

Membrane Technology Environmental Conversion

Complaint SG/E/2017/29

Complaints Mechanism - Complaints Mechanism - Complaints Mechanism

Conclusions Report

12 March 2018

EIB Complaints Mechanism

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Complainant: IIDMA (*Instituto Internacional de Derecho y Medio Ambiente*)

Promoter: CUF Químicos Industriais S.A.

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The EIB Complaints Mechanism

The EIB Complaints Mechanism is designed to provide the public with a tool enabling alternative and pre-emptive resolution of disputes in cases in which members of the public feel that the EIB Group has done something wrong, i.e. if they consider that the EIB has committed an act of maladministration. When exercising the right to lodge a complaint against the EIB, any member of the public has access to a two-tier procedure, one internal – the Complaints Mechanism Division (EIB-CM) – and one external – the European Ombudsman (EO).

Complainants that are not satisfied with the EIB-CM's reply have the opportunity to submit a confirmatory complaint within 15 days of receipt of that reply. In addition, complainants who are not satisfied with the outcome of the procedure before the EIB-CM and who do not wish to make a confirmatory complaint have the right to lodge a complaint of maladministration against the EIB with the EO.

The EO was "created" by the Maastricht Treaty of 1992 as an EU institution to which a citizen or an entity may appeal to investigate an EU institution or a body on the grounds of maladministration. Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples, as set out by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal to provide information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group's activities and to project cycle-related policies and other applicable policies of the EIB Group.

The EIB Complaints Mechanism is designed not only to address non-compliance by the EIB with its policies and procedures but also 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/accountability/complaints/index.htm>

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EXECUTIVE SUMMARY

In July 2017, the Complaints Mechanism Division of the European Investment Bank (EIB-CM) received a complaint from *Instituto Internacional de Derecho y Medio Ambiente* (IIDMA) concerning an EIB financed project regarding chlor-alkali facilities in Torrelavega, Spain. The project promoter, Companhia União Fabril (CUF), is intending to use the loan to convert the Torrelavega chlor-alkali facilities from using mercury cell technique to using membrane cell technique. The Torrelavega chlor-alkali facilities are part of the Torrelavega industrial complex, owned by Solvay. The EIB Board of Directors approved the loan in December 2016. As of February 2018, the finance contract has not yet been signed.

The core of the complaint concerns the draft integrated environmental permit issued by the competent authority in Spain for the industrial complex/facilities. According to the complainant, it, contravened EU environmental requirements in that it allowed mercury cell technique to continue to be used after December 2017, even though this was no longer permissible. The complainant raised two allegations concerning the following:

- Compliance of the project with the EU environmental requirements, i.e. EIB environmental standards and
- EIB's environmental assessment.

In terms of compliance with the EIB environmental standards, the EIB-CM review has shown that the draft integrated environmental permit, which triggered the complaint, was not compliant with EU environmental requirements. However, the competent authority in Spain reviewed this draft and its final renewed integrated environmental permit complies with the relevant EU environmental requirements and, therefore, EIB environmental standards. According to media reports, production of chlor-alkali using mercury cell technique in the Torrelavega industrial complex has ceased, which is in accordance with the permit. Therefore, the EIB-CM review concludes that **the EIB's environmental standards have been complied with.**

In terms of the EIB's environmental assessment, the EIB-CM review has shown that the Bank's services documented that they were aware of the applicable EU environmental requirements that all chlor-alkali facilities using mercury cell technique must be closed or converted to membrane cell technique by December 2017. The Bank's services also requested the promoter to inform them about the integrated environmental permit and decommission works on the mercury unit. Finally, when informed of the complaint and the content of the draft integrated environmental permit, the Bank's services liaised with the promoter with the aim of obtaining relevant clarifications and documents. Therefore, the EIB-CM review concludes that **the Bank's services carried out its environmental assessment correctly** in this respect.

