



Europejski Rzecznik
Praw Obywatelskich

Decyzji w sprawie 366/2017/AMF - Podsumowanie decyzji w sprawie 366/2017/AMF dotyczącej sposobu zareagowania przez Europejski Bank Inwestycyjny na obawy o dyskryminację ze względu na płeć oraz równość szans personelu

Decyzja

Sprawa 366/2017/AMF - Otwarta 23/03/2017 - Zalecenia w sprawie 12/04/2018 - Decyzja z 17/10/2018 - Dane instytucje Europejski Bank Inwestycyjny (Propozycja/propozycje zaakceptowane przez instytucję) | Europejski Bank Inwestycyjny (Zalecenie zaakceptowane przez instytucję) |

Sprawa dotyczyła zgłoszenia przez członka personelu Europejskiego Banku Inwestycyjnego (EBI) domniemanej dyskryminacji ze względu na płeć w tej instytucji, szczególnie na szczeblu kierowniczym.

Europejska Rzecznik Praw Obywatelskich przeprowadziła postępowanie wyjaśniające w sprawie i uznała, że EBI nie ustosunkował się do zgłoszenia w sposób kompleksowy, w tym nie przedstawił zarysu działań podejmowanych na rzecz osiągnięcia równowagi płci. Europejska Rzecznik Praw Obywatelskich zaleciła, by EBI naprawił te niedociągnięcia i zasugerowała też, by poprawił swoją politykę zgłaszania nieprawidłowości poprzez włączenie zapisu przewidującego termin, w którym EBI musi odpowiedzieć na zgłoszenie dokonywane przez personel.

EBI zaakceptował sugestię i zalecenia Europejskiej Rzecznik Praw Obywatelskich. W związku z tym Rzecznik zamknęła sprawę. Jednocześnie Europejska Rzecznik Praw Obywatelskich zachęca EBI do zintensyfikowania działań na rzecz osiągnięcia równowagi w reprezentacji płci na wszystkich szczeblach kierowniczych oraz wyznaczenia celu wyższego niż obecny wynoszący 33% kobiet na stanowiskach kierowniczych do 2021 r. Jak zauważyła Komisja Europejska przy innej okazji, organizacje, które wspierają zróżnicowanie pracowników i włączają wszystkich osiągają na ogół lepsze wyniki, są bardziej innowacyjne i podejmują lepsze decyzje.

Background to the complaint

1. The complainant is a staff member of the European Investment Bank (EIB). The department



where the complainant was working was reorganised following the arrival of a new Director in 2014. In this context, the complainant lost her management position. The complainant then participated in a selection procedure for a new management post within the same department, but was not selected. The complainant considered that she and the other female managers in the department had been unfairly demoted from their management roles and that, in general, women in the EIB do not have the same opportunities as men to access management posts. On 26 October 2016, the complainant reported this [1] to the EIB [2], in accordance with the EIB's whistleblowing policy [3]. According to the complainant, the EIB as a whole is suffering from a lack of female managers — in 2015 20% of managers were women while 89% of the administrative support posts were occupied by women. The core of her report was that the principles of equal opportunities and non-discrimination on the basis of gender are not respected at the EIB.

2. On the same date, the complainant also made a harassment complaint [4] under its *Dignity at Work* [5] policy.

3. The EIB did not react to the report she submitted under the EIB's whistleblowing policy. The complainant then turned to the Ombudsman in March 2017 [6].

4. The Ombudsman opened an inquiry into the complainant's allegation that the EIB had not properly considered, under the EIB's whistleblowing policy, the issue she had reported.

The Ombudsman's suggestion for improvement and recommendations

5. It took the EIB more than 8 months to reply to the complainant's report, submitted under the EIB's whistleblowing policy. The EIB replied to the complainant's report only after the Ombudsman got involved. While the EIB whistleblowing rules do not set a deadline for the EIB to reply, this length of time cannot be considered acceptable for a reply to potentially serious breaches of conduct that might call for action to be taken promptly. Delays in replying to reports made by staff may also seriously undermine trust in the EIB whistleblowing policy and thus render it ineffective.

6. The Ombudsman therefore made the following suggestion for improvement to the EIB:

The EIB should put in place a time line for the handling of reports under its whistleblowing policy [7].

7. In its eventual reply to the report submitted by the complainant under the EIB's whistleblowing policy, the EIB suggested that the complainant had made the report only because she was unsuccessful in the selection procedure for a management post.

8. The Ombudsman considered that the fact that the complainant was dissatisfied with the outcome of the selection procedure and the reorganisation of her department was not sufficient



to prove that the general issue that she had brought to the EIB's attention - lack of equal opportunities - was not reported in good faith.

