

Corridor Côtier – Section Nord

Complaint SG/A/2019/03

Senegal

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

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The EIB Complaints Mechanism

The EIB Complaints Mechanism intends to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases where the public feels that the EIB Group has done something wrong, i.e. if a member of the public considers that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants who are not satisfied with the outcome of the procedure before the EIB-CM or with the EIB Group's response have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was “created” by the Maastricht Treaty of 1992 as an EU institution to which any EU citizen or entity may appeal to investigate any EU institution or body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as cited by the EO, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. 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.

The EIB Complaints Mechanism intends not only to address non-compliance by the EIB with its policies and procedures but also to endeavour to solve the problem(s) raised by Complainants such as those regarding the implementation of projects.

For further and more detailed information regarding the EIB Complaints Mechanism, please visit our website: <https://www.eib.org/en/about/accountability/complaints/index.htm>

TABLE OF CONTENTS

EXECUTIVE SUMMARY	5
1. THE COMPLAINT	7
2. BACKGROUND INFORMATION	7
2.1 The Project	7
2.2 The request for information	7
3. REGULATORY FRAMEWORK.....	9
3.1 The Aarhus Regulation	9
3.2 The EIB Group Transparency Policy	9
3.3 The right to good administration	10
4. FINDINGS AND CONCLUSIONS	11
4.1 The Bank services' response	11
4.2 Compliance Review.....	13
5. SUMMARY AND AREAS FOR IMPROVEMENT.....	15

EXECUTIVE SUMMARY

On 3 March 2019, the EIB Complaints Mechanism (EIB-CM) received a complaint from a CEE Bankwatch Network member regarding the Corridor Côtier – Section Nord project (hereafter the “Project”). The complaint concerns the Bank’s failure to provide a timely reply and disclose the requested documents, which will be the focus of this compliance review taking into consideration the provisions included in the 2015 EIB Group Transparency Policy (TP)¹.

The Complainant had requested access to a series of documents in an email addressed to the Bank on 7 December 2018. She submitted a confirmatory application on 3 February 2019. The EIB formally responded to the Complainant's request for documents in two batches: the first response was provided on 1 March 2019, i.e. 55 working days following receipt of the request, and the second (more comprehensive) response was provided on 15 April 2019, i.e. 86 working days following receipt of the request.

The Bank’s response exceeded the time limits set forth in the EIB-TP. According to the TP, the Bank shall reply to disclosure requests without delay, and in any event within 15 working days. In exceptional cases (complex requests), the time limit may be extended; the EIB shall, however, endeavour to reply no later than 30 working days following receipt. The EIB-CM notes that at the time of the request for documents and the Bank’s reply, the Bank was not in a position to share five of the seven requested documents (all those related to environmental and social mitigation measures). Submission of these documents was made conditional to the first disbursement of the loan, which is yet to take place. Hence, the Bank is not in possession of these documents. Nevertheless, the EIB in its response of 15 April 2019 referred to earlier versions of some of the requested documents (that were in possession of the Bank and/or already publicly available), which the services thought the Complainant may still find useful.

With regard to the two other requested documents: in EIB-CM’s view, the arguments concerning the complexity of the request for information and the need for consultation with the Promoter cannot be used to fully justify the delay of 56 additional working days for providing the Bank’s final response.

- In the CM’s view, disclosure of the Board Report (in full or in part) is not to be considered a complex process. This is even more so in the case under review given that the Project Appraisal Report for this particular project (i.e. the equivalent of the Board Report for the African Development Bank, which is co-financing the Project) contains very similar information (for example in terms of project description, results, risks) and is publicly available on the AfDB website.
- As far as the finance contract is concerned, the Bank shared the environmental and social related information contained in this document. The CM considers disclosure of such information to be quite straightforward. Moreover, the fact that the request for documents concerns a public sector operation is an element that can be taken into consideration as far as implementation of the TP and the disclosure process are concerned.

