Introdution

Transparency International welcomes the opportunity to participate in the consultation process to review the EIBs “Policy and Guidelines on Fighting Corruption, Fraud, Money Laundering and the Financing of Terrorism”.

Transparency International (TI), founded in 1993, is a global movement comprised of an International Secretariat and national chapters in more than 90 countries dedicated to fighting corruption. From its earliest days, TI has urged international financial institutions and donors to address corruption and its impact on efforts to alleviate poverty.

As an economic development agent within and outside of the EU, with a mandate to fulfill the EU’s development objectives, the EIB has a responsibility to ensure that its resources are used for the purposes for which they were intended and not fall prey of corrupt or fraudulent practices or that EIB funds are diverted to finance terrorist activities. Furthermore, as a contributor to the implementation of the EU’s aid and cooperation policies, the EIB needs to strengthen its efforts to ensure that its practices in fighting corruption are developed to match the highest international criteria and to include the existing best practice.

Transparency International salutes the EIB’s practice of setting up a consultation process which not only was announced early in advance to allow civil society and other stakeholders to provide substantive input, but was also designed to be transparent and accountable to contributors through the on line dissemination of feedback – as was the case during the review of the EIB’s Public Information Policy. The consultation meeting that took place in Brussels last March 30th encouraged another avenue for direct dialogue between the EIB and civil society, and TI was pleased to be able to present its contribution on that occasion as well. Furthermore, it is significant that this consultation process and its results will be reported directly to the Bank’s highest decision making body, its Board of Directors.

General Comments

The issues addressed in this draft policy remain complex, and the implementation of any anti-corruption policy will demand significant efforts and resources over time. Specific issues, relevant to special stakeholders, might demand further in-depth consideration beyond the opportunities provided by this initial consultation process or even the development of the present policy. TI suggests that after the initial collection of feedback by stakeholders and subsequent analysis, the EIB considers the possibility of engaging in a second round of dialogue with stakeholders to address specific topics in more depth.
To ensure consistency, it would be advisable that the policy refers to all four areas of its scope throughout the document -fighting corruption, fraud, money laundering and the financing of terrorism. At present, different terms are applied in different situations, but this can result in loopholes in the policy application and interpretation.

**On civil society engagement**
While recognizing that the draft policy relates to the protection of EIB funds, and not to anti-corruption initiatives more broadly, TI encourages the EIB to add provisions providing for civil society engagement and monitoring of its financed projects. Civil society participation and consultation can play an important role in ensuring borrower accountability and reducing diversion of bank funds. Incorporating Integrity Pacts with monitors into the anti-corruption measures applicable to procurement would be an example worth exploring.

Such provisions are already included, for example, in the United Nations Convention Against Corruption, and therefore will become standard practice in the over 120 countries which are Parties to this convention. The EIB could take advantage of such measures at national level and explore how these could be useful for civil society engagement in activities or projects where EIB funds are used.

**On implementation & review**
All policies depend for a successful implementation to achieve its goals. Such a policy will not only demand decision making at the highest levels, but dissemination, training and compliance measures all across the EIB to make sure all actors within the EIB and all stakeholders contracting or carrying out activities jointly with the EIB are aware of this policy.

With long term in mind, TI recommends that the EIB review its policy on a regular basis, not only to ensure that it reflects improvements and positive developments both at EU and international levels but also to regularly enrich the policy with lessons learned from its implementation.

TI encourages the EIB to publicly announce the steps towards implementation of this policy and report on its progress, successes and lessons learned, as this can only improve and reinforce the process. The information obtained in compiling results of the implementation should also feed back into a periodic review process of this policy.

**On IV. MEASURES TO MINIMIZE THE RISK OF FRAUD AND OTHER ILLEGAL ACTS.**

TI understands that efforts to minimize the risk of corruption, fraud, money laundering and financing of terrorism are wide and demand a broad spectrum of measures to work simultaneously to succeed. Preventive measures play an important role as an additional safety net to the existing legal frameworks -both within and outside the EU. At present this policy assumes that if laws are in place this should be enough. However, this has not always prevented corruption, even in countries with solid institutions and judicial systems. For instance, there is a very poor record in pursuing the OECD Anti Corruption convention in courts, where legal systems exists to prevent and fight fraud and corruption. The case might be more serious in countries outside the EU, where institutions might not be weaker. We advise the EIB to consider preventive measures such as those outlined in this section to be applied to all activities in all countries, and not just outside the EU.

