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Bill Digest

Finance (Miscellaneous Provisions) Bill 2020

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Abstract

The Finance (Miscellaneous Provisions) Bill 2020 (the Bill) is a short Bill with three primary (unrelated) objectives:

1. To amend the *Credit Union Act 1997* to make provision for the holding of certain meetings of credit unions virtually and to provide for related matters;
2. To amend the *Fiscal Responsibility Act 2012* to extend the term limit for a member of the Irish Fiscal Advisory Council (IFAC);
3. To amend the *Credit Institutions (Stabilisation) Act 2010* to include the European Union as a "facility lender."

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Contents

Introduction **2**

Principal provisions of the Bill **3**

Objectives of this Bill **5**

Objective 1: To facilitate certain meetings of credit unions to be held virtually **5**

Policy background on credit unions 5

Key provisions of this Bill 7

Objective 2: To increase the number of consecutive terms of office a member of the Irish Fiscal Advisory Council may serve **11**

Objective 3: To include the European Union as a "facility lender" **12**

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Introduction

The Finance (Miscellaneous Provisions) Bill 2020 (the Bill) was published on Thursday, 19 November 2020 and second stage debate in the Seanad is scheduled for **Tuesday, 24 November 2020**.

As noted in the Explanatory and Financial Memorandum accompanying the Bill, the Bill's purpose is threefold:

1. To amend the *Credit Union Act 1997* to make provision for the holding of certain meetings of credit unions virtually, and to provide for related matters;
2. To amend the *Fiscal Responsibility Act 2012* to extend the term limit for a member of the Irish Fiscal Advisory Council (IFAC);
3. To amend the *Credit Institutions (Stabilisation) Act 2010* to include the European Union as a 'facility lender' to make provision in relation to certain loan agreements entered into by the State with the European Union.

The Explanatory and Financial Memorandum also notes that there are no financial implications for the Exchequer arising from this Bill.

The Bill has not been subject to the pre-legislative scrutiny (PLS) process[1] and no General Scheme was published to outline the heads of the Bill. As the Bill deals with three unrelated areas, they are examined in this Digest as three separate objectives.

[1] See Library & Research Service (2017) *The legislative review loop of Government legislation [infographic]* for more information on the legislative process – available at https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2017/2017-04-10_the-legislative-review-loop-of-government-legislation_en.pdf

Principal provisions of the Bill

The Bill contains 15 sections contained in four Parts, as summarised below:

Part	Section	Title	Effect
1.	1.	Short title	Provides for the short title which may be cited as the *Finance (Miscellaneous Provisions) Act 2020.*
2	2.	Definition	Provides for the defining of *the Credit Union Act 1997* as the "Act of 1997".
	3.	Amendment of section 2 of the *Credit Union Act 1997*	Amends section 2 of the *1997 Act* by inserting additional definitions (including 'Covid-19' and 'interim period') and amending existing definitions to facilitate remote / virtual meetings, including voting by proxy. Notably, certain amendments will be valid for an 'interim period' only (from the date of enactment of this Bill to 30 April 2021).
	4.	Extension of interim period	Allows the Government to extend the interim period (upon request of the Minister for Finance after consultation with the Minister for Health) for two reasons (1) to control the spread of Covid-19 or (2) to mitigate the economic effect of the disease.
	5.	Amendment of section 78	Amends sections 78(1), 78(2) and 78(3) of the *1997 Act* to provide for meetings to take place in a non-physical location (i.e. virtual/remote meetings).
	6.	New sections 78A and 78B	Inserts new sections into the *1997 Act* to allow for credit unions to hold wholly or partly virtual general meetings. The sections refer to general meetings held during (section 78A) and after (section 78B) the interim period.
	7.	Amendment of section 80	Amends section 80 of the *1997 Act* to specify particular details which a notice of a general meeting much include.
	8.	Notice of rescheduled general meeting	Inserts a new section (section 80A) in the 1997 Act which details requirements in respect of the notice of a rescheduled general meeting.
	9.	Amendment of section 81	Amends section 81 of the 1997 Act to include new specificity regarding details contained in notices for general meetings including those held virtually.

