Annex I – EIB's reply to the suggestions for improvement contained in the EO Decision on how the European Investment Bank (EIB) Group handled the move of a former vice-president to become the CEO of a 'national promotional bank' (case 611/2022/KR)

The European Investment Bank (EIB) acknowledges the Ombudsman's decision of 7 November 2023, finding maladministration in the EIB's handling of a conflict of interest situation in a specific case concerning a former vice-president.

The EIB would like to recall the changes amounting to a substantial overhaul of its ethical framework since the case at hand occurred, including the measures adopted in 2021 to enhance the rules for post-mandate activities of Management Committee (MC) members. These measures include a requirement to disclose appointments to positions in the public sector and other public-service roles to the Chairperson of the Ethics and Compliance Committee (ECC) during the cooling-off period.

The revised MC Code of Conduct (MC CoC), effective since August 2021, explicitly addresses conflict of interest and provides for clear guidelines on disclosure, recusal, and processes that such conflict may trigger, throughout MC members' term and cooling-off period.

The EIB has an independent ECC overseeing compliance with ethical standards and addressing conflict of interest situations. Following a request, including of its Chairperson, the ECC may rule on any situation involving MC members which might give rise to conflict of interest and provide appropriate mitigating measures. The ECC operates autonomously, reporting to the Board of Governors and to the Board of Directors annually.

MC members are required to promptly disclose any personal or financial interests that may lead to conflict of interest. The EIB manages or mitigates conflicts through safeguards in its legal framework and any appropriate measures recommended by the ECC. A new Declaration of Interests (DoI) for MC members, implemented in 2023, introduces clearer requirements for outside activities and financial interest disclosure.

Regarding the issue of "revolving doors", the EIB has implemented measures to prevent undue influence or conflict of interest. Specific rules and restrictions on post-employment activities aim to ensure that MC members do not exploit their positions. A mandatory cooling-off period of 24 months alongside the continuous obligation of confidentiality are also regulated in the MC CoC to prevent misuse of insider knowledge gained during their EIB mandate.

I. The EIB should ensure that, where a member of its Management Committee intends to take up a post mandate activity in an entity that the EIB considers performing a public-service function, and where that post may give rise to conflict of interest risks, the move should require the authorisation of the ECC.

The EIB values the Ombudsman's feedback regarding Management Committee (MC) members' post-mandate activities, especially regarding potential conflicts of interest.

The abovementioned 2021 overhaul of the ethical rules has introduced appropriate requirements for prospective employment during MC members' mandate. Article 6.1. of the revised MC CoC requires that MC members inform the ECC and seek approval as soon as any negotiations concerning any prospective employment (regardless of whether the position is in the public or private sector) and the acceptance of professional positions are under way. This has ensured that such situations are now addressed appropriately, as the previous version of the MC CoC (applicable when the former vice-president moved to the national promotional bank) did not contain any specific provision on prospective employment.

Once their mandate ends, Article 6.2 allows former MC members to pursue professional development opportunities in both the public and private sectors, subject to a number of conditions during the cooling-off period.

Regarding appointments in the public sector, public-service employment, or official public position within a Member State or its public institutions, given the EIB's unique position as the EU bank, it is noteworthy that MC members are often civil servants in their respective countries of origin prior to the start of their EIB mandate. With this in mind, the ethical rules in place have been designed to allow former MC members to take on public-service roles in the Member States. However, former MC members must declare such appointments to the Chairperson of the ECC, who can proactively request the ECC to address any potential conflicts of interest and reputational risks.

The ECC, in its examination of requests pending before it, carefully reviews the information provided by former MC members to determine the compatibility of planned activities with the provisions outlined in the CoC during the cooling-off period, considers conflict of interest and reputational risk for the Bank and proposes necessary mitigating measures, as applicable.

It is important to note that the ECC Chairperson proactively sends "Departure letters" to all outgoing MC members to remind them of obligations during the cooling-off period. They are also explicitly requested to provide information about their new professional positions.

The EIB appreciates the suggestion to enhance oversight for MC members engaging in post-mandate activities with public-service entities. The ECC has been informed of the Ombudsman's decision and of the suggestion for improvement.

Finally, it is highlighted that, in line with Article 23.a(1) of the EIB's Rules of procedure, the Bank actively seeks MC members with financial and banking expertise, who also demonstrate high integrity. Considering that MC members' term of office typically ranges from 2 to 6 years, to meet this objective, the Bank needs to reconcile in its framework ethical requirements, with particular regard to apparent conflict of interest[1], with the mobility of MC members. To this end, it has been decided that MC members shall be allowed to continue professional activities in their field of expertise after their term of office within the Bank, unless the ECC determines otherwise. The rules concerning the moves during the cooling-off period to public sector entities have been inspired by the applicable rules in the Commission's Code of Conduct.

II. When the ECC adopts decisions in relation to an EIB Management Committee member who also chairs the EIF's Board of Directors, the mitigating measures that the ECC adopts should reflect the dual role of that position-holder and refer not only to the Management Committee functions but also the functions of EIF Board of Directors.

The Bank acknowledges a gap in the current legal framework for the EIB and the European Investment Fund (EIF) regarding an ethics body at the Group level. As both entities within the EIB Group (EIBG) remain separate legal entities and the members of the governing bodies are subject to separate rules and codes of conduct, a common ethics body, equivalent to the ECC, at the Group level is currently not foreseen.

Having said that, the EIBG takes note of the Ombudsman's suggestion. The EIBG entities will continue to seek effective ways to address the above identified shortcoming.

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[1] Namely, situations which may be perceived by external observers as conflicts even if they lack the materiality element.

It is important to note that the ECC already now considers EIF functions, where applicable, when assessing conflicts of interest situations of MC members. As a result, if the ECC were to recommend any mitigating measures, those would apply not only to MC members in their MC position but also to their EIF role, if any.

Furthermore, the ECC plays a pivotal role in promptly communicating any remedial actions resulting from ECC decisions or opinions to all relevant internal stakeholders, including the EIF, thereby ensuring the appropriate dissemination of guidance to relevant individuals within the EIB Group. To uphold transparency and effective documentation, the ECC maintains a registry of such communication, ensuring record-keeping of this internal process. This will further strengthen the Bank's practice, given the gaps identified by the Ombudsman's inquiry.

III. The ECC should remind former members of the EIB Management Committee, where they take up post-mandate activities, that they are obliged to ensure that their contracts do not contain any clause preventing them from declaring to the ECC any personal conflict of interest situation arising before the end of their 'cooling-off period'.

Former MC members shall indeed ensure that their contracts do not restrict them from declaring any personal conflict of interest to the ECC during the cooling-off period. The ECC has enhanced communication vis-à-vis MC members by including this requirement in "Departure Letters" sent by the ECC Chairperson to all outgoing MC members, reinforcing their responsibility to declare conflicts without contractual restrictions. This aims to uphold transparency and ethical conduct, providing comprehensive guidance and strengthening the Bank's governance framework.