



Yves Mersch  
*Executive Board Member*

[COURTESY TRANSLATION]

Ms. Cristina Sofia Dias  
Head of the Minister of State and for Finance's Office  
Ministry for Finance  
Av. Infante D. Henrique, 1  
1149-009 Lisboa  
Portugal

30 June 2014

Dear Ms. Dias,

**Re: Portuguese consultation on the Intergovernmental Agreement on the transfer and mutualisation of the contributions to the Single Resolution fund**

We refer to your letter of 23 June 2014, in which the Portuguese Minister of State and for Finance requests an ECB opinion on the Intergovernmental Agreement on the transfer and mutualisation of the contributions to the Single Resolution Fund (“Intergovernmental Agreement/IGA”).

The IGA is an instrument of public international law that complements the common understanding reached between the Council of the EU and the European Parliament on 27 March 2014, in the context of banking union, on a regulation establishing a Single Resolution Mechanism (including a Single Resolution Fund).

Pursuant to Article 127 of the Treaty on the Functioning of the European Union (the “Treaty”), Article 4 of the of the European System of Central Banks and of the European Central Bank (the “ESCB Statute”) and Article 1(2) of Council Decision 98/415/EC of 29 June 1998 on the consultation of the ECB by national authorities regarding draft legislative provisions, the ECB needs to be consulted on proposed Union acts (by Union institutions, e.g. the Council of the EU) and on draft national legislative provisions (by national authorities, e.g. ministries of finance).

The IGA is not a Union legal act within the meaning of Article 288 of the Treaty, but an international agreement. Moreover, the IGA was signed on 21 May 2014 by the representatives of euro area and non-euro area Member-States participating in the Single Supervisory Mechanism and in the Single Resolution Mechanism (‘Contracting Parties’) and cannot, therefore, be deemed to be a proposed Union act within the meaning of the first indent of Article 127(4) of the Treaty the Functioning of the European Union (the “Treaty”) and of the first indent of Article 4(a) of the ESCB Statute.

The IGA specifies the terms and conditions for the financing of the Single Resolution Fund by credit institutions in the Member States constituting Contracting Parties. Although it could be argued that the IGA contains provisions applicable to financial institutions which may materially influence the stability of financial institutions and markets, as referred to in the last indent of Article 1(2) of Decision 98/415/EC, the provisions of the IGA do not constitute draft national legislative provision within the meaning of the second indent of Article 127(4) of the Treaty and Article 4(a) of the ESCB Statute and Article 1(1) of Decision 98/415/EC. Furthermore, the IGA does not require implementation into Portuguese Law.

Accordingly, there are no legal grounds in the Treaty and the ESCB Statute or compelling reasons for the ECB to issue an *ex-post* opinion in this particular case.

We would appreciate if the ECB would be kept abreast of developments with respect to legislative provisions which may fall within the ECB's field of competence and warrant an ECB opinion in the future, as would be the case if there was any need of implementation of the IGA in Portugal, and thank you for having given the ECB the opportunity to express its views.

Yours sincerely,

[signed]

Yves Mersch