Alignment of the draft EIB Group Complaints Mechanism Procedures with the draft revised EIB Group Complaints Mechanism Policy.

In an effort to remove inconsistencies and improve readability, the Procedures implementing the EIB Group Complaints Mechanism Policy have been aligned with the revised Policy. For the sake of transparency and good administration, all issues raised by external stakeholders relating to the EIB Group Complaints Mechanism Procedures can be found below in **bold** and the EIB’s reasoned position in regular text. Within the scope of this alignment, the EIB Group brought in additional changes, which have also been listed below (issues #2 and #26).

**Article 1.1 - Admissibility Check/Registration**

**General Comments**

1. **Registration of a complaint should occur regardless of whether it is later considered as admissible or not, to reflect judicial best practice.**

   Under the current as well as revised Procedures, complaints are registered regardless of whether they are declared admissible or not.

   It should be noted that the EIB-CM is a non-judicial review mechanism and as such it does not follow judicial best practices.

   For the sake of clarity, Article 1.1.4 (new Article 1.1.3 of the draft Procedures) has been amended as follows:

   “After the admissibility check, the complaint is registered by the EIB-CM. If admissible, complaints follow the complaints handling process. The decision taken in the admissibility check does not prevent the EIB-CM from reconsidering the (full or partial) admissibility of the complaint on the basis of information obtained at a later stage.”

2. **There is currently no explanation as to how the EIB-CM deals with multiple allegations as well as with additional allegations received during the complaints handling process, and in particular during the Initial Assessment phase.**

   In order to provide more clarification on these issues, the EIB Group has introduced two new Articles (1.1.4 and 1.1.5) in Section 1.1.

   **1.1.4** “When admissible complaints contain several allegations of the same type, they are all processed under the same complaint-handling procedure. If the same complaint presents different types of allegations, separate complaint-handling procedures are launched in line with the provisions of article 4.2 of the EIB-CM Policy. When the complainants submit additional allegations before the finalisation of the Initial Assessment phase, the EIB-CM will decide whether to handle them within the same complaints-handling procedure or to launch a separate one. Additional allegations submitted after the finalisation of the Initial Assessment phase will be handled in a separate complaint-handling process.”

   **1.1.5** “When the complainants substantiate an allegation contained in the complaint after the submission of the complaint, the new information provided is treated as part of the ongoing complaints-handling procedure. Depending on the complexity/quantity of the new information, the timeframe for the handling of the case may be extended.”
**Article 1.1.3**

3. The draft Procedures allow the Inspector General to determine admissibility if EIB Services disagree with the EIB-CM’s decision.
   - Unless provision 1.1.3 is removed, the EIB-CM’s independence and credibility will be seriously jeopardised.
   - The CM is the only body that should be responsible for judging upon the admissibility of complaints.
   - The Head of EIB-CM should have sole responsibility of admissibility, even if there is disagreement with the other bodies.

The EIB Group agrees with the issues raised.

Article 1.1.3 has been deleted.

Article 1.1.4 (new Article 1.1.3 of the draft Procedures) has been amended as follows:

"After the admissibility check, the complaint is registered by the EIB-CM. If admissible, complaints follow the complaints handling process. The decision taken in the admissibility check does not prevent the EIB-CM from reconsidering the (full or partial) admissibility of the complaint on the basis of information obtained at a later stage."

4. There is no justification and no precedent for allowing EIB Services or anyone else to determine eligibility under any circumstances. While it is necessary for the EIB-CM to consult with EIB Services during the admissibility phase, that consultation should be limited to soliciting information regarding the project, not their opinion on whether the admissibility requirements have been met as this may prevent these complaints from being addressed.
   - The Head of the EIB-CM should take the decision on the necessity to consult with the services.

The EIB Group agrees with the issues raised.

See the EIB Group's response to issue #3.

5. It is suggested to clarify between whom potential disagreement is occurring.

See the EIB Group’s response to issue #3.

