



**An Coimisiún Imscrúdúcháin
(Gníomhaireacht Náisiúnta
um Bhainistíocht Sócmhainní)**

**Commission of Investigation
(National Asset
Management Agency)**

**The Honorable John D. Cooke
Sole Member**

Eighth Interim Report

28th August 2020

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Eighth Interim Report of the Commission of Investigation (National Asset Management Agency) and Request for the revision of the timeframe for submitting the Final Report under section 6 (6) of the Commissions of Investigation Act 2004

1. The Commission submits this Eighth Interim Report pursuant to sections 6(6) and 33 of the Commissions of Investigation Act 2004 with, for the reasons set out below, a request for revision of the timeframe for submission of its Final Report. So far as concerns the outline of the Commission's approach to the issues identified in paragraph 2 of the Terms of Reference and the production and analysis of documentation, this Report should be read in conjunction with the previous Interim Reports referred to below.
2. The Commission's First Interim Report, as required by paragraph 8 of its Terms of Reference, was submitted on 12th September 2017. A Second Interim Report was submitted on 17th May 2018, on foot of which the timeframe for the submission of a Final Report was revised to 31st December 2018. Further Interim Reports were submitted on 30th November 2018, 4th December 2019, 24th February 2020 and 8th June 2020 following which the timeframe was successively extended until the current date of 30th September 2020.
3. A number of developments since the position described in the preceding Interim Report have led to a situation in which the Commission finds it necessary to request a further extension of the time frame for submission of the Final Report.
4. As indicated in the Sixth Interim Report, in July 2019 solicitors acting for NAMA requested that the Agency be given an opportunity of reviewing the expert advices which were to be provided to the Commission in accordance with paragraph 6 of the Terms of Reference. That Interim Report describes the steps taken as a result of that request including the indication given to the Commission that the comments of the Agency and the advices of its own experts would be furnished to the Commission by 25th March 2020. The Agency duly submitted certain expert reports and materials, together with its Corporate Response, within the timeframe envisaged.
5. The Commission had by letter of 25th June 2020 requested clarification from the Agency of submissions it had made and evidence it had relied upon in commenting on the advices of the Commission's expert in corporate governance relating to the issues which arise under paragraph 2(d) of the Terms of Reference – the management of conflicts of interest. A reply by letter of 10th July 2020 seemed to the Commission to have misunderstood the precise terms of the requested clarification which made it necessary to reformulate and repeat the request and a reply was sought by 24th August 2020. By letter of 14th August 2020 the solicitors requested that that time be extended until 4th September 2020 because the content would need to be reviewed by parties then on vacation.

6. The steps and exchanges which arose from the receipt of the Agency's reports and submissions on the advices of the Commission's financial expert were set out in the Seventh Interim Report. The volume of the submitted material required detailed evaluation by the Commission. The Commission felt it necessary, in light of certain criticisms and arguments advanced, to first seek clarification from the Agency of the position it appeared to be adopting in its Corporate Response on a number of these issues. On receipt of this clarification, the Commission felt it necessary to bring all of this information to the attention of the expert, whom it will be recalled from the Fifth Interim Report, submitted his Expert Report in November 2019. The Commission afforded the expert an opportunity to consider the material and to make any comments he might think appropriate.
7. The expert considered all of that material including the NAMA Corporate Response, the expert reports, submissions and clarifications and then furnished to the Commission comments by way of clarification of his Report. In the interest of transparency, this was provided to the Agency in late July but it was made clear to the Agency that having availed of the opportunity it had requested to comment on the original report on the financial issues, it was not obliged to make any further submissions. The Commission indicated that nevertheless, if it chose to do so, any such submissions would be taken into account. The Commission requested that any such reply should be received by 9th September 2020.
8. In a reply by letter of 13th August 2020 solicitors for NAMA maintained that it would be necessary for NAMA to reconsult its legal team and its experts and stated that a reasonable extended time until the end of September would be required to do so. In all the circumstances as set out below, the Commission considered that the request was not unreasonable and that no point would be served by attempting to agree a shorter period.
9. As explained in the Seventh Interim Report, the work of the Commission, in common with many other bodies, has been affected by the restrictions resulting from the current pandemic. The Commission legal team has worked remotely insofar as possible, in line with Government Regulations and Guidelines. The effect of this on the work of the Commission to date has not been as severe as might otherwise have been the case but it is concerned that the more recent enhancement of precautionary measures will have an impact on the efficiency with which the essentially collaborative work of detailed finalising draft Final Report can be carried out.
10. The Commission can confirm that much of the work in creating a first draft of the substantive narrative sections of the Final Report has now been completed. The Sole Member cannot, however, proceed to formulate objective findings and conclusions on the key issues which paragraph 2 of the Terms of Reference requires be considered, until the outstanding responses referred to above have been received.
11. Furthermore, as adverted to in the earlier Interim Reports, under section 34 of the Act, the Commission is required to send the draft Final Report or relevant

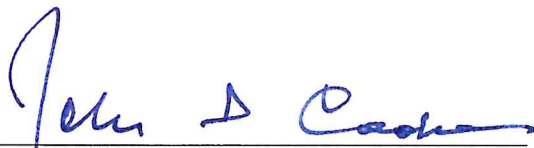
parts of it to any person identified or identifiable in it, for the purposes of sections 35 and 36 of the 2004 Act. Based on the extent of the factual and expert evidence and analysis that the Commission expects to have to cover in its Final Report, it is anticipated that the draft Final Report or relevant parts of it will have to be circulated to at least 60 individuals as well as to the Board of NAMA and to a number of individuals, firms and companies located outside the State.

12. Having regard to the unpredictability of possible responses to the exercise under section 34 and the need to proof-read and format the Final Report after any requested amendments have been dealt with, the Commission considers that it would be prudent to allow for a further three-month period to bring its work to a conclusion following the anticipated receipt of the Agency's replies referred to in paragraphs 5 to 8 above. If no major delays result from the section 34 exercise, the Commission would hope to submit its Final Report before the expiry of that period.

13. In the light of these developments and for the above reasons, the Commission requests an extension of the timeframe until 31st December 2020.

Delivered to the Taoiseach as the specified Minister and in accordance with the provisions of Section 32 of the Commissions of Investigation Act 2004.

On the 28th day of August 2020

A handwritten signature in blue ink, appearing to read 'John D. Cooke', written over a horizontal line.

John D. Cooke
Sole Member of the Commission