



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

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

Frankfurt am Main, 25 May 2016

Re: Your letter (QZ048)

Honourable Member of the European Parliament, dear Mr Hayes,

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 26 April 2016.

Regarding your question on the ECB's procedures for dealing with complaints on supervisory issues made by whistleblowers, I can confirm to you that the ECB has put effective mechanisms in place for any person to be able to report suspected breaches of relevant Union law¹, in compliance with the requirements laid down in the SSM legal framework. These mechanisms include a dedicated web platform with a predefined form, available on the ECB's website², which guarantees that reports are submitted directly and without delay to the ECB unit responsible for the initial assessment of such reports. To protect individuals who submit reports, the ECB consulted the European Data Protection Supervisor in order to adopt the appropriate standards and has ensured that all necessary safeguards have been put in place.

Nonetheless, in addition to the dedicated web platform, potentially relevant information can also be sent to the ECB through other channels (e.g. emails or letters). In order to ensure that all reports referring to alleged breaches of relevant Union law are properly assessed and followed up, coordination procedures have been developed both within the ECB and between the ECB and the national competent authorities (NCAs).

¹ "Relevant Union law" should be understood to include EU regulations and national law implementing EU directives laying down prudential requirements, the supervision of compliance with which has been conferred on the ECB by the SSM Regulation ([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). It also includes ECB supervisory decisions and regulations.

² <https://www.bankingsupervision.europa.eu/banking/breach/form/html/index.en.html>

In a nutshell, the procedure is as follows. An expert team receives the reports and assesses whether they fall within the remit of the ECB's supervisory tasks or within the scope of an NCA's supervisory tasks. The latter would apply, for example, if a report concerns a less significant institution, unless it refers to a breach of an ECB regulation or decision imposing obligations on the credit institution vis-à-vis the ECB. If, after the initial assessment, the report is considered relevant to the SSM's tasks, it is forwarded to the responsible area within the ECB (normally the Joint Supervisory Teams), or to the relevant NCA, for appropriate follow-up (e.g. a request for information, on-site inspection, adoption of supervisory measures, or initiation of enforcement or sanctioning proceedings). The report is passed on without providing the identity of the person who made the report, unless that person gives his/her explicit consent. Likewise, if an NCA receives a report of a suspected breach which falls within the remit of the ECB's supervisory tasks, it forwards the report to the ECB without providing the identity of the person who made the report, unless that person gives his/her explicit consent.

As to your question of whether the ECB has received reports from a whistleblower that Allied Irish Bank (AIB) did not accurately report its progress on restructuring impaired loans accurately to the Central Bank of Ireland and whether the ECB is investigating it, please allow me to remind you that, as laid down in the SSM Regulation and the Interinstitutional Agreement, any information provided to the European Parliament is subject to the relevant professional secrecy requirements. Therefore, information received from whistleblowers, and the assessment thereof, as well as any investigatory or supervisory measure taken with respect to an individual credit institution under ECB supervision, can generally not be disclosed.

Against this background, I would like to confirm that the ECB takes all the information provided in the reports received from whistleblowers into account for its prudential assessment in order to decide on the appropriate actions to be taken from a supervisory perspective. Aggregated information on the reports received by the ECB from whistleblowers is made available each year in the ECB's Annual Report on supervisory activities.³

Regarding your question on sanctions the ECB might impose on a bank if it does not accurately report on the status of impaired or non-performing loans, please be informed that, as a general rule, the ECB can impose pecuniary penalties on significant institutions that breach directly applicable Union law or ECB decisions or regulations. The ECB cannot sanction natural persons or impose non-pecuniary penalties. The ECB can also not sanction breaches of national law implementing EU directives. In these three cases, the ECB can, however, request the relevant NCA to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed. The NCA conducts these proceedings and decides on the resulting penalties in accordance with applicable national law.

The penalties which the ECB may impose in cases falling within the scope of its direct sanctioning powers are pecuniary penalties of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10% of the total annual turnover, as defined in the relevant Union law, of the legal person in the preceding business year.

In the specific case of a significant supervised entity that breaches reporting obligations regarding impaired or non-performing loans, the ECB may impose pecuniary penalties if, under the respective national law, a

³ <https://www.bankingsupervision.europa.eu/press/publications/annual-report/html/index.en.html>

penalty is available to the competent authorities for such breaches. If no sanction is available under national law, the ECB may issue a decision requiring the entity to report specific information and, if the entity breaches this decision, it may impose a pecuniary penalty.

Yours sincerely,

[signed]

Danièle Nouy