



**European Investment Bank**

**Complaints Mechanism**

## **CONCLUSIONS REPORT**

**Complaint SG/G/2010/03**

**Steel product and processing R&D Facility Project**

*16 November 2011*

External Distribution

Complainants:

Bankwatch Network

on behalf of ClientEarth and

on behalf of CEE

Internal Distribution

Vice President S. Brooks

Secretary General, Inspector General

EIB services concerned

# CONCLUSIONS REPORT

## 1. Complaint

**Complainants:** [redacted] on behalf of ClientEarth and [redacted] on behalf of CEE Bankwatch Network

**Date received:** 8 September 2010

**Subject:** Compliance of the decision to sign the loan for the Steel Product and processing R&D Facility prior to the completion of an inquiry of the EIB Complaints Mechanism into alleged maladministration relating to the project.

1.1 On 8 September 2010, [redacted] on behalf of CEE Bankwatch Network forwarded to the complaints inbox a complaint which had been lodged with the EIB Complaints Office<sup>1</sup> on 16 August 2010 together with [redacted] of ClientEarth (hereinafter the complainants) and which had not reached the complaints inbox at the time of its first submission. In essence, the complaint concerned the alleged maladministration committed by the EIB when deciding to sign the "Steel product and processing R&D Facility" loan prior to the issue of the Conclusions Report of the EIB CM on a previous complaint (hereinafter SG/G/10/01) concerning the compliance of the contested lending operation with the Treaty on the Functioning of the EU (TFEU) as well as with the EIB Statute. In their message, the complainants qualified the new complaint as additional and considered that it should have been dealt together with (and within the same deadline of) SG/G/10/01<sup>2</sup>.

1.2 The complainants took the view that the decision of the Management Committee [sic] to sign the contested lending operation on 15 July 2010, i.e. before the complainants were provided with a reply to their complaint in accordance with the EIB Complaints Mechanism Principles Terms of Reference and Rules of Procedure (EIB CMPTR), would constitute an instance of maladministration for the purposes of article 1.2 of the Principles of the CMPTR<sup>3</sup> and would have resulted in additional breaches of the latter, thereby undermining the role of the EIB CM as a compliance-focused mechanism and its efficacy in preventing maladministration. A detailed description of the alleged breaches of the CMPTR is provided in §2 of this Report.

1.3 In addition, by arguing that the very aim of the contested loan is to improve the R&D programme of the Borrower to make its production methods more respectful of the environment<sup>4</sup>, the complainants considered that the purpose of the loan would make the decision to sign the loan subject to the Aarhus Convention on Access to Information, Public Participation in decision-making and Access to Justice in environmental matters (hereinafter the Aarhus Convention). As a result, the complainants took the view that, by signing the contested loan before the issuance of the Conclusions Report, the EIB would have infringed the Aarhus Convention insofar as the EIB Complaints Mechanism would constitute the administrative procedure allowing the public to challenge acts and omissions of the EIB for the purposes of

<sup>1</sup> Since 1st September 2010, the EIB Complaints Office has been replaced by the EIB Complaints Mechanism Division within the Inspectorate General of the EIB. Accordingly, whenever possible, any reference to the Complaints Office in the complaint has been replaced in this Report with the acronym of the EIB Complaints Mechanism Division (EIB CM).

<sup>2</sup> A brief overview of case SG/G/10/01 with a special focus on the issues relating to the present complaint is provided in §5 of this Report.

<sup>3</sup> The complainants argue that this conduct would configure a failure to act in accordance with the CMPTR, failure to respect the principles of good administration, abuse of power and a failure to reply by not giving the Complaints Office the chance to carry out its function.

<sup>4</sup> In their complaint, the complainants refer to the letter of 27 October 2009 addressed to CEE Bankwatch and Global Action on ArcelorMittal Coalition.

Art. 9.3 of the Aarhus Convention. In this context, the decision to sign the loan before the completion of the inquiry prevented the Complaints Mechanism from providing adequate, effective, fair and timely remedies for the purposes of Art.9.4 of the Aarhus Convention.

