

Operating procedures for the Exclusion Committee

February 2018



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Table of Contents

ARTICLE I: INTRODUCTORY PROVISIONS	1
Section 1.01. Background and Purpose of these Procedures	1
Section 1.02. Composition of the Exclusion Committee	1
Section 1.03. Role of the Exclusion Committee.....	1
ARTICLE II: FUNCTIONING OF THE EXCLUSION COMMITTEE	2
Section 2.01. Chair of the Exclusion Committee	2
Section 2.02. Secretariat and Support.....	3
Section 2.03. Conduct of Meetings and Attendance.....	3
Section 2.04. Voting.....	3
Section 2.05. Hearings.....	3
Section 2.06. Representation.....	4
Section 2.07. Minutes and Notices of Recommendation.....	4
Section 2.08. Expenses	5
Section 2.09. Ethics	5
ARTICLE III: MISCELLANEOUS	6
Section 3.01. Confidentiality and Data Protection	6
Section 3.02. Retention of Documents	6
Section 3.03. Entry into Force.....	6

ARTICLE I: INTRODUCTORY PROVISIONS

Section 1.01. Background and Purpose of these Procedures

- (a) These Exclusion Committee Operating Procedures (the “Committee Procedures”) are adopted pursuant to the European Investment Bank (the “EIB” or the “Bank”) Exclusion Policy (the “Policy”).¹ The Committee Procedures provide the basis upon which the Exclusion Committee shall carry out its functions and may be revised, amended or supplemented from time to time. They are intended to assist the members of the Exclusion Committee and do not provide any additional rights or obligations to Respondents.
- (b) In case of conflict between the provisions of the EIB Exclusion Policy and these Committee Procedures, the Policy shall prevail.

Section 1.02. Composition of the Exclusion Committee

- (a) The Exclusion Committee consists of five (5) members, including three internal EIB staff members and two (2) external independent members. The EIB Group Chief Compliance Officer shall *ex officio* act as the Chair of the Exclusion Committee (the “Chair”). The two (2) other internal members of the Exclusion Committee are:
 - (i) *ex officio* the Head of Procurement in lending activities; and
 - (ii) a Director from Operations, to be appointed by the Secretary General, in consultation with the Chair and the Director General for Operations, for a period of not more than four (4) years, renewable only once.
- (b) The external independent members of the Exclusion Committee, together with two (2) alternate external independent members, are appointed by the President of the Bank for a period of not more than four (4) years, renewable once, upon proposal by the Secretary General (in consultation with the Inspector General, the General Counsel and the Chair), taking into account their relevant expertise i.e. in an international organisation, and/or in procurement rules and practices, and/or in law (at least one (1) external Committee member must have a strong legal background).
- (c) When an external member of the Exclusion Committee is unable to fulfil his/her duties (other than temporarily) or resigns his/her seat in the Exclusion Committee, a new member shall be appointed by the President.
- (d) Upon proposal by the Secretary General a member or alternate member of the Exclusion Committee may be removed by the President after consultation with the Chair or, if the latter is involved, of the General Counsel in the event of incapacity, violation of the ethics rules in Section 2.09 below or otherwise for conduct unbecoming a member of the Exclusion Committee.

Section 1.03. Role of the Exclusion Committee

- (a) **In cases of Early Temporary Suspension, prior to Exclusion Proceedings:**
Where the Inspector General issues a proposed Notice of Early Temporary Suspension, the Exclusion Committee shall, upon receipt of the proposed Notice of Early Temporary Suspension, the Respondent’s Response, the Inspector General’s Reply and any Additional Response provided by the Respondent, provide an opinion to the Inspector General within twenty-five (25) days.² This opinion may be issued following a formal meeting of the Exclusion Committee if practical or ad hoc discussions amongst the Committee members. The opinion should include the Exclusion Committee’s view on whether the evidence presented by the Inspector General is sufficient to support a finding of Prohibited Conduct against a Respondent and whether it is highly

¹ The EIB Exclusion Policy was approved by EIB’s Board of Directors on 11th December 2017 and is available at: <http://www.eib.org/infocentre/publications/all/exclusion-policy.htm>

² Notifications to the IG by the Chair may be by e-mail or letter. Note that “Days” shall mean calendar days, unless stated otherwise.

likely that the investigation will be successfully concluded and a Notice of Exclusion Proceedings presented to the Respondent and the Exclusion Committee within a maximum period of one (1) year.

