



**EUROPEAN CENTRAL BANK**  
BANKING SUPERVISION

**Andrea Enria**

Chair of the Supervisory Board

*COURTESY TRANSLATION*

Mr Markus Herbrand  
Member of the German Bundestag  
Platz der Republik 1  
11011 Berlin

Frankfurt am Main, 22 September 2020

**Re: Your letter of 10 August 2020**

Honourable Member of the Bundestag, dear Mr Herbrand,

Thank you for your letter on the supervision of Wirecard Bank AG, which was passed on to me by your President, the honourable Dr Schäuble, accompanied by a cover letter dated 10 August 2020.

First, please allow me to refer to my letters to Mr Schirdewan, Member of the European Parliament<sup>1</sup>, and Dr Bayaz, Member of the German Bundestag<sup>2</sup>, which addressed some of the questions raised in your letter. Please note that, due to professional secrecy requirements as outlined in the Capital Requirements Directive (CRD)<sup>3</sup>, I am prohibited from commenting on individual credit institutions and their actions. As a result, not all of the questions in your letter can be answered in full.

Regarding your question (1) on the ECB's internal procedures for assessing qualifying holding notifications, the ECB follows the assessment criteria set out in relevant EU law and, in particular, the provisions of the CRD<sup>4</sup>, applying the provisions of the national legislation transposing this Directive, and as further specified in the ECB's internal procedure<sup>5</sup>. In addition, the ECB also refers to the Joint Guidelines of the European Supervisory Authorities (ESAs) on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector<sup>6</sup>. After the proposed acquirer submits their application, the national competent authority (NCA) has two working days to send an acknowledgement of receipt to the proposed acquirer<sup>7</sup>,

<sup>1</sup> [Letter from Andrea Enria, Chair of the Supervisory Board, to Mr Schirdewan, MEP, on banking supervision.](#)

<sup>2</sup> [Letter from Andrea Enria, Chair of the Supervisory Board, to Dr Bayaz, Member of the German Bundestag, on banking supervision.](#)

<sup>3</sup> [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, p. 338.

<sup>4</sup> Article 23(1) of the CRD.

<sup>5</sup> [Chapter 3.1.2 of the SSM Supervisory Manual](#) further outlines the process for qualifying holding procedures.

<sup>6</sup> [Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector](#), Joint Committee of the European Supervisory Authorities, JC/GL/2016/01, December 2016.

<sup>7</sup> Article 22(2), first subparagraph of the CRD.

provided that all the necessary documents have been submitted<sup>8</sup>. Once an acknowledgement of receipt has been issued, the assessment time limit is 60 working days.<sup>9</sup> The assessment period may be suspended only once for a maximum of 20, or, where applicable, 30 working days.<sup>10</sup> A recommended list of documentation to be provided can be found in Annex I of the aforementioned ESA Joint Guidelines.

Regarding your question (2) on the admissibility of a change in the holding structure of an institution, the criteria for assessing the acquisition of a qualifying holding, as set out in the CRD<sup>11</sup>, are as follows: (i) the reputation of the proposed acquirer(s); (ii) the reputation, knowledge, skills and experience of those who will direct the business of the target undertaking; (iii) the financial soundness of the proposed acquirer(s); (iv) compliance of the target undertaking with prudential requirements; and (v) whether there are reasonable grounds for suspicion of money laundering or terrorist financing by the proposed acquirer(s).

As regards the assessment criterion of the financial soundness of the proposed acquirer<sup>12</sup>, the ECB assesses the capacity of the proposed acquirer to finance the proposed acquisition and to maintain their own financial soundness. The ECB carries out the assessment based on various factors, including: (i) the regulatory reporting submitted by the institution, including current balance sheet and income statements; (ii) the proposed acquirer's business plan, if necessary; and (iii) the proposed acquirer's statutory financial statements approved by the external auditor. In addition, for less significant institutions (LSIs), the ECB relies on the information and insight provided by the NCAs.

The above-mentioned criterion on compliance of the target undertaking with prudential requirements<sup>13</sup> involves assessing the ability of the target to continue to comply with prudential requirements following the acquisition.

In response to your question (3 and 4) on Article 85 of the [Single Supervisory Mechanism \(SSM\) Framework Regulation](#) and the number of qualifying holding procedures notified and approved, the ECB was notified of 646 qualifying holding procedures between 1 January 2015 and December 2019, as set out in the ECB Annual Report on supervisory activities 2019<sup>14</sup>. As part of the ongoing supervision of significant institutions, ECB Joint Supervisory Teams monitor whether the actual transaction takes place after the qualifying holding decision is taken. NCAs perform the same task for LSIs.

