

Decision of the European Ombudsman on complaint 1939/2002/IJH against the European Central Bank

Decision

Case 1939/2002/IJH - Opened on 05/12/2002 - Decision on 17/06/2003

Strasbourg, 17 June 2003

Dear Mr G.,

On 17 November 2002, you renewed your complaint 1354/2002/IJH to the European Ombudsman against the refusal of the European Central Bank (ECB) to provide you with statistics about stocks and flows of euro banknotes. That complaint, made on 17 July 2002, was deemed inadmissible under Article 2 (4) of the Statute of the Ombudsman because you had not completed the confirmatory application procedure provided by the ECB's rules on public access to documents.

Your renewed complaint was registered as 1939/2002/IJH.

On 5 December 2002, I forwarded the complaint to the President of the ECB. The ECB sent its opinion on 18 February 2003. I forwarded it to you with an invitation to make observations, which you sent on 17 March 2003.

I am writing now to let you know the results of the inquiries that have been made.

THE COMPLAINT

In November 2002, the complainant renewed his complaint to the Ombudsman against the refusal by the European Central Bank (ECB) to provide him with statistics about stocks and flows of Euro banknotes. His earlier complaint, made in July 2002, was deemed inadmissible under Article 2 (4) of the Statute of the Ombudsman, because the complainant had not followed the procedures laid down in the ECB's rules on public access to documents (1) . Specifically, he had not made a confirmatory application and waited the prescribed time for an answer.

The complainant subsequently made a confirmatory application, which the Executive Board of the ECB rejected by letter dated 5 November 2002. The ECB justified its decision by reference to the exceptions contained in the first and fourth indents of Article 4 of Decision ECB/1998/12, which provide that access to an administrative document shall not be granted where its



disclosure could undermine:

-- the protection of the public interest, in particular public security, international relations, monetary and exchange rate stability, court proceedings, inspections and investigations.

(...)

-- the protection of the ECB's financial interests.

In his complaint to the Ombudsman, the complainant contests the ECB's rejection of his confirmatory application. The complainant argues that none of the exceptions contained in Article 4 of Decision ECB/1998/12 applies to the statistics to which he claims access.

THE INQUIRY

The European Central Bank's opinion

In summary, the ECB's opinion made the following points:

The ECB has provided the complainant with the most recent information on aggregated volumes of euro banknotes in circulation and in stock, broken down by denomination. Furthermore, annual banknote production figures are published on the ECB's website. Monthly data on the volume of euro banknotes returned to the national central banks of the Eurosystem are also available on request.

In partially rejecting the complainant's request for information, the ECB acted on the basis of and in accordance with Article 4 of Decision ECB/1998/12 in that the disclosure of the information could have undermined the interests set out in that Article.

If information on the stocks and flows of banknotes in the territories of different euro area Member States were to be made available to the public, it could jeopardise the security of both the storage of banknotes and their subsequent transfer between national central banks: these transfers are made to compensate for any (potential) shortages. Furthermore, such information could undermine the security of the persons responsible for the stocks and/or involved in the transportation of banknotes. This reasoning would hold true even if information were to be made public after the actual transportation had taken place, since certain trends can still be identified. This point is particularly relevant for smaller Member States, which might have a limited number of banknote storage locations.

Banknote stocks and transports are security sensitive issues because of the possible large values that can be involved. The Executive Board of the ECB carefully weighed the interests of the general public in having access to this kind of information against the public interest in being protected in such cases, and in particular the issue of public security. On the basis of this consideration, the Executive Board concluded that information relating to the stocks and transportation of banknotes must not be disclosed. This decision also applies to information on past transports, since this kind of information may attract significant criminal attention.



In light of the above security concerns, the national central banks of the Eurosystem, which in practice manage the stocks and flows of euro banknotes, and other parties responsible for and/or involved with stocks and transportation (e.g. police and military forces in a number of euro area Member States) have asked the ECB to keep such information confidential.

The ECB attaches particular importance to giving citizens the greatest possible access to information in order to strengthen the democratic nature of public authorities and to bolster public confidence in the administration. Nevertheless, an important reason for denying access to information on stocks and flows of banknotes in different Member States is the risk that third parties could misinterpret the information and thus make a false assessment of the availability of certain banknote denominations. This could prompt the general public and retailers to hoard certain banknote denominations, thus leading to a shortage of such denominations (creating, in effect, a "self-fulfilling prophecy"). This argument would also hold true were country-specific stock data to be published after their actual availability, because certain trends could still be identified. Based on the past experience of Eurosystem national central banks, the ECB has concluded that such information might worry the public unnecessarily and therefore lead to irrational behaviour. Furthermore, the ECB considers that information relating to specific Member States has become less relevant given both the legal status of the single currency in all euro area Member States and the fact that euro banknotes are used for cross-border transactions. The European System of Central Banks (ESCB) has established mechanisms to compensate for regional shortages by building up surplus stocks.