9. In its reply to the complainant's report, the EIB focused on the situation of the complainant and other former female managers in their particular department, which was indeed mentioned in the complainant's report. However, the EIB failed to give a clear answer on the issue of alleged lack of equal opportunities for women *generally*, as a potential systemic problem within the EIB. The only response that the EIB gave to the statistics reported by the complainant was that, regarding " *the general gender balance in the EIB management positions, this is part of the Diversity Policy promoted and administered by PERSONNEL* ". However, the EIB did not in any way describe its Diversity Policy. Nor did it say whether the Diversity Policy had been made public or distributed to staff. Furthermore, the EIB did not provide the Ombudsman with a copy of its Diversity Policy. The Ombudsman therefore found that the manner in which the EIB had dealt with the complainant's report, made under the EIB whistleblowing policy, constituted maladministration.

10. The Ombudsman thus made the following recommendations to the EIB:

The EIB should reply to the complainant in a comprehensive fashion regarding the facts and figures cited in her whistleblower report and which, she argues, support her claim of gender inequality within the EIB. In its reply the EIB should also address the general issue of gender balance, taking into account the public statements made by its President and its new diversity and inclusion strategy . The EIB should provide the complainant with a copy of its Diversity Policy and outline the actions it has been taking, and intends to take in the future, in order to achieve gender balance within the institution. This comprehensive reply should be sent to the complainant within two months of this Recommendation and, at the same time, a copy of the reply (and of the Diversity Policy) should be sent to the Ombudsman.

The EIB's opinion on the Ombudsman's suggestion for improvement and recommendations

11. The EIB informed the Ombudsman that it would take account of her **suggestion**, to establish a time line for handling whistleblowing reports, in the context of the ongoing revision of its whistleblowing policy.

12. As regards the Ombudsman's **recommendations**, the EIB replied to the complainant in June 2018. In its reply, the EIB contested the statistics she had provided. It stated that, at the beginning of 2014, the percentage of female managers in the EIB was 24%. It had increased to 27% by the end of 2016. The EIB recognised that the percentage of women in administrative support functions was 89% at the end of 2015. It argued, however, that " *this is a reflection of the market place* ".

13. In its reply, the EIB provided the complainant with a copy of the "EIB Diversity and Inclusion



Strategy 2018-2021”, which is the third Diversity Strategy adopted by the EIB. The previous one covered the period 2012-2015. According to the EIB, the Diversity Strategy 2012-2015 was in place when the events took place that led the complainant to make her whistleblowing report. “*Shortlisting female candidates for managerial positions*” and “*promoting women to management positions*” were among the objectives of the Diversity Strategy 2012-2015. The Diversity Strategy 2012-2015 did not, however, include specific targets for the recruitment of female managers.

14. The EIB stated that since 2014, it has made continuous efforts to encourage women to apply for vacancies, by participating in targeted recruitment events and through the use of social media. In 2015, the EIB also contracted an external consultancy firm to carry out an analysis of how it was doing in terms of diversity. This study helped the EIB to identify the main challenges to be addressed in its Diversity and Inclusion Strategy 2018-2021, which acknowledges that the “*progress to date on some key metrics - notably gender diversity in executive and management levels - remain below our ambitions*”.

15. The EIB pointed out that its Diversity and Inclusion Strategy 2018-2021 establishes a target to increase the percentage of women managers from 27% to 33% by 2021. The EIB also aims to increase the share of male support staff from 9% to 21% by the same date. The EIB acknowledges that “*the target for women at Management level is below that of some peer organisations, notably the European Commission, which has an ambitious target of 40% women at Head of Unit (equivalent to EIB level 7) and above by 2019*”. The EIB considers, however, that its target is in line with organisations “*operating in similar market segments, notably the ECB, which targets 35% women in middle management and above (with 28% in senior management roles) and private financial sector companies where targets of between 30% and 35% at senior management level are common*”. In order to reach its objectives, the EIB will primarily focus on developing internal talent. It will also aim to attract and recruit “*high quality and diverse*” new staff members.

16. In her comments on the EIB’s reply, the complainant stated that the difference between the statistics that she provided and the statistics referred to by the EIB is due to the EIB giving the percentage of women in “management roles” instead of “management posts”. The more generic term “management role” includes staff managing the day-to-day tasks of a team without officially holding a management position.

17. The complainant considers that the target established by the EIB to increase its percentage of female managers from 27 to 33% in five years is far from ambitious. The complainant believes that the EIB is merely relying on the 1% yearly increase in the percentage of female managers that has proven to be steady over the past years.

The Ombudsman's assessment after the suggestion for improvement and recommendations

18. The Ombudsman welcomes the fact that the EIB will follow up on her suggestion and



establish a time line for handling whistleblowing reports as part of the ongoing revision of its whistleblowing policy.

