

COMPLAINTS MECHANISM

SG/G/2021/02

ECP AFRICA FUND II (KENYA) 2

CONCLUSIONS REPORT

7 July 2022



ECP Africa Fund II (Kenya) 2 Conclusions Report

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The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 12 May 2022. The conclusions are addressed solely to the EIB.

EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism is a tool enabling the resolution of disputes in case any member of the public feels that the European Investment Bank (EIB) might have done something wrong, i.e. if it has committed an act of maladministration. The Complaints Mechanism is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

Maladministration means poor or failed administration. It occurs when the EIB fails to act in accordance with a rule or principle that is binding upon it, including its own policies, standards and procedures. The concept of maladministration includes failure by the EIB to comply with human rights, with applicable law, or with the principles of good administration. Maladministration may relate to the EIB's Group decisions, actions or omissions. This may include the environmental or social impacts of the EIB's projects and operations.

One of the main objectives of the EIB Group Complaints Mechanism is to ensure the right to be heard and the right to complain. For more information on the EIB Group Complaints Mechanism, please visit: <https://www.eib.org/en/about/accountability/complaints/index.htm>.

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GLOSSARY

ECP	Emerging Capital Partners
EIB	European Investment Bank
EIB-CM	EIB Group Complaints Mechanism
LCIA	London Court of International Arbitration
OLAF	European Anti-Fraud Office
SFO	Serious Fraud Office

EXECUTIVE SUMMARY

This report concerns a complaint regarding Spencon, a former East African engineering and construction company focusing on public works and infrastructure projects. In 2006, the European Investment Bank (EIB) entered into a subscription commitment to invest alongside other investors in the Emerging Capital Partners (ECP) Africa Fund II, a protected cell company, formed and existing under the laws of Mauritius (hereinafter the “Fund”). The Fund was a private equity fund seeking to support private African companies. It was managed by ECP Manager LP, a limited partnership formed and existing under the laws of the US state of Delaware. The EIB made the investment on behalf of the European Development Fund. The Fund made an investment in Spencon in 2006 and 2007. The Fund fully terminated its operations in December 2021.

- In September 2021, the EIB Group Complaints Mechanism (EIB-CM) received a complaint with allegations regarding the work performed by the EIB service handling investigation work.

In line with the EIB Anti-Fraud Policy, applicable at the time of the events, the EIB service handling investigation work enjoyed complete independence in the exercise of its responsibilities. Without prejudice to the powers conferred on the European Anti-Fraud Office (OLAF), the head of the EIB service handling fraud investigation work has the full authority to open, pursue, close and report on any investigation within its remit without prior notice to, the consent of, or interference from any other person or entity.

The EIB-CM reviews the EIB’s activities to determine whether maladministration that is attributable to the EIB has taken place. To this end, the EIB-CM reviews whether the EIB services have provided a consistent and reasonable explanation of their position, and whether it is based on complete, accurate and reliable information identifiable at the time. Notwithstanding the above, it is important to highlight that maladministration reviews by the EIB-CM are not intended to substitute the services’ professional judgement.

Without prejudice to the services’ professional judgement on prohibited conduct and relevant evidence, the EIB-CM assessed the allegations in the context of potential EIB maladministration, including its potential non-compliance with its applicable regulatory framework (i.e. the EIB Anti-Fraud Policy and the EIB Group Investigation Procedures). Within the context of this complaint and the specific nature of the allegations, the EIB-CM reviewed the administrative process and steps followed to handle the fraud investigation (from the opening of the case to closure), the communications exchanged with the relevant stakeholders, the replies and outcomes provided to the complainants against their coherence, quality and clarity.

