

'Right to appeal' - International Financial Institutions and accountability – on the way to independent compliance and appeal mechanism for the European Investment Bank - Conference

Thursday, 30 November 2006, Brussels

**WORKING DISCUSSION PAPER
ON A PROPOSED EIB ACCOUNTABILITY
MECHANISM**

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Background Paper

Updated version: 3 January 2007

Conference organised by:



In cooperation with: Friends of the Earth Europe, Friends of the Earth International, Global Transparency Initiative, Bank Information Center, Campagna per la Riforma della Banca Mondiale, WEED, Urgewald, Les Amis de la Terre

The organisers gratefully acknowledge the financial support provided by the European Commission and the Dutch Ministry of Housing, Spatial Planning and the Environment

WORKING DISCUSSION PAPER ON A PROPOSED EIB ACCOUNTABILITY MECHANISM¹

By David Hunter and Natalie Bridgeman

The following paper outlines a potential Accountability Mechanism (the Mechanism) at the European Investment Bank (EIB). It is intended to prompt further discussion of the next steps for creating an effective mechanism at the EIB. The paper is based on the experience of the existing accountability mechanisms at other international and bilateral financial institutions.

I. General Principles to Guide the EIB Accountability Mechanism

1. The following principles should guide the creation and implementation of the EIB Accountability Mechanism:

- (a) Subject to any applicable legal constraints, the accountability mechanism shall be *transparent* in its operations and outputs;
- (b) The Mechanism shall be *independent* of EIB management and operational staff;
- (c) The Mechanism shall be *effective* in responding in a *timely* manner to environmental and social concerns, including labor, human rights and corruption concerns, and in promoting the development mandate of EIB;
- (d) The Mechanism shall reflect EIB's *institutional* context;
- (e) The Mechanism shall be *accessible* to project-affected people, their representatives and/or interested organizations or individuals, by maintaining open communications and providing information in languages and formats required to allow the greatest access practicable to affected people; and
- (f) The development of the Mechanism in light of these principles shall be the result of an open *consultative process* with EIB's various stakeholders, including project-affected people.

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II. Purpose/Function of the Accountability Mechanism

2. The Mechanism shall serve the following functions:

(a) evaluate and report on the compliance of EIB-supported projects, and monitor and report on efforts to bring non-compliant projects back into compliance;

(b) attempt to resolve concerns regarding the environmental, social or development impacts of specific EIB-supported projects; and

(c) provide advice and recommendations to the EIB regarding its portfolios, policies or practices.

III. Scope of the Accountability Mechanism

3. The Mechanism shall apply to claims brought regarding any of EIB's finance, insurance or investment fund activities.

4. Claims shall not be brought:

(a) by another business interest to gain competitive economic advantage; or

(b) that are clearly frivolous or malicious in nature.

5. The Mechanism shall review EIB-supported projects in light of:

(i) Requirements of any by-laws, articles, policies, guidelines or procedures established by the EIB;

(ii) Requirements of the European Union relating to environmentally and socially sustainable development;

(iii) Requirements in other international treaties, standards or norms relating to environment, labor, human rights, corruption or other aspects of sustainable development.

IV. Eligibility

6. A claim can be brought by:

(a) any person or group adversely affected by the project;

(b) any EU-based person or group with an interest in the environmental, developmental or social impacts of the project;

(c) by referral from the European Ombudsman; or

(d) the Chairman of EIB.

V. Institutional Structure and Staffing

7. The EIB Accountability Mechanism shall be headed by a high level Senior Accountability Officer (SAO) with one professional and two support staff.

8. The SAO shall be appointed by and report to the Development Committee of the European Parliament (the Development Committee).

9. The Development Committee shall nominate the SAO after receiving the recommendation of a multi-stakeholder hiring committee, including representatives of private sector, EIB, labor, NGOs, etc. Approval of the nominee will be by full vote of the European Parliament. The SAO shall not have been employed or served as a consultant by EIB for any of the past three years.

10. The SAO shall serve for a renewable five-year term subject to the satisfaction of the EIB Board of Directors after receiving the nomination of the multi-stakeholder hiring committee. Any person serving on the SAO shall not subsequently serve in any capacity at the EIB.

11. The budget shall be sufficient to maintain the effective operation of the mechanism.

VI. Basic Procedural Milestones

12. The Mechanism shall develop operating procedures based on an open consultative process. The procedures shall demonstrate and ensure the Mechanism's transparent, fair and effective operations. To this end, the Mechanism shall make public its methods of investigation, factual findings, non-confidential party submissions, and reports.

13. **Registration of the claim.** Within three (3) days of receiving a claim, the SAO shall notify the claimant, project sponsor, and EIB management that the SAO has received the claim. The SAO shall register the claim in a publicly available registry on the web. At the request of the claimant, the identity of any claimant will be kept confidential by the SAO.

14. **Eligibility of the Claim.** Within fourteen (14) days of receiving a claim, the SAO shall determine if the claim is eligible and within the scope of the SAO's authority, inform the claimant, project sponsor and EIB management of reasons for the determination, and make this determination available to the public on the website.

