Copenhagen, 28. September 2012

Inquiry no. 1339/2012/FOR

Remarks on the opinion of the European Central Bank, dated 29th of August

To the EU Ombudsman

Dear sir.

Thank you for the letter dated the 31st August 2012 and the enclosed opinion from the European Central Bank (ECB) in response to the complaint I filed on the 27th of June 2012. In the letter we (Corporate Europe Observatory) are asked to send you our observations on the opinion, if any, before the 30th September.

After reading the opinion carefully, we see a need to make substantial comments which I hope you will feel are relevant to the case. Generally we feel the ECB has not responded to our complaint, but tends to repeat the statements made in earlier exchanges with us.

We will divide our response into four parts, starting with the three points made in the ECB's opinion (on the nature of the Group of Thirty, on the Presidents' activities as a member, and the question of whether there's a breach of the ethics rules at play) followed by some concluding remarks.

1. The nature of the Group of Thirty

According to the ECB, the Group of Thirty is "not a lobby or an interest group but a forum for exchanging views on global economic and financial issues." To back up this claim, the ECB lists information on the Group of Thirty, drawing heavily on the organisation's website, including its 2010-2011 annual report (apparently the first of its kind made public).

Leadership and members

The ECB opinion quite correctly states that the Group of Thirty is 'composed of high-level representatives of the private and public sectors' and academics. Of the 32 current regular members, 12 work for private financial institutions: Jacob Frenkel (JPMorgan Chase), Geoffrey Bell (Geoffrey Bell and Associates), Domingo Cavallo (CFC Associates), E. Gerald Corrigan (Goldman Sachs), Guillermo de la Dehesa Romero (Grupo Santander), Roger W. Ferguson (TIAA-CREF), Arminio Fraga Neto, (Gavesa Investimentos), Gerd

Häusler (Bayerisch Landesbank), Guillermo Ortíz (Grupo Financiero Banorte), Raghuram Rajan (BankItau-Unibanco), David Walker (Morgan Stanley), and Axel A. Weber (UBS)[1].

It is also important to add that many of the other members are known to be bankers who have passed through 'the revolving door' from the private sector to the public sector or vice versa. At the moment six other members have had substantial involvement with private financial institutions, including Mario Draghi (Goldman Sachs), Mark Carney (Goldman Sachs), William C. Dudley (Goldman Sachs), Phillip Hildebrand (Moore Capital, Vontobel Group, Union Bancaire Privée), Lord Adair Turner (Merrill Lynch Europe, Standard Chartered Bank) and Ernesto Zedillo (Alcoa, Procter & Gamble, Credit Suisse).

To this should be added that not all members are equal. This is marginally touched upon in the opinion of the ECB, but not fleshed out. Major decisions regarding leadership, membership and policy are taken by the Board of Trustees and the 'officers' of the Group of Thirty. Inside this select group, five of the eight members work for the private financial sector.

Funding

The ECB opinion also mentions the question of funding for the Group of Thirty, but fails to address the reason why this might constitute a problem. Although details, such as the sums given to the organisation, are not disclosed, it is worth mentioning that 45 of the 79 financial contributors are financial firms or banking lobby groups. This – strikingly – includes almost all the financial corporations which have either present or former employees in the Group of Thirty. All of the members who have any sort of private financial sector background, except Geoffrey Bell, Axel Weber, Lord Adair Turner and Domingo Cavallo, enjoy the financial backing of present or former employers (or in the case of Guillermo de la Dehesa Romero from a lobby association to which his company belongs) in the private financial sector.

The fact that the organisation depends on funding from these sources, bear witness to the nature of the Group of Thirty, we believe. It is an initiative promoted by the private financial sector.

The activities

The Group of Thirty tends to base its work on major studies which are conducted by working groups, usually chaired by a steering committee. For the past four years, the Group of Thirty has undertaken four major studies on key issues regarding international financial regulation.

The way in which these studies are produced and published is important to examine in order to understand the nature of the Group of Thirty. Most importantly, the studies are not merely of an exploratory nature.

