



## European Ombudsman

**Emily O'Reilly**  
European Ombudsman

Mr Jean-Claude Juncker  
President  
European Commission

Strasbourg, 19/05/2016

Re: Transparency of the European Fiscal Board

Dear Mr President,

On 21 October 2015, the Commission adopted a decision establishing the European Fiscal Board<sup>1</sup>, whose task is to contribute *"in an advisory capacity to the exercise of the Commission's functions in the multilateral fiscal surveillance ..."* The Board should be operational by September 2016. Given how central questions of taxes, government expenditure and budgets generally are to the daily lives of citizens, I anticipate significant public interest in its work and I therefore think it is appropriate to write to you with the following reflections on potential transparency issues.

I hope you will agree that it is important that a body such as this gets off to the best possible start, and it is in that spirit that I am writing to you at this early stage so that the necessary consideration can be given to future transparency issues.

First, as the decision establishing the Board sets out that its secretariat should be administratively attached to the Commission's Secretariat-General, it might be assumed that certain documents relating to the Board's work and drafted by it will be held by Commission services. As a consequence, those documents will fall within the scope of Regulation 1049/2001 on public access to documents.<sup>2</sup> Does the Commission intend to include such documents in its

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<sup>1</sup> Commission's Decision 2015/1937 of 21 October 2015 establishing an independent advisory European Fiscal Board, OJ 2015 L 282, p. 37. <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1453282201556&uri=CELEX:32015D1937>

<sup>2</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.



register of documents so that citizens can obtain an overview of the documentation that they can request?<sup>3</sup>

Second, according to the Five Presidents' Report<sup>4</sup>, the Commission should explain the reasons in cases where it decides to deviate from the Board's views. Similarly, a Commission communication on common principles for national fiscal correction mechanisms sets out that "*the concerned Member State shall be obliged to comply with, or alternatively explain publicly why they are not following the assessments of these bodies*".<sup>5</sup> While the "comply or explain" principle is, as already noted by the European Central Bank (ECB)<sup>6</sup>, not explicitly acknowledged in the Commission's decision establishing the Board, can citizens expect that this will operate in practice? And if so, how?

The Commission decision is extremely limited as regards the Board's transparency provisions, setting out that the Board's meetings shall not be open to the public and that the only source of publicly available information on its work would be an annual activity report, which will include summaries of the advice and evaluations rendered to the Commission. I find it entirely appropriate that the Commission itself not seek to determine the appropriate transparency provisions for this independent body. This should be done by the Board itself, which as the Commission decision provides, shall establish its Rules of Procedure.

The significance of the Board's tasks and their economic, financial and societal impact suggests to me that ambitious transparency measures should be envisaged.<sup>7</sup> I think it is useful to highlight the following two points:

One: The proactive transparency regime of national fiscal advisory councils is not limited to publishing annual reports. I have taken note of more regular (published) reports of these bodies' work, as well as published opinions, papers, notes, pre-budget statements, speeches and meeting minutes.<sup>8</sup> The ECB has further outlined that the Board should be able to provide and publish assessments of the Commission's Stability and Growth Pact related decisions *in real time*. I trust,

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<sup>3</sup> If a document cannot be made public proactively, the document reference and, if possible, its title should be made public.

<sup>4</sup> The Five Presidents' Report: Completing Europe's Economic and Monetary Union, June 2015 [https://ec.europa.eu/priorities/publications/five-presidents-report-completing-europes-economic-and-monetary-union\\_en](https://ec.europa.eu/priorities/publications/five-presidents-report-completing-europes-economic-and-monetary-union_en)

<sup>5</sup> Commission Communication (2012) 342 final; Common principles for national fiscal correction mechanisms - Annex, Principle 7.

<sup>6</sup> ECB Economic Bulletin, Issue 7/2015, Box 5: The creation of a European Fiscal Board [https://www.ecb.europa.eu/pub/pdf/other/eb201507\\_focus05.en.pdf](https://www.ecb.europa.eu/pub/pdf/other/eb201507_focus05.en.pdf)

<sup>7</sup> The European Parliament has also noted in relation to the Board that "(...) *its assessments should be public and transparent*".

European Parliament resolution of 17 December 2015 on completing Europe's Economic and Monetary Union (2015/2936(RSP)) <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2015-0469+0+DOC+PDF+V0//EN>

<sup>8</sup> Besides the annual report, the Fiscal Council of Cyprus publishes detailed reports with its assessments twice per year.

Besides publishing a biannual Fiscal Assessment Report, the Irish Fiscal Advisory Council publishes analytical notes, corporate governance and commissioned reports, endorsement letters, pre-budget statements, and working papers.

Every month, the Netherlands Bureau for Economic Policy Analysis (CPB) publishes a digital outline of the results of its research, generally appearing as Discussion Papers, Policy Briefs, CPB Books, presentations, or scientific articles (links available through monthly newsletters available on its website). The Spanish Independent Authority for Fiscal Responsibility (AIReF) publishes on the document centre of its website its reports, opinions, recommendations, working papers, the President's speeches, and meeting minutes.

The French Fiscal Council publishes its opinions on its website.



therefore, that the Board will publish proactively and, where appropriate, in real time more documents relating to its activities, as well as agendas and minutes from its meetings.

Two: citizens enjoy a fundamental right of public access to documents, under Article 42 of the Charter of Fundamental Rights and can request access to documents that have not been published proactively. It will thus be important to clarify the handling of requests for public access to the Board's documents. Article 15(3), third indent TFEU provides that *"each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents ..."* In line with this provision, I trust that the Board will adopt rules on access to documents.

I would be grateful to receive your reply by 30 September 2016 to the two points addressed to the Commission. Should you require any further information or clarifications concerning the points raised in the present letter, your services can contact the Ombudsman's Strategic Inquiries Unit:

Ms Rosita Agnew

Ms Elpida Apostolidou

Yours sincerely,

Emily O'Reilly