

SG/A/2021/01

# **ECP AFRICA FUND II KENYA**

**CONCLUSIONS REPORT**

**22 DECEMBER 2022**



# SG/A/2021/01

## ECP Africa Fund II (Kenya)

### Conclusions Report

**Complaint confidential:** No

#### **External distribution**

Complainants

#### **Internal distribution**

Management Committee  
Secretary General  
Inspector General  
Relevant EIB project team

#### **Disclaimer**

The conclusions presented in this report are based on the information available to the EIB Group Complaints Mechanism up to 14 December 2022<sup>1</sup>. The conclusions are addressed solely to the EIB.

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<sup>1</sup> This includes documentation provided to the EIB-CM during report consultation with EIB competent services as reflected in the report.

## The EIB Group Complaints Mechanism

The EIB Group Complaints Mechanism (EIB-CM) is a tool enabling the resolution of disputes if 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 EIB-CM 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, applicable law, or the principles of good administration. Maladministration may relate to the EIB Group's decisions, actions or omissions and this may include the environmental or social impact of the EIB's projects and operations.

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

**Please note:** complainants who are not satisfied with the conclusions report may file a complaint of maladministration against the EIB Group with the European Ombudsman<sup>2</sup>.

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<sup>2</sup> Available at: <https://www.ombudsman.europa.eu/en/home>. For more information see [EIB Group Complaints Mechanism policy dated November 2018](#), section 4.5.

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## GLOSSARY

ECP	Emerging Capital Partners
EIB	European Investment Bank
EIB-CM	European Investment Bank Group Complaints Mechanism
EIB-TP	EIB Group Transparency Policy
OLAF	European Anti-Fraud Office

## EXECUTIVE SUMMARY

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 private equity fund seeking to support private African companies. In 2006 and 2007, ECP Africa, one of ECP's investment vehicles, provided a loan of USD 15m to Spencon, an East African engineering and construction company focusing on public works and infrastructure projects in Kenya, Uganda, Zambia, Tanzania and Mozambique.

On 10 November 2021, the EIB Group Complaints Mechanism (EIB-CM) received a complaint concerning an EIB fraud investigation conducted in relation to ECP/Spencon (SG/A/2021/01). The complainants claim that between November 2017 and November 2020, the EIB competent service failed to respond to five correspondence seeking information about the status of the EIB's ECP/Spencon fraud investigation and its findings. For the complainants, the lack of response results in non-compliance with the EIB Group Transparency Policy. Further, they claim that the EIB competent service should have provided its outcome to the complainants concurrently with that of other relevant stakeholders.

The EIB-CM determined in case SG/G/2021/02 that, specific to the complainants' **correspondence of 19 November 2017, 30 November 2018 and 10 June 2020**, "[t]he EIB service handling investigation work did not respond to two emails sent by the complainants enquiring about the status of their case as required." However, the EIB competent service noted it had exchanged a total of 86 emails with the complainants over the course of the investigation.

The EIB-CM looked into similar issues of failure to respond to requests for information in the context of cases SG/F/2020/05 and SG/G/2021/02 for which the EIB-CM issued a recommendation<sup>3</sup>, that has in the meantime been implemented.

As regards the complainants' **correspondence of 22 October 2020 and 23 November 2020**, the EIB did not respond to the former. Despite providing a response to the correspondence of 23 November 2020, the complainants' request for a 'comprehensive response of the EIB's findings' was partially responded to without providing the reason(s) why such information could not be fully divulged.

The EIB-CM looked into a similar allegation within the context of the complaint SG/G/2021/02 regarding the investigation on the ECP Africa Fund II on which the EIB-CM issued a recommendation<sup>4</sup>. As a result of it, the EIB-CM was informed by the EIB services that on 9 November 2022, the EIB services provided the complainant with further information regarding the closure of case 2016-IN-006. The EIB-CM considers that this information provides the complainant with a 'comprehensive response' of the EIB's findings' and fulfils the recommendation.

Considering the above, the EIB-CM takes note that the raised allegations had been addressed/solved during the complaint-handling. Therefore, the EIB-CM proceeded to the closure of the case.