(b) In cases of Exclusion Proceedings:

- (i) Upon receipt of a Notice of Exclusion Proceedings, the Exclusion Committee will determine whether the specific allegations of Prohibited Conduct presented by the Inspector General in the Notice of Exclusion Proceedings, are admissible. This should normally be within twenty-five (25) days of receipt.
- (ii) If a Respondent informs the Exclusion Committee that they contest the allegation and/or the recommended exclusion as presented in the Notice of Exclusion Proceedings, the Exclusion Committee shall notify the Inspector General. The matter shall then be referred by the Inspector General to the Exclusion Committee for its review and recommendation. The Notice of Exclusion Proceedings, along with attached evidence, should be transmitted to the members of the Exclusion Committee by way of email and/or postal mail, or in any other manner as may be decided by the Chair.
- (iii) If a Respondent does not contest the allegation or the recommended exclusion, the Exclusion Committee shall recommend the appropriate exclusion to EIB's Management Committee, taking into account any written submissions from the Respondent and the Inspector General.
- (iv) The Exclusion Committee may, based on new evidence brought to its attention at any time during the proceedings, annul the Notice of Exclusion Proceedings and notify the Respondents and the Inspector General accordingly, along with its reasons for doing so. In such situations, the Inspector General shall be given adequate time, at the discretion of the Chair, to revise the Notice.
- (v) Where the Exclusion Committee is required under the Exclusion Policy to forward written submissions received by the Exclusion Committee from the Respondent or the Inspector General to the other party, this shall be done through the Chair as soon as is practical.

(c) Submission of written materials / Languages:

All written materials submitted to the Exclusion Committee shall be submitted in English or French, except exhibits which shall be in the original language with the pertinent parts translated into English or French. On a case-by-case basis, the Chair may allow Respondents to submit written materials in any EU language. When authorising submission/reception of documents in EU languages other than French and English, the Chair may extend any procedural deadlines set forth in the Exclusion Policy, or in the present Committee Procedures.

ARTICLE II: FUNCTIONING OF THE EXCLUSION COMMITTEE

Section 2.01. Chair of the Exclusion Committee

- (a) The Chair shall:
 - (i) direct and facilitate the work of the Exclusion Committee,
 - (ii) represent the Exclusion Committee in all administrative matters, and
 - (iii) preside over all deliberations of the Exclusion Committee.If unable to act, the most senior EIB staff member among the Exclusion Committee shall be acting as Chair of the Exclusion Committee.
- (b) The Chair of the Exclusion Committee shall, in consultation with the members of the Committee, have full power to act on issues raised pursuant to Sections 6.04, 6.06 and 6.07 of the EIB Exclusion Policy, as well as to send letters or respond to issues concerning the Exclusion Committee's activities. The Chair of the Exclusion Committee shall inform the Committee's members in writing of any decisions made pursuant to Sections 6.04, 6.06 and 6.07 of the EIB Exclusion Policy, and provide a copy of any correspondence having to do with the Exclusion Committee's activities.

Section 2.02. Secretariat and support

The Office of the Group Chief Compliance Officer shall provide secretarial services for the Exclusion Committee and its Chair ("Secretariat").

Section 2.03. Conduct of Meetings and Attendance

- (a) Once a case and all materials have been submitted to the Exclusion Committee, the Chair shall, in consultation with the Committee's members, convene a meeting as soon as possible, and no later than thirty (30) days thereafter.
- (b) Meetings of the Exclusion Committee may also be convened by the Chair when it is necessary to deal with a question affecting the operations of the Exclusion Committee, including any issues related to confidentiality and/or conflict of interest, either upon the direct initiative from the Chair or at the request of any member of the Exclusion Committee. In such cases, meetings will be convened by the Chair with at least ten (10) days' notice.³
- (c) Where an internal EIB member of the Exclusion Committee is likely to be unavailable for the duration of a case or cannot serve in a particular case, an alternative EIB employee shall be appointed for that case only by the Secretary General in consultation with the Chair.⁴
- (d) Where a member is unable to attend a meeting in person, they may participate by submitting comments in writing, or in real time by video or telephone conference.
- (e) Exclusion Committee meetings are confidential and are not open to the public and non-authorized EIB staff members.
- (f) The composition of the Exclusion Committee shall, wherever possible, remain the same from the start until the completion of a case to ensure a consistent and informed approach and should continue to include a Committee member whose term has expired in the course of the proceedings. In case of a change of composition of the Exclusion Committee all preceding acts so far executed by the Exclusion Committee shall remain valid.

