

**DRAFT FOR CONSULTATION**

**EIB GROUP COMPLAINTS MECHANISM POLICY**

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## Glossary

**CSOs:** Civil Society Organisations

**Conclusions Report:** the Report containing a record of the EIB-CM's inquiry as well of its findings and conclusions on cases which underwent a compliance review.

**EIB-CM:** EIB Group Complaints Mechanism Division

**EIB Group:** Formed in 2000, it comprises the EIB and the EIF

**EIB:** European Investment Bank

**EIB Group Governing bodies:** Depending on the EIB Group member concerned by the complaint, this term may indicate the EIB Board of Directors and/or the EIB Management Committee (EIB) or the EIF Chief Executive/Deputy Chief Executive (EIF) and the EIF Board of Directors

**EIB Group Management:** Depending on the EIB Group member concerned by the complaint, this term may indicate EIB Management Committee and/or EIB Directors General (EIB) or the EIF Chief Executive (EIF)

**EIB Group's staff:** All EIB Group's members of staff holding an employment contract with the EIB or the EIF.

**EIB project:** A project receiving EIB's financial assistance

**EIF:** European Investment Fund

**EIF CE/DCE:** EIF Chief Executive/Deputy Chief Executive

**EO:** European Ombudsman

**EDPS:** European Data Protection Supervisor

**Initial Assessment Report:** The Report containing (i) an initial assessment of the allegations made by a complaint regarding environmental and social impacts or governance aspects of operations/projects financed by the EIB Group and (ii) concrete proposals on how to proceed with a collaborative process or an investigation/compliance review.

**Mediation Report:** The Report containing (i) a description of the Mediation process and (ii) its outcome which is communicated to the mediation parties and to the EIB Management and/or EIF CE/DCE.

**Collaborative resolution process:** The process followed by the EIB-CM to bring parties to mutually accepted and sustainable solutions. This includes several types: facilitation of information sharing, dialogue/negotiation, joint fact-finding and formal mediation/conciliation.

**Mediation Agreement:** The covenant containing the points of agreement and the commitments undertaken by the Mediation parties; once signed by the latter, it closes the Mediation process managed by the EIB-CM.

**Maladministration:** As defined in paragraph 3.

**Personnel:** The relevant departments of human resources in the EIB Group

**Policy:** The EIB Group document illustrating how the EIB Group seeks to fulfil its mission in a specific field through the elaboration of standards

**Procedures:** An EIB Group document translating standards into operational terms by establishing the sequence of actions or instructions to be followed with a view to ensuring EIB Group's compliance with its standards

**Project's "area of influence":** Areas, individuals and communities impacted beyond the footprint of the project or activity by cumulative impacts from further planned development of the project or other sources or similar impacts geographical area, any existing project or condition, and other project-related developments

that can realistically be expected at the time due diligence is undertaken. In addition to the area of geographical or spatial influence, temporal influence should also be determined.

**Regulations:** Secondary sources of EU Law, these documents have binding legislative nature.

**Working day:** Any day (other than Saturday and Sunday, legal holidays in the Grand Duchy of Luxembourg or Bank holidays) on which the EIB Group can conduct business.

**Standards:** Minimum quality requirements of EIB Group's action (e.g. with regard to the environmental and social impact of EIB-financed projects, the EIB establishes environmental and social standards of its operations).

**TFEU:** Treaty on the Functioning of the European Union

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## **PREAMBLE**

The EIB Group consists of the European Investment Bank (EIB)<sup>1</sup> and the European Investment Fund (EIF)<sup>2</sup>. The EIB is the financing body of the European Union (EU), and its capital is subscribed by the EU Member States. The EIB's Statute is a Protocol attached to the Treaty on European Union and the Treaty on the Functioning of the European Union. When performing its activities, the EIB Group is bound by the Treaties and its Statute as well as by the relevant legislative and regulatory framework of the European Union. The EIB Group, thus, shall operate in order to ensure that its various activities support and implement EU policies. Within the Group, the EIB mainly provides long and medium term bank loans, whilst the EIF specialises in private equity operations and providing guarantees and counter-guarantees to benefit small and medium sized enterprises (SMEs). A non-exhaustive list of the EIB and EIF policy documents is available respectively on the EIB website at <http://www.eib.org/about/partners/cso/key-policies/index.htm>, and on the EIF website at [http://www.eif.org/news\\_centre/publications/all/index.htm](http://www.eif.org/news_centre/publications/all/index.htm).

As part of the EU institutional framework and within the limits established by the Treaties, the EIB and the EIF are subject to the jurisdiction of the Court of Justice of the European Union, while the European Court of Auditors examines the use of EU funds managed by the EIB Group. Moreover, the EIB Group's activities fall within the mandate of the European Anti-Fraud Office (OLAF), as set by EC Regulation 883/2013, and are subject to the remit of the European Ombudsman (EO) and of the European Data Protection Supervisor (EDPS). The EIB's conduct may also be challenged before the Aarhus Convention Compliance Committee.

The Treaties and the EIB's Statute provide the EIB with operational and financial autonomy to enable it to perform effectively as a financial institution. The EIB is an important partner in the financial sector, especially when borrowing on the capital markets and financing projects. The EIB also works closely with other International Financing Institutions (IFIs), Multilateral Development Banks (MDBs) and Bi-lateral Development Banks (BDBs), in particular when it operates in the framework of the development aid and external co-operation policies of the EU.

EIF is the EU's main provider of risk financing for small and medium-sized enterprises ("SMEs") and mid-caps, and its central mission is to facilitate their access to finance. EIF designs and develops venture and growth capital, guarantees and microfinance instruments which specifically target this market segment. In this role, EIF promotes EU objectives in support of innovation, research and development, entrepreneurship, growth, and employment.

The EIB Group ensures that its activities respect EU law and policies. In countries where these are not applicable, the EIB uses EU law and policies as the best reference when carrying out its activities. In its day-to-day operations the EIB Group also takes into account standards and practices applied by the banking and financial community, particularly in areas not covered directly by EU law.

