Revision of EIB Complaints Mechanism Policy: Comments from the ITUC

1. The International Trade Union Confederation represents 181 million workers in 163 countries where it has national affiliates, which include almost all major trade union centres in EU member countries. The ITUC promotes workers’ interests in all forums or institutions whose activities affect these interests, and has been active for many years in urging international financial institutions to adopt and apply policies requiring compliance with international labour standards in the activities they finance. Beginning in 2006 several multilateral development banks (MDBs) adopted “labour safeguards” requiring such compliance, generally referring to the fundamental workers’ rights conventions of the International Labour Organization, known as the core labour standards.

2. In 2009, the European Investment Bank adopted the *EIB Statement of Environmental and Social Principles and Standards* (ESPS), which includes the provision that “the promoter shall develop and implement verifiable programmes and procedures to ensure that the core labour principles and standards are adhered to or would be reached during project implementation” (Para 54). It also states that project promoters “should develop and implement verifiable programmes and procedures to ensure community and occupational health and safety standards are aligned with good international practices” (Para 55).

3. While the EIB’s 2009 ESPS enunciates important basic principles on labour rights, it should be noted that several MDBs have adopted much more comprehensive provisions. In addition to spelling out detailed requirements on occupational health and safety and core labour standards – the latter comprise freedom of association and right to collective bargaining, and prohibition of child labour, forced labour and discrimination – the MDB labour safeguards also include the following requirements:
   - Providing written information to workers about their conditions of employment and providing conditions that are consistent with national law and applicable collective agreements and at least comparable to those of equivalent employers;
   - Ensuring that the labour standards requirements apply to non-employee (i.e. contracted) workers as well as direct employees;
   - Taking action to ensure that child labour, forced labour and significant safety issues are not present in the primary supply chain.
4. The ITUC strongly encourages the EIB, in the course of a revision of its environmental and social policy, to expand the current labour provisions of the ESPS such that they offer the same level of protection for workers as those adopted by the MDBs. We note that the draft *EIB Group Complaints Mechanism* states that the “EIB-CM compliance review ... might also include a substantive review of compliance with standards, especially in the case of complaints regarding environmental and social impacts” (Para 5.3.3). This provision could serve to develop more precise guidance for the implementation of the standards expressed in Paras 54 and 55 of the ESPS, and for updating the labour section of the ESPS during a subsequent revision.

5. The ITUC also recommends that a revision of the EIB’s ESPS should make clear the obligatory nature of the labour and other social and environmental requirement. The EIB should follow the example of MDBs that explicitly stipulate that a failure to comply with the safeguards can lead to a cessation of loans and investments. For example, the IFC’s *Policy on Environmental and Social Sustainability* (as revised in 2012) states:

   “IFC will only finance investment activities that are expected to meet the requirements of the Performance Standards within a reasonable period of time. Persistent delays in meeting these requirements can lead to loss of financial support from IFC.”

6. The ITUC welcomes the introduction of a “Simplified procedure” for responding to complaints “that are of easy and prompt resolution” (Section 4.2). A frequent weakness that complainants have encountered at MDBs regarding labour safeguard compliance is the length of time in responding to complaints, with the result that it many cases complainants are unable to benefit from corrective action taken after findings of noncompliant practices. However clear criteria for applying the simplified procedure should be published, and the complainant should consent to use of the simplified rather than the standard procedure for treating the complaint.

7. The ITUC agrees with the clearer separation of the different functions of the EIB-CM, notably between the Investigation and Mediation functions (Section 5.3). This is consistent with the practices recently developed within the MDBs’ complaints mechanisms.

8. We believe that the EIB-CM should be accountable to the Board of Directors and therefore welcome the intention to deliver regular reports to the board as well as management (Section 5.4). However, in order to respect the independence of the EIB-CM, ongoing complaints should not be subject to consultation of either management or the board. The independence would be further enhanced if the director of the EIB-CM were named by the Board of Directors rather than EIB management.

9. The ITUC strongly objects to two provisions of the draft *EIB Group Complaints Mechanism* regarding the admissibility of complaints, which in our view severely constrain the possibility of using the EIB-CM to address and resolve labour concerns. The provisions should be modified or deleted as suggested below.
10. A first constraint is the requirement that “Complaints must be submitted within one year from the date on which the facts upon which the allegation is based could be reasonably known by the complainant(s)” (Para 4.1.5).

11. It should be expected and encouraged that parties affected by possible non-compliance with the labour provisions of the ESPS seek to resolve their issue with project managers or EIB staff responsible for the project. Such a procedure may involve some back-and-forth over several months but, if successful, have the advantage of resolving disputes locally and without recourse to a heavier international procedure. The application of a short time limit may discourage the parties from seeking local resolution of disputes and, instead, encourage immediate recourse to the EIB-CM in order not to lose admissibility.

12. It is important to note that the MDBs with labour safeguards allow for much more generous time limits for filing complaints with their respective complaints mechanisms. For example, the EBRD’s project complaint mechanism states: “To be held eligible for a Compliance Review, the Complaint must be filed within 24 months after the date on which the Bank ceased to participate in the Project” (EBRD, Project Complaint Mechanism Rules of Procedure, page 4).

13. The EIB-CM should extend the period of admissibility for lodging complaints to the same duration as the EBRD’s Project Complaint Mechanism. The EIB should also request that the European Ombudsman extend its period of admissibility of complaints for parties that have filed a complaint with the EIB-CM.

14. A second major constraint for submitting complaints on labour issues to the EIB-CM is the stipulation that “Complaints which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter are not admissible” (Para 4.3.4). In almost all countries, workers who believe that employers are not complying with legal obligations regarding employment and working conditions frequently use established processes for obtaining redress on a local level. In many countries, administrative boards or tribunals deal with and try to resolve labour issues. In some countries these procedures function expeditiously, but in others much less so.

15. It seems highly illogical for the EIB-CM to prohibit its use by those who try to avoid ‘clogging the system’ by using local processes as a first recourse. Para 4.3.4 in effect discourages potential complainants from using the latter, since by doing so they lose the possibility of filing with the EIB-CM if local procedures do not resolve their issue. None of the MDBs’ complaints mechanisms imposes the constraint that complainants cannot attempt to resolve their grievance through local judicial, administrative or other procedures. The ITUC recommends deleting Para 4.3.4.
16. Finally, noting that the EIB and the ILO signed a Memorandum of Understanding in July 2015 to expand cooperation between the two institutions, the ITUC recommends that the EIB work with the ILO for an updating of the labour section of the ESPS, as suggested in paragraph 4 above. We also recommend that the EIB-CM work with the ILO for interpretation of the current and future labour provisions of the ESPS and particularly on the identification of promoters’ labour practices that can be deemed to be in non-compliance with the standards.

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