Taking into account the powers conferred on the EIB service handling investigation work, the reviewed evidence leads the EIB-CM to conclude the following:

- A. The EIB service handling investigation work did not respond to two emails sent by the complainants enquiring about the status of their case as required.
- B. In its communication with the complainants, the EIB service handling investigation work advised that, although they had interviewed a number of former Spencon staff and reviewed a large number of documents, they had not interviewed Spencon’s management representatives or formally exercised rights of access to Spencon documents. The EIB-CM considers that the complainants were not provided with sufficient information to understand the decision of the EIB service handling investigation not to interview Spencon’s management representatives or to formally exercise rights of access to Spencon documents.
- C. (i) The EIB service handling investigation work concluded that the available evidence would suggest that Spencon’s management representatives had engaged in illicit activities and possible

embezzlement of Spencon funds; (ii) the EIB service handling investigation work concluded that ECP had, more likely than not, been informed of the situation at Spencon; (iii) the EIB service handling investigation work acknowledged that the administrators had reported the questionable activities of Spencon; (iv) the loss related to Spencon had had a small negative impact on the financial performance of the Fund. The EIB service handling investigation work advised the complainants that it did not have sufficient evidence to qualify any of the allegations received as fraud or any other prohibited conduct and as a result proceeded to close the case. The EIB-CM considers that the complainants were not provided with sufficient information to understand the decision of the EIB service handling investigation work to close the case.

Allegation	Outcomes	Suggestion for improvement
<p>Work performed by the EIB service handling investigation work</p>	<p>Recommendation</p> <p>In future cases, the EIB service handling investigation work should ensure that it acknowledges receipt of all letters and requests and/or responds as soon as possible.</p> <p>In this specific case, the EIB service handling investigation work should provide further explanation to the complainants on the closure of the case.</p>	<p>As part of its monitoring of the case concerning Spencon, the EIB service handling investigation work is encouraged to follow up with the relevant authorities on developments related to Spencon.</p>

1 BACKGROUND

1.1 Project

- 1.1.1 In 2006, the European Investment Bank (EIB) entered into a subscription commitment to invest alongside other investors in the Emerging Capital Partners (ECP) Africa Fund II, a protected cell company, formed and existing under the laws of Mauritius (hereinafter the “Fund”)¹. It was a private equity fund seeking to support private African companies², subject to the provisions of a shareholder agreement as amended from time to time (hereinafter the “Shareholders’ Agreement”). The Fund was managed by ECP Manager LP, a limited partnership formed and existing under the laws of the US state of Delaware (hereinafter the “Manager”)³. The EIB mandate was under the Cotonou Agreement⁴. The EIB made the investment on behalf of the European Development Fund⁵. The EIB acquired over time an approximately 11% stake in the Fund by investing \$48 million in the \$428 million valued Fund by honouring its pro rata share of drawdowns made to all investors on an as needed basis for the purposes of making investments and paying management fees and expenses. The Fund terminated its operations in December 2021.
- 1.1.2 The Fund invested in a number of companies. One of these companies, Spencon⁶, was an East African engineering and construction company focusing on public works and infrastructure projects. Spencon had operations in Kenya, Uganda, Zambia, Tanzania and Mozambique.

Text Box 1 – ECP Africa investment in Spencon⁷

In 2006 and 2007, ECP Africa, one of ECP’s investment vehicles, provided a loan⁸ of \$15 million to Spencon.

In 2009, ECP Africa converted the loan into 38% of shares of Spencon (3/8 representation on the Spencon Board of Directors) and concluded the following three agreements with the other shareholders:

- Put option agreement;
- Shareholders’ agreement;
- Share pledge agreement.

These three agreements:

- Provided ECP with the right to require Spencon’s original shareholders to buy back all of ECP Africa’s shares in Spencon under certain conditions;
- Gave ECP Africa 50% control of Spencon’s board;
- Required Spencon’s original shareholders to pledge their remaining shares to secure their obligations to buy back ECP Africa’s shares under the put option agreement.

In 2011 and 2012, following a series of setbacks between the original shareholders and ECP Africa regarding the business and management of the company, a number of original shareholders challenged the validity of the three agreements. In 2013, ECP Africa submitted

¹ Formally incorporated as Emerging Markets Partnership (EMP), the Fund changed its name to ECP in February 2008.

² More information is available at [ECP Africa Fund II \(eib.org\)](https://eib.org), accessed on 17 January 2022.