According to the ECB's submitted opinion, the Group of Thirty is set up to "deepen the understanding of international economic and financial issues, to explore the international repercussions of decisions taken in the public and private sectors, and to examine the choices available to market practitioners and policy-makers." The ECB appears to like this description. In its opinion the Group of Thirty is a rather apolitical think tank, a research institute with no political bias. But the studies are intended to produce political conclusions. Consequently, it's not without significance who chairs the studies, and as can be seen from the list in the table, the key drivers tend to the members from the private financial sector.

Title and year of publication	Steering Committee or similar
"The structure of financial supervision" (2008)	Paul Volcker (G30), Roger Ferguson (TIAA-CREF), Jacob Frenkel (AIG), Richard Debs (Morgan Stanley), Geoffrey Bell (Geoffrey Bell & co.), Arminio Fraga-Neto (Gavea Investimentos), E. Gerald Corrigan (Goldman Sachs), Gerd Häusler (Lazard International), Andrew Crockett (JPMorgan Chase), John Heimann (Financial Stability Institute), Jacques de Larosière (BNP Paribas), Stuart Mackintosh (G30)
"Reform of the International Monetary Fund" (2009)	Chairman: Jacob Frenkel (AIG). Regular members: Stanley Fischer (Bank of Israel), Arminio Fraga Neto (Gavesa Investimentos), Peter B. Kenen (professor), Guillermo Ortíz (Banco de México), Stuart Mackintosh (G30).
"Financial reform: a framework for financial stability" (2009)	Paul Volcker (G30), Arminio Fraga Neto (Gavesa Investimentos), Tommaso Padoa-Schippoa (Promontory Financial Group), Stephen Thieke (RiskMetrics)
"Enhancing financial stability and resilience" (2010)	Chair: Roger Ferguson (TIAA-CREF), members: the whole membership of G30

Representation of G-30

Once a study is ready to be published, there is a question as to whose name (or names) appears on it. A glance through the reports mentioned in the table above, reveals an interesting dynamic. While the representatives of the private sector endorse three of the studies, the report on: "Financial reform: a framework for financial stability" was less straightforward. While most members from financial corporations participated, they found it necessary to stress that they – unusually - only endorsed the report "in their individual capacities"[2].

That begs the question as to whether these members in fact represent the financial corporations they work for in the Group of Thirty. The answer, generally, seems to be yes. When they don't, they state it explicitly. This formal representation can be found from other sources. When for instance a key figure in the Group of Thirty, Jacob Frenkel, left the insurance company AIG in late 2009, his new employer JPMorgan announced that from then on he would be their man in the Group of Thirty: "He will represent JPMorgan Chase at the Group of Thirty (G30), the International Monetary Fund (IMF), Institute of International Finance (IIF), and other organizations,"[3] the company wrote in a press release.

Where does this leave the central bankers in the Group of Thirty? Can they really be associated with what ends up as political advice signed off by some of the biggest financial corporations in the world?

At the moment most of the central bankers put their name on key studies produced by the Group of Thirty but stress that they do so only "in their individual capacities". This, for instance, was done by the then President of the ECB Jean-Claude Trichet, when the Group of Thirty issued its report on the IMF in 2008[4]. A matter which can hardly be called technical, considering the role of the IMF in the EU of today.

In our view, being President of the ECB cannot be combined with the endorsement of policy documents that are mainly written by representatives of large financial corporations, even if there is a formal disclaimer. And in practice, this fine balance is impossible to manage in the Group of Thirty. Large sections of the press, significantly, fail to notice the subtle reservations made by central bankers. When the report on the IMF was published, it was clearly received by the press as a Group of Thirty publication, and as such as a document supported by all members[5]. The press also tended to see Jacob Frenkel as the spokesperson for the organisation and many quoted him on the key message: that there was a need to strengthen the IMF by reducing the size of the board, and give the board more powers. The Times quoted him as saying that the IMF was "not complacent, but it was not forceful enough""[6]. "There are challenges to the IMF's legitimacy, its authority and its effectiveness," Mr Frenkel said".

It should be stressed that at the time, Jacob Frenkel was Vice Chairman of AIG, the US insurance company, notorious for its key role in the financial crisis and for having been bailed out by the US federal government in September 2008, ie. a year before.

