



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Andrea ENRIA

Chair of the Supervisory Board

COURTESY TRANSLATION

Mr Dimitrios Papadimoulis
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 18 March 2019

Re: Your letter (QZ-019)

Honourable Member of the European Parliament, dear Mr Papadimoulis,

Thank you for your letter on potential penalties against banks and bank executives for involvement in cases of tax fraud, 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 18 February 2019.

As you will be aware, the mandate of ECB Banking Supervision is restricted to prudential supervision and does not extend to tax fraud or other criminal activities, which are the responsibility of the relevant national authorities.

In response to your question on how ECB Banking Supervision addresses the potential involvement of bank executives in alleged crimes in the context of fit and proper assessments, members of bank management bodies should, at all times, be suitable for the role they are appointed to. The emergence of new facts may trigger a reassessment by ECB Banking Supervision¹ that could, in severe cases, lead to the removal of a member of the management body pursuant to Article 16(2)(m) of the SSM Regulation². More specifically, any fact that could affect the good reputation of a member of the management body, in particular in a case where sanctions or criminal proceedings are pending against him or her, any developments or outcome of such case, may trigger such reassessment of his or her suitability. In most cases where proceedings are ongoing, the supervised entity will be asked to monitor those proceedings and immediately notify ECB Banking Supervision of any new developments, as well as of any impact those developments may have on the supervised entity's own assessment (of the suitability of such management body member).

In its assessment of ongoing criminal or administrative proceedings, ECB Banking Supervision takes into account, inter alia: (i) the stage of the proceedings, specifically if convictions or judgements are final or if an

¹ See Article 94(2) of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 ("the SSM Framework Regulation").

² Council Regulation (EU) No 1024/2013 of 15 October 2013.

appeal is likely or prospective; (ii) the nature of new or existing charges or accusations, including whether the charge is criminal or administrative, or involves a breach of trust; (iii) the time that has passed since the alleged wrongdoing; (iv) whether there are any other pending or past investigations and their outcome, as well as the likely penalty in the event of a conviction; (v) the personal involvement of the member of the management body; and (vi) whether there is evidence of gross negligence, recklessness or intentional behaviour. Every assessment is conducted on a case-by-case basis, taking into account all the information available.

Turning to your question on potential sanctions against members of bank management bodies, let me clarify that sanctioning powers are distributed between ECB Banking Supervision and the national competent authorities (NCAs) within the European supervisory framework. Under Article 18 of the SSM Regulation, ECB Banking Supervision only has the power to impose sanctions against significant credit institutions under its supervision when they have breached prudential requirements as set out in EU law. If prudential breaches are committed by natural persons, ECB Banking Supervision may ask the relevant NCA to open the appropriate national proceedings. The NCA conducts those proceedings and decides on the resulting penalties in accordance with the applicable national law. Imposing penalties for tax fraud is, however, outside the mandate of prudential supervisors.

Regarding your question on how ECB Banking Supervision aims to protect the banking system from tax fraud, ECB Banking Supervision is aware that a violation of the relevant national legislation may have an impact on a credit institution. To this end, it has identified conduct risk – of which non-compliance with taxation laws is a constituent element – as a key risk for the euro area banking system. Consequently, it takes this risk into account when conducting its prudential supervision of the banks under its remit.

ECB Banking Supervision also reviews the internal governance and risk management of supervised institutions by applying the Capital Requirements Directive (CRD IV)³ and the EBA Guidelines on Internal Governance (EBA/GL/2017/11). These legal acts require credit institutions to have robust governance arrangements in place which, among other things, should include effective processes for identifying, managing, monitoring and reporting risks, as well as adequate internal control mechanisms. ECB Banking Supervision takes the existence of these mechanisms into account when carrying out its Supervisory Review and Evaluation Process (SREP). When identifying weaknesses, ECB Banking Supervision imposes qualitative and quantitative requirements on banks to remedy those deficiencies where needed.

Yours sincerely,

[signed]

Andrea Enria

³ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013.