



Besluit in zaak 1703/2012/CK - Weigering van toegang tot een brief die verzonden werd aan de Ierse minister van Financiën

Besluiten

Zaak 1703/2012/CK - **Geopend op** 03/10/2012 - **Besluit over** 24/04/2014 - **Betrokken instelling** Europese Centrale Bank (Geen verder onderzoek gerechtvaardigd) |

De zaak heeft betrekking op de weigering van de Europese Centrale Bank (ECB) om klager, een Ierse journalist, toegang te verlenen tot een brief die in 2010 verzonden werd aan de Ierse minister van Financiën. Na de brief bestudeerd te hebben, was de Ombudsman het ermee eens dat de openbaarmaking van de brief in 2011 toen de journalist het verzoek om toegang indiende, de belangen van Ierland en zijn financiële sector zou hebben ondermijnd. Daarom stelde de Ombudsman geen wanbeheer bij de ECB vast.

Aangezien er meer dan drie jaren waren verstreken sinds de verzending van de brief, verzocht zij de ECB evenwel om te overwegen de brief openbaar te maken wanneer er wijzigingen zouden optreden in de monetaire en economische omstandigheden van de eurozone. De ECB legde de kwestie voor aan haar raad van bestuur. Deze nam het standpunt in dat de bescherming van het openbaar belang wat betreft het monetaire beleid in de Europese Unie en de financiële stabiliteit in Ierland een vertrouwelijke behandeling nog steeds rechtvaardigde.

De Ombudsman was niet overtuigd door deze uitleg. Zij betreurde het dat de raad van bestuur van de ECB de kans had laten liggen om het beginsel toe te passen dat in een democratie transparantie de regel moet zijn en geheimhouding de uitzondering. Bij het sluiten van de zaak vertrouwde zij erop dat de ECB, indien een burger een nieuw verzoek om toegang tot de brief zou indienen, rekening zou houden met haar opvattingen en meer gewicht zou geven aan het openbaar belang van transparantie en verantwoording, en aan de noodzaak om haar legitimiteit in de ogen van de Europese burgers verder te vergroten.

The case concerns the European Central Bank's ('ECB') refusal to grant the complainant, an Irish journalist, public access to a letter it sent to the Irish Finance Minister in 2010. Having inspected the letter, the Ombudsman agreed that disclosing the letter at the time the journalist requested access, in 2011, would have jeopardised the interests of Ireland and its financial sector. For this reason, the Ombudsman found no maladministration by the ECB. However, as more than three years had passed since the letter was sent, she invited the ECB to consider disclosing the letter in the light of subsequent changes in the monetary and economic conditions of the eurozone. The ECB put the matter before its Governing Council,



which took the view that the protection of the public interest as regards monetary policy in the European Union and financial stability in Ireland continued to justify confidentiality. The Ombudsman was unconvinced by this explanation. She regretted that the Governing Council of the ECB had wasted an opportunity to apply the principle that, in a democracy, transparency should be the rule and secrecy the exception. In closing the case, she trusted that, should a citizen make a new request for public access to the letter, the ECB would take into account her views and give greater weight to the public interest in transparency and accountability, as well as the need further to enhance its legitimacy in the eyes of the EU citizens.

The background

1. In November 2011, the complainant, an Irish journalist, asked the European Central Bank ('ECB') for public access to a letter sent by the ECB's then President, Jean-Claude Trichet, to the Irish Finance Minister on 19 November 2010 ('the Letter'). The ECB refused to disclose the Letter. It based its refusal on the need to protect the integrity of Ireland's monetary policy and the stability of the Irish financial system, given the significant market pressure and extreme uncertainty as to the prospects for the Irish economy prevailing at the time. The complainant complained to the European Ombudsman on 20 August 2012.

