

Dr Werner Hoyer
President

Ms Emily O'Reilly
European Ombudsman
1, avenue du Président Robert Schuman
67001 Strasbourg
France

Luxembourg, 22 December 2022


Dear Ms O'Reilly,

I refer to your letter of 27 July 2022 concerning the complaint under reference 1016/2021/KR.

In your letter, you informed me of your decision to close the above-mentioned case because no further inquiries were justified. You also made a number of suggestions for improvement and requested the EIB to revert to you with information on measures taken to implement them.

Please find attached the EIB's reply, outlining the actions which have already been taken and/or those that the EIB envisages taking in order to address your suggestions for improvement.

Yours sincerely,



Enclosure: 1

Annex 1 – EIB’s actions to implement EO’s suggestions for improvement in case 1016/2021/KR

1. Record-keeping of recusals from decisions taken under the tacit approval procedure

“The EIB should amend its record-keeping practice for meetings of the MC, so that, where MC members recuse themselves from decisions taken using the tacit approval procedure because they consider themselves to be at risk of a potential conflict of interest, such recusals should be formally recorded, as they are for recusals in other Procedures”.

EIB’s actions to implement the suggestion:

The EIB would like to clarify the Ombudsman that the September 2021 MC Procedures establish that any recusal from decisions taken via tacit approval procedure will be formally recorded in the minutes.

2. Prompt publication of ECC decisions after their adoption to improve monitoring/enforcement of the compliance with conditions

“The EIB should make ECC decisions public shortly after they are adopted, in order to improve monitoring and enforcement of the compliance with conditions imposed by the ECC in relation to the post-mandate activities of the members of its MC”.

EIB’s actions to implement the suggestion:

The EIB is in the process of implementing an internal communication process, by means of which the ECC decisions will be shared, on a need-to-know basis, with the relevant internal staff, as a pro-active monitoring approach of the Bank. Such formal procedure shall be documented, in detail, in the ECC Procedures Manual, which the EIB expects to amend in Q2 2023.

With reference to your suggestion concerning the publication of the ECC decisions, the EIB is committed to a policy of presumption of disclosure and transparency, as general principles set out in the EIB Group Transparency Policy (EIB-TP). However, the EIB has also a duty to respect confidentiality in compliance with EU laws. These include, for instance, the obligation not to disclose information covered by professional secrecy in accordance with Article 339 TFEU, as well as legislation on the protection of personal data.

Moreover, one should also mention the need to protect the integrity of the ECC proceedings as well as its process for the assessment and mitigation of conflicts of interest. The EIB, given its dual nature of an EU body and an international financial institution, needs to strike a right balance between the above considerations, by weighting the EIB’s obligations stemming from its status of public institution and those related to its banking activities. There are, therefore, certain limits on the disclosure of information/documents related to the ECC proceedings, as set out in Article 16 of the ECC Operating Rules, which are in line with the EIB-TP and, in particular, its section 5.

The EIB can for the time being commit to considering appropriate ways to improve monitoring and enforcement of the compliance with conditions imposed by the ECC in relation to the post-mandate activities of the members of its MC, including through publication of the ECC

decisions. In light of the above, the ECC Operating Rules are to be adopted by the Board of Governors in line with the last paragraph of Article 11.4 of the EIB Rules of Procedure. Discussions within the Bank's services and then with the Governing bodies are necessary before submitting an appropriate proposal to amend the ECC Operating Rules in this respect to the Board of Governors for their consideration.

3. Introduction of a requirement for former members of the MC, whose post-mandate activities are subject to conditions, to provide the EIB with evidence that the restrictions imposed by the ECC were shared with the new employer

“As a minimum, the EIB should require former members of its MC whose post-mandate activities are subject to conditions, to submit evidence that the restrictions imposed in the ECC's decision were in fact shared with their new employer”.

EIB's actions to implement the suggestion:

In line with the EO suggestion, the ECC decisions will now systematically include an explicit requirement to the concerned MC member to provide the ECC with written confirmation on the implementation of the mitigating measures proposed by the ECC, including the condition to submit evidence that the restrictions imposed in the ECC's decision were in fact shared with his/her new employer.

We also draw your attention to the revised ECC Operating Rules (and in particular Article 2.7), which provide for a clear and reinforced obligation of former members to cooperate and furnish any information required that is necessary for the proper performance of the ECC's duties.

4. Broadening the membership of the ECC to include members with valuable experience from outside the EIB

“The EIB should consider broadening the membership of the ECC to include members with valuable experience from outside the EIB (for example former judges of the Court of Justice of the EU or former members of the Court of Auditors).”

EIB's actions to implement the suggestion:

The EIB would like to draw the Ombudsman's attention to Article 13.4 of the ECC Code of Conduct, pursuant to which *“the Chairperson of the ECC may request the EIB to engage, if needed to carry out ECC functions, the services of special external advisors of high professional standing and experience in relevant areas such as ethics, law, and international organizations”*. Therefore, it results that the ECC is already in a position to gain additional valuable experience from external advisors, on an *ad hoc* basis and as required.

In this regard, it is also worth noting that the composition of the ECC is regulated in Article 11.4 of the EIB Rules of Procedure. According to that provision, the Chair of the EIB Audit Committee (i.e. a statutory body that is independent from the EIB Board of Directors and EIB Management Committee, and reports directly to the EIB Board of Governors) is a member of the ECC.