

**Competitiveness and Innovation Framework Programme (CIP)  
EU Guarantees (SMEG)**

**Complaint EIF/G/2014/01**

**16 July 2014**

# **CONCLUSIONS REPORT**

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## EIB Complaints Mechanism

Prepared by

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### External Distribution

Complainant:

### Internal Distribution

EIF chief Executive  
EIB's Group Inspector General  
EIF services concerned

**The EIB Complaints Mechanism**

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

If complainants are unsatisfied with the outcome of the EIB-CM's procedure, a confirmatory complaint can be submitted by the complainant within 15 days of the receipt of the EIB-CM's reply. Complainants who are not satisfied with the outcome of the EIB-CM's procedure and who do not wish to make a confirmatory complaint may also bring a complaint of maladministration against the EIB to 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 of information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group 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 to 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

## EXECUTIVE SUMMARY

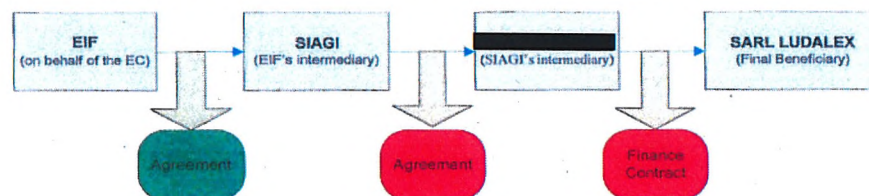
On 14 January 2014, SARL LUDALEX<sup>1</sup> in France (hereinafter the complainant) lodged a complaint with the EIB regarding the Competitiveness and Innovation Framework Programme (CIP) the SME Guarantee Facility (SMEG) which is managed by the European Investment Fund (EIF) on behalf of the European Commission<sup>2</sup>.

In her letter, the complainant alleged improper implementation of the CIP conditions. In this context, the complainant elaborated stating that within the context of a loan that was provided to her company by [REDACTED] on 15 April 2010 marketed under the CIP guarantee, the complainant was requested to sign 3 personal guarantees of 12 075 Euros each.

Following the cease of the activities of the complainant's company in January 2013, the complainant was requested by [REDACTED] to pay the commitments related to the guarantee signed. Therefore, the complainant took the view that the requests for a personal guarantee, as well as the request for compulsory reimbursement do not correspond to the principles and conditions of this CIP guarantee which does not require a personal guarantee. As a result, the complainant requested the intervention of the EIB with a view to urging [REDACTED] to comply with the conditions of the CIP.

Following the acknowledgment of receipt of the complaint and in light of the complainant's concerns, the EIB-CM deemed it appropriate to carry out further inquiries into the matter. In this context the EIB-CM liaised with the EIF operational services with a view to obtaining further information and the EIF liaised with its intermediary 'La Société Interprofessionnelle Artisanale de Garantie d'Investissement' (SIAGI) to obtain additional clarifications. In this context, the EIB-CM reviewed the information provided by the complainant as well as correspondence between SIAGI and [REDACTED] in relation with the guarantee, as well as further information and documents provided by SIAGI.

Flowchart showing the relation between the EIF, SIAGI, [REDACTED] and SARL LUDALEX:



In light of the concern raised as well as the contractual relation between the EIF, SIAGI, [REDACTED] and SARL LUDALEX (the Beneficiary), it is important to highlight that the EIF's relation is limited to its intermediary (SIAGI), within the boundaries of their agreement, and not extended to SIAGI's intermediaries ([REDACTED]) or to the final beneficiary of the guarantee (SARL LUDALEX) a relation which is regulated by a separate agreements between SIAGI and its intermediary.

<sup>1</sup> Small enterprise of limited responsibility registered in 2010 in Grenoble, France. Active in alimentary sector (baking and bakery products). On 22 January 2013, the company was cancelled.

<sup>2</sup> The Competitiveness and Innovation Framework Programme (CIP), is a Program of the European Commission for small and medium-sized enterprises (SMEs) as its main target, the CIP supports innovation activities, provides better access to finance and delivers business support services in the regions. The program has several schemes and a budget of over €1bn to facilitate access to loans and equity finance for SMEs where market gaps have been identified. One of the schemes is the SME Guarantee Facility (SMEG) under the CIP. SMEG was operated by the European Investment Fund (EIF) on behalf of the European Commission.

However, from the information gathered it emerged that SIAGI informed the EIF that, due to the non-compliance of [REDACTED] with the timeframe to notify the event of the default and more importantly the non-compliance with CIP conditions of the guarantee agreement by requesting a personal guarantee from the beneficiary, SIAGI considered the transaction ineligible to benefit from the CIP guarantee and consequently withdrew the guarantee in line with its agreement with [REDACTED].