**Article 1.2 - Notification to the EIB Group’s Services**

**Article 1.2.2**

6. Request for clarification on what qualifies a “sensitive case”.

The draft Procedures qualify a case where the EIB-CM has identified a potential risk of retaliation as “sensitive case”.

**Article 1.3 - Communication to the Complainants**

**General Comments**

7. Suggested to move sub-section 1.3 to the beginning of the section 'Procedures of the EIB-CM', before detailing the different processes.

The EIB Group does not agree with this proposal.
Article 1.3.3

8. The indication that EIB may direct the complainant to the competent authority could be problematic if the complainant is directed to the wrong authority. There is inconsistency with Article 4.3.2 of the Policy.

The rewording of Article 4.3.2, resulting from the public consultation, ensures that there is no inconsistency between Article 1.3.3 of the draft Procedures and the revised Policy.

In addition, Article 1.3.3 has been amended as follows:

“If, at any stage of the complaint-handling process, a complaint is declared fully or partially inadmissible, the complainants are informed of the reasons for inadmissibility and provided with suggestions as to whom they may address their concerns, if applicable.”

Article 1.4.2
(see also 1.1.3, 1.4.4, 1.10.1, 2.2.7, 4.2, 1.6.1, 1.6.2, 1.7.3, 2.5.6)

9. It is clear from the language used in the draft Procedures that the EIB and the EIB-CM do not consider complainants to be the primary beneficiary of the mechanism, The EIB-CM mandate is not sufficiently oriented towards the complainants, who should be considered the primary beneficiaries of the mechanism.

- The Procedures commit the CM to “substantial information flows and consultations with the EIB Group’s relevant services, in order to ensure constructive collaboration”, but there is no similar provision for complainants (Draft Procedures art. 1.4.2).
- Deference to EIB services is manifest throughout the draft Policy and Procedures (Draft Policy art. 6.2.6 and Draft Procedures arts. 1.1.3, 1.4.4, 1.10.1, 2.2.7, 4.2, 1.6.1, 1.6.2, 1.7.3, 2.5.6)."

During the complaints handling process, the EIB-CM engages with complainants, from admissibility check through the Initial Assessment up to the consultation on the outcome of the inquiry (the Conclusions Report).

The Articles referred to are crucial for the establishment of constructive co-operation with the EIB services concerned by the case. The EIB considers such cooperation instrumental with a view to efficiently and promptly resolve the concerns raised by the complainants and ensure that the agreed recommendations are adequately and timely implemented.

In order to address this recommendation, and besides the rewording of Article 2.4 of the revised Policy, the EIB has:

- deleted Article 1.1.3 of the draft Procedures;
- reviewed Article 1.6.1 of the draft Procedures with a clear indication of the timeframe for consultation of the EIB Group concerned services (see EIB Group’s response to issue #13);
- re-introduced the consultation of complainants on Initial Assessment Reports in Article 2.2.7 of the draft Procedures (10 working days in line with the timeframe for consultation of the EIB Group concerned service). See also the EIB Group’s response to issue #25.

With regard to the possibility of the Inspector General to request a review of the Conclusions Report on the basis of the reaction of members of the Management Committee or the EIF Chief Executive (Article 1.7.3 of the draft Procedures), this provision was already present in the currently applicable Complaints Mechanism Operating Procedures.
With regard to the recommendation made on Article 2.5.6 of the draft Procedures, see the EIB Group’s response to issue #39 of the Procedures Issues Matrix. On procedural provisions implementing the Advisory function (Article 1.4.4 of the draft Procedures) and simplified procedure (Article 4.2 of the revised Policy see respectively the EIB Group’s response to Stakeholder Comment #75 and #33 of the Policy Matrix.

**Article 1.6 - Consultation**

**General Comments**

10. The draft Policy and Procedures should be revised significantly to ensure that the complainants’ views are taken into consideration when the final decisions are made as to how the EIB will respond to the EIB-CM’s findings.

