



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, 02 October 2015

Re: Your letter (QZ135)

Honourable Member of the European Parliament, dear Mr Giegold,

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 10 September 2015.

In your first question you asked about the actions taken by the ECB as a banking supervisor regarding the outflow of potentially bail-inable capital from Greek banks. The mandate of the ECB as a banking supervisor is to ensure the safety and soundness of European credit institutions as well as to contribute to the stability of the financial system as a whole. In the exercise of its responsibilities, the ECB needs to carefully weigh all available supervisory measures and their potential implications. In the case of the significant Greek institutions supervised by the ECB, which represent the bulk of the Greek banking sector, the ECB has intensively monitored their solvency and liquidity positions since 2014. As a consequence of the continuous monitoring, the ECB has taken actions aimed at restricting or preventing operations which would have led to a further deterioration in the liquidity position of those banks. Moreover, it should be noted that a regulatory basis to preserve a minimum amount of liabilities that can be bailed in is not yet enforceable. Furthermore, currently available banking supervision powers cannot properly address liquidity outflows, and in particular outflows of bail-inable liabilities. However, administrative measures aimed at protecting the liquidity position of Greek banks have been implemented by the Greek authorities.

In your second question you asked whether the ECB has sufficient legal instruments in order to enact moratoria on banks to stop the outflow of bail-inable capital. While the term “moratorium” is not defined in the Union banking legislation, it can be generally understood as a measure by which the relevant authority suspends or restricts payments by a credit institution. This is an instrument granted to the resolution authority under the Banking Recovery and Resolution Directive (2014/59/EU) (BRRD).¹

¹ Art. 69 BRRD.

In addition, some national legal frameworks provide for the use of a moratorium within the above-mentioned meaning, or similar measures, by the supervisory authority. Provided that the conditions of Article 9(1) of the SSM Regulation are met, the ECB could consider making use of such measures on the basis and within the limits of national law. The aim of such a measure is generally to temporarily suspend payments to creditors by the bank in question, in anticipation of the start of liquidation or resolution proceedings, while there is normally no possibility to use the moratorium independently from the latter proceedings. The national legal framework in Greece did not confer such powers on the supervisory authority.

Lastly, you asked whether the ECB regards additional instruments as necessary in this regard and how legal certainty of a bail-in can be ensured. As mentioned above, in some national legal frameworks a moratorium is available to the supervisory authority to stabilise banks in the short or medium term. Hence, a moratorium could be considered as a useful measure for supervisors. It should be noted that, starting in January 2016, in line with the BRRD, resolution authorities will be equipped to ensure that sufficient bail-inable capital instruments and eligible liabilities are held by each bank, via the setting and monitoring of minimum requirements for own funds and eligible liabilities (MREL). MREL is aimed at ensuring that in the event of resolution there are sufficient bail-inable instruments for loss absorption and recapitalisation of the bank.

Yours sincerely,

[signed]

Danièle Nouy