

Report on the inspection of documents and on the meeting of the European Ombudsman's inquiry team with the European Central Bank's representatives

Correspondence - 28/10/2022

Case OI/1/2022/KR - **Opened on** 01/03/2022 - **Decision on** 26/10/2022 - **Institution concerned** European Central Bank (No further inquiries justified) |

Case title : How the European Central Bank (ECB) deals with 'revolving door' cases

Date : Monday, 23 May 2022

Remote inspection arrangements

Present

ECB representatives

Chief Compliance and Governance Officer

Deputy Head of Employee Services Division, Directorate General (DG) Human Resources

Head of Policy Assessment Section, DG Monetary Policy

Principal Compliance and Governance Officer

Senior Compliance and Governance Officer

EO representatives

Ms Rosita Hickey, Director of Inquiries

Ms Jennifer King, Legal Advisor

Ms Ángela Marcos Figueruelo, Inquiries Officer



Mr Koen Roovers, Inquiries Officer

Purpose of the inspection of documents / meeting

The purpose of the inspection of documents and the inspection meeting was to clarify certain matters related to the inquiry, as requested by the Ombudsman in her letter of 1 March 2022.

The Ombudsman's Director of Inquiries proposed discussion points for the meeting in a letter dated 16 May 2022, based on the documents that the ECB had shared with the Ombudsman, namely:

- I. Documents in the ECB's file related to the move of a former ECB economist to a US Investment Bank in Frankfurt ('ECB file');
- II. A statistical overview of staff members (divided between salary bands I and above, as well as salary bands F/G to H for the Banking Supervision Departments, and per directorate-general and directorate) that have left the ECB in 2020 and 2021, to take up positions outside the EU institutions, bodies, offices and agencies.

Introduction and procedural information

After introductions were made, the Ombudsman inquiry team noted that they would draw up an inspection meeting report, and that the draft would be shared with the ECB for review to confirm its factual accuracy before its finalisation. The inquiry team also mentioned that the Ombudsman would not divulge any information to third parties or to the public that the ECB considers confidential, without the ECB's consent.

The ECB representatives introduced the work of the ECB's Compliance and Governance Office, which is consulted on requests for post-employment activities, as well as requests for occupational activities of staff members on unpaid leave. They indicated that the Ombudsman's inquiry was timely, as the ECB is planning to review the ethics framework for ECB staff in the second semester of 2022.

Information exchanged

The discussion points proposed by the Ombudsman's inquiry team are in cursive. The ECB's answers are in regular font.

As regards the information on 2020 and 2021 revolving door cases:



1. Are the notifications of requests to take up new posts submitted in a timely manner?

The vast majority of cases are notified in a timely manner so that the ECB can address any potential risks and adopt mitigating measures, if and when necessary.

In this regard the ECB representatives referred to Article 0.2.8.1 in the ECB Staff Rules, which sets the framework for 'Negotiating prospective occupational activities':

Members of staff shall behave with integrity and discretion in any negotiations concerning prospective occupational activities. They shall inform the Compliance and Governance Office if the nature of the occupational activity may lead to a conflict of interest with the professional duties of the member of staff. If there is a conflict of interest, the Compliance and Governance Office shall inform and advise the responsible line manager with regard to the appropriate measures to be initiated to mitigate the conflict of interest, including, if necessary, relieving of the member of staff from responsibility for the relevant matter.

This requires ECB staff members to notify the CGO when discussions concerning prospective occupational activities are at an advanced stage but in any case before a decision on whether to accept the job is taken. The ECB representative stated that this point is emphasised in ethics awareness initiatives (such as articles on the intranet) and staff trainings (through organised events and e-learning)

2. How are conflicts of interest assessed?

The ECB representatives stated that the ECB takes managing conflicts of interest arising from post-employment activities and occupational activities during unpaid leave very seriously. In so doing, the ECB considers the full spectrum of mitigating measures. In case it identifies risks, it aims to adopt those measures that mitigate those risks adequately and that are proportionate. This can include a temporary prohibition.

In order for the ECB to carry out a fully informed assessment of post-employment and occupational activities of its staff during unpaid leave, it asks the staff members concerned for all relevant information concerning their current and future tasks in order to identify any possible overlap or conflict in tasks (including any potential professional contacts with the ECB they would have in their future role), to assess whether any measure such as restricting their access to specific information and/or being removed from certain information streams would be required as an immediate precautionary safeguard. In addition the CGO asks line managers to confirm information on tasks and to elaborate their views on potential conflicts of interests and may also consult other parties (such as DG HR etc.), and also takes into account publicly available information. The CGO determines if there are conflicts of interest and, in the affirmative, which mitigation measures are required to effectively address the respective conduct risks. The ECB representatives stated that such decisions are shared within the ECB on a 'need to know' basis so that they can be properly respected and implemented.



