COMMENTS ON THE COMPLAINT MECHANISM POLICY OF THE EUROPEAN INVESTMENT BANK

ClientEarth hereby submits its comments on the draft Complaint Mechanism Policy of the European Investment Bank (“Bank”), dated 24 June 2008 (“Policy”).

- **Paragraph 4.2**

  The Bank should make sure the local population where a project is funded is informed about the complaint mechanism. The Policy should specify the means of information used by the Bank within the EU and outside the EU on the possibility to complain against the Bank.

- **Paragraph 5.3**

  The Bank is accountable to the citizens of the EU not only through the Member States but on its own as any other EU bodies. An evidence of that is that the Bank is subject to the remit of the European Ombudsman and to the jurisdiction of the European Court of Justice. In addition, the Policy states in paragraph 5.2 that the EC Treaty provides the Bank “enjoys its own legal personality and financial autonomy”. The Bank itself is therefore accountable to the EU citizens. The Bank is also accountable to the citizens of the countries where projects are funded by the Bank.

- **Paragraph 8.5**

  The Policy should explain concretely how the Bank is going to make the Complaints Mechanism accessible to the affected people.

- **Paragraph 11.5.2**

  The appeal mechanism does not comply with Regulation 1049/2001. In the event of a refusal from the Bank to provide access to information, the Bank shall inform the applicant of the remedies open to him or her in accordance with article 8(3) of Regulation 1049/2001, that is, instituting court proceedings or making a complaint to the Ombudsman.

  The Bank’s policy creates an additional step to the procedure established by the Regulation. It thus makes it longer and more cumbersome not only for the applicant but also for the Bank without making it more efficient. On the contrary, this additional internal procedure risks dissuading applicants to resort to the remedies provided by Regulation 1049/2001 which are the ones that the Bank must communicate to the applicant.

  For example, requests for documents to the European Commission are dealt first by the relevant DG and then the confirmatory request is dealt with by the Secretary-General of the Commission. In case of refusal to grant access to the requested documents the
Secretary-General informs the applicant that he or she may institute proceedings or make a complaint to the Ombudsman in accordance with article 8 (3) of Regulation 1049/2001.

It is hard to understand what the confirmatory request to the Bank will add to the first request as it seems that the confirmatory request will be dealt with by the same department of the Bank. Indeed, the Policy does not mention the department of the Bank to which the confirmatory request must be made.

The procedure should thus only contain two steps that is a first request, a confirmatory request to the Secretary-General of the Bank and then the possibility for the applicant to lodge a complaint to the Ombudsman or to the Court.

- **Paragraph 11.7.11**

The policy should mention that the Conclusions report prepared by the Complaints Office will be provided to the complainant as soon as the report is drafted. A simple one-sided page reply summarizing the findings of the Complaint Office should not suffice.

- **Paragraph 11.10.3**

Same comment than for paragraph 11.5.2.

- **Paragraph 11.11 Confirmatory complaints**

This stage of the procedure should be removed. The Complaint office is supposed to be independent from the other bodies of the Bank and is thus supposed to take proper decisions about the compliance of the Bank with policies/legislation. The Confirmatory complaint stage does not guarantee any better treatment of the complaint. The confirmatory complaint to the Secretary-General will make the procedure longer for the complainant and the Bank without making it more efficient.

If the complainant is not satisfied with the outcome of the procedure before the Complaints Office, the next step should be directly the Complaint to the European ombudsman.

Moreover, paragraph 11.12.1 states that a complaint may be lodged to the Ombudsman “regardless of the fact that they [the complainants] had lodged a prior confirmatory complaint with the EIB’s Secretary-General”. However, two complaints may not be lodged to two different bodies in the same time. The outcome of the confirmatory request to the Secretary-General of the Bank would not have any legal value if it did not have the same outcome as the complaint lodged to the Ombudsman. The Ombudsman would have to wait for the decision of the Secretary-General of the Bank which would clearly postpone the Ombudsman’s decision. This stage of the procedure should thus clearly be removed from the Policy.
• ANNEX III

In the “In general” section (second bullet point), the Policy should state that the exhaustion of the internal complaints mechanism procedure is a necessary requisite for any complaint to be entitled to escalate to the European Ombudsman, except the confirmatory complaint stage.”

In the “reporting and monitoring” section, the Policy should mention that the Conclusions Report prepared by the Complaints Office shall be provided to the complainant without any delay.