The decision of the EIB Group on how to respond to the EIB-CM’s findings takes into consideration comments of the complainants obtained through the continuous engagement with external stakeholders, including the complainants.

Furthermore, the two-tier structure of the EIB Group’s Complaints Mechanism ensures that final decisions on how the EIB Group will respond to the EIB-CM’s findings can be challenged before the European Ombudsman.

11. The draft Procedures should clarify the role and responsibilities of the Inspector General in case of disagreement regarding the different EIB-CM reports (draft and final Conclusions Reports and Initial Assessment Report).

See the EIB Group’s response to Stakeholder Comment #26 with regard to the Initial Assessment Report.

As regards both the draft and final Conclusions Report, the issue has been addressed in Articles 1.6.2 of the draft Procedures (as regards the draft Conclusions Reports) and in Articles 1.7.2, 1.7.3 and 1.8.2 (as regards the final Conclusions Reports).

12. Consultation with the EIB Group services should be limited in time and, after the expiration of the deadline, the Head of EIB-CM should submit it to the Management Committee for consultation without delay.

See the EIB Group’s response to the issues raised in comment #13 setting up a clear timeframe for, *inter alia*, the consultation with the services.

Articles 1.7.2 and 1.8.2 have been amended as follows.

1.7.2 “Following the expiration of the deadline for comments, and without further delay, the Head of EIB-CM will send […]”

1.8.2 “In case of disagreement with the services concerned, or if so requested by the relevant EIB Director(s) General or the EIF Head of Risk Management, following the expiration of the deadline for comments and without further delay, the EIB Inspector General will submit […]”
Article 1.6.1

13. The EIB-CM should adhere to clearly established timelines for each stage of the complaint process. The draft Procedures provide fairly clear deadlines for some phases of the complaint process but do not specify the deadlines for EIB Services or management, for example;

- EIB Services and Directors General are allowed to comment on a draft Conclusions Report before it is shared with complainants and Article 1.6.1 states the EIB-CM will give EIB Services and “indication” of the deadline.
- It is unclear whether the Directors General will have a deadline.
- In contrast complainants are given 10 days to comment.

The EIB Group agrees with the issues raised.

Articles 1.6 and 1.7 have been amended with a clear timeframe for the consultation of the EIB Group services and concerned Director Generals as well as for the circulation of the final Conclusions Report to relevant members of the Management Committee/EIF Chief Executive. Article 1.6.1, read in conjunction with Article 1.6.2 (see EIB Group’s response to issue #15) does foresee the possibility of further extending, in exceptional and well-motivated circumstances, the timeframe for consultation of internal and external stakeholders.

<table>
<thead>
<tr>
<th>Who</th>
<th>Action</th>
<th>Maximum delay</th>
</tr>
</thead>
<tbody>
<tr>
<td>EIB Group’s relevant services</td>
<td>Comment on draft Initial Assessment Report to the EIB Group’s relevant services</td>
<td>Up to 10 working days, depending on the complexity of the case</td>
</tr>
<tr>
<td>EIB Group’s relevant services</td>
<td>Comment on draft Conclusions Report</td>
<td>Between 5 and 10 workings days, depending on the complexity of the case</td>
</tr>
<tr>
<td>Directors General concerned respectively the EIF Head of Risk Management</td>
<td>Comment on the draft Conclusions Report, in case of agreement</td>
<td>5 working days (tacit procedure)</td>
</tr>
<tr>
<td>Directors General concerned respectively the EIF Head of Risk Management</td>
<td>Comment on the draft Conclusions Report, in case of disagreement and intention to consult external stakeholders</td>
<td>Between 5 and 10 working days taking into account the complexity of the report</td>
</tr>
<tr>
<td>Directors General concerned respectively the EIF Head of Risk Management</td>
<td>Provide the Inspector General with a formal Services Response with their position and comments in reaction to the final Conclusions Report</td>
<td>Up to 10 working days</td>
</tr>
<tr>
<td>Relevant members of the EIB Management Committee or EIF Chief Executive</td>
<td>Circulation of the final Conclusions Report and the Service Response, if any</td>
<td>Maximum 10 working days</td>
</tr>
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</table>
14. Articles 1.6.1 and 1.6.2 should be revised and indicate that the draft Conclusions Report should be shared simultaneously with all parties and the EIB for their comments.

