



**Ecocimento Fibre Cement
Project
Mozambique**

Complaint SG/E/2010/08

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

CONCLUSIONS REPORT

14 December 2012



EIB 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).

If complainants are unhappy with the reply they may, on a pure voluntary basis, within 15 days of the receipt of the EIB-CM's reply, submit a confirmatory complaint. Furthermore 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 may also 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 violated 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>

Acknowledgements

The EIB-CM would like to thank all people and organisations with whom they have interacted during the investigation of this complaint. The EIB-CM also expresses its appreciation to the EIB staff involved in the handling of the complaint.

Without the support and valuable contributions of everybody concerned, the preparation of this report would not have been possible.

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CONCLUSIONS REPORT

Complainant: [REDACTED]

Subject of complaint: Alleged negative environmental impact of the Ecocimento Fibre Cement Project

1. COMPLAINT

1.1 On 14 July 2010, [REDACTED] filed a complaint, by e-mail to the Complaints Mechanism (EIB- CM) mailbox, against the EIB concerning the alleged negative environmental impact of the Ecocimento Fibre Cement Project in Mozambique.

1.2 In his letter, the complainant communicated that his company [REDACTED] had purchased a property containing the asbestos dumps from [REDACTED] in Maputo, Mozambique. The complainant mentioned that his company's purchase had been conditional on [REDACTED] legal commitment that the property would be decontaminated from asbestos. The complainant took the opportunity to mention that an EIB web-notice had confirmed that the Bank was financing [REDACTED] for the decontamination and upgrade of two production sites – one in Maputo and one in Dondo, Beira. According to the complainant, [REDACTED] had confirmed that, in accordance with the EIB Project's loan conditions all properties must be decontaminated and that this had supported [REDACTED] purchase decision of the contested property. However, the complainant argued that between 250 000 tons and 400 000 of contaminants had remained untouched on the contested property. Furthermore, the complainant emphasized that [REDACTED] had repetitively contacted the local Environmental Ministry to request their intervention with regard to the [REDACTED] environmental noncompliance.

1.3 On the basis of the above considerations, the complainant alleged that the local laws of decontamination and the international protocols on the decontamination procedures had been violated insofar as (i) the [REDACTED] failed to comply with EIB loan conditionality and (ii) that on the concerned site the asbestos dumps had since remained unprotected and unsecured and that therefore the contested site presented a threat to public health. In this context, the complainant alleged that there was substantial negative environmental impact in the conditions of the mentioned site. As a result, in his letter, the complainant requests the intervention of the EIB and the assurances of the EIB that it does not finance projects unless they are consistent with the relevant legal environmental requirements.

1.4 Finally, the complainant takes the view that the EIB has committed an instance of maladministration by approving the Project and points out that EIB has breached its environmental policy. Therefore the complainant claims that the EIB should ensure an audit procedure and review the compliance of its loan condition i.e. the decontamination of the land.

1.5 On 28 July 2010, the EIB- CM sent an acknowledgment of receipt to the Complainant whereby he was informed about the date of an official reply from the EIB.

1.6 On 22 September 2010, the EIB-CM informed the complainant, in accordance with Article 10.2 of the EIB CMPTR, that due to the complexity of the inquiry it was necessary to extend its time-frame with a view to obtaining all the necessary information in order to form a reasoned opinion on the issues at stake and that he might expect the formal reply by the EIB by no later than 17 February 2011. Since then, the EIB-CM had regular contacts (on site and by phone) with the complainant with a view to help the complainant seeking a solution for the issues raised.

2. BACKGROUND INFORMATION

2.1 Prior to the assessment of the complainant's allegations, it appears appropriate to integrate the complete background information provided by the services and provide a chronology of events relating to the contested project.

2.2 According to the Finance Contract (hereafter the Contract), the Ecocimento Fibre Cement Project consists of Asbestos decontamination in 1 site in Dondo (hereinafter, the contested site), near Beira (the second Mozambican city, about 1000 km North of Maputo) where the project is located. The total area of the Property is 467 hectares and the Promoter of the Project is Ecocimento – (hereafter the Borrower). It is worth mentioning at this stage that the Project Description given on the EIB web-site (upon which the complainant alleges having relied in his purchase of the contested site) differs in two ways from the information in the Finance contract: 1) the Project Description given on the EIB web-site mentions that the Lusalite is the Borrower and that the asbestos contamination includes the Maputo, whereas the Finance Contract mentions the Borrower as Ecocimento and that the asbestos contamination of the contested site concerns only Dondo.

