



Европейска инвестиционна банка
Evropská investiční banka
Den Europæiske Investeringsbank
Europäische Investitionsbank
Euroopa Investeeringispank
Ευρωπαϊκή Τράπεζα Επενδύσεων
European Investment Bank
Banco Europeo de Inversiones
Banque européenne d'investissement
Banca europea per gli investimenti
Eiropas Investīciju banka

Europos investicijų bankas
Európai Beruházási Bank
Bank Europew ta' l-Investment
Europese Investeringsbank
Europejski Bank Inwestycyjny
Banco Europeu de Investimento
Banca Europeană de Investiții
Európska investičná banka
Evropska investicijska banka
Euroopan investointipankki
Europeiska investeringsbanken

Secretary General

To the attention of:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

EXP BEI - EIB
002126 04 MAR 11

Luxembourg, 4th March 2011

Dear complainants,

I refer to the Complaints Office's message of 5 November 2010 informing you of the fact that the European Investment Bank (EIB) was not anymore involved in the appraisal of the Barro Blanco Hydroelectric project following the Promoter's decision to withdraw its request for financial assistance. In the same message you were also informed of the fact that - in line with the provisions of the EIB Complaints Mechanism - the Complaints Office was in the process to finalise its Conclusions Report within the shortest delay possible. I take note of the fact that, in your reply of 7 November 2010, you requested that the Conclusions Report of the Complaints Office be public.

The inquiry carried out into your complaint presented a high degree of complexity due to the fact that the contested Project was still under appraisal, as required by EIB policies and procedures. It is clear that, prior to the formalisation of the appraisal by the EIB operational services, a formal and comprehensive compliance review of the appraisal process cannot yet be performed. In such cases, however, early warnings from civil society organisations and project-affected people can provide beneficial inputs to the appraisal of the project; based on this, the role of the EIB Complaint Mechanism in the present case has been to ensure, through engagement with the appraisal team and critical analysis of project available information, that your concerns were given due consideration by the EIB during the appraisal of the operation with a view to avoiding possible future non-compliance with the Bank's policies and standards.

Given the persistent divergence between on one hand - the information provided by the Promoter and the EIB operational services as long as the appraisal of the lending operation was carried out and - and on the other - the information you provided throughout the inquiry - the CO deemed appropriate to engage directly with you and the Promoter and organise an on-site visit aiming at identifying the possibility of a friendly solution between the parties of the complaint as well as at gathering evidence on the allegations concerning the



environmental and social impacts of the Project as well as the public consultation and prior informed consent of indigenous communities on which the CO had not yet the opportunity to form a reasoned opinion.

In this context, the withdrawal of the Promoter's request for financial assistance has modified – unilaterally and independently from the efforts made by the EIB to address your concerns – the admissibility assessment carried out on the complaint at the time of its submission, insofar as the contested operation is not anymore considered by the EIB for financing and therefore falls outside of the scope of the EIB Complaints Mechanism; as such, article 7.11 of the Rules of Procedures of the EIB Complaints Mechanism excludes the issue of Conclusions Reports for complaints which are declared inadmissible. However, with a view to providing you with information on the EIB's final assessment and in line with article 41.2 of the European Charter of Fundamental Rights and article 18 of the European Code of Good Administrative Behaviour, I provide you herein with the reasons for the Bank's decision on the inadmissibility of the other allegations made in your complaint.

The additionality requirement of the Clean Development Mechanism (CDM)

From an analysis of the validation and registration procedure of the Project under CDM, it results that it is the responsibility of AENOR (as the Designated Operational Entity) to check the fulfilment of additionality requirement during the validation process and to confirm that the project meets such requirements. Once the project is submitted to registration as CDM Project, it is the responsibility of the Registration and Issuance Team of the CDM Executive Board to appraise the request and to check compliance with the international rules.

In the light of the above it seems appropriate to conclude that the EIB (as any other financial institution) is not competent to assess the fulfilment of the additionality requirement but bases its evaluation on the decisions taken by the international and national authorities which are competent to act in this field; if read in conjunction with article 2.3 of the Rules of Procedure of the EIB Complaints Mechanism, such considerations imply the inadmissibility of the allegation.

However, since AENOR has put in place a procedure for the handling of complaints, should you wish to pursue this matter further, you may consider the possibility to lodge a complaint with this institution to the following e-mail: cdm.kyoto@aenor.es

Role of ANAM and conflict of interest

As concerns the delegation of functions from ANAM to the Promoter as well as the alleged conflict of interest of the former due to the concentration of roles, the authority targeted by such allegations is a national authority, subject to the legal framework - including the jurisdiction - of the Republic of Panama. On the basis of these considerations and pursuant to article 2.3 of the Rules of Procedure of the EIB Complaints Mechanism, these allegations are inadmissible. In this regard, should you wish to pursue these allegations further, you may consider the opportunity to refer your case to the appropriate national review procedures.

I trust this is helpful in clarifying the issues raised in your complaint and remain at your disposal for any further information.

Yours sincerely,

A. Querejeta