



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

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*COURTESY TRANSLATION*

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

Frankfurt am Main, 8 May 2018

**Re: Your letter of 21 March 2018**

Honourable President, dear Dr Schäuble,

Thank you for your letter, dated 21 March 2018, submitting a number of questions from the Member of the German Parliament, Mr. Schäffler.

As you may be aware, Article 21 of the SSM Regulation<sup>1</sup>, which sets out the rules for interactions between the European Central Bank (ECB) and the national parliaments, does not contain a derogation from the professional secrecy requirements applicable to the information received or created in the conduct of the supervisory tasks conferred on the ECB. Therefore, the responses that ECB Banking Supervision may offer to questions posed by national parliaments need to respect these professional secrecy requirements. However, within the boundaries of the applicable confidentiality rules, allow me to outline some considerations that may prove useful for a better understanding of the ECB's supervisory role, which, necessarily, will be confined to the sphere of prudential banking supervision. For the sake of clarity, I will group my responses by relevant topic.

**Cooperation between the ECB and the national anti-money laundering authorities**

In this field, it is important to start by reiterating that responsibility for ensuring compliance with anti-money laundering (AML) legislation remains at the national level. Consequently, the ECB relies on proactive information sharing by the national authorities entrusted with ensuring compliance with and the enforcement of AML legislation (AML authorities) to draw appropriate supervisory conclusions from AML issues<sup>2</sup>. The ECB cannot itself investigate and determine breaches of AML requirements; however, it takes the available information into account within the limits of its competence. It is also worth noting that, under the current legal framework and given the absence of further harmonisation until now, the conditions for the exchange of information between AML authorities and banking (i.e. prudential) supervisors have not been clearly defined

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<sup>1</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013.

<sup>2</sup> See recital 29 of the SSM Regulation.

in European law and so remain subject to national provisions. The ECB welcomes, therefore, the draft fifth Anti-Money Laundering Directive (AMLD5), which includes provisions aimed at enhancing information exchange among the relevant authorities.

Looking forward, a more European approach to combatting money laundering could be considered. In that regard, the spectrum contributing to an enhanced European AML framework can go from having a formalised information exchange forum for the relevant authorities on AML issues, to replacing the current directive with a directly applicable regulation, and even to establishing an EU authority to ensure the harmonised application of such a regulation.

### **Information exchange between the ECB and the SRB**

The ECB and the Single Resolution Board (SRB) cooperate and exchange all information necessary for the performance of their respective tasks on the basis of the SSM Regulation and the Single Resolution Mechanism Regulation (SRMR)<sup>3</sup>. The modalities of this exchange of information are set out in detail in the Memorandum of Understanding (MoU) signed between the ECB and the SRB in 2015<sup>4</sup>. In line with the provisions of the MoU, this information exchange framework is currently being revised to further enhance and broaden the existing exchange of information, taking into consideration the experience gained over the past two years. So far, it is my view that the cooperation and information exchange between the ECB and the SRB have worked smoothly and successfully.

### **Disclosure of information by national competent authorities to the national courts of auditors**

Provisions on the protection of confidential information and the disclosure of such information to the courts of auditors are in force both at the EU and the national level. Those provisions govern the institutional relationships between the different supervisory authorities and the respective courts of auditors, including the modalities for the exchange information among them, which, therefore, falls outside the ECB's mandate.

As an EU institution, the ECB is accountable at the EU level and is subject to the scrutiny of the European Court of Auditors (ECA)<sup>5</sup>. Within the limits determined by the legislator, the ECB makes every effort to cooperate with the ECA, including by providing relevant documentation and information.

### **Addendum to the ECB Guidance to banks on non-performing loans**

Regarding the *Addendum to the ECB Guidance to banks on non-performing loans*<sup>6</sup>, the Legal Service of the Council of the EU provided explanations about the applicable legal framework and also some general considerations on the powers of the ECB as concerns prudential supervision and, in particular, on the power to adopt instruments of soft law. The Legal Service of the European Parliament, for its part, commented inter alia on the potentially legally binding character of the Addendum, as well as on the limitations to the

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<sup>3</sup> Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014.

<sup>4</sup> See [https://www.ecb.europa.eu/ecb/legal/pdf/en\\_mou\\_ecb\\_srb\\_cooperation\\_information\\_exchange\\_f\\_sign\\_.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/en_mou_ecb_srb_cooperation_information_exchange_f_sign_.pdf)

<sup>5</sup> See Article 287 of the Treaty on the Functioning of the European Union, Article 27(2) of the Protocol on the Statute of the European System of Central Banks and of the European Central Bank, and Article 20(7) of the SSM Regulation.

<sup>6</sup> See [https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.npl\\_addendum\\_201803.en.pdf](https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.npl_addendum_201803.en.pdf)

competences of the ECB. The ECB agreed with these analyses and hence made sure, when drafting the final version of the Addendum, to take them into account and ensure that no ambiguity remained as to the non-binding nature of the Addendum.

Yours sincerely,

[signed]

Danièle Nouy