In this context, the Executive Board of the ECB has carefully weighed the interests of the general public in having access to this kind of information against the public interest to be protected. It concluded that the above-mentioned risks, based on past experience, are significant enough to justify not publishing the requested information.

The complainant's observations

The complainant's observations on the ECB's opinion made, in summary, the following points:

For the avoidance of doubt, the information that the complainant seeks is data on country-specific stocks, that is, the value of euro banknotes in circulation from time to time within the territory of each of the participating Member States, expressed either in absolute terms or in relative terms, as proportions of the aggregate value of euro banknotes in circulation in the euro area.

The complainant is not seeking information about the transfer of euro banknotes from the territory of one participating Member State to another, nor about the ECB's decisions or criteria concerning such transfers.

In rejecting the complainant's confirmatory application, the ECB cited the first and fourth indents of Article 4 of Decision ECB/1998/12. The fourth indent concerns the protection of the ECB's financial interests. However, it appears from the ECB's opinion that it intended to cite not the fourth, but the fifth, indent. This concerns the "protection of confidentiality as requested by any natural or legal person who supplied any of the information contained in the document or as



required by the law applicable to such person."

The ECB's opinion mentions that other parties responsible for and or involved with stocks and transportation (e.g. police and military forces in a number of euro area Member States) have asked the ECB to keep such information confidential. However, parties such as police and military forces, are not "persons who supplied any of the information." Therefore, the fifth indent cannot apply to them.

Furthermore, confidentiality does not arise simply by virtue of a person requesting it. There has to be actual confidentiality within the meaning of Article 8 of Regulation 2533/98 (2) . For such purposes, the national central banks (NCBs) are not "reporting agents" but collectors of information pursuant to their obligations under Articles 5.1 and 5.2 of the Statute of the ESCB and ECB. Therefore, although the information would, by its nature, allow the NCBs to be identified, it would not be confidential.

As regards the issue of security, the complainant points out that variations in country-specific stocks of euro banknotes would not normally lead to transfers of banknotes between national central banks and that Article 3 (4) of Decision ECB/2001/15 makes clear that such transfers are the exception and not the rule (3) . Therefore, it cannot be concluded, from data on country-specific stocks or variations in them, either that such transfers have occurred or that exceptional circumstances, giving rise to future transfers, have arisen. Even if such conclusions could be drawn, no trends could be identified because exceptional circumstances are, by definition, not subject to trends.

The ECB's argument that "such information might worry the public unnecessarily and therefore lead to irrational behaviour" is a highly dangerous notion. If it was accepted, there would be no limit to its application and it would substantially undermine the Declaration on the Right of Access to Information annexed to the Final Act of the Treaty on European Union.

THE DECISION

1 Statistics about stocks and flows of euro banknotes

1.1 The complainant contests the rejection by the European Central Bank (ECB) of his confirmatory application for access to statistics about stocks and flows of Euro banknotes. The complainant argues that none of the exceptions contained in Article 4 of Decision ECB/1998/12 (4) applies to the statistics to which he claims access.

1.2 The ECB argues that it has provided the complainant with the most recent information on aggregated volumes of euro banknotes in circulation and in stock, broken down by denomination. Disclosure of statistics about stocks and flows of Euro banknotes in the territories of different euro area Member States could undermine the interests set out in Article 4 of Decision ECB/1998/12, because it could jeopardise the security of both the storage of banknotes and their subsequent transfer between national central banks. Furthermore, such information could undermine the security of the persons responsible for the stocks and/or involved in the transportation of banknotes. This reasoning also applies to information on past



transports, since this kind of information may attract significant criminal attention. In light of the above security concerns, the national central banks and other parties such as police and military forces have asked the ECB to keep such information confidential.

Moreover, according to the ECB, information on stocks and flows of banknotes in different Member States could be misinterpreted, leading to a false assessment of the availability of certain banknote denominations. This could prompt the general public and retailers to hoard certain banknote denominations, thus leading to a shortage of such denominations thus creating, in effect, a self-fulfilling prophecy. This argument would also hold true were country-specific stock data to be published after their actual availability, because certain trends could still be identified.