¹ Available at http://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf

The CM is of the opinion that the Bank could have (i) informed the Complainant about its inability to disclose five of the seven requested documents and (ii) released the other two documents to the Complainant much earlier, within the time limit of 15 or at the latest 30 working days. It is important for the Bank to handle requests for access to environmental information promptly, such as in the case under review the request for the final environmental and social management plan.

The CM suggests that, as part of the forthcoming review of the Bank's TP, the Bank reflects on past experiences in handling requests for information that it considered more complex, and considers the need to develop detailed implementation guidelines for such cases. In the CM's view, such guidelines for complex cases could help further streamline the disclosure and consultation processes and ensure that the Bank provides a timely reply in accordance with its transparency policy.

1. THE COMPLAINT

- 1.1 **On 3 March 2019, the EIB Complaints Mechanism (EIB-CM) received a complaint from a CEE Bankwatch Network member regarding the Corridor Côtier – Section Nord project** (hereafter the “Project”). The complaint was registered under the reference SG/A/2019/03 in accordance with paragraph 1.1.3 of the EIB Group Complaints Mechanism Procedures².
- 1.2 The Complainant alleges **the EIB’s failure to provide a timely reply and to disclose any of the documents requested**. The Complainant had requested a series of documents related to the Project in an email addressed to the EIB on 7 December 2018. She submitted a confirmatory application on 3 February 2019, requesting the immediate disclosure of the documents already available with the Bank and information about the approximate time needed for disclosing the rest of the documents requested. The **EIB provided its formal response** to the Complainant’s request for documents **in two batches**: a first response on **1 March 2019** (before submission of the complaint to the EIB-CM) **and** a second response on **15 April 2019**.
- 1.3 This compliance review will consider whether the EIB met its obligations under the **2015 EIB Group Transparency Policy (TP)**³, focusing solely on the failure to disclose the requested documents and disclosure timelines.

2. BACKGROUND INFORMATION

2.1 *The Project*

- 2.1.1 The Project consists of the construction of a bridge in Rosso with an estimated length of 1.5 km over the Senegal river, and the corresponding access roads (totalling 8 km). It also includes the construction of cross-border checkpoint facilities between Mauritania and Senegal and ancillary infrastructure. The Project is expected to foster the development of the transport sector in the sub-region and promote economic development and regional integration in northern and western Africa.
- 2.1.2 The project was approved by the EIB Board in January 2017. The Bank’s sovereign loan to Senegal (the Borrower) amounts to EUR 22 million (European Development Fund). The Project is co-financed by the Republic of Senegal and the Islamic Republic of Mauritania (both Promoters), the African Development Bank (AfDB) and the European Union, for a total of EUR 94.47 million.

2.2 *The request for information*

- 2.2.1 On **7 December 2018**, the Complainant addressed an email to the Bank **requesting the following documents** related to the Project:

² Available at https://www.eib.org/attachments/strategies/complaints_mechanism_procedures_en.pdf

³ Available at http://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf

1. *“The final Resettlement Action Plan inclusive of a vulnerability assessment and livelihood restoration plan.*
2. *Final Environmental and Social Management Plan.*
3. *Stakeholders Engagement Plan.*
4. *Influx management plan.*
5. *Road safety audits and management plan.*
6. *Management Committee Proposal for the Board for this project.*
7. *Finance contract.”*

2.2.2 Following the Complainant’s request, there was an exchange of emails with the Bank as presented in the table below.

Table 1: Chronology of emails between the Bank and the Complainant following her request of 7 December 2018

Date	Who	What	Number of working days following the request for information of 7 December 2018
10/12/2018	EIB	Acknowledges receipt of the request for information.	1 working day
03/01/2019	EIB	Informs the Complainant about the extension of the standard time limit from 15 to 30 working days (based on Articles 5.23 and 5.24 of the TP) due to the complexity of her request and the need to consult with external third parties.	14 working days
03/02/2019	Complainant	Submits a confirmatory application, requesting immediate disclosure of the documents ready to be disclosed and information about the approximate time needed for disclosing the rest of the documents requested.	35 working days
08/02/2019	EIB	Acknowledges receipt of the Complainant’s message and mentions that the Civil Society (CS) Division team would get back to her shortly.	40 working days

