European
Investment
Bank

Médiateur européen

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Date d'arrivée

Dr Werner Hoyer
President

Ms Emily O'Reilly
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Luxembourg, 31 January 2017

Dear Ms O'Reilly,

I refer to your letter of 22 July 2016 providing the European Investment Bank (EIB) with suggestions in the area of Governance and Compliance.

As anticipated in my previous letter of 22 March 2016, I am pleased to attach some further information about the EIB's specific framework and in particular some recently adopted changes which I hope you will find helpful in this context.

I have taken note of the suggestions in your letter and I can assure you that my services will take them into consideration in any future proposals for the review of the relevant internal EIB rules. As anticipated in our recent letter of 11 November 2016, we much appreciate your interest in a meeting between our services to exchange views on the EIB Codes of Conduct. Our services will contact Ms. Alice Dossière to organise this meeting.

Yours sincerely,

Enclosure:
Annex I – Additional information in relation to the European Ombudsman's suggestions on Governance and Compliance

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Annex I

Introduction

In its capacity as the EU Bank, the EIB attaches utmost importance not only to its compliance with the highest ethical standards in its financing operations, but also to the integrity of its governing bodies. It is in this light that stringent Codes of Conduct and other complementary rules and arrangements apply to both the Board of Directors - the EIB's non-resident governing and oversight body - and the Management Committee, which is charged with the current business of the Bank.

Moreover, article 12 of the Bank's Statute establishes that its Audit Committee shall verify that the activities of the Bank conform to Best Banking Practice (BBP). The Audit Committee established jointly with the Bank's management in 2010 a framework for such a purpose.

The framework establishes a hierarchy of the main legal and regulatory texts that are relevant and should be followed by the Bank taking into account its specific legal framework and EU policy mission, which means that BBP as applicable to the EIB must be reconciled with and interpreted in light of the EIB mission as set out in EU primary law. Flowing from this hierarchy, precedence is therefore given to the "core EU legislation" including the EU Treaty, the Bank's Statute and the Rules of Procedure over other provisions such as EU Directives, Regulations or Guidelines.

As regards the EIB's Board of Directors, the existing arrangements are designed, among other considerations, in the light of its specific institutional character which is different to that of full-time management boards of many other IFIs or of commercial banks. In fact, the Board of Directors of the EIB meets generally once a month, carrying out, as a core task, the approval of policies and projects which are prepared by the Management Committee and exercising oversight functions.

1. Conflict of interest assessment prior to appointments to Board of Directors and Management Committee

a) Regarding the publication of the Operating Rules of the Ethics and Compliance Committee,

Since 3 November 2016, similarly to other governance related rules, the ECC Operating Rules are published in the Bank's Website:
http://www.eib.org/infocentre/publications/all/ethics-and-compliance-committee-operating-rules.htm

b) Regarding the Board of Directors

- The focus of the activities of the EIB Board of Directors as a non-resident governing body lies on the supervision of (rather than active participation in) the day-to-day management of EIB financing operations.

- As regards candidate selection, 28 Board members are nominated by the national governments of the EU Member States and these members vote, once they are appointed, representing the capital share of the Member States which have nominated them. One further Board member is nominated by the European Commission. Furthermore, the Board of Directors shall co-opt six non-voting experts: three as members and three as alternates.

- Within this framework, and pursuant to the Statute which enjoys the rank of EU Treaty law, the selection and nomination of members to the Board of Directors is the exclusive prerogative of the governments of the EU Member States and of the Commission. The power to appoint members to the Board is the prerogative of the Board of Governors, the EIB' s supreme governing body comprising ministers of the 28 EU Member States.

- Notwithstanding the cited statutory prerogatives, it may be noted that, in accordance with Article 4 of the Code of Conduct for the Members of the Board of Directors, EIB Board members are obliged to disclose to the Ethics and Compliance Committee (ECC) of the Board any official or professional position they hold at the time of their appointment, as well as any subsequent changes thereto. Furthermore, pursuant to Article 9 (5) of the Statute, the Board of Governors may lay down which activities are incompatible with membership of the Board of Directors; membership in a government or parliamentary assembly is defined as incompatible with Board membership pursuant to the Code of Conduct.

c) Regarding the Management Committee

- Members of the EIB Management Committee, including the President, are appointed by the Board of Governors upon a proposal from the Board of Directors.