19. In response to the Ombudsman's **recommendation**, the EIB has provided the complainant with a detailed reply to the facts and figures cited in her whistleblowing report, including an assessment of the situation in terms of gender balance. The EIB has also provided the complainant, as well as the Ombudsman, with a copy of its Diversity Strategy.

20. The Ombudsman considers that it is particularly regrettable that the EIB initially treated the complainant's whistleblowing report as an unjustified attempt to complain about her own individual situation. First, as confirmed below, the issues raised by the complainant are a matter of serious concern. Second, by focusing on the motives of a whistleblower, rather than the matters raised in the report, the EIB risks discouraging whistleblowers from coming forward—the first and most important thing to do when a whistleblowing report is received is to determine, as quickly as possible, whether the matters raised should be investigated. Third, and specifically as regards the complainant's situation, the General Court of the EU recently held that the EIB did not carry out a proper assessment and follow up of the complainant's harassment complaint [8]. This makes the EIB's approach to the complainant's whistleblowing report all the more regrettable. It also suggests a culture at the EIB that, at least at the time of the events in question, was not yet ready to take these issues seriously. This is explored further below.

21. While the Ombudsman considers that the EIB has accepted her suggestion for improvement as well as her recommendations and has therefore decided to close the case, she would like to voice certain concerns in relation to the substance of the EIB's reply, for it to consider when implementing its Diversity and Inclusion Strategy 2018-2021.

Further reflections

22. Regardless of whether the figures provided by the complainant coincide with the official figures provided by the EIB, the fact remains that it is worrying that, in 2017, the percentage of female managers in the EIB was as low as 27%.

23. The EIB's Diversity Strategy 2012-2015, which was in place when the percentage of female managers in the institution was lower than 25%, did not include any specific measures for the *recruitment* of female managers (just a general intention to *promote* women to management positions). When the Diversity Strategy 2012-2015 expired, it took the EIB several years to adopt a new Diversity and Inclusion Strategy (the one for the period 2018-2021). Accordingly, when the complainant submitted her whistleblowing complaint to the EIB and her subsequent Ombudsman complaint, the EIB did not have a Diversity Strategy in place.

24. The results of the analysis of the Bank's diversity situation, carried out by an external contractor in 2015, showed that, compared to other financial institutions, the EIB had a much lower share of women at management level in 2014 [9]. The analysis also showed that, in 2014, the EIB did not recruit any women for "top management jobs" (Director General/Deputy



Director General or Director) from outside the institution. Only 19% of the external recruits at Head of Unit level were women.

25. This was the context in which the EIB decided to set targets in its Diversity and Inclusion Strategy 2018-2021 for the *recruitment* of female managers. The Diversity and Inclusion Strategy 2018-2021 sets a target of 33% of female managers by 2021.

26. It is relevant to note that the Council of Europe's 2003 Recommendation on balanced participation of women and men in political and public decision making [10] sets out that “*balanced participation of women and men [in decision making power] is defined as a minimum 40% representation of each sex in any decision-making body in political and public life*”. The percentage of women in top management roles in the EIB (where a significant part of the decision making power of the institution lies) was as low as 13% in 2014. These figures are worrying and seem to indicate a systemic problem that has been acknowledged by the President of the EIB in August 2017 [11] and noted by the European Parliament in a resolution on the EIB in April 2015 [12] .

27. A target of 33% women in management positions by 2021 is certainly better than no target at all, but it is still far from the 40% target set by other public bodies, like the European Commission [13] , in accordance with the Council of Europe's Recommendation. The EIB's target is closer to the 30% target set by the United Nation's Economic and Social Committee for women in positions at decision-making level **by 1995** [14] . More than twenty years later, it might be appropriate for the EIB, as a European public body, to consider aiming for the more “ambitious” (in its own words) target of 40%. To aim for an increase of female managers by 6 percentage points over five years would seem to imply an increase only slightly higher than the already existing rate of increase of 1 percentage point per year. The fact that there are now more women at ‘junior professional level’ (57% in 2017) is positive, but these women will become eligible for management positions only in the rather distant future.

28. The EIB seems to consider that its 33% target is in line with other organisations “*operating in similar market segments*”, like the European Central Bank and *private* financial entities. As regards private financial entities, the Ombudsman is of the view that the EU civil service should be held to a higher standard than that of private financial entities and it should set an example in terms of equal opportunities and diversity. According to the EIB, “*targets of between 30% and 35% at senior management level are common*” in *private* financial entities. The Ombudsman is of the view that, if private financial entities are in a position to set a target of 30-35% of women at **senior** management positions, then the “*market segments*” should not be an impediment for the EIB to reach a target of 40% women at **middle** management level and above.

29. The EIB also justifies the fact that the percentage of women in support functions is currently at 89%, as “*a reflection of the market place*” . But in this case the EIB seems committed to make the effort to fight these “market trends” and increase the number of male assistants from 9% to 25% over five years. This contrasts with the target set for the increase in the number of female managers, which is limited to six percentage points over five years and can, as pointed



out above, be achieved without significant efforts by the EIB.