The ECB aims for consistency in the decisions it takes on post-employment and on occupational activities of its staff during unpaid leave. If the circumstances are similar in two individual cases, then the ECB adopts similar measures but each case is assessed on its own merits on a case-by case basis and any divergence of approach is justified.

When the ECB adopts a decision on a request for a post-employment or occupational activity during unpaid leave, it trusts that the staff members concerned will abide by the conditions and restrictions applied by the ECB. In any event, staff members having left the ECB have the obligation to notify any intention to change their occupational status during a given period (which is consistent with the maximum cooling-off period applicable to them).

The ECB also monitors the compliance with its post-employment and occupational activity during unpaid leave decisions, and follows up with the staff member concerned if it becomes aware of any allegations related to breaches.

ECB staff members are required, even after they have left the ECB's service, not to disclose information of the kind covered by the obligation of professional secrecy, which is not only stipulated in the Staff Rules but even at the level of primary law in Article 37 of the ECB's Statute. [1]

3. How does the ECB determine the measures it proposes to address actual, potential or perceived risks of conflicts of interest?

The ECB takes a number of factors into account in its assessment of conflicts of interest, including:

- The seniority of the staff member concerned;
- The intensity of/exposure to the risks identified;
- The tasks and responsibilities in the service of the ECB of the staff member concerned;
- The tasks and responsibilities in the future of the staff member concerned;
- Whether the requested activities may give rise to risks of reputational harm to the ECB;

In carrying out its assessment, the CGO takes the business area of the staff member concerned into account.

Mitigating measures are discussed with the line manager of the (former) staff member concerned. These deliberations are duly documented. The resulting mitigating measures always strive for adequate balancing of the interests thereby respecting proportionality and could include, for example, re-assignment to other tasks, applying the "four eyes" principle, etc.

In addition, the ECB considers, in its assessment, potential risks resulting from access to confidential and/or market sensitive information, which might require an adjustment of access rights.

4. Why did the ECB impose a de facto/voluntary cooling off period in certain cases in the absence of a formal requirement in the ECB Staff Rules?



The ECB representatives said that additional mitigating measures to those foreseen in the ECB Staff Rules may be adopted as an extra safeguard to protect the ECB's interests, for example to mitigate the risk of reputational harm that a prospective post-employment activity of a (former) staff member may give rise to.

5. The latest amendments to the ECB Staff rules apply since 1 May 2022. Are any of these amendments to the staff rules relevant in the context of this inquiry? For example, do any amendments concern the ECB's rules on notifying post-employment activities, external mobility, and cooling-off periods, among other issues?

The ECB representatives said that the latest amendments to the ECB Staff Rules, which for example aimed at improving the ECB's whistle-blowing rules, did not concern issues related to the Ombudsman's inquiry.

The ECB expects to make further amendments to its Staff Rules in 2023.

As regards the individual case

The discussion points shared in advance of the meeting were based on the understanding that the individual case related to an ECB staff member who had joined a US bank while on unpaid leave for mobility with a view to returning to the ECB after.

During the meeting, the ECB representatives informed the Ombudsman's inquiry team that in the meantime the ECB had been informed that the circumstances in that case were different to those on which the ECB's initial decision had been based, and that the staff member in question had resigned as of March 2022.

6. The compliance and governance office's (CGO) assessment of the application raised concerns that moving to an entity that is subject to supervision by the ECB was at odds with the existing purpose of 'leave for mobility'. Against this background:

a. Was the requested external activity consistent with activities for which the leave for mobility provision had hitherto been intended and applied? If not, why did the ECB decide to deviate from the normal policy on leave for mobility in this case?

The ECB representatives said that the ECB encourages staff to develop their skill set by taking on positions outside the ECB for a specific time period and that any request for mobility is assessed (if needed, with the involvement of the CGO) and formally approved by DG HR.

