's sponsor, Deputy Michael McGrath, and other stakeholders - Mr. Jer Buckley, Irish National Flood Forum (INFF), Mr. Pat. O'Connell, Cork Business Association, Mr. Paul Kavanagh, McCarthy Insurance Brokers and Mr. Kevin Thompson, Insurance Ireland, and Dr. Swenja Surminsk Grantham Research Institute on Climate Change and the Environment.

Mr Michael D'Arcy T.D., Minister of State at the Departments of Finance and Public Expenditure and Reform, with special responsibility for financial services and insurance; and Mr Kevin Boxer Moran T.D., Minister of State at the Department of Public Expenditure and Reform with special responsibility for the Office of Public Works (OPW) and flood relief, were unable to attend at the Committee. However statements received from both Ministers are incorporated into the Report. This section looks at some of the main issues arising and highlighted during the Committee's consideration of the Bill.

9.1 Stakeholder commentary

A treatment of the main stakeholder evidence is presented below based on the two proposals in the legislation. The key issues which emerged were as follows:

- A. Assessment and independent verification of flood risk data;
- B. Transparency and the Memorandum of Understanding (MoU);
- C. Impact on insurance companies and consumers;
- D. Area impact; and
- E. Demountables and human intervention.

A) Assessment and independent verification of flood risk data

According to the OECD, the accurate assessment of flood risk is an essential prerequisite for the effective financial management of flood risk. However, some stakeholders note there are a number of problems with the current assessment

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methodology, particularly regarding validation and audit of the flood risk data information, but also around the availability of data. Referring to data availability, Dr. Surminski points out that to successfully intervene to solve the problem requires a detailed assessment and general acceptance of the scale of the problem, which is currently disputed. This assessment must include the total affected population / number of households and the proportion that will benefit from new defences.

INFF highlights the absence of independent studies and lack of independent verification or validation by Government of flood risk data provided by Insurance Ireland, which may be incomplete or outdated. INFF also identifies a lack of comprehensive identification of the uninsured (or underinsured) segments of the population and sectors of the economy that are financially vulnerable and the associated lack of assessment of the reasons they lack insurance, in line with OECD recommendations¹⁷. This, according to the OECD, is "despite the existence of hazard maps" and that "less than 40% of the respondents to the OECD survey provided an estimate of the share of the population facing flood risk". Ireland's estimate of 33% or 570,000 households with no household insurance is based on a 2010 Department of Finance report, but there is no specific figure for those households or businesses that lack flood insurance. McCarthy Insurance Brokers also note the lack of comparative data and independent audit.

Insurance Ireland refer to the "only reliable baseline data" being the percentage of household insurance policies that include flood cover, which is information provided to it through its membership periodically, as well as the number of household insurance policies issued in totality. This tracking of the number of household insurance policies in existence which include flood coverage is the only data produced by Insurance Ireland. Any other data is, according to the association, proprietary to each insurer. Insurance Ireland explicitly does not provide the following data, as it is not within its remit:

- The number of households who decide not to take out flood cover / insurance;

¹⁷ OECD (2016) [Financial Management of Flood Risk](#), OECD Publishing, p. 130.

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- The number of homes / businesses affected where flood cover was withdrawn at the point of policy renewal (even where flood relief / defence schemes in their areas have been completed by the OPW);

The association also states that the underwriting criteria utilised / applied by Insurance Ireland members is solely a matter for them, but it confirmed that certain insurers may attach a comparatively high excess amount to a policy to cover the higher risk. Insurance Ireland also notes that, particularly due to compensation paid out in respect of recent severe weather events (€1.3bn), the industry is, as whole, loss-making (in 2016).

In terms of assessing risk profiles and underwriting criteria, the Minister of State, Michael D'Arcy T.D. also notes that determining a reasonable price by the Financial Services Ombudsman relies on that Office possessing a full understanding of the actual risk, as well as a broader understanding of the risk profile of each insurer, which is not feasible as that Office lacks the expertise and relevant knowledge in this area. The Minister further states that individual property protection is an important element and that where a homeowner undertakes such works to protect their property against flood risk, and has those works appropriately certified, this should be taken into account by insurers in their underwriting / risk assessment decisions.

Mapping

The use of appropriate mapping by the relevant actors is vital to assessing risk which reflects the situation on the ground in affected areas.

The Office of Public Works (OPW) Catchment Flood Risk Assessment and Management (CFRAM) programme is currently being undertaken by engineering consultants on behalf of the OPW in collaboration with local authorities. This work includes the production of predictable flood mapping, as well as the development of preliminary flood risk management options and the production of Flood Risk Management Plans. Insurers use their own risk modelling to inform their underwriting decision-making regarding insurance provision. McCarthy Insurance Brokers note that the CFRAM maps are more detailed and should be utilised for this purpose and should also "be forced into geocoding".

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However, Insurance Ireland believes that geocoding is redundant, and Eircode is a more precise tool in identifying the location of a property and, in particular, that it “should feed through in terms of how companies assess underwriting risk and should be to the benefit of consumers.” According to Insurance Ireland, its members are precluded from using CFRAM maps, and they are not used for underwriting.

The use of CFRAM maps as proposed is “based on a flawed understanding of these OPW maps and the role of the OPW to designate” according to the Minister of State, Kevin ‘Boxer’ Moran T.D. in his statement. In particular, the Minister of State concludes:

“The ‘CFRAM’ flood maps are not necessarily accurate to an individual property basis and cannot be used to designate individual properties. Therefore, and in line with other member states, the OPW has made clear that the information in the ‘CFRAM’ flood maps cannot be used for commercial purposes and this applies to the insurance industry. The OPW has written to the insurance industry to make this clear.

The ‘CFRAM’ flood maps primarily relate to river and coastal flooding and do not consider other sources of groundwater flooding such as pluvial flooding, caused by heavy rain, where the responsibility to measure that flood risk and propose measures to address that risk rests not with the Commissioners but with Irish Water and/or the Local Authorities.”

B. Transparency and the Memorandum of Understanding (MoU)

Transparency

Directly related to the stakeholder’s perception regarding the lack of reliable data is the issue of transparency, specifically around the sharing of information between Insurance Ireland and stakeholders, including policy-holders and the Office of Public Works (OPW).

McCarthy Insurance Brokers note that there is a lack of communication from insurance companies regarding the right of a policyholder to have an independent assessor appointed on his/her behalf.

The Irish National Flood Forum (INFF) also note that a Central Bank investigation of 188 flood claims found incidents of potentially unfair settlements, with insurance companies retaining partial claims. This may, according to the INFF, be in contravention of the consumer protection code.

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On this point, Insurance Ireland's response is that where there is evidence of code breaches in specific cases, it actively encourages all parties concerned to provide this information to the Central Bank. On the issue of retention limits, Insurance Ireland clarifies the issue as follows:

"Insurers make an advance payment to an affected claimant to allow him or her to conduct remedial work at no financial loss to himself or herself. They withhold a percentage of the claim amount until such time as they have confirmed that the works completed by the third party are to the required standard, following which they release the moneys. The consumer is in no way disadvantaged, from a financial point of view in particular, by retention limits."

Memorandum of Understanding (MoU)

The Memorandum of Understanding (MoU) between the OPW and Insurance Ireland was a substantial discussion point in the public hearing, with many stakeholders suggesting the agreement is not working. This is disputed by Insurance Ireland.