	10.	Amendment of section 82	Amends section 82 of the 1997 Act to provide the Minister for Finance with power to make regulations in respect of further provisions related to wholly or partly virtual general meetings (and remove the prohibition preventing members from voting by proxy).
	11.	Proxies	Amends section 82 of the *1997 Act* by inserting a new section 82A which allows credit unions to provide members with the option of voting by proxy at general meetings and sets out certain rules in relation to the use of proxy voting.
	12.	Amendment of section 92	Amends section 92 of the *1997 Act* to provide for meetings to take place in a non-physical location (i.e. virtual/remote meetings).
	13.	Amendment of section 182	Amends the *1997 Act* to allow the Minister for Finance to make regulations regarding general meetings.
3.	14.	Amendment of Schedule to the *Fiscal Responsibility Act 2012*	Amends the Schedule of the *Fiscal Responsibility Act 2012* to increase the consecutive terms a member of the Irish Fiscal Advisory Council (IFAC) can serve from two to three.
4.	15.	Amendment of section 67 of the *Credit Institutions (Stabilisation) Act 2010*	Amends section 67 of the *Credit Institutions (Stabilisation) Act 2010* to include the European Union as a facility lender to the State.

Objectives of this Bill

Each of the three objectives of this Bill will now be discussed separately.

Objective 1: To facilitate certain meetings of credit unions to be held virtually

Policy background on credit unions

This section provides brief background information in relation to the credit union sector in Ireland.

Defining credit unions

Broadly speaking, a credit union is a volunteer run, member-owned organisation where people save and lend to each other at affordable rates of interest. They typically have a not-for-profit status and a strong community-based ethos. A common bond, based on factors like living or working within a particular area, determines who can join each credit union. All members have an equal input into the running of their credit union regardless of the level of savings they hold.

In Ireland, the principal legislation governing credit unions is the *Credit Union Act 1997* (as amended). The Act sets out the statutory framework within which they are regulated by the Registry of Credit Unions, in addition to outlining the characteristics of and restrictions on a credit union. The Registry of Credit Unions (RCU) is the division within the Central Bank which is responsible for the registration, regulation and supervision of credit unions.

Overview of credit unions in Ireland

Credit unions have a relatively long history in Ireland, dating back to 1958 when the country's first was founded. There were 241 credit unions in Ireland at 30 September 2019, compared to 406 at 30 September 2011 (see figure 1 overleaf). The sector's profile has evolved over recent years, with more large size credit unions (assets of at least €100 million) and fewer small size credit unions (assets less than €40 million).

Whist the number of credit unions decreased by 165 over that time given ongoing restructuring, the sector continues to retain a strong national presence having a reported combined membership of c.3.4 million.[2]

The total assets of the credit union sector increased from €14.0 billion to €18.3 billion over the 8-year period from 30 September 2011 to 30 September 2019. Investments and deposits accounted for 72% of credit union assets at 30 September 2019.

Total loans outstanding decreased by €0.6 billion over the period, falling from €5.7 billion at 30 September 2011 to €5.1 billion at 30 September 2019.