<sup>3</sup> "In future cases, the EIB competent service should ensure that it acknowledges receipt of all correspondence/requests and/or responds as soon as possible." [SG/G/2021/02](#)

<sup>4</sup> "...the EIB service handling investigation work should provide further explanation to the complainants on the closure of the case" [SG/G/2021/02](#)

# 1 BACKGROUND

## 1.1 Object of the Complaint

- 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 (“the Fund”)<sup>5</sup>, being a private equity fund seeking to support private African companies<sup>6</sup>, subject to the provisions of a shareholder agreement as amended from time to time. The Fund was managed by Manager LP, a limited partnership formed and existing under the laws of the state of Delaware. The EIB mandate is under the Cotonou Agreement<sup>7</sup>. The EIB made the investment on behalf of the European Development Fund<sup>8</sup>. The EIB acquired over time an approximately 11% stake in the Fund by investing USD 48m into USD 428m 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, Spencon, 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 Spencon

In 2006 and 2007, ECP Africa, one of ECP’s investment vehicles, provided a loan of USD 15m to Spencon.

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

- Put option agreement;
- Shareholders’ agreement; and
- 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 fifty percent control of Spencon’s Board; and
- 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 the case for arbitration with the London Court of International Arbitration (“LCIA”), the agreed dispute resolution forum pursuant to the put option agreement.

In 2014, the LCIA determined that the put option agreement was valid and binding. As a result<sup>9</sup>, ECP Africa accumulated approximately 98% of Spencon’s shares (8/9 representation in the Spencon Board).

<sup>5</sup> Formally incorporated as Emerging Markets Partnership (EMP), the fund has changed its name to ECP in February 2008.

<sup>6</sup> More information is available at: [ECP Africa Fund II \(eib.org\)](https://eib.org).

<sup>7</sup> The Cotonou Agreement is the backbone of the partnership between the EU, EU countries and 79 African, Caribbean and Pacific countries – for more information, see: [EUR-Lex - r12101 - EN - EUR-Lex \(europa.eu\)](#).

<sup>8</sup> [EU and EDF annual accounts | European Commission \(europa.eu\)](#).

<sup>9</sup> 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.

## 1.2 The Complaint

- 1.2.1 On 10 November 2021, the EIB Group Complaints Mechanism (EIB-CM) received an access to information complaint concerning an EIB fraud investigation conducted in relation to ECP/Spencon.
- 1.2.2 The complainants claim that between November 2017 and November 2020, the EIB competent service failed to respond to five correspondence seeking information about the status of the EIB's ECP/Spencon fraud investigation and its findings.
- 1.2.3 A summary of the complainants' requests and the EIB's subsequent responses, where made, are summarised in the table below.

Date	Request	EIB reply
<b>19 November 2017</b>	<i>We would appreciate an update on the status of the investigation and your proposed next steps. In particular, we would ask that you provide a clear timeline as to when we can expect a decision in relation to your investigation.</i>	None as of report issuance
<b>30 November 2018</b>	<i>Please update me on the status of the EIB's investigation you commenced based on [...]. In particular, I ask that you provide a clear timeline as to when we can expect a decision in relation to your investigation.</i>	None as of report issuance
<b>10 June 2020</b>	<i>We would like to know the status of this matter. Has the EIB concluded its investigation or is it still pending? If the investigation concluded, what were the EIB's findings?</i>	Replied on 10 August 2020 ¶4.1.4
<b>22 October 2020</b>	<i>In light of the EIB's communication to Counter Balance, please confirm, at your earliest convenience, when this notification to [...] will be made and that it will be accompanied by any findings or conclusions reached by EIB.</i>	None as of report issuance
<b>23 November 2020</b>	<i>[...] request the disclosure of information pursuant to Section 5 of the EIB Transparency Policy. Specifically, has the EIB concluded its investigation or is it still pending? If the investigation has concluded, what were the EIB's findings.</i>  <i>[...][...] and, having spent a great deal of time, effort and resources, should, at the very least, be given a comprehensive response of the EIB's findings.</i>	Replied on 2 December 2020 ¶4.1.7



- 1.2.4 For the complainants, the lack of response results in non-compliance with the EIB Group Transparency Policy, specifically its Section 5.
- 1.2.5 Further, they claim that the EIB competent service should have provided its outcome to the complainants concurrently with that of other relevant stakeholders.
- 1.2.6 The complaint refers to the requests for access to information handled by the EIB under the Group's Transparency Policy. In light of this, the EIB-CM's review has considered whether the EIB competent service responded to the complainants' requests for information as listed under ¶1.2.3. As relates to the complainants' request for information of 23 November 2020 more specifically, the EIB-CM has considered whether the Bank's response is compliant with its Transparency Policy (¶3.2.7-3.2.10).
- 1.2.7 The following table summarises the allegations as raised in the complaint.