1.4 On 22 September 2010, the EIB acknowledged receipt of the complaint and informed the complainants that their letter – insofar as it raised concerns which had not been identified in the previous complaint – would have been dealt with as a new complaint and that, accordingly, the timeframe established by article 10.2 of the EIB Complaints Mechanism would apply to the new procedure. On 19 and 23 November 2010, the complainants were informed of the fact that the EIB CM was still carrying out a review of their case as well as the date by which they may have expected a formal reply from the EIB. On 14 April 2011, the EIB CM informed the complainant of the fact that it was not in a position to provide them with its Conclusions Report by the expected date, apologised for the delay and assured them that it would endeavour to issue the formal reply within the shortest delay.

## 2. The alleged breaches of the CMPTR

2.1 Together with the main allegation referred to in §1.2 of the Report, in their letter the complainants considered that the decision to proceed with the signature of the contested loan whilst an inquiry of the EIB Complaints Mechanism was pending had breached the following provisions of the EIB CMPTR:

- Art. 1.2 – Title I “Background Information”
- Art. 2.4 – Title II “Principles”
- Art. 3.1 and art. 3.2 – Title II “Principles”
- Art. 3.1 – Title III “Terms of Reference”

2.2 According to the complainants, such decision prevented the Complaints Mechanism from participating in the decision-making process of the EIB and from contributing to improvements to the implementation of the EIB Group’s activities in the meaning of article 1.2 of the Introduction to the CMPTR. In this regard, the complainants also argued that the “*pre-emptive resolution of disputes*” referred to by article 1.2 would necessarily imply that “*the Complaints Office should provide replies to the complaints lodged with it before any decisions of the Management Committee is taken*”.

2.3 As regards the Principles of the EIB Complaints Mechanism, the complainants also took the view that by signing the loan before the completion of the investigation into SG/G/10/01 “*the Management Committee did not allow the EIB Complaints Mechanism to be part of the institutional context of the EU*” thus also violating the provision under article 2.4 of the CMPTR. Furthermore, the complainants considered that the decision to sign the loan breached article 3.1 of the Principles of the EIB Complaints Mechanism insofar as it did not allow the EIB CM respectively:

- to assess the occurrence of maladministration;
- to evaluate and report on the compliance of the decision of the Bank to grant the contested loan with the TFEU (Treaty on the Functioning of the European Union) and the EIB Statute;
- to resolve concerns raised by the complainants through a consensual process whilst acting as problem solving or pre-emptive dispute resolution function; and
- to provide advice and recommendations to the EIB Management.

As such the complainants argued that the EIB CM was not able to ensure proper corporate responsibility and accountability of EIB Group towards all its stakeholders as stipulated by article 3.2 of the Principles of the EIB Complaints Mechanism.

2.4 Finally, the complainants argued that the EIB competent services did not comply with the requirement stipulated by article 3.1 of the Terms of Reference of the CMPTR as they did not co-operate with the CM in a way to enable it to provide a reply to the complainants before adopting their decision on the litigious matter.

### 3. Regulatory Framework

#### 3.1 The EIB Complaints Mechanism

3.1.1 Article 1.2 of Title I “Background Information” of the CMPTR describes the EIB Complaints Mechanism as a tool provided to the public with a view to “enabling alternative and pre-emptive resolution of disputes between the latter and the EIB” and assisting the EIB “for the common sake of good administration, by contributing to the identification of possible improvements to the implementation of the EIB Group’s activities”. In line with the above-mentioned provisions, article 1.4 of Title II “Principles” of the CMPTR clarifies the “alternative and pre-emptive” function of the administrative dispute resolution mechanism of the EIB by recalling that “the lodging of a complaint under the EIB Complaints Mechanism is without prejudice to the rules under which the complainant may be allowed to institute court proceedings before the Court of Justice of the EU, in accordance with and under the conditions laid down in the Treaty on the Functioning of the European Union”.

3.1.2 Article 1.2 of Title II “Principles” of the CMPTR defines maladministration as “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”. This definition, which reflects the definition of maladministration adopted by the European Ombudsman, does not limit the concept of maladministration to mere legal compliance but also allow a wider assessments of the administrative behaviour of the institution in the light of the principles of good administration contained in the European Code of Good Administrative Behaviour and – with regard to the EIB – in the Code of good administrative behaviour for the staff of the EIB in its relations with the public.