³ In this report, the reference to the Fund includes reference to the ECP Africa Fund II, ECP and ECP Africa.

⁴ The Cotonou Agreement is the backbone of the partnership between the European Union, EU countries and 79 African, Caribbean and Pacific countries. For more information, see [EUR-Lex - r12101 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/lexuri/cs/l/uri.do?uri=CELEX:31999L0001:EN:HTML), accessed on 7 April 2022.

⁵ [EU and EDF annual accounts | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/eu-edf-annual-accounts), accessed on 9 February 2022.

⁶ Reference to Spencon in this report includes the Spencon Group.

⁷ July 2017 United States District Court for the District of Columbia, Case No. 16-mc-2581 (RC/GMH), available at: [show_public_doc \(uscourts.gov\)](https://www.uscourts.gov/show-public-doc), accessed on 10 January 2022.

⁸ Purchased two promissory notes.

the case for arbitration with the London Court of International Arbitration ("LCIA"), the governing tribunal pursuant to the put option agreement.

In 2014, the LCIA determined that the put option agreement was valid and binding. As a result⁹, ECP Africa accumulated approximately 98% of Spencon's shares (8/9 representation on the Spencon board).

More information on the ECP's activities in Spencon is available in section 4.1.

- 1.1.3 In 2011, the Fund informed the investors, including the EIB, that the Board noted that Spencon was experiencing cash flow problems. In 2012, Spencon continued to perform poorly and the Fund's relationship with the Spencon's original shareholders became strained. In 2013, Spencon did not generate a net profit. The company Board did not meet for over a year. Also, Spencon's 2012 and 2013 accounts were not audited, which prevented the company from finalising contracts.
- 1.1.4 The EIB was informed that once the Fund took full control of the company (see Text Box 1), the Fund tried to improve financial conditions of the company. For example, the Fund appointed a new management team¹⁰. Spencon engaged in negotiating a way forward with its creditors and restructuring its balance sheet. The Spencon's Board approved a 12 point restructuring plan. The Fund reported that Spencon attempted to audit its 2012 and 2013 accounts. In 2015, Spencon won a contract for a project worth USD 9.8m in Tanzania and was expecting to win new contracts up to USD 100m by the end of the year. In 2016, the Fund and Spencon signed a term sheet with a new investor that agreed to inject USD 13.5m into Spencon.
- 1.1.5 However, in 2016, the Fund informed the investors, including the EIB, that the efforts did not produce positive results. For example, 2012 and 2013 audits were not completed due to lack of cash to pay the auditors. This prevented Spencon from finalising contracts with its clients. Also, there were a number of direct and indirect litigations. By September 2016, Spencon began discussions to appoint administrators.
- 1.1.6 In November 2016, Spencon directors appointed two licensed insolvency practitioners as Spencon administrators. In line with the 2015 Insolvency Act, the administrators were tasked with restructuring or liquidating the business. From their appointment in November 2016, the decision making authority was transferred from the Spencon Board to the administrators. The Fund provided support to the administrators in pursuit of various claims. The administrators were providing the Fund with progress reports. However, the Fund was not sending the administrators' reports regularly to the investors, including the EIB. The administrators collected company's assets.
- 1.1.7 The Fund informed the investors, including the EIB, that in 2018 the administrators convened a creditors meeting which decided to put the company into liquidation with the administrators being appointed as the liquidators.
- 1.1.8 Throughout this time, the Fund reported on the number of Spencon's employees. In 2007, a year after the Fund's investment, Spencon numbered 1300 employees. In 2014, the year that the Fund took full control of the company (see Text Box 1), the number of employees decreased to 603. By November 2016, at the time of appointment of administrators (see § 1.1.6), the company had 106 employees. At that time, the majority of the employees was not actively working as there were no ongoing projects.

⁹ The ECP became a larger shareholder and took possession of the pledged shares via a put agreement (normally a way to sell), as the initial shareholders defaulted on the put obligation.

