

## How the Court of Justice of the European Union handled concerns about public comments made by an advocate general of the Court concerning the draft EU Digital Markets Act

Correspondence - 19/07/2021

**Case** 1072/2021/NH - **Opened on** 19/07/2021 - **Decision on** 27/06/2022 - **Institution concerned** Court of Justice of the European Union ( No further inquiries justified ) |

Mr Koen Lenaerts

President

Court of Justice

Strasbourg, 19/07/2021

Complaint 1072/2021/NH

**Subject:** How the Court of Justice of the European Union handled concerns about public comments made by an advocate general of the Court concerning the draft EU Digital Markets Act

Dear President,

I have received a complaint from the 'Bureau Européen des Unions de Consommateurs' (BEUC) against the Court of Justice of the European Union (CJEU).

The complaint concerns the comments made by an Advocate General in an interview. The complainant is dissatisfied with how the CJEU has handled the matter, as it considers that the comments made on a pending legislative proposal have adversely affected the public



perception of the Advocate General's impartiality. This, BEUC says, goes against the “ *Code of Conduct for Members and former Members of the Court of Justice of the European Union* ”.

After a careful analysis of the facts, my view is that the matter is an administrative one and merits an inquiry.

I take note of the explanations you provided to BEUC in your letter of 8 April 2021. You said that “ ... *in the assignment of any new case to a Member of the Court, the public perception of the impartiality of the Member concerned in the handling of that case is always duly taken into account* . ” The complainant takes the view, drawing on Article 4(2) of the Code of Conduct, that the duty of impartiality is broader and should be adhered to also outside of the context of a particular case before the CJEU. Specifically, the complainant contends that it is inappropriate for a member of the Court to comment on a pending legislative proposal.

I would be grateful to receive the CJEU's views on this complaint by 30 September 2021. Thank you for your cooperation.

Please note that I am likely to send your reply and related enclosures to the complainant for comments [1] . We may also decide to publish your reply. The responsible inquiries officer is Mr Nicholas Hernanz, who is at the Court's disposal for any question.

Yours sincerely,

Emily O'Reilly

European Ombudsman

19/07/2021

Enclosure:

· Complaint 1072/2021/NH

[1] 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’. Encrypted emails can be sent to our dedicated mailbox [eo-secem@ombudsman.europa.eu](mailto:eo-secem@ombudsman.europa.eu). Please contact [eo-secem@ombudsman.europa.eu](mailto:eo-secem@ombudsman.europa.eu) beforehand. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.