

## THE CHAIRPERSON



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**EBA-2020-D-3000**

John Berrigan  
Director-General  
Directorate-General Financial Stability, Services and  
Capital Markets Union  
European Commission  
Rue de Spa 2  
1000 Brussels  
Belgium

4 May 2020

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

Dear Mr Berrigan,

I refer to the letters from Tiina Astola, in her former position as Director-General of DG JUST, of 1 March 2018 and 3 April 2019 concerning allegations of money laundering at ABLV Bank and Swedbank respectively.

Ms Astola highlighted in both letters the role of the EBA in promoting supervisory convergence to ensure harmonised application of the regulatory framework and, in that context, Article 17 of Regulation (EU) No 1093/2010 which provides for the EBA investigating potential breaches of Union law by competent authorities in relation to anti-money laundering and counter-terrorist financing (AML/CFT) legislation. The letters concluded by calling on the EBA to use its powers to ensure that ABLV Bank and Swedbank satisfy the requirements laid down in Union law relating to AML/CFT and investigate the possible breaches of Union law.

By separate letter of 21 September 2018 Ms Astola called on the EBA to investigate with the necessary degree of urgency a potential breach of Union law by competent authorities in Denmark and Estonia in connection with serious money laundering concerns at Danske Bank. Given the circumstances in that case the EBA promptly undertook extensive preliminary inquiries and subsequently opened a formal BUL investigation in relation to the competent authorities concerned.

The EBA considers that high standards of financial supervision – including effective and timely identification of supervisory weaknesses relating to AML/CFT rules – are essential to the integrity of the Union’s financial system. Our assessment of how to address individual cases has to be realistic to ensure that the EBA can best contribute to supervisory convergence in this area.

Similar to our investigation of supervision of Danske Bank, the ABLV Bank and Swedbank cases each concern supervision of an individual bank in circumstances predating Directive (EU) 2015/849 (AMLD 4) where supervisory actions have subsequently been taken.

The EBA’s investigation relating to the supervision of Danske Bank ultimately concluded with the decision of the EBA Board of Supervisors on 16 April 2019 to close the case without finding a breach of Union law by the competent authorities. As recorded in the minutes of that Board of Supervisors meeting<sup>1</sup> there were concerns amongst Board members about whether the supervisory obligations for competent authorities under Union law were sufficiently clear and unconditional to properly support a finding that the competent authorities were in breach of Union law. Some Board members also raised questions about using the breach of Union law tool and suggested potentially more appropriate use of other tools, such as a peer review or lessons learned report, which could lead to disclosure of concerns about supervision by a competent authority without establishing that they amount to breaches of Union law. To similar effect, and taking into account that AMLD 4 replaced and strengthened the legislation that had applied at the time, the minutes recalled that many in the Board of Supervisors considered that the EBA should focus more on strengthening supervisory practices rather than investigating past failures of institutions and their supervisors.

Thus in view of the basis for closure of the Danske Bank case, there is no substantial prospect of the EBA proceeding to a BUL investigation for the ABLV Bank or Swedbank cases.

Focusing on what constructive action may be pursued within our remit, the EBA is carrying out a series of implementation reviews to assess the effectiveness of national competent authorities’ approaches to AML/CFT supervision. This is part of a multiyear plan with the aim to cover competent authorities from all Member States in the Union, including of course the competent authorities responsible for the supervision of ABLV Bank and Swedbank.

Results from the first AML implementation review<sup>2</sup> highlight that competent authorities are working hard to reform their approach to AML/CFT supervision, but that significant challenges remain in ensuring that AML/CFT supervision is risk based, proportionate and effective, in particular by moving away from a tick box compliance culture to assessing effectiveness of systems and controls, taking more proportionate and sufficiently dissuasive measures to correct deficiencies identified, and cooperating more effectively with domestic and international stakeholders.

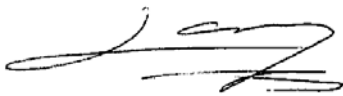
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<sup>1</sup> <https://eba.europa.eu/file/104481/>

<sup>2</sup> <https://eba.europa.eu/eba-acts-improve-amlcft-supervision-europe>

Our implementation reviews are continuing in 2020, noting the challenges of physical visits with multinational teams during the current COVID-19 pandemic. To ensure efficiency, we are cooperating with the Council of Europe who are assessing the implementation of Directive (EU) 2015/849 on the Commission's behalf.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'José Manuel Campa', is positioned below the text 'Yours sincerely,'.

José Manuel Campa

CC:

Martin Merlin, Director Dir D, Regulation and prudential supervision of financial Institutions, DG FISMA  
Dominique Thienpont, Legal Counsellor to Dir D, DG FISMA