

THE CHAIRPERSON



Floor 46, One Canada Square,
London E14 5AA UNITED KINGDOM

t: +44(0) 20 7382 1770

f: +44(0) 20 7382 1771

www.eba.europa.eu

+44(0)20 7382 1765 direct
andrea.enria@eba.europa.eu

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Tiina Astola
Director General
Directorate-General Justice and Consumers
European Commission
1049 Brussels
Belgium

6 June 2018

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

Dear Ms Astola,

I am writing you in relation to your letter of 23 October 2017 (Ref. Ares (2017)5170820) concerning the request to investigate a possible breach or non-application of Union law by the Maltese competent authorities in relation to Pilatus Bank.

After consultation with the Alternate Chairperson, I decided to open a formal Breach of Union Law Investigation in relation to the Maltese Financial Intelligence Analysis Unit (FIAU).

The initiation of the investigation is based on the following preliminary assessment:

1. The manner in which the FIAU conducted its investigation and planned its supervisory activities in relation to the high-risk institution does not appear to have been adequate to ensure compliance with the Directive, in particular Article 37 of 3rd AMLD, requiring competent authorities to effectively monitor and to take the necessary measures with a view to ensuring compliance with the requirements of the Directive by institutions.
2. The FIAU appears to have failed to ensure that the institution put in place adequate and appropriate AML/CFT policies and procedures, as required under Article 34 of the 3rd AMLD.
3. The FIAU neither imposed effective, proportionate and dissuasive sanctions nor any other supervisory measures to correct the shortcomings it had identified to ensure the institution's compliance with the 3rd AMLD's requirements, pursuant to Article 39 of this Directive.

4. Therefore, the FIAU appears to have breached Articles 37 and 39 of the 3rd AML Directive.

In accordance with Article 17 of EBA's founding Regulation and the EBA Rules of Procedure for Breach of Union Law Investigations, after giving to the FIAU the opportunity to express its views on the Report that we have sent to it, EBA Breach of Union Law Panel will be convened to decide whether there has been a Breach of Union Law and, if so, to propose some recommendations to the EBA Board of Supervisors for adoption. The EBA has 2 months to conclude its Investigation and therefore we expect to reach a conclusion by mid-July.

Concerning the Maltese Financial Services Authority (MFSA), I sent a letter to that Authority asking for additional information in relation to our preliminary findings by 10 June 2018. In particular, I asked the MFSA to provide information about the specific actions it has taken, or plans to take (within a specified timeline), in relation to some issues identified in the preliminary enquiry, such as the cooperation with the FIAU, the prudential supervision and interventions regarding the authorisation process, the internal controls and the business model of Pilatus Bank. The need for further action will be assessed on the basis of the reply of the MFSA.

I will keep you informed of the outcome the Breach of Union Law investigation on the FIAU and on the conclusion of the Preliminary Enquiry on the MFSA.

Yours sincerely,

[signed]

Andrea Enria