In light of the above, the EIB-CM concludes that its inquiry did not reveal any instances of non-compliance by the Bank's services. Therefore, the EIB-CM considers the case settled and closed.

Complainant: *Instituto Internacional de Derecho y Medio Ambiente (IIDMA)*

Complaint received: 4 July 2017

Confidentiality requested: No

1. THE COMPLAINT (ALLEGATIONS AND CLAIMS)

- 1.1 On 4 July 2017, the Complaints Mechanism Division of the European Investment Bank (EIB-CM) received a complaint from the *Instituto Internacional de Derecho y Medio Ambiente (IIDMA)* (hereinafter: the complainant). The complainant is a Spanish based “environmental law center whose goal is to contribute to the protection of the environment and to promote sustainable development through the study, development, implementation and enforcement of the law”¹.
- 1.2 The complaint², accompanied with six attachments³, concerns an EIB financed project regarding chlor-alkali facilities in Torrelavega, a municipality in the autonomous community of Cantabria, Spain⁴. The project promoter and the borrower of the Bank’s loan is Companhia União Fabril (CUF) (hereinafter: the promoter), the third biggest Iberian producer of chlorine⁵ with production facilities in Portugal and Spain.

The purpose of the loan is to convert the Torrelavega chlor-alkali facilities from using mercury cell technique to using membrane cell technique. The Torrelavega chlor-alkali facilities are part of the Torrelavega industrial complex. At the time of the complaint, both the industrial complex and the chlor-alkali facilities within⁶ were owned by Solvay SA (Solvay), an international multi-specialty chemicals company⁷.

- 1.3 The core of the complaint concerns the conditions for transfer of the Torrelavega chlor-alkali facilities from Solvay to the promoter and the associated integrated environmental permit for the facilities/industrial complex. According to the complainant, in July 2016 the promoter and Solvay had negotiated an agreement according to which the promoter would purchase the Torrelavega chlor-alkali facilities on condition that Solvay is granted a permit allowing mercury cell technique to be used in the facilities/industrial complex after 11 December 2017. The complainant claims that this agreement “is the base for the promoter to execute the project financed by the EIB”. The complainant claims that this extension of use of mercury cell technique after 11 December 2017 contravenes EU environmental requirements,

¹ <http://iidma.org/index.php/en/home/>, accessed on 12 December 2017.

² The complaint is available on the following link: <http://www.eib.org/attachments/complaints/sq-e-2017-29-complaint-en.pdf?f=search&media=search>, accessed on 12 December 2017.

³ Attachment I - statute of the complainant; Attachment II - registration of the complainant in the registry of associations; Attachment III - draft Integrated Environmental Permit; Attachment IV - letter by IIDMA to DG Environment; Attachment V - response from DG Environment to IIDMA; Attachment VI - letter from the national level competent authority to the competent authority in Cantabria.

⁴ EIB project number: 2016-0192). For more information, please see: <http://www.eib.org/projects/pipelines/pipeline/20160192>, accessed on 12 December 2017.

⁵ <http://www.cuf.pt/en/cuf/>, accessed on 12 December 2017.

⁶ https://www.solvay.es/es/solvay-in/locations/torrelavega_en.html, accessed on 12 December 2017.

⁷ https://www.solvay.com/en/binaries/2016SolvayinShort_EN-313471.pdf, accessed on 12 December 2017.

specifically, the Industrial Emissions Directive (2010/75/EU)⁸ (IED) and Regulation (EU) 2017/852 on mercury (hereinafter: Mercury Regulation)⁹.

1.4 Thus the complainant raises two allegations concerning the following:

- Compliance of the project with EU environmental requirements, i.e. EIB environmental standards, as stated in the EIB Statement of Environmental and Social Principles and Standards (ESPS)¹⁰ and 2013 version of the EIB Environmental and Social Handbook¹¹; and
- The environmental assessment, i.e. "assessment by the EIB of the environmental impacts of the approved loan".