2.2.3 The **EIB provided** a formal response to the Complainant's request for documents in two batches: **a first response on 1 March** (before the complaint was submitted to the EIB-CM on 3 March 2019) **and a second response on 15 April 2019.**

3. REGULATORY FRAMEWORK

3.1 *The Aarhus Regulation*

3.1.1 Regulation (EC) No. 1367/2006 (hereafter the “Aarhus Regulation”)⁴ implements the provisions of the Aarhus Convention⁵ for EU institutions and bodies and is thus applicable to the EIB. Article 1 of the Aarhus Regulation guarantees the **right of public access to environmental information received or produced by Community institutions or bodies and held by them**. ‘Environmental information’ is defined in Article 2 while Articles 3 to 8 deal with access to environmental information.

3.1.2 **Following the entry into effect of the Aarhus Regulation** in June 2007, the **EIB made amendments to its then Public Disclosure Policy**. Among the revisions made, the Bank **shortened the periods for handling information requests from 20 to 15 working days and from 40 to 30 working days for complex cases**. The same time frames of 15 and 30 working days apply **irrespective of whether the request for information concerns environmental and/or non-environmental information**. A similar approach is adopted in the current EIB-TP that takes account of the relevant provisions of the Aarhus Regulation.

3.2 *The EIB Group Transparency Policy*

3.2.1 The current TP was adopted by the EIB’s Board of Directors in March 2015. The TP sets out the EIB Group’s approach to transparency and stakeholder engagement. Its Article 2.3 reads as follows: *“The EIB Group understands transparency to refer to an environment in which the objectives of policies, its legal, institutional and economic framework, policy decisions and their rationale, and the terms of its member institutions’ accountability are provided to the public in a **comprehensive, accessible and timely manner**”*.

3.2.2 The TP defines the Bank’s procedures concerning information made available to the public either on a routine basis or upon request. The TP gives the public the right to request disclosure of EIB-held information and documents. The relevant provisions on disclosure of information and documents are based on a **‘presumption of disclosure’ unless the exceptions of the TP apply**. The policy is *“guided by openness and the highest possible level of transparency with the underlying presumption that information concerning the Group’s operational and institutional activities will be made available to third parties (the public) unless it is subject to a defined exception ...”*.⁶

3.2.3 At the same time, **ensuring trust and safeguarding sensitive information is another guiding principle of the TP**. *“As financial institutions the members of the EIB Group must maintain the confidence and trust of their clients, co-financiers and investors, and it is necessary to allay concerns about the treatment of confidential information which, otherwise, could affect these*

⁴ Available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1367&from=EN>

⁵ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Aarhus, Denmark, 25 June 1998.

⁶ EIB Transparency Policy, March 2015, Article 2.1

partners' willingness to work with the Group and thus impede its members from fulfilling their respective missions and objectives. This Policy ensures that information is protected from disclosure when disclosure would undermine the legitimate rights and interests of third-parties, and/or of the Group in line with the exceptions defined in the Policy..." (Article 2.5). Article 5.3 reiterates the commitment to a policy of presumption of disclosure and transparency on the one hand and the need for the Bank to protect its legitimate interests and the confidentiality of its relationship with its counterpart on the other hand.

