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Joint Committee of Inquiry into the Banking Crisis

Clarification Statement of

Liam O` Reilly

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As indicated on its cover page, the document(s) contained within are confidential unless and until the Joint Committee decides otherwise including where the Joint Committee publishes such document(s). For the avoidance of doubt, "documents" include witness statements in this context. Further to section 37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013 ("the Act"), while the documents remain confidential, you must not disclose the document(s) or divulge in any way that you have been given the document(s), other than:

- "(a) with the prior consent in writing of the committee,
- (b) to the extent necessary for the purposes of an application to the Court, or in any proceedings of the Part 2 inquiry, or
- (c) to his or her legal practitioner."¹

Serious sanctions apply for breach of this section. In particular, your attention is drawn to section 41(4) of the Act, which makes breach of section 37(1) a criminal offence.

¹ See s.37 of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013

To: Deputy Ciaran Lynch TD
Joint Committee of inquiry
into the Banking Crisis
Leinster House
Dublin2

From:Liam O'Reilly

14 September 2015

Dear Chairman,

Re: Your Letter to me of 28 August

The material in the answers provided below to the questions posed in your letter is to a large extent contained in my written and oral contributions to the Inquiry. While not providing anything substantially new , hopefully in its organisation under the specific questions, it may be of some help to the Inquiry.

Q.1 The Financial Regulator had a range of powers that could have been used to address risks in the Banking system during the period 2003 to 2008. Could you explain why none of these powers were used against any bank for prudential breaches during the period in which you were Chief Executive?

My period as Chief Executive was from May 2003 to January 2006 inclusive. Various sanctions were applied which relied on our powers. For example in the case of a particular bank powers were used to increase capital requirements, to appoint auditors to carry out investigations and to require the institution to pay for particular auditor investigations. High profile sanctioning powers such as placing a condition on a bank's license were not used. There was a view that taking over-aggressive action might cause reputational damage to a banking institution, with possible consequent contagion effects.

Q.2 The Administrative Sanctions introduced in the 2003 Banking Act were not implemented until the Middle of 2005.

Q.2a Can you explain the reasons behind the delay in implementation of these Sanctions?

The legislation for administrative sanctions - The Central Bank and Financial Services Authority of Ireland Act 2004 - did not come into force until August 2004 because of legislative programme delays.

Following this, an extensive body of work was required to develop fair administrative procedures for the application of sanctioning powers for breaches in codes. To develop these procedures a consultation paper (CP08) on proposed procedures was issued in November 2004 with a closing date for comments of end February 2005. Following consultation, there was a need for more work to take account of the views from the consultation, which included the seeking of senior counsel advice. The Board, at its June 2005 meeting, decided that the sanctions were to be progressively rolled out from July 2005.

Q.2b Why, following implementation of these sanctions, did IFSRA decide that these powers were more likely to be used for consumer conduct rather than prudential breaches?

Administrative Sanctions were first applied in the consumer area because detailed sectoral consumer codes were well developed for a number of years in various sectors of financial services. These were consolidated in 2006.

In contrast, in the prudential area, work was not as well advanced as more reliance was placed on the principles based approach. However, towards the end of my tenure, prudential codes were being prepared in the corporate governance area. It was planned that, when finalised following consultation, sanctions would be imposed on institutions in the event of breaches of these codes.

The intention to apply administrative sanctions in the prudential area is evidenced by an issue which arose in INBS. A press release was issued (22 December 2004), referring to the investigation and setting out INBS's acceptance that it had not fully complied with the legislation. It stated that in

future, administrative sanctions, which were not available in December 2004, would be applied.

3 Can you provide details of the participation, if any, of the Irish Financial Regulator in any EU or ECB committees, including the Committee of European Banking Supervisors.

My recollection from my tenure as Chief Executive is that the main subject of discussion in EU meetings was the implementation of the Basel 2 Capital requirements. No major issues emanating from these meetings were discussed at Board level.

The Financial Regulator Annual Reports provided a detailed table of information on the number of international meetings attended (eg see table 1.5 p 24 Annual Report 2005). The EU ECB Banking Committees, were attended regularly by senior management in the prudential area who would have participated fully in the meetings. Briefing notes and agendas, minutes and papers of these meeting should be available on file in the Central Bank.

Q.4 Can you outline the extent to which the activities, performance and resourcing of the Irish Financial Regulator was benchmarked against EU counterparts.

The Irish system was examined by the IMF FSAP and by the office of the Comptroller and Auditor General. These examinations covered the effectiveness of the Irish system compared with external standards which applied internationally.

Q.5 Can you provide details of any additional powers, sanction, or means of enforcement which may have assisted the activities of the Central Bank and/or Financial Regulator in the years leading up to the Financial Crisis?

and

Q.6 Please outline details of any further legislation which was sought during your period as Chief Executive of the Financial Regulator?

With the introduction of Administrative Sanctions the view was that sufficient powers were available. The problem was not the lack of powers, the problem was the overreliance on the principles based approach to regulation.

Yours Sincerely

A handwritten signature in black ink, appearing to read "Liam O'Reilly", written on a light-colored background.

Liam O'Reilly