

# 2021 Annual Report of the Ethics and Compliance Committee



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## Mission

The Ethics and Compliance Committee **rules and makes decisions** on any conflict of interest of a member and former member<sup>1</sup> of the Board of Directors or the Management Committee. The Committee provides **opinions** on any conflict of interest of a member or an observer of the Audit Committee.

The Committee may also provide **opinions on ethical matters** concerning members of the Board of Directors or the Management Committee, regulated in the codes of conduct of both bodies or in related applicable provisions.

The Committee's operating rules stipulate that its decisions must be communicated to the Board of Directors and the Board of Governors in an annual report.

## Composition

The Ethics and Compliance Committee is composed of the **four longest-serving directors** of the Board of Directors and the **chairperson of the Audit Committee**. In 2021, its composition was as follows:

- Ms Miglé Tuskiené, chairperson until 1 August 2021, board member since December 2007
- Mr Arsène Jacoby, chairperson, board member since January 2013
- Mr Kyriacos Kakouris, member<sup>2</sup>, board member since May 2004
- Mr Konstantin Andreopoulos, member, board member since May 2013
- Ms Kristina Sarjo, member, board member since May 2013
- Mr László Balogh, chairperson of the Audit Committee (until June 2021)
- Mr Audrius Linartus, chairperson of the Audit Committee (since June 2021)

The Committee's chair is assumed on a rotating basis. Every three years, the chairperson is replaced by the next Committee member in order of seniority. The outgoing chairperson remains a member of the Committee. Mr Arsène Jacoby has been chairperson since 1 August 2021.

## Activity report for 2021

The codes of conduct of the Management Committee and of the Board of Directors are designed, among other considerations, to prevent potential conflicts of interest. To strengthen this principle further during the cooling-off period, certain activities<sup>3</sup> of former members of the Management Committee or Board of Directors might, depending on their specific nature, require assessment and prior approval from the Ethics and Compliance Committee.

Prior to 27 August 2021, the Committee's formal remit to rule and make binding decisions on potential conflicts of interest in the Audit Committee extended only to voluntary requests from the Audit Committee member concerned by the potential conflict.

In 2021, the Committee met twelve times and provided eleven reasoned decisions and opinions.

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<sup>1</sup> With regard to their cooling-off period

<sup>2</sup> Ethics and Compliance Committee chairman until 31 August 2019

<sup>3</sup> As stipulated in Article 6 of the Management Committee and Board of Directors codes of conduct.

The breakdown of the Ethics and Compliance Committee’s activities since 2018 is as follows:

Year		2018	2019	2020	2021
Number of meetings		5	5	7	12
Number of reasoned decisions and opinions		7	8	9	11
concerning a member of the	Management Committee	3	4	1	3
	Board of Directors	2	1		4
	Audit Committee	1	1		2
concerning a former member of the	Management Committee	1	2	3	1
	Board of Directors				
	Audit Committee				

In accordance with the Management Committee’s code of conduct, certain activities<sup>4</sup> not connected to the Bank’s work also require assessment and prior approval from the Ethics and Compliance Committee, if said activities are to take place during a member’s mandate. In 2021, three reasoned non-objection decisions were provided in response to requests received for a ruling and guidance concerning **members of the EIB Management Committee**. These non-objection decisions, made after due deliberation, were subject to standard or more specific caveats that were outlined by the Ethics and Compliance Committee to mitigate potential conflicts of interest during and after the EIB mandate.

- One non-objection decision concerned a personal invitation received by a member of the Management Committee to join an independent advisory board established by the auditor general of a Member State. The Ethics and Compliance Committee considered that this non-remunerated role in a national supervisory body of a shareholder did not undermine the EIB vice-president’s independence.
- A non-objection decision concerned a request from a Management Committee member for the Ethics and Compliance Committee’s approval to participate, in a personal capacity, as a member of a “Wise Persons Group” set up by an EU Commissioner.
- Another non-objection decision concerned a request from the EIB Secretary General about the Bank’s services’ intention to submit a proposal to the Management Committee regarding a strategic sponsorship of a not-for-profit foundation. The Secretary General requested guidance from the Ethics and Compliance Committee on the appropriate management of possible conflicts of interest situations arising from a Management Committee member serving as a (non-remunerated) board member of said foundation. This non-objection decision was subject to specific caveats and clarifications.