2.3 Concerning the location of the project, there were initially two sites concerned by the asbestos decontamination, one in Maputo and another in Dondo. The decontamination operation in Maputo was dropped from the final Project Description, which only included the technological conversion to be rehabilitated to produce asbestos free fibre cement at Dondo and the loan concentrated on the environmental decontamination and environmental upgrade of this site. Therefore, the decontamination of the Maputo unit was not a part of the final Project Description in the Contract.

2.4 Concerning the relation between [redacted] and Ecocimento - [redacted], the Contract stipulates, in §2 of the Recital, that [redacted] was the majority shareholder of the Borrower, considering that the voting share capital of the Borrower was owned by the following shareholders:

	% (approximate)
Lusalite de Mozambique S.a.r.l.	95%
Mr. Duarte Manuel Horta Machado da Cunha	2.5%
Mr. Vitor Manuel Amorim Jardim	2.5%
Total	100%

2.5 The asbestos decontamination of the contested site being the subject of this Project, the Project would include the removal of asbestos as a hazardous material, its transportation and storage on a dedicated landfill. It would also include the conversion of a plant for construction materials from asbestos fiber cement to clean fiber cement, using the PVA process. The Maputo unit would be deactivated.

2.6 On 5 December 2006, the EIB signed the Finance Contract for the above-mentioned project. In addition to EIB finance (with an amount of EUR 1.3m from the Cotonou Investment Facility), the Project is co-financed by the, Banco Comercial e de Investimentos SARL (BCI). For the purposes of this conclusions report it is important to mention that the voting shareholders of the Borrower are owned by the [redacted] (with 95 %) which is called hereinafter as Guarantor. The Mozambican State has 20 % share in the Lusalite. Article 8 of the Contract sets the obligations of the Borrower and Guarantor in the Guarantee and Indemnity Agreement between the Borrower and EIB.

2.7 In December 2008, the Borrower informed the EIB by e-mail that it was facing bankruptcy. Not having been able to produce any cash flow since January 2008, Ecocimento had no other option left than to stop producing. Subsequently, the Bank's services have employed a legal advisor in Mozambique, to assist the Bank in this case.

2.8 The cash-flow problems faced by Ecocimento were temporarily mitigated by a line of credit made available by BCI, the EIB's co-financier. However, at the moment the company was facing liquidity problems again and was in arrears again for the April 2009 installment. In June 2009,

(hereafter the Investor), agreed to invest in the company and solve the liquidity problem and voluntary prepay EIB's loan and to restart operations with BCI. As regards the financial status of the project, the project is fully disbursed.

2.9 The complainant, purchased the contested sites, in 2005 under the assumption that the site had been decontaminated. In discussions and correspondence relating to that acquisition, reference is made to the involvement of EIB, as well as to the Project Description on the EIB's Web site, as a guarantee of future decontamination. The complainant also stressed that Lusalite took a 30% share on but sold it to other shareholders three months later.

2.10 Technical experts working for as well as an audit executed by the environmental authorities (hereinafter the MiCoA) have confirmed the presence of between 30.000 and 40.000 m3 of asbestos on the contested site in Maputo. According to the complainant, the Mozambique government, which owns 20% of have asked to decontaminate the site. However, also according to the complainant, the Dondo site has not been decontaminated, but rather Asbestos contaminated materials have been buried on-site which is contrary to Mozambique law and proposed the complainant to bury Asbestos contaminated materials located in Maputo site which is the subject of the present complaint.

3. THE APPLICABLE REGULATORY FRAMEWORK

3.1. Scope of the EIB Complaints Mechanism

3.1.1 According to Article 4.1 of Title II "Principles" of the EIB CMPTR the EIB Complaints Mechanism has a brief to consider complaints of maladministration lodged against the EIB Group. Such 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 CMPTR). However, according to Article 2.3 of Title IV "Rules of Procedure" - CMPTR the EIB-CM is not competent to investigate complaints against International organisations, Community institutions and bodies, national, regional or local authorities and, according to article 2.5 of Title IV, complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter.

