



EUROPEAN CENTRAL BANK  
BANKING SUPERVISION

**Danièle NOUY**

Chair of the Supervisory Board

Mr Valli and Mr Zanni  
Members of the European Parliament  
European Parliament  
60, rue Wiertz  
B-1047 Brussels

Frankfurt am Main, 27 April 2015

**Re: Your letter (QZ50)**

Honourable Members of the European Parliament, dear Mr Valli, dear Mr Zanni,

Thank you for your letter, 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 23 March 2015.

Regarding your first question as to whether the investigation of falsification of a bank's financial reporting and public disclosure falls outside the remit of the ECB's supervisory tasks, the SSM Regulation<sup>1</sup> (SSMR) states that the ECB is competent to ensure compliance with the relevant legal acts of the Union which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information "*on those matters*" (Article 4(1) of the SSMR). The SSMR thus confers on the ECB the task of ensuring that significant supervised entities comply with the respective provisions of the CRR<sup>2</sup>. In this context, reporting "*on those matters*" refers to "*supervisory reporting*" (see, for example, Article 99 of the CRR and Commission Implementing Regulation (EU) No 680/2014) rather than to "*financial reporting*". Public disclosure of information "*on those matters*" refers to the so-called Pillar 3 requirements, which can be found in Part 8 of the CRR ("*Disclosure by Institutions*").

The ECB has the power to investigate alleged breaches of the aforementioned prudential requirements by significant supervised entities (Article 18 of the SSMR) within the remit of the supervisory tasks conferred on it by the SSMR. If such breaches are proven, the ECB can impose administrative pecuniary penalties. However, alleged breaches related to (audited) financial statements of issuers whose securities are admitted to trading on a regulated market and their disclosure fall outside the ECB's supervisory tasks. They remain

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<sup>1</sup> Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.

with the national (market) authorities under the Transparency Directive<sup>3</sup>. These national authorities are responsible, among other tasks, for ensuring that (audited) financial statements are drawn up in accordance with the relevant (financial) reporting framework and must take appropriate measures where they find infringements (Articles 4 and 24 of the Transparency Directive).

In your second question you asked whether the ECB is competent for ensuring compliance with IFRS in the areas of reporting and public disclosure in relation to matters of own funds requirements, securitisation, large exposure limits, liquidity and leverage.

When exercising its supervisory tasks, the ECB takes into account all available information in order to make a prudential assessment. This information includes financial statements disclosed by supervised entities.

In particular, in order to assess the impact that potential deficiencies in the financial statements of significant supervised entities may have on their compliance with prudential requirements (e.g. on own funds, capital, securitisation, large exposures, etc.), the ECB considers whether or not a supervised entity's financial statements give a true and fair view of its assets, liabilities and financial position. If this is not the case and the deficiencies detected have an impact on the entity's compliance with the aforementioned prudential requirements, the ECB will adopt all appropriate measures within its supervisory powers to address the shortcomings.

However, as stated above, the task of ensuring compliance with IFRS in the areas of (audited) financial statements of issuers and their disclosure falls outside the remit of the ECB's supervisory tasks under the SSMR. In line with the legal framework of the Union, this task remains with the competent national (market) authorities under the Transparency Directive, without prejudice to the cooperation between the ECB and the national authorities where appropriate and in accordance with the applicable legal framework.

Lastly, you asked whether falsification of financial reporting and public disclosure committed by persons responsible for managing a bank falls outside the ECB's remit to impose fit and proper requirements with respect to managers.

If the results of an investigation by the competent authority show that a member of the management body of a bank cannot be assessed as fit and proper, the ECB may, under Article 16(2)(m) of the SSMR, seek to remove that person from the management body of the bank. This provision refers to relevant Union law, and in the case of Directives, their transposition into national law. The fit and proper requirements are set out in Article 91 of CRD IV<sup>4</sup>. The national law transposing CRD IV specifies the conditions and the circumstances under which a member of the management body is considered fit and proper. Therefore, the ECB can seek to remove a member of the management body only if the requirements set out by the national law implementing Article 91 of CRD IV are no longer fulfilled. In addition, if the person concerned in the management of the bank is not a member of the management body, the ECB may use those powers directly

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<sup>3</sup> Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

<sup>4</sup> Directive 2013/36 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.

or indirectly if they exist in national law, pursuant to Article 9(1) of the SSMR. On a very practical level, the ECB will always communicate at the outset with the national competent authority in any such cases.

Yours sincerely,

Danièle Nouy