

Decision of the European Ombudsman closing his inquiry into complaint 1363/2012/BEH against the European Banking Authority

Decision

Case 1363/2012/BEH - **Opened on** 23/07/2012 - **Decision on** 19/02/2013 - **Institution concerned** European Banking Authority (No maladministration found) |

The complainant is a German citizen who, in 2012, submitted a petition to the Committee on Petitions of the European Parliament concerning the use of official languages on the website of the European Banking Authority ('EBA'). Given that the complainant's petition concerned a possible instance of maladministration, the Committee on Petitions transmitted it to the Ombudsman who, with the complainant's consent, dealt with it as a complaint. In his complaint, the complainant alleged that the fact that the EBA makes information on its website available in English only is not in conformity with the law and with principles of good administration.

In its opinion, the EBA pointed out that it had drawn up a list of documents which might have general application and must therefore be published under the applicable legal framework. The EBA also referred to concrete examples of such documents, such as its Guidelines. It concluded by stating that it had made significant efforts, despite being a relatively new authority and having limited resources, to realise the aim of multilingualism to the greatest extent possible.

In view of the specific tasks entrusted to the agency, the Ombudsman underlined that it is of paramount importance for citizens to be able to access information concerning the EBA's work in a language they can understand. He applauded the fact that the EBA had made significant progress, as shown by a number of concrete examples. While he noted that some documents having general application are not available in all the official languages, he also took into account the EBA's ongoing efforts in this regard. In particular, he welcomed the EBA's constructive approach of providing citizens, upon request, with a translation of a document which is not available in the official language of their choice. The Ombudsman was moreover pleased to note that, in the framework of the redesign of its website during the first half of 2013, the EBA aims to ensure that users have access in all official languages to key information related to its role and main tasks. Trusting that the EBA would take the necessary steps to achieve this aim, the Ombudsman concluded that at present there is no maladministration in its activities with respect to the complainant's allegation and claim.



The background to the complaint

1. The complainant is a German citizen. On 25 January 2012, he submitted a petition to the Committee on Petitions of the European Parliament (henceforth the 'Committee on Petitions') concerning the use of official languages on the website of the European Banking Authority ('EBA'). Specifically, he pointed out that, contrary to Article 73(1) of Regulation 1093/2010 [1] in conjunction with Article 4 of Regulation 1/58 [2], the EBA's website provides information exclusively in the English language. The complainant considered this practice also to amount to an instance of language discrimination. He stated that this was particularly serious, considering that the EBA's activities affect the entire EU, including European bank customers, who should be able to grasp EBA guidelines without facing any language barriers. The complainant asked the Committee on Petitions to prevail upon the EBA to comply with Article 73(1) of Regulation 1093/2010. Referring to Parliament's role as legislator, he also suggested that the Committee include in its assessment the other " *European supervisory authorities* " likely to give rise to the same concerns.

2. On 26 June 2012, the Chair of the Committee on Petitions informed the Ombudsman of the Committee's view that it would be worthwhile for him to examine the questions raised in the complainant's petition, given that they concerned alleged maladministration by the EBA. She explained that the Committee on Petitions had therefore instructed her to transmit the complainant's petition to the Ombudsman and had concluded its examination of the petition. At the same time, the Chair asked to be informed of any follow-up action taken by the Ombudsman.

3. On 10 July 2012, the Committee on Petitions informed the Ombudsman's services that, on 9 July 2012, the complainant had given his consent to the Ombudsman's dealing with his case. The Committee on Petitions enclosed the complainant's e-mail to that effect.

4. In view of these circumstances, the Ombudsman registered the complainant's petition as the present complaint (complaint 1363/2012/BEH) and informed the complainant accordingly on 10 July 2012.

The subject matter of the inquiry

5. The Ombudsman understood the complainant to make the following allegation and claim.

Allegation

The fact that the EBA makes information on its website available only in the English language (i) is not in conformity either with Article 73(1) of Regulation 1093/2010, read in conjunction with Article 4 of Regulation 1/1958, or with principles of good administration, and (ii) amounts to an instance of language discrimination.



Claim

When making information available on its website, the EBA should comply with its obligations pursuant to Article 73(1) of Regulation 1093/2010 read in conjunction with Article 4 of Regulation 1/1958 and should avoid language discrimination.

6. In his letter informing the complainant of his inquiry (see paragraphs 7 and 8 below), the Ombudsman referred to the suggestion which the complainant made in his petition to include other " *European supervisory authorities* " in the assessment of the Committee on Petitions. The Ombudsman pointed out that he did not understand that suggestion to be addressed to him. In any event, he stated that it would not appear useful at that stage to launch inquiries against other institutions, given that the complainant did not submit any information in this regard. At the same time, the Ombudsman informed the complainant that he remained free to submit complaints to him against other institutions.

