

THE ETHICS COMMITTEE

- THE CHAIRMAN -

[ECB/EC/21/4]

**ECB-PUBLIC**

[TRANSMITTED ON 15 OCTOBER 2021]

To the ECB President

**Subject: New post-employment activity – Ethics Committee Opinion**

Dear Madame President,

In line with the requirements of the Code of Conduct for high-level ECB officials (Single Code)<sup>1</sup> Mr Mersch, former member of the ECB Executive Board and Governing Council, has informed the Ethics Committee (end-September 2021) about his new role as member of the Board of Trustees of the “Scope” Foundation. Although Mr Mersch had been appointed to this position on 9 September 2021 and the Single Code establishes - strictly speaking - the requirement to notify and seek advice of the Ethics Committee prior to committing/accepting a remunerated post-employment activity<sup>2</sup>, the Committee understands that no meeting of the Board of Trustees has yet taken place and that Mr Mersch has notified the Committee still prior to the effectively assuming his new responsibilities.

As to the substance, the Ethics Committee has assessed this new post-employment activity against the requirements of the Single Code as follows:

First, the Committee notes that – according to publicly available information – the main responsibility of the Board of Trustees of the “Scope” Foundation is to warrant the achievement of the purpose of the Foundation (i.e. to protect the long term independence and European identity of Scope Ratings GmbH) – including the management of the Foundation’s assets – and to ensure continuity among the shareholders. Although the Foundation itself does not seem to be involved in the day-to-day operations and core business of Scope Ratings GmbH, i.e. providing (analysis and research) services, *inter alia*, to credit or financial institutions, it nevertheless constitutes part of Scope’s overall governance structure, a credit rating agency which precisely offers such services. Furthermore, the Committee notes that, at Group level, Scope is also a recognised “interest group” for lobbying activities.

Therefore, the Committee holds the view that Article 17.1 (c) of the Single Code should apply, if not directly then at least by way of analogy and in the spirit of the provision. As a consequence, taking on

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<sup>1</sup> In line with Articles 17.1 and 17.3 of the Code Conduct for High-level ECB Officials (Single Code).

<sup>2</sup> In line with Article 17.3 of the Single Code.

such responsibility would be subject to respecting the corresponding six-month cooling-off period. In this regard, the Ethics Committee notes that such cooling-off period has meanwhile been observed. Second and with the qualifications made under the previous point, the Ethics Committee notes that the core activity of Scope has some touchpoints with certain ECB dossiers. One example is the Eurosystem credit assessment framework (ECAF)<sup>3</sup>, which has been established by the ECB Governing Council with a view to mitigating the credit risk of collateral used in monetary policy operations, together with appropriate valuation and risk control measures. This framework also defines the procedures, rules and techniques ensuring that the Eurosystem requirement of high credit standards for all eligible assets is met. These rules and procedures foresee that in order to adequately assess the credit quality of eligible assets, the Eurosystem takes into account information – ratings or probabilities of default – from credit assessment systems belonging to one of three different sources, one of which being external credit assessment institutions (ECAIs) – Scope Ratings GmbH is currently not among the credit assessment systems / providers recognised by the ECB as ECAI.

As, on the one hand, it cannot be excluded that Scope Ratings GmbH might seek to become eligible as ECAI and, on the other hand, Mr Mersch as member of the ECB's Executive Board has been directly overseeing the ECB's financial risk management function for several years, i.e. the business area in charge of the ECAF dossier, the Ethics Committee deems it opportune to recommending Mr Mersch to establish certain precautionary measures in order to credibly avoid the merest doubts on his impartiality but also to avoid that the independence and integrity of the ECB and/or the dignity of public office of high-level ECB official could be negatively impacted. Such safeguards deem warranted also in light of the fact that – according to publicly available information – the members of the Board of Trustees as “leading figures from business and finance” are expected to “offer their expertise and counsel”.

Against that backdrop, the Ethics Committee deems it appropriate to ask Mr Mersch to abstain from participating in matters/discussions/deliberations on dossiers that also fall within the remit of the ECB until the end of his two-year notification period established by Article 17.1 of the Single Code (i.e. until mid-December 2022). This advice takes into account both the fact that Mr Mersch, on the one hand, has relinquished his direct responsibility for financial risk management matters in the second quarter of 2019 and, on the other hand, has maintained an exposure to this matter via his direct responsibility for the ECB Legal Services; moreover the ECB Executive Board is designed and acts as collegiate decision-making body with ultimately joint responsibility of all Executive Board members for all ECB business areas. Third, with regard to the Board of Trustees' responsibility for the management of the Foundation's assets the Ethics Committee does not deem it necessary to suggest any precautionary measures to protect Mr Mersch's and the ECB's integrity as almost one year has elapsed since he had left the role of ECB Executive Board member and thus any former insights into market sensitive information will have meanwhile lost its relevance. In any case and as always, the Ethics Committee deems it important to remind high-level ECB officials about their duty of professional secrecy applying

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<sup>3</sup> See <https://www.ecb.europa.eu/paym/coll/risk/ecaf/html/index.en.html>.

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without time limit beyond their terms<sup>4</sup> - to be understood as a prohibition to disclose any information covered by the obligation of professional secrecy obtained in the exercise of their duties and responsibilities that has not been made public and is not accessible to the public.

In conclusion, the Ethics Committee observes that any applicable cooling-off period has meanwhile already been consumed and thus there is no objection for Mr Mersch to take on the new assignment as member of the Board of Trustees of the Scope Foundation. Nevertheless, and with a view to best protect the integrity of the ECB and that of its (former) high-level officials, it sees merit in recommending to the Governing Council to invite Mr Mersch to respect the above-mentioned safeguard(s).

Last but not least, in line with the transparency policy adopted by the Governing Council in July 2020<sup>5</sup>, it is recalled that opinions issued by the Ethics Committee on post-employment matters will be published.

With best regards,

Chair of the ECB Ethics Committee (Patrick Honohan)

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<sup>4</sup> In line with Article 339 of the Treaty on the Functioning of the European Union, Article 37 of the Statute of the European System of Central Banks and of the European Central Bank and Article 4 of the Single Code.

<sup>5</sup> See <https://www.ecb.europa.eu/press/govcdec/otherdec/2020/html/ecb.gc200731~33d1f664a6.en.html>.