Managing complaints of any kind is a Group-wide responsibility as it helps the EIB Group to enhance its performance and products. For this purpose and on the basis of a Memorandum of Understanding signed with the European Ombudsman, the EIB Group has a two-tier Complaints Mechanism composed of one internal tier – the Complaints Mechanism Division – and an external one – the European Ombudsman. This two-tier system with an external and independent body makes the Complaints Mechanism unique amongst the multilateral development institutions.

In order to strengthen and formalise its Complaints Mechanism, the EIB Group publishes the relevant Policy and Procedures regarding the handling of complaints from members of the public who are, or feel, affected by EIB Group's actions or omissions. The Complaints Mechanism Policy and Procedures have been established for the EIB Group.

The EIB Group Complaints Mechanism is a public accountability tool, part of the institutional context of the European Union. It enables alternative and pre-emptive resolution of disputes between complainants and the EIB Group. In addition, the Complaints Mechanism assists the EIB Group, for the common sake of good administration, by advising on possible improvements to the implementation of its activities.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain of EIB Group stakeholders, thus giving voice to their allegations regarding maladministration. Examples of maladministration include administrative irregularities, unlawful

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<sup>1</sup> European Investment Bank (EIB) – [www.eib.org](http://www.eib.org)

<sup>2</sup> European Investment Fund (EIF) – [www.eif.org](http://www.eif.org)

discrimination, unjustified refusals of information, as well as a failure of the EIB Group to comply with its own obligations in the appraisal and monitoring of projects financed by the EIB Group.

The present document shall not be deemed to confer any additional rights of access to justice to the persons lodging a complaint under the procedure set forth therein.

On DD/MM/YY, following a process of public consultation, the EIB and EIF Boards of Directors approved this version of the EIB Group Complaints Mechanism Policy.

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## **POLICY**

### **1. Scope**

- 1.1 The EIB Group Complaints Mechanism Policy and Procedures apply to complaints of alleged maladministration lodged against the EIB Group.
- 1.2 When exercising the right to lodge a complaint against the EIB Group, any member of the public has access to a two-tier procedure, one internal – before the Complaints Mechanism Division (EIB-CM) – and one external – before the EO. To this effect, the EIB and the EO have signed an MoU in 2008.
- 1.3 The EIB Group Complaints Mechanism is a process that entails the interplay of all the actors involved and is led and coordinated by the EIB-CM.
- 1.4 Members of the public who are not aware of the policies, procedures or standards applying to the EIB Group may also submit complaints. They do not need to identify the specific policy, procedure or standard nor do they need to directly challenge the EIB Group's non-compliance with specific policies, procedures or standards.
- 1.5 The EIB Group policy on preventing and deterring prohibited conduct in EIB and EIF's activities applies to allegations concerning fraud, corruption, collusion, coercion, obstruction, money laundering and terrorist-financing ("prohibited conduct"). Further information on how to report such allegations is available on the EIB's website<sup>3</sup> and the EIF's website<sup>4</sup> respectively.
- 1.6 The submission of a complaint to the EIB Group Complaints Mechanism is without prejudice to the rules under which the complainant(s) may be allowed to institute court proceedings before the Court of Justice of the EU, in accordance with and under the conditions laid down in the Treaty on the Functioning of the European Union.
- 1.7 Moreover, as set by Article 27 of the EIB Statute, disputes between the EIB on the one hand and its creditors, debtors or any other person on the other, are decided by the competent national courts, save where jurisdiction has been conferred on the Court of Justice of the EU.

### **2. Guiding Principles**

- 2.1 Subject to any applicable legal constraint, the EIB Group Complaints Mechanism shall be *transparent* in its operations and outputs.
- 2.2 The EIB-CM shall be *independent* from the EIB Group's services, which are responsible for the activities challenged by the complainant(s).
- 2.3 The EIB-CM shall be *effective* in responding in a *timely* manner to allegations regarding maladministration expressed by people being or feeling affected by EIB Group decisions.
- 2.4 The EIB-CM shall be *accessible* to affected people, their representatives and/or interested organisations or individuals.
- 2.5 In the light of these principles, the development of the EIB Group Complaints Mechanism shall be subject to an open public consultative process with the EIB Group's various stakeholders.
- 2.6 Complainant(s) to the EIB Group Complaint Mechanism must not be subject to any form of retaliation, abuse or any kind of discrimination based on the fact that they exercised their right to complain. This applies to the EIB Group as well as any other counterpart part of a business relation with the EIB Group.

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<sup>3</sup> <http://www.eib.org/infocentre/publications/all/anti-fraud-policy.htm>

<sup>4</sup> [http://www.eif.org/news\\_centre/publications/anti\\_fraud\\_policy.htm?lang=-en](http://www.eif.org/news_centre/publications/anti_fraud_policy.htm?lang=-en)

### 3. Maladministration

- 3.1 Maladministration means poor or failed administration. It occurs when the EIB Group fails to act in accordance with a rule or principle that is binding upon it, including in the case of the EIB Group, its own policies, standards and procedures.
- 3.2 The concept of maladministration includes failure by the EIB Group to comply with human rights<sup>5</sup>, with the applicable law, or with the principles of good administration.
- 3.3 Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and to other applicable policies of the EIB Group. The EIB Group's obligations with regard to compliance of projects with national and EU law are defined in its Policies and Procedures.
- 3.4 Maladministration always refers to the Institution (a member of the EIB Group) and does not refer to individual staff members of the Institution.