In this context it appears important to underline that the EIF's role takes place when a guarantee is called<sup>3</sup> by its intermediary (SIAGI); which in the case at stake, did not occur. On the basis of these considerations it results that the complaint does not challenge the EIB Group's action or omission but rather the compliance of [REDACTED] with its agreement with SIAGI. In line with article 2.3 of the Complaints Mechanism Principles, Terms of Reference and Rules of Procedures, the EIB-CM is not competent to investigate complaints concerning other bodies or organisations. Therefore, the allegation raised falls outside the remit of the EIB-CM and consequently proceeds to the closing of the file with no recommendations.

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<sup>3</sup> *Guarantee call: means a request for payment under the Guarantee agreement issued by the intermediary (SIAGI) to the EIF pursuant to the terms of the agreement between the EIF and SIAGI.*



## CONCLUSIONS REPORT

Complainant: [REDACTED]

Subject of complaint: Alleged improper implementation of the CIP conditions in respect of the financial guarantee

### 1. COMPLAINT

1.1 On 14 January 2014, SARL Ludalex<sup>4</sup> in France (hereinafter the complainant) lodged a complaint with the EIB regarding the Competitiveness and Innovation Framework Programme (CIP) the SME Guarantee Facility (SMEG) that is managed by the European Investment Fund (EIF) on behalf of the European Commission. In her letter, the complainant alleged improper implementation of the CIP conditions. In this regard the EIB-CM requested further clarifications on the issues at stake that were provided by the complainant on 27 March 2014.

1.2 In her letters, the complainant stated that in April 2010 (Ludalex) obtained a loan of 63000 Euros from [REDACTED] with a 50 % guarantee provided by "La Société Interprofessionnelle Artisanale de Garantie d'Investissement" hereinafter SIAGI) under the CIP. However, the complainant stated that on 15 April 2010, during the signature of the finance contract to obtain the loan, the complainant and other two guarantors were requested by [REDACTED] to sign a personal guarantee as a condition to obtain the loan.

1.3 The complainant explained that the three personal guarantees of 12 075 Euros each were requested by [REDACTED]. In this context, the complainant alleged that the requested personal guarantee was never mentioned by [REDACTED] prior to the day of signature or during any of the previous meetings and discussions. At that stage, the complainant considered that the refusal to sign the requested guarantee would have hindered the loan approval and the entire project. Consequently, on 15 April 2010 the complainant including the other two guarantors signed the requested personal guaranty.

1.4 The complainant stated that in August 2011, SARL LUDALEX had to stop its business activities and therefore the partners were requested by [REDACTED] to pay the amount of 53 808,68 Euros each. Therefore, the complainant took the view that the requested amount do not correspond to the signed guarantee neither to the conditions of the guarantee of SIAGI under CIP.

1.5 As a result, the complainant stated that following her objection to pay the requested amount, the case had been transferred to the dispute services of [REDACTED]. The complainant mentioned that the exchanged communication between SARL LUDALEX's lawyer (hereinafter the lawyer) and [REDACTED] do not seem to lead into positive solutions for SARL LUDALEX. However, the complainant mentioned that within the latest communications exchanged between the lawyer and [REDACTED] the latter had reduced the requested amount to 9982, 88 Euros for each one of the guarantors (3).

1.6 The complainant highlighted that one of the crucial principles of the CIP guarantee at stake is that a personal guarantee is not required. Therefore, the complainant took the view that the requested personal guarantee as well as the amount requested to be reimbursed is contrary to the principles of the CIP.

1.7 As a result, the complainant requested the intervention of the EIB with a view to urging [REDACTED] to comply with the conditions of the CIP.

<sup>4</sup> Small enterprise of limited responsibility registered in 2010 in Grenoble, France. Active in alimentary sector (baking and bakery products). On 22 January 2013, the company was cancelled.



1.8 On 31 January 2014, the EIB-CM acknowledged receipt of the complaint. The complainant was informed of the fact that the EIB-CM was carrying out a review of her complaint as well as the date by which she might expect a formal reply from the CM. On 8 April 2014, the EIB-CM informed the complainant of the necessity to extend the time frame for the handling of the complaint in line with article 10.2 of the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure.