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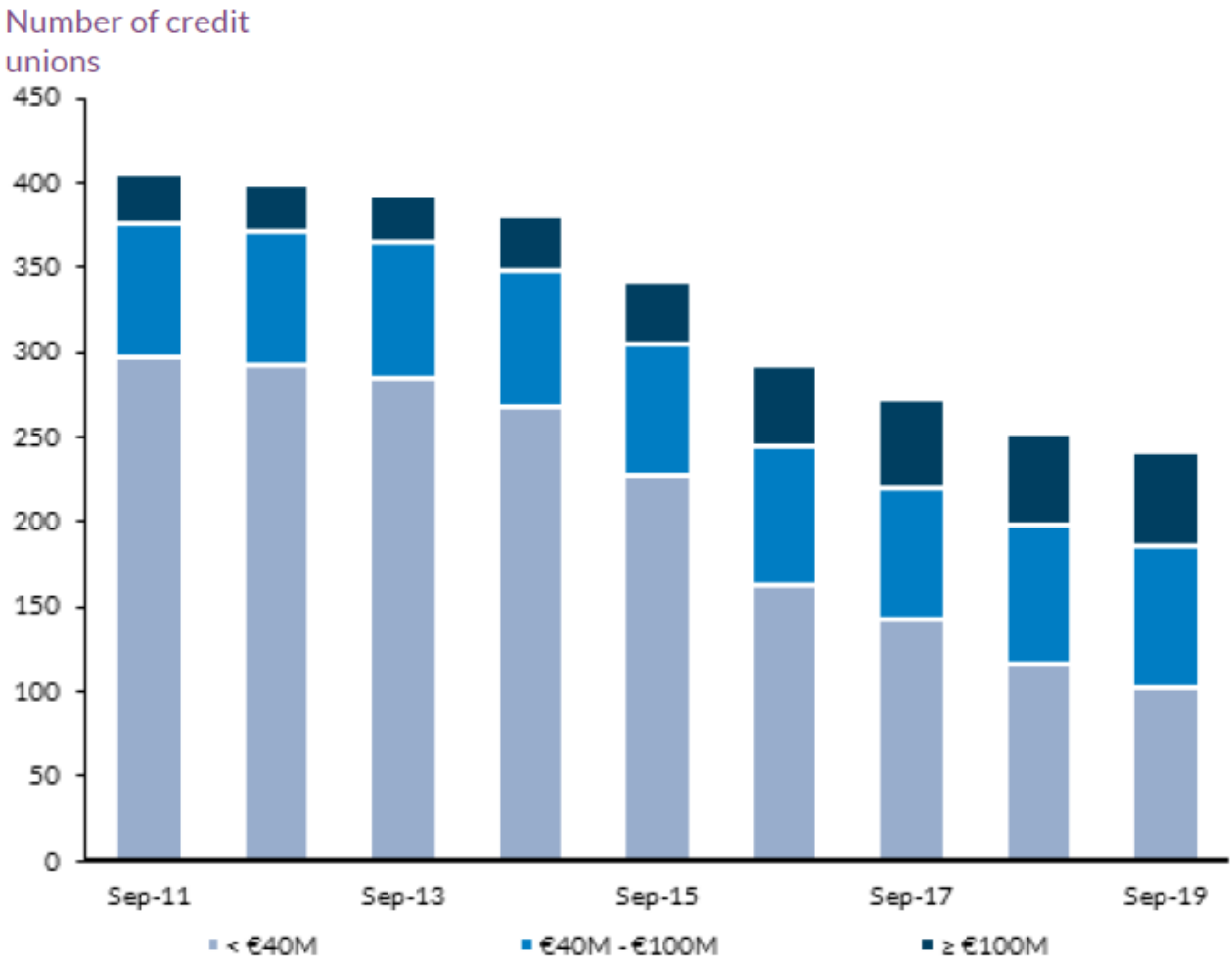
[2] Central Bank of Ireland (2019) *Financial Conditions of Credit Unions, 2019: II Issue 6*, December 2019. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/financial-conditions-of-credit-unions/financial-conditions-of-credit-unions-2019-ii.pdf

According to the Central Bank, both total gross loans and total savings grew over recent years following a period of decline since 2011, with gross loans outstanding increasing from €4.0 billion at 30 September 2015 to €5.1 billion at 30 September 2019 and savings increasing from €12.5 billion to €15.3 billion over the same period.[3]

Figure 1: Number of credit unions by asset size



Source: Central Bank of Ireland (2019) *Financial Conditions of Credit Unions, 2019: II Issue 6*, December 2019. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/financial-conditions-of-credit-unions/financial-conditions-of-credit-unions-2019-ii.pdf

[3] Central Bank of Ireland (2019) *Financial Conditions of Credit Unions, 2019: II Issue 6*, December 2019. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/financial-conditions-of-credit-unions/financial-conditions-of-credit-unions-2019-ii.pdf

In 2019, the Central Bank identified key financial challenges for the sector in terms of income generation and return on assets given the low interest rate environment and high cost metrics.[4] In the context of credit unions moving through the 2020 year-end process and beyond 2020, the Central Bank has stated that identification and consideration of the key risks arising from both Covid-19 and Brexit will be a key focus.[5]

Annual General Meetings (AGMs) of credit unions

Annual General Meetings (AGMs) are a key component of the year for well-governed credit unions. These would typically take place as face-to-face meetings, but as with many other events, Covid-19-related social distancing requirements has challenged the traditional way of doing this[6].

