EUROPEAN CENTRAL BANK

BANKING SUPERVISION

Danièle NOUY

Chair of the Supervisory Board

COURTESY TRANSLATION

Mr Enrique Calvet Chambon
Member of the European Parliament
European Parliament
60, rue Wiertz
B-1047 Brussels

Frankfurt am Main, 19 July 2017

Re: Your letter (QZ051)

Honourable Member of the European Parliament, dear Mr Calvet Chambon,

Thank you for your letter relating to banking foundations in Spain, 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 19 June 2017.

As laid down in the Interinstitutional Agreement between the European Parliament and the European Central Bank (ECB), any reporting obligations vis-à-vis the European Parliament are subject to the relevant professional secrecy requirements, as outlined in the Capital Requirements Directive IV (CRD IV)[1]. I therefore cannot comment on individual institutions supervised by the ECB.

In your letter, you refer to a significant institution which is majority owned by a banking foundation. You also argue that the Banco de España granted the institution a lower reserve fund than required.

With respect to the Spanish Royal Decree 536/2017 which also covers the amendments of the reserve fund for banking foundations, let me first clarify that Spanish banking foundations are not included in the list of entities supervised by the Single Supervisory Mechanism, as they do not qualify as credit institutions as defined by the Capital Requirements Regulation (CRR)[2]. On 26 May 2017, however, the ECB published an opinion[3] on the Royal Decree creating and regulating the monitoring, control and evaluation commission for the out-of-court procedure established in Royal Decree-Law 1/2017, as requested by the Banco de España on behalf of the Secretary of State for Economy and Business Support.

The ECB was of the opinion[4] that reducing the mandatory percentage which the banking foundations must transfer to the reserve fund out of dividends (from 50% to 30%), and extending from five to eight years the

---

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

2 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013.

3 The ECB's competence to deliver an opinion is based on Articles 127(4) and 282(5) of the Treaty on the Functioning of the European Union and the third and sixth indents of Article 2(1) of Council Decision 98/415/EC.

4 https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2017_19__signed.pdf

period that foundations are granted to comply with their reserve fund target, changed the structure of the incentives laid down in Law 26/2013 on savings banks and banking foundations. The ECB was also of the opinion that this was contrary to the spirit of the original savings bank reform.

The rationale behind the reform of the savings bank sector was to set incentives to reduce controlling stakes of banking foundations in banks by imposing additional costs on banking foundations. Amending those provisions significantly reduces the incentives for banking foundations to divest their controlling stakes in credit institutions.

The reform of the saving bank sector banks was one of the key pillars of the financial assistance programme in Spain and the amendments appeared to unduly weaken its importance. The ECB considered that the economic rationale of the measure was not sufficiently explained in the draft Royal Decree. The draft Decree merely mentioned the 'current situation of financial markets' without providing further explanation as to the substantive reasons for the amendment. It did not expand on how the measure would help banking foundations, or the credit institutions they control, in the current situation which is characterised by strong and broad-based economic growth, from which the financial sector is benefiting. It was also not clear in what way the 'current situation of financial markets' has played a role to derive the extension of the horizon and the reduction of the percentage to be transferred for setting up the reserve fund.

The ECB furthermore considered that this reduction could have an impact on the level playing field, as it would put banking foundations that have already chosen to disinvest their controlling stakes in credit institutions in a disadvantaged position. Therefore, the ECB recommended that further consideration should be given to the proposed amendment of the reserve fund for banking foundations.

This opinion was published on the ECB's website and is non-binding. The legislation was not amended in response to the ECB's opinion.

Regarding potential risks related to solvency and governance for the significant institution you mention, please be informed that the ECB is conducting the Supervisory Review and Evaluation Process (SREP) at least annually for all the institutions it supervises directly. The scope of the SREP covers all requirements of the CRD IV and CRR. This includes, but is not limited to, governance and solvency matters.

Finally, regarding your question on whether the ECB can exercise its supervisory powers directly, the ECB is indeed empowered to require significant credit institutions under its supervision to take steps to address shortcomings regarding compliance with prudential requirements, the soundness of management and sufficiency of the coverage of risks in order to ensure the viability of the credit institution.[5]

Yours sincerely,

[signed]

Danièle Nouy

[5] https://www.ecb.europa.eu/pub/pdf/other/ssmguidebankingsupervision201409en.pdf