- In this context, the selection, nomination and appointment of Management Committee members are the exclusive prerogative of government-nominated and Commission-nominated Board members as well as of the ministers comprising the Board of Governors.

- With a view to strengthening the process of candidate selection, the Board of Governors has recently defined and laid down qualification criteria for members of the Management Committee and established a special Appointment Advisory Committee. The amended EIB Rules of Procedure, which took effect on 1 September 2016, specify in Article 23a that members of the Management Committee *"shall be persons of independence, competence and have experience in financial, banking and/or European Union matters. They shall, at all times: be of high integrity and enjoy high reputation, [and] possess sufficient knowledge, skills and expertise to perform their duties."*

- The Appointment Advisory Committee is responsible for issuing opinions on candidates' suitability to perform the duties of members of the Management Committee. According to its Operating Rules, the Committee is to satisfy itself, among other things, that the personal or business conduct of candidates does not give rise to any material doubt about their high integrity and high reputation as well as their ability to ensure the sound and prudent management of the Bank. According to art 4.2. of such Operating Rules,

    - *"A candidate shall be considered to be of high integrity and high reputation if there is no evidence to suggest otherwise and if his or her personal or business conduct does not give rise to any material doubt about his or her high integrity and high reputation as well as his or her ability to ensure the sound and prudent management of the Bank. In this respect, account shall be taken of factors such as convictions or pending prosecutions of a criminal offence as well as relevant current or past investigations and/or enforcement actions relating to the candidate, or the imposition of administrative sanctions for non-compliance with any banking or financial services legislation. The surrounding, including mitigating, circumstances and the seriousness of any relevant offence or administrative or supervisory action, the time period elapsed and the candidate's conduct since the offence and the relevance of the offence or administrative or supervisory action to the position of member of the Management Committee should be considered. Also, the cumulative effects of more minor incidents, which individually do not impinge on a candidate's reputation but may in sum have a material impact, should be considered."*

    - *"The assessment of a candidate's experience shall involve consideration of his or her theoretical experience attained through education and training and his or her practical experience gained in previous occupations. The Committee shall take into account the skills and knowledge acquired and demonstrated by the professional conduct of the candidate. Consideration shall be particularly given to experience in fields such as European Union matters, International Financial Institutions,* *financial markets, regulatory framework and requirements, strategic planning, and understanding of a bank's business strategy, risk management, creating effective governance, oversight and controls and interpreting a bank's financial information, identifying key issues based on this information and appropriate controls and measures, and the candidate's ability to perform his or her duties independently."*

- The Operating Rules of the Appointment Advisory Committee were adopted by the Board of Governors in January 2016 and are effective as from 1 September 2016. They are published in the Bank's website since 3 November 2016: http://www.eib.org/infocentre/publications/all/appointment-advisory-committee-operating-rules.htm

In this light, the EIB is confident that existing and newly created arrangements and safeguards are sufficiently robust to meet the risk of conflicts of interest.

2. Adequacy of details in MC members' declarations of interests

Pursuant to Article 1.13 of the Code of Conduct of the Management Committee, Management Committee members are obliged to make an annual declaration of interest, covering, to the best of their knowledge, their own and their spouses' or partners' activities and holdings that may entail a conflict of interest, and to update the declaration in case of a material change in their situation. The declarations are published on the EIB website.

- Published declarations of interests of Management Committee members are an important component in the EIB's overall approach to addressing possible conflicts of interest. They are complementary to other components, notably the diligent application of the Code of Conduct of the Management Committee as well as the oversight role of the Office of the Chief Compliance Officer and of the Board of Directors including its Ethics and Compliance Committee.

- The EIB confirms that the Office of the Chief Compliance Officer continues to monitor whether the level of detail in the declarations are still commensurate with the risks at hand, notably in the light of the growth of EIB financing activities in both volume and commercial complexity.