Section 2.04. Voting

- (a) The Exclusion Committee shall, in determining questions of culpability and exclusion, seek to reach a unanimous decision. If unanimity cannot be achieved, the Exclusion Committee may decide on the basis of a simple majority, with the Chair having the deciding vote where votes are otherwise equal.⁵ This fact shall not be disclosed to the parties.
- (b) A majority of the members shall be in attendance either in person or remotely for the meeting to be considered quorate.

Section 2.05. Hearings

- (a) The Exclusion Committee may decide in a particular case, upon a request by the Respondent or its own initiative, to hold a hearing. In such case, the Respondent and the Inspector General shall be provided with reasonable notice of the date, time and location of the hearing.

³ The Chair may exceptionally call a meeting with a shorter notice in urgent cases.

⁴ Where the Group Chief Compliance Officer (GCCO), the Head of Procurement or the OPS Director are unavailable, the Secretary General may replace them on a case-by-case basis, with a senior member of OCCO, a PJ Director and an OPS Director respectively.

⁵ Votes shall be recorded by the Secretary of the Exclusion Committee.

- (b) The procedure of a hearing shall run in accordance with Section 7.01 of the Exclusion Policy, subject to appropriate changes at the Chair's discretion. The process in each case should reflect the administrative nature of the proceedings.
- (c) At the discretion of the Chair, each party may make an opening statement, the length and nature of which shall be determined by the Chair.
- (d) The Exclusion Committee members shall have the right to:
 - (i) ask questions; and
 - (ii) request the attendance of any witness during the proceedings.
- (e) The Exclusion Committee will not be bound by any formal rules of evidence. The Exclusion Committee shall have discretion to determine the relevance, materiality, credibility, weight and sufficiency of all evidence offered during the proceedings.
- (f) The Exclusion Committee will provide copies of any materials submitted to or emanating from the Exclusion Committee to both the Respondent and to the Inspector General as applicable. Where there is more than one (1) Respondent in a case, or there are related cases involving other Respondents, the Exclusion Committee may make such materials available to other Respondents in related proceedings, as appropriate. The Exclusion Committee will do this following notification to the original provider of the materials and allowing them to make representations as to why such disclosure would be prejudicial to them, if applicable.

Section 2.06. Representation

- (a) The Respondent(s) and the Inspector General may attend the hearing in person and/or through one representative.
- (b) The parties shall within fifteen (15) days after having received the notice of the hearing, provide the Chair of the Exclusion Committee with the names and designations of those they wish to accompany them to the hearing. The Chair may decide to allow an increase in the number of representatives.
- (c) Full and truthful cooperation shall be a condition of attendance at the hearing by the Respondent and/or their representative and the Exclusion Committee retains the right to draw negative inferences from any refusal to answer or cooperate fully.

Section 2.07. Minutes and Notices of Recommendation

- (a) The Secretariat of the Exclusion Committee shall prepare minutes of all Exclusion Committee meetings, including dissenting views, under the supervision of the Chair. The draft minutes will be submitted to the Exclusion Committee members for approval.⁶
- (b) Exclusion Committee minutes shall be strictly confidential, and once approved by the Exclusion Committee members, shall be retained securely by the Secretariat.
- (c) The Secretariat shall, under the guidance of the Chair, prepare draft Notices of Recommendation to the Management Committee, based on the deliberations that have taken place in the Exclusion Committee. The Notice of Recommendation shall record the Exclusion Committee's findings in respect of the culpability and its recommendation in respect of exclusion. The draft Notice shall be approved by the Exclusion Committee members before it is sent to the Management Committee.⁷

⁶ Approval can be provided by any communication means, including electronic means.