The financial year for Irish credit unions ended on 30 September 2020, with AGMs due to take place by 31 January. The Central Bank has acknowledged the potential challenges with meeting certain statutory deadlines due to Covid-19 impacts on the holding of AGMs.[7] It is in this context that this Bill is proposed to allow credit unions to host, either partial or wholly, virtual General Meetings and to provide for a temporary period for credit unions to delay hosting AGMs related to financial year end September 2020 until April 2021.

Key provisions of this Bill

This section of the Digest examines key provisions of Part 2 of the Bill (Amendment of the *Credit Union Act 1997*).

New definitions ('Covid-19', 'interim period' and 'special resolution')

This Bill makes provision for a number of changes to the *1997 Act* with respect to definitions, including by inserting certain new definitions, amending existing ones and clarifying references in the Act.

Section 3 amends section 2 of the *1997 Act* by providing for definitions of 'Covid-19' and 'interim period'. Under this section, certain amendments in the Bill will be operational for a temporary period only. The 'interim period' provided for in section 3 of the Bill as meaning the time from when the Bill is enacted and ending on 30 April 2021, and any period specified by order under section 3A (a new section inserted by this Bill).

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[4] Central Bank of Ireland (2019) *Financial Conditions of Credit Unions, 2019: II Issue 6*, December 2019. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/financial-conditions-of-credit-unions/financial-conditions-of-credit-unions-2019-ii.pdf

[5] Central Bank of Ireland (2020) *Credit Union News*, Issue 13, October 2020. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/credit-union-news/credit-union-news-issue-13---october-2020.pdf

[6] The *Companies (Miscellaneous Provisions) (Covid-19) Act 2020* similarly allows for remote company meetings and meetings of Industrial and Provident Societies

[7] Central Bank of Ireland (2020) *Credit Union News*, Issue 13, October 2020. Available at https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/credit-unions/communications/credit-union-news/credit-union-news-issue-13---october-2020.pdf

Section 3 also amends the definition of 'special resolution' so that it includes voting by proxy. In addition, the section amends references in the Act to a member being "present at a meeting", and inserts a new subsection relating to references to a "member being present and voting at a general meeting". These changes are proposed to in order to include proxies and meetings held wholly or partly by virtual means.

Extension of interim period

Section 4 of the Bill amends the *1997 Act* by inserting a new section to provide that the Government may, by order, extend the interim period at the request of the Minister for Finance, after consulting with the Minister for Health. This may be done for any period considered appropriate, provided they are satisfied such measures would be in the public interest in the context of the control of Covid-19 and mitigating its economic effects.

General meetings of credit unions

Two new sections 78A and 78B are to be inserted into the 1997 Act (after section 78), by section 6 of this Bill. These relate to general meetings during the interim period (section 78A) and general meetings (other than during the interim period) (section 78B).

Under subsection (1) of Section 78A, the provisions of this section, and any regulations made under it, only apply during the interim period and will apply notwithstanding any other provisions of the *Credit Union Act 1997* or the rules of a credit union.

Section 78A provides that a credit union may hold its AGM for the financial year ended September 2020 at any time during the interim period. In addition, this meeting may be conducted, wholly or partially, by virtual means provided all attendees have a reasonable opportunity to participate. Virtual meetings shall include a mechanism for casting votes at the meeting (subsection (4)(a)).

This section also provides for a number of operational details in relation to virtual AGMs, including for example, a temporary failure or disruption of communications not invalidating the meeting. This section also provides that the board of directors may, by resolution, cancel an AGM, change its venue or change the means by which it would take, up to the day before it is due to be held. It may cancel a meeting if deemed necessary due to exceptional and unexpected circumstances.

The second new section relates to general meetings (other than during the interim period), i.e. general meetings after the interim period. Subsection 78B (1) provides that this section shall not apply to general meetings held during the interim period to which section 7A applies.

