

Decision in case 1669/2016/CEC on the European Central Bank's refusal to intervene in a dispute with a Dutch bank

Decision

Case 1669/2016/CEC - **Opened on** 13/06/2017 - **Decision on** 13/06/2017 - **Institution concerned** European Central Bank (No maladministration found) |

The case concerned the European Central Bank's (ECB's) refusal to intervene in a dispute between the complainant and a Dutch bank about the interest rate of the complainant's mortgage.

The complainant argued that the ECB's supervisory role under the Single Supervisory Mechanism (SSM) meant it should intervene in the dispute. The ECB stated that it did not have the power to intervene in the matter because its tasks under the SSM do not include consumer protection.

The Ombudsman inquired into the issue and found the ECB's reply to be correct. The Ombudsman thus closed the case with a finding of no maladministration.

The background to the complaint

1. The complainant is a client of a Dutch bank (" **the bank** ") [\[1\]](#) [\[Link\]](#).
2. The complainant requested the bank to adapt the interest rate of his mortgage. In response, the bank stated that it could not deal with his request since the documents submitted were incomplete (one form had not been signed and other forms were not properly filled in). It invited the complainant to resubmit and sign the relevant documents. The complainant considered that the documents submitted were complete and that there was no need to sign any new documents.
3. On 3 November 2016, the complainant sent an e-mail to the European Central Bank (" **ECB** "). He explained that he had to make corrections to the documents received from his bank in order to prevent it from seizing his money. Given that the bank had refused to adjust the interest rate of his mortgage, he asked the ECB to intervene to ensure that his bank would process his request. He also complained about the bank's general lending conditions applied to mortgages. In his correspondence, he noted that the bank in question fell under the Single Supervisory



Mechanism of the ECB (“**SSM**”) [2] [\[Link\]](#).

4. On 6 November 2016, the complainant sent a “reminder” e-mail to the ECB.
5. On 8 November 2016, the complainant turned to the European Ombudsman.
6. On 15 November 2016, the complainant forwarded to the Ombudsman the ECB’s reply in which the ECB stated that it could not intervene in disputes between banks and their clients.

The inquiry

7. The Ombudsman opened an inquiry into the complaint and identified the following issue:

The European Central Bank failed to intervene in the complainant’s contractual dispute with a Dutch bank.

8. In the course of the inquiry, the Ombudsman’s team duly considered the information provided in the complaint. In particular, it carried out a thorough analysis of the correspondence exchanged between the ECB and the complainant before the complainant turned to the Ombudsman.

The ECB’s refusal to intervene in a contractual dispute with a Dutch bank

Arguments made by the complainant and the institution

9. The **complainant** argued that the ECB should guarantee consistent supervision under the SSM. In his case, this would mean ensuring that the bank should deal with his request to adjust the interest rate of his mortgage.

10. On 15 November 2016, the **ECB** informed the complainant that it could not intervene in the matter. The ECB explained that under the SSM Regulation (Article 1) [3] [\[Link\]](#), it was responsible only for specific tasks concerning the prudential supervision of credit institutions falling within the scope of the SSM. The ECB considered that the complainant’s case was a consumer protection issue, which is an area that falls within the competence of the relevant national authorities under the SSM Regulation. It therefore advised the complainant to address his complaint to the national supervisory authority for consumer protection. It also assured him that it had taken note of the reported business practices in the context of its ongoing supervision.

11. The **complainant** argued that by refusing to intervene in his case, the ECB had failed to guarantee the consistent supervision of a bank falling under the scope of the SSM. He argued that the ECB had infringed Article 23 of the SSM Regulation [4] [\[Link\]](#), which states that the ECB should provide appropriate protection for persons who report breaches.

12. On 16 December 2016, the **ECB** confirmed its previous reply. It noted that the main



objective of the ECB's monetary policy mandate is maintaining price stability, and that this was the best manner in which it could help protect the purchasing power of citizens in the Eurozone, as well as supporting sustained growth, economic prosperity and job creation.

The Ombudsman's assessment

13. The Ombudsman notes that the aim of the SSM is to supervise European banks to ensure the safety and soundness of the overall banking system. It seeks to increase financial integration and stability in Europe and ensure consistent supervision [\[5\]](#) [\[Link\]](#).

14. Article 1 of the SSM Regulation confers on the ECB specific tasks concerning the prudential supervision of credit institutions. However, the Ombudsman notes that the SSM Regulation explicitly provides that other supervisory tasks, such as carrying out the day-to-day verification of credit institutions and ensuring consumer protection, remain the responsibility of the national authorities [\[6\]](#) [\[Link\]](#).

15. The Ombudsman agrees with the ECB that this (contractual) dispute over the interest rates applying to an individual mortgage does not fall within the ECB's banking supervision mandate, but within the remit of the national authorities.

16. Regarding the complainant's argument that the ECB was contravening Article 23 of the SSM Regulation, the Ombudsman notes that this Article concerns the ECB's obligation to ensure that effective mechanisms are in place for persons that report breaches by credit institutions or competent authorities of the relevant EU law that relates to banking supervision. It aims to ensure that persons who report breaches are appropriately protected. Thus, the Ombudsman finds that this Article cannot be read as meaning that the ECB should intervene in contractual disputes between banks and their clients.

17. The Ombudsman therefore finds that there was no maladministration by the ECB in refusing to intervene in a dispute of a purely contractual nature between the complainant and his bank about the (re)adjustment of the rate of his mortgage.

Conclusion

On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion [\[7\]](#) [\[Link\]](#):

There was no maladministration by the European Central Bank .

The complainant and the European Central Bank will be informed of this decision.

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Strasbourg, 13/06/2017

Final English version of the decision on complaint **1669/2016/CEC**

[1] [Link] The bank is mentioned in the list of 129 significant banks supervised by the Single Supervisory Mechanism,

https://www.bankingsupervision.europa.eu/ecb/pub/pdf/list_of_supervised_entities_20160531en.pdf?496fcf1d1a3add48ded49e7db0e9f3e6

<https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html>

[2] [Link]<https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html> [Link]

[3] [Link] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287 (SSM Regulation).

[4] [Link] Article 23 of the SSM Regulation provides: “ *The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities in the participating Member States of the legal acts referred to in Article 4(3), including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant Union legislation and shall ensure that the following principles are applied: appropriate protection for persons who report breaches, protection of personal data, and appropriate protection for the accused person.* ”

[5] [Link]<https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html> [Link]

[6] [Link] Preamble 28 of the SSM Regulation.

[7] [Link] Information on the review procedure can be found on the Ombudsman’s [website](http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark) [Link]
:
<http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/70669/html.bookmark>
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