



European Ombudsman

Emily O'Reilly
European Ombudsman

Dr Werner Hoyer
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Strasbourg, 22/07/2016

Re: Follow-up to my letter of 22 February 2016 (SI/8/2016/AB)

Dear Mr President,

I would like to thank you for your constructive reply to my letter dated 22 February 2016, in which I made three suggestions to the European Investment Bank (EIB) in order to deepen your commitment to transparency.

With regards to the European Fund for Strategic Investments (EFSI), I was pleased to see that the Agreement signed between the European Union and the EIB on 22 July 2015 was published on the Bank's website, along with other important documents related to the Fund's management¹.

As regards my two other proposals – (i) proactively disclose the minutes of EIB and EIF² Boards of Directors' meetings and (ii) publish details of the Bank's plans to progressively develop its Public Register - you indicated that the EIB is considering them. Your services recently signalled that this reflection is ongoing. In the meantime, my Office has been examining the governance arrangements of several EU institutions and agencies, including those of the EIB, as part of our ongoing strategic work. Against this background, I would be grateful if your pending reply could also include information on the following five points in bold below:

By way of introduction to these points, I note that the EIB provides lending in various sectors, mostly to private companies and commercial banks.

¹ Such as the 'EFSI Multiplier Methodology Calculation', 'Investments in Funds in line with EFSI regulation', 'Key Performance Indicators - Key Monitoring Indicators Methodology' and 'Stakeholders Consultation on the Orientation and Implementation of the EFSI Investment Policy'.

² The European Investment Fund (EIF), which together with the EIB makes up the EIB Group.



In addition to supporting access to finance for SMEs through intermediated loans, it directly finances major operations such as expansion of energy distribution networks, renewable energy projects, modernisation of transport infrastructures and broadband investments. I am sure you will agree that this requires effective mechanisms to assess and prevent possible conflicts of interests within governing bodies. In this context, it is my view that the EIB should not only continue to work towards preventing conflicts of interest, but also appearances of conflicts of interest, and should continue to be proactive in identifying and managing risks before, during and after the term-of-office of governing body members.

The Board of Directors of the EIB is responsible for approving the operational strategy of the Bank and all its financing operations. Unlike the World Bank or the European Bank for Reconstruction and Development (EBRD), members of the EIB Board of Directors are non-resident and usually hold other professional positions, which they have to declare when taking up office. They do not receive a salary from the EIB. According to the EIB's Statute, they are independent and responsible only to the Bank when performing their duties.

The Management Committee, which consists of you, as President, and eight Vice-Presidents, is the EIB's permanent executive body. It is responsible for the day-to-day management of the Bank under the supervision of the Board of Directors. Members of the Management Committee are also independent and responsible only to the Bank.

In accordance with article 11.4 of the EIB's Rules of Procedure, an Ethics and Compliance Committee (ECC) has been established within the Board of Directors. The Rules of Procedure³ state that "[t]he Ethics and Compliance Committee shall rule on any potential conflict of interest of a member or former member of the Board of Directors or the Management Committee. It shall apply the legal provisions concerning incompatibility with duties adopted by the Board of Governors. [...] The Board of Governors shall adopt the operating rules of the Ethics and Compliance Committee." The EIB's Chief Compliance Officer participates in the meetings of the ECC without the right to vote.

Board members and Vice-Presidents are covered by different Codes of Conduct, both of which the ECC seeks to enforce. As the ECC's Operating Rules are not publicly available on the EIB's website, it would be helpful if the EIB could specify how conflict of interest assessments are performed before members of the Board of Directors and Management Committee are appointed.

As regards the Management Committee, it would also be useful to know if the declarations of interests published on the Bank's website are the same as the declarations submitted to the Chief Compliance Officer. At first

³ In its current version, prior to the amendments adopted on 20 January 2016, which shall enter into force on 1 September 2016.



sight, these documents do not seem to contain an adequate level of detail to perform an effective conflict of interest assessment⁴.

As regards members of the Board, their Code of Conduct does not foresee the obligation to file a declaration of interests or a financial interest disclosure, as is the practice for other International Financial Institutions. It would be useful to know why the EIB does not consider it necessary, given that although most Board members are public service officials, a few members are retired officials or work for the private sector.

The Code of Conduct for Board Members also provides that *"If members of the Board of Directors envisage to undertake an activity which may give rise to a conflict of interest as regards his/her duties and responsibilities as a member of the Board of Directors of the Bank he/she shall inform in writing the ECC, which shall determine whether accepting such position would be compatible with his/her duties and responsibilities as a member of the Board."*

The Ombudsman has, in the past, made the point that it is the responsibility of the relevant EU institution, and not the individual in question, to determine whether there is a conflict of interest. As regards the EIB, it appears to be the Board member's responsibility to determine whether or not a new outside activity may create a conflict of interest. I also note that this contrasts with the code of conduct for Board Officials of other International Financial Institutions, which foresee that Board members may not engage **in any outside activity** without prior authorisation of the relevant Ethics Committee, subject to limited exceptions⁵.

With this in mind, it would be helpful if the EIB could indicate whether it would be willing to review its practice in this area, for example by requiring Board members to request prior authorisation from the ECC before undertaking a new activity.

Finally, according to the same Code of Conduct, former members of the Board of Directors cannot lobby members of the EIB governing bodies or Bank staff for six months after ceasing to hold office. The Code of Conduct for the Management Committee requires members to inform the ECC and seek its approval to engage in an official or professional position for 12 months after ceasing to hold office.

It would be useful to know if these cooling-off periods of six months and 12 months respectively reflect best practice, particularly given the

⁴ The level of detail varies from one declaration to another. Some financial interest declarations do not mention the number or current value of shares held by the declarant. Some real estate declarations mention all real estate and others only mention assets deemed "relevant". Generally, declarations do not seem to include posts held in the governing, supervisory and advisory organs of companies and bodies devoted to commercial or economic activities.

⁵ See, for example, World Bank, Code of Conduct for Board officials, November 2007, p.5 and EBRD, Code of Conduct for Board officials, February 2012, p. 3.



public's increasing interest in and concern about potential 'revolving door' issues.

Thank you once again for your continued commitment to the highest standards of administration and strong co-operation between our services. On this note, I reiterate my keen interest in the ongoing review of the EIB Complaints Mechanism and stand ready to provide input from the Ombudsman's perspective.

Should you require any further information or clarifications concerning the points raised in the present letter, your services can contact Ms Alice Bossière from the Strategic Inquiries Unit.

Yours sincerely,

Emily O'Reilly
European Ombudsman