



DECISION

given by

the
BOARD OF APPEAL
OF THE EUROPEAN SUPERVISORY AUTHORITIES

under Article 60 of Regulation (EU) No 1093/2010
and the Board of Appeal's Rules of Procedure (BoA 2019 04)

In the appeal case brought by

Jeffrey Michael Howerton

Against

The European Banking Authority

Decision Ref.: 2021-D-01

Board of Appeal
Marco Lamandini (President)
Lars Afrell
Giuseppe Godano
Katalin Mero
Beata Maria Mrozowska
Michele Siri

Place of this decision: Paris

Date: 7 January 2021

APPEAL under Article 60 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 of the European Parliament and of the Council (the “ESAs Regulations”)

1. This is the decision of the Joint Board of Appeal of the European Supervisory Authorities on the appeal filed by the appellant Jeffrey Michael Howerton (“Howerton” or “appellant”) under Article 60 of the ESAs Regulations.

Background of facts

2. On 4 August 2020 and with subsequent correspondence the appellant requested the European Banking Authority (“EBA”) to initiate an investigation under Article 17 of Regulation (EU) No 1093/2010. The request alleges breaches of intellectual property rights regarding a script which the appellant sought to sell to Netflix. The appellant refers to abuse by several persons who attended Brown University in the United States around the time when the appellant was there and who may now work for law enforcement authorities including the California Department of Justice, the FBI and the Mossad. The appellant complained of these matters to numerous bodies including, in the Netherlands, de Nederlandsche Bank; in Liechtenstein, the Financial Market Authority and the Conciliation Board; in Italy, Banca d’Italia; in Malta, the Malta Financial Services Authority, the National Audit Office and the Ombudsman; in Ireland, the Central Bank of Ireland; in Denmark, the Danish Financial Supervisory Authority and the Ombudsman; in Germany, BaFIN; and in Luxembourg, the Commission de Surveillance du Secteur Financier, Banque du Luxembourg and the Luxembourgish Ombudsman.
3. The complaints relate to the same substantive issues already brought (i) to the attention of ESMA, which led the Board of Appeal to adopt its decision of 12 October 2020 (2020-D-01, the “Howerton v ESMA BoA Decision”) and (ii) to the attention of EIOPA, which led the Board of Appeal to adopt its decision of 29 October 2020 (2020-D-02 the “Howerton v EIOPA BoA Decision”)
4. EBA assessed the content of the requests to investigate and concluded that the facts that were described in the requests were outside the scope of EBA’s remit because they did not fall under any of the Union acts referred to in Article 1(2) of Regulation (EU) No 1093/2010. EBA also found that there were allegations of money laundering against Netflix, but EBA concluded that these were unsubstantiated allegations which in the circumstances did not appear to be a supervision issue that can be clearly linked to the responsibilities of competent authorities in the Union based on the information that the appellant has provided. In view of the above, EBA concluded that the appellant’s request does not set out a grievance which relates to a clear and unconditional obligation of a competent authority under an act referred to in Article 1(2) of the EBA Regulation and is therefore not a matter which the EBA may pursue through an investigation under Article 17 of the EBA Regulation. Additionally and in any event EBA further noted that the appellant’s allegations are not considered to have a significant, direct impact on EBA’s objectives concerning: contributing to the short, medium and long-term stability and effectiveness of

the financial system, functioning of the internal market; integrity, transparency, efficiency and orderly functioning of financial markets; preventing regulatory arbitrage and promoting equal conditions of competition; and enhancing customer protection. This factor also weighs against opening an investigation in this case. Having regard to the above considerations, EBA informed the appellant that the EBA Chairperson has in the exercise of his discretion concluded that no investigation under Article 17 should be initiated in this case.

5. The appellant was informed of this conclusion by EBA on 21 December 2020, by e-mail.
6. The appeal against the EBA communication of 21 December 2020 was filed with the Board of Appeal's Secretariat on 22 December 2020.
7. The Board of Appeal has read the 50-pages of this new appeal of the appellant and finds that this appeal merely reiterates, albeit vis-à-vis a different authority (EBA instead of ESMA and EIOPA), the same complaints which have been almost identically raised in the past by the appellant with respect to ESMA and EIOPA and which led to two appeals which the Board of Appeal has determined to be inadmissible in that context.
8. The Board of Appeal further notes that the appellant, at the time of filing of this new appeal, was fully aware of the reasons of inadmissibility of both appeals filed against ESMA and EIOPA.
9. As in the ESMA Decision and in the EIOPA Decision, also in the instant case the Board of Appeal fails to see how the facts described in the appeal, and previously in the complaint submitted to EBA, may involve a matter within the remit of EBA (the Board of Appeal also notes that, in the notice of appeal, the appellant denies that it intended to make any allegation of money laundering against Netflix).
10. In the circumstances, therefore, considering also that the *Howerton v. ESMA BoA Decision* and the *Howerton v. EIOPA BoA Decision* were known to the appellant before the filing of the present appeal, the Board of Appeal recalls the reasons widely expressed in those decisions, including the clear reference made therein to settled case-law of the Court of Justice (judgments of 9 September 2015, T-660/14 *SV Capital OÜ v EBA*, T-660/14, EU:T:2015:608 and, on appeal, the CJEU in its judgment of 14 December 2016, *SV Capital OÜ v EBA*, C-577/15 P, EU:C:2016:947). The Board of Appeal considers therefore that the appeal is manifestly inadmissible and does not allow for any further consideration.

The decision

On these grounds the Board of Appeal unanimously dismisses the appeal as manifestly inadmissible.

The original of this Decision is signed by the Members of the Board in electronic format, as authorised by Article 22.2 of the Rules of Procedure and countersigned by hand by the Secretariat.

Lars Afrell
(SIGNED)

Giuseppe Godano
(SIGNED)

Marco Lamandini (President)
(SIGNED)

Katalin Mero
(SIGNED)

Beata Mrozowska
(SIGNED)

Michele Siri
(SIGNED)

On behalf of the Secretariat
Tomas Borovsky
(SIGNED)

A signed copy of the decision is held by the Secretariat.