The ECB representatives said that occupational activity during unpaid leave may be authorised to staff in accordance with Article 5.12.1a (b) of the ECB Staff Rules [2] :

“ (b) Mobility: for gainful employment in one of the following:



- *a national central bank forming part of the ESCB or any other central bank;*
- *a national competent authority forming part of the SSM;*
- *an institution, body, office or agency of the European Union;*
- *an institution or organisation listed by the International Service for Remunerations and Pensions as a member of the group of international financial institutions and of other international organisations;*

as well as, provided the Director General Human Resources [DG HR] or their Deputy considers the experience to be gained as a result of the period of employment or self-employment as relevant for the ECB:

- *academia;*
- *the private sector;*
- *the national public sector or inter-governmental organisations entrusted with the performance of tasks in the public interest, to the extent not included above .”*

The ECB representatives added that, with the exception of supervisors requesting authorisation to work for a supervised entity, the ECB does not rule out *per se* a certain type of occupational activity during unpaid leave *a priori* . The ECB's approval depends on whether a move could:

- be of relevance or be of benefit to the ECB;
- conflict with the ECB's legitimate interests, or
- give rise to conflicts of interest with the tasks and responsibilities of the staff member at the ECB.

To determine whether this is the case, the ECB assesses each case individually also duly taking account of the seniority of the staff member and their current and potential future role.

In this case, the CGO assessed whether or not the request for external mobility would give rise to a conflict of interest. [3] The CGO considered the current tasks of the staff member and the proposed future tasks (as provided by the staff member), it took account of the salary band of the staff (non-managerial) and the opinion of his line manager and, consistent with previous decisions, the CGO decided, guided by the principle of proportionality, that there was no risk of conflict of interest:

- he did not have tasks that were directly related to the prospective employer;
- he would not have close professional contacts with the ECB in the prospective job;
- he was not in a salary band that is subject to a cooling off period [4] , or involved in supervisory activities that are subject to a cooling off period since supervisors take decisions affecting supervised entities at the ECB [5] ;
- the prospective job was described as leading a team of economists who will provide research



based on which the prospective employer will develop a view on the likely evolution of the European economy. As such, his ECB tasks and his future assignments were sufficiently distinct.

In these circumstances, DG HR approved the request for leave for mobility, as it deemed the experience to be gained as a result of the external activity with the US bank to be relevant for the ECB. Also, the ECB representatives said that the ECB's business was not affected by the move.

b. Based on the concerns raised by CGO about working for "supervised institutions" during unpaid leave, did this case raise revolving door concerns? If so, what were those concerns?

The ECB said there were no such concerns because of the following reasons.

As the former ECB staff member had not been involved in supervisory activities in the ECB but rather at expert level assigned/conducting tasks related to contributing to specific research/assessment aspects on monetary policy, the fact that his new employer is a supervised entity of the ECB was not considered relevant. The ECB representatives clarified that in those circumstances, they considered the US bank to be a 'financial institution'.

The CGO concluded that there were no conflict of interest concerns in this case, also taking into account the assessment of the line manager of the former staff member.

The line manager of the staff member had expressed a favourable opinion as regards the request for unpaid leave. This view was based on a number of aspects:

- The staff member was not involved in supervisory activities.
- The staff member had partial access to information as regards monetary policy preparation only; he was involved in a very focused and specific role.
- Information relating to monetary policy was said to be subject to rapid change, which the line manager illustrated with the difference in the macroeconomic and monetary policy outlook in October 2021, compared to February 2022.
- From the beginning of October 2021, i.e. when the staff member notified the possible move, his access to information related to monetary policy had been removed informally by his line manager. On 22 October 2021, the ECB formally revoked the ECB economist's access to information that is classified either as Secret or as Confidential according to the ECB's confidentiality regime. Both these pro-active measures were taken to avoid any perception of the staff member benefitting from having privileged access to sensitive information.

The CGO agreed with the preventive measures suggested by the line manager to take the staff member off the information flow on the formulation of recommendations for monetary policy three months before his departure as an extra safeguard to protect professional secrecy as well as to avoid any potential perception of providing privileged information about possible ECB Governing Council decisions.

c. The CGO assessment did not identify a risk that, by approving the move to a supervised entity



of a staff member that intended to return, the ECB would be perceived as encouraging revolving door moves that could damage the ECB's reputation. What were the reasons for this conclusion?

The ECB representatives said that, within the financial business community, it would be generally understood that the ECB would have taken the necessary proactive mitigating measures as standard practice. They also referred to the strict confidentiality requirements ECB staff members are under, violation of which has serious consequences. They also stated that the ECB's staff rules, which also include a chapter on ethics, are furthermore available to the public.

d. The file inspected by the Ombudsman inquiry team makes clear that the economist had been in touch with his hierarchy, the HR department and an ECB executive board member about the prospective job, and that he had received assurances that they would agree to this external activity while on unpaid leave for mobility. Does the ECB hold any documents concerning these exchanges? If so, could the ECB please make them available for inspection?

