

**JEREMIE – Bank of Cyprus**  
**Cyprus**  
Complaint EIF/F/2014/03

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

## **CONCLUSIONS REPORT**

19 May 2016

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EIB Complaints Mechanism

Prepared by

**Complaints Mechanism**

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*Head of EIB Complaints Mechanism*

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Complainant: ----- on behalf of Frioncon LTD.

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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 whereby the public feels that the EIB Group did something wrong, i.e. if they consider that the EIB Group committed an act of maladministration. 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 – the Complaints Mechanism Division (EIB-CM) - and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of the receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB Group with the European Ombudsman.

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 set by the European Ombudsman, 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 to not only address non-compliance by the EIB Group with its policies and procedures but 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: <http://www.eib.org/about/cr/governance/complaints/index.htm>

## CONCLUSIONS REPORT

**Complainant:** ----- on behalf of Frioncon LTD.

**Date received:** 23 September 2014.

**Subject of complaint:** Alleged unfair handling of loan applications by Bank of Cyprus.

### 1. THE COMPLAINT

1.1 On 23 September 2014, ----- of Frioncon LTD (hereinafter the Complainant) lodged a complaint with the EIB Complaints Mechanism (EIB-CM) by submitting the online complaint form. The complaint concerns the implementation of the JEREMIE initiative in the Republic of Cyprus.

1.2 The Complainant reports that by the end of December 2013 and after having collected all the supporting documents required, he submitted a funding application to Bank of Cyprus (BoC) under the JEREMIE initiative. In the following weeks the Complainant tried to find out whether his application had been processed. After six weeks, a BoC employee informed the Complainant that his application had not been processed due to technical problems<sup>1</sup>. The same bank clerk then told the Complainant that he would send the application directly.

1.3 On 26 February 2014, the bank clerk contacted the Complainant informing him that the documents concerning income tax had expired. The following week the Complainant submitted new documents, but he did not receive any reply to his application. In the following weeks the Complainant tried unsuccessfully to contact the bank. On 26 March 2014 the Complainant was informed that his application was still pending. Following that and due to the fact that there were "*new documents to fill and fill again...*", the Complainant decided to stop his application procedure. In his message, the Complainant stated that in response to this complaint he would expect the EIB to set forth written and clear procedures for its financing programmes with the accompanying forms to be filled out. Finally, the Complainant specified that he wanted his complaint to be treated as confidential.

1.4 On 8 October 2014 the EIB-CM acknowledged receipt of the complaint informing the Complainant of the launch of an inquiry into the case and of the date by which the Bank's reply could be expected. On 3 December 2014 the EIB-CM informed the Complainant of the fact that it was necessary to extend the timeframe for the handling of the complaint. On 27 April 2015, the EIB-CM contacted the Complainant in order to apologise for the delay and assure him of the efforts made to provide a formal reply as soon as possible.

### 2. BACKGROUND INFORMATION ON THE JEREMIE INITIATIVE

2.1 The JEREMIE (Joint European Resources for Micro to Medium Enterprises) initiative offers EU Member States the opportunity to use, through their national or regional Managing Authorities, part of their European Union Structural Funds to finance small and medium-sized enterprises (SMEs) by means of equity, loans or guarantees, so increasing their access to finance. Specifically, that happens by means of a revolving Holding Fund (HF) acting as an umbrella fund. As it is an umbrella fund, JEREMIE does not directly target SMEs, but financial intermediaries.

2.2 The Republic of Cyprus decided to appoint the European Investment Fund (EIF) as the HF manager. In this country the EIF acts through the JEREMIE Trust (JT) and, via the JT, it manages the funds made available from the European Regional Development Fund (ERDF). In this context, BoC was selected as the Financial Intermediary in charge of the practical implementation of the initiative. The immediate objective is to support the expansion and strengthening of

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<sup>1</sup> From the information provided in the complaint, it appears this was due to the incompatibility of Laiki Bank's email inbox with that of BoC.

SMEs with new loans for amounts of up to €100 000. These new loans are designed to be available under particularly favourable terms in relation to repayment period, grace period, collateral required and pricing policy<sup>2</sup>.

### **3. APPLICABLE REGULATORY FRAMEWORK**

#### *3.1 The EIB Complaints Mechanism*

3.1.1 The EIB-CM applies to complaints of maladministration<sup>3</sup> lodged against the EIB Group (Article 4.1 of Title II “Principles” of the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure - CMPTR). Complaints may concern any alleged maladministration of the EIB Group in its actions and/or omissions (Article 4.1 of Title IV “Rules of Procedure” of the EIB’s CMPTR).

