

## THE CHAIRPERSON

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### **Banco Espirito Santo**

Dear Ms Gomes

I refer to your letter of 19 June 2014, where you have brought to the EBA's attention (i) the serious irregularities in accounting practices of Espirito Santo International ('ESI') and the alleged involvement in such practices of the President of Banco Espirito Santo ('BES'), as well as (ii) the lending practice pursued by Banco Espirito Santo Angola ('BESA'), a subsidiary of BES, allegedly to the benefit of unknown beneficiaries, reportedly prominent individuals of the Angolan regime.

The European Banking Authority has enquired with Banco de Portugal ('BdP') about the above mentioned contentions. In response to our request, BdP has informed the EBA that:

- (a) ESI's accounting irregularities referred to in your letter have been identified by BdP in the course of a transversal supervisory exercise launched by BdP aimed at ascertaining the exposures of the main Portuguese banks towards the largest economic groups;
- (b) ESI, in as much as a Luxembourg and non-financial parent company, does not fall under the supervision of BdP or of any competent authority.

In the meantime, in consideration of the impact of the losses on the solvency situation of BES, BdP has been led to take early intervention measures and then to put BES into resolution. Whilst the competence for such actions rests on the national supervisory and resolution authorities, also considering that the bank resolution was carried out in accordance with Portuguese national law before the expiration of the implementation date of Directive 2014/59/EU on bank recovery and resolution, the EBA is monitoring the developments to remain informed of the situation.

With specific regard to ESI, it should be noted that by being a non-financial parent holding company, it did not fall within the consolidating perimeter under the supervision of BdP which extended up to Espirito Santo Financial Group S.A., a holding company with head office in Luxembourg providing banking and insurance services. ESI is a family owned, non-listed, parent holding company which is not captured by Article 111 of Directive 2013/36/EU on the determination of the consolidating supervisor nor by Article 11 of Regulation (EU) No 575/2013 on the application of regulatory requirements on a consolidated basis, and is not subject to solo supervision in Luxembourg.

On the basis of publicly available information, the EBA staff has learned that ESI's financial statements were signed off by a *commissaire aux comptes*, rather than an auditing firm. In this regard the EBA would like to note that is not competent to assess whether such practice is consistent with EU or national Luxembourg accounting and corporate law.

With specific regard to the transversal supervisory exercise launched by BdP aimed at ascertaining the exposures of the main Portuguese banks towards the largest economic groups, as a result of which ESI's accounting irregularities have come to surface, BdP mentions that such exercise followed previous targeted supervisory exercises carried out under the Troika Economic and Adjustment Programme, in the context of which the Commission and the European Central Bank where members of the Financial sector team, whilst the EBA was not involved.

According to the briefs released by BdP, in the early intervention phase it has focused its attention, inter alia, on the governance arrangements of Banco Espírito Santo with a view to strengthening the internal controls and to avoiding conflicts of interests. In this respect I would like to point out that such requirements are expressly stated in the EBA Guidelines on the assessment of the suitability of members of the management body and key function holders (EBA/GL/2012/06 of 12 November 2012) which entered into force on 22 May 2013. Under Paragraph 15 of those Guidelines it is provided that when assessing the suitability of a member of the management body, the supervisory authority should take into account the existence of "potential conflicts of interests, the ability to commit sufficient time, the overall composition of the management body, the collective knowledge and expertise required and the members' ability to perform their duties independently without undue influence from other persons". These Guidelines will be subject to review next year in order to take into account the experience gained in their application.

Lastly, with specific regard to the allegations contained in your letter in respect of BESA, the EBA's enquiries with BdP are in course and the EBA will keep you updated on any relevant findings.

Yours sincerely

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

Andrea Enria