Text Box 1 – Claims of the Complainant

The complainant requests the EIB-CM to open an investigation and:

- In case the finance contract has not been signed, to inform the Banks's services of the potential violations of the EU environmental requirements, i.e. EIB environmental standards, by the promoter and to recommend establishing conditions in the contract to ensure the project complies with these standards.
- In case the finance contract has been signed, to recommend the Banks's services to suspend the loan until corrective measures have been introduced.

2. BACKGROUND INFORMATION

2.1 The complaint concerns an EIB investment loan for the Torrelavega chlor-alkali facilities to use the applicable Best Available Technique (BAT), i.e. membrane cell technique. At the time of the project appraisal, the facilities were expected to have a capacity of 65,000 tonnes per year of chlorine and 71,500 tonnes per year of sodium hydroxide and to consist of a membrane cell room equipped with the latest membrane electrolysis technique, brine treatment unit, and a caustic concentration unit. The facilities, to be operated by the promoter, are located within the Torrelavega industrial complex, owned by Solvay.

On 13 December 2016, the EIB Board of Directors approved a loan¹² of up to EUR 25.75m for the project. The total expected project cost is EUR 56.82m. As of February 2018, the finance contract has not yet been signed.

2.2 As indicated in paragraph 1.3 above, the complaint concerns compliance of the Torrelavega industrial complex integrated environmental permit¹³ with EU environmental requirements.

⁸ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control).

⁹ Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008.

¹⁰ http://www.eib.org/attachments/strategies/eib_statement_esps_en.pdf, accessed on 27 February 2018.

¹¹ http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf, accessed on 27 February 2018.

¹² http://www.eib.org/attachments/strategies/ca_provisional_summary_20161213_en.pdf, accessed on 12 December 2017.

¹³ *Autorización Ambiental Integrada*.

On 29 April 2008, the Directorate General (DG) for Environment of Cantabria¹⁴ granted the integrated environmental permit to Solvay for the Torrelavega industrial complex¹⁵. The 2008 permit granted Solvay the right to use mercury cell technique in the Torrelavega chlor-alkali facilities within the industrial complex.

On 7 July 2016 the DG Environment of Cantabria initiated the administrative procedure to renew the permit in question. On 28 April 2017 the DG Environment presented a draft update of the permit¹⁶ (hereinafter: draft integrated environmental permit). The content of the draft integrated environmental permit triggered the complainant to submit the complaint to the EIB.

3. REGULATORY FRAMEWORK

Complaints Mechanism

- 3.1 The EIB-CM is tasked with addressing complaints concerning alleged maladministration by the EIB¹⁷.

Maladministration means poor or failed administration. This occurs when the EIB fails to act in accordance with the applicable legislation and/or established policies, standards and procedures. Maladministration may also relate to the environmental or social impacts of EIB's activities¹⁸. Any person or group who alleges that there may be a case of maladministration within the EIB, can lodge a complaint¹⁹.

- 3.2 The EIB-CM endeavours to resolve the issues giving rise to complaints²⁰. This also means that the EIB-CM is collaborating with the Bank's services to ensure that there is good coordination between the services' on-going work and the EIB-CM's activities²¹.

EIB environmental standards

- 3.3 The EIB will not finance projects that do not meet its environmental standards²². This means that in the case of EU Member States, the projects that EIB finances must comply with

¹⁴ Dirección General de Medio Ambiente de Gobierno de Cantabria.

¹⁵ http://www.medioambientecantabria.es/documentos_contenidos/22273_1.1.pdf, accessed on 12 December 2017.

¹⁶ *Propuesta de Resolución por la que se Revisa y Modifica la Autorización Ambiental Integrada Otorgada a la Empresa Solvay Química, S.L. Como Consecuencia de la Publicación de las Conclusiones Sobre las Mejores Técnicas Disponibles (MTD) en la Producción Cloro-alkali, Conforme a la Directiva 2010/75/UE del Parlamento Europeo y del Consejo, Sobre las Emisiones Industriales.*

¹⁷ Section II, § 3 and 4 and Section III, § 1.4 of the European Investment Bank Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR).