So here we have a key report full of policy recommendations, signed by central bankers "in their personal capacity", including Jean Claude Trichet, President of the ECB. And the essence of the report is explained to the press by the group's spokesperson, Jacob Frenkel. The fact that Trichet only signed "in his individual capacity" is lost on the press, and as a consequence, a private sector spokesperson acts in the name of the ECB in public.

This is not an exceptional anecdote. Jacob Frenkel frequently acts as spokesperson for the Group of Thirty; he is often quoted in the press as if his views represented the views of the G30[7]; and he takes part in seminars and conferences on behalf of the organisation[8].

Policy of the G-30: self-regulation and self-supervision

The Group of Thirty has played a major role in number of key political disputes over financial regulation over the past two decades, and in several significant cases, the Group of Thirty has been victorious and actually considerably influenced legislation, or helped prevent regulation. They include debates over the clearing and settlement of securities, (non)regulation of over-the-counter-derivatives, and the use of risk assessment in international banking regulation. The first, while it was a major success to the Group of Thirty in that they set the terms of the debate and practically defined the outcome – in the US as well as in Europe – is of less interest here. But the latter two are intricately linked to the present political debate on financial regulation, and deserves further discussion.

Over-the-counter derivatives

Since the collapse and bailout of US investment giant AIG in 2008 and the bankruptcy of Lehman Brothers, "over-the-counter derivatives" have been a hot issue in the debate over financial regulation[9]. The crisis showed clearly that there was a need to adopt regulation and increase supervision of a hitherto obscure

market. Over-the-counter derivatives are products which are traded without much public supervision, a fact which had historic roots in the debate in the nineties. From 1993 and about six years from then on, were years when derivatives were looked at with much suspicion as a number of financial firms including Bankers Trust, Gibson Greetings, and Merrill Lynch suffered major losses, while the investments by Orange County in California failed leading to its near bankruptcy.

The Group of Thirty was an active and important participant in the debate at the time. The Group published a major report, written by representatives of JPMorgan, BNP Paribas, Morgan Stanley and the association of derivatives traders ISDA. The key message of the report was that practically no public supervision or regulation was necessary, and that the private sector would be able to build a system of self-regulation. "Promoted as the definitive report on derivatives, those fancy financial products which few understand but many want to regulate, the G30 study provided a long list of arguments on why governments should keep out of their patch," the Australian Financial Review wrote[10]. Data was provided by ISDA and the international banking lobby group,the Institute of International Finance, "indicative of a concerted private sector effort to consolidate expertise on the topic"[11].

Some scepticism was voiced in the internal debate in the Group of Thirty. Paul Volcker (Federal Reserve) and Brian Quinn (Bank of England) were wary about the lack of consideration of systemic risk. But interestingly, a compromise was found within the group[12].

What followed was a concerted effort by many Group of Thirty members to make the proposals a reality. JPMorgan made its own risk assessment model freely available in a surprise move to indicate strong private sector commitment to internal risk management. This was further underlined when lobbyists from the private sector, such as the American Bankers Association[13], embraced the Group of Thirty's proposals. Other moves included seminars, and work with the press, but the effort with the US Congress was decisive. Here, the Group of Thirty was represented at hearings by Mark Brickel of JPMorgan and ISDA. Generally, the Group of Thirty's positions and proposals were embraced by the private financial sector.

The G30 study assumed greater importance when several US regulatory agencies started using it as an authoritative source. After a couple of years the Group of Thirty's self-regulation and self-supervision approach had won over its critics.

Many analysts have – along with academic Eleni Tsingou, author of a dissertation on the Group of Thirty – concluded that the organisation "acted to prevent regulatory involvement"[14]. At the time, many commentators saw exactly that. "The G30 study, which lays out a system of risk management that is essentially self-administered, is the industry's attempt to minimise government interference," the (UK) Independent wrote[15].

Given that complicated financial products have been at the core of the recent crisis and that they were promoted in the nineties, through the Group of Thirty's decision to refrain from public regulation, this topic has been heavily debated since 2008.

