Subject: European Investment Bank – Public Consultation on Anti-Fraud Policy

Dear Madam,

Thank you for giving OLAF the opportunity to comment on the proposal of the internal anti-fraud rules and policies of the European Investment Bank (EIB). Having reviewed the two documents submitted for consultation (indicated below in italics) and having participated to the discussion at the workshop organized by the EIB in Brussels on 30 March 2007, although the documents are very general in outline, we would have the following remarks:

Procedures for the Conduct of Investigations by the Inspectorate General of the EIB

(1) The provisions provide for extensive rights to conduct investigations, including on-the-spot checks, interviews etc., which are probably based on the powers incorporated in the contracts with final beneficiaries. However, it provides for few rules concerning the rights of defence of the investigated parties such as legal advice, right not to incriminate oneself, access to the file etc. It might be useful to clarify it.

(2) Neither of the two documents contains reference to a protection of personal data. Unless such rules are provided by another document and apply generally, the EIB might consider developing appropriate provisions here, in accordance with the EU standards.
EIB Policy and Guidelines on Fighting Corruption, Fraud, Money laundering and the Financing of Terrorism

(3) As a general point, we would like to enquire whether it would not be possible to give a general definition or explanation of the general notions used in the text, such as: borrower, promoter, contractor, beneficiary, supplier etc. This would provide a better understanding for people not familiar with these terms.

(4) Under the title “Measures to minimize the risk of fraud and other illegal acts”, there is a distinction made between projects the EIB finances in the EU, for which a close cooperation with OLAF is indicated, and on the other hand, projects financed outside the EU, for which there is no mention of OLAF whatsoever. We would like to understand why this distinction is made in such a way.

Furthermore, in the document on the EIB’s website on Project Cycle, it is indicated, on page 7, that all projects attracting Community grant aid or assistance (including a guarantee from the Community budget) are subject to possible control by the Court of Auditors of the European Union. Maybe it would be possible to align OLAF's investigative powers in the same sense, i.e. related to the funding of the project.

(5) As for paragraph 10 - Sanctions, we would also like to come back to the issue that was discussed during our informal meeting with Duncan Smith (Senior Investigator / EIB) and which relates to the exclusion rules to be applied by the Bank or its partners. We think that a clear policy should be developed by the Bank in this area in order to prevent unreliable operators from benefiting from EIB financing. We also think that this policy should as far as possible follow the same rules as those developed by the European Commission.

The reference to Art. 45(1) of Directive No. 2004/18 means that similar exclusion criteria shall apply. However, in addition to the Directive, the Commission system foresees a database on non-reliable operators (see Art. 95 of the Financial Regulation No. 1605/2002 as modified by Council Regulation No. 1995/2006 – FR). Does the EIB intend to keep its own database? It would be desirable that the Commission and the EIB could exchange and use such data as appropriate, which is not the case yet. OLAF will support a change of this policy at the Commission, so that the database based on the FR is available also to the EIB.

The administrative sanctions such as debarment should not be based only on ‘res judicata’ decisions of the national courts. Such decisions are only very difficult to obtain and if, usually with a considerable delay that might render the sanctions system ineffective. Moreover, the institution might get into a difficult situation if an entity, which has been found guilty of fraud by the administrative authority, applies for another contract before the national judicial proceedings are finalized and so there is no legal basis for exclusion. An effective EIB sanctions system may also provide for the opportunity to introduce other anti-fraud measures such as leniency/voluntary disclosure programs etc.

(6) The protection of whistleblowers (paragraphs 23 and 24) is another important tool to obtain good quality information on fraud and corruption. As the experience shows, however, formal rules might not be sufficient to encourage potential whistleblowers to come forward with such information. Therefore, the EIB might
consider further development of the rules on confidentiality and possibly even tools for anonymous exchange of information.

Regard,

[Signature]

Franz-Hermann Brüner