



EUROPEAN CENTRAL BANK
BANKING SUPERVISION

Andrea ENRIA
Chair of the Supervisory Board

COURTESY TRANSLATION

Dr Danyal Bayaz
Member of the German Bundestag
Platz der Republik 1
11011
Berlin

Frankfurt am Main, 28 August 2020

Re: Your letter of 9 July 2020

Honourable Member of the Bundestag, dear Dr Bayaz,

Thank you for your letter, which was passed on to me by your President, the honourable Dr Schäuble, accompanied by a cover letter dated 10 July 2020.

First of all, please allow me to refer to my letter to Mr Schirdewan, MEP, which addressed some of the questions raised in your letter.¹ As I clarified there, the German Federal Financial Supervisory Authority (BaFin) is the competent authority responsible for the direct prudential supervision of less significant institutions (LSIs) in Germany, such as Wirecard Bank AG, on a consolidated basis.² As such, BaFin is responsible for the designation as financial holding companies of entities that own credit institutions under its supervision. The ECB is responsible for overseeing the supervision by the national competent authorities (NCAs) of LSIs from the Member States participating in the Single Supervisory Mechanism (SSM), with the aim of ensuring the effective and consistent functioning of the SSM as a whole.³

Against this background, and in relation to your first question, I confirm that ECB Banking Supervision did not play a role in assessing whether Wirecard AG was a financial holding company from a prudential perspective, as this is the sole competence of the NCAs.

Regarding your second question, the criteria for designating an entity as a “financial holding company” are laid down in Article 4(20) of the Capital Requirements Regulation. This provision stipulates two main criteria:

¹ The letter to Mr Schirdewan, MEP, can be found on the ECB Banking Supervision website: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm.mepletter200730_Schirdewan~ce95c8fd2f.en.pdf?74d6f322a4a2c907f7158ba3fc51a113.

² Article 6(4) and 6(6) of 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 (OJ L 287, 29.10.2013, p. 63).

³ See the ruling of the European Court of Justice of 16 May 2017 in the case *Landeskreditbank Baden-Württemberg v ECB* (T-122/15), concerning policies relating to the prudential supervision of credit institutions and their classification as less significant institutions.

(i) the subsidiaries of the entities should be exclusively or mainly⁴ institutions⁵ or financial institutions, with at least one of such subsidiaries being an institution, and (ii) the entity should not qualify as a “mixed financial holding company”⁶. In practical terms, this means that parent companies of banks should be supervised on a consolidated basis when the banking activities represent a majority of their activities. A parent company of a bank is designated as a financial holding company via a supervisory decision. As pointed out above, BaFin is competent to take such a supervisory decision, as Wirecard Bank AG is an LSI.

In relation to your third question on a qualifying holding procedure (*Inhaberkontrollverfahren*) regarding Wirecard Bank AG, and as clarified in my letter to Mr Schirdewan, MEP, I can confirm that in January 2019 ECB Banking Supervision took a qualifying holding decision on an internal reorganisation of Wirecard group (which was never carried out) in which it refers to BaFin’s decision that Wirecard is not a financial holding company as one of the facts on which the qualifying holding decision was based.

Due to professional secrecy requirements, as outlined in the Capital Requirements Directive⁷, I am prohibited from commenting on individual credit institutions and their actions. Therefore, also linked to your fourth question, I cannot further comment on the specific nature and extent of interactions between the ECB and BaFin regarding Wirecard Bank AG or matters related to the prudential supervision of the bank.

Yours sincerely,

[signed]

Andrea Enria

⁴ See the definition in the European Banking Authority Q&A (question-ID: 2014_796): “The term “mainly” used in Article 4(1)(20) of Regulation (EU) No 575/2013 should be understood to refer to a situation where more than 50% of the equity, consolidated assets, revenues, personnel or another indicator deemed relevant by the competent authority of a holding company are associated with subsidiaries that are institutions or financial institutions”, available at: https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_796

⁵ As used in Article 4(1)(3) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

⁶ As used in Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1.) .

⁷ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, (OJ L 176, 27.6.2013, p. 338).