The inquiry

7. On 23 July 2012, the Ombudsman asked the Chairperson of the EBA to submit an opinion on the complaint. In his letter, the Ombudsman also informed the Chairperson that Article 2(4) of the Statute of the European Ombudsman requires complaints to the Ombudsman to be preceded by appropriate administrative approaches to the institution concerned. One of the purposes of this provision is to give the institution concerned a chance to comment on and possibly remedy an alleged instance of maladministration, once such an instance has been brought to its attention. Noting that (i) the Ombudsman had already raised the issue of the use of official languages on the EBA's website following his visit to the agency and that (ii) the complaint does not concern an individual problem affecting the complainant but aims at addressing the issue as such, the Ombudsman informed the EBA that he considered that the condition set by Article 2(4) of his Statute had been met in the present case.

8. The EBA's opinion was forwarded to the complainant with an invitation to submit observations by 15 December 2012. No observations have been received to date.

The Ombudsman's analysis and conclusions

Preliminary remarks

9. In its opinion, the EBA stated that one example of offering equal treatment to citizens across Europe is related to its Code of Good Administrative Behaviour, which it adopted at its very first Management Board meeting. The EBA pointed out that it has been acting in full accordance with Article 13 of that Code since day one. Thus, every citizen of the Union or any member of the public who wrote and/or submitted a complaint to the EBA in one of the official languages of the Union received a reply in the same official language. The EBA emphasised that it processes



all correspondence received in the official Union languages, and does not discriminate on the grounds of language, or on any other basis for that matter. While the Ombudsman clearly welcomes this practice, the issue of the language used in correspondence with citizens is not part of the present inquiry. Accordingly, he will not address it in the present decision.

A. As regards the complainant's allegation and claim

Arguments presented to the Ombudsman

10. The complainant alleged that the EBA's practice of making information on its website available in the English language only (i) is not in conformity either with Article 73(1) of Regulation 1093/2010, read in conjunction with Article 4 of Regulation 1/58, or with principles of good administration, and (ii) amounts to an instance of language discrimination. He claimed that, when making information available on its website, the EBA should comply with its obligations pursuant to Article 73(1) of Regulation 1093/2010, read in conjunction with Article 4 of Regulation 1/58 and should avoid language discrimination.

11. In its opinion, the EBA stated that multilingualism constitutes an essential element for the effective exercise of citizens' democratic right to be informed about matters dealt with by the EU institutions. The EBA also underscored that multilingualism is an indispensable component of the effective operation of the rule of law in the Union legal order, and acknowledged the importance of citizens' being able to familiarise themselves in the official Union language of their choice with provisions potentially affecting them.

12. The EBA stated that, as a relatively new authority, it is striving, within its limited resources, to implement, to the best of its ability, the principles of openness, transparency, good administration and non-discrimination.

13. As regards compliance with Article 73(1) of Regulation 1093/2010, read in conjunction with Article 4 of Regulation 1/58 and also with principles of good administration, the EBA pointed out that, "*within its embryonic stages*", it had identified, and placed on a non-exhaustive list, documents which might be considered to be of general application, and provided concrete examples of such documents, which were or are being translated into all official languages. The EBA stated that this also shows its compliance with principles of good administration.

14. As a first example, the EBA referred to its Guidelines [3], which are of general application within the meaning of Regulation 1/58. Thus, at the time it submitted its opinion, the EBA was translating its Guidelines into all official languages of the Union and making those translations available on its website. The EBA added that, for example, the translations of its Guidelines on the Incremental Default and Migration Risk Charge (IRC (EBA/GL/2012/3) were already available on its website [4] at that time, whereas all the other EBA Guidelines would be available in all official languages by the end of 2012.



15. As a second example, the EBA referred to its Technical Standards [5] , which are of general application within the meaning of Regulation 1/58. The EBA conceded that no Technical Standards had been published at the time of submitting its opinion. However, all Technical Standards would be published in the Official Journal of the Union and translated into all official languages by the European Commission. The EBA committed itself to providing links on its website to the translations published in the Official Journal.

16. In its opinion, the EBA also made reference to other documents, namely, its Annual Report, Work Program, Establishment Plan and Budget. As for the Annual Report, the EBA stated that it considers it to be of general application within the meaning of Regulation 1/58. On that basis, the Executive Summary and Foreword by the EBA Chairperson were translated into all official languages of the Union [6] . As for its 2013 Work Programme, the highlights would be made available in all official languages of the Union by the end of 2012. As of 2013, that is to say, as of the EBA's second Annual Report, the whole Annual Report would be translated into all official languages of the Union.