¹⁰ Chief Executive Officer, Chief Operating Officer, Head of Human Resources, Chief Legal Officer, Head of Treasury, Chief Financial Officer and Chief Restructuring Officers.

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- 1.1.9 The employees were creditors in the administration process in relation to their dues (e.g. salaries). In December 2016, newspapers' ads invited former employees to submit their claims against the company to administrators until 10 January 2017¹¹. The administrators explained to the remaining employees the administration process. In 2017, because the company was not generating income, the administrators terminated the employment of around 100 remaining employees, apart from a few individuals who were to assist the administrators with their duties. The employees were given one month notices of termination and statements of their dues.
- 1.1.10 The employees' representatives participated in the meetings of creditors and in the Creditors' Committee¹². The administrators paid partially¹³ the employees' dues from proceeds out of the sale of company's assets¹⁴. However, not enough funds remained to fully pay the creditors¹⁵. This may be partially due to certain issues. For example, the administrators documented that some Spencon assets were sold by a third party, proceeds of which¹⁶ went into a third party's own bank account. The administrators notified the relevant authorities of these issues, which in turn followed up with an investigation. The Fund and various commercial lenders declined to provide additional funding to enable the administrators to fully pay the employees' dues. It should be noted that the Manager owed a fiduciary duty to the investors in the Fund to achieve the best possible financial returns. Despite this the Fund incurred a loss on the Spencon investment¹⁷. In law the Fund and the commercial lenders did not have an obligation to pay the employees' dues.
- 1.1.11 In 2017, having been informed of the alleged mismanagement of Spencon, the EIB requested more information from ECP and added the overall investment in the Fund to its enhanced monitoring process. In December 2020, the EIB considered the overall investment in the Fund as unsatisfactory as it resulted in losses¹⁸.

1.2 Complaint

- 1.2.1 On 20 September 2021, the EIB Group Complaints Mechanism Division (EIB-CM) received a complaint from the complainants.
- 1.2.2 The complainants made one allegation as presented in Table 1 below.

Table 1 - Summary of allegations

Allegation	Description of the Allegation
Work performed by the EIB service handling investigation work	The complainants are dissatisfied with the work carried out by the EIB service handling investigation work ¹⁹ in handling the complaint concerning alleged prohibited conduct of the ECP Africa Fund II regarding Spencon.

- 1.2.3 The complainants request the EIB to investigate properly the complaint concerning alleged prohibited conduct of the ECP Africa Fund II regarding Spencon.

¹¹ E.g. 23 December 2016 edition of The Citizen newspaper in Tanzania; [Sh871m KCB loan defaulter Spencon put under receivership - Business Daily \(businessdailyafrica.com\)](https://www.businessdailyafrica.com/kenya/871m-kcb-loan-defaulter-spencon-put-under-receivership), accessed on 11 January 2022.

¹² The objective of the Committee was to regularly follow up on the administration process.

¹³ The Administrators have paid USD 133 637 to employees out of the proceeds of assets realizations. The outstanding dues to employees are circa USD 460 703 net and all other applicable statutory deductions.

¹⁴ [Construction company Spencon now retires 110 Kenyan workers - Business Daily \(businessdailyafrica.com\)](https://www.businessdailyafrica.com/kenya/construction-company-spencon-now-retires-110-kenyan-workers), accessed on 11 January 2022.

¹⁵ The estimated deficit as regards Spencon creditors was USD 12.99m.

¹⁶ Allegedly USD 6m worth of equipment was sold for USD 1.5m.

¹⁷ ECP Africa Fund loss on the investment amounted to USD 11.75m.

¹⁸ As of February 2022, EIB DPI stands at 0.91x.

¹⁹ Please note that the EIB service handling investigation work is the EIB Fraud Investigation Division (IG/IN).

2 WORK PERFORMED

- 2.1.1 The EIB-CM had a number of separate meetings with the EIB service handling investigation work²⁰. The EIB-CM requested and received a number of documents and information from the EIB services. The EIB-CM also reviewed other available information as well as media articles.
- 2.1.2 The EIB-CM deemed that it is able to form an independent and reasoned opinion on the concerns raised by the complainants. Therefore, EIB-CM proceeded directly with a compliance review.
- 2.1.3 On the basis of the collected and analysed information, the EIB-CM prepared this conclusions report.