### 4. The Complaint

#### 4.1 General

- 4.1.1 A complaint is defined as a written communication concerning alleged maladministration by the EIB Group, which may lead to an action by the EIB Group with a view to restoring compliance and good administrative behaviour<sup>6</sup>.
- 4.1.2 Complaints are different in nature and are to be lodged with specific Institutions / functions depending on the subject of the complaint.
- 4.1.3 A complaint can be submitted via a written communication addressed to the EIB Group, preferably via email to the dedicated email address [complaints@eib.org](mailto:complaints@eib.org), by completing the online complaint form available at the following address: <http://www.eib.org/complaints/form>, via fax or delivered directly to the EIB-CM, any EIB Group local representation office or any EIB Group staff.
- 4.1.4 Complainants can write in one of the official languages of the EU and have the right to receive a reply in the same language. For complaints, which are not lodged in one of the official languages of the EU, the complainants shall be informed of this provision and requested to provide a copy of the complaint in one of the official languages of the EU. For complaints relating to lending operations outside of the EU, the EIB-CM will endeavour, whenever possible, to process complaints and documents in the official national language of the country of the project.
- 4.1.5 Complaints must be submitted within one year from the date on which the facts upon which the allegation is based could be reasonably known by the complainant(s).
- 4.1.6 The object of the complaint (preferably including the allegations of maladministration) must be clearly stated as well as, if possible, the complainant(s)' claims, i.e. what the complainant(s) expects to concretely achieve with the complaint. All relevant information should be provided as part of the complaint. Complainants may ask for an investigation/compliance review or mediation. Whenever necessary, the EIB-CM, through further correspondence, may seek to clarify the substance of the complainant's concerns. Where a complaint is broadly worded, the EIB-CM may identify all the elements which, in essence, must be understood as allegations of maladministration falling within the remit of the EIB-CM.
- 4.1.7 Complaints without contact details such as the postal address or e-mail address of the complainant(s) cannot be dealt with although they may be considered admissible.
- 4.1.8 Members of the public are encouraged to address requests for access to information as well as any enquiry regarding the financing facilities, programmes, activity, organisation and objectives of the EIB or EIF respectively to [infodesk@eib.org](mailto:infodesk@eib.org) or [info@eif.org](mailto:info@eif.org).

<sup>5</sup> For the project it finances, the EIB Group follows a rights based approach reflecting the principles of the Charter of Fundamental Rights of the EU, and the UN Universal Declaration of Human Rights.

<sup>6</sup> <http://www.eib.org/infocentre/publications/all/code-of-good-administrative-behaviour-for-the-staff-of-the-eib-in-its-relations-with-the-public.htm?lang=en>

## 4.2 Categories of complaints and types of procedures

There are four types of procedures, fully described in the EIB Group Complaints Mechanism Procedures:

- “**Standard procedure**” - applies to all complaints unless otherwise stated in the EIB Group Complaints Mechanism Procedures.
- “**Extended procedure**” - applies to complaints of types E and F.
- “**Prevention (PR) procedure**” – applies to E, and F complaints when the alleged activity concerns an action not yet been taken or, in case of omission, the timeframe for the EIB Group to take an action has not expired and therefore the EIB Group services are given the opportunity to address the maladministration;
- “**Simplified procedure**” - applies to complaints that are of easy and prompt resolution.

Type of complaints	
Project/operations related complaints	A – Access to Information
	E – Environmental and Social Impacts of financed projects/operations
	F – Governance aspects of financed operations

Type of complaints	
Non-project/operations related complaints	A – Access to Information
	C – Customer and Investor Relations
	G – Own governance / administration
	H – Human resources
	R – Own procurement

## 4.3 Admissibility

4.3.1 Any natural or legal person who alleges a case of maladministration of the EIB Group in its actions and/or omissions can lodge a complaint.

### Exceptions

4.3.2 Complaints against International Organisations, EIB Group counterparts such as Borrowers/Promoters, EU institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils) are not admissible. In such cases, the EIB-CM may inform the complainant(s) of the possibility to address another competent authority.

4.3.3 Complaints submitted by the EIB Group’s staff are not admissible. Such cases will be dealt with by other relevant internal mechanisms, such as those under the responsibility of Personnel as regards working relations and/or the Compliance Directorate (OCCO) for cases related to the EIB Group’s Code of Conduct.

4.3.4 Complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter are not admissible.

4.3.5 Complaints from anonymous parties, complaints with the objective to gain a competitive economic advantage or that are excessive, repetitive, clearly frivolous or malicious in nature are not admissible.

4.3.6 Complaints concerning the investment mandate of the EIB Group, its financing or investment decisions *per se*, its credit policy, or other related, purely commercial or banking discretionary decisions fall outside the scope of the Complaints Mechanism.

4.3.7 Complaints challenging the legality of EIB/EIF Policies decided by the EIB/EIF Governing Bodies are not handled by the EIB-CM but will be addressed by the Secretary General of the EIB or the EIF CE/DCE respectively.

- 4.3.8 The EIB Group Complaints Mechanism cannot deal with project procurement complaints, which fall within the mandate of the EIB Project Procurement Complaints System.
- 4.3.9. The EIB Group Complaints Mechanism cannot deal with allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies<sup>7</sup>, which will be handled by the EIB Group's competent services. If during the inquiry, it appears that some allegations concern prohibited conduct, the relevant part of the complaint will be handed over to the EIB Group's competent services in accordance with the applicable EIB Group Policies and procedures.

#### Project related complaints

- 4.3.10 Complaints regarding a lending operation of types E and F are admissible as far as the EIB has financed, approved or is at least actively considering financing<sup>8</sup> the operation/project.
- 4.3.11 Although complaints may be admissible, there may be limitations in the handling of complaints submitted when the contractual relationship with the Borrower/Promoter no longer exists (e.g. after full reimbursement of the loan) as the EIB does not have any possibility to restore compliance.
- 4.3.12 Compliance of a project with international, EU, national or local standards is the responsibility of the project promoter and local authorities. However, the EIB Group has a duty to verify compliance with its applicable policies, procedures or standards. Complaints may relate to any aspect of the planning, implementation, or impact of EIB Group projects, including but not limited to:
- Project's due-diligence;
  - The adequacy of measures for the mitigation of social and environmental impacts of the project;
  - Arrangements for involvement of affected communities, minorities, and vulnerable groups in the project;
  - Project's monitoring.