17. With regard to the Establishment Plan and the Budget, the EBA pointed out that they are available in all official languages in the Official Journal [7] .

18. The EBA emphasised that one of the first service-level agreements it had entered into was with the Translation Centre for the Bodies of European Union (the 'CdT'), for the purpose of ensuring that principles of good administration are adhered to when documents need to be translated. The EBA stated that it regularly makes use of the services of the CdT.

19. As regards the issue of language discrimination, the EBA submitted that, as illustrated by its examples, it strives, within its limited resources, to implement, to the best of its ability, the principles of openness, transparency, good administration and non-discrimination, which it applies across the board to the fullest extent possible.

20. The EBA went on to state that the principle of multilingualism does not require the EU institutions and bodies to use all official Union languages in every situation. What is required, however, is that comparable situations not be treated differently and different situations not be treated alike, unless such treatment is objectively justified. Therefore, the EBA explained, it has opted for translating the documents mentioned above. In doing so, it takes into account multilingualism as a fundamental value of the EU, within the limitations of an agency which has been in existence for less than two years.

21. The EBA concluded by saying that, apart from the above, it intends, within the framework of its website's redesign during the first half of 2013, to ensure that users have access to key information related to its role and main tasks in all official Union languages. The EBA added that it will continue to endeavour to apply principles of good administration by, as far as possible, providing information to citizens either in their own language, or, upon request, in translation. The EBA also stated that it will continue to translate the aforesaid documents and emphasised its continuing work on improving the situation in relation to multilingualism.



22. The complainant did not submit any observations on the EBA's opinion.

The Ombudsman's assessment

23. The complainant's allegation raises two distinct and yet related aspects of the EBA's publication practice, namely, its alleged non-conformity with (i) Article 73(1) of Regulation 1093/2010, read in conjunction with Article 4 of Regulation 1/58, as well as with principles of good administration, and (ii) the principle of non-discrimination on the grounds of language. The Ombudsman will consider both aspects in turn. For reasons of expediency, he will consider the conformity of the EBA's publication practice with principles of good administration in connection with the principle of non-discrimination.

24. As for the first aspect of the complainant's allegation, the Ombudsman recalls at the outset that Article 73(1) of Regulation 1093/2010 provides that Regulation 1/58 shall apply to the EBA. Article 4 of Regulation 1/58 requires that regulations and "*other documents of general application*" be drafted in the official languages. It follows that this aspect of the allegation extends to regulations and other documents of general application within the meaning of Article 4 of Regulation 1/58.

25. The Ombudsman furthermore notes that the complainant's allegation concerns the EBA's publication practice on its website and, thus, an aspect of its external communication with citizens, stakeholders and other interested parties. As far as the external communication of EU institutions, bodies, offices and agencies with citizens is concerned, it has been the Ombudsman's longstanding position that it would be ideal for the material intended for such purposes to be published in all official languages. This position is based on the rationale that, in order for such communication to be effective, it is necessary that citizens can understand the information provided to them [8] .

26. As regards the EBA specifically, the Ombudsman points out in this context that Article 8(1)(k) of Regulation 1093/2010 expressly lists among the EBA's tasks that of publishing on its website, and updating regularly, information relating to its field of activities "*in order to ensure information is easily accessible by the public*". The EBA has also been given a number of additional important tasks in the area of financial supervision and consumer protection (see, in particular, Articles 8 and 9 of Regulation 1093/2010), which may have a direct or indirect impact on citizens. It should also be noted that Regulation 1093/2010 attaches great importance to preserving trust in the internal market (see recital 7 of Regulation 1093/2010) and underscores the benefit to be obtained from the twin goal of protecting the public interest while also contributing to the stability and effectiveness of the Union financial system for citizens (Article 1(5) of Regulation 1093/2010). In this context, the Ombudsman emphasises that transparency and accessibility have a very important role to play in building citizen trust in EU institutions, while also constituting essential parts of the citizens' right to participate in the democratic life of the Union. It follows from the above that it is of paramount importance for citizens to be able to access information concerning the EBA's work in a language they can understand.