3.1.3 Article 2.4 of Title II “Principles” of the CMPTR stipulates that “the EIB Complaints Mechanism shall be part of the institutional context of the European Union”<sup>5</sup>. Art. 1.2 of Title III “Terms of Reference” of the CMPTR elaborates on this principle by establishing that “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 Office – and one external – the European Ombudsman”<sup>6</sup>. Equally, it appears appropriate to draw the attention to the fact that on 9 July 2008 the EIB and the EO signed a Memorandum of Understanding concerning information on the Bank’s policies, standards and procedures and the handling of complaints, including complaints from non-citizens and non-residents of the European Union (hereinafter, the MoU). Art 1 of the MoU recalls that the two institutions “are part of, and function within, the institutional framework of the European Union” whilst Art. 2 of the MoU identifies the points of principle on which the EO and the EIB share the same view; among those, it is worth emphasising point n.4 according to which “Before turning to the EO, complainants should have recourse to an effective internal EIB complaints procedure.” (Emphasis added)

3.1.4 With regard to the purpose of the EIB Complaints Mechanism, besides the functions stipulated by art 3.1 of the Principles of CMPTR and referred to in §2.3 of this Report, art. 3.2 stipulates that “...in order to ensure proper corporate responsibility and accountability of EIB Group towards all its stakeholders, EIB Complaints Mechanism is predominantly compliance-focussed. Over and above such compliance review and whenever applicable the EIB Complaints Office also has a remit for problem solving and/or mediation”.

3.1.5 Art. 2.2 of Title III “Terms of Reference” of the CMPTR stipulates that all Conclusions Reports are submitted to the Management Committee. This provision should be read in conjunction with art. 7.16 of Title IV “Rules of Procedure” of the CMPTR which - besides restating such procedural rule – attributes to the Management Committee the power to decide whether or not to apply the recommendations/corrective actions eventually made/requested by the Conclusions Report.

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<sup>5</sup> Article 2 of Background Information describes the institutional framework within which the EIB and its Complaints Mechanism operate; to this extent, article 2.8 clarifies that, as part of the EU institutional framework, “the EIB is subject to the jurisdiction of the Court of Justice of the European Union, while...EIB’s activities...are subject to the remit of the European Ombudsman (EO)”.

<sup>6</sup> See also article 6 of Title III “Terms of Reference” concerning the relation with European Ombudsman.

3.1.6 Finally, art. 3.1 of Title III “Terms of Reference” of the CMPTR establishes simple but crucial provisions for the correct and effective functioning of the EIB CM by stipulating that *“in carrying out its responsibilities, the EIB Complaints Office has the right to obtain access to any and all information necessary for the performance of its duties. The EIB Group’s staff has the duty to co-operate with the EIB Complaints Office promptly, fully and efficiently following the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure, especially with a view to respecting the deadlines as well as to adhering to the standards and policies of the EIB Group.”*<sup>7</sup>

### 3.2 The Aarhus Convention

3.2.1 Article 9.3 of the Aarhus Convention stipulates that *“In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law<sup>8</sup>, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment”*. It is of paramount importance to draw the attention to the fact that this provision provides members of the public with the right to challenge **exclusively** violations of environmental law. Although it is irrelevant whether such violation is related to the information and public participation rights guaranteed by the Convention, however in order to be entitled to exercise this right, the action/omission challenged shall not fail to concern a violation of environmental law.

3.2.2 Article 9.4 of the Aarhus Convention establishes that *“In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate<sup>9</sup> and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible”*. Whilst article 9.3 describes the particular ground for the public to trigger a review procedure in case of violation of (EU) environmental law, art. 9.4 of the Aarhus Convention does not introduce additional rights of access to environmental justice but rather establishes the minimum qualitative standards that must be met by the review procedures defined by article 9 of the Convention as well as the type of remedies that must be provided in accordance with it.

## 4. EIB Project Cycle

4.1 For each project it finances, the EIB conducts a detailed project appraisal. The overall results of the appraisal are summarised in a report to the Board of Directors. The Management Committee conducts a prior examination of this report and its various annexes covering technical, environmental, economic, financial, legal and credit risk aspects. Once the draft report is approved, it is passed on to the Board of Directors for decision. As regards the contested lending operation, the EIB Board of Directors approved it on 21 October 2009.

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<sup>7</sup> Similarly, article 2.5 of Title III « Terms of Reference » establishes that *“the EIB Complaints Office shall be heard on all issues related to its remit and can disclose its findings in accordance with the rules and standards applying to the EIB group.”*

<sup>8</sup> As suggested by the Aarhus Convention Implementation Guide, United Nations Economic Commission for Europe, 2000, <http://www.unece.org/env/pp/acig.pdf>, when referring to the European Community (and now the European Union), the scope of terms as “national legislation” or “national law” should be enlarged as to cover EU law. As a result, when dealing with EU public authorities, the text of art. 9.3 of the Aarhus Convention should be read as follows: *“besides the review procedures laid down by art. 9.1 and 9.2, the EU must ensure that, where they meet the criteria laid down in EU law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by public authorities which contravene provisions of EU law relating to the environment”*.