15. **Issuing a Terms of Reference.** If the claim is viewed as being eligible and within the scope of the SAO's authority, within thirty (30) days of receiving a claim, the SAO shall release to EIB management, the claimant, project sponsor, Development Committee and public a draft terms of reference identifying the steps the SAO intends to take to respond to the claim and the proposed timeframe. The response shall include a compliance review if the claimant has alleged noncompliance, and may also include other measures to address

concerns raised in the claim (for example, using mediation or the good offices of the SAO to try to resolve concerns).

16. **Response to the Terms of Reference.** EIB management, the claimant, project sponsor and public shall have twenty (20) days to provide comments after the issuance of the draft terms of reference.

17. **Finalizing and Implementing Terms of Reference.** After considering all comments received, the SAO shall issue a final terms of reference and timeframe for responding to the claim and begin implementing the final terms of reference.

18. **Mechanism's Access to Information.** In carrying out a compliance review or in taking other steps, the SAO and staff shall have full access to all EIB staff and all documents or files in EIB's control. At the SAO's discretion, the SAO or staff may also visit the project site and meet with people living in the project area.

19. **Issuing a Draft Report and Recommendations.** The SAO shall issue a draft report and recommendations within the timeframe specified in the terms of reference.

20. **Commenting on the Draft Report and Recommendations.** The claimant, project sponsor, EIB management and any member of the public shall have twenty (20) days to provide their comments after receiving the draft report.

21. **Final Report and Recommendations.** The SAO's final report shall include at least the following information:

- (a) measures the SAO took in responding to a claim;
- (b) factual findings or conclusions the SAO reached in processing the claim, including, for example, a description of specific violations, if any, that have occurred; and
- (c) recommendations the SAO believes are necessary to bring the project into compliance or otherwise to address the concerns of the claimants.

Comments provided by EIB management, the project sponsor, the claimants and the public, as well as responses to the comments, shall be appended to the final report. The final report shall be submitted to the Development Committee, EIB Board and management, the claimants and the public.

22. **Remedies.** At any time after receiving a claim and upon determining that there could exist a threat of irreversible harm to the claimants, the SAO can recommend to the EIB Chairman and/or to the EIB Board that project preparation or implementation be stopped until the SAO's review can be completed. Such a recommendation shall be sent to the claimant, the project sponsor, EIB management, the Development Committee, and made publicly available on the website. The SAO shall recommend any remedies the SAO believes will address the claim, including, for example, modifications to the project, mitigation

steps, suspension or cancellation of the insurance or investment, disbarment from EIB support, or pursuit of civil or criminal fines or penalties.

VII. Decision making

23. Within forty-five (45) days of receiving the SAO's final report, the EIB Board shall decide in light of the SAO's recommendation and the management's and claimants' response, what action, if any, shall be taken to address the claims. If there is disagreement about whether the EIB Board's decision will adequately remedy problems identified in the SAO's final report, any complaining party may submit a letter to the Chairperson of the Development Committee registering such disagreement. The Development Committee will have discretion about further appropriate action, if any.

VIII. Transparency and Reporting

24. The SAO and other staff shall be subject to the same business confidentiality restrictions as other EIB staff members. The SAO and staff shall be subject to the normal terms and conditions of EIB employment.

25. All SAO reports shall be made public at the time they are submitted to the EIB Board.

26. All EIB Board meetings (or Development Committee Meetings) in which a claim or a SAO report is discussed shall be open to the claimant, project sponsor and the public.

27. The SAO shall issue such advisory reports as it deems warranted to provide advice to EIB regarding its policies, projects or practices, including, for example, advice on changes that should be made to EIB's policies, additional norms or standards that EIB should adopt or recommendations to improve EIB's compliance monitoring systems.

IX. Monitoring

28. The SAO shall provide annual monitoring reports to the EIB Board on the status of implementation of any decision made in response to a claim. To prepare the monitoring report, the SAO may conduct site visits, interview claimants or take any other steps it deems necessary. The monitoring reports shall be made public at the time they are sent to the Board.

X. Annual Reports

29. The SAO shall issue to the EIB Board an annual report that describes activities of the Accountability Mechanism during the last year with respect to specific claims and provides general advice regarding EIB's portfolio, practices or policies.

30. As part of the annual report for the second year after the Mechanism becomes effective, the SAO shall provide an independent assessment of the effectiveness of EIB's regular compliance monitoring systems.

XI. Outreach

31. The Mechanism shall be provided the resources and mandate to inform potentially affected people and other stakeholders of the existence of the Mechanism and the opportunity it provides to affected people. The EIB will also be responsible for informing its clients, affected people and other stakeholders of the existence of the Mechanism and shall facilitate contact between affected people and the Mechanism.

XII. Review of the Mechanism

32. The effectiveness of the Accountability Mechanism shall be independently evaluated three (3) years after it becomes operationalized.