Under this section, a credit union may conduct its meeting, wholly or partially, by virtual means provided all attendees have a reasonable opportunity to participate. Such virtual meetings shall include a mechanism for casting votes at the meeting. It also provides that any temporary failure or disruption of electronic communications technology shall not invalidate the general meeting or any proceedings relating to the meeting. In addition, the board of directors, may by resolution, cancel a general meeting at any time prior to the holding of the meeting, if they deem it necessary due to exceptional and unexpected circumstances.

The particulars required of a notice of a general meeting are also addressed by provisions of this Bill. Section 7 amends section 80 of the 1997 Act and inserts a new paragraph which provides for

certain details that a notice of a general meeting that includes virtual participation must specify. These are:

1. The electronic platform to be used,
2. Details for access to the electronic platform,
3. Where required by the rules of a credit union, the time and manner by which an attendee must confirm his or her intention to attend the meeting,
4. Any requirements or restrictions which the credit union has put in place in order to identify attendees who intend to attend the meeting, and
5. The procedure for attendees to communicate questions and comments during the meeting, and the procedure to be adopted for voting on resolutions proposed to be passed at the meeting.

Section 8 inserts a new section 80A into the 1997 Act (after section 80). Subsection 1 provides that a notice of a reschedule general meeting will be given in the same manner as the previous meeting. This is unless the directors of the credit union think that such notice is "not reasonably practicable", in which case notice shall be given:

1. On the credit union's website (if they have one),
2. By email to all attendees where the credit union has an email address for them, and
3. By notice in at least one national newspaper published in the State and circulating in the area in which the registered office of the credit union is situated.

Under subsection (2), the requirements set out in subsection (1) are deemed unnecessary if all members agree in writing to the cancellation, change of venue or change of means of holding the general meeting concerned, or to dispensing with notice for the general meeting.

Voting by proxy and Ministerial powers to make regulations

Section 10 of the Bill amends section 82 of 1997 Act, by deleting subsection (3) which prohibits credit union members from voting by proxy at a general meeting of the credit union.

It also inserts a new subsection (6) to provide the Minister with the power to make regulations (under section 182) for all or any of the following, in relation to general meetings held wholly or partly by virtual means:

1. The convening and conduct of the meetings;
2. Attendance at the meetings;
3. Access to and participation in the meetings;
4. Such other matters relating to the meetings as the Minister considers appropriate for the purposes of section 78A or 78B.

Section 11 inserts a new section 82(A) into the 1997 Act, which allows credit unions to provide their members with an option for voting by proxy at general meetings. It also sets out the rules to govern such voting by proxy. These include that the proxy would have the same speaking rights as the credit union member and the same rights to vote on a show of hands and on a poll. Subsection (3) provides that a member can only appoint one proxy to attend on the same occasion unless the credit union's rules provide otherwise.

This section also provides that the instrument appointing a proxy shall be in the same form as provided for in the credit unions rules, that it be deposited at the registered office of the credit

union or another specified place (subsection 5) and the timeframes for depositing the instrument of proxy before the meeting or poll (subsection 6). Instruments of proxy that do not fulfil the requirements under subsections (5) and (6) will be treated as invalid.

This section also deals with how a proxy will be treated in the case of the death of the appointer. Subsection (11) provides for an offence where an officer of the credit union knowingly and intentionally does not provide all members entitled to be notified of the meeting and to vote by proxy, with invitations to appoint a proxy. Subsection (12) sets out the circumstances under which an officer of the credit union will not be guilty of an offence under subsection (11).

Section 92 of the 1997 Act is amended, in subsection (6)(b), by the substitution of “time, place (where applicable) and manner of holding (where applicable)” for “time and place”. The Explanatory Memorandum explains that this is proposed to allow for a meeting that occurs under the provisions of this section to not be restricted to a physical location. This provision is provided for in section 12 of the Bill.

Section 13 amends section 182 of the 1997 Act by inserting a new paragraph (la) after paragraph (l). This will allow the Minister to make regulations referred to in section 82(6) (see section 10 of the Bill above).