Banking regulation and risk management

The story of the Group of Thirty's influence over banking regulation is in many ways similar. A few financial corporations dominated financial markets, cross-border transactions caused problems for public regulators,

so the question of "systemic risk" required some sort of reform of international banking regulation. In the late nineties, the Group of Thirty was in a good position to set the terms of the ensuing debate on how to deal with that question in the framework of international banking regulation. Basically, they came up with a proposal for self-regulation and self-supervision as far as risk-assessment was concerned.

The Group of Thirty had started advocating self-regulation as far back as 1993. This came on the back of discussions and proposals within the official negotiations at the Basel Committee to introduce particular methods to deal with "market risk" within the Basel framework. These proposals were fiercely opposed by the financial industry[16]. The Group of Thirty followed up with a study in 1997, written by the chairmen of NatWest and Merrill Lynch[17]. This focused on internal risk assessments, arguing that financial corporations would have to develop models to assess the risks of their own investments, and basically take the responsibility to supervise themselves.

A key tool promoted by the Group of Thirty was the so called value-at-risk model (or VaR). At the time, this was not uncontroversial. There were voices who felt the model had major flaws. Two analysts at KPMG wrote in 1996: "The high profile endorsement of value-at-risk (VAR) by the Group of Thirty (G30) in 1993 and, more recently, the Basle Committee on Banking Supervision has led to the rapid adoption of this approach as the measurement standard for market risk in the finance industry…However, risk managers are divided as to whether VAR is the last word in measuring risk or merely part of an evolving framework. Since VAR measures the impact of market movements on portfolios in normal markets, it does not consider extreme events. Understanding the potential impact of improbable and adverse events should be part of the risk measurement process."[18] Dissident voices of this kind were ignored.

The G30 report helped the private sector to get better organised and find common ground in the debate on the so called Basel II agreements. Several lobby groups found "renewed impetus"[19], including the Financial Services Roundtable, and the Counterparty Risk Management Policy Group, which was chaired by E. Gerald Corrigan of Goldman Sachs – a Group of Thirty member.

Unlike the process on over-the-counter derivatives, the battle over internal risk assessment was not an open political battle, but took place in the framework of international negotiations with little public debate. However, to the extent there was a public debate, the Group of Thirty played a part in it. As when in 1994 Charles Taylor spoke out on behalf of the Group of Thirty to support the banking lobby group IIF and a number of big banks such as JP Morgan which were arguing that their VaR-model was a sufficient tool to deal with market risk[20].

As Eleni Tsingou put it: "Indeed the work of the Group of Thirty led to intensified and arguably institutionalised policy functions for private actors in the development and eventually the content of Basel II".[21] This was very helpful to lobby groups like the IIF: "The end result was that IIF preferences for market-generated standards, and self-regulatory oversight solutions were internalized in the Basel-process, and that consequently, large sophisticated banks were the best placed and best suited to the ensuing proposals"[22].

As it has turned out, the critics seem to have been right. With the outbreak of the financial crisis, the VaR model came under fire, and a new debate on the reform of the regulation on risk assessment was initiated.

What these two examples tell us about the Group of Thirty is that the organisation is far more than a think tank. It has displayed political preferences for self-regulation and self-supervision, and has worked to establish them as the norm in global financial governance. And it's an effective organisation.

The impact and the consequences

Eleni Tsingou, an academic expert who has studied the Group of Thirty for more than a decade, finds that "the G30 has played a significant part in altering and harmonizing transnational practices of regulation and supervision in a way that was consistent with private sector preferences"[23]. In her assessment, "a certain level of capture takes place". "Groups such as the G-30 have not only legitimised private sector involvement, in policy-making but have also enabled private interests to become internalized in financial policy decisions"[24].

The outcome of this kind of financial governance is a matter of deep concern and is of public interest, in that reforms that can be traced back to the work of the Group of Thirty helped pave the way for the financial crisis. Or as Tsingou puts it: "the severe shortcomings in the quality of governance: the regulatory and supervisory arrangements advocated by the G-30 were directly linked to the failings that brought about and exacerbated the financial crisis"[25].