30. The above reflections justify calling on the EIB to consider taking “ *temporary special measures aimed at accelerating de facto equality between men and women*”, as defined in the United Nations Convention on the Elimination of All Forms of Discrimination against Women [15] . The Ombudsman notes that “de facto equality” in public decision making bodies has been defined by the Council of Europe as a *minimum 40% representation of each gender*.

31. The Ombudsman is committed to promoting the highest possible standards of administration across the EU civil service, including in the area of equal opportunities. As the European Commission points out in its Communication “ *A better workplace for all: from equal opportunities towards diversity and inclusion* ”, organisations that embrace a diverse workforce and are inclusive to all tend to deliver better results, innovate more and are able to take better decisions [16] . The Ombudsman therefore encourages the EIB to increase its efforts to achieve a balanced representation of both genders at all levels of management and to aim higher than the target of 33% women in management positions by 2021. She will make an additional suggestion for improvement in this regard. The Ombudsman will continue to monitor closely the progress of the EIB in this regard by way of a follow-up in 18 months.

Conclusions

Based on the inquiry, the Ombudsman closes this case with the following conclusions :

The European Investment Bank has accepted the Ombudsman’s suggestion for improvement.

The European Investment Bank has accepted the Ombudsman’s recommendations.

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

Suggestion for improvement

The European Investment Bank should try harder to achieve a balanced representation of both men and women in its management positions, aiming higher than the target of 33% women in management positions by 2021.

Emily O'Reilly

European Ombudsman

Strasbourg, 17/10/2018



[1] In her report, the complainant argued that there were breaches of points 1.2 and 1.3 in the Staff Code of Conduct. Point 1.2 is about Equal opportunities and sets out that “ *[t]he Bank is an employer which guarantees equal opportunities and ensures respect for the dignity of its employees.* ” Point 1.3 concerns non-tolerance of discrimination and sets out, among other things, that “ *[t]he Code is intended to set the highest standards as regards the non-tolerance of discrimination. In particular this applies to illicit discrimination based on sex*”

http://www.eib.org/attachments/thematic/code_conduct_staff_fr.pdf [Link]

[2] On the basis of Article 1.5.1 of the Code of conduct of the EIB.

[3] Point III.2(a) of the EIB’s whistleblowing policy sets out that “ *[i]n the event of serious misconduct or a serious infringement of the Staff Code of Conduct or the Integrity Policy and Compliance Charter, members of staff are required to refer the matter forthwith to the Chief Compliance Officer.* ”

http://www.eib.org/attachments/strategies/eib_s_whistleblowing_policy_en.pdf [Link]

[4] The complainant did not complain to the Ombudsman about how the EIB handled her harassment complaint. She chose to bring that issue to Court, see paragraph 20.

[5] Available at http://www.eib.org/attachments/general/dignity_at_work_en.pdf [Link]

[6] Point III.2(d) of the EIB’s whistleblowing policy provides that “ *[i]n the event of maladministration by the Bank in the management of the above procedures, members of staff may as a last resort refer the matter to the **European Ombudsman** in accordance with the relevant provisions.* ”

[7] Along the lines of Article 6 of the “ *Decision of the European Ombudsman on internal rules concerning disclosure in the public interest* ”:

<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/59102/html.bookmark#h14> [Link]

[8] See judgement of the General Court of 13 July 2018, *SQ v European Investment, Bank*, T-377/17 , ECLI:EU:T:2018:478. Press release available here:

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-07/cp180109en.pdf> [Link]

[9] 13% at Vice President/Director General/Deputy Director General level versus 29% in other financial institutions; 20% at Director Level versus 29% in other financial institutions; and 27% at Head of Unit level versus 45% in other financial institutions.



[10] Available at:

https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e0848 [Link]

[11] See article “ *Macho time warp at the EIB*” in Politico [Link]:

<https://www.politico.eu/article/european-investment-bank-a-mens-club-at-the-top/>

[12] Available at:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0183+0+DOC+XML+V0//EN>

[Link]. See point 58: “[The European Parliament] *Regrets the lack of diversity in the management committee, the board of governors and the board of directors of the EIB, in particular with regard to gender[...]*”

[13] *Diversity and Inclusion: European Commission acts to reach at least 40% women in its management and launches comprehensive strategy*

http://europa.eu/rapid/press-release_IP-17-2070_en.htm [Link]

[14] See the UN Beijing’s Declaration and Platform for Action, “Women in Power and Decision-making”, point 182

<http://www.un.org/womenwatch/daw/beijing/platform/decision.htm#diagnosis> [Link]

[15] Available at : <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article2>

[Link] Article 4.1.

[16] Available at :

https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/equality-treatment_en [Link]