The Committee also acknowledged a notification from a member of the Management Committee following an appointment as chief executive and general manager of a large national promotional bank in Europe.

A non-objection decision concerned a request received from **a former Management Committee member** for a ruling and guidance on a possible academic collaboration, during the cooling-off period, with a university as an adjunct professor.

As a matter of principle, members of the EIB Board of Directors are free to pursue their professional development during their mandate at the Bank without prior approval from the Ethics and Compliance Committee. This is without prejudice to the requirement to seek Committee approval before committing to any activity which may give rise to a conflict of interest as regards duties and responsibilities as a board member. Two reasoned decisions and two opinions were provided in response to requests for a ruling and guidance received from **acting board members** in 2021. The

<sup>4</sup> See article 5.9 of the EIB Management Committee Code of Conduct.

Ethics and Compliance Committee did not receive any request from a former board member for a ruling and guidance regarding a conflict of interest.

- The Ethics and Compliance Committee's views were sought by several board members requesting its opinion on potential conflicts of interest arising from membership of the Pan-European Guarantee Fund Contributors Committee (EGF CC) and EIB Group Governing Bodies.

The Ethics and Compliance Committee confirmed that a role on the EIB Board of Directors should be incompatible with a role on the EGF CC to avoid conflicts of interest when making decisions representing the interests of both the lender and the guarantor, as the EGF CC is made up of representatives of Member States providing funds for deployment.

As outlined by the Committee, the specific powers and obligations inherent in the roles of the members of the EIB Board of Directors and of the EGF CC would hinder the individual from acting exclusively in the interest of the EIB or of the Pan-European Guarantee Fund. Such a situation should therefore be considered an institutional and structural conflict of interest.

The Committee was also of the opinion that combining other roles in EIB Group Governing Bodies did not give rise to specific concerns regarding potential conflicts of interest when: i) the person does not hold formal executive/decision-making role(s) in entities with different interests; and ii) appropriate mitigating measures — such as those in the EGF CC rules of procedure — are in place to limit influence on the decision-making process, where relevant.

- The Committee was notified of a change in a board member's professional position and decided to perform a comprehensive analysis of the new professional position vis-à-vis any conflicts of interest and reputational risks for the Bank. After due deliberation, the Committee was of the opinion that the new professional position was incompatible with membership of the EIB Board of Directors, and recommended that the member consider resigning from the board. Following a decision by the Committee, a number of measures were put in place in the interim to mitigate the material conflict of interest, possible confidentiality issues and reputational risks. The member concerned resigned at the end of 2021, as recommended by the Committee.
- One non-objection decision concerned a request received from a member of the Board of Directors on a possible appointment as a member of the EIB Management Committee.
- Another non-objection decision concerned a request from a newly appointed member of the Board of Directors on how to manage potential conflicts of interest with regard to the position of CEO in a national promotional institution.

The two above-mentioned non-objection decisions by the Committee, made after due deliberation, were subject to specific terms and conditions.

Two reasoned opinions were provided in response to requests for a ruling and guidance received from **members of the EIB Audit Committee**.

- The Ethics and Compliance Committee received a request for guidance from the Audit Committee's Chairman regarding a potential conflict of interest relating to the professional activities of a newly appointed member of the Audit Committee. The Ethics and Compliance Committee considered that the concerns of the Audit Committee's Chairman justified prima facie the Audit Committee's unanimous position as regards the presence of a potential conflict of interest, and especially the perception thereof.
- The Ethics and Compliance Committee also considered a voluntary request for guidance from an Audit Committee observer on a possible appointment as non-executive director and Chair of Risk at a private entity. Taking into consideration the lack of (material) conflicts of interest, the Committee did not have any objections to the above-mentioned appointment.