2. The Ombudsman opened an inquiry into the complaint. In the course of the inquiry, the Ombudsman received the opinion of the ECB on the complaint and, subsequently, the comments of the complainant on the ECB's opinion. Her services also inspected the Letter. Alleged failure to provide access

The Ombudsman's findings and the friendly solution proposal

3. After inspecting the document and thoroughly examining the arguments put forward by the parties [1], the Ombudsman considered that at the relevant time (that is, at the time of the request for access in November 2011) the ECB was entitled to refuse even partial access to the Letter on the basis of the exceptions laid down in Article 4(1)(a) of the ECB Decision on public access to documents. She thus reached the conclusion that there was no maladministration by the ECB.

4. However, the Ombudsman noted that the request had been made nearly two years earlier and that more than three years had passed since the Letter was sent to the Irish Finance Minister. The Ombudsman also noted that the ECB had already disclosed the substance of the Letter to the complainant. Thus, in line with the Ombudsman's mission to seek fair outcomes to complaints that satisfy both the complainant and the institution concerned, she made the following proposal for a friendly solution, which aimed to give the ECB an opportunity to demonstrate further its commitment to the principles of transparency and accountability:

At the time of the complainant's request for access, the ECB was entitled to refuse access to the Letter it sent to the Irish Finance Minister on 19 November 2010. The Ombudsman therefore finds no maladministration by the ECB. However, in view of the passage of time since the Letter was sent and the request for access was made, the Ombudsman invites the ECB now to consider disclosing



the Letter, taking into account its specific content and prevailing monetary and economic conditions.

5. In its reply to the Ombudsman's proposal, the ECB informed the Ombudsman that it had referred the matter to its Governing Council [2], which took the view that the protection of the public interest as regards monetary policy in the European Union and financial stability in Ireland continued to justify confidentiality, and refused to release the Letter. According to the Governing Council, even though the prospects of the Irish economy have meanwhile improved considerably, financial stability risks were still present, and the situation continued to require close monitoring. It added that the overall context in which the Letter was sent was considered to be still relevant, as Ireland is subject to post-programme surveillance following its exit from the economic adjustment programme. Finally, the ECB restated its commitment to the principles of transparency and accountability and undertook that its Governing Council would re-evaluate disclosure of the Letter at a more advanced stage of the post-programme surveillance.

6. The complainant did not submit any observations.

The Ombudsman's assessment after the friendly solution proposal

7. Upon receiving the ECB's response to her proposal, the Ombudsman expressed publicly her regrets that the Governing Council of the ECB had wasted the opportunity to demonstrate its commitment to the principles of transparency and accountability and to further enhance its legitimacy in the eyes of the EU citizens, at a time when so many of them have been suffering as a result of the economic crisis [3]. However, in the light of the Ombudsman's previous conclusion [4] that the ECB was entitled to refuse access to the Letter at the time of the complainant's request she will not pursue the matter further in the context of the present complaint.

8. The Ombudsman takes note of the Governing Council's commitment to re-evaluate disclosure of the Letter at a more advanced stage of the post-programme surveillance. Accordingly, she trusts that, should a citizen make a new request for public access to the Letter [5], the ECB will take into account her views and give greater weight to the public interest in transparency and accountability, as well as to the need further to enhance its legitimacy in the eyes of the EU citizens.

Conclusion

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

At the time of the complainant's request, the ECB was entitled to refuse access to the Letter. There are no grounds for further inquiries into the matter in the context of the present complaint.

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



Emily O'Reilly

Done in Strasbourg on 24 April 2014

[1] The arguments and the Ombudsman's assessment were explained in detail in the Ombudsman's letter to the ECB, dated 16 December 2013, proposing a friendly solution.

[2] The Governing Council is the main decision-making body of the ECB and consists of the six members of its Executive Board and the governors of the national central banks of the 18 euro area countries.

[3] See, the Ombudsman's press release of 7 March 2014, available at:
<http://www.ombudsman.europa.eu/en/press/release.faces/en/53710/html.bookmark>

[4] See above, paragraph 3 and in detail in the Ombudsman's proposal for a friendly solution.

[5] Any such request should be made in line with the procedure set out in the Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents 2004/258/EC, OJ 2004 L 80, p. 42, as amended by Decision ECB/2011/6 of 9 May 2011, OJ 2011, L 158, p. 37.