

Decision in case 18/2016/ZA on the European Central Bank's failure to reply adequately to request for information

Decision

Case 18/2016/ZA - Opened on 16/03/2016 - Decision on 27/09/2016 - Institution concerned European Central Bank (Settled by the institution) |

The case concerned the European Central Bank's (ECB) failure to reply adequately to the complainant's request for information concerning the ECB's competence to ensure the enforcement of financial regulation and consumer protection legislation in Member-States. The Ombudsman asked the ECB to provide the complainant with a detailed answer concerning its supervisory role vis a vis the national central banks, but also the role of the Single Supervisory Mechanism in supervising private entities. The ECB replied in a clear and comprehensive manner. The Ombudsman therefore decided to close the case.

The background to the complaint

1. The complainant, an Irish citizen, initially contacted the European Central Bank's (ECB) Press and Information Division (29/11/2013 and 10/12/2013) to inquire whether there is an ECB procedure to lodge a complaint against the refusal of the Central Bank of Ireland to investigate a serious complaint against a financial services provider. As he did not receive any answer, he addressed his request directly to the President of the ECB on 2 January 2014.
2. In its reply of 3 March 2014, the ECB apologised for the delay in answering and informed the complainant that ECB is not mandated to investigate the central banks or private entities, even after the establishment of the Single Supervisory Mechanism (SSM).
3. The complainant, being unhappy with ECB's answer, lodged the present complaint with the Ombudsman on 30 December 2015. He argued that the ECB is failing in its duty to ensure the enforcement of financial regulation and consumer protection legislation in Member-States. He also argued that the ECB should investigate why the Central Bank of Ireland and Irish financial regulation authorities refused to investigate a complaint against a financial services provider.

The inquiry

4. The Ombudsman opened an inquiry into the complaint and identified the following allegation:



The ECB failed to address the complainant's concern with respect to ECB's competence to ensure the enforcement of financial regulation and consumer protection legislation in Member-States.

5. The Ombudsman asked the ECB to provide the complainant with a detailed answer concerning the ECB's supervisory role *vis a vis* the national central banks, but also the role of the SSM in supervising private entities. The ECB sent a detailed reply to the complaint with the EO in copy. [1]

6. Introducing its reply, the ECB clarified that under the Treaties and in light of the principle of conferral, it cannot extend its mandate unless provided so by the treaties. It also analysed the subsidiarity principle. Concerning the specific matters the complainant had raised, the ECB stated the following:

(i) On 4 November 2014, the ECB assumed its tasks concerning policies relating to the prudential supervision of credit institutions within participating Member-States (Council Regulation 1024/2013). According to this Regulation, “ *the ECB is exclusively competent for specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions*” (Article 4 of Regulation 1024/2013). The tasks of ensuring compliance with financial regulation in general or consumer protection laws remain within the national authorities.

(ii) The Governing Council may launch an infringement procedure if a national central bank does not fulfil its obligations under the Treaties and the Statute of the European System of Central Banks and of the ECB.

(iii) Member-States may allocate tasks regarding consumer protection to their central banks. However such tasks would be national tasks and therefore would not be considered as being part of the national central banks' obligations under the Treaties and the Statute of the European System of Central Banks and of the ECB.

The ECB concluded that it has not the power to investigate the refusal of the Central Bank of Ireland and the Irish financial regulation authorities to investigate a complaint against a financial services provider.

The Ombudsman's assessment

7. The ECB's reply appears to be comprehensive and based on the relevant legislation.

Conclusion(s)

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



Solution found.

The complainant and the ECB will be informed of this decision.

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Unit 1- Inquiries and ICT

Strasbourg, 27/09/2016

[1] The ECB's initial reply of 3 March 2016 was wrong as the Bank had based its reply on wrong facts. The ECB apologised for the mistake and provided the complainant with a new reply.