

Decision of the European Ombudsman on complaint 2077/2003/MF against the European Central Bank

Decision

Case 2077/2003/MF - Opened on 27/11/2003 - Decision on 10/12/2004

Strasbourg, 10 December 2004

Dear Mr H.,

On 30 October 2003, you made a complaint to me against the European Central Bank concerning a failure to reply to your e-mail dated 17 December 2001.

On 27 November 2003, my services contacted the ECB by fax in order to obtain a reply to your e-mail dated 17 December 2001. On 10 December 2003, the ECB replied that it would try to provide me with an answer *"either between Christmas and New Year or during the first week of January starting with 5 January 2004"*. In these circumstances, I decided to open an inquiry against the ECB.

On 19 December 2003, I forwarded the complaint to the President of the ECB. The ECB sent its opinion on 29 March 2004. On 14 April 2004, I forwarded it to you with an invitation to make observations, which you sent on 27 May 2004.

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

I apologise for the length of time it has taken to deal with your complaint.

THE COMPLAINT

According to the complainant, the relevant facts are as follows:

The complainant is a French citizen living in an island belonging to French Polynesia. On 7 December 2001, he went to the premises of the European Central Bank (ECB) in Frankfurt in order to submit to its President a file relating to a case of money-laundering in the French Overseas Territories. The complainant was not allowed to give the file to the President of the ECB personally.

In an e-mail dated 16 December 2001, the complainant was informed by the Head of the Press



Division of the ECB that he would receive a reply on the matter raised in his file in due course. The complainant was further informed that a meeting with the President of the ECB could not be arranged.

On 17 December 2001, the complainant wrote a further e-mail to the ECB. In this e-mail, the complainant asked the ECB for information on Protocol 27 of the Treaty of Amsterdam and on the media (TV, radio, and newspapers) specialising in matters relating to the Euro. He further asked again to be given an interview with the President of the ECB.

On 30 October 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the European Central Bank had failed to answer his e-mail dated 17 December 2001.

The complainant claimed that the European Central Bank should answer the questions he raised in his e-mail dated 17 December 2001.

THE INQUIRY

The opinion of the European Central Bank

The opinion of the European Central Bank on the complaint was in summary as follows:

It should be pointed out that when the complainant had first approached the ECB on 7 December 2001, his questions had been answered orally at a meeting with representatives of the ECB's Press and Information Division held on the ECB's premises. As the complainant had not made a prior appointment, it had been impossible to arrange a meeting with the President of the ECB.

It had been possible to address some of the complainant's questions raised at the meeting itself. In particular, he had been informed that the Protocol on France annexed to the Treaty establishing the European Community (Protocol 13 annexed to the Treaty of Maastricht) to which the complainant referred, had indeed been renumbered as No 27 following the entry into force of the Treaty of Amsterdam. However, concerning the other issues that he had raised, the complainant had been informed that it would be appropriate to contact the French authorities to discuss them, given that the topic of French overseas currencies was rather complex and was linked to the question of French territorial integrity.

On 14 December 2001, the complainant wrote a letter to the President of the ECB, requesting a meeting on the subject of French overseas currencies. The ECB answered this letter on 16 December 2001, explaining that it would not be possible to arrange a meeting with the President of the ECB and that it would reply to the complainant in due course. The complainant then responded by e-mail on 17 December 2001. The text of his e-mail led the ECB to conclude that he had followed its advice and that he had contacted the "*Banque de France*". It appeared, however, that the information provided by the "*Banque de France*" had not satisfied the complainant. As a result, the complainant had again sent his original questions to the ECB and specified a date, by which he expected to receive an answer. In his e-mail of 17 December



2001, the complainant had further requested information concerning the media (TV, radio, and newspapers) specialising in matters relating to the Euro.

At this point, the ECB felt that it had already provided the complainant with all possible information relating to his enquiries. It therefore concluded that it had nothing further to contribute to them.

However, concerning the complainant's further request for information on the media specialising in matters relating to the Euro, the ECB had unfortunately not sent any reply to the complainant. The ECB acknowledged this procedural error and sent a letter of apology to the complainant on 29 March 2004. In this letter, the ECB made reference to telephone conversations in the context of which of which it had, in its estimation, replied to the complainant's request for information.

The complainant's observations

The European Ombudsman forwarded the opinion of the European Central Bank to the complainant with an invitation to make observations. In his reply dated 27 May 2004, the complainant maintained his complaint and made in summary the following further comments;

Concerning the interview on the ECB's premises, it had to be pointed out that this interview had taken place under the presence of the police.

The ECB's reply to the question relating to the existence of "Protocol 27 of the Treaty of Amsterdam" had been evasive. The President of the ECB had not sent the Protocol and/or enclosed any reference, such as an extract of an OJ containing this Protocol.

The e-mail dated 17 December 2001 had aimed to obtain a meeting with the President of the ECB in order to submit a file to him. At the date of the complainant's observations, the ECB had still refused to organise such a meeting. The e-mail dated 17 December 2001 had referred to the file concerning a case of money-laundering in the French Overseas Territories that the complainant had tried to submit to the President of the ECB personally on 7 December 2001.

THE DECISION

1 The alleged failure to reply to the complainant's e-mail dated 17 December 2001

1.1 On 7 December 2001, the complainant, a French citizen living in an island belonging to French Polynesia, went to the premises of the ECB in order to submit to its President a file relating to a case of money-laundering in the French Overseas Territories. A meeting with representatives of the ECB's Press and Information Division was held on the ECB's premises that day.

