



EUROPEAN CENTRAL BANK

BANKING SUPERVISION

**Danièle NOUY**

Chair of the Supervisory Board

Mr Sven Giegold  
Member of the European Parliament  
European Parliament  
60, rue Wiertz  
B-1047 Brussels

Frankfurt am Main, 3 May 2018

**Re: Your letters (QZ026-28)**

Honourable Member of the European Parliament, dear Mr Giegold,

Thank you for your letters, which were passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 26 March 2018.

In your letters, you raise questions regarding money laundering incidents and ABLV Bank, the information exchange regarding money laundering risks and the integration of those risks in prudential supervision.

As regards your questions on ABLV Bank, after the US Department of the Treasury's Financial Crimes Enforcement Network published the finding and notice of proposed rulemaking on 13 February 2018, all the authorities involved cooperated effectively and this facilitated a swift reaction to the crisis. However, this case has shown that there may be disparities between the European and national frameworks both before and after the "failing or likely to fail" (FOLTF) assessment is carried out. A major problem which can arise after such assessment lies in the possible misalignment between the EU Framework for Crisis Management in the Financial Sector (the Bank Recovery and Resolution Directive<sup>1</sup> and the Single Resolution Mechanism Regulation<sup>2</sup>) and national insolvency laws. Under the BRRD/SRMR, not only present illiquidity but also likely illiquidity in the near future are reasons that a bank might be declared as FOLTF. By contrast, insolvency laws typically require present and actual illiquidity before insolvency proceedings can commence on liquidity grounds. This creates the risk of a "limbo" situation in which it is unclear how to proceed, such as in the event that a bank is declared as FOLTF but no resolution scheme has been adopted owing to a lack of public interest. For this reason, we consider it necessary to amend the legal framework (the BRRD and the SRMR) in order to ensure that liquidation is automatically triggered when a bank is declared as FOLTF but there is no public interest to start a resolution action.

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<sup>1</sup> Directive 2014/59/EU of the European Parliament and of the Council.

<sup>2</sup> Regulation 806/2014/EU of the European Parliament and of the Council.

Regarding the assignment of competences in anti-money laundering (AML) matters and the flow of information between the relevant authorities, it is important to note that ensuring compliance with and enforcement of national AML legislation is a national competence. The ECB fully cooperates with the national authorities which are competent to ensure the fight against money laundering (recital 29 SSM Regulation<sup>3</sup>) to the extent permitted by law.<sup>4</sup> At the same time, it should be noted that the ECB relies on the competent national authority to share information proactively. Therefore, closer cooperation among relevant authorities is needed. In this respect, we welcome the fifth Anti-Money Laundering Directive as a step towards enhancing cooperation among relevant authorities.

Information is exchanged between the ECB and the national competent authorities (NCAs) on the basis of the SSM Regulation. With respect to anti-money laundering authorities that are not part of the SSM, if the current draft of the Anti-Money Laundering Directive is adopted (including the modification of Article 56 of the Capital Requirements Directive (CRD IV)<sup>5</sup> aimed at encompassing the exchange of information with national AML authorities) this will enhance the exchange of confidential AML-related information. Still, this would not guarantee that national AML authorities would share all relevant information with bank supervisors in a timely manner. Moreover, it will be difficult to swiftly set up the cooperation framework, which is set out in Article 57(2) of the Anti-Money Laundering Directive, within a tight time frame of six months following the Directive's entry into force. Looking forward, a more European approach to combatting money laundering should be considered, for example, through enhanced cooperation and exchanges of information between supervisory and AML authorities. As anti-money laundering concerns both the supervisory and criminal/judicial spheres, reviewing the Directive may not suffice to ensure cooperation is smooth and all-encompassing. Establishing a European AML authority could bring about such a degree of improved cooperation.

You also raised questions regarding the possibility of withdrawing a banking licence in response to a serious breach of anti-money laundering rules. While serious breaches of national AML provisions could give the ECB reason to withdraw authorisation, the fact that AML powers lie at national level means that one of the reasons for licence withdrawal remains under national authorities' control. To decide whether a licence should be withdrawn as a result of AML-related breaches of national provisions the relevant national authority would need to inform the ECB of the circumstances and facts justifying the withdrawal. Our approach in such cases is to look carefully at the evidence submitted to us by national supervisors and to decide whether it is, in our view, strong enough to give grounds for withdrawing the licence. If it is not, we share our doubts with the national authorities and encourage them to investigate the breach further.

In the ECB's view, the phrase "a serious breach", which appears in the CRD IV is not a major obstacle because it can be seen as a consequence of the principle of proportionality which nonetheless applies as a general principle of law: not every breach of AML legislation justifies a licence withdrawal, in particular owing to the fact that some aspects of AML law are highly formalised. In some Member States, legislation provides

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<sup>3</sup> Council Regulation (EU) No 1024/2013

<sup>4</sup> Owing to the principle of professional secrecy, such information exchange requires a solid legal basis.

<sup>5</sup> Directive 2013/36/EU of the European Parliament and of the Council

more precisely formulated criteria for what constitutes a sufficient reason for a licence withdrawal on AML grounds. There is, however, always a need for supervisory discretion on a case-by-case basis.

The ECB also takes into account findings relating to financial crime when conducting the “fit and proper” assessments of board members, namely when assessing their reputation. In this context, the ECB takes into account and considers the outcome of the assessments conducted by competent authorities, namely the given facts, surrounding details and conclusions reached.

Furthermore, you asked about the integration of money laundering risks in prudential supervision. While the ECB is not responsible for enforcing AML legislation, it is incorporated to some extent in the ECB’s supervisory assessment. In principle, the SSM Supervisory Review and Evaluation Process (SREP) methodology includes the components necessary for a comprehensive prudential treatment of AML risk, within the limits of its competence and in the light of the information available, namely as part of:

- (i) Internal governance and the assessment of institutions’ compliance function and procedures: this assessment aims to ensure that institutions have a full system of governance, compliance and internal controls in place to prevent the materialisation of AML risk from materialising, in line with the Basel III capital framework.
- (ii) Operational risk and the assessment of conduct risk: the assessment of this category of risk to capital ensures that institutions are strong enough to withstand the negative consequences of the occurrence of AML risk. The ECB takes into account legal and reputational risks arising for banks from AML concerns when it assesses the need for supervisory measures under the SREP (such as capital add-ons, organisational measures and recalling board members) for those supervised entities to ensure an adequate coverage of such risks.
- (iii) Business model: the assessment of the potential impact of AML risk on the viability and sustainability of the bank’s business models.

In the specific case of ABLV, 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 AML 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, information that ECB supervisors gather or receive regarding a bank’s governance and control framework is included in the supervisory process and operations.

More generally, banks’ business models are assessed on a regular basis with regard to their viability and sustainability. As the case of ABLV has shown, the impact of money laundering issues can pose a significant risk to a bank’s viability and, as such, the risk of money laundering can form part of the assessment of the business model.

Significant institutions run a wide range of business models and, in particular, fee and commission income is generated from various business mixes, so there is no immediate connection between the proportion of net fee and commission income in operating income on the one hand and lax standards with regard to anti-money laundering rules on the other.

Yours sincerely,

[signed]

Danièle Nouy