

## THE CHAIRPERSON



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16 December 2014

### **Banco Espirito Santo – Banco Espirito Santo Angola**

Dear Ms Gomes

I would like to provide you with an update on the enquiry that the EBA has carried out with Banco de Portugal ('BdP') in relation to Banco Espirito Santo ('BES') in as much as the EU parent institution of Banco Espirito Santo Angola ('BESA'), its wholly owned Angolan subsidiary.

The EBA's enquiry with BdP arises from the concerns conveyed to the EBA in your letter of 19 June 2014 on BESA's lending practices, reportedly to the benefit of unknown beneficiaries belonging or linked to the Angolan regime. The EBA's request for information to BdP has focused on the application of Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. Pursuant to the Directive, politically exposed people are subject to the customer due diligence measures provided thereof. Attention has been drawn in particular to Article 31(1) of the Directive, providing that credit institutions apply in their branches or majority-owned subsidiaries in third countries measures at least equivalent to those laid down in that Directive with regard to customer due diligence and record keeping. The EBA's enquiry has also relied on the Mutual Evaluation Report of the Republic of Angola (August 2012), prepared by the World Bank as part of the Financial Sector Assessment Program for the Republic of Angola, showing shortcomings in the application of the Angolan anti-money laundering regime.

The EBA submitted a first request for information on 20 August 2014, to which BdP replied by its letter of 4 September 2014. On that occasion BdP informed the EBA that BESA was subject to the application of local anti-money laundering laws and to the supervision of Banco Central de Angola; BdP also informed the EBA of the cooperation with the Angolan supervisor.

The EBA submitted an additional request of information to BdP by its letter of 10 October 2014, focusing on Article 31(1) of Directive 2005/60/EC as described above.

In reply to this second request for information, BdP - by letter its of 31 October 2014 - provided a comprehensive description of the framework adopted in Portugal and of BdP's supervisory approach to implement and ensure compliance with the anti-money laundering requirements applying to EU banking groups with branches or majority owned subsidiaries in third countries. BdP's note also elaborates on the application of that approach to BES in recent years.

The last developments described in the note relate to the broader in scope forensic audit commissioned by BdP in July 2014, including aspects of anti-money laundering implementation. Following the forensic audit interim report, BdP initiated administrative proceedings against BES in the month of October 2014. Such proceedings deal, among other matters, with the relationship between BES and BESA from different perspectives, including inadequate procedures in terms of money-laundering prevention. The EBA understands that this is the same initiative referred to by the Governor of BdP at the Hearing before the Parliamentary Committee of inquiry into the management of BES on 17 November 2014.

On the basis of the description provided in the note, the EBA appreciates BdP's understanding of Article 31(1) of the Directive as aiming at ensuring that equivalent measures to those laid down in the Directive are actually applied by branches and subsidiaries in non-EU jurisdictions and that compliance should not just be formal. In this regard the EBA, whilst noting that it is the discretion of the national supervisory authorities to determine the appropriate supervisory actions (off-site, on-site supervision etc) in accordance with, *inter alia*, its scale of priorities, resources etc, observes that timing of interventions is a central element for the effectiveness of supervision.

The EBA would like to take this opportunity to remind its commitment to the prevention of the use of the financial system for illicit purposes and the awareness of its steering role in the European context. It welcomes that the legislator in the 4<sup>th</sup> Anti-money laundering Directive currently under negotiation within the Trilogue, has envisaged conferring on the EBA, ESMA and EIOPA a mandate to develop Guidelines relating to the 'characteristics of a risk-sensitive approach to supervision and the steps to be taken when conducting supervision on a risk-sensitive basis'. The EBA considers this to be a first step towards a more effective and harmonized supervision in such sector providing the supervisor with an additional tool.

Yours sincerely

A handwritten signature in black ink, which appears to read 'Andrea Enria', is positioned below the text 'Yours sincerely'.

Andrea Enria