These decisions were taken after a comprehensive analysis of the context and the potential conflict of interest related to each request. Due consideration was given to the information received, the scope of responsibilities of the individual concerned, and all relevant and applicable legal provisions.

In the cases where the Committee provided a non-objection decision, the text outlining the opinion made it clear that such consent was subject to terms and conditions, in particular to abstain from any business relations with the EIB Group and from lobbying EIB Group Governing Bodies and staff, where relevant.

## Considerations by the Ethics and Compliance Committee in 2021

In 2021, the Ethics and Compliance Committee also met to discuss proposed draft amendments to its operating rules and held a meeting with the board's working groups on governance to discuss the proposed draft revised codes of conduct for the Board of Directors and for the Management Committee. The Ethics and Compliance Committee supported the changes to these documents, which were approved by the Board of Governors in the third quarter of 2021.

Under its revised operating rules, the Committee's role is extended to **providing opinions on any conflict of interest** of a member or an observer of the Audit Committee (Article 2) following a request from the chairperson of the Board of Governors, the chairperson or any member or observer of the Audit Committee, or the Secretary General (Article 9.2). In the spirit of the Bank's diversity policy, the revised operating rules introduce the gender-neutral terms of chairperson and chairpersonship throughout the text. **The role of the Ethics and Compliance Committee's chairperson is strengthened** in the revised operating rules. To this end, the chairperson is responsible for ensuring that the Committee's proceedings are impartial, efficient and respect procedural rights (Article 4.4); as specified in the applicable codes of conduct, declarations are to be submitted to the chairperson for registration and record-keeping (Article 4.5); the chairperson will also have a casting vote (Article 6.3). Finally, the chairpersonship can be delegated to another member if the chairperson is absent (Article 4.2). As regards the **procedure before the Ethics and Compliance Committee**, Articles 10, 11 and 12 further enhance due process and rights of defence.

Following a complaint by two Members of the European Parliament, the EU Ombudsman launched an inquiry on 23 June 2021 on the EIB's handling of a former vice-president's application during the cooling-off period for a senior position at a subsidiary of a Spanish company that had received EIB loans. The Committee was informed that the Bank had provided the EU Ombudsman's inquiry team with the documents requested as part of the related remote inspection.

Green/EFA Group Members of the European Parliament (MEPs) also contacted the Bank directly on the same matter. The Committee was therefore consulted on the potential disclosure of the related internal and confidential Committee documents. Taking into consideration the Bank's transparency policy and the need to preserve the independence of the Committee and its decision-making process, the Committee agreed in July 2021 with the Bank's proposal to invite the Green/EFA MEPs to consult the requested confidential documents (redacted versions of the minutes of the Committee meeting of 26 November 2020 and of the Committee's annual reports to the Board of Governors) in a reading room on EIB premises. At 31 December 2021, no formal request to organise such a consultation had been received yet.

In 2021, the Committee's view was sought by members of the Board of Directors on how to manage potential institutional conflicts of interest. The EIB rules of procedure do not establish a fit and proper assessment framework prior to the appointment of board members. As a result, potential conflicts of interest can only be declared to the Committee after appointment. In such cases, the Committee has



to propose, where relevant, appropriate mitigating measures to counter any potential conflicts of interest and/or reputational risks for the Bank.

The Committee is of the view that certain inter-institutional (or professional) conflicts of interest may raise concerns as regards the appropriate discharge of EIB tasks if they might compromise the independence of the Board member, give rise to personal conflicts of interest, undermine the duty of confidentiality and ultimately impair the EIB's integrity and reputation.

However, the responsibility of nominating candidates for the Board of Directors lies with the Member States. The Committee therefore is of the opinion that it is also the responsibility of the Member States to make every effort to verify a person's suitability for a position on the Board of Directors. To this end, Member States should carry out appropriate preliminary checks and, more generally, take into account all requirements (such as time commitments, diversity, etc.) as defined by European Banking Authority and European Central Bank guidelines, and be aware of the consequences of these requirements.





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