

The European Ombudsman : Complaint about maladministration

1. Plaintiff

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2. Against which European Union (EU) institution or body do you wish to complaint?

The European Banking Authority (EBA)

3. What is the decision or matter about which you complain? When did you become aware of it?

It concerns the EBA decision on the composition of its Banking Stakeholder Group, announced by Press Release on the 18th March 2011.¹

4. What do you consider that the EU institution or body has done wrong?

This decision does not comply with Article 37.2 and 37.3 of the Regulation (EC) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Banking Authority, which provides for a balanced representation of different stakeholders (see Annex II).

In March 2011, the EBA announced the members of its Stakeholder Groups, established to facilitate EBA's consultation with "stakeholders" in Europe. However, following our analysis of the composition of the Banking Stakeholder Group, we must raise serious concerns about the over-representation of financial industry interests and the under-representation of financial user representatives on the group.

We do not have access to biographies of all of the members of the stakeholder group but from the analysis we have been able to undertake we would make the following points (see details in Annex III):

"Representing in **balanced proportions**"

- "*Credit and Investment Institutions operating in the Union*": in conformity with the regulation, ten members of the thirty member Stakeholder Group are senior level professionals employed and paid directly by the banking industry. It is however to be stressed that nine are senior professionals from leading multinational European banks from EU 15 while only one is from a recent Member State (MS).

¹ See Annex I and <http://www.eba.europa.eu/News--Communications/Year/2011/The-EBA-establishes-its-Banking-Stakeholder-Group.aspx>

- *"Their Employees' Representatives as well"*: we do not question the appointment of employees' representatives, as this is required by Article 37 and because they represent their own interests which are not necessarily those of their employers. However we would like to underline that employees of the banking industry are not economically independent from it.
- *"As well as Consumers"*: the implementation by EBA of this provision gives rise to serious problems indicating that EBA has not granted sufficient attention to the notion of consumer representativity:
 - one of the designated consumer representatives is actually an academic, another one works for a think tank: they do not represent consumers and never did it in the past.
 - The other three consumer representatives come exclusively from very small consumer associations located in recent EU Member States while several applications from the more affluent and experienced national consumer associations were submitted to EBA and not selected. While we very much support the principle of ensuring that smaller countries are represented, it is important to recognize that these members will not have access to the same level of expert support and resources to challenge the industry representatives - including bank industry representatives from the international "mega" banking groups such as Deutsche Bank or BNP Paribas.

- *Five "Users of banking services"*: the five chosen persons are not "users" of banking services; they actually are "providers" from influential organizations that supply services to banks. The description of these paid service providers to the banking industry as "users" is at the very least misleading and contradicting the Regulation. Users of banking services refer to the notion of customers of such services. This is clear in article 37. 2 of the Regulation, and the Recital 48 (see annex II) is even clearer and more precise: "and other financial institutions which themselves use financial services, (...) and other retail users of banking services" should be represented in the Group in addition to "consumers". And there is not any mention of providers or suppliers.

In particular, in the EBA Stakeholder Group there are no representatives of the Pan-European financial services users' associations despite their applications. We are also surprised not to see any representative of companies who are bank customers in this sub-group, such as major retailers or their associations.

EBA seems therefore to have seriously mistaken "users" of banking services with banking industry executives themselves and with providers to this industry. Nevertheless, there is no ambiguity at the EU level in the term "users" of services. We refer to the above mentioned Recital 48 and - for example - to the creation of the "Financial Services Users Group" (FSUG) in 2010 by the European Commission, which does not include any representatives of the financial industries or any of their providers.

- *"And Representatives of SME"s*: one of the three representatives of SMEs is from a European federation that also represents the interests of the banking federations that are members of this federation.
- *"At least five of its members shall be independent top-ranking academics"*: it seems that the economic independence of one of them who works for a think tank partly funded by the financial industry is questionable. We could not check the economic independence of the other four from the financial industry as EBA did not communicate their resumes.

- “Ten of its members shall represent financial institutions, three of whom shall represent cooperative and savings banks”: except the fact that only one member of this sub-group comes from a recent MS, we can notice that, concerning number and expertise, the requirements of Article 37 are met only for this sub-group.

“Ensuring, to the extent possible”,

- “An appropriate geographical (balance)”: 8 of 30 members come from UK; 5 out of 30 members come from EU12;
- “And a gender balance”: 10 of the 30 members are women;
- “And representation of stakeholders across the Union”: there is only one of 10 representatives of credit and investment institutions from recent Member States while there is no consumer representatives from the EU 15. More generally the demand side is underrepresented while the banking sector and its providers are overrepresented.

In our view, the make-up of the Banking Stakeholder Group falls well short of the intentions expressed in many public statements made by European Authorities since the financial crisis, committing to make the voice of financial services users “*much more strongly heard on all financial issues*”, and to restore balance between the representation of financial services providers and that of users².

The disproportion in the Banking Stakeholder Group goes against both the spirit of the EU legislator and the wording of new financial supervision regulations (see Annex II) which require a balanced proportion between the representatives of financial services providers and financial services users.

As a matter of fact, the 30 member Group is heavily outweighed towards the persons paid by the banking industry or by its suppliers with at least 15 members, versus only 3 representing consumers and users in general. When the group will have to issue an opinion, advice EBA, or decide on the agenda of its meetings, because of the dominance of industry representatives and its suppliers, it will be impossible for the rest of the group to make up a majority. There is a serious risk that the membership vote will always lean on the same side.

