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Mario Draghi  
President of the European Central Bank (ECB)

Brussels, 26 March 2018

**Subject: License of Pilatus Bank in Malta**

Dear President,

At its meeting on 26 October 2017, the Conference of Presidents of the European Parliament decided that an ad-hoc delegation be sent to Malta for a fact-finding mission, whose objectives were based on the resolution adopted by the European Parliament on 15 November 2017 on the rule of law in Malta. The mission was organised on 30 November - 1 December 2017. On this occasion, the delegation met with the Maltese Financial Services Authority (MFSA) and asked several questions about the ownership and licensing process of Pilatus Bank. MFSA assured the European Parliament that all checks had been done, especially on Mr. Ali Sadr as beneficial owner of the Bank. On the 16th of January, we have sent you the mission report, since part of the recommendations required action on the part of the ECB. In particular, we outlined in the report that the ECB and the EBA “should investigate whether the fact that Pilatus Bank continues to hold a license to operate in the EU warrants ECB/EBA intervention”.

Last week, Mr. Ali Sadr, Chairman and beneficial owner of Pilatus Bank, was arrested in the United States, on charges that he participated in a scheme to evade U.S. sanctions against Iran and funnel more than \$115 million paid under a Venezuelan construction contract through the U.S. financial system, as announced by American federal prosecutors.<sup>1</sup> Mr. Sadr has been charged with six different accusations, including bank fraud, conspiracy to commit bank fraud, money laundering and conspiracy to commit money laundering. This came as a particularly relevant new element to the European Parliament delegation, given the reassurances by MFSA a few months ago, who clearly were not in contact with US authorities.

Under Article 18 of the CRD IV<sup>2</sup>, credit institutions in the EU may be subject to withdrawal of authorisation when they no longer fulfil the conditions under which authorisation was

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<sup>1</sup> <https://www.reuters.com/article/us-usa-iran-crime/u-s-arrests-iranian-over-alleged-115-million-sanctions-evasion-scheme-idUSKBN1GW32E>

<sup>2</sup> DIRECTIVE 2013/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC



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granted, or when they commit one of the breaches referred to in Article 67 (1) of the same Directive. In particular, Article 14 §2 CRD IV requires competent authorities to *“refuse authorisation to commence the activity of a credit institution if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the shareholders or members, in particular where the criteria set out in Article 23(1) are not met<sup>3</sup>.”* In addition, Article 91 of CRD IV specifies the fit and proper requirements for the management body, which should be of *“good repute and possess sufficient knowledge, skills and experience to perform their duties.”*

In June 2017 already, we asked the ECB whether all Maltese financial institutions were complying with these requirements. In your response in August, you did not mention specific cases but highlighted that evidence of money laundering is of relevance for your institution’s assessment of board members of a financial institution as well as their licensing process. You are entitled to re-assess board members whenever new relevant facts emerge in order to ensure the suitability requirements are still met.

In line with Maltese national law, the MFSA decided to impose a freeze on the business of Pilatus Bank, including all deposits and withdrawals and any disposal of the bank’s assets.<sup>4</sup> The Regulator also ordered the removal of Mr. Ali Sadr as bank director, suspended his voting rights as a shareholder of the bank and ordered him to refrain from exercising legal and judicial representation of the bank. The MFSA has not announced further measures, including the possibility to propose the withdrawal of the authorisation of Pilatus Bank to operate.

Therefore, in line with Article 82 (1) of the SSM Regulation<sup>5</sup>, and in view of the gravity of the recent events, we urge the ECB to assess the adequacy of the measures taken by the MFSA and consider whether these circumstances warrant the withdrawal of the authorisation of Pilatus Bank by the ECB in accordance with the relevant Union law. In addition, we call on the ECB to systematically check whether the business model of other Maltese credit institutions pose risks stemming from financial criminality, e.g. when it comes to requirements about fit and proper management.

Furthermore, we urge the ECB to assess the adequacy of the organisational structure of the MFSA, and the independence of its regulatory and operational functions, notably the absence

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<sup>3</sup>Article 23 §1 CRD IV stipulates that the competent authorities shall assess the suitability of the proposed acquirer in accordance with the certain criteria, inter alia *“the reputation of the proposed acquirer”* and *“whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.”*

<sup>4</sup> <https://www.reuters.com/article/us-malta-banks/malta-freezes-pilatus-banks-operations-after-chairmans-arrest-idUSKBN1GY0Z9>

<sup>5</sup> COUNCIL REGULATION (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions



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of conflicts of interest among staff and Board of Governors. We regret that, after months of warnings and allegations on the integrity and compliance of Pilatus Bank's activities with Union law, dating back to reports and investigations of the murdered journalist Daphne Caruana Galizia, no visible action was taken by either Maltese or European supervisory or law enforcement bodies to ensure the integrity of the EU financial system.

We further disclose documents sent to us from Pilatus Bank in the aftermath of the ad-hoc delegation, where a meeting with Pilatus Bank representatives took place.

Best regards,

Ana Gomes

David Casa

Monica Macovei

Sophie In' t Veld

Sven Giegold

Takis Hadjigeorgiou