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**Anti-money laundering and countering the financing of terrorism – the EBA's role**

Dear Ms Gomes

Thank you for your letter dated 25 November 2015. You asked what we do to ensure compliance with European anti-money laundering and counter-terrorist financing (AML/CFT) legislation. You also asked what we do to ensure that National Competent Authorities (NCAs) assess the fitness and propriety of those who own or control their financial institutions. You were particularly interested in any action we may have taken to satisfy ourselves that the Bank of Portugal is upholding high standards in this regard and that Portuguese banks are complying with European AML/CFT legislation.

I thought it might be helpful to briefly set out our role. I will then address the specific questions you raised.

We have a statutory duty to contribute to the stability and effectiveness of the European Union's financial system. As part of this, we aim to ensure the integrity, transparency and orderly functioning of financial markets.

Financial crime undermines these objectives, which is why we work closely with NCAs to achieve a sound, effective and consistent approach to both assessing and managing money- laundering and terrorist financing risk and the AML/CFT supervision of financial institutions across the European Union. As part of this, we expect NCAs to take steps to assess the fitness and propriety of those who own or control financial institutions to prevent them being abused for money laundering or terrorist financing purposes.

Our powers are set out in Regulation (EU) 1093/2010. We are working to foster supervisory convergence and ensure the consistent application of Union law, including in the area of AML/CFT, through setting regulatory standards on the one hand, and monitoring, reviewing and supporting the implementation of these standards on the other hand.

We draft binding technical standards, 'comply or explain' guidelines and opinions, monitor supervisory practices and use peer reviews to support the implementation of specific aspects of Union legislation and our own regulatory products where appropriate. We also regularly organise training for NCAs, promote close cooperation by facilitating the exchange of information among NCAs and participate in colleges of supervisors for cross-border banks.

You asked how we satisfy ourselves that NCAs' supervision of their sectors' AML/CFT systems and controls is sound and complies with European Union legal requirements.

We have reviewed the implementation of specific aspects of European AML/CFT legislation - for example, the application of the beneficial ownership requirements in Directive 2005/60/EC and the AML/CFT supervision of electronic money issuers - and made recommendations where appropriate. We are now focusing our resources on delivering the mandates set out in Directive (EU) 2015/849 and Regulation (EU) 2015/847.

Together with ESMA and EIOPA, we are currently consulting on guidelines under Articles 17, 18(4) and 48(10) of Directive (EU) 2015/849 to foster the development of a common understanding, by NCAs and credit and financial institutions, of what the risk-based approach to AML/CFT entails and how it should be applied. These guidelines provide credit and financial institutions with the tools they need to adopt a more effective and proportionate AML/CFT regime and guide NCAs not only in their assessment of the adequacy of financial institutions' AML/CFT systems and controls, but also in their allocation of supervisory resources in a way that reflects the money-laundering and terrorist financing risk associated with financial institutions in their sector. We are confident that these guidelines will be conducive to the implementation of a more effective and proportionate European AML/CFT regime.

You also asked what we do to ensure that NCAs manage the money laundering and terrorist financing risk where a considerable proportion of their jurisdiction's financial sector is beneficially owned by persons from other, high risk or offshore jurisdictions, as you are concerned about the impact this might have on the soundness and integrity of a Member State's financial system. You asked whether we require NCAs to provide us with information on the beneficial owners and the level of foreign investment of banks in their jurisdiction.

We do not hold or routinely require NCAs to provide us with information on the identity of persons who own or control financial institutions. But we expect NCAs to consider whether money laundering or terrorist financing is being committed or attempted, or whether a proposed acquisition could increase the money laundering or terrorist financing risk, when they assess acquisitions of qualifying holdings in credit institutions.

Our expectations are set out in joint guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, which we are in the process of finalising. Section 14 of these draft guidelines is clear that an NCA should oppose the acquisition where it has reasonable grounds to suspect that money laundering or terrorist financing is being attempted, or that a proposed acquisition would give rise to increased money laundering or terrorist financing risk. This could be the case where the source of funds used in the acquisition gives rise to concern or where the proposed acquirer is established in, or has relevant personal or business links to, a high risk jurisdiction with strategic deficiencies in its AML/CFT regime.

These guidelines replace similar provisions in non-binding guidance the European Supervisory Authorities' predecessors published in 2008.

Please note that work is currently underway on draft technical standards under Article 8(2) of Directive 2013/36/EU, which requires NCAs to refuse authorisation to commence the activity of a credit institution where they have reasonable grounds to suspect that money laundering or terrorist financing is being attempted or that the risk thereof would be increased, among others.

Please also note that we are issuing new governance guidelines, which are relevant in the AML/CFT context. One of these guidelines will replace our existing guidelines on internal governance, which make clear that where an institution operates through special purpose or related structures, or in jurisdictions that impede transparency or do not meet international banking standards, the management body shall only accept these activities when it has satisfied itself the risks will be appropriately managed. The other concerns the assessment of the suitability of members of the management body and key function holders in line with Article 91 of Directive 2013/36/EU, and takes into account the findings of our recent peer review of the extent to which NCAs already consider the fitness and propriety of members of the management body and key function holders, which may well be of interest to you.

Finally, you asked us whether we have taken any action to ensure that Portuguese banks are complying with their AML/CFT obligations and that the Bank of Portugal's assessment of those who own or control Portuguese financial institutions is sound.

As set out above, we have extensive convergence and coordination powers over the internal banking market; but we have only very limited direct, binding powers of intervention over NCAs and financial institutions. These powers of intervention apply where we determine that an NCA has breached Union banking law, in certain situations specified in banking legislation where there is a dispute between NCAs which we have been unable to resolve through conciliation between the NCAs, and where an emergency has been declared by the Council.

These powers do not enable us routinely to assess individual actions taken by NCAs, though we can investigate where we have grounds to believe that an NCA's course of action may be in breach of Union law or that Union law has not been applied. When deciding whether to investigate, we have to consider the degree of discretion available to NCAs in carrying out their tasks. Where Union law gives supervisors broad powers and a variety of ways of discharging their functions, we will be able to take action only where we find clear evidence that the supervisor's conduct was manifestly unreasonable or contrary to basic principles of law.

Regrettably as you may be aware, we are facing significant resource constraints. As part of the expected shift in the nature of our work from regulatory to supervisory tasks, our draft work programme for 2016 had envisaged expanding the resources allocated to breach of Union law investigations. Our final budget allocation reduced the number of new staff positions to a quarter of those requested. This means that we have limited ability to conduct broad ranging investigations potentially leading to breach of Union law proceedings. In areas where we are unable to investigate, we will however pursue our objectives through other means.

Finally, you will recall that we liaised with the Bank of Portugal last year to discuss concerns you had raised about the adequacy of group-wide AML/CFT practices in a Portuguese credit institution and its subsidiaries in third countries. We set out our findings in a letter to you on 16 December 2014. I can confirm that I asked the Bank of Portugal to respond to the letter from the European Parliament's Intergroup on Integrity, Transparency, Corruption and Organised Crime you co-signed. I have received the Bank of Portugal's response and I will revert to you and your colleagues in due course with the result of my enquiries.

Please rest assured that we are continuing to afford AML/CFT issues the importance they deserve and remain committed to contributing to the development of a more robust and effective European AML/CFT regime.

I trust that this information is helpful. Please do not hesitate to contact me should you have any questions.

Yours sincerely

Andrea Enria