



**DRAFT**

**EIB GROUP COMPLAINTS MECHANISM POLICY**

## Table of Contents

Glossary.....	2
PREAMBLE .....	4
POLICY.....	6
1. Scope .....	6
2. Guiding Principles .....	6
3. Maladministration .....	7
4. The Complaint .....	7
4.1 General .....	7
4.2 Categories of complaints and types of procedures.....	8
4.3 Admissibility .....	8
4.4 Timeframe for dealing with a complaint .....	9
4.5 Escalation to the European Ombudsman .....	10
4.6 Disclosure and Publication regime.....	10
4.7 Data Protection .....	11
5. EIB Group Complaints Mechanism Division .....	11
5.1 The Role of the Complaints Mechanism Division .....	11
5.2 Authority and responsibility .....	12
5.3 Functions.....	12
5.4 Regular reporting .....	13
6. Complaints handling.....	13
6.1 Tasks.....	13
6.2 Methodology of the inquiry.....	14
6.3 Consultation .....	15
7. External relations.....	16
8. Publication and Awareness.....	16
9. Review and Consultation .....	17
Annex 1 THE EUROPEAN OMBUDSMAN .....	18
1. Who can complain?.....	18
2. How to Complain .....	18
3. Subject of the complaint .....	18
a. Eligibility .....	18
b. Time limit for complaints.....	18
c. Outcome of the procedure before the European Ombudsman.....	18

## Glossary

**CSOs:** Civil Society Organisations

**Conclusions Report:** the report containing a record of the EIB-CM's inquiry as well as of its findings and conclusions in cases that have undergone 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 the EIB Management Committee and/or EIB Directors General (EIB) or the EIF Chief Executive (EIF).

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

**EIB project:** A project receiving the 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 concerns raised by the complainants 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 establishment 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 the 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 in the geographical area, any existing project or condition, and other project-related

developments that can realistically be expected at the time the 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 are of a 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 the 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 for its operations).

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

DRAFT

## **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 shall therefore operate in such a way as 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 for the benefit of 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 laid down 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 cooperation policies of the EU.

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

The EIB Group ensures that its activities comply with EU law and policies. In countries where these are not applicable, the EIB uses EU law and policies as the best point of 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 directly covered 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 (MoU) signed with the European Ombudsman, the EIB Group has a two-tier Complaints Mechanism composed of an 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 the EIB Group's decisions, 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 Division assists the EIB Group, for the common purpose 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 concerns regarding maladministration.

---

<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)

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 herein.

On XX XX 2018, following a process of public consultation, the EIB and EIF Boards of Directors approved this version of the EIB Group Complaints Mechanism Policy.

DRAFT

## **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 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 laid down 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 services that 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 concerns 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. Its main objective shall be to review and analyse complaints with a view to preparing substantive and timely responses.
- 2.5 In 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 Complainants to the EIB Group Complaints Mechanism must not be subject to any form of retaliation, abuse or any kind of discrimination based on the fact that they have exercised their right to complain. This shall apply to the EIB Group as well as to any counterpart that is in a business relationship with the EIB Group. The EIB Group is committed to taking steps to prevent and address potential risks of reprisal against complainants and complaint-related people.

---

<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 its own policies, standards and procedures. Examples of maladministration include administrative irregularities, unlawful discrimination, unjustified refusals of information, abuse of power, unnecessary delays as well as a failure by the EIB Group to comply with its own obligations in the appraisal and monitoring of projects financed by the EIB Group.
- 3.2 The concept of maladministration includes failure by the EIB Group to comply with human rights<sup>5</sup>, with 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's activities and to project cycle-related policies and 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 may 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 through direct delivery to the EIB-CM, any EIB Group local representation office or any EIB Group member of staff.
- 4.1.4 Complainants may 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 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 expects to concretely achieve with the complaint. All relevant information should be provided as part of the complaint. The complainant 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 to be allegations of maladministration falling within the remit of the EIB-CM.
- 4.1.6 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 projects 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 procedure**

4.2.1 The types of procedure, fully described in the EIB Group Complaints Mechanism Procedures, are the following:

- **“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.
- **“Simplified procedure”** – applies to complaints that are of easy and prompt resolution. These are notably those which – due to the nature of the concerns raised in the complaint – can be addressed by letter in a faster and more effective way than through the procedural steps of the Standard procedure.

4.2.2 In addition, the **“Prevention (PR) procedure”** – applies to E and F complaints when the alleged activity concerns a decision or action not yet taken or, in case of omission, the timeframe for the EIB Group to take an action has not expired and the EIB Group services are therefore given the opportunity to address the concerns raised by the complainant.