#### **4.4 Timeframe for dealing with a complaint**

- 4.4.1 The EIB Group will endeavour to respond as swiftly as possible and will ensure that imposed and/or agreed delays and notices are respected.
- 4.4.2 The deadline for the final reply depends on the type of complaint and is defined in the Procedures. For justified reasons, the deadline may be extended, after having informed complainants thereof. Complainants submitting complaints in EU languages other than the working languages of the EIB (French and English) may be faced with increased deadlines due to translation delays.
- 4.4.3 Whenever the EIB-CM is not able to provide a response to the complainant(s) within the prescribed deadlines, the EIB-CM will inform the complainant(s) accordingly, before the expiration of the deadline, and provide the reasons for the delay.
- 4.4.4 In the case of mediation related to complaints of type E and F (article 11.5) the deadlines will be extended in consultation with the complainant(s) in order to allow for comprehensive stakeholder engagement and to manage legitimate expectations.
- 4.4.5 In light of the specific characteristics of complaints regarding access to information ("A" complaints), the EIB-CM endeavours to process the inquiry within the shortest timeframe. Whenever possible, the CM will establish the timeframes in consultation with the complainant(s).

#### **4.5 Escalation to the European Ombudsman**

- 4.5.1 Complainants who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group's response can file a complaint of maladministration against the EIB Group with the EO.
- 4.5.2 In its final reply, the EIB Group will ensure that complainants are informed of the possibility to submit a complaint with the EO.
- 4.5.3 The exhaustion of the internal mechanism procedure is a necessary requisite for any complaint to be entitled to escalate to the EO.
- 4.5.4 The EO was established in 1992 by the Maastricht Treaty to deal with complaints about alleged maladministration by the institutions and bodies of the European Community. Therefore, EU citizens

<sup>7</sup> Prohibited conduct includes corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing. See EIB Anti-Fraud Policy at [http://www.eib.org/attachments/strategies/anti\\_fraud\\_policy\\_20130917\\_en.pdf](http://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf) and EIF Anti-Fraud Policy at: [http://www.eif.org/attachments/publications/about/Anti\\_Fraud\\_Policy.pdf](http://www.eif.org/attachments/publications/about/Anti_Fraud_Policy.pdf)

<sup>8</sup> The Management Committee's decision to appraise is the formal decision to actively consider financing the project.

and/or residents may lodge a complaint concerning alleged maladministration against the EIB Group with the EO, should they consider the EIB Group's reply to be unsatisfactory.

4.5.5 In order to strengthen the accessibility of the EIB Group Complaints Mechanism by non-EU citizens who do not reside in one of the EU Member States, the EIB and the EO have signed a [Memorandum of Understanding \(MoU\)](#) according to which, should a complaint not be admissible on the sole basis of Article 195 of the EC Treaty (now Article 228 TFEU)<sup>9</sup>, the EO will commit to using its own initiative power systematically in order to handle complaints lodged by non-EU complainants.

4.5.6 Furthermore, the MoU sets work arrangements as regards the starting point of the EO's inquiry, the scope of the EO's review and the recognition of the EIB's internal mechanism as the prior administrative approaches required by Article 2.4 of the EO's Statute of the Ombudsman<sup>10</sup>. Additional information on the EO is provided in Annex 1.

#### 4.6 Disclosure and Publication regime

4.6.1 For the sake of transparency, complaints are considered non-confidential. A non-confidential treatment means that the EIB Group has the permission to disclose the information communicated in any representations to be made to the relevant internal and external parties for the handling of the complaint including project Promoters.

4.6.2 In case complainants indicate in their communication that their complaint should be treated confidentially, they shall motivate their request. A confidential treatment may severely limit the capability of the EIB-CM to handle the complaint, and may not discharge the EIB Group from the duty to provide the EU competent authorities with access to the complaint.

4.6.3 Complainants will be requested at the time of the acknowledgement of receipt to indicate if their name may be communicated externally (e.g. Promoters, website).

4.6.4 Unless full confidentiality has been requested by the complainant(s), each admissible complaint will be published on the EIB website together with a summary of the case, the EIB-CM conclusions and the relevant reports. The identity will only be published in case the complainant(s) has given consent (article 4.6.3).

4.6.5 Access to information concerning any document related to the complaint is subject to the provisions of the EIB Group Transparency Policy.

4.6.6 Information requests formulated as part of the complaint or of the complainant(s)' further correspondence may require longer timeframes than requests submitted directly to the EIB Group competent services through the procedures established by the EIB Group Transparency Policy.

#### 4.7 Data Protection

4.7.1 Complaints may contain personal data relating to the complainant(s), or to a third party. The processing of personal data by the EIB Group is governed by Regulation (EC) N° 45/2001<sup>11</sup>.

4.7.2 The EIB Group will ensure that personal data are treated confidentially in accordance with Regulation (EC) No 45/2001, in particular Article 5 (d). For those complainant(s) that have waived their right to confidentiality the EIB Group will only publicly release personal data for which the complainant(s) has given consent.

<sup>9</sup> The complainant(s) is not a citizen/resident of (or, in case of legal person, it has not a registered office in) one of the Member States of the European Union.

<sup>10</sup> European Parliament decision 94/262 of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ 1994, L 113 p. 15.

<sup>11</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. Official Journal L 8/1, 12/01/2001.

