

The European Banking Authority's (EBA) refusal to grant public access to the votes and debates of its Board of Supervisors on an alleged breach of EU law by national supervisory authorities

Case 615/2021/TE - Opened on 29/04/2021 - Decision on 07/02/2022 - Institution concerned European Banking Authority (No further inquiries justified) |

The complainant sought public access from the European Banking Authority (EBA) to documents showing details of the votes of the EBA's Board of Supervisors concerning an investigation in which it found that national authorities had breached EU law ('BUL recommendations') with respect to the supervision of two specific banks. The EBA refused access to the documents in question. In doing so, it invoked an exception provided for under the EU's rules on public access to documents, arguing that releasing these documents would seriously undermine its decision-making process and that there is no overriding public interest in disclosing the documents.

Based on her inquiry, the Ombudsman sent a preliminary assessment to the EBA, setting out her findings. In particular, the Ombudsman considered that the EBA did not provide sufficient reasons for refusing access, and should have disclosed the voting records. She also found that a practice of proactive transparency should apply to BUL recommendations, as applies to EU law making in general.

In reply, the EBA agreed to publish documents related to the two decisions at issue in this case. The Ombudsman welcomed this and encouraged the EBA to do so proactively in future.

The preliminary assessment also assessed the decision-making procedure for BUL recommendations, and provisions for preventing conflicts of interest. The Ombudsman took the view that Board members should not vote on whether the EBA should issue a BUL recommendation concerning their own respective supervisory authorities, as had happened in the votes at issue in this case. However, as the EBA has since adopted new internal rules for the Board that cover conflicts of interest, which appear to address this issue, the Ombudsman considers that no further inquiries are justified.