Text Box 2 – Scope of the EIB-CM work

In line with the EIB Anti-Fraud Policy, applicable at the time of the events, the EIB service handling investigation work enjoyed complete independence in the exercise of its responsibilities. Without prejudice to the powers conferred on the European Anti-Fraud Office (OLAF), the head of the EIB service handling fraud investigation work has the full authority to open, pursue, close and report on any investigation within its remit without prior notice to, the consent of, or interference from any other person or entity.

The EIB-CM reviews the EIB's activities to determine whether maladministration that is attributable to the EIB has taken place. To this end, the EIB-CM reviews whether the EIB services have provided a consistent and reasonable explanation of their position, and whether it is based on complete, accurate and reliable information identifiable at the time. Notwithstanding the above, it is important to highlight that maladministration reviews by the EIB-CM are not intended to substitute the services' professional judgement.

Without prejudice to the services' professional judgement on prohibited conduct and relevant evidence, the EIB-CM assessed the allegations in the context of potential EIB maladministration, including its potential non-compliance with its applicable regulatory framework (i.e. the EIB Anti-Fraud Policy and the EIB Group Investigation Procedures). Within the context of this complaint and the specific nature of the allegations, the EIB-CM reviewed the administrative process and steps followed to handle the fraud investigation (from the opening of the case to closure), the communications exchanged with the relevant stakeholders, the replies and outcomes provided to the complainants against their coherence, quality and clarity.

3 REGULATORY FRAMEWORK

3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy²¹ tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB²². Maladministration means poor or failed administration²³.
- 3.1.2 The policy specifies that the EIB-CM reviews the EIB's activities to determine whether maladministration attributed to the EIB has taken place²⁴.

²⁰ The meetings/calls took place on 8 October 2020, 27 January 2022, 21 February 2022, 3 March 2022 and 6 April 2022.

²¹ Available at: https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf.

²² § 5.1.3 of the EIB Group Complaints Mechanism Policy.

²³ § 3.1 of the EIB Group Complaints Mechanism Policy.

²⁴ § 5.3.3 of the EIB Group Complaints Mechanism Policy.

3.2 Responsibilities of the EIB service handling investigation work

- 3.2.1 The work of the EIB service handling investigation work for this case is regulated by the 2013 EIB Anti-Fraud Policy²⁵ and the 2013 EIB Group Investigation Procedures²⁶.
- 3.2.2 The policy applies to all EIB activities, including projects financed by the EIB using third party resources²⁷. It applies to relevant persons or entities involved in EIB-financed activities (such as borrowers, promoters and consultants)²⁸ and requires the EIB service handling investigation work to investigate allegations of prohibited conduct²⁹.
- 3.2.3 Prohibited conduct includes corrupt³⁰ and fraudulent practices³¹. The policy requires any prohibited conduct to be investigated thoroughly and fairly, wrongdoers to be sanctioned and appropriate legal steps to be taken to recover misapplied funds³².
- 3.2.4 The procedures define the way the EIB service handling investigation work conducts an investigation, more particularly the receipt and registration of an allegation, and the conduct and findings of an investigation. In line with the procedures, the EIB service handling investigation work should, to the extent feasible, contact the person reporting allegations of prohibited conduct to acknowledge receipt of the allegation and to obtain as much information concerning the allegation as possible³³. As part of its work, the EIB service handling investigation work may review documentation, conduct on-site inspections, interview witnesses and subjects of investigation as well as consult authorities conducting investigations³⁴. The findings of an investigation must be based on the most reliable factual information available, and reasonable inferences and conclusions drawn from established facts³⁵.
- 3.2.5 In this specific case, in line with the contractual requirements, the Fund legally undertook to use its best efforts to ensure that representatives of the EIB were able to visit and/or audit the Fund and portfolio companies, including Spenco. The visit and audit rights were in force until December 2017, when the Fund exited Spenco (see § 4.1.3).
- 3.2.6 In line with the procedures, if the EIB service handling investigation work has grounds to suspect that there is prohibited conduct in an EIB-financed-project or activity, it will notify OLAF and provide it with the necessary information³⁶. If OLAF decides, for any reason, not to open an investigation, the EIB service handling investigation work can nevertheless decide to continue the investigation³⁷.
- 3.2.7 Without prejudice to the powers conferred on OLAF, the head of the EIB service handling investigation work has the full authority to open, pursue, close and report on any investigation within its remit without prior notice to, the consent of, or interference from any other person or entity³⁸.

