

EXECUTIVE BOARD OF DIRECTORS

**United Nations High Commissioner for Human
Rights Office**

Palais des Nations, 1211 Geneva 10, Switzerland

With copy via e-mail to: registry@ohchr.org

16 August 2021

Joint communication from special procedures on Venezuela

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Our Ref.: NB/CAE/310/2021

Dears Sirs,

We refer to your letter identified above, dated 12 July 2021, in which you raise questions relating to the release of funds held by Novo Banco on behalf of certain Venezuelan state-owned entities.

We are aware from media reports of the severe humanitarian crisis in Venezuela, which unfortunately affects those most vulnerable in the country.

Novo Banco is and has always been fully available to assist with transactions relating to funds held on behalf of these Venezuelan state-owned companies, but only where doing so would be fully in compliance with Novo Banco's legal and regulatory obligations. As we will explain in detail below, Novo Banco is not acting in any way due to the imposition of sanctions by the United States, the European Union, or any other foreign authority. Rather, Novo Banco is subject to strict anti-money laundering obligations under Portuguese law that prevent it from carrying out the instructions of competing claimants, each purporting to have the sole authority to instruct Novo Banco in relation to the Venezuelan state-owned companies.

By way of background, even before the constitutional crisis that began in January 2019, Venezuela's delicate situation and the risks arising from growing economic crime in Venezuela posed substantial anti-money laundering challenges to managing relationships with Novo Banco's Venezuelan state-owned customers. Those challenges were exacerbated by the political rupture in Venezuela resulting from the proclamation of Mr. Juan Guaidó as interim President of the Bolivarian Republic of Venezuela on 23 January 2019 – a position formally recognized by the Portuguese Government on 4 February 2019.

Under the Portuguese anti-money laundering legislation, it is only possible to conduct transactions on behalf of a client where we are confident that the individuals instructing the bank have the legal authority to act on the client's behalf. Following Mr. Guaidó's election, it has not been possible to determine who had the legitimate authority to instruct Novo Banco on behalf of its Venezuelan state-owned customers. Accordingly, under Portuguese anti-money laundering legislation, Novo Banco was left with no alternative but to terminate its contractual relationships with these clients in 2019. This view was validated by the Portuguese Courts when, following PDVSA and BANDES's legal challenges in 2019 that sought release of the funds, the Courts denied them injunctive relief they requested for that effect.

The process of terminating Novo Banco's contractual relationships with these clients was conducted in close cooperation with the Portuguese Public Prosecutor and with *Banco de Portugal* (the Portuguese banking regulator). In 2019, as part of this process, Novo Banco contacted both the representatives appointed by Mr. Nicolas Maduro's side and Mr. Juan Guaidó's side and requested that they jointly identify

a bank account to where the funds should be transferred. Those representatives failed to agree on a common destination for the funds and provided Novo Banco contradictory instructions, each insisting that their side had the sole authority to direct the funds to differing destinations.

Immediately after this, Novo Banco received orders from the Public Prosecutor and the Portuguese Criminal Courts blocking all the funds existing in the impacted bank accounts and prohibiting Novo Banco from carrying out any transactions on behalf of these clients. We understand that these orders were issued in connection with ongoing criminal investigations and have nothing to do with the legitimacy issues which ultimately led Novo Banco to terminate the contractual relationships with the Venezuelan state-owned clients.

As some of these freezing orders have been recently lifted, and considering that the doubt regarding who had the legitimate authority to instruct Novo Banco on behalf of its Venezuelan state-owned customers persisted, Novo Banco recently initiated judicial proceedings that allow Novo Banco to deposit the impacted funds in the care of the Portuguese Courts, after which the Portuguese Courts will determine who is entitled to them (these are called "consignation in deposit" proceedings). Further to a judicial order issued for that effect, Novo Banco has meanwhile transferred most of its former Venezuelan state-owned clients' funds to the Portuguese Courts and it is now up to the Portuguese judicial system to determine who has the legitimacy and authority to finally direct their dispensation.

We hope that this clarifies that the conduct of Novo Banco is by no means related with an alleged applicability of economic sanctions imposed by any authority, but rather that Novo Banco's conduct is guided by its obligations arising from Portuguese legislation that is applicable to the banking sector. Novo Banco's position is solely guided by the rule of law and not by political innuendos. It is neither a matter of undue implementation of unilateral sanctions nor overcompliance, but rather Novo Banco's strict compliance with Portuguese law.

Finally, aside from the threshold anti-money laundering considerations discussed above, Novo Banco is not aware of any specific payment orders received from Venezuelan state-owned companies in connection with the provision of medical assistance or ensuring the guarantee of the basic economic and social rights of its people by the Venezuelan State. To the contrary, the payment instructions that identified the purpose of the requested transfers referred to the fulfilment of alleged commercial obligations of the state-owned entities rather than the humanitarian considerations you raised in your letter.

In view of the above, Novo Banco strongly disputes any causal link between Novo Banco's conduct and the failure to fund the expenses identified in your correspondence. Novo Banco has fiduciary duties in the management of its clients' funds and it was exactly the fact that Novo Banco could not lawfully discharge those duties that led to the closure of the bank accounts and termination of contracts with the Venezuelan state-owned clients.

For the reasons set out above, Novo Banco does not agree that the information in your possession regarding the relationship with its clients is reliable or complete, and that Novo Banco's actions are based in sanctions imposed by the United States of America, any other country or organization.

We remain available to cooperate in all aspects deemed necessary to the extent permitted by its legal obligations.

Please note that a copy of this correspondence is being sent to the Portuguese Minister of Foreign Affairs and to the Portuguese Banking authority, Banco de Portugal.

Yours sincerely,

Novo Banco, S.A.



Luísa Soares da Silva
Executive Board Member



António Ramalho
CEO