¹⁸ Section II, § 1.2 of the CMPTR.

¹⁹ Section IV, § 2 of the CMPTR.

²⁰ Section III, § 4.2(k) of the CMPTR.

²¹ § 5.2 of the EIB Complaints Mechanism - Operating Procedures (CMOP), which fully implement the CMPTR.

²² Article 6 of the Statement Section of the ESPS. The ESPS must be applied by the EIB in all of its operations (Article 9 of the Background Section of the ESPS).

applicable EU and Member State environmental laws²³. For industrial projects, the EIB requires its promoters to apply IED's emission standards²⁴ and to apply the BATs²⁵.

- 3.4 In respect to the content of the applicable national/regional legislation, the EIB is entitled to assume that EU environmental law has been correctly transposed into EU Member State law and that the competent authorities are enforcing that law²⁶. The EIB's assessment focuses particularly on Member States where there is evidence to suggest these assumptions may be false²⁷.

EIB's environmental assessment

- 3.5 All projects financed by the EIB must undergo an environmental assessment adjusted to the project context²⁸. The environmental assessment includes the requirement for the Bank's services to carry out assessment of the project against the relevant legal framework and EIB's standards²⁹.
- 3.6 The promoter is responsible for the application and enforcement of the relevant legal framework and EIB's standards³⁰. The EIB's role is to satisfy itself that the promoter has met these requirements³¹.

4. WORK PERFORMED BY THE EIB-CM

- 4.1 The EIB-CM carried out the admissibility check and established that the complaint is admissible. On 19 July 2017 the EIB-CM notified the complainant that its complaint has been registered.
- 4.2 Following the declaration of admissibility and notification of the case to the Bank's services, the EIB-CM conducted a preliminary assessment. This assessment included exchanges with the European Commission (EC), desk review of available documents³², and meetings with the relevant Bank's services. With respect to the latter, the EIB-CM organised these meetings to inform the services of the complaint and the EIB-CM's preliminary observations after the consultation with the EC and the desk review. These meetings were also used to clarify uncertainties and to request access to additional documents.
- 4.3 The Bank's services and the EIB-CM followed the developments closely concerning the renewal of the integrated environmental permit. The Bank's services obtained and shared with the EIB-CM the final renewed integrated environmental permit dated 20 September

²³ Article 36 of the Statement Section of the ESPS.

²⁴ Article 33 of the Statement Section of the ESPS.

²⁵ Article 33 of the Statement Section of the ESPS and Paragraph 26 of Volume II of the 2013 v. of the Environmental and Social Handbook. The Handbook translates the environmental principles and standards described in the ESPS in Bank's operational practices (Article 12 of the Background Section of the ESPS).

²⁶ Article 20 of the Background Section of the ESPS.

²⁷ Article 20 of the Background Section of the ESPS.

²⁸ Article 17 of the Statement Section of the ESPS and Paragraph 29 of Volume II of the 2013 v. of the Handbook.

²⁹ Paragraph 8 of Volume II of the 2013 v. of the Handbook.

³⁰ Article 12 of the Background Section and Article 2 of the Statement Section of the ESPS.

³¹ Paragraph 255 of Volume II of the 2013 v. of the Handbook and Article 8 of the Statement Section of the ESPS.

³² E.g. draft integrated environmental permit.

2017³³ and the November 2017 agreement between Solvay and the promoter concerning the Torrelavega chlor-alkali facilities. The EIB-CM reviewed these documents, carried out additional desk research and proceeded with drafting this conclusions report.