## **5. EIB Group Complaints Mechanism Division**

### **5.1 The Role of the Complaints Mechanism Division**

- 5.1.1 The Complaints Mechanism Division (EIB-CM) is the EIB Group's service responsible for the implementation of the Complaints Mechanism Policy and Procedures, including its status, authority, responsibilities, rules of conduct and relationship with the EO and the other EIB Group's services.
- 5.1.2 The EIB-CM is part of the independent Inspectorate General (IG), headed by the Inspector General. The Head of the EIB-CM is the Principal of the EIB Group Complaints Mechanism and is, under the auspices of the independent Inspector General, responsible for the management, development, implementation and monitoring of the Complaints Mechanism.
- 5.1.3 The mission of the EIB-CM as an internal mechanism is to centrally and objectively deal with all external complaints concerning alleged maladministration by the EIB Group. It also deals with complaints against the EIB Group with the EO or any other non-judicial complaint lodged with international institutions or bodies and which (directly or indirectly) concern the EIB Group.
- 5.1.4 The EIB-CM is independent from operational activities in order to ensure that each complaint is dealt with by the highest standards of objectiveness whilst safeguarding the interest of all the internal and external stakeholders of the EIB Group. The operational independence and effectiveness of the EIB-CM, as part of the Inspectorate General, are ensured by the responsibility of the Head of EIB-CM regarding (i) the admissibility of complaints, (ii) the type of mediation and/or investigation to be performed for a particular complaint and (iii) the decision on the final version of the EIB-CM Reports.
- 5.1.5 The EIB-CM submits its final case-related reports (Conclusions Reports and Mediation Reports as defined under the Procedures) to the EIB Management Committee, or to the EIF Chief Executive for EIF related matters.
- 5.1.6 In addition to complaints submitted by external stakeholders, an inquiry of the EIB-CM (assessment, investigation or mediation process) may be initiated:
- By specific request of the President, the EIB Management Committee or the EIF Chief Executive;
  - By the Inspector General, either on his own initiative, or on the basis of a reasoned proposal from the Head of EIB-CM.
- 5.1.7 The EIB-CM shall perform its functions impartially, whilst recognising the competences and responsibilities attributed to the other services of the EIB Group.
- 5.1.8 The EIB-CM shall be heard on all issues related to its remit and can disclose or agree to disclose its findings in accordance with the rules and standards applying to the EIB Group.
- 5.1.9 The EIB-CM assists the EIB Group by advising on possible improvements for the common sake of good administration, to the implementation of its activities.
- 5.1.10 The EIB-CM contributes to the establishment of strategies, policies and procedures relating to the handling of complaints and is responsible for their implementation and communication.
- 5.1.11 Due to the nature of the complaints mechanism, the EIB-CM deals with all the services of the EIB Group and, whilst maintaining its operational independence, closely co-operates with them. The EIB-CM shall be free from internal and external interference in the issuance and publishing of its public reports and related documents, without prejudice to the corresponding competences of the EIB Group governing bodies.
- 5.1.12 In order to prevent possible future complaints, the EIB-CM reviews relevant documents and follows the activities of external stakeholders that are active with regard to the operations of the EIB Group.
- 5.1.13 Adequate budgetary support will be provided to the EIB-CM to be effective in carrying out its activities in a timely manner.

### **5.2 Authority and responsibility**

- 5.2.1 Without prejudice to its duty to respect professional secrecy in compliance with European laws, in particular Article 339 TFEU and applicable EU law (notably, Market Abuse Regulation and Directive and the relevant EIB Policies), in carrying out its responsibilities, the EIB-CM has the right to obtain access to any and all information necessary for the performance of its duties. As a result, the EIB Group's staff has the duty to co-operate with the EIB-CM promptly, fully and efficiently in line with the

EIB Group Complaints Mechanism Policy and Procedures, especially with a view to respecting the deadlines as well as to adhering to the standards and policies of the EIB Group. Upon receipt of a complaint, staff members of the EIB Group must immediately transfer it to the EIB-CM.

- 5.2.2 In order to enhance the operational independence of the EIB-CM, EIB Group's staff working for or supervising the EIB-CM is expected to apply and uphold specific Rules of Conduct. The rights and obligations established by these Rules must be exercised in accordance with principles, rules and procedures set out in the EIB/EIF Staff Code of Conduct and in other policies and regulations applicable to the EIB/EIF staff.
- 5.2.3 In light of the nature and remit of the EIB-CM, the latter is committed to consultation and exchange of information with the relevant stakeholders, in order to ensure constructive collaboration.

### 5.3 Functions

5.3.1 The EIB-CM has the following four functions:

- Complaints Investigation Function – the EIB-CM is responsible for investigations/compliance reviews regarding complaints against the EIB Group;
- Mediation Function – the EIB-CM provides different forms of mediation between the complainant(s) and/or Project Promoter with the participation of national authorities and/or the relevant EIB Group's services wherever appropriate;
- Advisory Function (within the scope of its responsibilities) - the EIB-CM advises the EIB Management and/or the EIF CE/DCE internally on broader and systemic issues related to policies, standards, procedures, guidelines, resources, and systems, on the basis of lessons learned from complaints;
- Monitoring Function (in the context of closed complaints) – the EIB-CM monitors further developments and the implementation of agreed corrective actions and recommendations.

5.3.2 When discharging its functions, the EIB-CM will:

- Assess allegations of maladministration raised by the complainant(s);
- Evaluate and report compliance with the EIB Group's relevant regulatory framework for each admissible complaint;
- Prevent potential occurrence(s) of maladministration by contributing to the solution of problems identified;
- In cooperation with relevant internal and external stakeholders, attempt to resolve problems raised by the complainant(s) through a consensual process whilst acting as a problem solving or pre-emptive dispute resolution function;
- Provide advice and recommendations to the EIB Management and/or EIF CE/DCE; and
- Follow-up and report on efforts to take corrective actions whenever applicable.

5.3.3 In order to ensure the implementation of these functions, the EIB-CM is predominantly compliance focussed. The EIB-CM compliance review is not necessarily limited to an investigation of compliance with existing policies and procedures (which is more like a box checking exercise), but might also include a substantive review of compliance with standards, especially in the case of complaints regarding environmental and social impacts.

The EIB-CM reviews the Bank's activities with a view to determining whether maladministration has taken place which is attributable to the Bank. To this end, the EIB-CM reviews whether the EIB services have provided a consistent and reasonable explanation of their position, and whether it is based on complete, accurate, and reliable information identifiable at the time. Using technical expertise when necessary, the EIB-CM reviews the facts in order to establish an independent opinion on whether there has been a manifest error in the Bank's position or a manifest breach of the rules that applied to the services at the time. Maladministration review by the EIB-CM is not intended to substitute the services' professional judgement.

