



Mr. Pierre Moscovici,
Commissioner for Economic and Financial Affairs, Taxation and Customs

Ms. Věra Jourová,
Commissioner for Justice, Consumers and Gender Equality

Ms. Margrethe Vestager
Commissioner for Competition

Mr. Mario Draghi,
President of the European Central Bank

Mr. Jo Swyngedouw,
Interim Chairperson of the European Bank Authority

Strasbourg, 14th March 2019

*Dear Commissioners
Dear Mr. Draghi; Dear Mr. Swyngedouw,*

I write to you concerning the huge burden that Novo Banco (NB), as the successor of the collapsed Portuguese Banco Espírito Santo (BES), continues to pose to the Portuguese State and, therefore, to the Portuguese taxpayers.

As you are well aware of, Novo Banco was bought by the USA based Lone Star Fund, which acquired 75% of the capital, in an operation rushed out in 2017, under EC and ECB pressure and with the EC consent.

It is relevant to recall the earlier stage of the resolution of BES in 2014, which is becoming quite a study-case of what ought NOT to be done:

- National legislation passed in 2014 to “resolve” BES anticipated much of what was in the EU Directive¹ on recovery and resolution of credit institutions, by then just adopted and never implemented. **This alone is surprising: why would the EC authorize for the resolution of BES, which took place on the 3rd August 2014, to be done under national laws when the DRRB Directive was already in force in the EU since the 15th May 2014?**

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059&from=EN>



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- The BES resolution process was very closely accompanied and even steered by the Troika and the European Commission in particular.
- That process was supposed to involve a “bail-in” operation, through which Portuguese taxpayers would be protected from injecting any supplementary money to save the new institution.
- That is the version that the then Government and the Governor of the Central Bank instilled in the Portuguese people: a vision according to which NB, as a “good bank”, would contain only healthy assets, leaving all junk assets in the old “bad” BES.

However, the reality turned out to be very different and tremendously unfair: now the Portuguese are being informed that the State - therefore the taxpaying citizens - **will have to inject this year alone an additional 850 million euros, on the basis of the *Contingent Capital Agreement*, annexed to the contract made with Lone Star.**

That is in addition to the 800 million injected in 2018, plus 300 million from the Resolution Fund. All on top of the sum of 4.900 million euros injected in NB in 2014 (1 billion from the Resolution Fund and 3.9 billion from the State budget). **So, in total around 7 billion euros have already been dumped in NB so far!**

And more may still be required, since the contract between the Portuguese State and Lone Star includes the Contingent Capital Agreement that allows the mechanism to go up to a total of 3.9 billion € to be paid by the State.

That contract is, by the way, outrageously kept secret. Yet, it unfairly burdens the Portuguese State/taxpayers with *an* agreement that is enriching Lone Star. A Fund that promised to invest 1 billion in the NB, but was in fact given the bank, plus the 3.9 billion amount to be drawn as the Capital Contingency...

The enrichment process works as follows: NB undervalues the bank assets, selling them way below their market value, alleging that no better offers could be found. By doing this, NB has to register losses as imparities in the bank’s balance accounts. By reaching the agreed level of imparity, the contingency agreement kicks in and triggers the support of State and other banks bound by the Resolution Fund, up to the limit of 3900 million euros.

This means that, from the cap of 3.9 billion euros set as contingency capital, almost half of it was already consumed in just 2 years time.

It is in fact the Portuguese taxpayer who is paying for the resolution of BES/NB. **No “bail-in” rules were ever applied, it was rather a full and outrageous “bail-out” operation.**



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As if this was not enough, **the scheme is enriching Lone Star, and possibly others**, in more ways:

- On the other end of the buying operation of the undervalued assets, a series of funds connected to Lone Star may be buying these assets on extremely low prices, to later sell them for a considerable profit. This means that Lone Star may be buying from itself, at the expense of Portuguese State/taxpayers.
- Furthermore, it may also be that these undervalued assets - including a portfolio of 9.000 real estate properties - are actually in the process of being sold back to the Espírito Santo family and associates, via frontmen/women and companies linked with LoneStar. Suspicions raise further when it is known that Ms Ana Rita Barosa, formerly member of BES' board and indicated by its exCEO Ricardo Salgado as a successor to the management of the collapsed bank, now serves as the CEO of the Portuguese branch of the Spain-based fund Alantra, which has been put in charge by NB of finding a buyer to its real estate portfolio, valued (undervalued?) at 700 million.
- It should be noted that BES, when it was already being investigated by the Central Bank, was able to transfer from Portugal into offshore jurisdictions, such as Panama and Uruguay, around eight billion euros without any Tax Authority controls or anti-money-laundering controls (the so-called "Tax Blackout" organized in the period 2011/2015, exactly when the Troika was supposed to oversee Portugal's financial redress).
- Neither the exCEO Ricardo Salgado, nor any of his associates, were ever arrested. They have plenty of means and are let in a position to disturb the judicial investigation launched after the collapse of BES, which is under wraps till this day. The carousel of corruption, revolving doors, the Lone Star contract, the selling out of NB undervalued assets and the perverse contingency capital mechanism may serve as ideal cover up for the buyback of assets by the criminal organization which caused the collapse of the Group GES/BES.

The European Commission and the ECB cannot keep silent in view of all of these alarming developments, even more so given their own responsibilities in sponsoring this fake bail-in



resolution process. **Indeed, the Commission was co-responsible for to all of this, by authorizing the creation of the CCA - a mechanism that clearly goes against the spirit of the DRB Directive - thus shifting the burden from shareholders to the Portuguese taxpayers.**

The **capital contingency agreement** made with Lone Star Fund amounts to an **illegal state aid mechanism to a vulture fund** that is taking advantage of the Portuguese State and of the Portuguese taxpaying citizens.

The perversity of that mechanism must be stopped. The total failure of the “bail-in” solution, pushed by the Commission with the imposition of a very short deadline for the sale, must be acknowledged. Other solutions must be found to prevent the ongoing organized theft of public resources and to ensure full transparency and accountability in the evaluation and selling operations of NB’s assets.

Taking into consideration the above-mentioned reasons, which explain the public alarm in Portugal, and in order to ensure public transparency and parliamentary scrutiny, I ask you:

1. To impose **public disclosure of the SPA** between Lone Star and Novo Banco;
2. To determine an **auditing to evaluate** whether the **credits** that NB is now selling out - and which are registered as imparities or losses- were earlier registered at their real value. Or were they inflated to facilitate the “sale” (indeed, the gift) to Lone Star?
3. To impose **public disclosure of the list of NB’s largest debtors**, responsible for the imparities registered by the Bank. If billions were suddenly converted into imparities, who are the debtors, were they compelled to pay back?
4. To impose an **auditing** to find out whether it was really **impossible to recover those non performing credits**, and if best efforts were actually deployed.
5. To publish the **list of all the entities which are currently** buying those undervalued assets, NPLs, real estate assets or other assets. Who is making huge profits reselling those undervalued credits or assets?



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6. To assess the legal validity of the *Contingent Capital Agreement*, namely its compatibility with EU rules concerning state aid, **as well as to explain the reasons that led the Commission to accept such outrageous agreement.**
7. To assert whether **due diligence** was ensured by Banco de Portugal regarding the **ultimate beneficiary owner/owners** of the Lone Star Fund which bought 75% of NB.

Best regards,

Ana Gomes,
Member of the European Parliament