3.1.2 In the context of the handling of admissible complaints and pursuant to Article 4.2 of Title III, the EIB-CM gathers and reviews existing information on the subject under complaint, conducts appropriate inquiries with a view to assessing whether the EIB Group’s policies and procedures have been followed, reports on the findings, makes recommendations regarding corrective actions and/or possible improvements of existing procedures, fosters adherence to the EIB Group’s policies and endeavours to resolve the issue giving rise to the complaint. As regards confidentiality, pursuant to Article 2.6 of Title IV “Rules of Procedure” – CMPTR: “[...] *without prejudice to the provisions of the EIB’s Transparency Policy, a complainant has the right that her/his complaint shall be dealt with confidentially [...]*”.

#### *3.2 EU law*

3.2.1 Pursuant to Article 44 of the consolidated version of Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the ERDF, the European Social Fund (ESF) and the Cohesion Fund, “...*Structural Funds may finance expenditure in respect of an operation comprising contributions to support financial engineering instruments for enterprises, primarily small and medium-sized ones, such as venture capital funds, guarantee funds and loan funds...*”.

3.2.2 In addition, Article 60 “Functions of the managing authority” stipulates that “*The managing authority shall be responsible for managing and implementing the operational programme in accordance with the principle of sound financial management and in particular for...ensuring that operations are selected for funding in accordance with the criteria applicable to the operational programme and that they comply with applicable Community and national rules for the whole of the implementation period...*” and for – *inter alia* – “*ensuring compliance with the information and publicity requirements laid down in Article 69*” of Regulation No 1083<sup>4</sup>.

#### *3.3 The JEREMIE Cyprus Trust*

3.3.1 The Trust Deed governs the cooperation between the Republic of Cyprus (the Grantor) and the EIF (the trustee), it defines the type of cooperation and the operational modalities of the JEREMIE Trust financing expenditure in respect of an operation<sup>5</sup>. Among the actions that the EIF may and shall perform for the purpose of fulfilling the objects of the Deed and the performance of its powers hereunder, Article 5 of the JEREMIE Cyprus Trust includes the identification and selection of appropriate Financial Intermediaries, monitoring of the performance of the Operations<sup>6</sup>

<sup>2</sup> [http://www.fundingprogrammesportal.gov.cy/easyconsole.cfm/page/prog/prog\\_id/2890/lang/en;](http://www.fundingprogrammesportal.gov.cy/easyconsole.cfm/page/prog/prog_id/2890/lang/en;)

<http://www.bankofcyprus.com.cy/en-GB/Cyprus/BUSINESS/Small-enterprises/Financing/NEW-Business-Loan-Jeremie/>

<sup>3</sup> Maladministration 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.

<sup>4</sup> “*The Member State and the managing authority for the operational programme shall provide information on and publicise operations and co-financed programmes. The information shall be addressed to European Union citizens and beneficiaries with the aim of highlighting the role of the Community and ensure that assistance from the Funds is transparent....The managing authority for the operational programme shall be responsible for publicity in accordance with the implementing rules of this Regulation adopted by the Commission...*”

<sup>5</sup> Appendix A “Investment Strategy and Planning” to the JEREMIE Cyprus Trust provides an overview of the objectives of the JEREMIE initiative (to facilitate access to finance for the creation and development of SMEs in Cyprus and in particular those that face difficulties in obtaining finance because of their size, the relatively higher risk they represent and the insufficient collateral available)

<sup>6</sup> See also Article 6 (h) which includes among the tasks to be performed by the Protector appointed by the Republic of Cyprus “*regular monitoring...of the performance and impact on the national economy of the activity of the JEREMIE Trust and of the performance of the Operations,*

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and the establishment and execution of marketing campaigns, at the level of Financial Engineering Instruments and SME-related associations, to promote the objectives of the JEREMIE Trust.

3.3.2 Article 9 (c) of the JEREMIE Cyprus Trust establishes that “any Operational Agreement shall...include...the obligation of the Financial Intermediary to carry out adequate marketing and publicity campaigns, focussed in the relevant territory as appropriate, aimed at making the JEREMIE initiative known to the SMEs in the relevant territory, in line with the relevant provisions of the EU Structural Funds Regulations”. Finally, Article 11 of the JEREMIE Cyprus Trust clarifies that “[...] EIF shall under no circumstances be held responsible or liable for the financial performance of the JEREMIE Trust or for the financial results of any of the Operations, nor for the failure by the Grantor to comply with applicable EU Structural Funds Regulations or with any other applicable Community rules”<sup>7</sup>.