Regarding your question (5) on compliance by the German Federal Financial Supervisory Authority (BaFin) with the notification deadline, it is worth pointing out that qualifying holding procedures are often complex

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<sup>8</sup> Article 22(1) and Article 23(4) of the CRD.

<sup>9</sup> Article 22(2), second subparagraph of the CRD.

<sup>10</sup> Article 22(3), second subparagraph and Article 22(4) of the CRD.

<sup>11</sup> Article 23 of the CRD.

<sup>12</sup> Article 23(1)(c) of the CRD.

<sup>13</sup> Article 23(1)(d) of the CRD.

<sup>14</sup> [ECB Annual Report on supervisory activities 2019](#).

and require extensive supporting documentation. Once the NCA considers the application file to be complete, it issues an acknowledgment of receipt<sup>15</sup> which triggers the assessment period.

Regarding your questions (6 and 7) on the transmission of BaFin's decisions, please note that the ECB performs the supervisory assessments of qualifying holding procedures in close cooperation with NCAs, with the ECB being the competent body for taking the final decision. From an operational standpoint, the completeness of the file is a prerequisite for issuing an acknowledgement of receipt as an interim step before the NCA prepares the draft proposal.

For the sake of completeness, I would also like to mention that the ECB is responsible for overseeing the supervision of euro area LSIs by the NCAs<sup>16</sup>, with the aim of ensuring the effective and consistent functioning of European banking supervision as a whole<sup>17</sup>. This is a competence of the ECB that is unrelated to the competence to issue a qualifying holding decision, the latter being an exclusive competence of the ECB towards every supervised credit institution, irrespective of its significant or less significant status.<sup>18</sup>

In relation to your question (8) on Wirecard AG, the ECB took a qualifying holding decision on an internal reorganisation of Wirecard group, which in the end did not go ahead. All formal notification requirements under EU and national law had been fulfilled. The ECB decision regarding the proposed transfer of 100% of the capital and voting rights in Wirecard Bank AG from Wirecard Acquiring & Issuing GmbH to Wirecard AG was notified to Wirecard AG on 10 January 2019.

Regarding your question (11) on the ECB's involvement in the assessment of Wirecard Bank AG, ECB Banking Supervision did not play a role in assessing whether Wirecard AG was a financial holding company from a prudential perspective; for LSIs, NCAs perform this task. In the qualifying holding decision taken in 2019, ECB Banking Supervision refers to BaFin's decision that Wirecard AG is not a financial holding company as one of the facts on which the decision is based.

Regarding your question (13) on the temporary nature of the ECB's approval of the acquisition of a qualifying holding in Wirecard Bank AG, it is the ECB's policy when making such decisions to specify the period for which its assessment will remain valid. This reflects the fact that the assessment is a point-in-time assessment of the acquisition, i.e. dependent on the circumstances prevailing at said point in time. By limiting the validity of the assessment in time, the ECB ensures that, after the end of the relevant period, another assessment can be conducted that takes new developments into account.

In relation to your question (14) on Wirecard's strategy, it is up to market participants to decide how to structure banking groups and their investments in the banking sector. In performing its supervisory role, and specifically in the context of assessing the acquisition of a qualifying holding as set out in the CRD<sup>19</sup>, the

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<sup>15</sup> Article 22(2) of the CRD.

<sup>16</sup> Article 6(4) and (6) of the SSM Regulation.

<sup>17</sup> See the European Court of Justice ruling of 16 May 2017 ([ECB \(T-122/15\) Landeskreditbank Baden-Württemberg v ECB](#)) concerning policies relating to the prudential supervision of credit institutions and their classification as LSIs.

<sup>18</sup> Article 4(1)(c) of the SSM Regulation.

<sup>19</sup> Article 23 of the CRD.

ECB assesses whether these investments are made in line with the applicable regulatory prudential framework (your questions 2 and 16). Against this background, linked to your questions 17 and 18, we cannot verify the claim that Wirecard AG only initiated a qualifying holding procedure to delay or hinder BaFin's supervision of (parts of) the Wirecard Group. The purpose of ECB assessments of the acquisition of qualifying holdings is to ensure the sound and prudent management of the institution.<sup>20</sup>

In relation to your last question on the supervision of credit institutions<sup>21</sup> under the Capital Requirements Regulation, let me stress that the development of non-bank institutions providing payments and other bank-like services under a lighter regulatory regime might require some further reflections by legislators at the national and European level on the perimeter of regulation and supervision.

Yours sincerely,

[signed]

Andrea Enria

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<sup>20</sup> Criterion d, Article 23(1) of the CRD.

<sup>21</sup> As defined in Article 4.1(1) of [Regulation \(EU\) No 575/2013](#).