**Preventive measures and the private sector (Integrity Commitments)**
TI welcomes the proposal to require borrowers/promoters to provide integrity commitments. However, there needs to be further elaboration on this matter to ensure that the highest possible standards are applied to these integrity commitments.

The EIB can have a strong impact in being a positive influence to improve corporate behaviour, improving the performance of the private sector on EIB funded projects, thereby reducing the number of cases where investigations would be necessary or sanction procedures would be
needed. Every allegation of corruption in EIB financed projects represents not only a risk to the effective use of EIB funds, but also presents a risk to the reputation to the Bank. TI recommends that the EIB conducts its own effective due diligence process. For several years, TI has urged multilateral development banks to adopt a pre-qualification requirement for private sector bidders and partners, providing evidence that they have anti-corruption policies in place. TI’s Business Principles for Countering Bribery (BPCB) and its related tools are the bases for companies to be able to comply with this demand. TI has also produced a check-list that can be used by banks, both commercial and public, to check whether their funds are allocated to reputable entities. ¹

We therefore urge the EIB to take this requirement of integrity commitments one step further, and demand that partners/bidders prove they have an actual active anti-bribery program in place.

Transparency International has continually highlighted the role of legal and financial professionals in facilitating corruption by, wittingly or not, allowing the proceeds of corruption to be moved, laundered, stored and invested. TI helped form the Wolfsberg Group, an association of twelve global banks, which aims to develop financial services industry standards, and related products, for Know Your Customer, Anti-Money Laundering and Counter Terrorist Financing policies. The Wolfsberg Group seeks to establish standards and guidelines for the financial services industry to prevent the flow of corrupt money, having issued a statement against corruption last March².

TI encourages the EIB to consider the principles that inspired the policies adopted by the Wolfsberg Group in the subsequent review of this policy.

**Measures applying to EIB employees**

The draft policy incorporates the Staff Code of Conduct by reference; however the policy could go one step further, and incorporate preventive measures applicable to all staff, such as the establishment of an asset disclosure provision for its senior officials, or the establishment of a register of interests –to avoid conflict of interests. We are aware that some of these measures are covered in the Management Committee Code of Conduct. However, it would be advisable that these apply also to staff to ensure consistency and a higher level of prevention all across the EIB.

**Protection of whistle-blowers**

While the inclusion of basic provisions as outlined in this policy are welcome, the present design does not provide a comprehensive system to ensure that the necessary mechanisms are actually in place to protect whistle-blowers. Without effective whistle-blower protection, efforts to fight corruption within an institution are significantly compromised as those with relevant information are unlikely to come forward without certain guarantees of confidentiality and due process. TI recommends that the EIB consider the standards set by the recently developed policy for protection of whistle-blowers at the United Nations to inspire a revision and improvement of its policy.

**Procurement: Sanctions available to the Bank**

Transparency International strongly encourages the EIB to expand and develop the sanctions available, in particular debarment. TI has previously produced a set of recommendations for the Development and Implementation of an effective Debarment System in the EU (HTTP://www.transparency.org/global_priorities/public_contracting/key_sectors/special_topics) which the EIB is encouraged to examine more closely. The full text of these recommendations is attached as Annex A.³

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¹ For more information about the Business Principles and TI’s work in the private sector, please see: http://www.transparency.org/global_priorities/private_sector/business_principles


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The recommendations specify why debarment is not only a powerful sanction, but, more importantly, an effective deterrent for corruption. The paper also lays out in detail the conditions necessary to make a debarment system transparent, proportionate, fair, timely and accountable.

With these recommendations as the general framework, TI has following specific comments to the EIB guidelines:

**Debarment applicable to both finance contracts and procurement cases**
In the current draft the option of debarment seemingly only applies to finance contracts and not procurement. TI believes the sanction should be available in both.

**Debarment on the basis of non res judicata cases**
The current guidelines allow for debarment of “any candidate tenderer who has been convicted by a final judgment”. TI welcomes this possibility, but strongly encourages the EIB to expand the concept and allow debarment based on administrative (non res judicata) decisions as well:

1) **Limited number of res judicata cases**
Corruption thrives in obscurity and spreads with impunity. In corruption cases there are often no direct victims to raise a case and no direct witnesses to the act. As a result there are few investigations of cases though the problem of corruption in public procurement remains alarmingly high. This unfortunately makes a system based solely on res judicata cases limited in scope and effectiveness.