### 3.4 The Facility Agreement between EIF and Bank of Cyprus Public Company LTD.

3.4.1 On 4 December 2013 the EIF (the Lender) and Bank of Cyprus Public Company LTD (the Borrower) signed a Facility Agreement. According to recital f, the Lender, in its capacity to act through and on the account of the JEREMIE Holding Fund and the JEREMIE Jurisdiction, agrees to make a loan facility available to the Borrower for the purpose of making financing available to SMEs satisfying certain eligibility criteria. Article 4.1 of the Facility Agreement specifies that “The Lender is not bound to monitor or verify and shall not be responsible for monitoring or verifying the application of any amount borrowed pursuant to this Agreement. Notwithstanding this, the Lender may, at any time, request information from the Borrower to enable the Lender to verify whether a SME Loan complies with the Eligibility Criteria and whether its inclusion in the Portfolio is in compliance with the terms of this Agreement. The Borrower shall supply to the Lender any such information requested by the Lender.”

3.4.2 Article 23.9 of the Facility Agreement lays down the Borrower’s undertaking to carry out adequate information, marketing and publicity campaigns, focussed on the territory where SME Loans will be offered and aimed at making the JEREMIE initiative known to SMEs. As for SME assessment, Article 23.13 stipulates that “the Borrower undertakes that, pursuant to its Credit and Collections Policy, it will, prior to making a SME Loan, assess the ability of the potential borrower of that SME Loan to service the SME loan [...]”. Finally, Schedule 1 (“Specific Terms”) of the Facility Agreement lays down the eligibility criteria that SMEs must fulfil in order to obtain a loan<sup>8</sup>.

## 4. The EIB-CM inquiry

### 4.1 The selection of BoC for the implementation of the JEREMIE initiative in Cyprus

4.1.1 In order to select the Financial Intermediaries receiving resources from the EIF acting through the JEREMIE Trust, the EIF published the Call for EoI No JER-008/2010/1. Appendix 2 provides a list of documents that the Applicant<sup>9</sup> is required to provide together with its Expression of Interest; among such documents, it is worth drawing attention to

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*in accordance with the objectives of the JEREMIE initiative, the Operational Programmes and the Investment Strategy and Planning”. Appendix B to the JEREMIE Cyprus Trust is dedicated to monitoring.*

<sup>7</sup> The same article further stipulates that “Any liability of EIF connected to its own performance by virtue of this Deed or otherwise shall be limited to cases of actions or omissions due to fraud, wilful misconduct and gross negligence, provided that compliance with the Investment Strategy and Planning and with the decisions of the Protector shall exclude liability of EIF [...]”. This provision is further supported by the exemption of the EIF from the obligation to independently verify the accuracy, relevance or completeness of “...any information of whatever nature and howsoever sourced obtained from the Grantor or the Protector...”.

<sup>8</sup> The criteria include a limit to the maximum amount to an individual SME, a limit to the maximum aggregate amount of all SME loans to a single SME, the term of a SME loan, the territorial and activity (positive and negative) requirements; a condition to finance only expenditure which is eligible pursuant to Article 7 of EC Regulation 1080/2006, the requirement for SME Loans to be amortized according to a fixed repayment schedule, the ban on providing SME Loans in the form of lines of credit or revolving facilities; the ban on lending to SMEs which are either delinquent or have defaulted in respect of any other loan lent either by the Borrower or by another financial institution (according to reasonable checks carried out by the Borrower), the duty to provide SME loans on the basis of either of the pricing and collateral terms identified in the Facility Agreement. In addition, the criteria include a limit for the aggregate principal amount of all SME Loans to high-risk eligible SMEs included in the portfolio, a limit for the percentage of loans granted to SMEs active in the real estate and construction sectors out of the Maximum Portfolio Amount and limits for the fees charged to each SME in respect of an SME loan.

<sup>9</sup> Meaning a Financial Intermediary applying to such Call for Expression of Interest.

the “General implementation strategy (e.g. how the Financial Instrument will be promoted regionally and nationwide, publicity strategy, procedures for allocation of loans, etc.)”<sup>10</sup> (emphasis added).

4.1.2 In its Expression of Interest (updated in May 2013), BoC informed the EIF of its Credit Granting Process and namely of the fact that BoC had a clearly-defined process in place for approving new credits as well as for the amendment, renewal and re-financing of existing credits. BoC stressed that there are specific procedures in place for the submission, approval and processing of credit applications: the application is prepared by the Customer Relationship Officer (CRO) through the ELS system (automated system for the processing of applications) and is submitted together with all the necessary information to the Manager for approval (if the loan amount is above the manager’s authorisation limits then the application is forwarded to a higher authority for approval). Upon approval (based always on the four-eyes principle), the application is forwarded to the relevant department for processing and the client is notified on the finalisation of the processing procedures<sup>11</sup>.