Types of complaint	
<b>Project/operations related complaints</b>	<b>A</b> – Access to information
	<b>E</b> – Environmental and social impacts of financed projects/operations
	<b>F</b> – Governance aspects of financed operations

Types of complaint	
<b>Non-project/operations related complaints</b>	<b>A</b> – Access to information
	<b>C</b> – Customer and investor relations
	<b>G</b> – Own governance/administration, including own procurement
	<b>H</b> – Human resources

4.3 **Admissibility**

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

Complaints falling outside the scope of the EIB-CM's Policy

- 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 handled by the EIB-CM. In such cases, the EIB-CM may inform the complainant of the possibility to address the complaint to another authority, which may be competent to handle her/his case.
- 4.3.3 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.
- 4.3.4 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 are not handled by the EIB-CM.
- 4.3.5 Complaints submitted by the EIB Group’s staff are not handled by the EIB-CM. Such cases will be handled 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.
- 4.3.6 The EIB Group Complaints Mechanism cannot handle project procurement complaints, which fall within the mandate of the EIB Project Procurement Complaints System.

- 4.3.7 The EIB Group Complaints Mechanism cannot handle allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies<sup>7</sup>; these 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.
- 4.3.8 Where the complaint (i) has already been brought against a member of the EIB Group before other administrative or judicial review mechanisms, or (ii) is brought subsequently, or (iii) is already settled by the other administrative or judicial review mechanisms, the EIB-CM cannot handle it. However, pending or concluded reviews of complaints against a third party before other administrative or judicial review mechanisms will not preclude the EIB-CM from reviewing the actions of the EIB Group for acts of maladministration.
- 4.3.9 If a complaint falls outside the scope of the EIB-CM's Policy and another internal department of the EIB is competent to deal with such a complaint, the EIB-CM will refer the complaint to the relevant department, in line with the code of good administrative behaviour for the staff of the EIB in its relations with the public.

#### *Admissibility criteria*

- 4.3.10 Complaints must be submitted within one year from the date on which the facts upon which the allegation is based could reasonably be known by the complainant.
- 4.3.11 Complaints from anonymous parties, complaints without contact details such as the postal address or email address of the complainant, and complaints that have the objective of gaining a competitive economic advantage or that are excessive, repetitive, clearly frivolous or malicious in nature are not admissible.
- 4.3.12 Complaints regarding a lending operation and falling within types E or F are admissible as far as the EIB has financed, approved or is at least actively considering financing<sup>8</sup> the operation/project.

#### *Project-related complaints*

- 4.3.13 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.
- 4.3.14 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:
- The 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;
  - The monitoring of the project.

#### **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 the complainant thereof. The handling of complaints submitted in EU languages other than the working languages of the EIB (French and English) may require extended timeframes due to translation delays.

---

<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.

- 4.4.3 Whenever the EIB-CM is not able to provide a response to the complainant within the prescribed deadlines, the EIB-CM will inform the complainant accordingly, before the expiry of the deadline, and provide the reasons for the delay.
- 4.4.4 In the case of mediation related to complaints of types E and F, the deadlines will be extended in consultation with the complainant 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 EIB-CM will establish the timeframes in consultation with the complainant.

#### 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 to the EO.
- 4.5.3 The EO was established in 1992 by the Maastricht Treaty to handle complaints about alleged maladministration by the institutions and bodies of the European Community. Therefore, EU citizens 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.
- 4.5.4 In order to strengthen the accessibility of the EIB Group Complaints Mechanism for 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.
- 4.5.5 Furthermore, the MoU sets out working 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 approach 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 to be non-confidential. A non-confidential treatment means that the EIB Group has permission to disclose the information communicated in any representations to the relevant internal and external parties for the handling of the complaint.
- 4.6.2 Complainants have the right to indicate in their communication that their complaint should be treated confidentially. 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 acknowledgement of receipt to indicate whether they consent to the EIB-CM communicating their names to external stakeholders.
- 4.6.4 Unless full confidentiality has been requested by the complainant, 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 if the complainant has given consent (Article 4.6.3).
- 4.6.5 Access to information concerning any document relating 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’s competent services through the procedures established by the EIB Group Transparency Policy.

---

<sup>9</sup> The complainant is not a citizen/resident of (or, in case of a legal person, it does not have 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.

#### **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 the relevant rules of the EU legal framework concerning data protection.

### **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 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 handle all external complaints concerning alleged maladministration by the EIB Group. The EIB-CM also deals with complaints against the EIB Group lodged with the EO and all other non-judicial complaints 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 applying the highest standards of objectiveness whilst safeguarding the interests of all 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 Head of EIB-CM being responsible for (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 EIB-CM inquiry (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 relating to its remit and may 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 to the implementation of its activities for the common purpose of good administration.
- 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 cooperates 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 ensure that it is 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 the Market Abuse Regulation and Directive and 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 cooperate 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 forward it to the EIB-CM.
- 5.2.2 In order to enhance the operational independence of the EIB-CM, EIB Group staff working for or supervising the EIB-CM are expected to apply and uphold specific rules of conduct. The rights and obligations established by these rules must be exercised in accordance with the principles, rules and procedures set out in the EIB/EIF Staff Code of Conduct and in other policies and regulations applicable to 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, including marginalised communities and vulnerable groups, 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 and/or Project Promoter with the participation of national authorities and/or the relevant EIB Group services wherever appropriate;
- Advisory Function – (within the scope of its responsibilities) – the EIB-CM provides its written advice to 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 – the EIB-CM monitors further developments and the implementation of agreed corrective actions and recommendations in the context of closed complaints, including agreements reached through mediation, as well as the EIB Group's response to its advisory opinions.