As a result, this creates a serious risk of the EBA failing to properly understand the needs and interests of ordinary financial users and could undermine effective policymaking.

5. What, in your views, should the institution or body do to put things right?

EBA should reconsider the composition of the Banking Stakeholder Group at once without waiting for the renewal of this group foreseen in 2013. The new stakeholder group should be composed in balanced proportions and the users of banking services should be real users of those services – and not providers of services to the industry. It is also important to avoid potential conflicts of interests.

² See for example Annex IV: 4 March 2009 « *Driving EU recovery* » communication from the EC, Annex I, page 4: «*The interests of European investors, consumers and SMEs, must be at the centre of the reform... The Commission will ... ensure that the voice of European investors is much more strongly heard on all financial issues*”.

Even if the concept of balanced proportions is not defined by the Treaty or a previous directive, it is not new in the EU context. The Commission's White Paper on European Governance³, published in July 2001, mentions that – in order to '*reduce the risk of the policy-makers just listening to one side of the argument or of particular groups getting privileged access...*'⁴, – the Commission will adopt minimum standards for consultation and publish them in a code of conduct. The subsequent Commission's Communication on 'General principles and general standards for consultation of interested parties'⁵ lays down the principles of equitable consultation. Under those principles:

In determining the relevant parties for consultation, the Commission should take into account the following elements as well:

- ...
- *the need for specific experience, expertise or technical knowledge, where applicable*
- *the need to involve non-organised interests, where appropriate*
- *the track record of participants in previous consultations*
- *the need for a proper balance, where relevant, between the representatives of:*
 - *social and economic bodies*
 - *large and small organisations or companies*
 -

As the stakeholder group is established to '*facilitate consultation with stakeholders in areas relevant to the task of the Authority*' (Art. 37, 1. ; Regulation 1094/2010 establishing the EBA), the Commission's White Paper and Communication are adequate sources of inspiration to interpret rightly the concept of balanced proportions.

Additionally, in order to insure full transparency and prevention of conflicts of interests we would like the CVs of chosen members of stakeholder groups to be published on EBA website together with the criteria that were taken into account while recruiting.

6. Have you already contacted the EU institution or body concerned to obtain redress?

Yes

On 4 April 2011, we sent a letter (see Annex V) to the EBA Chairman raising our concerns on its decision and asking him to reconsider the composition of the EBA banking stakeholder group. On 26 April 2011, we received a response we consider unsatisfactory (see annex VI).

³ European Governance – A white Paper, 25/07/2001, COM(2001) 428 final.

http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0428en01.pdf

⁴ European Governance – A white Paper, 25/07/2001, COM(2001) 428 final, p. 17.

⁵ Communication from the Commission towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission, 11/12/2002, COM(2002) 704 final, p. 20.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2002:0704:FIN:EN:PDF>

7. If the complaint concerns relationships with the EU institutions or bodies; have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

No, not relevant in this case

8. Has the object of your complaint already been settled by a court or is it pending before a court?

No

9. Please select one of the following two options after having read the information in the text below:

Please treat my complaint publicly

10. Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

Date and signature:

Brussels 14/09/2011

A handwritten signature in black ink, appearing to be 'J. Enria', written over a horizontal line.

List of attachments:

1. [Annex I - Press Release on the establishment and composition of EBA's Banking Stakeholder Group announced by on 18 March 2011](#)
2. [Annex II - Article 37 and Recital 48 of the Regulation \(EC\) No. 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Banking Authority](#)
3. [Annex III - Analysis of the EBA Banking Stakeholder Group published list of members](#)
4. [Annex IV - 4 March 2009 « Driving EU recovery » communication from the EC](#)
5. [Annex V - EuroInvestors' letter to the Chairman of EBA, Mr. Andrea Enria](#)
6. [Annex VI - Reply from the Chairman of EBA, Mr. Andrea Enria to EuroInvestors](#)

Complaints to the European Ombudsman (and any annexed documents) are normally dealt with publicly.

'Dealing publicly' with a complaint means that any member of the public may have access to the complaint and its annexes. If the Ombudsman opens an inquiry, the opinion of the institution or body concerned on the complaint, any observations on the opinion made by the complainant, as well as other documents mentioned in Article 14 of the Implementing Provisions (available on the Ombudsman's website) are public documents to which any member of the public may have access on request. The Ombudsman's decisions on complaints are published on his website with the

complainant's name removed. Some are also published in full, or in summary form, in hard copy and electronic formats. These publications do not include the complainant's name or address.

A complainant has the right to request that his or her complaint be dealt with confidentially. If confidentiality is requested, there is no public access to the complaint or to the other documents mentioned above. However, even a confidential complaint must be sent to the Union institution or body concerned, if the Ombudsman begins an inquiry. The Ombudsman's decisions on confidential complaints are published on his website, after the removal of any information which could lead to the identification of the complainant. This information is also removed if the decision is published in full, or in summary form, in a hard copy or electronic format.

Complaints to the Ombudsman may contain personal data relating to the complainant, or to a third party. The processing of personal data by the European Ombudsman is governed by Regulation (EC) No 45/2001 (1). Unless the complainant requests confidentiality, he or she is understood to consent for the purposes of Article 5 (d) of Regulation (EC) No 45/2001 to the Ombudsman dealing publicly with any personal data which the complaint may contain.

(1) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1)