3. Absence of obligations for Board of Directors members to file a declaration of interests or a financial interest disclosure, as is the practice at other IFIs

Unlike Management Committee members, members of the Board of Directors of the EIB are not obliged to file a declaration of financial interests. However, there are a number of safeguards in EIB's internal rules that mitigate conflicts of interest in this non-resident governing body composed of members who have full-time occupations outside the EIB:

- According to art 4 of the Code of Conduct for the Members of the Board of Directors, they are "*duty bound to conduct themselves honestly and sensitively with respect to acceptance of certain functions, perquisites or assignments which could conflict with the knowledge acquired by them in the performance of their duties as Members of the Board of Directors. They shall continue to be bound by this obligation after termination of their mandate.*"

- In accordance with Article 4 of such Code of Conduct, members are obliged to disclose any conflict of interest that may arise out of any existing activity or holding outside the EIB to the chairman of the Board, regarding any decision to be taken by the Board. Furthermore, if Board members envisage undertaking an activity that could give rise to a conflict of interest, they must report it in writing to the Board's ECC, for decision.

- Furthermore, also according to Article 4, "*a member of the Board of Directors having a conflict of interest concerning a decision to be taken by the Board shall declare it to the Chairman of the Board meeting at the start of relevant meetings in the presence of other Board members, shall not communicate with other Board members about the decision, shall absent him/herself from the discussion of such operation in the Board and shall abstain from voting on such decision. Any such declaration concerning a decision of the Board shall be included in the minutes*".

The EIB is confident that existing arrangements and safeguards, taking equally into account the Board's institutional character as a non-resident governing body rather than day-to-day management board, are sufficiently robust to meet the risk of conflicts of interest in a manner that is proportionate to that risk.

4. **Absence of obligation to obtain ECC clearance before undertaking any new outside activity**

- As noted earlier, the EIB's Board of Directors is a non-resident body composed of individuals who by nature have primary full-time occupations outside of the EIB, often in national public administrations. A general requirement for the EIB Board's ECC to approve other activities of Board members would therefore not sit comfortably with this governance setup.

- Nevertheless, the ECC has a broad remit: Board members are obliged to declare to the ECC any conflict of interest in a decision taken and submit to it any envisaged activity or position that may give rise to a conflict of interest.

- In accordance with the ECC Operating Rules, the ECC rules on conflicts of interest upon request not only of the Board member concerned but also upon request of any ECC member, any current or former Board, Management Committee or Audit Committee member, the Secretary General or the Chief Compliance Officer.

- In addition, ECC remit has been enlarged to all ethics matters with effect on 1 September 2016, and the ECC may now be requested to rule by the Chairman of the Board of Governors and, on fraud-related matters, by the Inspector General.

In that light, the EIB is satisfied that existing safeguards for the identification and management of conflicts of interest at Board level are sufficient to meet those risks.

5. **Adequacy of length of 6-months and 12-months cooling-off periods before lobbying and engaging in other professional activity**

- Currently, "cooling-off" periods apply to members of the EIB Management Committee and the Board of Directors: Respectively a <u>12-months ban on lobbying</u> and, subject to ECC clearance, on <u>conflicting activities</u> after Management Committee membership; and a <u>six-months ban on lobbying</u> for former Board members.

- Furthermore, members of the Management Committee need the ECC's approval before committing to any activity not connected to the Bank's work, either during their period in office <u>or during the cooling-off period</u>.

- The "cooling-off" period is an important component in the EIB's policy regarding conflicts of interest. It is reinforced by the competence of the ECC to clear professional activities of former Management Committee members and to rule on potential conflicts of interest of former Board and Management Committee members during their "cooling-off" period. This competence of the ECC has been recently enlarged to providing opinion on all ethical matters.

In this light, the EIB is satisfied that, for the time being, the length and enforcement of these "cooling-off" periods has been sufficient to counter the risk of conflicts of interest arising in connection with the transition from an EIB office to a subsequent professional activity.

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