## 2. BACKGROUND INFORMATION

### 2.1 *Competitiveness and Innovation Program*

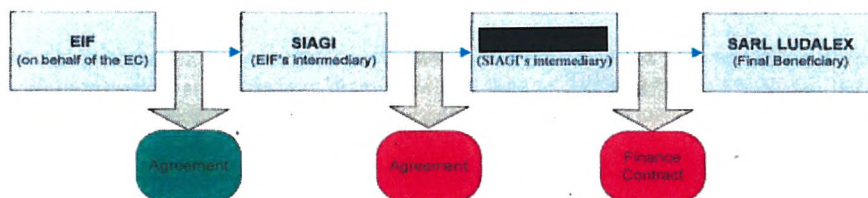
2.1.1 The Competitiveness and Innovation Framework Programme (CIP), is a Program of the European Commission for small and medium-sized enterprises (SMEs) as its main target, the CIP supports innovation activities, provides better access to finance and delivers business support services in the regions. The program has several schemes and a budget of over €1bn to facilitate access to loans and equity finance for SMEs where market gaps have been identified.

2.1.2 One of the schemes is the SME Guarantee Facility (SMEG) under the CIP. SMEG was operated by the European Investment Fund (EIF) on behalf of the European Commission under Decision No 1639/2006/EC of the European Parliament and of the Council of 24 October 2006 on a Competitiveness and Innovation Framework Programme for the period of 2007-2013. The purpose of SMEG is to enhance access to finance for SMEs and give entrepreneurs a chance by providing guarantees and counter-guarantees to encourage banks and financial institutions to make more loan finance available to SMEs, including microcredit and mezzanine finance, by reducing the banks' exposure to risk with a view to increasing banks' lending volumes to SMEs.

### 2.2 *SIAGI*

2.2.1 SIAGI is the Inter-professional Craft Company for Guarantee Investment 'La Société Interprofessionnelle Artisanale de Garantie d'Investissement' was created in 1966 by the chambers of professions and handicraft in France. SIAGI is active in the handicraft sector providing guarantees to investment credits which are provided through SIAGI's intermediaries (banks and financial bodies). SIAGI is EIF's intermediary for the CIP SMEG in France.

#### 2.2.2 Flowchart showing the relation between the EIF, SIAGI, [REDACTED] and SARL LUDALEX



## 3. APPLICABLE REGULATORY FRAMEWORK

### 3.1 *The scope of the EIB Complaints Mechanism*

3.1.1 The EIB-CM enables any person or group, who alleges there may be a case of maladministration by the EIB in its actions and/or omissions, to lodge a complaint with its Complaints Mechanism. Article 4 of the EIB-CM describes the scope of the mechanism and its scope in dealing with all complaints of maladministration lodged against the EIB Group.

3.1.2 On the basis of part IV, Article 2.3 of the Complaints Mechanism Principles, Terms of Reference and Rules of Procedures "the EIB Complaints Mechanism is not competent to investigate complaints concerning International organisations, community institutions and bodies, national regional or local authorities.

### 3.2 Agreement between SIAGI and [REDACTED]

3.2.1 From the information provided by SIAGI, it emerges that among the conditions, the agreement states that in case of the default of final beneficiary, [REDACTED] should inform SIAGI within two months from the date of the default event. The failure to comply with this condition as well as with the conditions and principles of the CIP guarantee can lead to the exclusion of the file from the guarantee.

## 4. EIB-CM INQUIRY

In light of the complainant's concerns, the EIB-CM deemed it appropriate to carry out further inquiries into the matter. In this context the EIB-CM liaised with the EIF operational services with a view to obtaining further information. The EIF liaised with its intermediary (SIAGI) to obtain additional clarifications. In this context, the EIB-CM reviewed the information provided by the complainant as well as some of the exchanged correspondence between SIAGI and [REDACTED] in relation of the guarantee. In this regard the EIB-CM reviewed, the correspondence provided by the complainant, as well as further information and documents provided by SIAGI.

### 4.1 Further correspondence provided by the Complainant

4.1.1 On 19 February [REDACTED] sent a letter to SARL LUDALEX requesting to pay its commitments on the basis of the issued personal guarantee.

4.1.2 On 12 March 2013, the complainant's lawyer sent a letter to the dispute services of [REDACTED] expressing its astonishment of the request of 19 February. In this context the lawyer highlighted that the loan at stake was obtained under SIAGI guarantee within the context of the CIP that does not require a personal guarantee.

4.1.3 On 19 March 2013, [REDACTED] sent a letter to the complainant requesting the reimbursement of 53 969,60 EUR from each of the three guarantors.

4.1.4 On 12 December 2013, [REDACTED] sent a letter to reminding the partners that they had signed a personal guarantee and therefore requested the three guarantors to reimburse [REDACTED] EUROS each.

### 4.2 Loan agreement between [REDACTED] and SARL LUDALEX

4.2.1 The finance contract was provided to the EIB-CM by the complainant. The contract was concluded on 15 April 2010 for a loan of (63000 EUR) provided by [REDACTED] to SARL LUDALEX. SARL LUDALEX was represented by [REDACTED] of the company including Mr, [REDACTED] and Ms [REDACTED] as guarantors.