- 3.2.4 Pursuant to Articles 5.22 to 5.24 of the TP, the **EIB commits to reply to disclosure requests without delay, and in any event within 15 working days; in exceptional cases, the time limit may be extended and the EIB shall however endeavour to reply no later than 30 working days following receipt.** Exceptional cases, as provided for in the policy, may for example relate to *"a very long document or when the information is not readily available and complex to collate."*⁷ Time extensions may be reasonably anticipated for requests concerning *"large volumes of information and information that relates to third-parties."*⁸ Where, on account of the complexity of the issues raised, a reply cannot be provided within 15 working days following receipt, the correspondent *"shall be informed accordingly no later than 15 working days following receipt."*⁹ **Failure by the Bank to reply to a request within the prescribed time limit shall be considered as a negative reply** (Article 5.34).
- 3.2.5 In cases where the Bank is unable to divulge the information requested (in full or partially), Article 5.25 obligates the Bank to state the reason(s). According to Articles 5.4 and 5.5 of the TP, the Bank will **not disclose information** that would undermine the **protection of**, inter alia, the **public interest**, as regards international relations (5.4), and **commercial interests** of a natural or legal person (5.5). **As regards third-party documents, the Bank shall consult with the third party** to establish whether the information in the document is confidential, unless otherwise clear¹⁰.
- 3.2.6 As per Article 5.15 of the TP, *"All requests for disclosure of specific information/documents shall be handled promptly by the Bank, which will either grant full or partial access to the document requested (if only parts of a requested document are covered by any of the constraints above, information from the remaining parts shall be released) and/or the grounds for the total or partial refusal shall be stated."*
- 3.3 *The right to good administration*
- 3.3.1 The **right to good administration** is recognised as a **fundamental right** in the Charter of Fundamental Rights of the European Union. Its Article 41(1) states the right of every person to have his or her affairs handled impartially, fairly and **within a reasonable time** by the institutions, bodies, offices and agencies of the Union.

⁷ EIB Transparency Policy, March 2015, Article 5.23

⁸ EIB Transparency Policy, March 2015, Article 5.22, footnote 8.

⁹ EIB Transparency Policy, March 2015, Article 5.23

¹⁰ EIB Transparency Policy, March 2015, Article 5.9

- 3.3.2 The right to good administration, including the importance of timeliness in replying to citizen's requests and queries, have been further elaborated in other instruments. The European Ombudsman (EO) considers that timeliness makes an integral part of the principles of good administration, and more particularly the principle of respect for others. Principle 4 of the Public Service Principles established by the EO that should guide EU civil servants therefore reads as follows: *"Civil servants should act respectfully to each other and to citizens. They should be polite, helpful, **timely** and co-operative"*.
- 3.3.3 The European Code of Good Administrative Behaviour (for the EU institutions and their officials) and the EIB Code of Good Administrative Behaviour (for the EIB staff) lay down the general principles of good administrative behaviour applicable for officials in their relations with the public. Both codes contain the obligation of replying to/taking a decision on all requests or complaints **within a reasonable time limit, without delay, and in any case no later than two months following receipt** (Article 17 of the European Code and Article 13 of the EIB Code)¹¹. Moreover, both codes refer to general principles of courtesy and fairness (Articles 11 and 12 of the European Code, and Articles 7 and 9 of the EIB Code), and the principle of proportionality as set out in Article 6 of the European Code of Good Administrative Behaviour: *"When taking decisions, the official shall ensure that the measures taken are proportional to the aim pursued. The official shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued."* (Article 6(1)).

4. **FINDINGS AND CONCLUSIONS**

4.1 *The Bank services' response*

- 4.1.1 The EIB services set out their perspective of the complaint during a meeting with the EIB-CM on 18 March 2019. At the meeting, the services expressed their **willingness to address the request for documents in line with the EIB-TP**. They informed the CM that the CS Division team had discussed the request with the Complainant informally on the occasion of the EIB Board seminar with civil society held in Luxembourg on 4 February 2019. They further shared that they were in the process of consulting with the Promoter about disclosure of the Board Report and the finance agreement and that the Bank would soon be able to send a more complete response to the Complainant.

¹¹ Article 17 of the European Code of Good Administrative Behaviour: *"1. The official shall ensure that a decision on every request or complaint to the institution is taken within a reasonable time-limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public and for answers to administrative notes which the official has sent to his or her superiors requesting instructions regarding the decisions to be taken. 2. If a request or a complaint to the institution cannot, because of the complexity of the matters which it raises, be decided upon within the above mentioned time-limit, the official shall inform the author as soon as possible. In such a case, a definitive decision should be communicated to the author in the shortest possible time."* Article 13 of the EIB Code of Good Administrative Behaviour: *"1. Members of staff shall ensure that a reply to all requests and complaints addressed to the Bank is provided within an acceptable period, without delay, and in any event no later than two months following receipt. 2. Where, on account of the complexity of the issues raised, a reply cannot be provided within the abovementioned period, the member of staff responsible shall inform the correspondent thereof without delay. In this event, the correspondent shall be furnished with a definitive reply as soon as possible."*

4.1.2 The **EIB services acknowledged the delay in providing a reply to the request for information.** They explained that the main reason for the delay is the **complexity of the request, which was about disclosure of a series of documents and required consultation** – both internally and with the Promoter. They shared some of the challenges faced regarding the consultation process. The EIB services are of the opinion that caution was required in this case, especially in relation to disclosure of information that could undermine the protection of international relations.

