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Mr. Pierre Moscovici,
Commissioner for Economic and Financial Affairs, Taxation and Customs

Ms. Věra Jourová,
Commissioner for Justice, Consumers and Gender Equality

Ms. Margrethe Vestager
Commissioner for Competition

Brussels, 5th March 2019

Dear Commissioners,

I write to raise with you a tax-dumping scheme in place in Portugal, which requires your immediate attention.

According to Portuguese Law, since 2009, both Portuguese and foreigner citizens are, under specific conditions, entitled to apply to the so-called Non-Habitual Resident Status (*Estatuto de Residente Não Habitual* or "RNH"). Under this status, citizens with foreign-based income can benefit from a total income tax exemption for the duration of 10 years, while Portuguese-based income is subject to a flat income tax of 20% for the same period. This includes foreign retired people whose pensions are paid in their home countries and who are subject to a complete income tax exemption.

For this status to be granted, two conditions must be met: i) that applicants have not resided in Portugal for the last 5 years, and ii) that they have the intention of residing in Portugal for the future. This last criterion is fulfilled by residing physically in Portugal for the duration of 183 days or acquiring property (which is presumed as evidence of permanence).

The program was advertised as an engine for competitiveness and to attract the brightest minds and skills, while at the same time appealing to foreign retired citizens who wish to spend their retirement in Portugal.

For foreigners, this represents a lifetime opportunity. They can travel to Portugal, pay ZERO taxes over their pensions, and enjoy a sunny country with a relatively low cost of living. All of this with obvious costs for other European states, such as Finland, which has recently

suspended the 1970 double taxation agreement with Portugal, precisely on the basis of the fiscal inequality this system was creating among retired Finns.

For the Portuguese, it is a golden opportunity for fraud. Many Portuguese residents have been pretending to have no fiscal residence in Portugal for 5 years, through complex schemes of purchases with foreign cards and outside bank accounts, in order to benefit from the 20% flat income tax rates for 10 years.

The truth is that this system turns Portugal into a tax haven for retired people and for Portuguese fraudsters, who take advantage of the system to have tax exemptions regardless of their permanence in Portugal.

The numbers illustrate the dimension of the problem. As of 14 February 2019, the total number of beneficiaries in Portugal was 27 367. When one looks at the desegregated numbers however, the picture becomes clear: from those 27 367, an **astonishing 25 227** are said to practice "no high value added activity", which includes retired people. This is quite in contrast with the number of architects (15), university professors (48) or surgeons (1) who are qualified as practicing "high value added activities". It seems that the major objective of the program, to attract expertise and bright minds, is nothing but a blatant fiction.

When one looks at the division by nationality, the suspicions increase: the three main beneficiaries are nationals of France (6556), the UK (2980) and Italy (2900), closely followed by Brazil (2444), Sweden (2337) and Portugal (1889). This highlights how Portugal is creating a true tax haven for retired citizens inside the EU, but also, above all, how a few Portuguese nationals are taking advantage of the program, while the majority of the Portuguese citizens and SMEs are overburdened with confiscatory levels of taxation.

I have raised this discrimination with the Commission[1], in a question dated 04/06/2013, and the response was quite clearly stated that "Member States are not, however, entitled to discriminate against citizens of the EU who exercise their freedoms as conferred by the Treaties"[2]. I have also sent a letter to the Portuguese Minister of Finance and President of the Eurogroup, Mr. Mário Centeno, in May 2018, which I attach, and I have never received any response.

Moreover, one of the options to prove "the intention to reside in Portugal" is to acquire property. This is understood by the authorities as a signal of permanence. Of course, these schemes, alongside the Golden-Visa programs, are responsible for the creation of a real-estate bubble in Portugal, one that is impeding students from renting houses in cities such as Lisbon

[1] https://www.anagomes.eu/pt-PT/fiscalidade.aspx?newsid=0d8fa9c9-4077-4931-8cc9-833bc3eebd88
[2] https://www.anagomes.eu/pt-PT/fiscalidade.aspx?newsid=65f3c43b-9c3f-44b5-98b7-c985cabe1f37

or Oporto, and skyrocketing the prices of the real-estate market to unbelievable new highs. Owning property, as the Golden Visa schemes certainly demonstrate, prove nothing: it does not require nor ensure a real significant permanence.

All of this is scandalous, grossly unfair to Portuguese citizens and not loyal towards other EU Member States. Not only are the programme's objectives admittedly failing, by bringing mostly retired citizens, as the program is actively contributing to create tremendous inequality among European citizens, namely tax inequality. This must be stopped at once.

For these reasons, I ask you:

1. To formally point out to the Portuguese Government that this is a tax-dumping scheme that brings tax inequality and discriminates negatively against Portuguese nationals, hence breaching article 4 TEU and 21(2) of the Charter of Fundamental Rights of the EU;

2. To launch an immediate investigation, with a view to open infringement procedures, on the impact of such tax-dumping practices in Portugal, and eventually other Member States, in fostering tax inequality and, therefore, violating fair competition rules in the EU Single Market and in the EuroZone.

Best regards,

Ana Gomes

Ana Gomes,
Member of the European Parliament