The INFF contends that all potential solutions have been exhausted despite the OPW's "best effort" to deal with the issue through the MoU process.

The Cork Business Association, describing the MoU as "merely a commitment to share information", criticises the significant lack of transparency around the MoU, "despite the openness of the OPW in sharing information" suggesting that Insurance Ireland has not acted sufficiently on this information.

Dr. Surminski, while sceptical of the necessity for the Bill and stating that the proposal in the Bill "would not work", notes that "[Ireland does] not have a transparent approach to rating flat risk, and there is no transparent approach to showing how that flat risk is evaluated by insurers and how it is communicated to home owners." The quality of information held by insurance companies is therefore unknown.

On the MoU, Dr. Surminski states that while it represents a "step in the right direction", it "does not work as well as it could or should" due to the lack of transparency. Dr. Surminski recommends that a new MoU is required and that the information regarding the consideration of risk data by insurers and its impact on price / underwriting decisions must be proactively shared better and

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faster by insurers, particularly as the information relates to new defences, and that all risk models should be more flexible. She noted that addressing these transparency issues in the form of an enhanced MoU should be the priority but that, "if that does not work, there is a strong case for the Bill". Dr. Surminski details a number of measures which could enhance transparency:

- Providing indication of a potential (and existing) policyholder's risk level on policy documentation;
- Providing specific evidence of the impact on risk levels (and underwriting models utilised by insurers) of the installation of flood defences;
- Providing for the disclosure of reasons for not granting cover as standard practice;
- Introducing a system of recourse / appeal for consumers who do not agree with the insurer's risk assessment / insurance decision (e.g. similar to the Australian system);
- Improving information provision regarding the link between risk levels and cost of premia;
- Providing clarity about non-flood / other risks in a particular region which may impact on underwriting decisions;
- Providing for a dedicated 'signposting' information service to consumers who are struggling to access insurance regarding additional options available to them.

Insurance Ireland states that the MoU is working and cite increasing rates of insurance provision in the three years since the MoU was agreed (in 2014) and that the "trajectory is moving in the right direction", though it conceded that the rates "have a bit of a way to go". Insurance Ireland also convenes an OPW working group comprising formal Committees which provide for a formalised structure facilitating information flows from each local authority and the OPW to Insurance Ireland, and vice versa.

Minister of State, Michael D'Arcy T.D. notes that the Government approach, via the MoU is proving to be successful and states the following:

"On an overall basis, the Government believes that there is a well-established market system of insurance cover which ensures that flood insurance is already widely available in Ireland – 98% of property insurance policies include flood cover which

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translates to some 1.42m policies. This is a very high penetration rate by European standards.”

Minister of State, Kevin ‘Boxer’ Moran T.D. concludes, in his opening statement, that the improvement in the rates is clear evidence that the “Government’s strategy is working”.

C. Impact on insurance companies and consumers

The knock-on impact of mandatory insurance cover on the insurance industry, even based on limited conditionality, is an important consideration according to Dr. Surminski. Her analysis concludes that:

“Among the possible responses are lower coverage levels, so insurers might just review their existing provision of cover to properties, and there could be some concern on solvency.”

Insurance Ireland also notes that the industry must be prudent, with due cognisance of their solvency and risk limitations associated with concentration of insurance provision in certain high risk areas. Insurance Ireland also states that the more profitable the industry is, the greater likelihood that coverage rates will increase as new providers enter the market.

D. Area impact

Lack of flood insurance cover has consequences for both the property owner and for the area in which the property is located. The INFF and the Cork Business Association highlights a number of associated / knock-on impacts that a lack of insurance cover has on “blighted areas”, such as:

- Reduced ability of an area to attract new industry and commerce (particularly retail);
- Reduced desirability of an area with a knock-on impact on urban renewal programmes;
- Reduced access for existing businesses to sources of finance for expansion;
- Reduced potential revenue for the Exchequer due to reduced property tax valuations in affected areas (associated with the next self-assessment for property tax); and

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- Increased human costs due to physical / psychological toll, including an increase on stress and anxiety.

E. Demountables and human intervention

A number of stakeholders note that despite substantial efforts to mitigate risk through significant investment in the installation of flood relief and defence schemes, the insurance industry has been slow to provide cover. The INFF highlights the problem that a number of flood affected areas are still unable to avail to flood insurance cover, despite the completion of high-standard flood defence schemes in recent years. The INFF notes that for 3 schemes in particular, a total of €115m has been spent, as follows:

- Clonmel, Co. Tipperary: **€41m** (completed in 2013)
- Fermoy, Co. Cork: **€35m** (completed in 2014);
- Mallow, Co. Cork: **€39m** (completed in 2014).

A "further €100m is expected to be spent over the next 5 years". The Cork Business Association notes that flood relief works are due to commence (or have commenced) in Cork city, and are expected to cost between €140m-€150m which would make it the largest single flood scheme yet proposed in Ireland.

However, a number of schemes comprise the often extensive erection of demountable flood barriers, particularly the schemes completed in [Fermoy, Co. Cork](#) and [Clonmel, Co. Tipperary](#).

INFF/McCarthy Insurance Brokers refer to the lack of recognition around demountable barriers by insurers, despite evidence that such defences have been successfully deployed. On human / manual intervention, the INFF notes that all insurance include some element of human error.

Insurance Ireland notes that following successful negotiations with the Office of Public Works (OPW) and the Department of Finance, its members agreed that once demountables defences are erected "in a timely fashion and correctly installed", they offer the same protection and risk as fixed defences. However, Insurance Ireland in evidence highlight examples of failures from the UK and from Ireland noting that human intervention is a "key variable and one which is difficult to resolve", though it acknowledged that such defences appear to be

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performing well. However, in relation to addressing this issue, Insurance Ireland states that its overarching goal is to increase coverage but also that:

"The missing part of the puzzle is the human intervention to erect the defences. We are beginning to look at strategies to address the issue of human intervention. This is detailed work and needs to be progressed in a prudent manner to ensure insurance companies do not take on excessive risk that would undermine their solvency, this in turn is to ensure that they have sufficient revenues to meet the needs of their future claimants."

Insurance Ireland also raises the question of appropriate liability in the event of a failure or lack of human intervention.

The Minister of State, Michael D'Arcy T.D., notes that in meetings and correspondence between the OPW and Insurance Ireland, the industry "accepts that demountable defences are built to a 1 in 100 year standard" and therefore in principle do not oppose the idea that cover should be provided. However, the Minister of State agreed that the issue of human error and liability is a real concern for the industry citing examples from the UK and Ireland (likely those summarised above, as detailed by Insurance Ireland in the public hearing). The Minister of State notes that, in pricing demountable flood risk, insurers must take account of the range of possibilities which may occur, including the risk of "overtopping" and the possibility of the barriers "not being installed or incorrectly installed", leading to flooding. The Minister of State notes that provision of insurance is a commercial decision for each insurer and that diversification of risk to avoid over-concentration of risk exposure is a "prudently sensible approach".

The Minister of State points out that discussions are continuing in the Memorandum of Understanding Working Group in relation to schemes where demountable defences are used, and consideration is being given to concerns expressed by the insurance sector in this regard.

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10. KEY ISSUES IDENTIFIED

The Joint Committee has identified a number of key issues in its scrutiny of the Bill which are detailed below.