5. FINDINGS

EIB environmental standards

- 5.1 On 28 April 2017, DG Environment of Cantabria prepared the draft integrated environmental permit for the Torrelavega industrial complex, owned by Solvay. According to the draft permit, the operator, Solvay, would be allowed to continue production of chlor-alkali using mercury cell technique for the period of 24 months following the issuance of the renewed update of the integrated environmental permit (hereinafter: final renewed integrated environmental permit). This extension would be, however, contradictory to the subsequent views expressed by the EC, Spanish national authorities and the industry.
- 5.2 The EC regards that production of chlor-alkali using mercury cell technique in the EU after 11 December 2017 is contrary to the applicable EU environmental requirements. More specifically, the EC considers that this extension would contravene IED, BAT 1 of Decision 2013/732/EU³⁴ and the Mercury Regulation.
- 5.3 The Spanish national authorities competent for environmental protection also share the same view with the EC. More specifically, following the publication of the draft permit, the Spanish Ministry of Agriculture, Fisheries, Food and Environment³⁵ informed DG Environment of Cantabria that the use of mercury cell technique in chlor-alkali production after 11 December 2017 would constitute a breach of EU environmental requirements, as well as those in Spain. The Spanish Ministry noted that the same approach is taken in respect to other parts of Spain.
- 5.4 Finally, the same view is shared by the industry. The Euro Chlor, an association of a majority of chlorine producers in the EU including Solvay and the promoter³⁶, notes that under the IED, production of chlor-alkali using mercury cell technique must cease by 11 December 2017³⁷.
- 5.5 After finalising the public and inter-institutional consultation process, on 20 September 2017, DG Environment of Cantabria issued the final renewed integrated environmental permit. In line with the considerations of the EC, national authorities and industry, **the permit prohibits production of chlor-alkali using mercury cell technique from 11 December 2017 onwards. Moreover, from the same date, the permit allows production of chlor-alkali**

³³ *Resolución por la que se Revisa y Modifica la Autorización Ambiental Integrada Otorgada a la Empresa Solvay Química, S.L. Como Consecuencia de la Publicación de las Conclusiones Sobre las Mejores Técnicas Disponibles (MTD) en la Producción Cloro-alkali, Conforme a la Directiva 2010/75/UE del Parlamento Europeo y del Consejo, Sobre las Emisiones Industriales.*

³⁴ 2013/732/EU: Commission Implementing Decision of 9 December 2013 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali.

³⁵ *Ministerio de agricultura y pesca alimentación y medio ambiente.*

³⁶ <http://www.eurochlor.org/about-euro-chlor/full-members.aspx>, accessed on 6 November 2017.

³⁷ <http://www.eurochlor.org/chlorine-industry-issues/mercury.aspx>, accessed on 6 November 2017.

only if in compliance with the Decision 2013/732/EU, i.e. using membrane cell technique.

On 8 November 2017, DG Environment of Cantabria transferred the authorisation for production of chlor-alkali using membrane cell technique to a separate permit and gave its approval to Solvay to transfer this permit to the promoter as of 11 December 2017.

- 5.6 The complainant, who was involved as an interested party in the renewal of the permit, endorsed the final renewed integrated environmental permit³⁸.
- 5.7 After receiving the final renewed integrated environmental permit, Solvay and the promoter entered into a new agreement on 17 November 2017. The agreement concerns the Torrelavega industrial complex chlor-alkali facilities, its conversion from mercury cell to membrane cell technique and use of some of Solvay's services, utilities and resources (e.g. hydrogen). The agreement terminated and replaced the July 2016 agreement (see paragraph 1.3). In the agreement, the promoter and Solvay acknowledged that production of chlor-alkali using mercury cell technique after 11 December would contravene EU environmental requirements.
- 5.8 On 11 December 2017, according to media reports, Solvay **stopped production of chlor-alkali using mercury cell technique** in the Torrelavega industrial complex, thus, meeting EU environmental requirements³⁹. On the same day, Solvay initiated the process of transfer of the chlor-alkali facilities to the promoter for conversion to membrane cell technique which should commence in the first quarter of 2018.