The ECB representatives confirmed that no such documents exist, as these preliminary interactions took place orally. For the CGO assessment, this also did not play a role, as the CGO conducts its assessment independently from any oral assurances that others within the ECB may have given to staff members concerned, given the independent role the CGO holds within the institution.

e. Does the ECB hold any documents concerning DG HR's decision to approve the move, taking into account the CGO's assessment? If so, could the ECB please make them available for inspection?

The ECB shared the DG HR decision on 20 May 2022, which was added to the inspection file (see 'ECB file' above).

f. The line manager of the economist flagged the potential overlap in tasks (the economist's tasks in the ECB at the time and his future tasks with the US bank) in a telephone call and not in writing. In the CGO's experience, is it common practice for the line managers concerned by such moves to flag their concerns or provide input by oral, rather than written, means?

The ECB representatives explained that the line manager's assessment can either be provided orally or in writing. What matters to the CGO, where such an opinion is provided orally, is that this assessment is recorded by way of a note to the file, which is then shared with the line manager concerned, as was done in the present case. More specifically, the CGO noted that the line manager did not see any risk of conflict of interest since the future role as described showed only a limited and not substantial similarity in tasks.

7. About a week after the economist took up his job for the US bank, a note was shared with clients of the bank that the economist was reported to have authored. [6]

a. Does the ECB have knowledge of the content of this note? If not, does the ECB consider that



this note is important for verifying whether the economist is complying with the ECB's rules for unpaid leave for mobility? If so, did the ECB check whether the information in the note is based on information that is publicly available?

The ECB is aware of the content of the note of 7 February 2022. The note was related to the meeting of the ECB's Governing Council of 3 February 2022. The ECB representatives confirmed that the information in the note did not include any confidential information or ECB information that was not already public at the time. The ECB representatives clarified that the note had been co-authored by the then ECB economist on leave for mobility and not written exclusively by him.

The line manager of the staff member referred to the ECB Survey of Monetary Analysts [7]

conducted at the time of the publication of the US bank's note in question. The outcome of that survey reflected the views and economic outlook similar to those expressed in the note, thus the note did not contain information that was not already known in the market.

As regards the updated position of the individual staff member, the ECB representatives said that the ECB economist's resignation as of March 2022 was not linked to the terms of the note. The ECB representatives said that following his leave for mobility, the ECB became aware, through media report and certain social media posts, of the actual tasks being carried out by its former staff member, which concerned monetary policy more specifically than had been understood from his request for mobility. This meant that the former ECB economist would not only be giving a general outlook on the European economy but also a forecast for future monetary policy decisions, i.e. he would be working more specifically on subjects that would directly fall within the ECB's competence. As such, given this change in circumstances, the former staff member decided to resign from the ECB.

[Follow up] In the context of the discontinuation of the unpaid leave for mobility from March 2022 onwards, did the ECB assess whether the new employment could conflict with the ECB's interests, and could be approved as a 'post-service' activity?

The ECB said that no such assessment had taken place. However, since no cooling-off period applied to the ECB economist, it said that the conclusion of such an assessment would in any case have been the same as the assessment that had been carried out in October 2021 when the activity had been requested during leave for mobility, namely adjusting access rights to sensitive information.

b. How does the ECB check that the conditions imposed on those taking up new posts during unpaid leave for mobility remain fulfilled during the time that the staff member is with the new employer?

The ECB representatives said that they do not actively monitor for possible breaches of the conditions of authorisation, but that it follows up with staff members concerned if it is made aware of alleged breaches. They also recalled that staff members having left the ECB have the



obligation to notify any intention to change their occupational status during a given period (which is consistent with the maximum cooling-off period applicable to them).

Brussels, 17.6.2022,

Rosita Hickey Koen Roovers

Director of Inquiries Inquiries Officer

[1] See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E%2FPRO%2F04> [Link].

[2] See: https://www.ecb.europa.eu/careers/pdf/staff_rules_fixedterm.pdf [Link].

[3] See Article 0.2.1.2 which defines conflict of interest as *'a situation where members of staff have personal interests that may influence or appear to influence the impartial and objective performance of their professional duties. 'Personal interests' means any benefit or potential benefit, of a financial or non-financial nature, for members of staff, their family members, their other relatives or their circle of friends and close acquaintances.'*

[4] The staff member concerned was an economist in salary band H, which was a non-managerial, expert role.

[5] This is why at the ECB cooling-off periods are specifically strict for supervisory staff members and/or salary level I and above (i.e. managers/advisers).

[6] See:

<https://www.politico.eu/article/jens-eisenschmidt-ecb-morgan-stanley-client-note-timing-access/> [Link].

[7] See: https://www.ecb.europa.eu/stats/ecb_surveys/sma/html/all-releases.en.html [Link].