1. Implementation Joint Committee Report Recommendations

A number of Joint Committee reports into the provision of flood insurance have recently been published and have particular resonance regarding this issue. In that context the following merits consideration:

- Whether the objectives of this Bill can be met through the implementation of outstanding recommendations in the two most recent Joint Committee reports (JC on Finance, Public Expenditure and Reform [report](#) in May 2015 and JC Environment, Culture and the Gaeltacht [report](#) in January 2016);

The Joint Committee reports have identified a number of options available to alleviate the problem before a legislative recourse to compulsory insurance (or equivalent) is considered "as a last resort". These include:-

- Further enhance cooperation/sharing of information between Insurance Ireland and the OPW to better and more efficiently inform the insurance companies of progress toward completion of flood defences/flood relief schemes in 'at risk' /affected areas (effectively, full implementation of the MoU agreed between Insurance Ireland and the OPW in 2014);
- Consider a flood insurance equivalent to the Declined Cases Agreement (for young drivers) to improve insurance provision amongst affected persons/businesses if a potential policy holder has unsuccessfully sought quotes from a set number of insurers;
- Consider establishing a formal partnership/insurance pool system through an agreement between Insurance Ireland and the Government, modelled on the UK's *Flood Re* insurance fund, funded by levies;

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- Establish alternative disaster fund schemes (e.g. similar to those in Belgium or France), as has been the case with Irish Red Cross Humanitarian Funds;
- Legislate for compulsory provision of insurance (or, as in this Bill, to prohibit insurers for discriminating against applicants previously affected by flooding but now residing in areas where flood relief works to a recognised standard have been completed).

The Department of Finance report published in May 2016 (Appendix 5 of the OPW / Interdepartmental Flood Policy Coordination Group [report](#)) considered these options and concluded that the existing system of private sector provision of flood insurance was preferred. It also noted the compulsory insurance would have a limited impact and lead to:

- exorbitant pricing for high risk properties;
 - increases in premiums for households at low and medium risk of flooding; and
 - insurers leaving the Irish market.
- That the Bill's objectives may be met by the acceptance by the insurance industry of new developments in risk assessment, including an OPW 'flood data' portal and a new commercial flood risk model to be released in 2018 ([Surminski](#) (2017) p.11);
 - That, following publication of the Department of Finance [report](#) (May 2016), more time should be given to ascertain whether maintaining the current approach but enhancing the flow and quality of information shared between the OPW and Insurance Ireland is optimal.

2. Memorandum of Understanding (MoU) between Insurance Ireland and the OPW and demountable defences

The MoU, which came into effect on 1 June 2014, aims to facilitate greater sharing of information on completed OPW / Local Authority flood defences works between the OPW and Insurance Ireland, to ultimately enhance insurance

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provision to those affected by flooding or in a high-risk area/region. The Department of Finance report (May 2016) states that, as a result of the MoU / greater sharing of information, insurance provision has improved. However, a number of stakeholders criticised the MoU in the public hearing.

The following issues may merit consideration:

- Whether the pace of change in the numbers reinsured/provided with flood insurance after the completion of flood defences is significant and satisfactory¹⁸;
- That (as previously referred to by two Oireachtas Joint Committee reports) the accuracy and use of geo-coding be prioritised and reviewed, in collaboration with Insurance Ireland under the MoU (particularly as Insurance Ireland considers the use of geo-coding to be “redundant”);
- That the contention regarding the use of the Catchment Flood Risk Assessment Management (CFRAM) / OPW flood maps by insurers (members of Insurance Ireland) be clarified, as these maps are not suitable to determine all flood risk and cannot and should not be used for commercial purposes^{19, 20};
- Whether the MoU should be strengthened to *oblige* Insurance Ireland (and its members) to improve the transparency of its decision-making particularly, for example, regarding demountable defences and the persistent problem of comparatively lower provision of flood insurance to properties with such defences (78% vs. 90% with permanent defences).

¹⁸ The Minister of State with responsibility for the OPW noted in November 2016 during the [2nd Stage debate](#) in Dáil Éireann an “incremental” increase in the provision of flood insurance in areas protected by flood defences, up 8 percentage points to 83% (January 2016).

¹⁹ Following media reports that insurers were using such maps to base their decision-making. See: Irish Examiner (2016) [‘Insurers using OPW maps to refuse home flood cover’](#), 12 September 2016.

²⁰ Minister of State, Kevin ‘Boxer’ Moran T.D. refers to this issue in his opening statement to the Committee (23 November 2017). The Minister of State outlined in his statement that “The OPW has written to the insurance industry to make this clear”.

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3. Definitions of “reasonable” and “unreasonable”

The Government has noted that the proposed role of the Financial Services Ombudsman may, in effect, take the pricing of risk away from insurers and, ultimately, force insurers to provide insurance policies at a loss. However, under Section 3(b) and (c) of the Bill, an insurer may still discriminate against affected and unaffected persons, on one aspect only – price (“other than the extent reasonably justified by the current risk profile associated with a property”). Furthermore, Section 4(b) prohibits an insurer from offering a policy at an “unreasonable” price.

The following may merit consideration:

- Whether definitions of “reasonable” and “unreasonable” should be included in Bill, considering that it may be consumer’s own definition of these that lead to a complaint being submitted to the Financial Services Ombudsman for judgement, ahead of a direction by the Ombudsman in relation to offering a policy at a price that it considers “fair, reasonable and appropriate”;
- Whether the prohibition of “unreasonable” pricing/terms in Section 4 of the Bill directly conflicts with the sponsor’s suggestion that insurers will still be able to charge a premium under Section 3(b) and (c).

4. Regulatory Impact Assessment (RIA)

According to the Government’s assessment of the Bill, there are many risks inherent in the proposed legislation. However, the European Central Bank noted that the Bill does not impact on the enforcement powers of the Central Bank of Ireland.

The following may merit consideration:

- That all risks, including those identified by the Government, require detailed analysis through the publication of a regulatory impact analysis (RIA) or equivalent, by a competent authority as an update to the May 2016 report of

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the Department of Finance. This updated RIA should explicitly examine best practice models which are applicable to the Irish market;

- That an impact assessment be published which would specifically determine the impact that enacting this Bill may have on the all existing household / commercial insurance policy-holders, and the insurance industry as a whole. However, the Minister of State is concerned that it would be difficult to justify such an expensive and resource intensive project (which would require considerable actuarial inputs).
- That a proposal to establish a flood insurance fund modelled on *Flood Re* (in the UK) be scrutinised, funded by the existing 5% Government insurance levy.

5. Area impact study

Stakeholders noted that lack of flood insurance cover has a detrimental impact on affect or “blighted” areas in various ways, including that it:

- Reduces the ability of an area to attract new industry and commerce (particularly retail);
- Reduces the desirability of an area with a knock-on impact on urban renewal programmes;
- Reduces access for existing businesses to sources of finance for expansion;
- Reduces potential revenue for the exchequer due to reduced property tax valuations in affected areas (associated with the next self-assessment for property tax); and
- Increases human costs due to physical / psychological toll, including an increase on stress and anxiety.