<sup>9</sup> *“In many countries, some type of “ombudsman” functions as an independent and impartial review body for violations of administrative law against citizens. Depending on how the ombudsman office is structured and on how it fits within the national review system, it may or may not fully meet the criteria under article 9...During the Convention’s negotiations, Denmark, Finland, Norway and Sweden made an interpretative statement about the institution of ombudsman in the context of article 9, contending that it corresponded with the requirements of the Convention in practical terms, although it did not imply a legal right to any review procedures, did not supply binding decisions, and did not provide injunctive relief. Moreover, the ombudsman does not have strict standing rules for bringing a complaint. Where a person does not achieve the intended results through the ombudsman, however, he or she may still have opportunities to seek review in the courts in some countries, in a manner consistent with the Convention.”* Aarhus Convention: An Implementation Guide, p. 127 <http://www.unece.org/env/pp/acig.pdf>

4.2 The financing decision is subject to the opinions of both the EU Member State(s) on whose territory the project will be located and the European Commission, in accordance with the provisions of article 19 of the EIB Statute, to the receipt of a formal loan application from the promoter and to the contractual finalisation of any points still unresolved when the financing decision was taken by the Board.

4.3 The finance contract incorporates all the key elements studied during appraisal and forming the basis for the Bank's decision. It includes an appended technical description and any necessary technical, economic or environmental conditions. Draft contracts are also submitted to the Credit Risk Department, which has to endorse the main financial clauses. The approval is valid for one year. Where duly warranted, however, this period may be extended. Additional information on the EIB project cycle is available at the following website: <http://www.eib.org/projects/publications/project-cycle.htm>

4.4 In this context, it appears appropriate to emphasise that – contrary to the view taken by the complainants throughout the complaint – the EIB Management Committee does not take any formal decision on the signature of the loan but rather participates to the decision-making process described in §4.1. It falls upon the EIB competent services to implement through contractual means the financing decisions taken by the Board of Directors as well as to decide as to when to materially sign the loan – in the absence of any significant modification of the loan approved by the EIB Board of Directors. Within the present inquiry, the complainants' allegations referring to an action (the decision to sign) of the EIB Management Committee have been interpreted as alluding to an omission of the EIB competent services (i.e. the failure to consult the EIB Complaints Mechanism despite the fact that the EIB competent services were informed of the inquiry carried out by the EIB CM on case SG/G/10/01).

## 5. The processing and outcome of SG/G/10/01

5.1 The present complaint challenges the EIB's decision to sign the loan agreement for the contested lending operation prior to the completion of the inquiry of the EIB Complaints Mechanism into case SG/G/10/01. The present complaint is therefore related to the processing as well as to the outcome of case SG/G/10/01 lodged on 3 March 2010 and closed by the Conclusions Report of the EIB Complaints Mechanism of 11 October 2010.

5.2 As regards the complaint that originated case SG/G/10/01, it is worth drawing the attention to the fact that in their letter of 3 March 2010 the complainants had asked the Bank to ensure that the finance contract for the contested loan would not be signed (and that no funds would be disbursed to the Borrower) until the investigation of the EIB Complaints Mechanism had been completed and to confirm in writing that their requests would be satisfied. In this regard, the complainants stressed that they would have not hesitated to bring a complaint to the European Ombudsman if they were aware that Bank would fail to take the appropriate actions to prevent disbursements, to reconsider the decision to grant the loan and to ensure an appropriate assessment of eligibility for Bank financing is incorporated into the assessment procedure applied to all projects.