Such review includes but is not limited to situations where:

- There are major discrepancies between, on one side, the information provided by the complainant(s) or otherwise available in the public domain and, the other side, the information provided by the EIB Group concerned services and/or by the Promoter;
- There is clear indication that the EIB Group's concerned services have not reviewed the information provided by the Promoter or other relevant international, national or local authorities as part of the EIB Group's due diligence or monitoring.

- 5.3.4 Whenever applicable, the EIB-CM also has a remit for *problem solving and/or mediation* which may constitute a credible alternative to full investigations, in cases where a compliance review can reasonably be excluded. When performing a problem-solving or dispute resolution function, the EIB-CM endeavours to find and propose appropriate solutions whilst taking into account the interest of all stakeholders.
- 5.3.5 The clear separation of the Mediation Function from the Investigation Function, with separate staffing, ensures it will be managed as an independent and impartial office with the necessary expertise and resources in terms of problem solving.

#### 5.4 Regular reporting

5.4.1 The EIB-CM provides the EIB's Management Committee, the Chairman of the EIB's Audit Committee and the EIF Chief Executive with a Quarterly Report, containing a list of:

- New complaints registered
- On-going complaints
- Closed complaints

For each complaint, the EIB-CM provides a short description of (i) the concerns raised, (ii) the work performed and (iii) next steps.

5.4.2 The EIB-CM meets annually with the EIB Management Committee and the EIF Chief Executive for EIF related complaints to review its work program and ensure a common understanding about the objectives, role, needs and functioning of the Mechanism.

5.4.3 An Annual Report on the EIB-CM, including decisions taken on recommendations by the EIB-CM or the EO, is submitted to the EIB Board of Directors for information after approval by the EIB Management Committee and to the EIF Board of Directors, after approval by the EIF Chief Executive. The Annual Report is published on the EIB website, taking into account any confidentiality constraint.

5.4.4. In addition, the EIB-CM informs the EIB's Board of Directors or the EIF Board of Directors of the status of complaints against the EIB Group which have been submitted to the EO as well as of the outcome of these procedures.

5.4.5 As part of its reporting, the EIB-CM develops a methodology and procedures for gauging the satisfaction of external stakeholders and of the EIB Group Services with the performance, i.e. the outcome and, where possible, the impact of the compliance review or mediation processes on the complainant(s) and other stakeholders.

### 6. Complaints handling

#### 6.1 Tasks

6.1.1 In the context of the handling of a complaint, the EIB-CM carries out the following tasks:

- a) Decides on the admissibility of the complaint in accordance with the operating procedures;
- b) Notifies the registration of the complaint to the EIB Group relevant services;
- c) Acknowledges the receipt of complaints lodged with the EIB Group;
- d) Gathers and reviews existing information on the subject under complaint;
- e) Endeavours to resolve the issues giving rise to complaints in cooperation with internal and external stakeholders;
- f) Identifies the EIB Group's policy, procedure or standard or applicable regulatory framework that allegedly has been violated;
- g) Conducts appropriate inquiries with a view to assessing whether the EIB Group complies with the applicable regulatory framework, including its own policies, procedures or standards;
- h) Coordinates different services involved in order to obtain all possible internal information and opinions on the complaint;

- i) Ensures appropriate stakeholder engagement through fact-finding<sup>12</sup>, mediation, conciliation and dialogue facilitation whenever appropriate;
- j) Coordinates with other European Institutions (e.g. European Commission, EO, European Parliament Committee on Petitions) and international organisations (e.g. Aarhus Convention Compliance Committee) whenever appropriate;
- k) Reports on findings, makes proposals regarding corrective actions and/or recommendations regarding possible improvements of existing procedures in case these recommendations result from findings of maladministration, and issues its Reports to be submitted to the EIB Management Committee or the EIF Chief Executive for consideration;
- l) Drafts appropriate replies to the complainant(s) or, when dealing with complaints lodged against the EIB Group with other institutions/bodies, to the relevant institution (e.g. EO, EDPS);
- m) Ensures that imposed and/or agreed delays and notices are respected;
- n) Conducts monitoring on the implementation of agreed recommendations when necessary.

6.1.2 After registration, the complaints handling process will include the following phases:

- **Initial Assessment**;
- **Investigation**, if deemed necessary after Initial Assessment;
- **Mediation**, if applicable and agreed by the parties involved;
- **Reporting**;
- **Consultation** on the draft reports;
- **Closing** of the case and issue of final report;
- **Follow-up** on recommendations if applicable.

6.1.3 In order to ensure an effective and efficient use of resources, the different phases of the complaints handling process are modulated according to (i) the complexity of the complaint, (ii) the existence of “red flags” indicating that the complaint could be grounded and (iii) facts revealed during the assessment/investigation process. To this extent, the different phases are adapted in terms of tasks performed, depth of analysis performed, extent of stakeholders’ engagement and amount of resources allocated.

6.1.4. Complaints submitted to the EIB-CM do not have a suspensive effect on the actions/omissions and decisions challenged. Nevertheless, during the handling of the complaint, if deemed necessary, the EIB-CM may address the EIB Management Committee or the EIF Chief Executive, with specific recommendations if applicable.

## 6.2 Methodology of the inquiry

6.2.1 The written form consisting of the exchange of correspondence among the concerned parties and of the internal review constitutes the main investigatory procedure of the EIB-CM.

6.2.2 Taking into account the nature of any particular complaint, the EIB-CM may use a variety of additional investigatory methods, including but not limited to:

- Contacts with the complainant(s), affected people, government officials and project authorities of the country where the project is located, promoters of EIB Group financed projects/operations and representatives of local and international non-governmental organizations;
- Visiting project sites;
- Requesting written or oral submissions on specific issues from the complainant(s), affected people, independent experts, government or project officials, promoters of EIB Group financed projects/operations, EIB Group staff, or local or international non-governmental organizations; and
- Hiring independent experts to research specific issues relating to the complaint.

