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

EBA-2019-D-2399

26 April 2019

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

Dear Ms. Astola,

I refer to your letter of 21 September 2018 (Ref. Ares(2018)4866024) concerning your request for the European Banking Authority to investigate a possible breach of Union law by the Estonian Financial Services Authority (Finantsinspeksiõon) and the Danish Financial Services Authority (Finanstilsynet) in connection with money laundering activities linked with Danske Bank and its Estonian branch in particular.

As I informed you on 18 February 2019, following a preliminary inquiry the EBA opened a formal Breach of Union Law investigation in this case under Article 17 of the EBA's founding Regulation (Regulation (EU) No 1093/2010). Following the opening of an investigation the EBA's founding Regulation requires the EBA to convene an independent Breach of Union Law Panel consisting of the EBA Chairperson and six other members of the Board of Supervisors to decide whether to propose a recommendation finding a breach of Union law for adoption by the Board of Supervisors.

Following extensive preparation and analysis by the EBA staff, the Breach of Union Law Panel proposed a draft recommendation to the EBA Board of Supervisors in relation to a number of breaches of obligations by Finantsinspeksiõon and Finanstilsynet under Directive 2006/48/EC (the Banking Consolidation Directive), Directive 2013/36/EU (the Capital Requirements Directive) and Directive 2005/60/EC (the Third Anti-Money Laundering Directive) in relation to their supervision of Danske Bank and its Estonian branch in the period 2007-2014.

At its meeting on 16 April 2019 the Board of Supervisors discussed the draft recommendation and, following a vote, the draft recommendation was rejected conclusively. In particular, a number of members of the Board of Supervisors, while acknowledging that with the benefit of hindsight there

were failings in the supervision by the two authorities, did not consider that those failings amounted to a breach of Union law and more generally questioned the use of the breach of Union law tool in cases covering periods which fell under earlier implementations of AMLD than AMLD4. Despite the recent decision to reinforce the EBA's breach of Union law powers in the area of anti-money laundering and terrorist financing (AML/TF), many members also considered that the relevant supervisory and cooperation requirements under the Directives referred to above are not clear and unconditional, and so cannot be used to found a breach of Union law recommendation.

In the light of this decision of the Board of Supervisors, the investigation into Finantsinspeksjoon and Finanstilsynet is now closed. The EBA will be reviewing how best to take forward the issues raised in the additional cases which you have referred to the EBA for a potential breach of Union law investigation and will update you on these in due course.

The EBA remains committed to improving standards of AML/CFT supervision across the EU. We will continue to review our regulatory products to ensure improvements across the EU, promote risk identification and information sharing amongst competent authorities, and assist in the implementation of AML/CFT standards and guidelines through training and AML/CFT implementations reviews of individual authorities.

Yours sincerely,

[SIGNED]

Jo Swyngedouw

EBA Interim Chairperson

CC Olivier Guersent, Director-General, DG FISMA