The nature of the G-30

In sum, we believe the ECB is putting forward a picture of itself in its opinion that, to paraphrase the ECB itself, is based on "partial/incomplete information about the very nature of the Group of Thirty". The ECB tends to depict the Group as a neutral body in which wise men exchange abstract theories, but this is far from the reality. It may be a club – in fact some of the leading academics on the matter prefer exactly that term – but it's not a dull club for sterile academic disputes, it's a club with ambitions to frame the debate on financial regulation globally in order to influence the outcomes.

Though the Group of Thirty is not an organisation that pops up in the media every day, many journalists who regularly write on financial issues have come to know the group as a lot more than a think tank. Even in the nineties, it was was often simply referred to as "a lobby group"[26], or a "pressure group" [27]. Others used more opaque terms like "a high powered outfit"[28].

In our view, the organisation displays all the characteristics of a lobby group. It is funded by private financial corporations, it is dominated by representatives of largely the same corporations, its public figures are mostly people representing financial corporations, its objective is to formulate policy and influence financial regulation, and historically it is known to have taken positions close to those of financial corporations.

The presence of central bankers, and arguably some of the activities of the Group of Thirty, might call into question whether another more exotic term would be more appropriate than "lobby group". It could be dubbed an "interest group", or "elite club". But it is certainly not the kind of neutral think tank, the ECB implies in its opinion.

But terminology is less important than the core issue: that the ECB President's membership raises many important questions about his involvement, and his interaction with the other members, and how this can be compatible with the ECB's own ethics rules.

2. The involvement of President Draghi

If the ECB had provided a description of President Draghi's activities in the Group of Thirty, this might have shed light on the matter in a way that a search of publicly available information cannot do (assuming that the ECB has access or can get access to this detailed information). However, the information that they have provided is of limited value. For instance, it takes no more than a few minutes to learn from the Group of Thirty's website that they organise seminars, that they form study groups to write reports, that they have a leadership which does not include Mario Draghi. What would have been more useful from the ECB would have been a more qualified underpinning of its arguments, perhaps supported by some documents. They have not provided that.

Firstly, Group of Thirty meetings are closed to the public. Minutes are confidential. As a consequence, little information on the internal workings of the group can be found in the public domain. A fact the ECB omits to mention. This makes the meetings all the more important to this case. But in the opinion of the ECB, seminars and meetings are treated as one and the same, and no detail is given. The closed nature of the meetings is one of the serious points of concern that we've raised, but with the ECB's opinion does not help with this.

Secondly, the ECB states that as a matter of course, the ECB President, when participating at meetings and seminars: "is bound by the principle of independence and the duty of professional secrecy." While that may be, it seems to be impossible to confirm, since information on the internal procedures are unavailable.

Thirdly, while we acknowledge the need for the president to stay informed and to be in touch with other central bankers and discuss issues of importance to banks and financial institutions, the choice of environment and circumstances for such an exchange is highly relevant. The fact that the ECB also organises conferences and seminars does not make alter the significance of membership of the Group of Thirty. It is not participation at conferences in itself that constitutes the problem.

Fourth and finally, the nature of Mr Draghi's involvement seems utterly unclear. In an earlier letter from the ECB, we were told that "Mr Draghi's participation in the Group of 30 is undertaken in his personal capacity, upon invitation.."[29] There is no mention of this in the opinion provided by the ECB, which even suggests it's the duty of the President to be part of the Group. As when it is stated that such contacts "are indispensable for the proper execution of the ECB's mandate."

3. The ethics rules

In the complaint, we've listed many precise potential breaches of the ethics regulation. The Ombudsman has also asked the ECB to take two separate international ethics guidelines into account.

Bearing this in mind, the ECB's opinion is remarkably brief, and makes only three comments:

The first comment: "It is necessary for the proper execution of the ECB's mandate that the ECB President has regular exchanges of view with representatives of the global economic and financial environment in which the ECB operates."

As if to underline the point made in the comment, the ECB refers to article 3.4 in the Code of Conduct for the members of the Governing Council which reads:

"They may, however, accept invitations to conferences, receptions or cultural events and connected entertainment, including appropriate hospitality, if their participation in the event is compatible with the fulfillment of their duties as members of the Governing Council. In this respect, they may accept the refunding by the organisers of travel and accommodation expenses commensurate with the duration of their commitment except when the organisers are institutions under their supervision. In particular, members of the Governing Council should observe particular prudence with regard to individual invitations. These rules should apply equally to their spouses or partners, if the invitations are also extended to them and if their participation is consistent with internationally accepted custom."