²⁵ Available at: [Anti-Fraud Policy \(eib.org\)](https://eib.org/anti-fraud-policy), accessed on 26 January 2022.

²⁶ Available at: [Investigation Procedures \(eib.org\)](https://eib.org/investigation-procedures), accessed on 26 January 2022.

²⁷ § 9 of the 2013 EIB Anti-Fraud Policy.

²⁸ § 9(b) of the 2013 EIB Anti-Fraud Policy.

²⁹ § 8(ii) of the 2013 EIB Anti-Fraud Policy.

³⁰ “the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party” (§ 10(a) of the 2013 EIB Anti-Fraud Policy).

³¹ “any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation” (- § 10(b) of the 2013 EIB Anti-Fraud Policy).

³² § 8(i) of the 2013 EIB Anti-Fraud Policy.

³³ § 11 of the 2013 EIB Group Investigation Procedures.

³⁴ § 15 of the 2013 EIB Group Investigation Procedures.

³⁵ § 26(a) of the 2013 EIB Group Investigation Procedures.

³⁶ § 10 of the 2013 EIB Group Investigation Procedures.

³⁷ § 10(i) of the 2013 EIB Group Investigation Procedures.

³⁸ § 47 of the 2013 EIB Anti-Fraud Policy.

- 3.2.8 If an investigation into suspected prohibited conduct is launched by a national authority, the EIB service handling investigation work is required to, in consultation with the services, liaise with and provide appropriate assistance to the national authorities³⁹, if requested. In the event of an investigation by judicial authorities, law enforcement, administrative, legal or tax authorities, the EIB service handling investigation work may decide to await the results of such an investigation and request a copy of their findings before taking further action⁴⁰. The EIB service handling investigation work may reopen a case that has been closed if credible new information is received or if it is warranted by other circumstances⁴¹.
- 3.2.9 The EIB service handling investigation work cooperates with many authorities. For example, the 2010 EIB and Serious Fraud Office (SFO)⁴² Memorandum of Understanding facilitates the exchange of information between the EIB and the SFO. The information provided must be considered strictly confidential and will not be disseminated outside the organisation, unless required by law.
- 3.2.10 The standard of proof used by the EIB service handling investigation work to determine whether a complaint or allegation has been substantiated is based on whether the information, taken as a whole, shows that an investigative finding is more probable than not⁴³. Other international financial institutions have a comparable standard of proof⁴⁴.
- 3.2.11 Finally, the Code of good administrative behaviour for the staff of the EIB in its relations with the public requires the EIB to acknowledge receipt of all letters and requests within two weeks of their delivery⁴⁵. It requires the EIB to respond to all requests and complaints addressed to the EIB with a definitive reply as soon as possible⁴⁶. It also states that all replies to complaints must be reasoned in such way that the person concerned is precisely informed of the grounds and arguments on which they are based⁴⁷.

4 FINDINGS/OBSERVATIONS/ANALYSIS

- 4.1.1 In December 2015, the EIB service handling investigation work received allegations of prohibited conduct concerning the Fund from the complainants. In February 2016, the EIB service handling investigation work held a meeting with the complainants, during which it clarified the allegations and obtained additional information. In April 2016, upon the complainants' request, the EIB service handling investigation work provided the complainants with additional information regarding confidentiality and data protection. The EIB service handling investigation work and the complainants maintained continuous communication until November 2017. For example, upon request for clarifications, in October 2016, the EIB service handling investigation work and the complainants interacted when the latter provided the service with: (i) additional information concerning the allegations; (ii) names of additional witnesses; (iii) information about ongoing legal proceedings; and (iv) information about the appointment of the Spencon administrators (see § 1.1.6). In February 2017, the EIB service handling investigation

³⁹ § 67 of the 2013 EIB Anti-Fraud Policy.

