

The European Ombudsman

COMPLAINT ABOUT MALADMINISTRATION

1. Complainant

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On behalf of (if applicable): Corporate Europe Observatory (CEO)

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2. Against which European Union (EU) institution or body do you wish to complain?

European Parliament European Investment Bank

Council of the European Union European Central Bank

European Commission European Personnel Selection

Office (EPSO)

Court of Justice of the European

Communities (*)

European Anti-Fraud Office

(OLAF)

European Court of Auditors European Police Office (Europol)

European Economic and Social Committee Other Union body (please specify)

Committee of the Regions of the European

Union

(*) Except in its judicial role.

3. What is the decision or matter about which you complain? When did you become aware of it?

The decision by the European Central Bank to accept ECB President Mario Draghi's membership of the Group of 30 and his continued involvement in the work of the group, including its meetings, with no precautionary action taken to investigate whether it could represent a conflict of interests or if it could harm the independence of the ECB and its President.

Corporate Europe Observatory wrote a letter to Mr. Draghi

(<http://www.corporateeurope.org/blog/letter-ceo-mario-draghi>) putting forward our understanding, as set

out below, of why, as President of the ECB, his membership of the Group of Thirty and his participation in the group's meetings create a problem:

Firstly, 'The Group of Thirty' is a joint endeavour by bankers from private sector and from central banks. Prominent among its members are chief executives and advisors from Morgan Stanley, JP Morgan Chase International and BNP Paribas. When the group presents itself to the public, it is usually Jacob Frenkel from JP Morgan Chase International who acts as its spokesperson.

Secondly, it's clear from the group's mission statement that the aim is to influence the debate on regulation of the financial sector worldwide. According to the statement, the Group of Thirty aims to impact "the current and future structure of the global financial system by delivering actionable recommendations directly to the private and public policymaking communities." (see <http://www.group30.org/>)

On more than one occasion, the Group of Thirty has supported the objectives of the banking lobby, for instance on Basel II.

Thirdly there's the opaque nature of the group's activities and of its membership. There is no way for the public to know the details of the President's involvement, since the meetings of the members are confidential. Information on the discussions that take place, and whether the members commit to certain lines of action is not accessible to the public.

In our view, given the above, the group has the characteristics of a lobbying vehicle for private financial interests. It is an important interface between the private banking sector and central banks, and allows some of the biggest private banks in the world to exert a direct influence on the top executives of the most important central banks, including the European Central Bank. This is explained in more detail in an article based on Corporate Europe Observatory's own research (<http://www.corporateeurope.org/publications/lobby-take-presidency-ecb-again>).

We believe that any president of the ECB has to make it absolutely clear that he or she is not under the influence of the financial lobby at any time, and has to ensure that he is not attached to a forum or process that could jeopardise his independence or give rise to conflicts of interest. Also, it is the responsibility of the institution as such to ensure the independence of the President cannot be questioned and to ensure he is not burdened by conflicts of interest in his work.

In particular, at this dramatic point in the history of the EU, with the eurocrisis and an ailing banking sector – recipients of trillions of euro in aid – and given the increasing role of the ECB in banking regulation, it seems to be even more pressing than ever that the independence of the ECB's president cannot be questioned, and that any activity that could raise suspicions of conflicts of interest are stopped.

What must be expected of the ECB is that the principles the ECB subscribe to are upheld. After a close look at the rules governing the ECB, first and foremost its ethical framework, Corporate Europe Observatory believes this has not been the case.

4. What do you consider that the EU institution or body has done wrong?

The European Central Bank has failed to uphold its stated principle of independence, and has not taken the necessary steps to ensure a conflict of interests does not occur. Also, the ECB has not taken steps to secure the reputation and integrity of the ECB. This is at odds with the principles laid down in the ethical framework of the ECB.

The independence of the ECB and the absence of conflicts-of-interest, are to be ensured by the Statute and by the ethics framework. This framework consists of three documents, all of which are relevant to the President.