The ECB also refers to article 3 of the Supplementary Code of ethics Criteria for the Members of the ECB's Executive Board. This article on 'Acceptance of invitations' reads:

"Members of the Executive Board, while keeping in mind their obligation to respect the principle of independence and avoid conflicts of interest, may accept invitations to conferences, receptions or cultural events and connected entertainment, including appropriate hospitality, if their participation in the event is compatible with the fulfillment of their duties or is in the ECB's interest. In this respect, they may accept the payment by the organisers of travel and accommodation cost commensurate with the duration of their commitment. In particular, members of the Executive Board may accept invitations to widely attended events, while they should observe particular prudence with regard to individual invitations. Any fees which may be accepted by the members of the Executive Board for lectures and speeches undertaken in their official capacity shall be used by the ECB for charitable purposes.

"These rules should apply equally to their spouses or partners, if the invitations are also extended to them and if their participation is consistent with internationally accepted custom."

The two articles stress that members of the Executive Board may accept invitations. But again the question is not whether the President can participate at events, or indeed whether events can be part of his duties. The question is whether participation in the Group of Thirty is compatible with the President's duties or in the ECB's interest, and in particular whether due caution has been taken to respect the principle of independence and to avoid conflicts of interest. In this regard, the ECB's opinion is silent.

The two articles are slightly different in that the first specifies the kind of invitations members of the Governing Council can accept. They are invitations to conferences, receptions, cultural events and connected entertainment. This article does not mention meetings such as the bi-annual meetings of the Group of Thirty. Furthermore, the article asks for 'particular prudence with regard to individual invitations'. According to the ECB, invitations to the meetings of the Group of Thirty are exactly that. It may be that the Group of Thirty has been thoroughly assessed by the ECB, but up to now there is no sign of that in our communication with the Bank.

The second comment: "The Group of Thirty is not an interest group in the sense of article 3.7 of the Code of Conduct for the members of the Governing Council, but a non-partisan discussion forum."

The mentioned article 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."

We believe we've produced enough evidence above, in previous letters to the bank, as well as in our formal complaint, to support our claim that the Group of Thirty has all the characteristics of an interest group. To implement its own rules the ECB would need to show it has considered in depth what constitutes an interest group and what not. This comment from the ECB, however, does not bring this out into the open. It's a bit puzzling that the ECB mentions this article in the body of the opinion, as if this article carried particular weight in terms of defining an interest group. But this article merely states that relations to interest groups must be compatible with the principles of independence and integrity.

Apparently the ECB is arguing that since the Group of Thirty is not an interest group, the principles of independence and integrity do not apply. Surely this not acceptable.

The third comment: "The ECB President's membership… does not provide him with 'any potenitial advantage for himself, his family, his other relatives or circle of friends and acquaintances'. Such membership is therefore, by definition, not liable to give rise to any private or personal interest, and even less to any conflict, or appearance of conflict, of such interests."

On this, the ECB refers to article 4.1 of the Code of Conduct for the members of the Governing Council. This article 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."

As argued above, the Group of Thirty displays all characteristics of an interest group. None of the questions raised by us have been addressed by the ECB, which seem to believe that it can avoid any discussion of the substance. In our view, there is no doubt the President Draghi's membership creates a situation "liable to give rise to a conflict of interests."

In our view, conflict of interests cannot be understood narrowly. This article, as well as other parts of the ethics rules, and other documents of juridical relevance (see below) go well beyond simplistic definitions. Identification of a conflict of interest can very well be based on, for instance, assumed loyalty to an organisation.

Complaints not addressed

It's important to add that while the ECB's three points address, albeit unsatisfactorily, some of our claims on breaches of the ethics regulations, the ECB does not come close to addressing all of them.

In the complaint we highlighted five matters on which we would have liked to get a more detailed response from the ECB than so far provided.

