

## CONCLUSIONS REPORT

### Complainant:

on behalf of CEE Bankwatch

### Subject of complaint:

Allegedly unfair refusal to disclose the Framework Agreement between the EIB and the Republic of Tajikistan

### 1. Complaint:

1.1 On 25 March 2009 on behalf of CEE Bankwatch Network (hereinafter, the complainant) lodged a complaint by e-mail to the EIB Complaints Inbox. In her message, she alleged the unfair refusal to disclose the Framework Agreement signed by the EIB and the Republic of Tajikistan. In particular, the complainant challenged the grounds of the refusal, as she did not share the view of the competent services of the EIB that the document should have been considered as a "third party document".

1.2 On 31 March 2009 the EIB Complaints Office (CO) acknowledged the receipt of the complaint. The complainant was informed to the fact that the CO was carrying out a review of his complaint as well as of the date by which she may expect an official reply from the EIB.

1.3 Following a preliminary analysis on the admissibility of the complaint, the CO deemed appropriate to carry out further inquiries with a view to gathering additional information on the complaint. In this context, the CO thoroughly reviewed the information provided by the complainant as well as the submissions by the competent services of the EIB. Finally, it conducted an inter-services consultation on the issue raised by the complainant.

### 2. Background information

2.1 On 17 February 2009 the complainant sent a letter to the EIB's Communication Department whereby she requested, *inter alia*, a copy of the Framework Agreement signed by the EIB and the republic of Tajikistan.

2.2 On 24 March 2009 the EIB's competent services replied by stating that the EIB could not disclose the requested document insofar as the Tajikistan Authorities had not given their consent for disclosure; moreover, the reply drew the complainant's attention to paragraph 33 of the Public Disclosure Policy which stipulates that "*as regards third-party documents, the Bank shall consult with the third party to assess whether information in the document is confidential, unless it is clear that the document shall or shall not be disclosed*".

### 3. Analysis of the Framework Agreement

3.1 Given the reasoning provided in the EIB's reply of 24 March 2009 and the allegations made by the complainant in the present case, the CO deems appropriate to clarify that the purpose of Framework Agreements is to establish the basic terms governing EIB activities in country(ies) which might in the future benefit from the EIB's financial assistance. As such, framework agreements must be countersigned by the competent authorities of the concerned country(ies) as well as by the EIB.

3.2 From the above considerations, the CO fails to see how §33 of the EIB Public Disclosure Policy and the category of "Third-Party documents", whose disclosure is governed by the above-mentioned provision, could be appropriately invoked in the case at stake. Indeed, since Framework Agreements are contractual documents

between the EIB and a counterpart, they cannot be defined as EIB internal documents nor as third-party documents; as a result and considering the fact that some of the information therewith contained might be confidential in line with the provisions under paragraphs 24-36 of the EIB Public Disclosure Policy, requests for disclosure concerning such documents shall be assessed by the competent services of the EIB on a *ad hoc* basis in accordance with the EIB PDP. In that regard, it is worth stressing that when a document contains information typically forming part of the EIB's confidential relationship with its business partners, the Bank does not object to the concerned counterpart making information available on their relationship and arrangements with the EIB.

3.3 However, from the information gathered by the CO during its inquiry into the complaint, it appears that the requested document did not yet undergo the ratification procedure which is compulsory for it to be applicable to the Tajiki authorities. Indeed, in accordance with article 13 of the Framework Agreement "*Entry into Force*", the agreement "*shall enter into force upon the day following the date on which the Bank confirms to the government of Tajikistan its receipt of a certified copy of the latter's instrument of ratification*". As a result, it appears that in the case at stake, the request to disclose cannot be satisfied as the requested document is not yet a valid document binding any of its signatories.

#### **4. Conclusions:**

4.1 Following a review of the exchange of correspondence between the complainant and the competent services of the EIB, the CO acknowledges that the refusal to disclose the framework agreement was not correctly grounded and, therefore, concludes that it would be advisable to recognise it in the reply of the EIB Secretary General to the complainant.

4.2 However, on the basis of the considerations in §3.3, from the elements available, the CO concludes that there was no maladministration in the contested refusal to disclose the requested document.

4.3 The complainant shall be informed that the competent services of the EIB will liaise with the national authorities of Tajikistan in order to verify whether their objection to disclose the requested document can be waved after its ratification and shall be provided with a follow-up on the status of her request.

F. Alcarpe  
Head of CRP Division  
04/05/2009

E. de Kruijff  
Head of the EIB Complaints Office  
04/05/2009