In an e-mail dated 16 December 2001, the complainant was informed by the Head of the Press Division of the ECB that he would in due course receive a reply on the matter raised in his file. The complainant was further informed that a meeting with the President of the ECB could not be arranged. On 17 December 2001, the complainant wrote a further e-mail to the ECB. In this e-mail, the complainant asked the ECB for information on "Protocol 27 of the Treaty of Amsterdam" and on the media (TV, radio, and newspapers) specialising in matters relating to



the Euro. He further asked again to be given an interview with the President of the ECB.

On 24 October 2003, the complainant lodged a complaint with the European Ombudsman. He alleged that the ECB had failed to answer his e-mail dated 17 December 2001.

1.2 The ECB stated that it had been possible to address some of the complainant's questions raised at the meeting itself. Concerning the other issues raised, the complainant had been informed that it would be appropriate to contact the French authorities to discuss them. When it had received the e-mail dated 17 December 2001, the ECB had felt that it had already provided the complainant with all possible information relating to his enquiries. It had therefore concluded that it had nothing further to contribute to them.

Concerning the complainant's further request for information on the media specialising in matters relating to the Euro, the ECB stated that it had unfortunately not sent any reply to the complainant. The ECB acknowledged this procedural error and sent a letter of apology to the complainant on 29 March 2004.

1.3 The Ombudsman notes that the complainant's e-mail dated 17 December 2001 contained two requests for information, namely as regards the existence of "Protocol 27 of the Treaty of Amsterdam" and as regards the media (TV, radio, and newspapers) specialising in matters relating to the Euro. The complainant's e-mail further contained a request for an interview with the President of the ECB.

1.4 Concerning the request for an interview with the President of the ECB, the Ombudsman notes that on 16 December 2001, the ECB answered the complainant's letter of 14 December 2001 and explained that it would not be possible to arrange a meeting with the President of the ECB. The Ombudsman therefore considers that the complainant had already been informed that an interview with the President of the ECB was not possible. In view of the information provided in the complaint, the Ombudsman considers that the complainant could not ignore that a meeting with the President of the ECB was not possible. The Ombudsman further notes that the complainant has explained that he had asked for a meeting with the President of the ECB in order to submit a file to him. In an e-mail dated 16 December 2001, the Head of the Press Division of the ECB had informed the complainant that he would in due course receive a reply on the matter raised in his file. The Ombudsman therefore concludes that it emerges from this e-mail that the file had been transmitted to the ECB.

1.5 Principles of good administration require that the Community institutions or bodies should deal diligently and within a reasonable period of time with requests for information.

1.6 Concerning the request for information on "Protocol 27 of the Treaty of Amsterdam", the Ombudsman notes that the ECB pointed out that the complainant had been informed at the meeting of 7 December 2001 that the Protocol on France annexed to the Treaty establishing the European Community (Protocol 13 annexed to the Treaty of Maastricht) had been renumbered as No 27 following the entry into force of the Treaty of Amsterdam.



In his observations, the complainant submitted that the ECB's reply to the question relating to the existence of "Protocol 27 of the Treaty of Amsterdam" had been evasive and that the President of the ECB had not sent the Protocol and/or enclosed any reference, such as an excerpt of an OJ containing this Protocol.

As regards the point that the ECB's reply to the complainant's question on the existence of "Protocol 27 of the Treaty of Amsterdam" was evasive, the Ombudsman notes that the ECB informed the complainant that the Protocol on France annexed to the Treaty establishing the European Community had been renumbered as No 27 following the entry into force of the Treaty of Amsterdam. In these circumstances, the Ombudsman considers that the information given by the ECB was correct and should have enabled the complainant to find the document concerned.

As regards the point that the President of the ECB did not send the Protocol and/or did not enclose any reference, such as an excerpt of an OJ containing this Protocol, the Ombudsman notes that the complainant does not appear to have made such an explicit request in his e-mail dated 17 December 2001 but only asked for information on where to find details on the Protocol. The Ombudsman considers that it would however have been courteous for the ECB to send a copy of the relevant Protocol to the complainant. In order to be as helpful as possible, the Ombudsman encloses with his decision a copy of the relevant Protocol on France.

1.7 As regards the request for information on the media specialising in matters relating to the Euro, the Ombudsman notes that the ECB did not send any reply in writing to the complainant on this point. In its letter of apology to the complainant dated 29 March 2004, the ECB wrote that *"we concluded that we had already answered your questions at the meeting held with you on 7 December as well as during telephone conversations subsequent to your letter of 17 December"*. The complainant does not appear to dispute the ECB's position.

The Ombudsman takes the view that, even if the ECB considered that it had already replied to the request for information of the complainant, it would have been courteous to confirm to the latter that it had no further information to give to him. The Ombudsman notes that the ECB failed to do so. He however also notes that the ECB sent a letter of apology to the complainant on 29 March 2004.

1.8 In the light of the above, the Ombudsman considers that there is no need to pursue further inquiries into this complaint.

2 The complainant's claim

2.1 In his complaint, the complainant claimed that the ECB should answer the questions he raised in his e-mail dated 17 December 2001.

2.2 In view of the above conclusions, the Ombudsman considers that there is no need to pursue his inquiry into this claim.

3 Conclusion

In view of the results of his investigation, the Ombudsman considers that there is no need to pursue his inquiry into this complaint. He therefore closes the case.



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

Yours sincerely,

P. Nikiforos DIAMANDOUROS

Enclosure: copy of Protocol on France no 27 annexed to the Treaty establishing the European Community