Also according to the ECB, based on the past experience of Eurosystem national central banks, such information might worry the public unnecessarily and therefore lead to irrational behaviour.

1.3 In observations on the ECB's opinion, the complainant clarifies that he seeks data on country-specific stocks; i.e. the value of euro banknotes in circulation from time to time within the territory of each of the participating Member States, expressed either in absolute terms or in relative terms, as proportions of the aggregate value of euro banknotes in circulation in the euro area.

According to the complainant, the ECB is not entitled to rely on the exception concerning requests for confidentiality contained in the fifth indent of Article 4 of Decision ECB/1998/12. As regards the issue of security, no information on transfers of euro banknotes can be derived from data on country-specific stocks or variations in them. If accepted, the ECB's argument that such information might worry the public unnecessarily and therefore lead to irrational behaviour would substantially undermine the Declaration on the Right of Access to Information annexed to the Final Act of the Treaty on European Union.

1.4 The Ombudsman first notes that the complainant's observations clarify the information that he wishes to obtain from the ECB. The Ombudsman considers, however, that the ECB's interpretation of the complainant's application was reasonable. The present decision therefore examines whether the ECB was entitled to refuse to supply the information which it understood the complainant to be seeking.

The Ombudsman points out that the complainant could make a new application to the ECB in accordance with Decision ECB/1998/12, specifying precisely the information that he wishes to obtain.

1.5 The Ombudsman understands the reference in the ECB's opinion to requests for confidentiality from national central banks, police and military forces as being intended to provide evidence to support the ECB's reliance on the exception for public security in the first indent (5) of Article 4 of Decision ECB/1998/12, not as a reference to its fifth indent (6). The Ombudsman considers that the arguments advanced by the ECB concerning public security are reasonable and justify the ECB's decision to refuse access to the information which it



understood the complainant to be seeking.

1.6 As regards the ECB's argument concerning the risk of a self-fulfilling prophecy leading to shortage of certain banknote denominations, the Ombudsman first notes that Article 106 EC gives the ECB the exclusive right to authorise the issue of banknotes within the Community and that Article 12 (1) of the Statute of the ESCB and ECB provides that the Executive Board of the ECB shall implement monetary policy in accordance with the guidelines and decisions laid down by the Governing Council of the ECB. The Ombudsman is aware that the concept of a self-fulfilling prophecy is used in the literature of economics. The Ombudsman points out that in carrying out the above-mentioned responsibilities, the ECB is entitled to take into account economic analysis of the possible effects of self-fulfilling prophecies on monetary developments. The Ombudsman therefore considers that such analysis is also relevant to the exception for protection of the public interest contained in the first indent of Article 4 of Decision ECB/1998/12. The Ombudsman does not accept, however, that the ECB is entitled to rely on the argument that information about country-specific stocks might worry the public unnecessarily and therefore lead to irrational behaviour. The Ombudsman points out that the ECB offers no evidence to substantiate this argument which, moreover, does not appear to relate to any of the exceptions contained in Article 4 of Decision ECB/1998/12.

1.7 For the reason given in 1.5 above, the Ombudsman considers that the ECB was entitled to refuse access to the information which it understood the complainant to be seeking. The Ombudsman therefore finds no maladministration in the ECB's rejection of the complainant's confirmatory application.

2 Conclusion

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the European Central Bank. The Ombudsman therefore closes the case.

The President of the European Central Bank will also be informed of this decision.

Yours sincerely,

P. Nikiforos DIAMANDOUROS

(1) Decision of the European Central Bank of 3 November 1998 (ECB/1998/12), concerning public access to documentation and the archives of the European Central Bank 1999 OJ L110/30.

(2) Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank, 1998 OJ L 318/8.

(3) Decision of the European Central Bank of 6 December 2001 on the issue of euro banknotes (ECB/2001/15) 2001 OJ L 337/52: "NCBs shall not transfer euro banknotes accepted by them to other NCBs and shall keep such euro banknotes available for reissue. As an exception, and in



accordance with any rules laid down by the Governing Council of the ECB: (...) (b) euro banknotes held by NCBs may, for logistical reasons, be redistributed in bulk within the Eurosystem.”

(4) Decision of the European Central Bank of 3 November 1998 (ECB/1998/12), concerning public access to documentation and the archives of the European Central Bank 1999 OJ L110/30.

(5) “the protection of the public interest, in particular public security, international relations, monetary and exchange rate stability, court proceedings, inspections and investigations.”

(6) “the protection of confidentiality as requested by any natural or legal person who supplied any of the information contained in the document or as required by the law applicable to such person.”