The following may merit consideration:

- That a targeted social, economic and fiscal impact study be completed for each area where OPW flood relief schemes have been completed or are proposed to inform policy development in this area;
- That the recently announced flood defence / relief scheme investment programme of €1bn over 10 years (under Project Ireland 2040) may be

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insufficient considering the “incremental change”²¹ to flood insurance coverage in affected areas, and considering the continuing impact on affected areas.

6. Independent verification of data

A number of stakeholders note there are a number of problems with the current assessment methodology, particularly regarding lack of validation and independent audit of the flood risk data information, but also around the general availability of flood risk data.

The following may merit consideration:

- That an independent assessment be conducted which will comprehensively assess the scale of the flood insurance issue as it stands in 2019, including:
 - the share of the population facing flood risk (both actual *and* potential);
 - the number of households / businesses which currently lack flood insurance cover;
 - the share of affected households / businesses that will benefit from new defence schemes;
 - the number of affected households / businesses where flood cover was withdrawn at the point of policy renewal due to flooding.

7. Policy implications / risks

The Government has substantial concerns with this Bill and has noted that, as drafted, it will not achieve its objective of improving insurance provision and may, if enacted, lead to higher insurance premiums for existing customers, undermine existing flood relief efforts and undermine the existing insurance market, at a time when flood insurance provision is increasing where the Memorandum of Understanding (MoU) is leading to improved coverage.

²¹ The term used by the Minister of State with responsibility for the OPW and Flood Relief, Seán Canney T.D. at the [second stage debate](#) in Dáil Éireann on 29 November 2016.

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The financial, legal, regulatory, and consumer risks associated with this Bill as identified by Government (*Section 6 of this Report refers*) require further detailed examination to ensure that the objective of the Bill (to improve flood insurance provision) is not unintentionally undermined.

11. OBSERVATIONS AND CONCLUSIONS OF THE JOINT COMMITTEE

The Joint Committee:-

1. Commends the proposer of the Bill in drafting and bringing the Bill before this Committee for scrutiny;
2. Notes the broad support expressed for the principle of the Bill by Dáil Éireann and that the Bill passed Second Stage reading unopposed by the Government;
3. Notes that a Money Message from the Government is required before the Bill can progress to Committee Stage consideration pursuant to Standing Order 179(2) [Dáil Éireann];
4. Notes the contributions of the stakeholders, including expert witnesses who attended at Committee and gave evidence on the Bill;
5. Notes that the European Central Bank adopted an Opinion on the Bill to the effect that the Bill does not affect the CBI's institutional, financial and personal independence and that the proposed new powers of the CBI to carry out assessments of insurance applications of "affected" persons complement the CBIs existing mandate for consumer protection in financial services;
6. In seeking to improve the draft law, identifies a number of key issues for further consideration in progressing the Bill, as follows:-
 - 6.1 The observations of the Government that the proposed legislation potentially contravenes EU rules (prohibiting the State from controlling

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pricing) and also the Irish Constitution due to (a) absence of an appeal mechanism for the regulated financial service providers targeted in the legislation / lack of access to the courts, and (b) concerns as it forces insurers to price policies at a loss. These issues need to be examined as part of the Regulatory Impact Analysis outlined in paragraph 6.10 and 6.11 in order to ascertain how the legislation may be amended to mitigate these issues;

- 6.2 Whether the objectives of this Bill can be met alternatively by (1) implementing outstanding recommendations contained in the two Joint Committee reports (JC on Finance, Public Expenditure and Reform [report](#) in May 2015 and JC Environment, Culture and the Gaeltacht [report](#) in January 2016), in which a number of options are outlined, and (2) the acceptance by the insurance industry of new developments in risk assessment, including an OPW ‘flood data’ portal and a new commercial flood risk model to be released ([Surminski](#) (2017) p.11);
- 6.3 That, in the light of the publication of the Department of Finance [report](#) (May 2016), more time should be given to ascertain whether maintaining the current approach but enhancing the flow and quality of information shared between the OPW and Insurance Ireland is optimal in achieving the objective of the Bill;
- 6.4 In relation to the Memorandum of Understanding (MoU) between Insurance Ireland and the OPW and demountable defences, whether the pace of change in the numbers reinsured / provided with flood insurance after the completion of flood defences is significant and satisfactory and is acceptable to the Minister with responsibility in overseeing the implementation of the MoU²²;
- 6.5 That (as previously referred to in two Oireachtas Joint Committee reports) the accuracy and use of geo-coding be prioritised and

²² The Minister of State with responsibility for the OPW noted in November 2016 during the [2nd Stage debate](#) in Dáil Éireann an “incremental” increase in the provision of flood insurance in areas protected by flood defences, up 8 percentage points to 83% (January 2016).

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reviewed in collaboration with Insurance Ireland under the MoU, particularly as Insurance Ireland considers the use of geo-coding to be “redundant”;

- 6.6 That the contention regarding the use of the Catchment Flood Risk Assessment Management (CFRAM) / OPW flood maps by insurers (members of Insurance Ireland) be clarified, as these maps are not suitable to determine all flood risk and cannot and should not be used for commercial purposes²³;
- 6.7 Whether the Government should seek to strengthen the MoU to *oblige* Insurance Ireland to improve the transparency of its decision-making particularly, for example, regarding demountable defences and the persistent problem of comparatively lower provision of flood insurance to properties with such defences (78% vs. 90% with permanent defences);
- 6.8 That, in relation to the proposed role of the Financial Services Ombudsman, the Bill would benefit from precise definitions of the terms “reasonable” and “unreasonable” and consideration should be given to included such definitions in the Bill;
- 6.9 With reference to *Section 4* provisions in the Bill, that further consideration is required regarding the prohibition of “unreasonable” pricing/terms, which potentially conflicts with Section 3(b) and (c) provisions that insurers will still be able to charge a premium;
- 6.10 In view of the Government’s observations regarding the prevalence of certain risks with the proposed legislation, that the risks identified by Government require detailed analysis through the publication of a regulatory impact analysis (RIA) or equivalent, by a competent authority, as an update to the Department of Finance 2016 Report. The updated RIA should explicitly examine best practice models which are applicable to the Irish market;

²³ Following media reports that insurers were using such maps to base their decision-making. See: Irish Examiner (2016) '[Insurers using OPW maps to refuse home flood cover](#)', 12 September 2016.

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- 6.11 That an impact assessment be published by the Department of Finance which would specifically determine the impact that enacting this Bill may have on the all existing household/commercial insurance policy-holders, and the insurance industry as a whole. In this regard, it is noted, however, that the Minister of State is concerned that it would be difficult to justify such an expensive and resource intensive project (which would require considerable actuarial inputs).
- 6.12 That a proposal to establish a flood insurance fund modelled on *Flood Re* (in the UK), funded by the existing 5% Government insurance levy, be scrutinised by the competent authority;
- 6.13 That an independent assessment be conducted by the competent authorities which will comprehensively assess the scale of the flood insurance issue as it stands in 2019, in order to assess the requirement for this legislation;
- 6.14 That the current assessment methodology be improved, particularly regarding validation and independent audit of the flood risk data information, and also the general availability of flood risk data;
- 6.15 That the financial, legal, regulatory, and consumer risks associated with this Bill as identified by Government require further detailed examination to ensure that the objective of the Bill, to improve flood insurance provision, is not unintentionally undermined.