3.1.2 In the context of the handling of admissible complaints and pursuant to art. 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, coordinates with other European institutions, reports on findings, makes recommendations regarding corrective actions and/or possible improvements of existing procedures, fosters the adherence to the EIB Group's policies and endeavours to resolve the issue giving rise to complaints.

3.2 The allocation of responsibilities as regards the assessment of the environmental impact of EIB-financed projects

3.2.1 Prior to a detailed assessment of the Complainant's allegations in the light of the submissions of the complainant and the information provided by the competent services of the EIB, it appears appropriate to clarify the internal regulatory framework applying to the EIB as well as the allocation of responsibilities between the latter and the Borrower as regards the assessment of the environmental impacts of a EIB-financed project.

3.2.2 As regards the assessment of the environmental impact of projects receiving the EIB's financial assistance, the 2004 EIB Statement on Environmental and Social Standards, which applied to the Project at the time of the appraisal, stipulated that "*within the 25 EU Member States and the Candidate Countries, projects financed by the EIB comply with the principles and standards set by both EU [including therefore the Natura 2000 Directives] and national environmental legislation...For projects located in the EU, the Bank applies a presumption of legality and that national legislation conforms with EU legislation, where appropriate. The*

Promoter is responsible for compliance, whilst regulatory and enforcement tasks are the responsibility of the competent authorities". The principle of the segregation of responsibilities as regards the assessment of the environmental impact of EIB-financed project is further deployed in the 2007 Environmental and Social Practices Handbook.

3.2.3 Pursuant to Article B.2.2 120 of the Handbook, the Bank is responsible for checking whether the Promoter has fulfilled the following requirements: a full EIA process (including the public consultation and approvals/planning consent), the identification of the impacts and appropriate measures to avoid, reduce or mitigate them, the consideration of alternatives, the proposed mitigation and compensation measures and associated Mitigation Plan and public disclosure. Whilst carrying out a due diligence on projects for which the Bank's funding has been requested, the Bank's role is to check compliance with its environmental requirements as well as with Community and national legislation in the field of environment.

3.2.4 The EIB is committed to safeguarding community health in the Projects it finances. The EIB's Social and Environmental Handbook <http://www.eib.org/infocentre/publications/all/environmental-and-social-practices-handbook.htm>) indicates that *"Outside the EU, Candidate and potential Candidate countries, the benchmark is EU standards. Where EU standards are more stringent than national standards, the higher EU standards are required if practical and feasible (i.e. affordability, local environmental conditions, international good practice, etc.)"*. In this case, the national Mozambique law has more stringent rules than EU directives.

3.2.5 From an analysis of the allegations against the EIB, it results that the complainant refers in particular to paragraphs of the Environmental Handbook, Part C: Reference to EU Legislation on Occupational and Community Health and Safety which has been taken into account by the EIB-CM when conducting its inquiry into the complaint.

3.2.6 Moreover, other provisions of the Environmental Handbook which are relevant in the present case is the Treaty-based "precautionary principle" according to which preventive action should be taken and environmental damage should be rectified at source as a priority.

3.2.7 Finally, it is worth emphasising that the Finance Contract incorporates all the key elements forming the basis for the Bank's decision and identified in discussions between the Bank and the Borrower during project preparation, appraisal and negotiation. In that regard, §6.13 of the Finance contract mentions that the Borrower undertakes to implement and operate the Project in conformity with Environmental laws and best international practice in the respect of protection of the environment. Among those described in §193, it is worth highlighting the Conditions for disbursement (e.g. environmental conditions which must be fulfilled to the satisfaction of the Bank prior to any fund being disbursed by the Bank on either the whole project or a part of the project). Non-compliance with these conditions might result in a halt to the disbursement of the EIB's loan.

