EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Andrea ENRIA
Chair of the Supervisory Board

ECB-PUBLIC
COURTESY TRANSLATION

The German Parliament
Ms Lisa Paus
Platz der Republik 1
11011 Berlin

Frankfurt am Main, 1 August 2019

Re: Your letter of 18 April 2019

Honourable Member of the German Parliament, dear Ms Paus,

Thank you for your letter, in which you raised a number of questions on the ECB Banking Supervision's involvement in mergers and acquisitions.

In response to your first and second questions concerning the legal basis and procedure for assessing and approving mergers, let me stress that this depends on the national law of the country or countries where the merging banks are headquartered.[1] If national law foresees a formal approval of a merger by the competent authority for prudential supervision, the ECB will exercise this power with respect to significant institutions.

In the case of Germany, a merger of significant credit institutions does not require the approval of the banking supervisor; however, the supervisor is required to be notified thereof.[2] A significant credit institution must therefore inform the ECB if it intends to merge with another institution, an electronic money institution or a payment institution.

In some other jurisdictions (e.g. Italy, Greece, Slovenia and Belgium), mergers require prior approval by the competent supervisory authority, i.e. the ECB in the case of significant institutions.

In response to your third question on whether the requirements for approving a qualifying holding adopted by the ECB differ from those applied by national supervisors, according to Articles 4(1)(c) and 15 of the SSM Regulation, the ECB is exclusively competent for assessing acquisitions (and disposals) of qualifying

[1] For further details see:
https://www.bankingsupervision.europa.eu/about/ssmexplained/html/bank_mergers_acquisitions.en.html

[2] Section 24 (2) of the German Banking Act (*Kreditwesengesetz*) in the wording of the announcement of 9 September 1998 (BGBl. I S. 2776) in conjunction with Section 10 of the Reports Regulation (*Verordnung über die Anzeigen und die Vorlage von Unterlagen nach dem Kreditwesengesetz*).

European Central Bank
60640 Frankfurt am Main
Tel.: +49 69 1344 0
E-mail: info@ecb.europa.eu
Website: www.bankingsupervision.europa.eu

holdings in the SSM. This means it is the sole prudential supervisory authority responsible for taking such decisions in regard to significant and less significant institutions.[3]

The ECB conducts this assessment with the assistance of the national competent authority (NCA) of the participating Member State where the relevant credit institution is established. The NCA prepares a draft proposal for the ECB to oppose or not to oppose an acquisition.[4] The assessment is carried out applying the criteria laid down in the Capital Requirements Directive IV (CRD IV) as transposed by national law.

In response to your fourth question, the following types of transactions would result in the ECB's involvement in the event of a merger involving at least one significant institution.

1. Qualifying holdings: Transactions involving a change of qualified shareholding within the ownership structure require notification according to Article 22 of the CRD IV, following the procedure and assessment criteria contained in Article 23 et seq. of the CRD IV (see also the paragraph above).
2. Merger approval, if provided for in national law.
3. Other cases: A new banking licence may be required if two or more credit institutions merge and create a new entity, in order to accommodate the activities of the merged credit institutions. Any new entity performing regulated banking activities requires authorisation to conduct banking services.

In response to your fifth question on the timing of the examination of the feasibility and sustainability of a possible merger, I should like to clarify that mergers involving significant institutions will in any event be reviewed in the context of ongoing supervision to ensure that the resulting banking group will be able to continuously comply with all prudential requirements in the foreseeable future. Irrespective of whether a merger is subject to prior assessment or approval by the competent authority for prudential supervision, the impact on the prudential situation of the relevant bank or banks will be assessed on an ongoing basis and, if necessary, supervisory measures will be applied. As for a definition of ongoing supervision, I would refer you to section 4.5 of the SSM Supervisory Manual.[5]

As regards your sixth question on the necessity of a preliminary assessment of the recoverability of the institution resulting from a merger, and on the ECB's involvement in such an assessment, there is no requirement to specifically examine the recoverability of a significant institution resulting from a potential merger, except if a national framework would explicitly foresee this as part of the competent authority's merger approval assessment.

As for the need to submit a new recovery plan, the resulting institution would in principle be expected to submit a full recovery plan to the ECB within six months of the merger.

