

## **Decision in the case 1511/2021/JN on how the European Securities and Markets Authority (ESMA) dealt with a complaint that a bank and the financial markets authorities in Austria and Liechtenstein breached EU law**

Decision

**Case 1511/2021/JN - Opened on 14/02/2022 - Decision on 14/02/2022 - Institution concerned** European Securities and Markets Authority ( No maladministration found ) |

Dear Mr X, dear Mr Y,

You submitted a complaint to the European Ombudsman against the European Securities and Markets Authority (ESMA) concerning how it handled your complaint about alleged breaches of EU law by a bank and the financial markets authorities in Austria and Liechtenstein.

After a careful analysis of all the information you provided with your complaint, we have decided to close the inquiry with the following conclusion:

**There was no maladministration by ESMA.**

According to the rules establishing ESMA, which set out its powers in cases of alleged breaches of EU law [1] , ESMA is required to outline how it intends to proceed with a case and, *where appropriate* , investigate the alleged breach or non-application of EU law. This means that ESMA has discretion in deciding whether or not to launch an investigation, as the Court of Justice of the European Union recently confirmed. [2]

The role of the Ombudsman in such cases is thus limited. The Ombudsman can verify if ESMA explained properly how it has exercised its discretion in a given case, but cannot interfere in ESMA's exercise of its discretion.

ESMA informed you that it does not consider your case to constitute evidence of systemic non-compliance with EU law or a general supervisory issue, and that the relevant national authorities would be best-placed to deal with the issues you raise. It has the discretion to take this view and we consider that it has clearly explained how it has exercised its discretion in this case.



In light of the above, we have decided to close the case.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 14/02/2022

[1] Article 17(2) of the ESMA Regulation:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02010R1095-20200101&qid=1632399730493>  
[Link]

[2] Case T-760/20 *Jakeliunas v. ESMA* , order of the General Court of 10 August 2021, point 29.