3.3 National applicable regulatory Framework

3.3.1 Article 4 Fundamental Principles of the Environmental Law of Mozambique of 1997 stipulates that [translation in English of] *"Environmental management is based on fundamental principles deriving from the entitlement of all citizens to an ecologically balanced environment which is conducive to their health and mental well-being, in particular:*

- (a) the rational use and management of environmental components, with a view to improving citizens' quality of life and maintaining biodiversity and ecosystems*
- (b) recognition and profitable use of the traditions and knowledge of local communities which contribute to the conservation and preservation of natural resources and the environment*
- (c) a precautionary approach, on the basis of which environmental management must accord priority to the establishment of systems to prevent action detrimental to the environment, in such a way as to avoid significant or irreversible negative environmental impacts, regardless of whether or not there is scientific certainty as to the occurrence of such impacts*
- (d) a global and integrated view of the environment, as a set of interdependent ecosystems, whether natural or fabricated, which must be managed in such a way as to maintain their functional equilibrium without going beyond their intrinsic limits;*

(e) considerable participation by citizens, as a vital aspect of implementation of the National Environmental Management Programme;

(f) equality, guaranteeing equal opportunity of access to and use of natural resources for men and women;

(g) accountability, whereby any person who pollutes or otherwise degrades the environment will always be under an obligation to rectify or compensate for the resultant damage;

(h) international co-operation directed towards achieving harmonious solutions for environmental problems, it being recognised that they have cross-frontier and global dimensions"

3.3.2 Article 9, on prohibition of pollution, determines in § 1 that *"It shall not be permitted, within national territory, to produce, deposit in the soil or subsoil, discharge into water or into the atmosphere any toxic or polluting substances, or to undertake activities which accelerate erosion, desertification, deforestation or any other form of environmental degradation, outside the legally defined limits."*

3.3.3 Finally, the Mozambican Regulation of Management of Residues from June 2006 does classify Asbestos in the dangerous category.

Article 4

Responsibility in Management of Residues

1. On the management of residues, it is for MICOA (Ministry for Coordination of Environmental Affairs):

- a) To issue and disseminate mandatory rules on the procedures to be observed in the management of hazardous waste;
- b) Implementing the licensing of facilities or storage sites and / or disposal of hazardous waste;
- c) Accrediting organizations in coordination with the guardianship, after hearing the institutions, stakeholders, transport operators of hazardous waste and vehicles used for the transport thereof;
- d) Sign the public or private entities that handle hazardous waste;
- e) Adopt, in coordination with the sectors of protection, the measures necessary to suspend the storage, disposal or transportation of hazardous waste carried out unlawfully and / or conditions that constitute a danger to health of public or the environment;
- f) monitoring compliance with the provisions of this Regulation.

Article 9

Specific obligations of entities that handle waste

1. In addition to the obligations contained in the preceding article, are the specific obligations of entities generating waste or manuseadoras:

- a) Minimise production of waste in any category.
- b) Ensure the segregation of different waste categories.
- c) Ensure the treatment of waste before disposal.
- d) Ensure the protection of all workers involved in the handling of waste accidents and diseases resulting from their exposure.
- e) Ensure that all waste to be transported involving a potential risk of minimal contamination to workers involved in this process, the general public and the environment.
- f) To train their employees on health, occupational safety and environment.
- g) Ensure that the disposal of waste within and outside the production site has not negative impact on the environment or health and safety.
- h) Undertake a comprehensive recording an annual nature of the sources, quantities and types of waste handled, transported, treated, recovered or disposed of and keep it during the five years following their registration.

CHAPTER III

HAZARDOUS WASTE MANAGEMENT

Article 16

Specific obligations of entities that handle hazardous wastes.

In addition to the general obligations contained in Article 9 of this Regulation is a specific obligation of entities handling and generating hazardous waste, the identification of the framework for controlling such waste.

3.3.4 National law, as described above, was to be applied under the EIB finance contract at stake.

4. THE EIB-CM ASSESSMENT

4.1 Internal review

4.1.1 After having reviewed the complaint received the EIB-CM held consultation meetings with the competent EIB services with a view to gathering all pertinent information on the complaint. The EIB competent services have expressed their willingness to co-operate with the EIB-CM in order to find a solution for the complaint.