⁷ Approval can be provided by any communication means, including electronic means.

Section 2.08. Expenses

- (a) Subject to Section 2.09(b) below, all expenses related to the function of the Exclusion Committee shall be borne by EIB.
- (b) The external members of the Exclusion Committee shall receive a per diem equal to the indemnity received by members of EIB's Audit Committee.
- (c) All expenses associated with the Respondent, its representative and any witness called by the Respondent attending a hearing shall be borne by the Respondent.

Section 2.09. Ethics

- (a) In carrying out their duties, the Exclusion Committee members shall consider each case fairly and impartially in accordance with the EIB Exclusion Policy. They shall act independently, neither seeking nor taking instructions from any government or institution, body, office or agency, nor shall they answer to or take instructions from EIB's Management Committee, members of EIB's Board of Directors, the Inspector General, the Respondents or any other entity.
- (b) No Exclusion Committee member shall seek or accept any gift or compensation of any kind for the discharge of his or her responsibilities as member of the Exclusion Committee.
- (c) Members of the Exclusion Committee shall promptly disclose to the Chair any circumstances which may give rise to reasonable doubts as to his/her impartiality or independence, including professional, business, personal and other relationships with, or financial interests in, the Respondents or entities associated with a Respondent.
- (d) In cases where a member of the Exclusion Committee may have a potential conflict of interest, the member shall seek written guidance from the Chair on the matter, or if the potential conflict of interest involves the Chair, from the Secretary General. Members of the Exclusion Committee shall, after consultation with the Chair, recuse themselves from participating in Exclusion Proceedings involving any project, operation or transaction in which, by virtue of their current position or previous employment, there could be a significant perceived or actual conflict of interest. The Chair may also require members to recuse themselves. If an external member of the Exclusion Committee is unable to act in a particular case due to conflict of interest, one of the alternate external members to the Exclusion Committee will be designated by the Chair for the case in question. In cases where a Notice of Exclusion Proceedings has been presented to the Exclusion Committee by the Inspector General, the alternate member so appointed shall remain as member of the Exclusion Committee in any subsequent meetings and deliberations involving the case.
- (e) Where the Chair has a conflict of interest, he/she may recuse him/herself by notice to the Secretary General.
- (f) For what concerns replacement of internal members of the Exclusion Committee under this section, Section 2.03(c) above is applicable.

ARTICLE III: MISCELLANEOUS

Section 3.01. Confidentiality and Data Protection

- (a) Information obtained by the members of the Exclusion Committee in the course of a case is strictly confidential and may not be communicated to any third party without the written consent from the Chair.
- (b) Personal data shall be processed in compliance with Regulation 45/2001⁸ as amended and supplemented from time to time, and any applicable EU data protection legislation, and only for the purpose of Early Temporary Suspension and Exclusion Proceedings as described in the Exclusion Policy.
- (c) All documents related to a case should be held securely. In particular, paper files shall be archived in specific locked archives only accessible to authorised persons. Electronic files shall be stored by the Secretariat of the Exclusion Committee in a restricted area of the electronic document management system of the Bank ("GED"). Access to this restricted area of GED can be granted only upon written authorisation of the Chair. External members of the Exclusion Committee shall also ensure that documents transmitted to them are held securely by filing paper documents in locked archives and protecting access to electronic documents by passwords.

Section 3.02. Retention of Documents

- (a) All documentation pertaining to an exclusion proceeding shall be retained for a period of up to ten (10) years from the close of an exclusion case. For the purpose of this retention policy, an exclusion case is considered closed, as the case may be, at:
 - (i) the end of an exclusion period and/or the compliance of the Respondent with any Bank's conditions part of the Exclusion Decision; or
 - (ii) the dismissal of the case by the Exclusion Committee or the Management Committee.
- (b) At the expiry of the retention period, documentation shall be destroyed by the Secretariat and members of the Exclusion Committee. The retention policy is also applicable to documentation in the possession of former and present members of the Exclusion Committee.

Section 3.03. Entry into Force

These Committee Procedures shall enter into force upon entry into force of the Exclusion Policy.

⁸ Regulation 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing or personal data by the Community institutions and bodies and on the free movement of such data.

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