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12. RECOMMENDATIONS OF THE JOINT COMMITTEE

- i. The Committee recommends that –
 - a. drafting issues arising be addressed during the legislative process, however
 - b. a number of steps (as detailed in 6.1 to 6.15 above and including improvements to operation of the MoU and implementation of existing Oireachtas recommendations on flood insurance) should be taken to mitigate the need for this legislation;
- ii. The Committee calls on the competent authorities to carry-out and publish an RIA of the proposed legislation to prior to the Select Committee proceeding to consider the Bill at Third (Committee) Stage.

The Joint Committee commends this Report to the House.

John McGuinness, T.D.,
Chairman.

June, 2019.

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Appendix 1 - ECB Opinion



EN

ECB-PUBLIC

OPINION OF THE EUROPEAN CENTRAL BANK

of 7 April 2017

on the provision of flood insurance

(CON/2017/12)

Introduction and legal basis

On 28 February 2017 the European Central Bank (ECB) received a request from the Chairman of the Oireachtas (Irish National Parliament) Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach (Irish Prime Minister) for an opinion on a Flood Insurance Bill 2016 (hereinafter the 'draft law'). The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third indent of Article 2(1) of Council Decision 98/415/EC¹, as the draft law relates to the Central Bank of Ireland (CBI). In accordance with the first sentence of Article 17.5 of the Rules of Procedure of the European Central Bank, the Governing Council has adopted this opinion.

1. Purpose of the draft law

- 1.1 The draft law contains provisions intended to achieve fairness in the market for property and flood insurance in Ireland. In order to achieve this purpose, the draft law places certain obligations on insurance undertakings carrying out business in Ireland (hereinafter 'insurers') and confers certain powers upon the CBI.
- 1.2 There are two aspects of property and flood insurance provision that are covered by the draft law. First, the draft law prohibits insurers from discriminating, when offering property insurance policies, between (a) persons living in areas designated as being at low to medium risk of flooding (hereinafter 'affected persons'); and (b) persons living in areas which are neither at low to medium risk of flooding nor designated as being at high risk of flooding (hereinafter 'unaffected persons')². Insurers are prohibited from discriminating in their decision on whether to offer an insurance policy to an affected or an unaffected person, the price at which a policy is offered (unless the price is reasonably justified by the current risk profile of the property) and other terms on which it is offered³. The prohibition on discrimination does not appear to prevent insurers from calculating a higher premium for affected persons than for unaffected persons, subject to reasonable justification

¹ Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions (OJ L 189, 3.7.1998, p. 42).

² See paragraph 3 of the draft law.

³ See paragraph 3 of the draft law.

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based on the current risk profile of the property. Second, the draft law prohibits insurers from unreasonably refusing to offer an insurance policy to affected persons, or offering a policy at an unreasonable price or on unreasonable terms to them⁴. This prohibition also appears to be limited as insurers are permitted to offer a price which is reasonably justified by the current risk profile associated with a property.

- 1.3 The draft law confers upon the CBI the power to carry out an assessment of the manner in which an insurer deals with applications for insurance by affected persons⁵. This assessment may consider the extent to which the insurer in question acts in compliance with the draft law's prohibition on discrimination and the duty not to act unreasonably in its dealings with an affected person. The draft law does not set any further parameters for such an assessment or the circumstances in which the CBI might carry out such an assessment.
- 1.4 Where the CBI decides to perform such an assessment, the draft law confers upon the CBI the powers to issue directions to the insurer concerned to take steps or adopt or cease practices as it considers appropriate and necessary to ensure compliance by that insurer with its obligations under the draft law⁶.
- 1.5 With regard to enforcement, the draft law confers powers on the CBI to enforce such directions on insurers that fail to comply with them, by applying to the High Court for an enforcement order⁷. When granting the enforcement order, the High Court must also impose a fine on the insurer, unless the High 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 fine⁸.

2. General observation

This opinion does not address whether the draft law is compatible with Directive 2009/138/EC of the European Parliament and of the Council⁹. The ECB will only assess the provisions of the draft law that impact on the tasks of the CBI as a national central bank (NCB) and as a member of the Eurosystem and the European System of Central Banks (ESCB).

3. Conferal of new tasks on the CBI

- 3.1 The draft law extends the CBI's current supervisory responsibilities in relation to insurance undertakings and expands its consumer protection-related mandate to include the tasks described in paragraphs 1.3 to 1.5. In the context of a proposed conferal of new tasks on an NCB in the ESCB, it is necessary to assess such a conferal against the prohibition on monetary financing

⁴ See paragraph 4 of the draft law.

⁵ See paragraph 8 of the draft law.

⁶ See paragraph 9 of the draft law.

⁷ See paragraph 10(3) of the draft law.

⁸ See paragraph 10(5) of the draft law.

⁹ Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 335, 17.12.2009, p. 1).

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under Article 123 of the Treaty. For the purposes of that prohibition, Article 1(1)(b)(ii) of Council Regulation (EC) No 3603/93¹⁰ defines 'other type of credit facility', *inter alia*, as 'any financing of the public sector's obligations vis-à-vis third parties'.

- 3.2 As one of the objectives of the monetary financing prohibition, which may not be circumvented, is ensuring a sound budgetary policy of Member States¹¹, the task of financing measures, which are normally the responsibility of the Member States, and financed from their budgetary sources rather than from the NCBs', must not be entrusted to NCBs by law. In order to decide what constitutes a form of financing of the public sector's obligations vis-à-vis third parties, which can be translated as the provision of central bank financing outside the scope of central bank tasks, an assessment of whether the task to be undertaken by an NCB is a central bank task or a government task, i.e. a task within the responsibility of the Member States, needs to be carried out on a case-by-case basis. In other words, sufficient safeguards must be in place to ensure that circumventions of the objectives of the monetary financing prohibition do not take place.
- 3.3 As part of its discretion in the exercise of its duty, on the basis of Article 271(d) of the Treaty and Article 35.6 of the Statute of the European System of Central Banks and of the European Central Bank (hereinafter the 'Statute of the ESCB'), to ensure that NCBs honour the obligations laid down by the Treaty, the Governing Council has endorsed safeguards of that kind in the form of criteria for determining what may be seen as falling within the scope of a public sector's obligation within the meaning of Article 1(1)(b)(ii) of Regulation (EC) No 3603/93 or, in other words, constitute a government task as follows:

First, central bank tasks are in particular those tasks that are related to the tasks that have been conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. These tasks are mainly defined in Article 127(2), (5) and (6) and Article 128(1) of the Treaty, as well as Article 22 and Article 25.1 of the Statute of the ESCB.

Second, as Article 14.4 of the Statute of the ESCB allows NCBs to perform 'other functions', new tasks, i.e. tasks that are not related to tasks that have been conferred upon the ECB and the NCBs, are not precluded *per se*. However, new tasks that are undertaken by an NCB and which are atypical of NCB tasks or which are clearly discharged on behalf of and in the exclusive interest of the government or of other public sector entities should be considered government tasks.

Third, an important criterion for qualifying a new task as atypical of an NCB task or as being clearly discharged on behalf of and in the exclusive interest of the government or other public sector entities is the impact of the task on the institutional, financial and personal independence of that NCB.

In particular, the following aspects should be taken into account:

10 Council Regulation (EC) No 3603/93 of 13 December 1993 specifying definitions for the application of the prohibitions referred to in Articles 104 and 104b(1) of the Treaty (OJ L 332, 31.12.1993, p. 1).

