



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

COURTESY TRANSLATION

President of the German Bundestag
Dr Wolfgang Schäuble
Platz der Republik 1
11011 Berlin

Frankfurt am Main, 11 July 2018

Re: Your letter of 6 June 2018

Honourable President, dear Dr Schäuble,

Thank you for your letter dated 6 June 2018 following up on my reply of 8 May in which you raise the issue of the professional secrecy requirements the European Central Bank needs to comply with, and provide clarifications regarding the arrangements put in place by the German Bundestag for the communication of information from the EU institutions. I would therefore like to take this opportunity to clarify the legal framework governing the exchange of information and professional secrecy requirements for bank-specific information, which is relevant for the case at hand.

This framework is laid down in Articles 53 to 62 of the Capital Requirements Directive (CRD IV),¹ which stipulates that bank-specific information can only be exchanged under the specific conditions listed in those articles. The CRD IV, and specifically Article 59 thereof, does not provide for the sharing of bank-specific information in the context of parliamentary questions. I nevertheless take note of your clarifications and will make sure to inform you comprehensively to the extent that this is compatible with the legal framework.

In the specific case of ABLV Bank, the ECB was made aware on a number of occasions that the bank was struggling with anti-money laundering issues. There have been incidents where the bank was subject to special investigations and fines imposed by the NCA in relation to money laundering activities. While the ECB cannot itself investigate and determine anti-money laundering breaches, within the limits of its competence and in the light of the information available, it took those issues into consideration, including in its SREP assessment, addressed them and followed up with supervisory actions to the extent possible. As mentioned above, all reliable information that ECB supervisors gather or receive regarding a bank's governance and internal control framework is included in the supervisory process and actions.

You also asked whether I could provide a reply to questions relating to emergency liquidity assistance (ELA). As outlined in the introduction to my previous letter, the answers I can provide as the Chair of the Supervisory Board are confined to the sphere of prudential banking supervision. ELA relates to central

¹ Directive 2013/36/EU of the European Parliament and of the Council.

banking and, as such, is not a task conferred on the ECB through the SSM Regulation.² Also in line with the principle of separation between ECB Banking Supervision and the other ECB functions,³ I am not in a position to provide answers on this topic.

Regarding your question on whether the ECB can refuse to provide certain information to the Single Resolution Board (SRB) under the relevant legal framework: the ECB may share a lot of information, including bank-specific information, to the extent that such information is “necessary for the performance” of the SRB’s tasks.⁴ In practice, this covers a very large part of the information held by the ECB. Let me clarify that the ECB and the SRB cooperate extremely closely; and I support a change of the regulatory framework that would permit the SRB to be a permanent observer at meetings of the ECB’s Supervisory Board, just like the ECB is a permanent observer at SRB meetings. As mentioned in my previous reply, cooperation and information exchange between the ECB and the SRB are working smoothly and successfully. This is also reflected in the revised Memorandum of Understanding (MoU) between the ECB and the SRB of 30 May 2018.⁵

Regarding the concrete case of ABLV Bank, the information exchange with the SRB worked well. The SRB was informed by the ECB about the supervised entity’s situation on the same day as the US Department of the Treasury’s Financial Crimes Enforcement Network published the notice of proposed rulemaking vis-à-vis ABLV Bank. A continuous exchange of information between the ECB and the SRB followed. Moreover, in line with previous crisis cases, the SRB attended the institution-specific crisis management team meetings and the Supervisory Board meetings where the situation of ABLV Bank was discussed. Similarly, an ECB representative attended the SRB Board meetings on ABLV Bank. In line with the division of tasks set out in the SRMR, on 23 February 2018, the ECB declared both ABLV Bank, AS and its subsidiary ABLV Bank Luxembourg, S.A. “failing or likely to fail”, after consulting the SRB. On the same day, the SRB decided not to adopt a resolution scheme for both banks, as it assessed that the public interest test was not met.

Yours sincerely,

[signed]

Danièle Nouy

² Council Regulation (EU) No 1024/2013.

³ Article 25 of the SSM Regulation.

⁴ Regulation (EU) No 806/2014 of the European Parliament and of the Council.

⁵ https://www.bankingsupervision.europa.eu/ecb/legal/pdf/en_mou_ecb_srb_cooperation_information_exchange_f_sign_2018.pdf