The first of these was about the "failure to explore potential threats to the independence of the ECB". This question is not addressed in the ECB's submitted opinion. As for the description in the opinion, most of it is taken straight from the website of the Group of Thirty and from its Annual Report 2010-2011. There is no inclusuion of detailed knowledge of the Group of Thirty's activities. As in the original complaint, we must conclude that no precautions have been taken.

The second was about the "failure to explore if participation at the Group of Thirty meetings is problematic". Again, the knowledge of the ECB as far as the meetings are concerned, amounts to a text from the Group of Thirty's Annual Report 2010-2011. As mentioned earlier and above, the Group of Thirty bi-annual meetings ought to be of particular concern to the ECB. The ethics rules are quite clear on the point that the ECB and its staff must "observe particular prudence with regard to individual invitations". In case of doubt, staff must consult the ethics officer. This has not happened. Also, since meetings are not on the list of activities mentioned in article 3.4 of the Code of Conduct (the list includes "invitations to conferences, receptions or cultural events and connected entertainment, including appropriate hospitality", as mentioned above), and since ECB staff rules obliges staff to obtain authorisation to participate in activities of this kind (Staff Rules, paragraph 0.12), the negligence shown in this case is obvious.

The third was about "the failure to secure the integrity and reputation of the ECB". An issue mentioned in the opinion, but not addressed.

The fourth was about "failure to avoid potential conflicts-of-interest arising from Mr Draghi's membership". Considering the apparent lack of any precautionary measure, and considering the evidence of the political interests at play in the Group of Thirty, it is impossible to argue that the ethics rules have been respected. The strong role of private financial sector interests in the Group of Thirty is not something that was discovered by Corporate Europe Observatory. The matter has been discussed in the press for a couple of decades, and it has been a matter of academic interest for almost as long. Consequently, the ethics rules leave no space for the kind of laissez-faire behavior of the ECB and its President in this case.

The fifth was about transparency. Despite the complaint and quite widespread coverage in the press, the ECB still does not feel obliged to ensure that the President's membership of the Group of Thirty is displayed on his CV on the website.

Finally, the EU Ombudsman has asked the ECB to comment on two separate international documents on ethical conduct. Unfortunately this request has been ignored by the ECB.

In the OECD's Recommendation of the Council on guidelines for managing conflict of interest in the public service, we find what is probably the most recent attempt to describe the challenges for government and public authorities on how to deal with 'conflicts of interest'. On several accounts, an assessment by the ECB would have been important, particularly on how 'conflict of interest' is defined (point 10-15), and on the identification of conflict of interest (point 1.1). The document also contains important considerations relevant for regulators on how to relate to the businesses they are to regulate. Generally, the level of ambition described in the document is far higher than the standards applied by the ECB.

We would also like to refer to the Council of Europe's Recommendation no. R 10 of the Committee of Ministers to Member States on codes of conduct for public officials, articles 13 to 15. Had this recommendation been respected by the ECB and its President, the President would not be a member of the Group of Thirty, because the recommendation very clearly includes advantage to "organisations with whom he or she has or has had business or political relations" (article 13.2) among the private interests that can give rise to conflicts of interest. Even if the ECB's claims were correct - that the Group of Thirty is not in any way an interest group – then measures would have to be taken according to this recommendation. Measures would include that Mr Draghi 'seek advice', and declare his membership.

Concluding remarks

As stated in the complaint, at a time like this, with a financial crisis, and with the ECB's increasingly powerful role in banking regulation – not to mention initiatives like LTRO (cheap loans for banks to the sound of 1 trillion euro), it is absolutely vital that the leadership of the ECB in general and the President in particular, cannot be suspected of being under undue influence from financial lobby groups. We feel that in the case of the President's membership of the Group of Thirty, there is cause for alarm, and that core principles of the Treaty as well as the ethics regulation have not been taken seriously enough by the ECB.

The independence of the ECB can be called into question if, for instance, questions of policy are settled at an early stage within a setting like the G-30. We've written above on a case where regulators found a common position on over-the-counter derivatives inside the group, for example.

The reputation of the ECB can be damaged if, for instance, the Group of Thirty's spokespersons directly or indirectly suggest the President's support for proposals favoured by the private sector, which may in themselves be the subject of political dispute, for instance in national parliaments in the EU.