#### 4.2 Leaflet and application form

4.2.1 As part of its inquiry, the EIB-CM reviewed the leaflet/prospectus used by BoC to promote the financial instrument in its branches and a template of the Application Form that SMEs had to complete in order to apply for a loan under the JEREMIE initiative. The review showed that BoC prepared leaflets to provide the public with information regarding the JEREMIE Business Loans for SMEs; in particular, the purpose of the communication material was to inform the public on the eligibility criteria for the JEREMIE co-financing instrument (the definition of SMEs, the main features of the loans such as maximum amount, minimum/maximum repayment period, grace period, etc.) and on the allowed uses of the borrowed funds<sup>12</sup>. Moreover, it was emphasised that the interest rate<sup>13</sup> was competitive and that such loans were characterised by particularly favourable conditions in terms of repayment period, grace period, collateral required and pricing policy. Finally, such documents contained a link to BoC’s website to enable interested customers to gather more detailed information on the programme in question.

4.2.2 In the forms to be used to apply for a loan under the JEREMIE initiative, the customer was required to provide the name of the company together with its registration number and registration date. Moreover, the customer was required to declare that he had not received any additional aid/grant for the same purpose and that he understood that a subsidy/grant could be granted for the same purpose only if it was ensured that there was no cross-subsidy<sup>14</sup>. Furthermore, in order to be granted the loan, the customer had to confirm that he had no pending debt/liabilities to: 1) the Inland Revenue Department, 2) Social Insurance Department, 3) the VAT (value added tax) Officer and, in general, to have complied with the tax return submission obligations. Finally, the customer had to indicate the loan amount and describe the purpose/expenditures co-financed with the loan.

## 5. Findings and conclusions

5.1 As the Complainant specifically requested that his complaint be treated as confidential, the EIB-CM was not able to contact Bank of Cyprus to verify whether the delays and the lack of cooperation alleged by the Complainant were truthful and unjustified. Therefore, this allegation of the complaint could not be fully investigated and verified by the EIB-CM. For the above-mentioned reasons, the EIB-CM focused its inquiry on the other issues raised by the Complainant: the lack of “written clear procedures set forth by the EIB about its financing programmes” and the absence of an application form to apply for the loans in question.

5.2 From the review of the information gathered during the inquiry, it appears that the obligation to provide the public with information concerning the procedures for allocation of loans and the procedure/criteria for selecting the operations to be financed is set forth both by the applicable regulatory framework (see §§ 3.2.2, 3.3.2 and 3.4.2 of this

<sup>10</sup> Appendix 2 to EoI, point 2), (c) (aa).

<sup>11</sup> EIF Report to the Board of Directors of 23 July 2013 proposing the approval of the Guarantee Operation also notes that since 2012 lending applications to BoC are assessed and approved centrally by a higher approving authority. Similarly, reference to monitoring of sector performance and the higher decision levels for loan approvals is also made in the EIF’s Due Diligence Report of 5 August 2013.

<sup>12</sup> All the information provided by the leaflet appears to be consistent with the information set forth by the Facility Agreement (see §3.4 of this report).

<sup>13</sup> In a leaflet reviewed as part of the inquiry, the interest rate was set at 4.62% for low-risk enterprises and 4.76% for high-risk enterprises. The leaflet explains that the interest rate was calculated on 29/10/13, being variable at 6m Euribor rate plus a 4.3875% margin for low-risk enterprises and a 4.5225% margin for high-risk enterprises.

<sup>14</sup> In particular, the two forms of aid were not to be used for the pre-financing or repayment of one by the other.

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Report). Moreover, from a review of the call for expression of interest (see § 4.1.1 of this report), it appears that BoC fulfilled its transparency obligation.

5.3 In addition, EIB-CM's inquiry has shown that BoC prepared application forms to be filled in by potential applicants. Such documents required the customer to provide the relevant information relating to the company/individual applying for the funds and the amount of the loan. Given the request to treat the complaint as confidential, the EIB-CM could not verify that in the Complainant's case such procedure and application forms were respectively followed and used.

5.4 Based on the above, the EIB-CM acknowledges that BoC fulfilled the transparency requirements established by the applicable regulatory framework and laid down dedicated and clear procedures for the implementation of the JEREMIE initiative. As a result, the EIB-CM proceeds to close the file.

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Head of Division  
Complaints Mechanism  
31.05.2016

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Senior Complaints Officer  
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31.05.2016