4.2 Further action of the EIB-CM

4.2.1 In order to (i) better understand the complainant's allegations, the positions of the other parties involved and the situation on the ground, and (ii) determine if further work was necessary and/or possible from the EIB side (investigation, compliance review or mediation between the parties), the EIB-CM conducted on-site visits.

4.2.2 The EIB-CM visited Mozambique on 9 September 2010 with the aim of gathering all the facts needed to assess the complainants concerns and attempt to solve the problems associated with the unsecured asbestos. The EIB-CM also met the national environmental engineers and the complainant's legal counsels, performed a site visit and gathered evidence of the asbestos contamination.

4.2.3. The Complainant informed the EIB-CM of all environmental issues and provided the EIB-CM with all the relevant documentation needed to conduct a property inquiry, such as documents and maps of the area where the asbestos could be seen, as detailed below:

Table 1: Assessment of the relevant documentation

1. Report prepared by the Consulting Occupational Hygienist CC. (COH) dated 24 November 2008 on Potential exposure of employees and Public to Airborne Asbestos Fibers
The report stated that results of samples taken on the site indicated the presence of friable asbestos which were potentially polluting the environment and putting the workers and residents' health at risk. Tests indicated that this friable asbestos may potentially increase the risk of personal exposure and if the area is utilised and the waste area is disturbed during any further construction or excavations this risk of exposure and pollution will be increased. The report recommended that the polluter is held responsible to clean up the waste area and rid it of any remains of asbestos or potentially contaminated soil.
2. Micoa Audit report dated 27 July 2009 concluded that the existence of asbestos fibers, uncovered and exposed to the air, presented a risk of contamination for the public health and had a negative impact on the environment. Micoa asked comply with national legislation and to clean up the site.
3. Correspondences of Micoa, and in particular, letter dated 28 July 2010 establishing that the production of sheets, among other products, gave rise to dangerous residues, specifically asbestos fibers, which, owing to their nature, should be dealt with appropriately, which had not happened to that date. The asbestos fibers were deposited, uncovered and exposed to the air, constituting a danger to the health of the local inhabitants. The letter recommended to make efforts to seal off the site and take measures to ensure the people affected do not continue to be exposed to such residues.
4. The document signed at the time sold its shares to , and thus became the new owner of the property attests acceptance of responsibility, in particular §4: *"Pursuant to earlier agreements, the promisor-seller accepts responsibility for implementing the legal provisions in force at present or in the future governing asbestos decontamination at the plants ¹, and all and any liability relating to any effect of any asbestos remaining in the said locality shall attach to the promisor-seller. For that purpose, and as proof of the express wishes of the promisor-seller,*

¹ The Maputo site

the latter shall deploy all efforts in order to implement the Environmental Decontamination Plan set out in the report drawn up by the competent body and duly certified, which is annexed to the present contract."

5. General Agreement relating to the signing of the Contrato Promesa de Compra e Venda for the Maputo site, which was signed on 11 June 2004. This document was signed by [redacted] and constitutes an integral part of the above-mentioned contract. In particular, § 5 stipulated that *"it is understood that [redacted] have applied for funding from European Investment Bank to clean the factory of asbestos and once this funding is issued [redacted] will take responsibility to clean this same premise."*

4.2.4 The assessment of the documentation was followed by regular telephone conferences with the complainant and visits during which the complainant informed the EIB-CM of a Court injunction against to clean up the asbestos. The EIB-CM has supported the complainant with relevant information and/or documentation. Contact was also maintained between the legal advisor employed by the Bank in Mozambique, who followed up the developments of the situation, and the legal counsel of the complainant.

4.2.5 On the basis of the above, the EIB-CM conducted a detailed review of all relevant documentation, policies and procedures as well as the project documentation to verify whether the EIB's actions were in line with the EIB Group's policies.

5. FINDINGS AND CONCLUSIONS

5.1 The inquiry of the EIB-CM highlighted a complex web of information relating to the negative environmental impacts generated by the asbestos contamination of the Maputo site and the consequent alleged non-fulfillment by the Borrower of its legal obligations. However, it must be noted that:

- The Maputo site was not part of the Ecocimento Fiber Cement Project financed by the Bank, therefore no direct contractual obligations exist between the Borrower and the Bank;
- The Borrower went bankrupt and the Project had been cancelled, and almost fully repaid, leaving the Bank with limited leverage on the Borrower to bring the Maputo site to compliance.

