To: EIB - Project Directorate – Procurement Office  
Attn.: Mrs. Alaleh Motamedi, Senior Procurement Specialist  

Cc: FIDIC  
Attn.: Mr. Enrico Vink, Managing Director  

Re: Draft for Consultation on the EIB Group Complaints Mechanism Policy and Draft of the Revised EIB Group Complaints Mechanism Procedure  

Please, find below our comments with regard the Draft for consultation of the EIB Group Complaints Mechanism Policy and the Draft of the revised EIB Group Complaints Mechanism Procedure.  

The comments are made under the understanding that EIB does not want a prescriptive procedure, but rather to establish the “principles” / framework within which the complaints procedure should take place.  

EIB Group Complaints Mechanism Policy  

Glossary  

Other definitions could be usefully included (ex.: Affected people, Anonymous party -see 4.1.7, 4.3.5., Interested parties)  

4.1.5 – what is the sanction?  

4.1.7 – see the issues raised during the Public Consultation in June 2017; the safety / life of the complainant could be put in danger in the case of a fully transparent procedure.  

4.3.2 – even if the text there is a “may”, there is the risk to be considered that EIB is responsible if it had wrongly indicated a competent authority.
4.3.4 – “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.” – “or” to be replaced with “and”.

On one hand, sometimes, courts and other institutions could ask what is the position of the EIB with regard certain aspects / situations and, on another hand, the decision of a court is not mandatory until is definitive and it could be changed in an appeal.

4.3.5 – see 4.1.7

4.3.8 – to be more clear if it is about the procurement projects within and outside the EU; the EIB Project Procurement Complaints System is only for procurement projects outside of EU?

EIB Group Complaints Mechanism Procedures

1.1 Admissibility check / registration

It could be wrongly interpreted that there is no “registration” of the complaint until the admissibility check. Normally the complaint must be registered as received, checked for admissibility and perhaps, when admissible, registered as “admissible in principle” (similar to some juridical procedures).

This way, the complaint can be rejected as inadmissible and the rejection could be properly sent to its author, closing the procedure.

The “complaint admissible in principle” will be addressed on merit by the EIB-CM.

Maybe 1.3 to be moved first, before the current para. 1.1?

1.1.3 – it could be unclear for some parties between who there was the disagreement;

1.2.2 – who and how decides when it is a sensitive situation?

1.3.3 – does not contain the “may” from 4.3.2 of the Policy; therefore could be interpreted as an obligation of EIB to provide the correct competent institution.

1.11.1 – the table must be corrected: in the column “After”, at the third and fourth row, the “Acknowledgment of receipt” should be replaced with “communication of admissibility” because the Acknowledgment of receipt could be given with a communication of inadmissibility.

2.5 Mediation phase – It is clear that EIB-CM will organize the mediation procedure, but the actual mediation (“the formal mediation”) will be done through an external mediation expert / mediator. It is not very clear where the activity of the mediator starts and ends (at least under the jurisdiction I know – Romanian). There it should be stated how, and which is the legislation applicable to the mediation (formal mediations and the rights and obligations of the parties and mediator – the national legislation could vary).
It is not perfectly clear who are the parties and who are the participants in the mediation.

The Scope of Policy says “The EIB Group Complaint Mechanism Policy and Procedure apply to complaints of alleged maladministration lodged against EIB Group.” Section 3 of the Policy defines maladministration in direct connection with the EIB activity. Therefore, EIB-services should be part of the mediation procedure and not mere participants.

It is not very clear who should sign the Agreement to mediate, who has the right to interrupt or call off the mediation process and who should sign the Mediation Agreement.

Also, it could be wrongly interpreted who should make the recommendation for an investigation if the mediation process fails (2.5.6).

3.1.2 – The complaints are defined in 4.1.1. of the Policy. From the art. 4.2. there it results that the Prevention (PR) procedure is one of the four categories of complaints. Art. 4.3 regulates the admissibility of a complaint. The Policy and Procedure should be co-ordinated in what regards the Prevention procedure, having in view that, a maladministration case is not possible before a decision to finance is made. Therefore, the admissibility phase is not applicable in the Prevention procedure.

A) The general case – the communication to the complainant should be made within a similar period of time with the one provided in 1.3.

B) The exceptional case – could be the refusal of the appraisal team a maladministration case? If yes, could start a review under the Standard procedure?

With due consideration,

Cremona Cotovelea
on behalf of FIDIC Procurement Policy Committee