

Danièle NOUY

Chair of the Supervisory Board

Mr Philippe Lamberts
Mr Ernest Urtasun
Members of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 24 January 2018

Re: Your letters (QZ115-116)

Honourable Members of the European Parliament, dear Mr Lamberts, dear Mr Urtasun,

Thank you for your letters concerning the obstacles to the implementation of early intervention measures, which were passed on to me by Mr Roberto Gualtieri, Chairman of the Committee on Economic and Monetary Affairs, accompanied by a cover letter dated 20 December 2017.

As explained in [my response](#) to your enquiries QZ-086 to 089, the flaws in the current legal framework on early intervention from an ECB perspective concern two main issues. First, there is no legal basis for the adoption of such measures by the ECB in directly applicable Union law. Therefore, these powers have to be exercised on the basis of national law, meaning that specific characteristics of 19 different legal frameworks have to be taken into account. Second, there is a significant overlap between the early intervention measures in Article 27(1) of the Bank Recovery and Resolution Directive¹ (BRRD) and the “regular” supervisory measures in Article 16 of the SSM Regulation², meaning that a number of measures could be adopted either as early intervention or as supervisory measures. In addition, the conditions for the use of early intervention largely mirror those for the use of supervisory measures under Article 16(1)(a) and (b) of the SSM Regulation. This means that whenever the conditions for early intervention are fulfilled, those for supervisory measures will usually be met as well.

From a proportionality perspective, it can be argued that early intervention measures are more intrusive than supervisory measures due to their role in crisis prevention and management, including the increased involvement of the resolution authority. For this reason, in situations where the competent authority needs to choose between taking a certain action as either an early intervention measure or as a supervisory measure, the principle of proportionality suggests that it should adopt a supervisory measure as the less intrusive

¹ Directive 2014/59/EU of the European Parliament and of the Council

² Council Regulation (EU) No 1024/2013

option, *provided that both types of measures are suitable to achieve the intended aim*. In addition, the use of early intervention measures might increase the probability that the adoption of a measure has to be disclosed under market transparency rules, in particular the requirement to disclose inside information under Article 17 of the Market Abuse Regulation.³ Such disclosure might have unintended adverse effects for the supervised bank and therefore jeopardise the effectiveness of the measure in mitigating a deterioration in its financial position.

Therefore, from the ECB's perspective, the main shortcoming is not that the early intervention conditions cannot be met, but that they are usually met at the same time as conditions for supervisory measures, which in practice, for the reasons stated above, discourages the use of early intervention powers.

In the view of the ECB, this situation should be remedied by removing the overlap between early intervention and regular supervisory measures, so that the legal basis and the implementation timing of each individual measure are clear. More specifically, the measures which are related to a crisis situation should remain in the BRRD (and be included in the SRM Regulation), whereas more general supervisory measures should be confined to Article 16 of the SSM Regulation. In addition, one could also consider specifying the conditions for early intervention measures in order to clarify their role vis-à-vis supervisory measures.

From the ECB's perspective, such amendments to the legal framework for early intervention would be crucial in ensuring a clear escalation ladder of supervisory action and enhancing the role early intervention could play as a crisis prevention measure.

Yours sincerely,

[signed]

Danièle Nouy

³ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014.