4.1.3 As mentioned above, the **Bank provided its response** to the Complainant's request for documents **in two batches**: a first response on **1 March 2019** (before the Complainant submitted her complaint to the EIB-CM) and a **more comprehensive response on 15 April 2019**.¹² In its response of 1 March 2019, the Bank informed the Complainant about the following: (i) **five of the seven documents requested (all those related to environmental and social mitigation measures for the Project) were not yet in the Bank's possession.** Submission of these documents to the Bank was made conditional to the first disbursement of the loan, which had not yet taken place; (ii) the Bank was currently consulting with the client about disclosure of the two other requested documents, namely the Board Report and the finance contract, and would revert to the Complainant as soon as possible. **In its more comprehensive response of 15 April 2019, the Bank disclosed the following documents and information:**

- 1 EIB proposal from the Management Committee to the Board of Directors (Board Report) – redacted;
- 2 Environmental and social related information contained in the finance contract;
- 3 Confirmation that five of the seven requested documents (all those related to environmental and social mitigation measures for the Project) are not yet in the possession of the Bank for the reasons stated above; and,
- 4 Two URL links providing access to the 2016 version of some of the documents requested (not final versions as requested by the Complainant since these have not yet been submitted to the Bank), which are available online: the Environmental and Social Impact Assessment (ESIA) for the Project, including the 2016 Environmental and Social Management Plan (ESMP) on the EIB website, and the Summary of the Full Resettlement Plan and ESIA 2016 on the AfDB website.

4.1.4 The EIB-CM takes note that **both the Board Report and the finance contract** shared with the Complainant were **redacted**. The Bank's response indicates that redacted information is covered by the **exceptions provided for under Article 5 of the EIB-TP**, more particularly Article 5.4, paragraph a, and Article 5.5, first bullet. These exceptions include the following:

- *protection of the public interest as regards international relations;*
- *protection of the commercial interests of a natural or legal person.*

The Bank informed the Complainant that the redacted information in the Board report mainly concerns information that, if disclosed, would undermine the protection of the public interest as regards international relations, or the commercial interest of the EIB. Furthermore, the

¹² Bank's emails dated 1 March and 15 April 2019. Not publicly available.

Bank stated that no overriding public interest was found to exist. The EIB-CM does not take a view regarding the redactions that were made and the exceptions communicated to the Complainant as the allegation was limited to the Bank's failure to reply and disclose the requested documents.

4.2 *Compliance Review*

4.2.1 **The Bank did not reply to the Complainant in a timely manner.** EIB formally responded to the Complainant's request for documents in two batches: the **first response** was provided on 1 March 2019, i.e. **55 working days** following receipt of the request, and the **second (more comprehensive) response** was provided on 15 April 2019, i.e. **86 working days following receipt of the request**. According to the TP, the Bank shall reply to disclosure requests without delay, and in any event within 15 working days; in exceptional cases (complex requests), it shall however endeavour to reply no later than 30 working days following receipt.¹³

4.2.2 The **EIB-CM acknowledges** the following:

- The Bank's acknowledgement of receipt was sent to the Complainant on 10 December 2018, i.e. one working day following receipt of the request for information.
- The Bank did inform the Complainant within the time limit about the complexity of her request and therefore the extension of the standard time limit of 15 working days: it did so via an email sent on 3 January 2019, i.e. 14 working days following the request (in line with Article 5.23 of the EIB-TP).

The Bank did not keep the Complainant informed about its inability to provide a response within the extended time limit of 30 working days when this period was about to expire, which in the CM's view would have been desirable.