5.2 Project related information in the EIB Web-site

5.2.1. The unusual nature of the complaint was inter alia due to the fact that at the time of receipt of the complaint (i.e. almost four years after the project approval) the EIB's Web-site still stated that the Ecocimento Fiber Cement Project included both, Maputo and Dondo site. Indeed, the final Project approved and financed by the EIB only included one site – Dondo.

5.2.2 This led the complainant to believe that the EIB financing also covered the Maputo site. Indeed, it appears that [redacted] had used such information – that the EIB financed project included the Maputo site - to mislead Construa regarding the effective asbestos decontamination of the Maputo site.

5.2.3 It appears that by error an initial project description (including the Maputo site) was incidentally left in the EIB's Web-site. Immediately after the complaint, the Bank has corrected in its Web-site the information regarding the project at stake.

5.3 Borrower obligations under the Finance contract

5.3.1 On the basis of these observations and taking into account the considerations of the present report the EIB-CM took note of the Borrower's obligations, where possible, as per the Finance contract: So long as the Loan is outstanding, the Borrower undertakes to implement and operate the Project in conformity with Environmental Laws (laws and regulations of Mozambique, applicable to the Project) and best international practice in respect of protection of the Environment.

EIB Complaints Mechanism

5.3.2 However, the relation between the Bank and the Borrower has become very difficult and communication hazardous. In this context, the attempts of the EIB-CM, with support of the Bank's relevant services, to discuss the issues raised by the complainant and the decontamination of the Maputo site have remained without result.

5.4 Allegations on the negative environmental impact

5.4.1 With regard to the complainant's allegation on the EIB's failure to ensure compliance with the environmental legislation and the loan conditions, on the basis of the documentation provided by the complainant (i.e. contact between [redacted] and [redacted] for the selling of the Maputo site), it was understood that [redacted] had initially applied for funding from the EIB to clean and reconvert its factories of asbestos and that it was its responsibility to clean these same premises.

5.4.2 On the basis of the relevant documentation, it appeared clear that the attested presence of friable asbestos in the Maputo site was polluting the environment and putting public member's health at risk. On this issue, the EIB-CM is aware of a Court Injunction against [redacted] to clean up the site.

5.4.3 However, such negative impacts generated by the asbestos contamination of the Maputo site, bought by [redacted], are not within the area of the Bank's responsibility as that component of the initial Project was not part of the project the Bank provided finance for according to the Project Description in the Finance Contract.

5.4.4 Such non-liability / non-responsibility by the EIB regarding the environmental situation in the Maputo site has been fully recognized by the complainant and his lawyers.

5.5 Allegations on maladministration from the Bank

5.5.1 With regard to the due diligence of the EIB operational services regarding this project, the EIB-CM notes that:

- The Bank has incidentally left an outdated project description in its Web-site, which has been used by the Borrower to mislead the complainant.
- the Bank acted in compliance with its policies and related dispositions of the Finance Contract, in particular, regarding the Project monitoring and implementation – with the Dondo site only - and regarding the respective reports due to the Bank.

5.6 Concluding remarks

5.6.1 The EIB-CM would like to underline the full cooperation of all parties involved and the effective assistance in the conduct of its actions.

5.6.2. The EIB-CM has helped the complainant, clarifying the situation, providing relevant information and documentation and seeking ways for the Bank to lead [redacted] to decontaminate the Maputo site.

5.6.3 In view of the findings above, it is clear that the EIB-CM cannot help the complainant further and therefore proceeds with filling of the complaint, with no further recommendations.

5.6.4 Moreover, the EIB-CM takes note of the fact that, after obtaining the injunction against [redacted] the complainant pursued the matter by lodging a further recourse with the national judicature.

F. Alcarpe
Head of Division
Complaints Mechanism
14 December 2012

E. de Kruijff
Senior Complaints Officer
14 December 2012