⁴⁰ § 68 of the 2013 EIB Anti-Fraud Policy.

⁴¹ § 30 of the 2013 EIB Group Investigation Procedures.

⁴² A UK government body that investigates and prosecutes serious or complex fraud and corruption.

⁴³ § 25 of the 2013 EIB Group Investigation Procedures.

⁴⁴ Section 12 of the September 2006 International Financial Institutions Anti-Corruption Task Force Uniform Framework, available at: [JointStatment.pdf \(eib.org\)](https://www.eib.org/attachments/general/code_en.pdf).

⁴⁵ Article 12(1) of the 2001 Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public, available at: https://www.eib.org/attachments/general/code_en.pdf, accessed on 6 May 2022. See also Articles 12(1) and 14(1) of the European Code of Good Administrative Behaviour.

⁴⁶ Article 13(1) and (2) of the 2001 Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public. See also Articles 17, 18 and 20 of the European Code of Good Administrative Behaviour.

⁴⁷ Article 13(3) and (2) of the 2001 Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public. See also Article 18 of the European Code of Good Administrative Behaviour.

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work organised an on-site mission to Kenya to meet and interview the witnesses mentioned by the complainants. Following the on-site visit, the EIB service handling investigation work collected additional information, such as the administrator's report to the Fund. It analysed the relevant information to ascertain whether any prohibited conduct occurred within the scope of the 2013 EIB Anti-Fraud Policy.

- 4.1.2 During the mission to Kenya, the parties involved, presumably either the witnesses or the complainants who were aware of the mission of the EIB service handling investigation work, leaked information to the media relating to the investigation. According to the EIB service handling investigation work, this had a negative impact on the progress of the investigation.
- 4.1.3 On the basis of the evidence gathered and the investigation activities carried out at that stage, the EIB service handling investigation work deemed it unnecessary to interview Spenco's management representatives or to review any additional Spenco documents. In addition, the Fund exited Spenco in December 2017 as the investigation continued. Thus, the limited visit and audit rights ceased.
- 4.1.4 The EIB service handling investigation work indicated that making contact with the national authorities investigating Spenco-related wrongdoings (see § 1.1.10) was considered. Appropriate efforts were made to explore this option but it was eventually decided not to establish contact.
- 4.1.5 In March 2017, the EIB service handling investigation work notified OLAF of information received alleging prohibited conduct and provided OLAF with the necessary information. In November 2017, OLAF dismissed the case because the facts did not raise sufficient suspicion to justify the opening of an investigation.
- 4.1.6 In April 2020, the EIB service handling investigation work finalised its report on the case and concluded the following.
 - The available evidence would suggest the Spenco management representatives engaged in illicit activities and possible embezzlement of company funds. The EIB service handling investigation work noted that these facts were under criminal investigation by the Kenyan Department for Criminal Investigation.
 - The ECP was, more likely than not, informed of the situation in Spenco because of the participation of ECP members to Spenco Board Meetings.
 - The EIB service handling investigation work was not in the position to obtain any additional evidence able to demonstrate a potential criminal intent aiming to defraud, and/or cause financial loss to the EIB investment by ECP.
 - The EIB service handling investigation work did not have sufficient evidence qualifying any of the allegations received as fraud or any other prohibited conduct.
 - Based on the aforementioned, the EIB service handling investigation work closed the case with monitoring. The EIB service handling investigation work explained to the EIB-CM that in this case, monitoring had so far been limited to periodical checks of open sources and had not included contact with the Kenyan authorities or SFO.