**Summary of allegations**

Allegation	Description of the Allegation
<b>Failure to respond to requests for information concerning the EIB's ECP/Spenco investigation</b>	The complainants claim that the EIB competent service <sup>10</sup> failed to respond - at the least acknowledge - their correspondence dated 19 November 2017, 30 November 2018, 10 June 2020, 22 October 2020 and 23 November 2020. For the complainants, such failure results in non-compliance with the EIB Group Transparency Policy, specifically its Section 5. Further, they claim that the EIB competent service should have provided its outcome to the complainants concurrently with that of other relevant stakeholders.

- 1.2.8 The complaint at issue is the fifth received to date by the EIB-CM concerning the Bank's involvement in ECP Africa Fund II.

## 2 WORK PERFORMED

- 2.1.1 This review was conducted in accordance with the EIB Group Complaints Mechanism Policy and Procedures (2018)<sup>11</sup>.
- 2.1.2 As set out in 1.4.3 of the EIB Group Complaints Mechanism Procedures, the objective of a review is to allow the EIB-CM to form an independent and reasoned opinion regarding the concerns raised by the complainant.
- 2.1.3 In accordance with the EIB-CM Policy and Procedures, this report documents review findings with respect to the EIB's compliance with the applicable regulatory framework.
- 2.1.4 This review is based on a review of relevant documentation<sup>12</sup> and discussions with the EIB competent services.

<sup>10</sup> Fraud Investigations Division of the Inspectorate General.

<sup>11</sup> Available at: <https://www.eib.org/en/publications/complaints-mechanism-policy.htm> and <https://www.eib.org/en/publications/complaints-mechanism-procedures.htm>.

<sup>12</sup> Relevant documentation includes the complaint, including attachments to the complaint; correspondence between the complainants and EIB competent services; and internal EIB documentation concerning both its investigative work as well as its processing of personal data, among others.

## 3 REGULATORY FRAMEWORK

### 3.1 The EIB Group Complaints Mechanism

- 3.1.1 The EIB Group Complaints Mechanism Policy<sup>13</sup> tasks the EIB-CM with handling complaints concerning alleged maladministration by the EIB<sup>14</sup>. Maladministration means poor or failed administration<sup>15</sup>.
- 3.1.2 The Policy specifies that the EIB-CM review the EIB's activities with a view to determining whether maladministration that is attributable to the EIB has taken place<sup>16</sup>.
- 3.1.3 Maladministration always refers to the institution (a member of the EIB Group) and does not refer to individual staff members of the institution<sup>17</sup>.

### 3.2 Responsibilities of the EIB

#### The Fraud Investigations Division

- 3.2.1 The Fraud Investigations Division (“the investigative division”) is an independent office within the Inspectorate General Directorate of the EIB Group. Its mission is to provide the institution with the capacity to professionally and objectively investigate allegations of prohibited conduct<sup>18</sup>. The investigative division works in close partnership with the European Anti-Fraud Office (OLAF).
- 3.2.2 Without prejudice to the powers conferred on OLAF, the head of the investigative division shall have full authority to open, pursue, close and report on any investigation within its remit without notice to, consent of, or interference from any other person or entity.<sup>19</sup>
- 3.2.3 The purpose of an investigation is to examine and determine the veracity of allegations or suspicions of prohibited conduct affecting EIB activities or alleged misconduct involving members of governing bodies or staff, to report its findings and make appropriate recommendations.
- 3.2.4 These investigations are undertaken in conformity with the EIB's Procedures for the Conduct of Investigations by the Inspectorate General of the EIB<sup>20</sup> (“the Investigation Procedures”).
- 3.2.5 The Investigation Procedures stipulate that the head of the investigative division shall make the information regarding the allegation and its evaluation available upon request to appropriate parties, including the President and the Vice President responsible for investigations, the Secretary General, the Audit Committee, OLAF and the external auditors.<sup>21</sup>
- 3.2.6 With regard to external investigations, the Investigation Procedures provide for the notification and involvement of OLAF.