5.3. As regards the processing of case SG/G/10/01, it is worth noting that the initial information provided by the complainants and the further information gathered during the internal consultation of the EIB concerned services of 30 March 2010, both assessed during the second quarter of 2010, did not provide the EIB CM with substantiated grounds justifying the *ex officio* advice to the EIB concerned services to suspend any further action with regard to the signature of the loan.<sup>10</sup> As a result, in its Conclusions Report, the EIB CM rejected the alleged breaches of the TFEU and of the EIB Statute. Moreover, the EIB CM took the view that the refusal to adopt a merely market-oriented interpretation of the unavailability of alternative financial resources

<sup>10</sup> On the contrary, it can be argued from the text of the §5.1 Findings and Conclusions of the Report for case SG/G/10/01 that the complainants were clearly informed that two of the factors leading to the extension of the deadline for reply and the issue of the Conclusions Report on 11 October 2010 were (i) the inconvenience of the annual holidays period during the summer break and (ii) the workload of the Complaints Office at the time, which did not allow the EIB CM to meet the time schedule which it would have otherwise followed.

supported the EIB in its efforts to employ its fund rationally as required by its Statute, provided that such interpretation would not lead the administrative behaviour of the EIB services towards the *de facto* abrogation of the statutory obligation under article 16 of the EIB Statute.

5.4 In addition to that, the EIB CM considered that the complainants should have been provided by the EIB competent services with the information identified in the project-related documentation and indicating an assessment of the availability of alternative sources of funding. The EIB CM further recommended that such assessments should be clearly identified as one of the steps of the appraisal in the operating manuals of the concerned operational services and documentary evidence of the assessment should be kept and a dedicated paragraph should be conceived in the Appraisal documents.

5.5 Finally, with regard to the alleged breach of article 19 of the EIB Statute, the EIB CM concluded that the EIB Management Committee complied with its statutory duty as it had informed the Board of Directors of the scarcity of financial sources for this type of investment and therefore of the necessity of the investment proposed for approval. In line with the recommendations to operational services as regards the collection of documentary evidence of the assessment of the availability of alternative sources of funding, the EIB CM advised the Management Committee to consider the possibility to include a dedicated paragraph of the proposal to the Board of Directors to the assessment carried out during the appraisal exercise as information necessary for the Board of Directors to exercise its functions under article 9 of the Statute.

## 6. Findings

### 6.1 Alleged breach of the CMPTR

6.1.1 From the analysis of the EIB CMPTR provided in §3.1, it results that the EIB Complaints Mechanism is an institutional device conceived to offer members of the public an alternative to the more costly and time-consuming recourse to judicial review. In this context, the adjective "*pre-emptive*" indicates the mission of the Mechanism to assess the concerns raised by the complainants before the matter escalates to the other actors of the institutional framework of the EU referred to in §§3.1.1 and 3.1.3 of this Report and, whenever the concerns raised are grounded, to issue recommendations aiming at pointing out the correct set of administrative actions to be taken, thus possibly preventing further escalation of the complaint and ensuring a win-win solution for the citizens and the institution. From the above considerations as well as from the observation of the provisions of the EIB CMPTR referred to in §§3.1.3 and §3.1.5, it stems that the complainants' interpretation of the "*pre-emptive nature*" of the EIB Complaints Mechanism as leading to the conclusion that the EIB CM should provide complainants with the reply to the complaint lodged before any decision of the Management Committee (or – as in this case – of the EIB competent services) is taken would be in conflict with the very policies on which the Mechanism stands.

6.1.2 The automatic suspension of the project cycle upon receipt of an admissible complaint would also undermine the operational efficiency of the EIB as well as its capacity to manage its fund rationally to the ultimate detriment of the public interest and of the objectives the EU attributes to this institution. On the other hand, the CM may recommend the suspension of the EIB project cycle when the EIB CM's assessment of the allegations provides sufficient grounds to do so. This would anyway require the combined acceptance of the above-mentioned suspension by the EIB concerned services or – in case of lack of consensus by the latter – of the EIB Management Committee in line with article 7.16 of Title IV "*Rules of Procedure*" of the CMPTR. However, the interpretation of the complainants seems to place – against the very wording of the CMPTR – the internal tier of the EIB Complaints Mechanism above the EIB governance and would run counter the nature of this first tier of the Complaints Mechanism as operationally independent but internal, and thus its recommendations are subject to the decisions taken by the EIB governing bodies.

6.1.3 On the other side, article 3.1 of the CMPTR clearly imposes on the EIB staff the duty to co-operate with the EIB Complaints Mechanism promptly, fully and efficiently with a view to adhering to the standards and



policies of the EIB Group. Such duty is instrumental to the achievement of point of principle IV of the MoU between the EIB and the EO according to which *"Before turning to the EO, complainants should have recourse to an effective internal EIB complaints procedure"* (emphasis added). The EIB CM takes note of (i) the fact that none of the EIB competent services extensively involved in the inter-services consultation from the very beginning of the inquiry into case SG/G/10/01 consulted with the EIB CM prior to the signature of the contract; (ii) the lack of formal internal procedures determining the type of internal consultation required during the handling of a complaint relating to a lending operation.