4.2.2 The Contract contained an article requiring a joint personal guarantee from the above-mentioned guarantors. Therefore, the contract included three personal guarantees of [REDACTED] each signed by the complainant and the two guarantors and valid for 108 Months.

### 4.3 Notification of Guarantee

4.3.1 A notification of guarantee was issued by SIAGI for the provided funds to the beneficiary SARL LUDALEX (contract Ref: 691000215/GC001, date of agreement 17/03/2010 date of validity 25/09/2010). A copy of the notification of guarantee was provided to [REDACTED] as well as to SARL LUDALEX. The notification of guarantee clearly states that SIAGI provides this guarantee without personal guarantee.

### 4.4 Inclusions Notice

4.4.1 On 15 July 2010, SIAGI sent the Inclusion Notice to the EIF. The notice informed that SIAGI had entered into intermediary transactions with the guarantee beneficiaries and requested the EIF to include the intermediary transaction in its portfolio of the provided guarantees. The notice also communicated the aggregated principal amount of the intermediary transactions as well as the number of the concluded transactions. The notice contained an annex of the list of the names of the beneficiaries included in this inclusions notice. SARL LUDALEX appeared among the beneficiaries of the guarantee.



#### 4.5 Exclusion by SIAGI

4.5.1 On 19 February 2013 [REDACTED] contacted SIAGI with a view to calling the guarantee. In this context, on 2 April 2013, SIAGI sent a letter to [REDACTED] highlighting that the judiciary liquidation of SARL LUDALEX took place on 4 January 2012. In this context SIAGI observed that [REDACTED] is notifying SAIGI on this matter after more than one year of this event.

4.5.2 In this regard, SIAGI highlighted that in line with the agreement between SIAGI and [REDACTED] the latter should have notified SIAGI within two months of the date of the event of the default of the beneficiary (SARL LUDALEX). In addition, SIAGI observed that contrary to the principles and conditions of the CIP Programme and the SMEG, the loan agreement that was issued by [REDACTED] required a personal guarantee from SARL LUDALEX on the provided funds.

4.5.3 As a result of these irregularities, SIAGI informed [REDACTED] that the file is no longer eligible to benefit from the CIP guarantee within the framework of the agreement with the EIF and therefore SIAGI informed [REDACTED] of the exclusion of the transaction from CIP guarantee.

#### 5. FINDINGS AND CONCLUSIONS

5.1 In light of the concerns raised, it appears important to recall the streamline of the contractual relations between the EIF and its intermediary (SIAGI) as well as between SIAGI and its intermediary ([REDACTED]) as indicated in the Simplified chart reported in of this report. In this context, it is important to highlight that the EIF's relation is limited to its intermediary (SIAGI), within the boundaries of their agreement, and not extended to SIAGI's intermediaries ([REDACTED]) or to the final beneficiary of the guarantee (SARL LUDALEX) a relation which is regulated by a separate agreement between SIAGI and its intermediary.

5.2 However, as reported in 4.5.3 of this report, SIAGI informed the EIF that due to the non-compliance of [REDACTED] with the timeframe to notify the event of the default and more importantly the non-compliance with CIP conditions of the guarantee agreement by requesting a personal guarantee from the beneficiary, SIAGI considered the transaction ineligible to benefit from the CIP guarantee and consequently withdrew the guarantee in line with its agreement with [REDACTED].

5.3 In this respect it should be highlighted that the EIF's role takes place when a guarantee is called<sup>5</sup> by its intermediary (SIAGI); which in the case at stake, did not occur. On the basis of these considerations it results that the complaint does not challenge the EIB Group's action or omission but rather the compliance of [REDACTED] with its agreement with SIAGI.

5.4 In this regard it appears important to recall that as reported in 3.1.2 of this report, the EIB-CM is not competent to investigate complaints concerning other bodies or organisations and in the case at stake the raised allegation falls outside the remit of the EIB-CM. Therefore the EIB-CM proceeds to the closing of the file with no recommendations.

5.5 The complainant should be provided with additional information on the EIB complaints Mechanism through a link to relevant webpage of the EIB's website.

F. Alcarpe  
Head of Division  
Complaints Mechanism  
16 July 2014

O. El Sabee  
Complaints Officer  
Complaints Mechanism  
16 July 2014

<sup>5</sup> Guarantee call: means a request for payment under the Guarantee agreement issued by the intermediary (SIAGI) to the EIF pursuant to the terms of the agreement between the EIF and SIAGI.