

## Report on the meeting of the European Ombudsman's inquiry team with ECB representatives

Correspondence - 18/11/2020

**Case** 1871/2020/OAM - **Opened on** 06/11/2020 - **Decision on** 22/03/2021 - **Institution concerned** European Central Bank ( No maladministration found ) |

**COMPLAINT** : 1871/2020/OAM

**Case title** : How the European Central Bank (ECB) dealt with a request for public access to documents related to the German constitutional court's ruling on the ECB's Public Sector Purchase Programme

**Date** : Wednesday, 18 November 2020

**Location** : The meeting took place via videoconference

**Present**

*European Central Bank (ECB)*

Chief Compliance and Governance Officer, DG Secretariat

Director General, DG Legal Services

Principal Compliance Officer, CGO Division, DG Secretariat

Compliance Officer, CGO Division, DG Secretariat

Head of Institutional Law Division, DG Legal Services

Head of the Money, Credit and Financial Accounts Section, Monetary Analysis Division, DG Monetary Policy

Principal Economist, DG Monetary Policy

*European Ombudsman*

Ms Rosita Hickey, Director of Inquiries



Mr Fergal O'Regan, Chief Legal Expert

Ms Oana Marin, Inquiries Officer

Mr Markus Spoerer, Inquiries Officer

## **Purpose of the inspection of documents / meeting**

The meeting was held in the context of an inquiry into a complaint that the ECB did not provide public access to selected documents related to the German constitutional court's ruling on the ECB's Public Sector Purchase Programme that the ECB authorised, subject to confidentiality safeguards, the Deutsche Bundesbank to disclose to the German Government and the German Bundestag. The purpose of the meeting was to obtain further information on the ECB's refusal to provide public access to these documents.

## **Introduction and procedural information**

The meeting took place via videoconference on 18 November 2020 from 11:00h to 12:00h.

The Ombudsman's inquiry team thanked the ECB's representatives for attending the meeting and outlined the legal framework applicable to meetings and inspections held by the Ombudsman.

The Ombudsman's inquiry team explained that a report on the meeting would be drawn up and that the ECB would have the opportunity to review the report before it would be sent to the complainant for comments. The Ombudsman's inquiry team informed the ECB representatives that they should signal any confidential information disclosed during the meeting and that such information would not be shared with the complainant without prior agreement of the ECB.

## **Information exchanged**

### *1. Background of the complaint*

The ECB representatives explained the institutional context in which the request for public access was made. The German constitutional court ruling of 5 May 2020 was, in jurisdictional terms, a national matter in which the ECB was not directly involved. Nonetheless, the ECB made an effort to put the Bundesbank, member of the Eurosystem, in a position to respond to the German authorities with authentic documentation in order for the Bundesbank to most effectively follow up on the ruling.

The ECB has received several applications for access to documents from the same



complainant. The ECB representatives explained that two of the requested documents (namely, letter sent by Governor Weidmann to the ECB of 18 June and the ECB's reply of 25 June 2020) have been disclosed to the complainant and offered to share these with the Ombudsman's inquiry team. The ECB has provided the complainant with explanations as to why the other documents cannot be disclosed.

## *2. Reasoning for refusing public access to the requested documents*

The ECB representatives explained that the ECB's authorisation to allow the Bundesbank to disclose the requested documents to the German authorities was exceptional and had to be seen in the specific constellation and the institutional constraints of the case at hand. Moreover, the disclosure was subject to safeguards that would ensure protection of the documents equivalent to the one required by the ECB's confidentiality regime. Therefore the exceptional release vis-à-vis the German authorities within the established safeguards was not undermining the interests protected via the public access regime.

The ECB representatives further explained that communication is a monetary policy tool. As such, the ECB primarily releases 'targeted' information to the public. Great progress has been made in this area in recent years, with the result that the ECB now assures a high level of transparency, for example, via extremely detailed communications on its monetary policy decisions, in particular in its Governing Council meeting [accounts \[Link\]](#). Releasing documents drawn up for internal use runs the risk that market participants draw conclusions that were not intended and cannot necessarily be anticipated. The fact that ECB documents are very closely scrutinised by market participants is highly relevant in this regard.

The Ombudsman's inquiry team acknowledged that one document, document 8, was manifestly covered by an absolute exception as confirmed by recent case law (case [T-730/16 \[Link\]](#), *Espírito Santo Financial Group v ECB* ).

For six documents, the ECB representatives explained that they contain assessments prepared internally to inform specific monetary policy decisions. Their release could lead to unintended market reactions.

When asked whether the disclosure of information contained in documents drawn up in 2014 can still have an effect on current monetary policy and possible knock-on effects on market operations, the ECB representatives replied that past assessments continue to be relevant today. The purchase programmes are ongoing and the policies remain relevant into the future. Making public these internal deliberations could risk reducing the margin of manoeuvre of the ECB in its decision-making and thus negatively impact the effectiveness of the ECB in pursuing its mandate as defined in the Treaty for the benefit of all euro area citizens and economic agents.

Regarding two documents prepared for courts proceedings, which have been completed in the meantime, the ECB representatives explained that new filings/court cases regarding the same subject matter have been submitted, according to press reports. Those documents are therefore



still deserving of protection.

### *3. Documents provided to the Ombudsman's inquiry team*

The ECB had made electronically available, via secured means, the seven documents to which public access had been denied (listed below, documents 2-8). Ms Marin and Mr Spoerer of the Ombudsman's inquiry team were given access on 16 November 2020 (and Ms Hickey was given access after the meeting). An additional document, related to the subject matter and disclosed to the applicant in a separate application, was shared with the Ombudsman's inquiry team after the meeting.

*[1. Document released: Letter to Jens Weidmann dated 25 June 2020]*

2. Background note, entitled "Expand Euro Area Asset Purchase Programme: Monetary Policy Considerations", dated 21 November 2014
3. Presentation entitled "Second Interim Report on Complementing the June-October Policy Package", 7 January 2015
4. Antworten zum dem Fragenkatalog gemäß §§ 27, 27a BVerfGG on the Expanded Asset Purchase Programme, 15 November 2016
5. Schriftliche Erklärung in der Rechtssache C-493/17, 30 November 2017
6. Excerpt from ECB policy briefing note of June 2020
7. Trial account of the monetary policy meeting on 4 December 2014
8. Excerpt from the minutes of the 506th Governing Council meeting on 3-4 June 2020 - Agenda item "Monetary policy decisions", 23 June 2020

## **Conclusion of the meeting**

The Ombudsman's inquiry team thanked the ECB representatives for their time and the explanations provided. The Ombudsman's inquiry team will further assess the documents provided ahead of the meeting and will revert to the ECB with further questions if needed.

Brussels, 18 November 2020

Rosita Hickey Oana Marin

Director of Inquiries Inquiries officer

