



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

Mr Sven Giegold
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 18 August 2017

Re: Your letter (QZ-067)

Honourable Member of the European Parliament, dear Mr Giegold,

Thank you for your letter regarding the enforcement of the Capital Requirements Directive (CRD IV)¹, which was passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 13 July 2017.

As laid down in the Interinstitutional Agreement between the European Parliament and the European Central Bank (ECB)², any reporting obligations vis-à-vis the European Parliament are subject to the relevant professional secrecy requirements, as outlined in the CRD IV. These requirements also apply to statements about groups of banks which may allow conclusions to be drawn about individual institutions. While I cannot disclose any confidential information, let me, nonetheless, provide you with some relevant considerations in response to your question.

Monitoring the use of the financial system for the purpose of preventing money laundering is not one of the tasks of the ECB. Compliance with anti-money laundering legislation is a matter for the relevant national competent authorities.

The ECB is, nevertheless, fully committed to cooperating with national competent authorities in combatting money laundering and the financing of terrorism by closely monitoring relevant developments and taking action where appropriate. From a prudential supervisory perspective, compliance by banks with non-supervisory legal requirements, such as anti-money laundering laws, can also be an indicator of the quality of their internal control, risk management and governance arrangements. Moreover, weaknesses in these areas may have consequences for a bank's reputation and solvency. To this end, the ECB has identified conduct risk – which includes compliance with anti-money laundering laws – as one of the key risks for the

¹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

² Interinstitutional Agreement between the European Parliament and the European Central Bank on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB within the framework of the Single Supervisory Mechanism (OJ L 320, 30.11.2013, p. 1).

euro area banking system. At bank-specific level, identifying such risks feeds into the ECB's annual Supervisory Review and Evaluation Process (SREP), which may result in additional capital or liquidity requirements, or supervisory measures, as appropriate.

In addition, as part of the supervisory tasks conferred upon it in respect of all euro area credit institutions by the Single Supervisory Mechanism (SSM) Regulation³, the ECB is responsible for granting and withdrawing licences to carry out banking activities,⁴ and for authorising the acquisition of qualifying holdings.⁵ For significant institutions in particular, the ECB also has to assess the influence that qualified shareholders may have on the prudent and sound management of the institution. The relations with shareholders, including the influence that they exert on an institution's management, can provide important input into the assessment of the internal governance of an institution. In that respect, the dialogue between the Joint Supervisory Teams and the management and supervisory boards of these institutions provides important insights.

For the purpose of assessing the proposed acquisition of a qualifying holding and the suitability of shareholders or members of an institution which intends to obtain a banking licence, the ECB shall take into account whether there are reasonable grounds to suspect that money laundering is being or has been committed, that there have been attempts to launder money or that the proposed acquisition could increase the risk of money laundering. In addition, the ECB, as the authority responsible for the authorisation of all banks in the euro area, may withdraw such authorisation, inter alia, for anti-money laundering and anti-terrorist financing reasons, subject to the safeguards of European Union law, including the principle of proportionality. In doing so, the ECB would, as envisaged by the legal framework of the SSM, apply the Maltese legislation transposing Article 18(f) CRD IV in conjunction with Article 67(1)(o) CRD IV.⁶

Evidence of money laundering is also of relevance for the ECB's fit and proper assessment of board members and key function holders of significant institutions under its supervision. The ECB performs this assessment against the requirements set out in Article 91 CRD IV at the time of the individual's appointment (and in some cases re-appointment) and as part of the process of an institution's application for a banking licence. Furthermore, the ECB can perform a reassessment of the board member whenever new relevant facts emerge in order to determine whether the board member continues to meet the suitability requirements. If a board member has been the subject of an investigation involving money laundering, this would be of great relevance to such an assessment, as members of the management body shall at all times be of sufficiently good repute to ensure the sound and prudent management of the supervised entity.⁷

Yours sincerely,

Danièle Nouy



³ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).

⁴ Article 8 CRD IV.

⁵ Articles 22 and 23 CRD IV.

⁶ In the case of Malta, Article 9(2)(e) of the Banking Act in conjunction with Regulation 7(1)(o) of the Administrative Penalties, Measures and Investigatory Powers Regulations.

⁷ Article 91(1) CRD IV.