

Letter from the European Ombudsman to the European Banking Authority (EBA) on its 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

Correspondence - 29/04/2021

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

Mr José Manuel Campa

Chairman

European Banking Authority (EBA)

Strasbourg, 29/04/2021

Complaint 615/2021/MAS

Subject of case: The European Banking Authority's (EBA) refusal to grant public access to documents containing information on the votes and debates of its Board of Supervisors on alleged breaches of EU law by national regulatory authorities - EBA's e-mail sent on 25 March 2021 on behalf of the Executive Director

Dear Mr Campa,

I have received a complaint from Mr X against EBA.

I have decided to open an inquiry into this complaint. It concerns EBA's refusal to grant public access to documents containing records of the votes of its Board of Supervisors on alleged breaches of EU law by national regulatory authorities in two instances (Danske Bank and Pilatus Bank). The complaint also concerns access to the minutes of the meeting of the Board



of Supervisors, in which the Pilatus Bank case was discussed.

As concerns voting records, the complainant considers that such records should be disclosed in general. Moreover, the complainant is particularly concerned that the representatives of the supervisory authorities that had allegedly breached EU law, participated in the votes. In the view of the complainant, such participation implies a conflict of interests and calls for increased transparency.

EBA refused to disclose the voting records on the ground that disclosure would harm the decision-making of EBA; disclosure could impede frank discussions amongst the members of the Board and expose them to external pressure. As to the complainant's particular concern, EBA's reply just referred to Article 42 of its founding Regulation according to which members of the Board must act in full independence in the interest of the Union. The reply did not state what measures EBA took or takes to avoid possible conflicts of interests.

As concerns the minutes, EBA referred to its practice of publishing minutes. However, it appears that the minutes of the meeting in which the Pilatus Bank case was discussed have not been published. [1]

As a first step, I consider it necessary for my inquiry team to review the voting records and the minutes of the meeting during which the Pilatus Bank case was discussed. I would be grateful if these documents could be shared with my Office by 10 May 2021. [2]

In addition, I have concluded that it would be helpful to receive a written reply from EBA to this complaint, in particular as concerns the voting records. Please note that I am likely to send your reply and related enclosures to the complainant for comments [3] and may decide to publish it. I would be grateful to receive your reply by 31 May 2021.

If necessary, my inquiry team may contact EBA later to set up a meeting with EBA representatives.

If you have any questions, please contact the responsible inquiries officer, Mr Markus Spoerer.

Yours sincerely,

Emily O'Reilly European Ombudsman

[1] According to EBA documents the meeting took place on 3 July 2018; however, there are no minutes on EBA's website of a meeting on 3 July 2018; see the EBA's recommendation to the Maltese Financial Intelligence Analysis Unit of 11 July 2018,

<https://www.eba.europa.eu/sites/default/documents/files/documents/10180/2257858/9bbe5ac5-f37c-42ca-9bdd-ea8>



[2] If EBA wishes to submit the documents by encrypted e-mail, please use the following e-mail address: eo-secem@ombudsman.europa.eu. Please contact eo-secem@ombudsman.europa.eu by regular e-mail before doing so. Confidential documents will be handled and stored in line with their confidential status and will be deleted from the Ombudsman's files shortly after the inquiry has ended. Confidential documents will not be shared with the complainant unless EBA agrees.

[3] If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainant, please mark them 'Confidential'.