

Decision of the European Ombudsman concerning complaint 1040/2021/OAM on how the European Commission dealt with an infringement complaint against Germany concerning a ruling of its constitutional court

Decision

Case 1040/2021/OAM - Opened on 29/06/2021 - Decision on 29/06/2021

Dear Mr X,

On 3 June 2021, you complained to the European Ombudsman about how the European Commission dealt with your infringement complaint (CHAP(2020)01279) against Germany.

In your complaint to the Commission of 6 May 2020, you argued that Germany had infringed the principles of primacy of EU law and of loyal cooperation when the German constitutional court handed down a judgment on the European Central Bank's Public Sector Purchase Programme. [1]

In your complaint to the Ombudsman, you contend that the Commission did not keep you informed about the state of play of your infringement complaint, despite your requests. You also contend that the Commission failed to take a decision on the infringement complaint within its standard time limit of one year. [2]

Under the rules [3] governing the work of the Ombudsman, it is a pre-condition for opening an inquiry into a complaint that the Ombudsman finds grounds for an inquiry. [4]

After a careful analysis of all the information you have sent us, I regret to inform you that the Ombudsman cannot deal with your complaint as there are not sufficient grounds to open an inquiry [5] .

There are not sufficient grounds for opening an inquiry because the Commission has in the meantime taken a decision on the matter raised in your infringement complaint. This decision has been taken shortly after one year has passed since the Commission registered your complaint.

On 9 June 2021, the Commission announced that it had sent a letter of formal notice to



Germany for violation of fundamental principles of EU law, in particular the principles of autonomy, primacy, effectiveness and uniform application of Union law, as well as the respect of the jurisdiction of the European Court of Justice under Article 267 of the Treaty on the Functioning of the EU. [6] This infringement procedure is registered under reference number INFR(2021)2114. [7]

I hope you find these explanations helpful.

Yours sincerely,

Tina Nilsson

Head of the Case-handling Unit

Strasbourg, 29/06/2021

[1] Judgment of the BVerfG Second Senate of 05 May 2020 - 2 BvR 859/15, available at http://www.bverfg.de/e/rs20200505_2bvr085915en.html [Link]

[2] In line with the Commission's communication *EU law: Better results through better application* (Annex, point 8), available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN) [Link]

[3] These are set out in the Treaty on the Functioning of the European Union and in the Statute of the European Ombudsman.

[4] Article 228 of the Treaty on the Functioning of the European Union says:

"In accordance with his duties, the Ombudsman shall conduct inquiries for which he finds grounds (...)"

[5] Full information on the procedure and rights pertaining to complaints can be found at <https://www.ombudsman.europa.eu/en/document/70707> [Link]

[6] See notice published on the Europa website, section "4. Justice" https://ec.europa.eu/commission/presscorner/detail/en/inf_21_2743

[7] You can follow this infringement procedure at the following address: https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_cod [Link]