



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

ECB-PUBLIC

Mr Brian Hayes
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 14 June 2017

Re: Your letter (QZ-037)

Honourable Member of the European Parliament, dear Mr Hayes,

In your letter to Mr Mario Draghi, President of the European Central Bank (ECB), which was passed on by Mr Roberto Gualtieri, Chair of the European Parliament's Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 5 May 2017, you raised questions relating to the implementation by the ECB of professional secrecy requirements in relation to complaints against banks submitted by citizens. The President has forwarded your letter to me.

I understand that your three queries refer to complaints from citizens on individual credit institutions.

First of all, let me clarify that, in the area of European banking supervision, professional secrecy requirements¹ prevent the ECB from disclosing any supervisory information that it receives, its assessment thereof and any steps that it takes with regard to an individual credit institution. These requirements, as adopted by the European Parliament and/or the Council of the European Union, form the cornerstone of the legal supervisory framework under which European banking supervision operates. They are aimed at instilling confidence in credit institutions that the banking supervisor will treat their sensitive information appropriately. This is essential for an open supervisory dialogue and thus an important basis for effective banking supervision.

In a previous letter² to you, I elaborated on the ECB's procedures for dealing with whistle blowers' complaints regarding supervisory issues. The handling of complaints which the ECB receives from citizens about individual credit institutions depends on a number of factors, including the nature of the information received.

¹ For example, Article 27 of the Council Regulation (EU) No 1024/2013 of 15 October 2013; Article 53 et seq of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013; Article 84 of the Directive 2014/59/EU of the European Parliament and of the Council.

² Available at https://www.bankingsupervision.europa.eu/ecb/pub/pdf/160525letter_hayes.en.pdf

In cases where the credit institution is under the direct supervision of the ECB, the ECB assesses whether the complaint falls within the scope of its supervisory tasks and whether it refers to an alleged breach of relevant EU law. If, prima facie, it is deemed to fall within said scope, it is forwarded to the responsible organisational unit for consideration and follow-up, as appropriate. The ECB's follow-up can involve requesting information from the bank, implementing supervisory measures or conducting on-site inspections. If the complaint is not deemed to fall within that scope (for example, if it refers to consumer protection or prevention of the use of the financial system for the purposes of money laundering and terrorist financing), the ECB informs the citizen that those tasks fall within the remit of the relevant national authorities and invites them to raise the issues directly with those authorities. In any case relating to a credit institution supervised directly by the ECB, citizens are always informed that the information they have provided is being processed and that it may be taken into account in the context of the ECB's ongoing supervisory activities. However, if the credit institution is not supervised directly by the ECB, they are informed that their complaint does not fall within the remit of the ECB and are advised to approach the relevant national competent authority (NCA).

With regard to citizens' requests for access to documents about a credit institution supervised by the ECB, the regime³ for public access to ECB documents applies. In the event that disclosure is refused, in full or in part, the ECB duly justifies its reasons, providing detailed explanations of the applicable exceptions. Citizens are also informed of the review possibilities and remedies that are open to them.

The ECB is also subject to professional secrecy obligations in the field of banking supervision in the case of alleged crimes and is not permitted to disclose confidential supervisory information. If, in carrying out its tasks related to the prudential supervision of credit institutions, it has reason to suspect a criminal offence may have been committed, it is obliged⁴ to request the relevant NCA to refer the matter to the appropriate authorities for investigation and possible criminal prosecution, in accordance with national law⁵.

Any requests/complaints from citizens have always been addressed by the ECB in line with its legal framework and in compliance with the principles of good administration⁶. Nevertheless, the ECB strives to continuously improve its communication with the general public. Its most recent action in this respect took place in 2016, with a revision of procedures regarding its treatment of citizens' complaints: the ECB is now providing a more comprehensive and structured reply, including further information about professional secrecy requirements and follow-up procedures.

Yours sincerely,

Danièle Nouy

³ Decision ECB/2004/3 of 4 March 2004 on public access to European Central Bank documents.

⁴ Pursuant to Article 136 of Regulation (EU) No 468/2014 of the European Central Bank.

⁵ Article 27 of the SSM Regulation and Article 53(1)(1) of the CRD IV permit disclosure to such authorities.

⁶ Article 41 of the Charter of Fundamental Rights of the European Union.