Conflicts of interest (apparent or potential) – a concept which forms part of the overall principle of securing independence – can also be a threat if, for instance, the President takes a position that is interpreted as loyalty to an organisation such as the Group of Thirty, or if the President were to advocate policies that would be particularly favourable to the corporations represented in the organisation.

We do not feel the ECB's opinion in any way addresses the concerns raised in our complaint and above. Also, we feel the opinion confirms our fears that the ECB has not at any point taken the matter seriously, either before or after the complaint was filed. There is no trace in any of the communication with the ECB that the matter has been dealt with by the ethics officer; no discussion seems to have taken place. This leads us to stress that besides the demand that Mario Draghi must leave the Group of Thirty, there is a need to drastically improve the internal procedures of the ECB in cases such as this.

Yours sincerely,

Kenneth Haar

Researcher, Corporate Europe Observatory

Notes

[1] In our response we have consulted the website of the organisation, www.group30.org.

[2] Group of Thirty; "Financial reform: a framework for financial stability", 2009, page 11-12, http://group30.org/images/PDF/Financial_Reform-A_Framework_for_Financial_Stability.pdf

[3] JPMorgan, press release, December 2009, http://www.jpmorgan.com/cm/cs?pagename=JPM_redesign/JPM_Content_C/Generic_Detail_Page_Template&cid=1259886088790&c=JPM_Content_C

[4] Group of Thirty; "Reform of the International Monetary Fund", 2009, page 12, http://group30.org/images/PDF/GRP30_IMF09_RPT_FNL-NEW.pdf

[5] Reuters, 6. October 2009: wrote: "The G30 suggested the Fund create a new governing council to oversee the IMF's executive board and to structure itself in a way that gave big emerging powers more say. This could mean greater political involvement for the Group of 20 leading developed and emerging economic powers.".

[6] The Times, 6. October 2009.

[7] Random examples include an interview to CNN on the 6th of October 2008 on the financial crisis, and the following words of optimism, uttered to the Jerusalem Post 27. May 2008; "Group of Thirty Chairman Jacob Frenkel, a former governor of the Bank of Israel, compared the effect of oil prices today to the oil crisis of the 1970s, when world economies entered into a period of severe economic hardship. Today, he said, the flexibility of world economies, buttressed by sound monetary policies, are keeping economies in good condition despite the runs on the commodity markets." At the time Frenkel was Vice Chairman of AIG.

[8] For instance, at a meeting on the 16th of September 2010 organised by the Council of Foreign Relations in the US, Frenkel was introduced as a spokesperson for JPMorgan Chase and as the Chairman of the Group of Thirty.

[9] The following two examples of the work of the Group of Thirty owes a lot to a dissertation on the Group of Thirty published recently. Eleni Tsingou; "Club model politics and global financial governance: the case of the Group of Thirty", University of Amsterdam, May 2012. http://dare.uva.nl/record/418085

[10] Australian Financial Review, 24. February 1994.

[11] Tsingou, page 135.

[12] Tsingou page 138.

[13] Tsingou, page 146.

[14] Tsingou, page 139.

[15] The Independent, 10. October 1993.

[16] Ranjit Lall; "Reforming global banking rules – Back to the future?", paper prepared for a seminar at DIIS, 18. May 2010, page 24 ff., http://www.diis.dk/graphics/Events/2009/Paper%20Ranjit%20Lall_Reforming%20Global%20Banking%20Rules%20_2_.pdf

[17] Group of Thirty; “Global institutions, national supervision and systemic risk”, 1997.

[18] Australian Financial Review, 14. May 1996.

[19] Tsingou, page 172.

[20] Financial Times, 7. September 1994.

[21] Tsingou, page 169.

[22] Ibid.

[23] Tsingou, page 2.

[24] Tsingou, page 14.

[25] Tsingou, page 27.

[26] Australian Financial Review, 31. August 1995.

[27] Evening Standard, 4. December 2000.

[28] The Observer, 31. January 2010.

[29] Letter from the ECB Press and Information Division, 25. March 2012.