11 Article 123 of the Treaty also serves the objective of maintaining price stability and reinforces central bank independence.

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- (a) whether the performance of the new task creates conflicts of interest with existing central bank tasks which are not adequately addressed and does not necessarily complement those existing central bank tasks. If a conflict of interest arises between existing and new tasks, sufficient safeguards to mitigate that conflict should be in place. The complementarity between a new task and the existing central bank tasks should not be interpreted broadly, so as to lead to the creation of an indefinite chain of ancillary tasks. Such complementarity should also be examined in relation to the financing of those tasks;
 - (b) whether without new financial resources the performance of the new task is disproportionate to the NCB's financial or organisational capacity and may have a negative impact on the capacity to perform properly the existing central bank tasks;
 - (c) whether the performance of the new task fits into the institutional set-up of the NCB in the light of central bank independence and accountability considerations;
 - (d) whether the performance of the new task harbours substantial financial risks;
 - (e) whether the performance of the new task exposes the members of the NCB decision-making bodies to political risks which are disproportionate and may also have an impact on their personal independence and, in particular, on the guarantee of term of office set out in Article 14.2 of the Statute of the ESCB.
- 3.4 On the basis of the criteria set out above, the following paragraphs assess whether the CBI's new tasks are in line with the monetary financing prohibition.
- 3.4.1 *New tasks related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB*
- The prudential supervision of insurance undertakings, and the terms on which they provide insurance policies, and the protection of consumers of financial services are not expressly mentioned among any of the basic central banking tasks listed in Article 127(2) or (5) of the Treaty or otherwise conferred upon the NCBs by the Statute of the ESCB. Indeed, under Article 127(6) of the Treaty, the Council may confer specific tasks upon the ECB concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings. While Article 127(5) of the Treaty provides that the ESCB shall contribute to the smooth conduct of policies pursued by the competent authorities relating to the stability of the financial system, the ESCB contribution in this respect does not imply the conferral of any original competences on the ECB. Against this backdrop, the new tasks conferred on the CBI under the draft law are not related to the tasks conferred upon the ECB and the NCBs by the Treaty and the Statute of the ESCB. Consequently, as a next step, the conferral of these tasks by the draft law on the CBI must be closely scrutinised to assess whether they constitute government tasks and whether the related funding gives rise to monetary financing concerns.
- 3.4.2 *Tasks which are atypical of NCB tasks*
- The draft law's conferral of tasks in relation to a specific area of insurers' activity may not be atypical of NCB tasks based on the understanding that these tasks do not interfere with the NCB's ESCB-related tasks and provided that those tasks are a complementary specification of:

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(a) an NCB's existing role as prudential and conduct of business supervisor of insurance undertakings, a role which is currently fulfilled by numerous ESCB NCBs¹², and/or (b) existing consumer protection tasks in the area of financial services, a role which is currently also fulfilled by numerous ESCB NCBs¹³. In this regard, it may be observed that a central bank's pursuit of legislative mandates in several areas may lead to inherent tensions between the multiple objectives it is bound to pursue, and require the central bank to balance competing interests in a manner more appropriate for a government.

The CBI is already responsible for the prudential supervision of insurance undertakings as well as supervision of their business conduct. It also has a broad consumer protection mandate in the field of financial services, including insurance¹⁴. Its responsibilities in this regard include ensuring compliance with, inter alia, the Consumer Protection Act 2007, the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and 2000, European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 and the Non- Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007. The Consumer Protection Code 2012, which the CBI adopted pursuant to section 117 of the Central Bank Act 1989 and section 61 of the Insurance Act 1989¹⁵, imposes binding obligations on, inter alia, insurance undertakings with respect to the manner in which they deal with customers and consumers. The Central Bank Acts 1942 – 2015 provide the CBI with investigatory, supervisory and enforcement powers designed to ensure that it can carry out its prudential and consumer protection mandates. In the case of the draft law, it specifically confers powers upon the CBI to monitor and take action in relation to insurers' conduct vis-à-vis consumers, i.e. potential discrimination or unreasonable actions, albeit in the particular sphere of property insurance.

Therefore, it follows that, given the CBI's mandate under national law for consumer protection in the field of financial services, and, more broadly, for financial stability, roles which are currently also fulfilled by numerous ESCB NCBs, the CBI's new tasks under the draft law may be argued to be not atypical of a central bank. For the same reasons, the tasks conferred by the draft law appear to be so closely related to the CBI's existing tasks and mandates that the overall objectives and interests to be pursued by the CBI remain largely unchanged. The new tasks would therefore not be regarded as being discharged in the exclusive interest of the government. The CBI is the sole supervisory authority for insurance undertakings and there is no indication that, in carrying out this function, the CBI would be acting exclusively in the interest of another public authority. Furthermore, the powers assigned to the CBI are in the-

12 See for example, paragraph 3.1 of Opinion CON/2012/61, paragraph 2.2 of Opinion CON/2011/46, paragraph 2 of Opinion CON/2010/33, paragraph 2 of Opinion CON/2010/4, and paragraphs 6 to 8 of Opinion CON/2003/23. All ECB opinions are published on the ECB's website at www.ecb.europa.eu.

13 See also paragraph 3.3.4.2 of Opinion CON/2016/54, paragraphs 4.3 and 4.4 of Opinion CON/2016/34, paragraphs 3.3 and 3.4 of Opinion CON/2015/54 and paragraph 3.1 of Opinion CON/2015/21.

14 See, in particular, sections 5A(1)(f) and 6A(2)(b) of the Central Bank Act 1942 (as amended).

15 In addition to the Investment Intermediaries Act 1995 and the Consumer Credit Act 1995.

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interest of consumers buying financial products, i.e. property insurance in relation to properties at a low-to-medium risk of flooding, which the CBI also has a statutory mandate under Irish law to protect.

3.4.3 *Impact of the tasks on the independence of the CBI*

It must also be considered how the new tasks that the draft law confers upon the CBI may have an impact on the institutional, financial and personal independence of the CBI.

3.4.3.1 *Extent to which the performance of the new task creates conflicts of interest with existing central bank tasks*

The core obligations created by the draft law apply to insurers. As noted in Sections 3.4.1 and 3.4.2, the CBI is the competent authority responsible for the authorisation and prudential supervision of insurance undertakings. In addition, the CBI has a consumer protection mandate with respect to insurance undertakings operating in Ireland. Therefore, the CBI's new tasks under the draft law seem to complement its existing tasks. The CBI's exercise of its powers under the draft law would therefore not appear to create a conflict of interest with its existing central bank tasks.

3.4.3.2 *Extent to which the performance of the new tasks is disproportionate to the CBI's financial or organisational capacity*

The principle of financial independence requires that the Member States may not put their NCBs in a position where they have insufficient financial resources to carry out not only their ESCB-related tasks, but also their national tasks, from both an operational and financial perspective. Furthermore, when allocating specific new tasks to NCBs, each NCB concerned should be able to avail itself of additional financial resources so that these tasks may be carried out in a manner that will not affect the NCB's operational or financial capacity (including sufficient human resources) to perform its ESCB tasks. As such, it must be ensured that the CBI can avail itself of sufficient resources, including personnel, for the performance of assessments and the issuance of directions under the draft law, so that the CBI's capacity to perform its ESCB-related tasks is not affected. In this regard, the draft law does not specifically address how to finance additional expenses resulting from the CBI being granted additional powers. However, the ECB understands that the additional resources required by the CBI to exercise its powers under the draft law would be financed by the existing framework that finances the supervision of regulated financial service providers, i.e. by way of industry levies and, if necessary, a subvention from the CBI. It is understood that in order to fall within the existing framework, and therefore provide for the CBI to be reimbursed for the costs incurred in relation to the performance of its new tasks, the draft law will need to be categorised as a 'designated enactment' for the purposes of the Central Bank Acts 1942 - 2015¹⁶.