6.2.3 The EIB-CM is committed to engaging with the complainant(s), and generally all relevant internal and external stakeholders, through structured dialogue with a view to gathering additional data and information which are relevant to the processing of the complaint. Whilst performing its activities, the EIB-CM applies its procedures including, whenever necessary, stakeholder engagement on the basis of the type of the complaint and of the complainant(s). It is important that the handling of such

<sup>12</sup> Joint fact-finding – the EIB-CM facilitates the project stakeholders to agree on the issues to be investigated, the involvement of the parties, the degree of independency required, the method to be used and what to do with the results, and to proceed with the joint investigation / fact-finding.

complaints takes appropriate account of the EIB Group-promoter relationship which, unless otherwise agreed, is managed by the competent EIB Group service. Moreover, the procedures and outcomes must (i) be timely in relation to market needs; (ii) be clear and firm as to the duration of the investigation / compliance review or mediation; (iii) ensure cooperation with EIB Group's services; and (iv) be consistent over time.

- 6.2.4 Whenever possible, and giving due consideration to the type of the complaint, the EIB-CM establishes a collaborative resolution process with a view to resolving the dispute by (i) achieving a better and common understanding, (ii) improving the degree of trust between the parties and (iii) seeking to identify a common agreed solution.
- 6.2.5 For each admissible complaint, the EIB-CM will record its findings and conclusions. Whenever appropriate, this will take the form of a Conclusions Report or Mediation Report as described in the Procedures.
- 6.2.6 In its Conclusions Report, the EIB-CM may propose, after consultation with the relevant EIB Group's services, operational corrective actions and include recommendations regarding improvements to existing policies and/or procedures in case these recommendations result from findings of maladministration. Corrective actions agreed with services or approved by EIB Management Committee (respectively the EIF Chief Executive for EIF-related matters) must include an implementation plan as well as a detailed timeframe. The EIB-CM, in collaboration with the EIB Group's concerned services, monitors the implementation of agreed corrective actions and recommendations, whenever appropriate and in any case no later than 24 months after the date of the Conclusions Report.
- 6.2.7 In case the complaint's allegations concern a violation of EU legislation in projects located within the EU, the EIB-CM may recommend the EIB Group to inform the Secretary General of the European Commission about the complaint and to forward the final Conclusions Report.
- 6.2.8 In case the complainant(s) deems that the agreed corrective actions are not implemented correctly or within the imposed timeframe, s/he may submit a complaint and the EIB-CM will review the case.

#### Project cycle

- 6.2.9 If a complaint regarding a project is received at pre-appraisal stage<sup>13</sup>, expressed concerns are forwarded to the concerned services. Complaints about Technical Assistance operations, in the context of a project that could be considered by the EIB, will be examined on their own merits, on administrative grounds only.
- 6.2.10 If a complaint regarding a project is received at appraisal stage<sup>14</sup>, and the action challenged has not yet been taken (or, in case of omission, the timeframe for the EIB Group to take an action has not expired), the complaint is notified to the concerned services and followed-up by the EIB-CM in line with the operating procedures. As soon as final decision on the proposal for financing is approved by the EIB Management Committee respectively the EIF Board of Directors, the applicable complaint handling process, depending on the type of complaint, will apply<sup>15</sup>.

### 6.3 Consultation

6.3.1 The work of the EIB-CM is based on consultation of concerned stakeholders. The objectives of the consultation processes are to:

- Eliminate factual errors and/or omissions;
- Clarify issues that have been misunderstood;
- Provide substantial and material new evidence, if any;
- Incorporate decisions taken, if any, based on the findings and conclusions provided;
- Express views on the substance of the allegations.

6.3.2 Consultation means (i) inviting comments and (ii) considering them.

As regards (i), the process cannot be blocked by failure to respond to the consultation. If no comments are received by the deadline, EIB-CM will proceed to the next stage based on a tacit agreement.

<sup>13</sup> Before the EIB Management Committee's decision to appraise.

<sup>14</sup> After the EIB Management Committee's decision to appraise.

<sup>15</sup> In many cases the project is approved with a number of conditions to be fulfilled by the borrower before the EIB will disburse the funds. In such cases, the EIB-CM maximises collaboration with the services to ensure that there is good coordination between the services' on-going work and the EIB-CM's activities.

As regards (ii), the EIB-CM must respond to critical comments on its findings and recommendations, but it does not have to obtain the agreement of the parties consulted before the process moves to the next stage.

## **7. External relations**

- 7.1 Whenever a complaint concerns an EIB project that involves other international financing institutions that have an independent accountability mechanism the EIB-CM will inform other co-financing institution's complaints mechanism of the admissibility of the complaint and shall endeavour to collaborate with that mechanism. Collaboration opportunities include sharing of information and need to take into account differences between the mechanisms in terms of mandate, policies and procedures applicable to complaints handling and duty of professional secrecy, confidentiality requirements and data protection. Nevertheless, the findings and conclusions of the EIB-CM will be independent.
- 7.2 The EIB-CM is member of the Independent Accountability Mechanisms peer group of international financial institutions and participates in the group's regular meetings.
- 7.3 The EIB-CM holds pro-active and co-operative contacts with all the relevant external institutions, bodies and non-state actors including but not limited to the EO, other complaint mechanism functions, external experts or CSOs.