Objective 2: To increase the number of consecutive terms of office a member of the Irish Fiscal Advisory Council may serve

Part 3, section 14 of the Bill amends the Schedule of the *Fiscal Responsibility Act 2012* to increase the consecutive terms a member of the Irish Fiscal Advisory Council (the Council) can serve from two to three.

The Council is an independent statutory body established as part of a wider agenda of reform of Ireland's budgetary architecture to scrutinise and endorse. The purpose of the Council is to provide an independent assessment of (and endorsement of, as it considers appropriate) official budgetary forecasts and proposed fiscal policy objectives.

The Council was set up on an administrative basis in July 2011 before being formally established as a statutory body in December 2012 under the *Fiscal Responsibility Act 2012*[8]. Today, it comprises five Council members and a secretariat of six.[9] Council Member appointments and terms are defined in the *Fiscal Responsibility Act 2012.* As of November 2020, there are 4 Council Members (1 vacancy) though the Council is currently recruiting for two vacancies[10] (see below Table detailing current Council membership). The Council has a 50:50 gender balance which exceeds the Government's target of a minimum of 40% representation of each gender in the Membership of State Boards. The current composition of the Council is below:

Table 1: Current composition of the Council (November 2020)

Name	First Appointed	Reappointed	Expiry Date	Position type	Basis of appointment
Sebastian Barnes	31/12/2012	01/01/2017	31/12/2020	Board Member and Chairperson	Appointed by Minister under Section 1(1) and (2) of the Schedule to the Fiscal Responsibility Act 2012
Martina Lawless	01/01/2017		31/12/2020	Board Member	PAS Process
Prof. Michael McMahon	18/04/2019		17/04/2023	Board Member	PAS Process
Dawn Holland	01/01/2020		31/12/2023	Board Member	PAS Process

Source: Stateboards.ie information booklet for 'appointments to the Irish Fiscal Advisory Council'

[8] This Act formally came into effect in December 2012. Further EU regulations implemented by the *Ministers and Secretaries (Amendment) Act 2013* enacted in July 2013.
[9] More information on the Council is available on the Council website at https://www.fiscalcouncil.ie/about-the-council/.
[10] See: http://www.stateboards.ie/stateboards/campaignAdvert/125657/booklet.htm

Under the *2012 Act*, as specified in the Schedule (under 'terms of office'), Council members cannot serve more than two consecutive terms but are eligible for reappointment at a later time.[11] The standard term of office is four years. This Bill will therefore increase the maximum term of office from 8 to 12 consecutive years (i.e. from two to three consecutive terms).

Objective 3: To include the European Union as a "facility lender"

Part 4, section 15 of the Bill amends section 67 of the *Credit Institutions (Stabilisation) Act 2010* to include explicit reference, though the addition of a paragraph (ca) after paragraph (c), to the European Union as a "facility lender".

Section 67 of the *Credit Institutions (Stabilisation) Act 2020* provides that a local authority (and other persons/bodies prescribed in section 67) cannot encumber its assets or revenues to secure any present or future indebtedness or any guarantee or indemnity given in respect of such indebtedness without the consent of the Minister for Finance. Consent depends on the Minister's determination that the relevant borrowing would not breach an existing obligation to a "facility lender". Section 67(7) lists the following current "facility lender(s)":

(a) The International Monetary Fund,
(b) The European Financial Stabilisation Mechanism,
(c) The European Financial Stability Facility, and
(d) The lender under any bilateral loan agreement with a Member State.

This means that the State can comply with certain provisions contained in the SURE (**S**upport to mitigate **U**nemployment **R**isks in an **E**mergency) Loan Agreement which is an EU instrument to provide temporary support to mitigate the economic impact of the pandemic.[12] The European Commission has (as of 16 November 2020) proposed financial support of €2.5 billion to Ireland which will have to be approved by the European Council.[13]

[11] For more information on Council membership, see https://www.fiscalcouncil.ie/about-the-council/members/appointments/

[12] See the *Financial Provisions (Covid-19) Act 2020* and L&RS Bill Briefing. For more information on the SURE loan agreement from an Irish perspective, see the second stage debate (Seanad Éireann, 16 July 2020) on the then Financial Provisions (Covid-19) Bill 2020.

[13] European Commission's dedicated webpage on SURE.

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