



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

Mr Luke Ming Flanagan
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 11 December 2018

Re: Your letter (QZ072)

Honourable Member of the European Parliament, dear Mr Flanagan,

Thank you for your letter to Mr Mario Draghi, President of the European Central Bank (ECB), which was passed on by Mr Roberto Gualtieri, Chair of the European Parliament's Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 26 October 2018. In your letter you raised questions relating to the accountability of bank managers. As this topic is related to banking supervision, the President forwarded your letter to me.

In your letter, you refer to a statement by Governor Lane in front of an Oireachtas committee. According to the transcript of the hearing¹, Governor Lane made reference to the accountability framework for bank managers introduced in the United Kingdom, stating in particular that: *"There were concerns in advance about whether this would scare people away and whether anyone would sign up to be the director of a bank, with this heavy responsibility on him or her."* He also suggested that the Oireachtas could *"take testimony from the UK about how this has been implemented"*.

Turning to your question on the ECB position regarding the accountability of bank managers, please note that, as stated in my speech of 15 October 2018², the ECB is of the opinion that good governance is key to putting a lid on unethical behaviour and excessive risk-taking. As supervisors, we place great importance on governance. Therefore, the issue of clear accountability is addressed within the scope of ongoing governance supervision.

Let me first note that the credit institutions themselves are primarily responsible for selecting and assessing the members of their management bodies. Making sure that the members of the management bodies set out values and policies and comply with them, promotes sound governance in the institution.

¹ https://www.oireachtas.ie/en/debates/debate/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/2018-10-04/2/

² <https://www.bankingsupervision.europa.eu/press/speeches/date/2018/html/ssm.sp181015.en.html>

The SSM Regulation conferred on the ECB the task of ensuring that significant institutions comply with governance and suitability (fit and proper) requirements.³ In carrying out this task, the ECB must apply relevant EU law, including transpositions into national law of EU Directives.⁴ Therefore, when assessing the fitness and propriety of members of management and supervisory bodies of Irish significant institutions, the ECB applies the Irish Central Bank Reform Act 2010 and Regulations 2014 (SI No. 158 of 2014). In addition to national law, the ECB complies with the Joint European Securities and Markets Authority (ESMA) and European Banking Authority (EBA) Guidelines on suitability⁵ and the EBA Guidelines on internal governance⁶. The ECB and the national competent authorities (NCAs) assess compliance with the fit and proper criteria set out in the CRD IV⁷, which need to be fulfilled at all times by members of the management body of a credit institution. These criteria are assessed in a proportionate manner and with due consideration given to the main characteristics of the candidates, including their role and the type of institution. In particular, when assessing the reputation of an appointee, the ECB and the NCA verify whether any doubt exists regarding his or her ability to ensure the sound and prudent management of a credit institution.

Moreover, as stated in my letter to MEP Balz dated 26 May 2017, according to the rules governing the ECB's fit and proper assessments, the ECB may initiate a new assessment of the suitability of a member of the management body if it becomes aware of new facts or issues that may have an impact on the initial suitability assessment for that member.⁸ After assessing the given facts and issues, the ECB decides on appropriate action, in accordance with applicable EU and national law. An identified issue of responsibility for financial misconduct by a member of a management body could constitute a new fact and be an area for further investigation in this context.

A credible sanctioning mechanism supports the regulator's efforts in maintaining ethical behaviour among members of the management bodies of credit institutions. Within European banking supervision, the sanctioning powers are distributed between the ECB and the NCAs. Pursuant to Article 18 of the SSM Regulation, the ECB is only competent to impose sanctions against significant supervised entities for breaches of prudential requirements in EU law. In the event of breaches committed by natural persons, the ECB may ask the relevant NCA to open the appropriate proceedings. The NCA conducts these proceedings and decides on the resulting penalties in accordance with applicable national law.

In order to improve the efficiency of sanctions and create a level playing field across the banking union with respect to bank governance matters, further harmonisation and supervisory convergence are needed. For instance, the CRD IV allows fit and proper assessments to be conducted after members of the management bodies take up the position, and consequently in some Member States board members start performing their functions before the supervisor had the possibility to check their suitability. Similarly, EU law does not include definitions of key function holders or senior management. The ECB has therefore repeatedly recommended,

³ See Article 4(1)(e) of Council Regulation (EU) No 1024/2013 of 15 October 2013 (the SSM Regulation).

⁴ See Article 4(3) of the SSM Regulation.

⁵ Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU.

⁶ EBA Guidelines on internal governance under Directive 2013/36/EU.

⁷ Directive 2013/36/EU of 26 June 2013.

⁸ https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.170526letter_balz.pdf

in the context of its call to reduce options and national discretions, that the rules for “fit and proper” assessments be fully harmonised.⁹ Amending EU law in a way that harmonises these rules would mean that bank managers would be assessed on the basis of the same rigorous rules and procedures across the entire banking union.

Yours sincerely,

[signed]

Danièle Nouy

⁹ https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2017_46_f_sign.pdf