

THE CHAIRPERSON

Ana Gomes
Benedek Jávor
Dennis de Jong
Elly Schlein
Ignazio Corrao
Members of the European Parliament
Members of the European Parliament Intergroup
Integrity, Transparency, Corruption and Organised Crime (ITCO)

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16 December 2016

Your letter regarding investment from Isabel dos Santos in Portugal– update

Dear Ms Gomes
Dear Ms Schlein
Dear Mr Jávor
Dear Mr de Jong
Dear Mr Corrao

You may recall that we have been liaising with the Bank of Portugal regarding concerns you had raised about the adequacy of the Bank of Portugal's assessment of various investments by Isabel dos Santos in Portugal and the adequacy of Portuguese banks' anti-money laundering and countering the financing of terrorism (AML/CFT) controls.

I am writing to let you know that after several enquiries with the Bank of Portugal, Ms dos Santos is no longer a member of the management board of any credit institution in Portugal.

Ms dos Santos is still shareholder of two credit institutions, Banco BIC and BPI. The acquisition by Ms dos Santos took place in 2014. Directive 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (CRD) provides for the proposed acquisitions to be approved if they are not opposed within 60 working days as from the date of the written acknowledgment of receipt of the notification. Contrary to what is established in relation to the members of the management board or directors, CRD does not provide for ongoing supervision of the assessment criteria of shareholders, which, together with the nature of a shareholding, makes it very difficult to revoke the approval once it has been granted. The timetable for objecting to acquisitions is also very tight, particularly where it is necessary for competent authorities to carry out their own investigations of information provided in relation to events in third countries and in relation to politically exposed persons.

The Bank of Portugal has described to the EBA the process that it followed once it received notification of the proposed acquisitions, and responded to the EBA's questions about that process and its subsequent supervision of the credit institutions concerned. Due to professional secrecy obligations the EBA is not in a position to share the details of those discussions with you.



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The Bank of Portugal also informed the EBA that it is working with the Portuguese government to ensure that certain deficiencies in the Portuguese implementation of the qualifying holdings approval process are addressed as part of its transposition of the fourth anti-money laundering directive. In particular, the EBA understands that those deficiencies have restricted the ability of the Bank of Portugal to take into account the full range of sources of information that we consider is required under the guidelines issued by the European Supervisory Authorities, limiting its ability to oppose acquisitions to cases where there are existing findings against individuals concerning their reputation, knowledge, skills and experience.

Taking account of these restrictions and the ongoing process to remove them, and of the supervisory approach of the Bank of Portugal I consider that this is not a case where it would be appropriate to open an investigation into a breach of Union law. However, I can inform you that I have addressed a letter to Bank of Portugal asking it to ensure the adoption of all the necessary measures for the specific supervision of the credit institution and to ensure the effectiveness of the adopted rules on corporate governance and AML in the context of the shareholders of Banco BIC.¹ I have also asked the Bank of Portugal to inform the EBA regularly on the effectiveness of these measures.

On the other hand, this case shows that it would be appropriate to reflect on the strengthening of the instruments for the control of qualifying holdings in credit institutions, having in mind the difficulties in establishing grounds to object to an acquisition in a complex case within the time limits set by the directive and to a level of proof that will withstand judicial scrutiny. Other measures that should be explored could include providing for approval to be given subject to conditions, and providing for voting rights to be suspended if the conditions are not met, or if the qualifying holder is subsequently shown no longer to be suitable. Such changes would strengthen the position of supervisors by ensuring that, while acquisitions are not blocked if they cannot be opposed on a timely basis, more proportionate means are available to deal with concerns that arise during the approval process, and any control acquired can to be unwound if further evidence comes to light.

Finally, I would like to stress that the EBA continues to take AML/CFT issues very seriously and remains committed to working towards a more robust and effective European AML-CFT regime.

Yours sincerely

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

Andrea Enria

¹ The undergoing takeover of Banco BPI by another credit institution would suppress the qualifying holding position of Ms. Dos Santos.