¹⁶ See sections 2 and 32D and Schedule 2, Part 1 of the Central Bank Act 1942.

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3.4.3.3 Extent to which performance of the new task fits into the CBI's institutional set-up, in light of central bank independence and accountability considerations

The performance of the new tasks appears to be aligned with the CBI's institutional set-up. As mentioned in paragraph 3.4.3.1, the CBI is responsible for the prudential supervision of insurance undertakings and has a consumer protection mandate with respect to insurance undertakings, in the context of which the new tasks under the draft law are conferred.

3.4.3.4 Extent to which the performance of tasks harbours substantial financial risks

The draft law does not directly address the CBI's potential liability in the event of any legal action, application or other legal proceeding for damages in relation to the exercise of its powers under the draft law. Nonetheless, section 33AJ(2) of the Central Bank Act 1942 provides that specified officers and employees of the CBI are not liable for damages for anything done or omitted in the performance or purported performance or exercise of any of its functions or powers, unless it is proved that the act or omission was in bad faith. Furthermore, no appeal shall lie to the Irish Financial Services Appeals Tribunal or the High Court in respect of assessments carried out by the CBI, directions issued by the CBI or decisions by the CBI to seek an enforcement order. In that respect the CBI appears not to be exposed to substantial financial risks. However, it is for the Irish authorities to assess whether the draft law complies with Irish legal and constitutional principles in this regard¹⁷.

3.4.3.5 Extent to which the performance of the new task exposes members of the CBI's decision-making bodies to disproportionate political risks and has an impact on their personal independence

The performance of the tasks conferred under the draft law does not appear to expose the CBI's decision-making bodies to any disproportionate political risk or have an impact on their personal independence. As mentioned in paragraph 3.4.3.1, the CBI is responsible for the prudential supervision of insurance undertakings and has a consumer protection mandate with respect to insurance undertakings in Ireland.

3.4.3.6 Conclusion in relation to the draft law's effect on the CBI's independence

On the basis of the above, it may be concluded that the draft law does not adversely affect the CBI's institutional, financial and personal independence.

3.4.4 Conclusion regarding the compatibility of the draft law with the prohibition on monetary financing

The CBI's new powers to carry out assessments of the manner in which an insurer deals with applications for insurance by affected persons can be regarded as central bank tasks, in the sense that they would complement the CBI's existing mandate for consumer protection in the field of financial services. However, it should be noted that a central bank's pursuit of legislative mandates in several areas may lead to inherent tensions between the multiple objectives it is bound to pursue, and require the central bank to balance competing interests in a manner more

¹⁷ See also paragraph 3.3.4.3.4 of Opinion CON/2016/54.

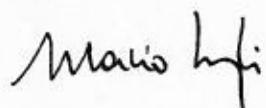
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appropriate for a government. It is understood that in order to ensure that the CBI is reimbursed for its costs incurred in relation to the performance of its new tasks, the draft law will need to be categorised as a 'designated enactment' for the purposes of the Central Bank Acts 1942 - 2015.

This opinion will be published on the ECB's website.

Done at Frankfurt am Main, 7 April 2017.



The President of the ECB

Mario DRAGHI

Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Appendix 2 - Key statistics on flood insurance in Ireland

- Flood insurance is included as standard in **98%** of household insurance policies which translates to some 1.42m policies²⁴;
- **2.9% / 50,000 households:** An estimate by the Irish Brokers Association (highlighted by the Irish National Flood Forum) of households with no *flood* insurance;²⁵
- **33% / 570,000 households:** A 2010 estimate of the number of households with no *household* insurance;²⁶
- **83%** of *property* insurance policies (in areas which recently completed flood defences) include cover against flood risk (January 2016 survey) – **89%** for permanent, **78%** for demountable²⁷. A December 2016 OPW survey indicates little change from these figures (**90%** permanent, **77%** demountable)²⁸;
- **<40%:** Percentage of OECD respondents (countries) that provided an estimate of the share of the population facing flood risk, despite the existence of hazard maps (excluding Ireland);
- **12** completed flood defence schemes since 2014²⁹
- **37** major and **400** minor capital works completed since 2015;
- **€430 million:** Flood relief budget under the 6-year Capital Investment Plan 2016-2021, under the following planned allocation³⁰

Capital Investment Plan – flood defences

Year	2016	2017	2018	2019	2020	2021
Allocation	€45m	€45m	€70m	€80m	€90m	€100m

- **€760 million:** Total expenditure (actual and projected) on flood defence schemes (1995-2021) including €480m since 1995³¹;
- **€1bn:** Total expenditure on flood relief / defence works under Project Ireland 2040 (over 10 years to 2028)³²;
- **€4m+:** Total humanitarian aid provided (since end-2015) to those unable to secure flood insurance.³³

²⁴ According to Insurance Ireland, as detailed in Office of Public Works (2016) [Interim Report to Government - Interdepartmental Flood Policy Co-ordination Group](#), 8 November 2016 and the Minister of State Michael D'Arcy is his opening statement.

²⁵ Census 2016 provides a figure of 1,702,289 private households in Ireland.

²⁶ *Ibid*, Appendix 5, Department of Finance report, p. 119.

²⁷ *Ibid*.

²⁸ Oireachtas (2017) [Flood Risk Insurance Cover Provision](#), Dáil Éireann debate, 31 January 2017.

²⁹ <https://www.opw.ie/en/completed/>

³⁰ Office of Public Works (2015) '[Minister Simon Harris announces major €430m capital investment in Flood Relief Measures](#)', 29 September 2015.

³¹ According to the Explanatory Memorandum accompanying the Bill, the State is spending approximately €760m (1995-2021) on flood defence.

³² OPW (2018) '[Kevin "Boxer" Moran publishes Flood Risk Management Plans and announces €257 million for 50 New Flood Relief Schemes, as part of a Ten-Year €1 billion Programme of Investment in Flood Relief Measures](#)', 3 May 2018.

³³ Those affected by flooding but unable to avail of insurance cover can seek assistance from ad-hoc humanitarian funds. However, it is not intended that these schemes are an alternative to insurance cover. For example, the damage caused by Storm Desmond (December 2015) led to the Government allocating a once-off €5m for small businesses, which was administered by the Irish Red Cross. The scheme was later expanded to include other flooding events, other small businesses and repeat applications.

