

Letter from the European Ombudsman to the European Central Bank on the European Central Bank's refusal of public access to documents concerning an alleged violation of EU law by a bank reported via the breach reporting mechanism

Correspondence - 24/11/2020

Case 1990/2020/MIG - **Opened on** 24/11/2020 - **Decision on** 19/02/2021 - **Institution concerned** European Central Bank (No maladministration found) |

Mr Roman Schremser

Chief Compliance and Governance Officer

Directorate General Secretariat

European Central Bank

Strasbourg, 24/11/2020

Complaint 1990/2020/MIG

Subject of case: The European Central Bank's refusal of public access to documents concerning an alleged violation of EU law by a bank reported via the breach reporting mechanism

Dear Mr Schremser,

The Ombudsman has received a complaint from X against the ECB. The complaint concerns the ECB's refusal to grant public access to documents relating to a breach reporting file and to an administrative supervisory file. She has asked me to deal with the case on her behalf.

The complainant made a request for public access to documents pertaining to an investigation against a bank that appears to have been based on information provided by the complainant via the breach reporting mechanism. The ECB identified 25 documents as falling within the scope



of the complainant's request but did not specify them. The ECB ultimately refused public access with its confirmatory decision of 24 September 2020 [1] , relying on a general presumption of non-disclosure based on the confidential nature of the documents.

We have decided to open an inquiry into the complaint.

Decision ECB/2004/3 states that applications for access should be handled promptly. It is in line with this principle that the European Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review a list of the specific documents which the ECB identified as falling within the scope of the complainant's access request. We would be grateful if the ECB could provide such a list, detailing the date, title and nature of all 25 documents by **Wednesday, 2 December 2020** [2] .

The list of the documents subject to the public access request will be treated confidentially, along with any other material the ECB choses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the European Ombudsman's files shortly after the inquiry has ended.

The ECB's position has been set out in its confirmatory response of 24 September 2020. However, should the ECB wish to provide additional views, to be taken into account by the Ombudsman during this inquiry, we would be grateful if they could be provided to us by **Friday, 18 December 2020** . Specifically, it would be useful if the ECB could provide information on the investigation at issue, in particular, what the status of the investigation is and why there are two files pertaining to it (a breach reporting file and an administrative supervisory file). We would also be happy to obtain this information in a meeting between the ECB and the Ombudsman's inquiry team, at which we can also discuss any other matters arising from this case.

The responsible case-handler, Michaela Gehring, can be reached on michaela.gehring@ombudsman.europa.eu [Link], to arrange for the transmission of the document and the meeting. I too remain at your disposal.

Yours sincerely,

Rosita Hickey Director of Inquiries

[1] Reference CL/20/256

[2] The ECB may wish to share the list via Astra, which it has used in previous cases.