27. In its opinion, the EBA stated that it had drawn up a list of documents which might be considered to be of general application within the meaning of Article 4 of Regulation 1/58. The EBA also provided concrete examples of documents it considers to be covered by that concept. The Ombudsman is pleased to note the EBA's effort to identify, on a general and abstract basis, documents to be made available in all the official languages. As regards the specific examples presented by the EBA, the Ombudsman applauds the fact that, since the beginning of 2012, all but one of the Guidelines published on EBA's website have been made available in 22 official languages. Equally, the EBA's Work Programme 2013 and the Executive Summary of and the Foreword to the Annual Report 2011 are available in 22 of the official languages. In spite of these significant achievements, the fact remains that some documents of general application are not available in all the official languages. In this regard, the Ombudsman notes the EBA's reference to the short period of its existence and to the limited resources available to it. The Ombudsman well understands that, within the relatively short time of EBA's existence, not all documents which might be covered by Article 4 of Regulation 1/58 can be available in all the official languages. In any event, the Ombudsman applauds the efforts undertaken by the EBA to reach the undisputed aim of multilingualism in the publication of documents of general application. The Ombudsman is particularly pleased to note the EBA's constructive approach to provide citizens, upon request, with a translation of a document which is not available in the official language requested.

28. As for the second aspect of the complainant's allegation, the Ombudsman recalls, that, according to the case-law of the General Court, there is no general principle of EU law which confers on every citizen a right to have, in all circumstances, a version of anything that might affect his or her interests drawn up in his or her language [9] . This case-law is reflected in the Ombudsman's own practice, in which he has repeatedly highlighted that good administration requires that, as far as possible , the institutions, bodies, offices and agencies of the EU should provide information to citizens in their own languages [10] .

29. With regard to documents of general application, the Ombudsman considers it sufficient to refer to the considerations he set out above in paragraph 27. As for other information published on its website, the Ombudsman recalls that, during his visit to the agency in May 2011, the EBA stated that it aimed to increase the number of languages on its website and, subject to resource constraints, to have the homepage and some documents, especially legally binding material, available in all languages. The Ombudsman notes that, with the exception of the documents discussed in paragraph 27 above, the EBA's website, for the time being, appears to be mainly in the English language only.

30. The Ombudsman recalls his findings and his suggestions, formulated following his visit to the EBA, that it should aim to make the homepage of its website, as well as information on its functions and language policy, available in all 23 official languages. By greeting citizens who visit the website in their own language and by explaining its functions to them, the EBA would demonstrate clearly that it recognises that all citizens of the European Union have a legitimate interest in its work. The Ombudsman is pleased to note that, in its opinion, the EBA stated that it intends to ensure, in the framework of the redesign of its website during the first half of 2013, that users have access in all official languages to key information concerning its role and main



tasks. The Ombudsman therefore trusts that the EBA will take the necessary steps to achieve this aim.

31. In view of these circumstances, the Ombudsman takes the view that, at present, there is no maladministration in the EBA's activities with respect to the complainant's allegation and claim.

B. Conclusions

On the basis of his inquiry into this complaint, the Ombudsman closes it with the following conclusion:

There is no maladministration in the EBA's activities with respect to the complainant's allegation and claim.

The complainant, the EBA and the Committee on Petitions will be informed of this decision.

P. Nikiforos Diamandouros

Done in Strasbourg on 19 February 2013

[1] Regulation No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, OJ 2010 L 331, p. 12. Article 73(1) reads as follows: "*Council Regulation No 1 determining the languages to be used by the European Economic Community shall apply to the Authority.*"

[2] Regulation 1/58 of the Council determining the languages to be used by the European Economic Community, OJ 1958 L 17 p. 385, as most recently amended by Regulation No 1791/2006 of the Council of 20 November 2006, OJ 2006, L 363, p. 1. Article 4 reads as follows: "*Regulations and other documents of general application shall be drafted in the official languages.*"

[3] Pursuant to Article 16(1) of Regulation 1093/2010, the EBA shall, among other things, with a view to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision, issue guidelines and recommendations addressed to competent authorities or financial institutions.

[4] <http://eba.europa.eu/Publications/Guidelines.aspx>

[5] Pursuant to Article 10(1) of Regulation 1093/2010, EBA, under certain conditions, may develop draft technical standards to be submitted to the European Commission for endorsement.



[6] <http://eba.europa.eu/getdoc/bf26c4c3-67c3-4c42-b93e-aaeb34e43866/Annual-Report.aspx>

[7] <http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2012:095:SOM:EN:HTML>

[8] See, for instance, Decision closing the Ombudsman's inquiry into complaint 640/2011/AN, paragraph 28.

[9] Case C-361/01, *Kik v OHIM* [2003] ECR-I-8283, paragraph 82.

[10] See, for instance, the Ombudsman's Special Report to the European Parliament in complaint 1487/2005/GG and the Decision closing the Ombudsman's inquiry into complaint 640/2011/AN, paragraph 54.