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Appendix 3 - Department of Finance Report May 2016 (analysis of options)

Options	Detail (as per report)
1. Insurance Pool / State indemnification	<p>Conclusion: Could lead to a considerable financial exposure to the State (provision of a State backstop and additional levies);</p> <ul style="list-style-type: none"> ▪ State backstop: Minimum cost of between €97m and €185m; ▪ Levy: Cost of levy between 3-5% per policy (potentially between 9-17% if demand increases) based on Flood Re in the UK; ▪ High set-up costs (Flood Re costs were £21m).
2. Legislative options (compulsory insurance) <i>Proposed approach under this Flood Insurance Bill 2016 [PMB]</i>	<p>Conclusion: Very costly, would not control pricing, may cause insurers to exit market;</p> <ul style="list-style-type: none"> ▪ Limited impact on the availability of insurance; ▪ Could result in exorbitant pricing for high risk properties; ▪ Government and regulatory prohibited in EU law from controlling pricing; ▪ Could lead to higher premiums for low/medium risk properties;
3. Private sector provision of flood insurance <i>Existing Government Approach</i>	<p>Conclusion: Current approach = best approach i.e. (a+b+c) as follows:</p> <ul style="list-style-type: none"> b. Investment in flood defences c. Targeted humanitarian assistance for households affected by flooding (e.g. events such as the Winter of 2015/16) d. Better exchange of information between OPW and Insurance Ireland. <ul style="list-style-type: none"> ▪ This approach, complemented with the existing Government strategy (in place since 2010) focuses on the development of a sustainable, planned and risk-based approach with a view to mitigating against flood damage. ▪ Has led to increased flood insurance availability where the State has invested in flood defences, both fixed and demountable.

Source: OPW (2016) Interim report to Government of the Interdepartmental Flood Policy Coordination Group, November 2016, p. 101-102.

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Appendix 4 - Orders of Reference

a. Functions of the Committee – derived from Standing Orders [DSO 84A; SSO 70A]

- (1) The Select Committee shall consider and report to the Dáil on—
 - (a) such aspects of the expenditure, administration and policy of a Government Department or Departments and associated public bodies as the Committee may select, and
 - (b) European Union matters within the remit of the relevant Department or Departments.
- (2) The Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann for the purposes of the functions set out in this Standing Order, other than at paragraph (3), and to report thereon to both Houses of the Oireachtas.
- (3) Without prejudice to the generality of paragraph (1), the Select Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments, such—
 - (a) Bills,
 - (b) proposals contained in any motion, including any motion within the meaning of Standing Order 187,
 - (c) Estimates for Public Services, and
 - (d) other matters

as shall be referred to the Select Committee by the Dáil, and

 - (e) Annual Output Statements including performance, efficiency and effectiveness in the use of public monies, and
 - (f) such Value for Money and Policy Reviews as the Select Committee may select.
- (4) The Joint Committee may consider the following matters in respect of the relevant Department or Departments and

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associated public bodies:

- (a) matters of policy and governance for which the Minister is officially responsible,
 - (b) public affairs administered by the Department,
 - (c) policy issues arising from Value for Money and Policy Reviews conducted or commissioned by the Department,
 - (d) Government policy and governance in respect of bodies under the aegis of the Department,
 - (e) policy and governance issues concerning bodies which are partly or wholly funded by the State or which are established or appointed by a member of the Government or the Oireachtas,
 - (f) the general scheme or draft heads of any Bill,
 - (g) any post-enactment report laid before either House or both Houses by a member of the Government or Minister of State on any Bill enacted by the Houses of the Oireachtas,
 - (h) statutory instruments, including those laid or laid in draft before either House or both Houses and those made under the European Communities Acts 1972 to 2009,
 - (i) strategy statements laid before either or both Houses of the Oireachtas pursuant to the Public Service Management Act 1997,
 - (j) annual reports or annual reports and accounts, required by law, and laid before either or both Houses of the Oireachtas, of the Department or bodies referred to in subparagraphs (d) and (e) and the overall performance and operational results, statements of strategy and corporate plans of such bodies, and
 - (k) such other matters as may be referred to it by the Dáil from time to time.
- (5) Without prejudice to the generality of paragraph (1), the Joint

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Committee appointed pursuant to this Standing Order shall consider, in respect of the relevant Department or Departments—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 114, including the compliance of such acts with the principle of subsidiarity,
 - (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
 - (c) non-legislative documents published by any EU institution in relation to EU policy matters, and
 - (d) matters listed for consideration on the agenda for meetings of the relevant EU Council of Ministers and the outcome of such meetings.
- (6) Where a Select Committee appointed pursuant to this Standing Order has been joined with a Select Committee appointed by Seanad Éireann, the Chairman of the Dáil Select Committee shall also be the Chairman of the Joint Committee.
- (7) The following may attend meetings of the Select or Joint Committee appointed pursuant to this Standing Order, for the purposes of the functions set out in paragraph (5) and may take part in proceedings without having a right to vote or to move motions and amendments:
- (a) Members of the European Parliament elected from constituencies in Ireland, including Northern Ireland,
 - (b) Members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (c) at the invitation of the Committee, other Members of the European Parliament.
- (8) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department

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or Departments, consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and
- (b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select.

b. Scope and Context of Activities of Committees (as derived from Standing Orders) [DSO 84; SSO 70]

- (1) The Joint Committee may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders; and
- (2) Such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil and/or Seanad.
- (3) The Joint Committee shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Committee of Public Accounts pursuant to Standing Order 186 and/or the Comptroller and Auditor General (Amendment) Act 1993; and
- (4) any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Orders [DSO 111A and SSO 104A].
- (5) The Joint Committee shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by
 - (a) a member of the Government or a Minister of State, or
 - (b) the principal office-holder of a body under the aegis of a Department or which is partly or wholly funded by the State or established or appointed by a member of the Government or by the Oireachtas:Provided that the Chairman may appeal any such request made to the Ceann Comhairle / Cathaoirleach whose decision shall be final.
- (6) It shall be an instruction to all Select Committees to which Bills

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are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice given by the Chairman of the Select Committee, waives this instruction on motion made by the Taoiseach pursuant to Dáil Standing Order 28. The Chairmen of Select Committees shall have responsibility for compliance with this instruction.

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Appendix 5 - Membership

Members of the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach

Deputies:

John McGuinness T.D. (FF) (Chairman)

Peter Burke T.D. (FG)

Joan Burton T.D. (Lab)

John Deasy (FG)

Pearse Doherty T.D. (SF)

Michael McGrath T.D. (FF)

Paul Murphy T.D. (Solidarity-PBP)

Senators:

Gerry Horkan (FF) (Vice-Chairman)

Paddy Burke (FG)

Rose Conway-Walsh (SF)

Kieran O'Donnell (FG)

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Appendix 6 - List of Witnesses

Bill Sponsor

- Mr. Michael McGrath TD

Department of Finance and Public Expenditure and Reform:

- Mr. Michael D'Arcy TD, Minister of State
- Mr. Cathal Sheridan
- Ms. Anne-Marie Walsh

Office of Public Works

- Mr. Kevin 'Boxer' Moran TD, Minister of State
- Mr. Brian Brogan

Cork Business Association

- Mr. Pat O'Connell

National Forum of Community Flood Committees

- Mr. Jer Buckley

McCarthy Insurance Brokers

- Mr. Paul Kavanagh

Insurance Ireland

- Mr. Kevin Thompson
- Mr. Michael Horan

London School of Economics

- Ms. Swenja Surminska

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Appendix 7 - Document Links

Link to Official Meeting Transcript [23 November 2017](#)

Link to OPW (2016) [Interim report to Government of the Interdepartmental Flood Policy Coordination Group](#), November 2016, p. 101-102.