6.1.4 As regards the alleged breach of articles 3.1-3.2 of Title II "Principles" of the CMPTR, given the considerations made in §5 (with regard to the processing and the outcome of SG/G/10/01) as well as §6 (with regard to the interpretation of the EIB Complaints Mechanism's "pre-emptive" nature and the focus on compliance), it seems that - contrary to the complainants' view - the lack of consultation has not undermined the assessment of the complainants' allegations in case SG/G/10/01 nor the ultimate outcome of the inquiry carried out on this complaint by the EIB CM which - together with the present Report - shows the level of the EIB's commitment to ensure proper corporate responsibility and accountability of EIB Group.

6.1.5 As regards the alleged breach of the provisions establishing that the EIB Complaints Mechanism operates within the institutional framework of the EU, the considerations made by the complainants do not suffice to substantiate how the decision to sign the loan prior to the communication of the EIB's final reply on case SG/G/10/01 might have breached the above-mentioned provision. On the contrary, it seems that the possibility to refer a case to the external tier of the EIB Complaints Mechanism as referred to in §3.1.3 of this Report as well as threatened by the complainants in their first letter (see §5.2 of this Report) indicates the high standards of corporate responsibility and accountability ensured by the EU institutional framework when it comes to the administrative behaviour of the EIB Group.

## *6.2 Alleged breach of the Aarhus Convention*

6.2.1 §3.2.1 of this Report elaborates on the objective (type of violation) and subjective (type of actors legitimised to act) factors regulating the access of members of the public to the administrative/judicial review procedures to challenge acts and omissions by public authorities established by article 9.3 of the Aarhus Convention. Without elaborating on the standing requirements established by EU law and which should govern the access to such procedures, it suffices to stress here that the Aarhus Convention imposes that these procedures laid down by article 9.3 shall concentrate on contraventions of provisions of - in case of the EIB - EU environmental law. On the other side as explained in §3.2.2, the provision stipulated by article 9.4 of the Aarhus Convention does not stand alone but rather integrates article 9.3 (and the other indents of article 9 of the Aarhus Convention) by qualifying the minimum requirements of the administrative/judicial procedures and of the remedies provided by the latter.

6.2.2 On the basis of the above considerations and from the assessment of the information provided by the complainants, the EIB CM fails to identify which piece of EU environmental law would have been violated by the decision to sign the loan prior to the completion of the inquiry of the EIB Complaints Mechanism on case SG/G/10/01 as prescribed by article 9.3 of the Aarhus Convention. Such consideration also entails the dismissal of the alleged breach of art. 9.4 in line with the considerations made in §6.2.2. The EIB CM thus proceeds to the closing of the file.

## **7. Final conclusions on the Operating Procedures of the EIB CM**

7.1 In the present case, the lack of information by EIB services to the EIB CM, did not cause any substantial violation of EIB policies and standards as the inquiry carried out by the EIB CM did not identify an instance of maladministration by the EIB justifying the interruption or the suspension of the project cycle. However, it is crucial that the duty laid down by article 3.1 of Title III "Terms of Reference" of the CMPTR is fully

acknowledged and implemented by the staff of the EIB Group for the EIB to preserve the common grounds on which the MoU between the EIB and the EO stands.

7.2 Indeed, the tension between the preventive function exercised by the internal tier of the EIB Complaints Mechanism on one hand (its pre-emptive nature as well as the problem-solving and mediation function that it is sometimes called to exercise) and – on the other hand - its focus on compliance (i.e. on the assessment whether administrative action which has already been performed was compliant with EIB policies and standards) is governed by the overall responsibility of the EIB governing bodies which ultimately decide upon the adoption of a specific recommendation/advice, such as suspending the project cycle for a lending operation subject to compliance review.

7.3 To that extent, the complainants should be informed that, besides the internal awareness sessions to which the EIB CM devotes time to facilitate the implementation of CMPTR by the EIB staff, the EIB – in cooperation with EO – is developing its CM Operating Procedures aiming at deploying the general and overarching provisions of the CMPTR. Such procedures will clarify and formalize what happens in terms of the project cycle while a project related complaint is being investigated.

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