



EUROPEAN CENTRAL BANK

EUROSYSTEM

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President

Mr Brian Lenihan

Tánaiste and Minister for Finance

Department of Finance

Government Buildings

Upper Merrion Street

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Ireland

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Dear Minister,

The ECB has recently been informally asked by some national authorities whether the ECB should be consulted on the national implementation of Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims¹.

In its advisory function, the ECB stands ready to respond to any formal or informal voluntary national consultations that you may wish to initiate and offer guidance on the transposition measures prepared for Ireland, even if there is no formal obligation to consult, which is the case.

Article 1(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the European Central Bank by national authorities regarding draft legislative provisions² does not formally oblige national authorities to consult the ECB if the exclusive purpose of draft national legislative provisions is the transposition of EU Directives.

As you know, the ECB seeks to promote proactively a harmonised EU-wide implementation of Directive 2009/44/EC in the legislation of the Member States in order to foster maximum transparency and legal

¹ OJ L 146, 10.6.2009, p. 37.

² OJ L 189, 3.7.1998, p. 42.

certainty for the closely connected payment and securities settlement systems and to ensure a level playing-field throughout the European Union. The ECB would therefore see merit if national implementation measures are shared with the ECB before adoption, as a way to facilitate consistency among Member States and a level playing field in this area. The ECB as a central point would be able to compare national implementation measures, alert in cases of inconsistencies, and recommend best practices throughout the Union.

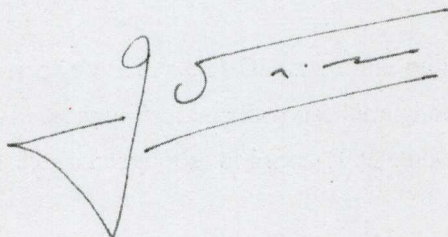
The interest of the ECB is based on the importance of Directive 2009/44/EC for the promotion of the smooth operation of payment systems in the Union and for the mobilisation of additional types of collateral in credit operations. The implementation of the following aspects of Directive 2009/44/EC is of particular importance to the ECB:

(1) as regards the amendments to the Settlement Finality Directive, the protection of night-time settlement and interconnected systems owing to the expected increase in system interoperability, inter alia in line with the Markets in Financial Instruments Directive and the European Code of Conduct for Clearing and Settlement, considering that these changes are crucial to TARGET2-Securities (T2S)³ and TARGET2⁴;

(2) as regards the amendments of the Collateral Directive, the mobilisation of credit claims as collateral for credit operations in order to facilitate their use throughout the Union, considering that such collateral is important for the counterparties of Eurosystem monetary policy operations.

In any case, in view of the imminent finalisation of the transposition process in Ireland, I would also like to kindly refer to ECB Opinion CON/2008/37 of 7 August 2008 on the proposal for a directive amending Directive 98/26/EC and Directive 2002/47/EC⁵, which may be helpful for the Department of Finance when transposing Directive 2009/44/EC into national law.

Yours sincerely,



³ T2S will be a single IT platform for settling almost all securities in Europe, eliminating substantial differences between the settlement of domestic and cross-border transactions.

⁴ TARGET2 (Trans-European Automated Real-time Gross settlement Express Transfer) is the Eurosystem's interbank funds transfer system, which is designed to support the Eurosystem's objectives of defining and implementing the monetary policy of the euro area and promoting the smooth operation of payment systems, thus contributing to the integration and stability of the euro area money market.

⁵ OJ C 216, 23.8.2008, p. 1.