Mr. Mario Draghi  
President  
European Central Bank  
Kaiserstraße 29, 60311  
Frankfurt am Main  
Germany

Subject: Proposed Extension of Freedom of Information to the Central Bank of Ireland

Dear Mr President,

I refer to the proposed extension of Freedom of Information to the Central Bank of Ireland (CBI) and to the ECB’s Opinion of 19th October 2012 (CON/2012/76) in that regard. I am writing to you now to update you and to advise you on the position regarding the specific matters raised in the ECB Opinion in respect of which we have continued to liaise closely with the Central Bank of Ireland.

I am pleased to inform you that the drafting of the Bill has now been completed and the Bill was approved by the Government on 16th July. I confirm that the final Bill does not deviate in any significant way from the General Scheme and in particular the specific issues raised by the ECB in its Opinion are addressed in the published legislation.

I wish to advise you that with a view to achieving greater transparency which is a fundamental objective of the legislation, I have made one change which is relevant to the CBI in that I now propose to list those bodies for which I am providing or retaining partial exemptions in Schedule 1 to the Act rather than using the less transparent and less efficient mechanism of making individual Orders. I am providing an exemption in the body of the Bill itself however to protect the professional secrecy obligations under the ECSB Statute, the Rome Treaty and the EU Financial Services Directives (section 42).

The Bill also provides for an amendment to be made to section 33AK of the Central Bank Act, 1942 in order to accommodate the Information Commissioner within the CBI’s existing disclosure framework (section 50). While this section prohibits the disclosure of any information by the CBI that is subject to professional secrecy requirements under the EU Treaty, the ESCB Statute or the Supervisory Directives, it confirms that the CBI may disclose such information in relation to certain matters to specific bodies. The amendment will enable the CBI to disclose information to the Information Commissioner in the performance of her functions, thus enabling the effective oversight by the Commissioner of the performance of the CBI of its statutory obligations under FOI legislation. The authorities to whom such information is disclosed are obliged to comply with the obligation on professional secrecy in respect of this information. To ensure that there is absolutely no doubt on the matter, I am
also specifically providing in the Bill that the Information Commissioner shall comply with the professional secrecy obligations in the Rome Treaty, the ECSB Statute or any of the Supervisory Directives in holding and dealing with any information provided by the CBI under the FOI Act (section 45).

Finally, while in reality the ‘point of law’ appeal to the High Court is very wide, in view of the point raised, I am amending the existing provision to ensure that where the CBI alleges that the release of a record concerned would contravene a requirement imposed by European Union law, an appeal may be made on a finding of fact set out or inherent in the decision and not just on a point of law (section 24). There current legislation already provides for a stay on decisions to grant a request where the matter is on appeal to the Information Commissioner or to the High Court, the effect of which is that no records can be released until a determination is made or the application to appeal is withdrawn. I maintained this provision (section 25 of the Bill or section 44 of the 1997 Act).

I am attaching the relevant legislative extracts for your information and my officials will email to your office the full Bill once published. My intention is that the Bill will be considered by our Parliament in the Autumn and be enacted before year end. I will gladly send you a copy of the final text at that stage. In the meantime, Ms. Evelyn O’Connor Principal Office in the Department of Public Expenditure and Reform (email: evelyn.o’connor@per.gov.ie phone: +353 1 6045311) is available to your colleagues should they have any queries.

Yours sincerely,

[Signature]

Brendan Howlin, T.D.
Minister for Public Expenditure and Reform
Appendix

Extracts from the FOI Bill

Appeal to High Court, etc.

24.—(1) A party to an appeal under section 22 or any other person affected by the decision of the Commissioner following a review under that section may appeal to the High Court—

(a) on a point of law from the decision, or

(b) where the party or person concerned contends that the release of a record concerned would contravene a requirement imposed by European Union law, on a finding of fact set out or inherent in the decision.

Restriction of Act.

42.—(1) This Act does not apply to—

(i) a record held by the Central Bank of Ireland, the disclosure of which is prohibited by—

(i) the Rome Treaty,

(ii) the ESCB Statute, or

(iii) any of the Supervisory Directives,

within the meaning of the Central Bank Act 1942,

Powers of Commissioner.

45.—(12) The Commissioner shall comply with the provisions on professional secrecy in—

(a) the Rome Treaty,

(b) the ESCB Statute, or

(c) any of the Supervisory Directives,

(within the meaning of the Central Bank Act 1942) in holding and dealing with information contained in records provided to him or her by the Bank under this Act.
Amendment of Central Bank Act 1942
50. Section 33AK(5) of the Central Bank Act 1942 is amended by substituting for paragraph (ap) the following:

“(ap) for any purpose connected with the functions of the Bank, the
Minister, the Governor or the Head of Financial Regulation or a special
manager under the Central Bank and Credit Institutions (Resolution)
Act 2011, or

(aq) to the Information Commissioner that is required for the performance
of that Commissioner’s functions under the Freedom of Information
Act 2013.”.

Schedule 1
[Note: The approach taken in the Bill is to provide a generic definition (section 6) which
captures all public bodies and includes them within FOI unless specifically excluded. In
relation to the CBI therefore, it is within FOI except to the extent to which access is restricted
in the FOI Bill (professional secrecy obligations under EU law) or exempted as set out in the
Schedule regarding confidential information it receives under domestic law].

SCHEDULE

PART 1

Section 6 does not include a reference to –

(b) the Central Bank of Ireland, insofar as it relates to records held by it containing –

(i) confidential personal information relating to the financial or business
affairs of any individual, or

(ii) confidential financial, commercial or regulatory information relating to
the business affairs of any person who holds or has held or who has
applied for a licence, authorization, approval or registration from the
Central Bank of Ireland, or is otherwise regulated by the Central Bank
of Ireland,

that the Central Bank of Ireland has received for the purposes of performing,
or in the discharge of, any of its statutory functions (other than when that
information is contained in records in summary or collective form, such that
persons cannot be identified from the record);