2) **Untimely outcome**
Debarment can and should be structured as a timely remedy that can contain damage to, and protect the integrity of, public funds by keeping corrupt business operators away from public contracts. As res judicata cases often take many years before a conviction is reached, the debarment of a tenderer is often applied too late to have a deterring effect as the direct perpetrator and possibly the CEO may already have left the company. The time delay can also create unfairness in the debarment, as the business procedures of the company may have improved significantly during the decade or more since the beginning of the trial. Administrative procedures allow for much quicker action, keeping the crucial deterring effects of the debarment system, while maintaining a due process similar to the courts.

2) **Limited, if any, litigation risk**
A debarment system based on administrative procedures is often perceived as risky, as debarred tenderers may take the decision to court e.g. to the European Court in Luxembourg. While this indeed is a possibility, it is TI’s opinion that litigation can be avoided if the system is designed, implemented, managed and operated by the highest standard. More information on this is available in the TI recommendations mentioned above.

The World Bank can serve as a good example for this: While not having to answer to a court in traditional sense, the bank has a similar independent internal complaint system. It is TI’s understanding that of more than 300 debarment cases, very few have been contested and none have lead to delisting.

The risk of debarring should further be weighted against the danger of not acting on alleged corruption allegations, potentially leading to a sense of immunity among procuring companies with high levels of corruption as result.

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3 These can be found at:

4 Only four countries of 36 signatories of the OECD convention on countering bribery (adopted in 1999) did judicial enforcement in 2005. This was despite the fact the 60% of the respondents to the World Business Environment Survey indicated that a bribe above 5% of the value of the contract is typically needed in doing business with the government (WBES 2000)
Transparency and exchange of information

Access to information is a key element for the transparency and effectiveness of the debarment. For this reason, EIB debarment cases should be shared with the EU-wide debarment system foreseen in the revision of the Financial Regulation (COM (2005) 181) adopted by the Council of Ministers in December 2006. In the regulation, an exchange of data between all parties procuring under the EU budget is foreseen, among EU institutions, member states and third parties and countries. Whether or not formally covered by this regulation, EIB would be well advised to participate in the system it creates.

Debarment under the Financial Regulation can be based on either res judicata cases or whenever a potential tenderer has “been guilty of grave professional misconduct proven by any means that the contracting authority can justify” as confirmed by the Commission to Transparency International in August 2003. It is hence TI’s position that a debarment system based on administrative procedure and shared with institutions in charge of the management of the EU budget is both legally feasible and desirable if designed, implemented, managed and operated at high standard.

Much work remains to be done in refining the details, but the EIB can save valuable time by building on the years of work already being done in this area by the Commission.

On V. OBLIGATIONS TO REPORT SUSPECTED FRAUD AND OTHER ILLEGAL ACTS.

As a preventive measure, in cases where the EIB lends money to governments, the EIB should also require the borrower to make public its receipt and expenditure of the loan to its citizens, and encourage fiscal (procurement, budget/expenditure, taxes) transparency in general. Fiscal transparency is a basic accountability mechanism that can serve to protect EIB funds and the integrity of the countries in which EIB funds are used.

Several anti corruption conventions -UN, African Union, OAS- already foster greater transparency in how governments are accountable to the public, asking them, among other things, to promote access to information legislation and to put transparent public contracting processes into place. This type of preventive measures can give citizens and other stakeholders a chance to monitor how projects are being carried out, and be able to report cases of suspected corruption, fraud or other illegal acts.

On VI. PRINCIPLES FOR THE CONDUCT OF INVESTIGATIONS

Authority to conduct investigations
In addition to the existing IG/IN, the EIB could consider the appointment of a special independent monitor, who should review and monitor the implementation of this policy within the EIB as well as review major cases of corruption or fraud within the IG of the Bank. Reports produced by the independent monitor should be made public and reported periodically to the Audit Committee and the Board of Directors of the EIB.

Access to Information
The present policy grants audits rights “in so far as provided in the applicable EIB financed contracts.” TI recommends that audit rights should be a standard provision of all contracts. This is a current practice at the World Bank, for example, and we consider it of vital importance.

Annex A: Recommendations for the Development and Implementation of an effective Debarment System in the EU

Even more so as the EIB is managing a certain amount of the EU budget and EDF resources in the foreign action of the EU