

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

**Cassa per il Mezzogiorno II  
Italy**

**Complaint SG/A/2014/02**

# **CONCLUSIONS REPORT**

**30 September 2014**

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**EIB Complaints Mechanism**

**Prepared by**

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**Head of Division**  
**Complaints Mechanism**

**External Distribution**

**Complainant:**

**Internal Distribution**

**Management Committee**  
**Secretary General,**  
**Inspector General**  
**EIB services concerned**

### **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 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 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 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 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 also endeavors 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/accountability/complaints/index.htm>

## CONCLUSIONS REPORT

**Complainant:** [REDACTED]

**Subject:** EIB's alleged failure to give to the complainant access to a document

**Date received:** 19 March 2014

### 1. BACKGROUND INFORMATION

- 1.1 By fax of 28 October 2013, [REDACTED] ("the complainant") asked the EIB services to give her access to a finance contract signed on 21 December 1973 between the EIB and Cassa per opere straordinarie di pubblico interesse nell'Italia Meridionale (Cassa per il Mezzogiorno).
- 1.2 Following contacts between the complainant and the EIB services, on 11 February 2014, [REDACTED] lodged a complaint with the EIB Complaints Mechanism ("EIB-CM") regarding EIB's failure to reply to her request.
- 1.3 On 7 March 2014, the EIB services replied to the complainant that her request could not be granted due to the confidentiality that the EIB is required to comply with vis-à-vis its counterparts.

### 2. THE PRESENT COMPLAINT

- 2.1 On 19 March 2014, the complainant lodged a second complaint concerning this time EIB's failure to give her access to the requested document.
- 2.2 The complainant alleged that the rejection of her request was not motivated and the reference to the confidentiality was arbitrary, unjustified and unlawful.
- 2.3 On 31 March 2014, the EIB acknowledged receipt of the complaint and informed the complainant that it was carrying out a review of the case as well as of the date by which a formal reply should be expected. On 4 June 2014, the EIB-CM informed the complainant of the need to extend the timeframe for the handling of the complaint in line with Article 10.2 of the Rules of Procedure of the EIB-CM.

### 3. APPLICABLE REGULATORY FRAMEWORK

- 3.1 Scope of the EIB Complaints Mechanism
  - 3.1.1 According to Article 4.1 of the EIB-CM Principles, the EIB Complaints Mechanism applies to complaints of [REDACTED] may concern any alleged maladministration of the EIB Group in its actions and/or omissions.
- 3.2 EIB Transparency Policy
  - 3.2.1 Article 5.1.1 of the EIB Transparency policy-Part A-Principles establishes a presumption of disclosure according to which all information held by the Bank is subject to disclosure upon request, unless there is a compelling reason for non-disclosure. As the EIB operates as a bank, there are certain constraints on the information it discloses. Section 5.2 introduces the exceptions to the presumption of disclosure.
  - 3.2.2 Article 4.1.4 of the EIB Transparency Policy-Part B-Practices stipulates that *"The exceptions will only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to the protection of personal data or commercial interests of a natural or legal person including intellectual property, the exceptions may, if necessary, continue to apply after this period."*

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#### 4. EIB-CM WORK

- 4.1 In the course of the enquiry, the EIB-CM reviewed the complaint and engaged with the EIB services in order to identify the reasons of the rejection of her request and determine whether there was space for reviewing the decision to refuse access.
- 4.2 In line with the Transparency policy, the EIB services in cooperation with the EIB-CM decided to grant the complainant's request. Before proceeding though to communicating copy of the Finance contract to the complainant, it was agreed that the Ministry of Finance, counterpart in the contract, should be given the chance to submit any objections regarding disclosure, in line with Article 4.1.4 of the EIB Transparency Policy.
- 4.3 By letter of 12 June 2014, the EIB informed the Ministry of Finance of the complainant's request and asked its opinion as to whether it was necessary to protect information contained in the Finance Contract. The deadline for replying was 10 working days as from receiving the letter. In case no justified reply was received within the stated period, the Bank would consider that the Ministry consents to the disclosure.
- 4.4 No reply was received by the EIB. Therefore, the EIB-CM considers the lack of reaction from the Ministry as a tacit agreement to the disclosure of the document.

#### 5. CONCLUSION

- 5.1 The disclosure of the document in question was agreed by the EIB services concerned. A copy of the Finance Contract will be sent to the complainant as an attachment to the present report. It must be noted that any reference to names of natural persons shall be deleted before disclosure of the contract in respect of the Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
- 5.2 The case is settled by the EIB and therefore, the EIB-CM closes it.

F. Alcarpe  
Head of Division  
Complaints Mechanism  
30 September 2014

S. Michi  
Complaints Officer  
30 September 2014

Attachment: Copy of the Finance Contract of 21 December 1973