4.2.3 The EIB-CM notes that the Bank had provided a **more comprehensive response to the Complainant** on 15 April 2019, **aimed at addressing all the different elements of the request for information**.

4.2.4 **With regard to the documents related to environmental and social mitigation measures for the Project (five of the seven documents requested):** the Bank informed the Complainant that it was not in a position to share the final version of these documents as requested because they were not in the possession of the Bank. However, the Bank provided the URL links to earlier (2016) versions for some of the requested documents, which the services thought the Complainant may still find useful. These documents were prepared and validated by the Promoter (governments of Senegal and Mauritania) in 2016.

Moreover, the EIB-CM confirms the following based on the records concerning the Project:

- Submission of the requested documents related to environmental and social mitigation measures was made one of the conditions to disbursements in the finance agreement,

¹³ See paragraph 3.2.4 earlier.

namely disbursement of the first tranche for all of them except for the road safety audits and inspections that need to be submitted for all tranches including the first tranche.¹⁴

- The Project has been experiencing some delays in its implementation. No disbursement has taken place so far (based on the Project records as of 29 May 2019).

Therefore, the **EIB-CM considers that the Bank duly and correctly informed the Complainant about the fact that the Bank is not yet in possession of these documents, and that is why it was not in a position to disclose them** at this stage.

4.2.5 **In the CM's view, this information** (the fact that the Bank does not hold (yet) the five requested documents related to environmental and social mitigation measures, as well as the links to earlier versions of some of the requested documents) **could have been provided much earlier**. The Bank should have informed the applicant about the fact that it does not hold five of the seven documents requested without delay (based on the general principles in terms of timing as per its TP and the applicable codes of good administrative behaviour). Moreover, in view of the Aarhus Regulation, the Bank needs to pay particular attention to requests for access to environmental information such as in the case under review the request for the final ESMP.

4.2.6 **Regarding the two other requested documents, namely the Board Report and the finance contract:** The **CM is of the opinion that the Bank could have shared these two documents with the Complainant earlier**. In its view, the arguments concerning the complexity of the request for information and the need for consultation with the Promoter cannot be used to fully justify the delay of 56 additional working days for providing the Bank's response.

- The CM notes that the services started formal consultation with the Promoter about disclosure of these documents via a letter of 4 March 2019.
- In the CM's view, disclosure of the Board Report (in full or in part) is not to be considered a complex process. This is even more so in the case under review given that the Project Appraisal Report for this particular project (which is the equivalent of the Board Report for the AfDB financing of the Project) contains very similar information (for example in terms of project description, results, risks) and is publicly available on the AfDB website.
- As far as the other document is concerned, the EIB-CM observes that while the Complainant requested the finance contract, the Bank shared only the environmental and social information contained in this document, which could have been done earlier. First, looking at the content of the information that was shared with the Complainant, it contains hardly any more information than what is included in the (i) Environmental and Social Data Sheet for this Project, and (ii) the EIB template with contractual clauses on

¹⁴ The finance contract includes the following conditions governing disbursements relevant to the request for information: For the first tranche: (i) Evidence deemed satisfactory by the Bank that all measures for environmental and social management identified in the ESIA have been incorporated in construction and supervision contracts; (ii) Full Resettlement Action Plan including assessment of vulnerability and livelihood restoration plan; (iii) Stakeholder engagement plan including grievance redress mechanism; (iv) Labour influx management plan; and (v) Updated ESAP/ESMP. For all tranches (including the first tranche): Road safety audits and inspections in line with the principles of EU Directive 2008/96/CE and confirmation that the recommendations have been included in final plans.

environmental matters. Both documents are available on the EIB website.¹⁵ Therefore, the disclosure of the environmental and social information contained in the finance contract (including consultation in this respect, if needed) could have happened sooner. Secondly, the Project is a public sector operation. Even though the EIB-TP does not make a distinction between different categories/types of documents requested and whether they concern a public or private sector operation, the fact that the Project is a public sector operation is an element that can be taken into consideration as far as implementation of the TP is concerned. When looking at the practices of some other international financial institutions (IFIs), the CM observes that for public sector operations, the equivalent to the Board Report and the finance contract are in fact documents that are generally made available routinely to the public.¹⁶