EIB's environmental assessment

- 5.9 When conducting the environmental assessment, the Bank's services first conducted screening of environmental issues and risks. In July 2016, the Bank's services recognised the EU requirement to close or convert all mercury cell chlor-alkali capacity by the end of December 2017.
- 5.10 Following the finalisation of the screening phase, in November 2016, **the Bank's services noted that, under the IED, all mercury cell chlor-alkali capacity must be closed or converted to membrane cell technique by December 2017. The Bank's services also set conditions according to which the promoter will undertake to timely inform the Bank concerning the approval of the integrated environmental permit and the decommissioning works and progress of the mercury unit in accordance with Decision 2013/732/EU⁴⁰.**

³⁸ <http://iidma.org/index.php/en/iidma-welcomes-the-decision-of-the-government-of-cantabria-to-deny-solvay-torrelavega-plant-the-moratorium-on-the-use-of-toxic-mercury/>, accessed on 12 December 2017.

³⁹ Information obtained from relevant media articles. E.g. <http://www.lavanguardia.com/vida/20171211/433573998300/solvay-cierra-hoy-la-planta-de-cloro-y-anuncia-un-plan-industrial-de-futuro.html>; https://www.elconfidencial.com/ultima-hora-en-vivo/2017-12-11/solvay-cierra-hoy-la-planta-de-cloro-y-anuncia-un-plan-industrial-de-futuro_1389754/; <https://www.invertia.com/es/-/solvay-cierra-hoy-la-planta-de-cloro-y-anuncia-un-plan-industrial-de-futuro>, accessed on 12 December 2017.

⁴⁰ E.g. Project's Environmental and Social Data Sheet, available at: <http://www.eib.org/infocentre/register/all/67339896.pdf>, accessed on 12 December 2016.

- 5.11 Once informed of the submitted complaint, **the Bank's services engaged with the promoter with the aim of clarifying relevant issues and acquiring relevant documents** (e.g. final renewed integrated environmental permit and the new agreement between Solvay and the promoter).

6. CONCLUSIONS

- 6.1 On the basis of this review, **the EIB-CM concludes that EIB's environmental standards are met** with respect to the use of mercury cell and membrane cell techniques for producing chlor-alkali in the industrial complex in Torrelavega, Spain. Whereas the draft integrated environmental permit, which triggered the complaint, did not comply with the EU and national environmental requirements, the final renewed integrated environmental permit complies with these standards. This led to termination of production of chlor-alkali using mercury cell technique in the Torrelavega industrial complex on 11 December 2017, as reported by the media.
- 6.2 Also, on the basis of the review carried out, **the EIB-CM concludes that the Bank's services correctly carried out its environmental assessment of the project** with respect to the use of mercury cell and membrane cell techniques for the production of chlor-alkali in the Torrelavega industrial complex. The Bank's services had noted that, under the IED, all mercury cell chlor-alkali facilities must be closed or converted to membrane cell technique by December 2017 and had requested the promoter to inform them about the integrated environmental permit and decommission works on the mercury unit.
- Once informed of the complaint and the content of the draft integrated environmental permit, the Bank's services liaised with the promoter with the aim of obtaining relevant clarifications and documents.
- 6.3 In light of the above, the EIB-CM concludes that its inquiry did not reveal any instances of non-compliance by the Bank's services. Therefore, the EIB-CM considers the case settled and closed.

Head of Division
Complaints Mechanism
12.03.2018

Deputy Head of Division

12.03.2018

LIST OF ABBREVIATIONS

BAT	Best Available Technique
CMOP	EIB Complaints Mechanism - Operating Procedures
CMPTR	EIB Complaints Mechanism - Principles, Terms of Reference and Rules of Procedure
CUF	Companhia União Fabril
DG	Directorate General
EC	European Commission
EIB-CM	Complaints Mechanism Division of the European Investment Bank
EO	European Ombudsman
ESPS	EIB Statement of Environmental and Social Principles and Standards
IED	Industrial Emissions Directive
IIDMA	<i>Instituto Internacional de Derecho y Medio Ambiente</i>

