EUROPEAN COMMISSION
DIRECTORATE-GENERAL JUSTICE and CONSUMERS

The Director General

Brussels,
JUST/B3/DV/vm
just.ddg.b.3(2018)5443619

Mr. Andrea ENRIA
Chairman

European Banking Authority
One Canada Square, Canary Wharf
London E14 5AA
United Kingdom

Subject: **request to investigate a possible breach of Union law under Article 17 of Regulation (EU) No 1093/2010**

Dear Chairman,

On 19 September 2018, Danske Bank published the results of its internal investigation into money laundering activities through its Estonian branch. This internal investigation shows that indeed money laundering seems to have been taking place through the Estonian Branch. The Bank itself identified deficiencies at several levels, for example at its governance and control systems, the non-reporting of suspicious transactions, its lack of identification of risks, the involvement of employees in illegal activities and other issues.

Under the Anti-Money Laundering Directive, particularly Article 48, Anti Money Laundering measures are supervised by the competent authorities of the host country, in this case Estonia. Where the bank operates establishments in another Member State, the competent authority of the home Member State (Denmark) is responsible for supervising the obliged entity's application of group-wide Anti Money Laundering/Counter Financing of Terrorism (AML/CFT) policies and procedures. The competent authority of the home Member State should also cooperate closely with the competent authority of the host Member State and should inform the latter of any issues that could affect their assessment of the establishment's compliance with the host AML/CFT rules.

It is our understanding that the Estonian AML supervisor carried out several inspections of the Danske Bank branch in Estonia to assess the extent of the Bank's compliance with

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the provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations that transpose into Estonian law the provisions of the Union legal framework for the prevention of money laundering and terrorist financing.

Questions remain however on the extent and depth of such inspections and whether sanctions were applied in an appropriate way. We have come to the conclusion that further analysis is required. The need for effective supervision and the need to apply effective, proportionate and dissuasive sanctions is a requirement that stems directly from Union legal framework.

It seems that the Estonian AML supervisor notified their Danish counterparts of the exposure of Danske Bank's branch to non-resident deposits. The actions of the Danish supervisor, as the one responsible for the compliance with group-wide AML/CFT policies and procedures remain unclear and raise questions as to whether the Danish supervisor carried out effective supervision of the Danske Bank group.

It is also questionable whether the exchange of information between the two supervisors was adequate and relevant, given that the AML problems at the Danske Bank Estonian branch did not relate only to non-resident deposits.

The European Banking Authority is called to play an important role in promoting convergence of supervisory practices to ensure a harmonised application of prudential rules. In this context, Article 17 of Regulation (EU) No 1093/2010 mandates it investigating alleged incorrect or insufficient application of EU law by national authorities on issues that, amongst others, pertain to the AML/CFT legislation.

The Commission therefore calls on the European Banking Authority to make full use of the power to investigate this possible breach or non-application of Union law both by the Estonian as well as the Danish supervisors. I would appreciate if you treat the matter with the necessary degree of urgency.

My colleagues and I remain at your disposal to provide further elements that may guide your analysis into this matter.

Yours sincerely,

(e-signed)
Tiina ASTOLA