5. SUMMARY AND AREAS FOR IMPROVEMENT

- 5.1 The **Bank provided a formal response** to the Complainant's request for documents of 7 December 2018 in two batches: the first response was provided **on 1 March 2019, i.e. 55 working days** following receipt of the request, and the **second (more comprehensive) response** was provided **on 15 April 2019, i.e. 86 working days following receipt of the request**. The Bank's response exceeded the time limits set forth in the EIB-TP: reply to disclosure requests without delay, and in any event within 15 working days; in exceptional cases, the time limit may be extended and the EIB shall however endeavour to reply no later than 30 working days following receipt.
- 5.2 The EIB-CM notes that at the time of the request for documents and the Bank's reply, the **Bank was not in a position to share five of the seven requested documents** (those related to environmental and social mitigation measures for the Project). This is because **submission of these documents was made conditional to the first disbursement of the loan, which is yet to take place**. Nevertheless, the EIB in its response of 15 April 2019 referred to earlier versions of some of these requested documents that were in the possession of the Bank and/or already publicly available on the EIB and AfDB websites, with good intention in the event that the Complainant would consider this to be useful.
- 5.3 With regard to the other two requested documents, namely the Board Report and the finance contract: the Bank shared redacted versions of these two documents with the Complainant in its response of 15 April 2019. In the **EIB-CM's view, the arguments concerning the complexity of the request for information and the need for consultation with the Promoter cannot be used to fully justify the delay of 56 additional working days for providing the Bank's response**. In the CM's view, disclosure of the Board Report (in full or in part) and the environmental and social related information contained in the finance contract is not to be

¹⁵ Available at <https://www.eib.org/attachments/registers/74146163.pdf>; https://www.eib.org/attachments/documents/eib_standard_contractual_clauses_on_environmental_information_en.pdf

¹⁶ In some cases, consultation and identification of information possibly falling under the exceptions of these IFIs' Access to Information policy are being done up front (e.g. already at the time of negotiations of the finance contract), which facilitates proactive disclosure and/or disclosure upon request.

considered a complex process. The fact that the request for documents concerns a public sector operation is an element that can be taken into consideration as far as implementation of the TP and the disclosure process are concerned.

- 5.4 The CM is of the opinion that the Bank could have (i) informed the Complainant about its inability to disclose five of the seven requested documents and (ii) disclosed the other two documents with the Complainant much earlier, within the time limit of 15 or at the latest 30 working days. The Bank needs to pay particular attention to requests for access to environmental information such as in the case under review the request for the final ESMP. In cases where the Bank is not in possession of information requested, it is expected to inform the applicant accordingly and without any further delay.
- 5.5 The CM proposes that, as part of the forthcoming review of the Bank's TP, the Bank **reflects on how the disclosure and consultation processes can be further streamlined in order to provide a timely reply** to requests for information that are considered more complex. In the CM's view, the **development of detailed implementation guidelines/arrangements for complex cases** would be useful in this respect. These guidelines could cover issues such as workflow and processes, timelines and responsibilities for the different steps involved, and the need to differentiate certain steps for different categories of documents and types of information (with a particular focus on those that are commonly and increasingly being requested by the public¹⁷). There **should be more clarity up front for all parties involved – including the EIB services and the promoter – on what information should, can, cannot or could be shared** depending on the nature of the operation in question (e.g. private/public), the type of document or information requested, and what their respective responsibilities are at what stage. The objective of such implementation guidelines is to (i) help reduce the time needed for internal and external consultations (if needed); (ii) result in a more streamlined and faster decision-making process; and (iii) help ensure that the Bank's good relationships with its clients and other stakeholders can be maintained during project implementation and after project completion.

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Head of Division
Complaints Mechanism
28.08.2019

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Complaints Mechanism
28.08.2019

¹⁷ Such as documents/information related to environmental and social aspects, the Board report or the finance contract.