- The Code of Conduct for the Members of the Governing Council (hereafter The Code of Conduct)
- The Supplementary Code of Ethics Criteria for the members of the Executive Board (hereafter The Supplementary Code)
- The ECB Staff Rules containing the Ethics Framework (hereafter The ECB Staff Rules)

A. Failure to explore potential threats to independence

The European Central Bank is supposed to be independent from any outside interference. This is laid down in article 130 of the Treaty on the Functioning of the European Union that reads: “When exercising the powers and carrying out the tasks and duties conferred upon them by the Treaties and the Statute of the ESCB and of the ECB, neither the European Central Bank, nor a national central bank, nor any member of their decision-making bodies shall seek or take instructions from Union institutions, bodies, offices or agencies, from any government of a Member State or from any other body.”

The mentioned article is often highlighted when the ECB’s independence from member state governments is questioned regarding influence over the decisions of the Bank. The now former president of the Bank defended this principle with zeal when Eurozone governments allegedly tried to interfere with ECB decisions. However, as is clear from the Treaty text, that independence also includes independence from other bodies. And the private financial sector and its representatives are prominent among the bodies that could exert undue influence over the bank.

If this article is to have any meaning, safeguards have to be applied to ensure that the Bank and its president do not jeopardise that independence. Given the large stake private banks have in decisions made by the European Central Bank, procedures to ensure independence must include relationships with representatives of private banks, especially groups with the stated purpose of influencing decisions on banking, as is the case with the Group of Thirty.

The independence of the ECB is also included in the ECB Staff Rules and the Code of Conduct.

In the Code of Conduct, the wording from the Treaty is repeated. Also, article 3.5 on interest groups reads: “Relations with interest groups shall be based upon an approach that is compatible with their independence as members of the Governing Council and the principle of integrity”. To uphold the Code of Conduct, the ECB has appointed an ethics advisor. The advisor is supposed to provide guidance. However, the European Central Bank has informed Corporate Europe Observatory in a letter dated 8 March 2012, that “the participation of Mr. Draghi in the Group of Thirty does not require any advice of the Ethics Adviser nor consultation of the Governing Council and that therefore there are no related documents.”

Further, the ECB argues in a letter dated 25. March 2012: “His participation to this forum is compatible with the Code of Conduct for the members of the Governing Council and Supplementary Code of Ethics Criteria for the members of the Executive Board of the ECB. Dialogue and exchange of views with third parties is compatible with the fulfilment of the duties as member of the Governing Council and with the principle of central bank independence as enshrined in Article 130 of the Treaty on the Functioning of the European Union and in Article 7 of the Statute of the ESCB.”

There is no sign from the communication with the ECB that any assessment of the Group of Thirty or of Mr. Draghi’s role there has been conducted. We believe this omission amounts to a breach of the principle of independence laid down in the ethics framework.

B. Failure to explore if participation at the Group of Thirty meetings is problematic

The Ethics Framework of the ECB seems to address the question of the nature of involvement in meetings and the interaction with interest groups this can imply.

The Supplementary Code addresses the question of invitation to meetings and states in article 3, stating that members of the executive board should “observe particular prudence with regard to individual invitations.” In case of doubt, the members of the executive board should consult the ECB’s Ethics Officer. Apparently Mr. Draghi has chosen not to consult the Ethics Officer.

The ECB Staff Rules reads in paragraph 0.12 that members of staff shall obtain the ECB’s authorisation if they participate in ‘unremunerated private activity’ other than ‘simple conservative management of family assets and activities in domains such as culture, science, education, sport, charity, religion, social or other benevolent work’ which do not impact staffs obligations or represent a likely source of conflict of interest.

But according to communication with the ECB, Mr. Draghi has not obtained authorisation for his participation in the activities of the Group of Thirty. We believe this is in breach of the rules on invitations to meetings.

C. Failure to secure the integrity and reputation of the ECB

Along with the concept of independence, the ‘integrity and reputation’ of the ECB is another cornerstone of the Ethics Framework. This is highlighted in the Code of Conduct in the very first sentences of the Code. Corporate Europe Observatory believes that Mr. Draghi’s membership of the Group of Thirty damages the integrity and reputation of the ECB in that it shows a disregard for the ‘arms-length principle’ in the relationship between private banks and central banks. The fact that Mr. Draghi has been employed with one of the major banks involved with the Group of Thirty, Goldman Sachs, adds another complication for the ECB.

Corporate Europe Observatory believes the participation of Mr. Draghi in a closed, club-like structure with representatives from big international private banks could damage the integrity and reputation of the ECB.

D. Failure to avoid potential conflicts-of-interest arising from Mr. Draghi's membership

On the question of conflicts-of-interest, the rules of the ECB are relatively precise.