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

- Assess concerns of maladministration raised by 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 complainants 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;
- 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 focused. 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 may 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 that is attributable to the Bank has taken place. 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 reviews by the EIB-CM are not intended to substitute for the services' professional judgement.

Such reviews include but are not limited to situations where:

- There are major discrepancies between, on one side, the information provided by the complainant or otherwise available in the public domain and, on the other side, the information provided by the EIB Group services concerned and/or the Promoter;
- There is clear indication that the EIB Group services concerned 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. When performing a problem-solving or dispute resolution function, the EIB-CM facilitates the dialogue to find appropriate solutions agreeable to all parties.

5.3.5 The clear separation of the mediation function from the investigation function, with separate staffing, ensures that the former is managed as an independent and impartial function within the EIB-CM 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) the 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 programme and ensure a common understanding of 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 constraints.

5.4.4. In addition, the EIB-CM informs the EIB Board of Directors or the EIF Board of Directors of the status of complaints against the EIB Group that 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 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 relevant EIB Group 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 has allegedly been violated;

- g) Conducts appropriate inquiries with a view to assessing whether the EIB Group is complying with the applicable regulatory framework, including its own policies, procedures or standards;
- h) Coordinates the different services involved in order to obtain all possible internal information and opinions on the complaint;
- i) Ensures appropriate stakeholder engagement through fact-finding, 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 the event that these recommendations result from findings of maladministration, and issues its reports for submission to the EIB Management Committee or the EIF Chief Executive for consideration;
- l) Drafts appropriate replies to the complainant 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 deadlines 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 the 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 the 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) the facts revealed during the assessment/investigation process. To this extent, the different phases are adapted in terms of tasks performed, depth of analysis carried out, 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 between 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:

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

6.2.3 The EIB-CM is committed to engaging with the complainant, and all relevant internal and external stakeholders in general, through structured dialogue with a view to gathering additional data and information 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 complaint and complainant. It is important that the handling of such complaints takes appropriate account of the relationship between the EIB Group and the Promoter, 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 the EIB Group services and (iv) be consistent over time.

- 6.2.4 Whenever possible, and giving due consideration to the type of 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 services, operational corrective actions and include recommendations regarding improvements to existing policies and/or procedures in the event that these recommendations result from findings of maladministration. Corrective actions agreed with services or approved by the 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 services concerned, 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 the event that the allegations in the complaint concern a violation of EU legislation in projects located within the EU, the EIB-CM may recommend that the EIB Group informs the Secretary General of the European Commission about the complaint and forward the final Conclusions Report.
- 6.2.8 In the event that the complainant 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 the pre-appraisal stage<sup>11</sup>, the concerns expressed are forwarded to the relevant 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 the appraisal stage<sup>12</sup>, and the action challenged has not yet been taken (or, in the case of omission, the timeframe for the EIB Group to take an action has not expired), the complaint is notified to the services concerned and followed-up by the EIB-CM in line with the EIB-CM's procedures. As soon as the proposal for financing is endorsed 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>13</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 a 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>11</sup> Before the EIB Management Committee's decision to appraise.

<sup>12</sup> After the EIB Management Committee's decision to appraise.

<sup>13</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 the other co-financing institution's complaints mechanisms 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 maintains proactive and cooperative contacts with all relevant external institutions, bodies and non-state actors including but not limited to the EO, other complaint mechanism functions, external experts and 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, on both the EIB and 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 for distribution through the EIB Group's external offices to local CSOs and 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 raising 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 organising awareness-raising sessions with civil society organisations and the public in general in the regions in which 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 organising 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 the complainant, 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 At least every five years, the EIB-CM will consider the need to launch a review of this Policy, including consultation with EIB Group stakeholders. In line with the EIB Group Complaints Mechanism's operational set-up (consisting of an internal tier as well as an external one), the EIB Group reviews its Complaints Mechanism in close cooperation with the EO.

9.2 Concerns expressed by CSOs, as well as the suggestions of internationally-renowned 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 by 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 services and following consultation with the EO whilst ensuring that the modification is consistent with the provisions of the Policy.

DRAFT

## **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 complainants.

### **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 and the grounds of the complaint. The complaint can be lodged by mail, fax or email. To ensure that all necessary information is provided, a complaint form is available from the European Ombudsman's office or on 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 by the EIB Group in its decisions, actions and/or omissions. As the European Ombudsman's 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 handle matters that are currently before a court or that have already been settled by a court.

Before turning to the European Ombudsman, complainants 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 its own review. Complaints shall therefore include an explanation of why the complainants contest the record or the EIB Group's position as set out therein<sup>14</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 that there has been no

---

<sup>14</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.

maladministration, that a solution has been found or that no further inquiries are justified, the inquiry shall be closed with a decision setting out the findings.

Where the Ombudsman finds that there has been 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, it can make a special report to the European Parliament.

DRAFT