

Briefing for the European Investment Bank Board of Directors

Reforms Needed for the EIB Complaints Mechanism

The EIB Complaints Mechanism's mandate and procedures lag behind good practice at other accountability mechanisms. As a result, the mechanism is not effective enough for communities who need it, and the EIB is not hearing about or addressing serious risks to the sustainability of its investments.

We seek the Board's support for a review of the EIB Complaints Mechanism [Policy](#) and [Procedures](#)¹, which were last updated in 2018. This review should improve the mechanism for communities by committing upfront to substantive changes, some of which are outlined below. The review process should include an initial external review followed by public consultations with civil society, affected communities, and other key stakeholders.

Examples of Substantive Changes Needed

Mandate and Reporting Line

- **The EIB CM needs a clearer, updated mandate to meet best practice.** Currently, the CM's only stated "mission" is to deal objectively with complaints. (Policy 5.1.3.) In order to meet [best practice](#), the mechanism must be given a clear mandate to facilitate remedy, prevent harm, and serve as a source of learning and improvement for the EIB.
- **EIB CM should report findings to the Board of Directors at key points of the complaint process.** Currently, the CM reports to the EIB Management Committee but not directly to the Board. In contrast, the strongest IAM policies give the mechanism a direct reporting line to the Board of the financial institution.² It is not sufficient that the Board receives only semi-annual reports; it should be receiving the CM's reports, along with the Management's responses, for each case. Accountability of the EIB requires that the Board of Directors understands the weaknesses in the Bank's operations and functioning to be able to address them in a systematic way, including through amending the relevant policies and procedures of the Bank.

Strengthening the CM as a Source of Learning for the EIB

- **Undue eligibility barriers prevent the CM from hearing important cases, leaving serious project issues unaddressed.** The following eligibility provisions should be changed:
 - **The CM's statute of limitations should be simplified.** Currently, eligibility hinges on the CM's subjective determination of whether a complainant should "reasonably" have known about the project-related harm. The current best

¹ This analysis applies particularly to complaint types E&F, which deal with potential and alleged negative environmental and social impacts of EIB Group-financed projects.

² For example, EBRD's IPAM Policy, para. 1.5: "IPAM operates independently, with a direct reporting line to the Board."

practice is to simply set a cutoff based on the date the complainant(s) in fact discovered the harm.³

- The CM currently **bars complaints that are also being considered by administrative or judicial review mechanisms.** This restriction puts the CM behind best practice. In recognition of the unique role accountability mechanisms play in holding institutions to their own policies, several peer development banks have removed parallel proceedings bars from their accountability mechanism policies.⁴
- **The EIB CM needs a real monitoring mandate.** When the EIB CM does accept a complaint and it goes through the case process, the outcomes are rarely implemented because the CM has a weak monitoring function. Key changes that are needed to strengthen monitoring include:
 - Monitoring reports should be required to be published.
 - Monitoring reports for each project must be shared with the Board.
 - The CM should be able to inform the Board if action plans or agreements are inadequate or failing to address harm.
 - Monitoring should not end after 24 months - the CM must be allowed to continue monitoring until all non-compliance has been remedied, or all commitments from DR agreements have been implemented.
- **The CM's policies on preventing and responding to retaliation are inadequate.** Communities raising issues to the CM face retaliation, some of which has been [publicly documented, including by UN Special Rapporteurs](#). Currently, no phase of the complaint handling process requires the CM to undertake a retaliation risk assessment with complainants or to plan for how the Bank, the CM, or both will prevent or address any retaliation against complainants that occurs.⁵ The CM needs clear guidelines and trainings to address reprisals throughout every stage of the complaint process.⁶
- **Issues that could be resolved are left unaddressed because the CM does not allow mediation after an investigation has closed.** Considering the intrinsic differences between the functions of the mechanism, complainants may be best served by a combination of both functions, in any sequence. The best policies allow dispute resolution and compliance review to take place contemporaneously or sequentially, as appropriate and as requested by the complainants.⁷
 - The [Nepal Marsyangdi Corridor Transmission Line](#) is a live example of this. Communities have continued to resist retaliation to fight against a deeply

³ For example, AfDB IRM's Operating Rules and Procedures para. 12 states that "IRM shall not handle Complaints filed more than 24 months after the physical completion of the concerned operation or more than 24 months from the date the complainant becomes aware of the adverse impacts, whichever comes later."

⁴ Examples include the IDB's MICI and the AfDB's IRM.

⁵ Example of a stronger policy: AfDB's IRM ORP para. 21 states that during the registration phase, "[t]he IRM will also undertake, in consultation with Complainants, a risk analysis to identify and monitor potential risks of retaliation, and plan and adopt preventative measures to address and reduce these risks."

⁶ See for example MICI's Guidelines for addressing risk of reprisals in complaint management.

⁷ UNDP's SECU Investigation Guidelines para. 33: "If both processes are applicable, the Complainant will be informed that both are applicable, and be given the choice to proceed with compliance review, stakeholder response [dispute resolution], or both."

flawed consultation process that does not respect their rights to Free, Prior, and Informed Consent and does not provide replacement cost compensation for land according to the EIB's own policies. Since the CM's conclusion report made findings of non-compliance, the communities and the EIB's Client have both expressed a desire for dialogue, but without support from the CM have not been able to successfully organize one.

Review Process

The review process for the Complaint Mechanism's policy and procedures should include:

- An initial review by external experts, whose recommendations should guide the reforms
- Public consultations with civil society, affected communities, and other stakeholders
- Consultation sessions structured as participatory dialogues between EIB and stakeholders
- Adequate time for stakeholders to submit written comments
- Availability in multiple languages of all materials regarding the consultations.

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Annex. Benchmarking the EIB CM against the accountability mechanisms of peer financial institutions

	EIB	EBRD	WB	IFC	ADB	IDB	AfDB	GCF	UNDP
Has a mandate to facilitate remedy				✓			✓	✓	✓
Reports to the Board		✓	✓	✓	✓*	✓	✓	✓	
Has an objective statute of limitations		✓	✓	✓**	✓	✓	✓	✓	✓
Allows complaints about projects subject to other administrative/judicial proceedings		✓	✓	✓	✓	✓	✓	✓	✓
Makes monitoring reports public		✓	✓	✓		✓	✓***	✓	✓
Shares monitoring reports from each case with the Board		✓	✓****	✓	✓	✓	✓	✓	
Allows monitoring for more than 24 months		✓	✓	✓	✓	✓	✓	✓	✓
Requires a retaliation risk assessment in the complaint process		✓	✓	✓			✓	✓	✓
Allows complaints to undergo dispute resolution after compliance review							✓		✓

* Compliance function only

** With exceptions for special circumstances

***If dispute resolution, then subject to consent of the parties

****Compliance function only: monitoring is responsibility of Management, with potential for verification by Inspection Panel