<sup>13</sup> Available at: [https://www.eib.org/attachments/strategies/complaints\\_mechanism\\_policy\\_en.pdf](https://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf).

<sup>14</sup> ¶5.1.3 of the EIB Group Complaints Mechanism Policy.

<sup>15</sup> ¶3.1 of the EIB Group Complaints Mechanism Policy.

<sup>16</sup> ¶5.3.3 of the EIB Group Complaints Mechanism Policy.

<sup>17</sup> ¶3.4 of the EIB Group Complaints Mechanism Policy.

<sup>18</sup> Prohibited Conduct includes fraud, corruption, collusion, coercion, obstruction, theft at EIB Group premises, misuse of EIB Group resources or assets, money laundering and financing of terrorism affecting the EIB Group's operations and activities.

<sup>19</sup> EIB Anti-Fraud Policy, September 2013, available at: [https://www.eib.org/attachments/strategies/anti\\_fraud\\_policy\\_20130917\\_en.pdf](https://www.eib.org/attachments/strategies/anti_fraud_policy_20130917_en.pdf)

<sup>20</sup> EIB Group Investigation Procedures, July 2013, available at: [https://www.eib.org/attachments/strategies/anti\\_fraud\\_procedures\\_20130703\\_en.pdf](https://www.eib.org/attachments/strategies/anti_fraud_procedures_20130703_en.pdf)

<sup>21</sup> Paragraph 9 of the EIB Group Investigation Procedures.

## EIB Group Transparency Policy<sup>22</sup>

- 3.2.7 The EIB Group Transparency Policy (EIB-TP) sets out the institution's approach to transparency and stakeholder engagement. The EIB-TP does not override other EIB Group policies and rules but must be read in conjunction with them as they are mutually reinforcing<sup>23</sup>.
- 3.2.8 All information and documents held by the Bank are subject to disclosure upon request, unless there is a compelling reason for non-disclosure<sup>24</sup>. In applying the exceptions to disclosure, the Bank shall have due regard for its specific role and activities, the need to protect its legitimate interests and the confidentiality of its relationship with its counterparts.<sup>25</sup>
- 3.2.9 Access to information/documents shall be refused where disclosure would undermine the protection of, inter alia: the purpose of inspections, investigations and audits<sup>26</sup> or privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data<sup>27</sup>. Disclosure of information and documents collected and generated during inspections, investigations and audits shall be presumed to undermine the protection of the purpose of the inspections, investigations and audits even after these have been closed, or the relevant act has become definitive and the follow-up action has been taken. For the purpose of interpreting article 5.5., the presumption referred to in the fourth bullet point applies to inspections, investigations and audits including compliance due diligence carried out by, or on behalf of, the relevant services of the Bank, notably the fraud investigations, internal and external audit and the compliance functions; it does not apply to inquiries carried out in line with the EIB Group Complaints Mechanism's Principles, Terms of Reference and Rules of Procedure. Without prejudice to the above, the Bank may disclose a summary of investigations that have been closed, notably taking into account and in compliance with the principles and rules provided for in (i) European Union data protection legislation and European Data Protection Supervisor opinions and (ii) European Union legalisation concerning investigations conducted by the European Anti-Fraud Office (OLAF) and EIB Anti-Fraud Policy.<sup>28</sup>
- 3.2.10 If, for reasons of confidentiality, the Bank is unable to divulge the information requested, in full or partially, the reason(s) why such information cannot be provided shall be stated<sup>29</sup>.

## The European Code of Good Administrative Behaviour

- 3.2.11 Finally, the Code of Good Administrative Behaviour ("the Code") 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 delivery<sup>30</sup>. The Code requires the EIB to respond to all requests and complaints addressed to the EIB with a definitive reply as soon as possible<sup>31</sup>. The Code 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 based<sup>32</sup>. No

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<sup>22</sup> The EIB-TP applicable to this complaint is available at:

[https://www.eib.org/attachments/strategies/eib\\_group\\_transparency\\_policy\\_en.pdf](https://www.eib.org/attachments/strategies/eib_group_transparency_policy_en.pdf). In November 2021, the EIB adopted a new Transparency Policy which is currently in force (available here):

[https://www.eib.org/attachments/strategies/eib\\_group\\_transparency\\_policy\\_2021\\_en.pdf](https://www.eib.org/attachments/strategies/eib_group_transparency_policy_2021_en.pdf).