As for a preliminary assessment of the resolvability of an institution resulting from a merger, and the ECB's involvement in such a process (your seventh question), the issue of the resolvability of significant institutions falls within the remit of the Single Resolution Board (SRB). The relevant Joint Supervisory Team (JST) at the SSM and the SRB's Internal Resolution Team (IRT) are in close contact about relevant developments. A

---

3 Except in the case of a bank resolution as mentioned in Article 4(1)(c) of the SSM Regulation.

4 Articles 85 to 87 of Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 ("SSM Framework Regulation").

5 https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.supervisorymanual201803.en.pdf

potential merger would be one such development and under point 1.1(l) of the Annex to the Memorandum of Understanding between the SRB and the ECB in respect of cooperation and information exchange, the JST shares any merger plans with its counterpart IRT. However, there is currently no general formal procedure to consult the resolution authority on the resolvability aspects of an institution resulting from a merger, except if a national framework would explicitly foresee this as part of the competent authority's merger approval assessment.

As regards your eighth question on the decision-making process for the final assessment of a merger, it is the same as for supervisory issues in general. The Supervisory Board, as an internal body of the ECB, prepares complete draft decisions, which are adopted by the Governing Council under the non-objection procedure. This decision-making procedure is laid down in Article 26(8) of the SSM Regulation.[6]

In principle, the Supervisory Board and Governing Council vote by simple majority.[7] The Supervisory Board is composed of its Chair and Vice-Chair, four ECB representatives and one representative of the national competent authority in each Member State participating in the Single Supervisory Mechanism.[8] The ECB Governing Council comprises the members of the ECB's Executive Board and the governors of the national central banks of the Member States whose currency is the euro.[9] As of 1 January 2015 national central bank governors take turns holding voting rights on the Governing Council, while Executive Board members of the ECB hold permanent voting rights.[10]

In response to your ninth question on contributions of state capital, any such contribution in the context of a merger of two banks would result in a State aid assessment by the European Commission. Moreover, if such state capital were to exceed the qualifying holding thresholds determined by national law transposing Article 22(1) of the CRD IV, then the relevant qualifying holding notification would need to be submitted. This notification would be followed by an assessment by the ECB with the assistance of the NCA, resulting in an ECB decision.

As regards your tenth question regarding the issuing of new banking licences following a merger, in addition to the cases outlined in my answer above to your question on the type of transactions which would trigger ECB involvement, other cases may also require a new licence decision, in particular mergers between two credit institutions which are not licensed for the same activities. For example, if the absorbing institution is not licensed for certain activities performed by the disappearing institution, an assessment is required as to whether the licence may be extended. As a matter of fact, certain Member States do not grant "universal"

---

[6] For further information on decision-making, please refer to: https://www.bankingsupervision.europa.eu/organisation/decision-making/html/index.en.html

[7] See Article 26(6) of the SSM Regulation, and Article 10.2 of the Statute of the European System of Central Banks and of the European Central Bank (Protocol (No 4) of the TEU/TFEU), respectively.

[8] As per Article 26(1) of the SSM Regulation.

[9] As per Article 283(1) of the TFEU and Article 10.1 of the ESCB/ECB Statute.

[10] For more information regarding the rotation of voting rights see: https://www.ecb.europa.eu/explainers/tell-me-more/html/voting-rotation.en.html

banking licences, i.e. licences authorising the applicant to perform all banking services. Of course, a new licence is also required if the absorbing institution is not authorised for conducting banking activities at all.[11]

Furthermore, the conditions for issuing a new banking licence are based on Articles 8 to 15 of the CRD IV, as implemented in national law. In accordance with EU law and the applicable national law, the assessment of a bank licence generally covers the following:

i. general presentation of the applicant and its history, including background and justification for requesting the licence;

ii. programme of operations, including intended activities, business model and the associated risk profile;

iii. the applicant's structural organisation, including IT organisation and outsourcing requirements;

iv. financial information, including forecast balance sheet and profit and loss account projections and adequacy of internal capital and liquidity;

v. suitability of shareholders;

vi. suitability of the management board and key function holders and of the supervisory board.

Lastly, in relation to your eleventh set of questions, aggregated data regarding cases of mergers and acquisitions since 2014 are not currently available. As for your questions regarding specific banks, in line with professional secrecy requirements as laid out in Article 27 of the SSM Regulation as well as in the CRD IV, I must reiterate that I cannot comment on individual cases.

Yours sincerely,

[signed]

Andrea Enria

[11] For additional information please refer to the ECB Guide on licence applications: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.201901_guide_assessment_credit_inst_licensing_appl.en.pdf?639083c1690b108e5a4a32fc90b110a6.