Contribution to Public Consultation: EIB draft Complaints Mechanism Policy

Firstly, I welcome the opportunity to be able to contribute to the public consultation launched by the EIB Group on its Complaints Mechanism Policy. Although officially, the consultation only concerns the Policy and not the Procedures, the two cannot really be separated. My comments therefore also refer to the Procedures, whenever necessary.

Independence of the Complaints Mechanism

In its current form, the Complaints Mechanism Division (EIB-CM) is heavily dependent on the EIB Group’s Administration. This holds, in particular, when it comes to the decisions on admissibility of complaints. However, paragraph 1.1.3. of the Procedures stipulates that the Head of EIB-CM will consult with the relevant EIB Group services on admissibility before registration. This implies that, if services object, complaints may not be registered. Moreover, it is not the Head of EIB-CM, but the Inspector General who may decide on admissibility when EIB Services have objected to the decision by the head of the CM and disagreement persists.

In my opinion, this procedure undermines the credibility of the EIB-CM as independent mechanism. I suggest two changes: (1) all complaints should be duly registered, so that the complainants receive a quick confirmation of the receipt and handling of their complaint; (2) the Head of EIB-CM will take all decisions concerning admissibility of the complaint and it is up to him/her to decide whether it is necessary to consult the services of the EIB Group.

Furthermore, paragraph 2.3.2. of the Procedures restricts the competence of the Head of the EIB-CM also in respect of the decision to consider the complaint eligible for an investigation/compliance review, or a collaborative process. Such a decision can only be taken in agreement with the EIB Inspector General. Concerning the decision on whether or not to proceed with formal mediation the paragraph stipulates that it needs to be endorsed by the Inspector General, after consultation with all the EIB Group’s services involved, and in case of disagreement, with the Management Committee. This significantly undermines the credibility of the Head of the EIB-CM, since for any important decision he/she is dependent on the Inspector General, the EIB Group’s Services or the Management Committee. Also in this respect, I suggest to have all decisions taken by the Head of the EIB-CM, even if there is no agreement with the EIB services, the Inspector General or the Management Committee.

I am well aware of the fact that the Complaints Mechanism is an internal instrument, whereas the complaints with the European Ombudsman serve as second tier and as external instrument. Nevertheless, in my opinion also the first tier should be as neutral as possible, which means that the EIB-CM should have sufficient leeway to act independently from the EIB Group’s services, as is also foreseen in paragraph 2.2. of the Policy.

Accessibility of the Complaints Mechanism

For a complaint to be considered admissible, it is necessary that it concerns a case of alleged maladministration of the EIB Group. This follows from paragraph 4.3.1. of the Policy. However, the definition of maladministration, introduced in paragraph 3 falls short of the one used by the European Ombudsman. Whereas also the EO defines maladministration as poor or failed administration, the following elements are mentioned as examples that are not to be found in the EIB Group’s Policy: ‘Some examples are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information and unnecessary delay. I suggest to include these examples in paragraph 3 of the Policy.'
Paragraphs 4.3.6, 4.3.7, 4.3.8 and 4.3.9. of the draft Policy mention certain types of complaints that are not admissible. It is unclear why complaints challenging the legality of the EIB Group’s policies should be handled by the Secretary-General of the EIB or the EIF CE/DCE. Very often, complaints will deal with matters that are seen as against the law. This already follows from the definition of maladministration. After all, the Complaints Mechanism will often be used to avoid having to go to court. In my opinion, this provision will lead to lack of clarity and also undermines the credibility of the EBI-CM. I therefore suggest to delete paragraph 4.3.7.

Like the EO, I also question the idea of having a separate Complaint Mechanism to deal with project procurement complaints. This will certainly diminish transparency for complainants.

Finally, I would appreciate clarification of paragraph 4.3.9. which stipulates that the EIB-CM cannot deal with allegations of prohibited conduct as defined in the EIB Group Anti-Fraud Policies. Yet again, the Policy refers such complaints to the services instead of to the EIB-CM.

Adding up all the grounds for admissibility, it will be extremely difficult for complainants to know whom to turn to, and additionally, it greatly diminishes the role of the EIB-CM. Instead, the EIB-CM should be the central point of reference for complainants.

**Disclosure of Information**

Access to documents is important in the context of transparency. This is not reflected enough in the set-up of the Complaints Mechanism. For example, Article 4.6.5 only refers to the EIB Group Transparency Policy. This is not a theoretical problem, but has immediate practical importance, as follows from the Parliament’s resolution 2014/2156(INI), in which Parliament: ‘regrets the fact that in the context of a recent case (Mopani/Glencore), the EIB is refusing to publish the findings of its internal inquiry; […] asks the EIB to follow the recommendations of the European Ombudsman’.

The Complaints Mechanism should further improve its transparency performance. It already improved its database of cases and clarified that additional case documents and information would be added. However, it is necessary that the Complaints Mechanism discloses information proactively. The EIB and CM policies should commit to transparency and disclosure of information about the mechanism’s procedures, operations and cases.

**Transparency in hiring processes**

Currently there is a lack of transparency in hiring processes at the CM. This also creates doubts concerning the independence of the mechanism. External stakeholders could be included in the selection process of the director and function managers of the mechanism. They would help to legitimise the hiring process and build trust in the independence and integrity of the individuals selected. Furthermore, these selection committees should not include members of EIB management. I recommend adding a specific paragraph in the Policy on recruitment policies in this regard.