- 4.1.7 The EIB service handling investigation work was aware that the administrators had reported that: (i) the sale of the company's assets was questionable; (ii) the evidence collected would indicate that the proceeds of the sales were transferred to a third person's account and allegedly shared with Spencon's management representatives, and that the proceeds remain unaccounted for; and (iv) the administrators reported this to the authorities. The data concerning the performance of the Fund became available in 2021. The loss related to Spencon had a small negative impact on the financial performance of the Fund. The EIB service handling investigation work was also informed that a number of similar allegations were transferred to SFO. Any recovery of the missing funds from the liquidation process would have been paid out to the creditors (e.g. employees) first and then to equity holders.
- 4.1.8 The EIB service handling investigation work noted that it had exchanged 86 emails with the complainants but confirmed that it had not responded to two emails sent by the complainants in November 2017 and November 2018 enquiring about the status of the case. In June 2020, the complainants contacted the EIB service handling investigation work again to enquire about the status of the case and provide access to media articles and videos concerning the collapse of Spencon⁴⁸. In August 2020, the EIB service handling investigation work informed the complainants that it had closed the case. The EIB service handling investigation work took into account the media articles when deciding not to reopen the case.

5 CONCLUSIONS

- 5.1.1 Taking into account the powers conferred on the EIB service handling investigation work (see §§ 3.3.2 – 3.3.12), the reviewed evidence leads the EIB-CM to conclude the following:
- A. The EIB service handling investigation work did not respond to two emails sent by the complainants enquiring about the status of their case (see § 4.1.8) as required (see § 3.2.11).
 - B. In its communication with the complainants, the EIB service handling investigation work advised that, although they had interviewed a number of former Spencon staff and reviewed a large volume of documents, they had not interviewed Spencon's management representatives or formally exercised rights of access to Spencon documents (see § 4.1.3). The EIB-CM considers that the complainants were not provided with sufficient information to understand the decision of the EIB service handling investigation not to interview Spencon's management representatives or to formally exercise rights of access to Spencon documents.
 - C. (i) The EIB service handling investigation work concluded that the available evidence would suggest that Spencon's management representatives had engaged in illicit activities and possible embezzlement of Spencon funds (see § 4.1.6, item 1); (ii) the EIB service handling investigation work concluded that ECP had, more likely than not, been informed of the situation at Spencon (see § 4.1.6, item 2); (iii) the EIB service handling investigation work acknowledged that the administrators had reported the questionable activities of Spencon (see § 4.1.7); (iv) the loss related to Spencon had had a small negative impact on the financial performance of the Fund (see § 4.1.7). The EIB service handling investigation work advised the complainants that it did not have sufficient evidence to qualify any of the allegations received as fraud or any other prohibited conduct (see § 4.1.6, items 3 and 4) and as a result proceeded to close the case. The EIB-CM considers that the complainants were not provided with sufficient information to understand the decision of the EIB service handling investigation work to close the case.

⁴⁸ Available at: [Gangsters, Golf and Greenbacks - BBC Africa Eye documentary - YouTube](#), accessed on 21 February 2022.

6 OUTCOMES AND SUGGESTION FOR IMPROVEMENT

6.1.1 The summary of allegation, outcomes and suggestion for improvement is provided in Table 2 below.

Table 2 — Summary of allegation, outcomes and suggestions for improvement

Allegation	Outcomes	Suggestion for improvement
<p>Work performed by the EIB service handling investigation work</p>	<p>Recommendation</p> <p>In future cases, the EIB service handling investigation work should ensure that it acknowledges receipt of all letters and requests and/or responds as soon as possible.</p> <p>In this specific case, the EIB service handling investigation work should provide further explanation to the complainants on the closure of the case (see § 5.1.1, item B and § 5.1.1, item C).</p>	<p>As part of its monitoring of the case concerning Spencon, the EIB service handling investigation work is encouraged to follow up with the relevant authorities on developments related to Spencon.</p>

Complaints Mechanism

Available remedy:

Complainants who are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman⁴⁹.

⁴⁹ Available at: <https://www.ombudsman.europa.eu/en/home>.