Article 4.1 of the Code of Conduct reads: "The members of the Governing Council shall avoid any situation liable to give rise to a conflict of interests. A conflict of interests arises where the members of the Governing Council have private or personal interests, which may influence or appear to influence the impartial and objective performance of their duties. Private or personal interests of the members of the Governing Council mean any potential advantage for themselves, their families, their other relatives or their circle of friends and acquaintances."

It is noteworthy that the Code of Conduct does not merely address established conflicts of interest, but includes "any situation liable to give rise to a conflict of interests", and any that "appear to influence the impartial and objective performance of their duties". Also, the "private or personal interests" that may conflict with the duties at the ECB can be a "potential advantage", not just for the member of staff but also for "their circle of friends and acquaintances".

Bearing this in mind, Corporate Europe Observatory believes Mr. Draghi is clearly in breach of the Code of Conduct when he participates in closed meetings of the Group of Thirty, and that the ECB is responsible for not upholding the Code of Conduct.

Conflicts of interest are addressed in the Staff Rules as well, and here it includes precise instructions for – in this case – the President and the ECB respectively, provided the President is to handle a case that is "liable to give rise or may be perceived to give rise to a conflict of interest". If this is the case, the member of staff "shall immediately inform their immediate superior or the Ethics Officer thereof". The ECB may then take appropriate measures to avoid a conflict of interest.

Since the nature of the meetings in the Group of Thirty is unknown to the ECB, and since the Ethics Officer has not been involved in exchanges concerning Mr. Draghi and the Group of Thirty, there seems to be a clear breach of the Staff Rules.

E. Transparency

While the ECB is well aware of Mr. Draghi's membership of the Group of Thirty, given that Mr. Draghi has informed the ECB on the matter, it is not disclosed to the public. Corporate Europe Observatory has received a full list of Mr. Draghi's external mandates. When compared to the CV on the website of the ECB, it becomes clear that the only external mandate not mentioned is the membership of the Group of Thirty. This is at odds with common principles of transparency.

These are the procedural and administrative errors made by the ECB, we believe. In our view this leads to the fact that the President of the European Central Bank retains membership of a group, which he should have left when taking up his post.

5. What, in your view, should the institution or body do to put things right?

To put things right, the following steps must be taken by the ECB and its President:

- * Mr. Draghi must refer the matter of participating in meetings for members of the Group of Thirty to the ECB's Ethics Officer.
- * The Ethics Officer must conduct an investigation into the work of the Group of Thirty to investigate in what ways participation of ECB staff and members of the governing bodies of the ECB constitute a danger to its independence, and how it may lead to potential conflicts of interest.
- * Mr. Draghi must be asked to withdraw from the Group of Thirty. Available evidence clearly shows that membership of the group is incompatible with the position as President of the ECB.

6. Have you already contacted the EU institution or body concerned in order to obtain redress?

Corporate Europe Observatory has been in communication with the European Central Bank on the matter since November 2011:

- * Letter on 28th of November: Corporate Europe Observatory urges President Mario Draghi to consider withdrawing from the Group of Thirty
- * Response to letter on the 22nd of December: The ECB Directorate Communications responded that it is part of the President's tasks to represent the ECB in "international conferences, fora and groups to exchange views on international economic and financial issues and to communicate the ECB's positions and policies".
- * Complaint to the ECB's executive board on the 14th of February: Corporate Europe Observatory complained to the executive board referring to several potential breaches of the internal rules of the ECB in the case of President Draghi's participation in the work of the Group of Thirty.
- * Request for access to documents on the 14th of February: Corporate Europe Observatory submitted a request for access to documents on the case.
- * Documents received from the ECB on the 8th of March via email, including a commitment to detail in a forthcoming letter as to why the matter does not raise a conflict of interests.
- * A reminder to the ECB sent on the 23rd of March on the aforementioned letter.
- * Letter received from the ECB Press and Information Division on conflicts of interest on the 25th of March.

7. Time limits

If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already

expired?

It does not concern work relationships.

8. Has the object of your complaint already been settled by a court or is it pending before a court?

Yes (please specify)

No

9. Public complaint

Please select **one** of the following two options **after having read the information in the box below**:

Please treat my complaint publicly

I require that my complaint be treated confidentially

10. Referral

Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes

No