



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Andrea ENRIA

Chair of the Supervisory Board

COURTESY TRANSLATION

President of the German Bundestag
Dr Wolfgang Schäuble MdB
Platz der Republik 1
11011 Berlin

Frankfurt am Main, 19 September 2019

Re: Your letter of 9 July 2019

Honourable President, dear Dr Schäuble,

Thank you for your letter, in which you submitted a question from Mr De Masi, Member of the German Parliament, regarding provisions in connection with ongoing or expected tax and criminal investigations, in line with the right of national parliaments to put questions to ECB Banking Supervision.¹

First of all, let me stress that the mandate of ECB Banking Supervision is restricted to prudential supervision and does not extend to prosecuting tax fraud or other criminal activities, which is the responsibility of the relevant national authorities. This includes investigations of cum-ex and cum-cum transactions, which made use of a loophole in German tax law to claim tax reimbursements.

Furthermore, as you may be aware, the answers that ECB Banking Supervision may offer to questions posed by national parliaments are also subject to the relevant professional secrecy requirements as laid out in Article 27 of the SSM Regulation² and in the Capital Requirements Directive IV (CRD IV).³ Owing to these requirements, I cannot disclose any confidential bank-specific data regarding the provisions that specific credit institutions have put in place in relation to ongoing or expected tax or criminal investigations.

Based on a non-exhaustive survey conducted via our Joint Supervisory Teams covering German significant institutions, the ECB has identified seven significant institutions in Germany as being subject to such ongoing tax and criminal investigations and/or payments. There are two cases relating to criminal proceedings against board members, as representatives of the institution, and five cases against individual staff members. The provisions related to these cases amount to €113.3 million in the case of cum-ex transactions and €40.1 million for cum-cum transactions. The already settled payments to tax authorities amount to €790.1 million and €66 million respectively. The Joint Supervisory Teams of the banks concerned follow these investigations closely and, based on the materiality of the findings, assess the potential impact on the

¹ In line with Article 21(2) of Council Regulation (EU) No 1024/2013 of 15 October 2013.

² Council Regulation (EU) No 1024/2013 of 15 October 2013.

³ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013.

arrangements, strategies and processes implemented by credit institutions to ensure sound management and coverage of risks. ECB Banking Supervision reviews these mechanisms when carrying out its Supervisory Review and Evaluation Process (SREP), taking appropriate measures if and when weaknesses are identified, and also monitors these types of cases when assessing the suitability of board members.

Yours sincerely,

[signed]

Andrea Enria