<sup>23</sup> Article 1.3 of the 2015 EIB-TP.

<sup>24</sup> Article 5.1(a) of the 2015 EIB-TP.

<sup>25</sup> Article 5.3 of the 2015 EIB-TP.

<sup>26</sup> Article 5.5, fourth bullet point of the 2015 EIB-TP.

<sup>27</sup> Article 5.4(b) of the 2015 EIB-TP.

<sup>28</sup> Article 5.5, fourth bullet point of the 2015 EIB-TP.

<sup>29</sup> Article 5.25 of the 2015 EIB-TP.

<sup>30</sup> 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](https://www.eib.org/attachments/general/code_en.pdf). Also see Articles 12(1) and 14(1) of the European Code of Good Administrative Behaviour.

<sup>31</sup> 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. Also see Articles 17, 18 and 20 of the European Code of Good Administrative Behaviour.

<sup>32</sup> 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.

acknowledgement of receipt or reply need be provided where an excessive number of letters or requests has been received or where these are of a repetitive or inappropriate nature.<sup>33</sup>

## 4 ANALYSIS

### 4.1 Failure to respond to requests for information concerning the EIB's ECP/Spenco investigation

4.1.1 The complainants claim that the EIB competent service failed to respond - at the least acknowledge - their correspondence dated 19 November 2017, 30 November 2018, 10 June 2020, 22 October 2020 and 23 November 2020. For the complainants, such failure results in non-compliance with the EIB Group Transparency Policy, specifically its Section 5. Further, they claim that the EIB competent service should have provided its outcome to the complainants concurrently with that of other relevant stakeholders.

4.1.2 It is important to point out that, in none of the five correspondence discussed below, were the complainants expressly seeking disclosure of the EIB ECP/Spenco case report nor the investigative work conducted by OLAF as raised in the complaint<sup>34</sup>. Rather, the complainants, in their correspondence spanning 2017 to 2020, sought an update of the ECP/Spenco investigation and once having learned of its closure through Counter Balance, requested “a comprehensive response of the EIB's findings” under the EIB-TP (¶3.2.7–3.2.10) on 23 November 2020.

4.1.3 **As regards the complainants' correspondence of 19 November 2017, 30 November 2018 and 10 June 2020 (¶1.2.3),** it has already been established in case SG/G/2021/02<sup>35</sup> that:

*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 Spenco. In August 2020, the EIB service handling investigation work informed the complainants that it had closed the case.*

4.1.4 In its response dated 10 August 2020, the EIB competent service indicated that:

*Further to your email of 11<sup>th</sup> June 2020 in which you requested information concerning the status of the case in subject, we wish to inform you that the Fraud Investigation Division (“IG/IN”) has concluded the aforementioned case. IG/IN did not have sufficient evidence qualifying any of the allegations received against Emerging Capital Partners (“ECP”) as fraud or any other prohibited conduct, in line with EIB's Anti-Fraud Policy.*

4.1.5 For the purposes of responding to the complainants' allegation, i.e. that the EIB competent service should have provided its outcome to the complainants concurrently with that of other relevant stakeholders, it is important to note that the above-mentioned letter of 10 August 2020

<sup>33</sup> Article 12(4) of the 2001 Code of good administrative behaviour for the staff of the European Investment Bank in its relations with the public.

<sup>34</sup> The complainants allege the following: “The EIB's lack of reply to requests for full IG/IN report, including the lack of reply to related requests for information under the EIB's administrative rules on access to information (Transparency Policy).” The EIB-CM notes that the complainant's request for the full IG/IN report emerges during their subject access request in May 2021.

<sup>35</sup> Available at: <https://www.eib.org/en/about/accountability/complaints/cases/ecp-africa-fund-ii-sg-g-2021-02 - section 4.1.8>.

informed the complainants of case closure, as the EIB competent service described to Counter Balance<sup>36</sup> in September 2020.

4.1.6 **As regards the correspondence of 22 October 2020 and 23 November 2020<sup>37</sup> (¶1.2.3)**, the EIB competent service considers that said correspondence had become repetitive in nature.