## **8. Publication and Awareness**

- 8.1 The EIB Group Complaints Mechanism Policy and Procedures are available in all official languages of the European Union, both on the EIB and the EIF websites and as a paper copy.
- 8.2 The initial webpages of the EIB Group provide a direct link to the EIB-CM website ([www.eib.org/complaints](http://www.eib.org/complaints)) where comprehensive and up-to-date information about the role and procedures of the EIB Group Complaints Mechanism, including overall statistical information, is published in all official languages of the European Union. For members of the public who do not have access to the internet, a flyer with an attached complaint form is published and distributed through the EIB Group's external offices to be distributed to local CSOs and to other members of the public.
- 8.3 Further information on the EIB Group Complaints Mechanism is available through informative tools that are distributed through the official delegations of the EIB Group within and outside the EU, such as project documents available to the public or briefings to external stakeholders during project consultation processes.
- 8.4 The EIB Group is committed to raise awareness of the EIB Group Complaints Mechanism in all areas of its activity. As one of the means to achieve this, the EIB-CM is committed to organise awareness session with civil society organisations and public in general in the regions where the EIB Group operates. Furthermore and with a view to enhancing shared understanding of the EIB Group Complaints Mechanism, the EIB-CM is committed to organise periodic internal outreach sessions with staff of the EIB Group Services.
- 8.5 Other communication initiatives may complement these measures with a view to ensuring the greatest outreach of the EIB Group's policies in the field of accountability.
- 8.6 Taking into account applicable confidentiality requirements of complainant(s), as well as third party personal data protection, the following information will be provided and updated on a regular basis on a specific part of the EIB website (<http://www.eib.org/about/accountability/complaints/index.htm>):
- How to use the mechanism,
  - Complaints form,
  - Policy and Procedures,
  - Complaints
    - Key information (e.g. allegations, summary, status),
    - Initial Assessment Reports (final versions),
    - Conclusions Reports (final versions),
  - Annual Reports,
  - Other.

8.7 The EIB-CM website will contain a Public Registry of Complaints with detailed and up-to-date information about all cases, including follow-up activities and the reason why each case was closed. Information disclosed takes into account applicable confidentiality requirements.

## **9. Review and Consultation**

9.1 The EIB Group endeavours to periodically review its Complaints Mechanism, through a process which includes consultation with EIB Group stakeholders. In line with the EIB Group Complaints Mechanism operational set-up (consisting of an internal tier as well as of an external one), the EIB Group reviews its Complaints Mechanism in close cooperation with the EO.

9.2 Concerns expressed by civil society organisations as well as suggestions of internationally-reputed consultancies specialised in the field of accountability are assessed and the EIB Group Complaints Mechanism is adapted accordingly with a view to incorporating the appropriate inputs.

9.3 The EIB Group Complaints Mechanism Policy is approved by the EIB and the EIF Board of Directors upon proposal of the EIB Management Committee and the EIF CE/DCE. When necessary, the EIB Management Committee and the EIF CE/DCE may amend the EIB Group Complaints Mechanism Procedures on the basis of a proposal from the EIB-CM, in consultation with the EIB Group's services and following consultation with the EO whilst ensuring that the modification is consistent with the provisions of the Policy.

## **Annex 1 THE EUROPEAN OMBUDSMAN**

### **1. Who can complain?**

- 1.1 If EU citizens or any natural or legal person residing or having its registered office in an EU Member State feel that the EIB Group has not dealt with their complaint in a timely and/or correct manner, they can, in accordance with Article 228 of the Treaty on the Functioning of the European Union and regardless of a direct concern in the alleged maladministration, lodge a complaint against the EIB Group with the European Ombudsman.
- 1.2 Moreover, following the Memorandum of Understanding signed by the EIB Group and the European Ombudsman, the latter commits to using its own initiative power systematically in order to handle complaints lodged against the EIB by non-eligible complainant(s).

### **2. How to Complain**

- 2.1 A complaint can be lodged with the European Ombudsman in any of the official languages of the European Union, setting out clearly the identity of the complainant(s) and the grounds of the complaint. The complaint can be lodged by mail, fax or e-mail. To ensure that all the necessary information is provided, a complaint form is available at the European Ombudsman's office or at the following website: <http://www.ombudsman.europa.eu/atyourservice/interactiveguide.faces>.

### **3. Subject of the complaint**

- 3.1 Complaints against the EIB Group may concern alleged maladministration of the EIB Group in its actions and/or omissions. As the European Ombudsman practice has shown so far, the most common allegations are administrative irregularities, failure to reply, unnecessary delay, refusal of information, unfairness, discrimination and abuse of power.

#### **a. Eligibility**

The European Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States of the European Union, even when the complaints refer to the EIB Group's field of activities. Such complaints should be addressed to national/local/special ombudsmen or committees on petitions in national/regional parliaments.

The European Ombudsman cannot deal with matters that are currently before a court or that have already been settled by a court.

Before turning to the European Ombudsman, complainant(s) shall have recourse to the EIB Group's complaints mechanism. The European Ombudsman considers that the record of how the EIB Group has dealt with the matters raised in the complaint through its own internal mechanisms and procedures is the appropriate starting point for his own review. Complaints shall therefore include an explanation of why the complainant(s) contest the record or the EIB Group's position as set therein<sup>16</sup>.

#### **b. Time limit for complaints**

A complaint must be lodged within two years from the date on which the facts on which it is based came to the attention of the person lodging the complaint.

#### **c. Outcome of the procedure before the European Ombudsman**

If the Ombudsman considers that a complaint can be resolved, the Ombudsman shall seek a solution with the institution concerned. The Ombudsman may also make suggestions for improvement regarding issues related to the inquiry. Where the Ombudsman finds no maladministration, that a solution has been found or that no further inquiries are justified, the inquiry shall be closed with a decision setting out findings.

<sup>16</sup> Article 2.4 of the Statute of the European Ombudsman provides that a complaint must be "*preceded by the appropriate administrative approaches to the institutions and bodies concerned*". See also the Memorandum of Understanding between the European Ombudsman and the European Investment Bank, July 2008.

Where the Ombudsman finds maladministration, the Ombudsman shall make any appropriate recommendation(s) to the institution concerned and ask the institution to provide an opinion within three months. The Ombudsman, after analysing the opinion of the institution and any comments submitted by the complainant, may close the inquiry setting out definitive findings. If the institution does not accept the recommendations of the Ombudsman, s/he can make a special report to the European Parliament.

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