4.1.7 It is clear from the file that while the correspondence of 22 October 2020 was left unanswered, a reply to the complainants' correspondence of 23 November 2020 was provided on 2 December 2020:

*We refer to your email of 24<sup>th</sup> November 2020 addressed to [...] of the European Investment Bank (EIB), requesting if the EIB had concluded its investigation number 2016-IN-006. [...] has asked us to respond to your request, which has been handled in line with the provisions of the EIB Group Transparency Policy.*

*In response to your question, we would like to confirm that the EIB fraud Investigations Division (IG/IN) has concluded the case 2016-IN-006, with the conclusion that IG/IN did not have sufficient evidence qualifying any of the allegations received against Emerging Capital Partners ("ECP") as fraud or any other prohibited conduct, in line with EIB's Anti-Fraud Policy.*

*This information was already provided to you in the letter from IG/IN dated 10<sup>th</sup> August 2020, further to your email of 11<sup>th</sup> June 2020 in which you requested information concerning the status of the case in subject. A copy of this letter, which was sent by courier and delivered to your address in [...] on 12 August 2020, is attached to this message for ease of reference.*

*We hope you find this information useful and remain at your disposal should you need any further clarifications.*

4.1.8 To the extent that the EIB competent service informed the complainants of case closure in August 2020, indeed the complainants' subsequent request in October 2020 appears to be repetitive.

4.1.9 However, the complainants' request for a 'comprehensive response of the EIB's findings' under the EIB Group Transparency Policy, as contained in their correspondence of 23 November 2020, was partially responded to. The EIB-CM regrets that the Bank's reply of 2 December 2020 failed to provide a more thorough response, particularly in light of the complainants' repeated requests.

4.1.10 More specifically, in accordance with the EIB Group Transparency Policy, the Bank was required to provide the reason(s) why such information could not be fully divulged (¶3.2.10).

## 5 CONCLUSIONS

5.1.1 The EIB-CM determined in case SG/G/2021/02 that, specific to the complainants' **correspondence of 19 November 2017, 30 November 2018 and 10 June 2020**:

*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.*

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<sup>36</sup> According to the EIB competent service, Counter Balance has maintained involvement in the case throughout the duration of the investigation as an acting representative and communicator. On this basis, the EIB competent service have continued communications regarding the case with Counter Balance, when requested. The complainants have never informed the EIB competent service that Counter Balance should no longer be considered as their intermediary.

<sup>37</sup> In their correspondence of 22 October and 23 November 2020, the complainants seek to understand whether the EIB has concluded its investigation and request the EIB's findings.

The EIB-CM looked into similar issues of failure to respond to requests for information in the context of cases SG/F/2020/05 and SG/G/2021/02 for which the EIB-CM issued a recommendation<sup>38</sup>, that has in the meantime been implemented.

- 5.1.2 As regards the complainants' **correspondence of 22 October 2020 and 23 November 2020**, the EIB did not respond to the former. Despite providing a response to the correspondence of 23 November 2020, the complainants' request for a 'comprehensive response of the EIB's findings' was partially responded to without providing the reason(s) why such information could not be fully divulged.
- 5.1.3 The EIB-CM looked into a similar allegation within the context of the complaint SG/G/2021/02 regarding the investigation on the ECP Africa Fund II on which the EIB-CM issued a recommendation<sup>39</sup>. As a result of it, the EIB-CM was informed by the EIB services that on 9 November 2022, the EIB services provided the complainant with further information regarding the closure of case 2016-IN-006. The EIB-CM considers that this information provides the complainant with a 'comprehensive response' of the EIB's findings' and fulfils the recommendation.
- 5.1.4 However, the email address of the complainant to which this correspondence was sent by the services differs from that which the EIB-CM has on file in relation to the current complaint. For this reason, the EIB-CM has requested that the EIB competent service share its response of 9 November 2022 with the complainant using an updated email address. The services confirmed that the email was submitted to the updated address in December 2022.
- 5.1.5 In light of the above, the EIB-CM takes note that the raised allegations had been addressed/solved during the complaint-handling. Therefore, the EIB-CM proceeded to the closure of the case.

## Complaints Mechanism

<sup>38</sup> "In future cases, the EIB competent service should ensure that it acknowledges receipt of all correspondence/requests and/or responds as soon as possible." [SG/G/2021/02](#)

<sup>39</sup> "...the EIB service handling investigation work should provide further explanation to the complainants on the closure of the case" [SG/G/2021/02](#)