The approach taken by the EIB-CM follows the model of the complaints-handling procedure before the European Ombudsman. Firstly, the institution/body complained against is asked to comment and provide its view on the allegations made, which then is communicated to the complainant for his/her comments.

This model applies to the internal tier of the EIB-CM, which seeks first the view of the EIB services on the facts gathered as part of the inquiry as well as its findings, conclusions and recommendations if any, before submitting them to the complainants, whenever appropriate.

Furthermore, the EIB-CM does engage with complainants and the other parties to best inform its opinion throughout the whole complaints-handling process.

15. While the Policy provides for extension of the timeline on mediation with the complainants, there may be other cases in which the complainants should have input into the timeline for the handling of the complaint. For example, Article 1.6.2 of the draft Procedures states that the external stakeholders involved in the complaint process typically have 10 working days within which to submit comments.

- Given the language and cultural differences, this may be too brief a period for certain persons to discuss and provide meaningful input.

The EIB Group agrees with the issues raised.

The text already contains “normally” and “taking into due account the complexity of the report” which implies an indicative deadline.

External stakeholders shall be given a reasonable time limit for comments. This means that the EIB-CM will extend the time limit for consultation of external stakeholders (and the overall timeframe for the EIB’s response accordingly), upon the latter’s reasoned request (see rewording of Article 1.6.2).

See also the EIB Group’s response to issue #13.

16. Where the EIB-CM finds non-compliance that has contributed to harms or the risk of harm, the Conclusions Report should include a set of recommendations for remedial measures. These recommendations should not be influenced by Bank management as the process renders the recommendations nearly meaningless, resulting only in actions the EIB is willing to take, not actions it must take to redress harm.

With regard to harm-redressing and the mission of the EIB-CM, see the Introductory Remarks on the remit of the EIB-CM, included at the beginning of the Policy Issues Matrix.

The recommendations of the EIB-CM are not influenced by the Bank’s Management, which is why the latter may or may not endorse them in case of lack of consensus between the EIB-CM and the EIB services concerned on the former’s final Conclusions Report.
In addition, given the non-judicial nature of the review carried out by the EIB-CM, the EIB decision-making process is not bound by the opinions of the EIB-CM. The EIB Group acts on the basis of decisions taken by the EIB Governing bodies or the EU judicature.

**General Comments**

17. Complainants should be consulted on the development of the remedial action plan, and the Board should have the benefit of the complainants’ perspective on its adequacy prior to approving the plan.

With regard to the specific features of the EIB Group Governance, see the Introductory Remarks on the remit of the EIB-CM, included at the beginning of the Policy Issues Matrix, as well as the EIB Group’s response to Stakeholder Comments #64, 89 and 90 in the Policy Issues Matrix.

The complainants are consulted on the recommendations and corrective actions identified in the draft Conclusions Report, pursuant to Article 1.6.2.

Article 1.8 does not concern consultation on a draft report, but rather the circulation of final reports to the Management Committee for information in case of agreement with the services (Article 1.8.1) and for decision in case of disagreement (Article 1.8.2).

The decision of the EIB’s Management Committee on the action to be taken is therefore already taken on the basis of the information provided by the complainant during the whole complaints-handling process.

**Articles 1.8.2 and 1.8.3**

18. If the EIB-CM persists in keeping a recommendation in the final Conclusions Report with which the EIB disagrees, the Management Committee can ultimately disregard it. The Management Committee also has the discretion to decide whether it will publicly disclose EIB Services’ response to the EIB-CM’s compliance report which greatly diminishes its independence. These Articles should be revised or removed.

The suggestion is that there is a need to clarify the meaning of Article 1.8.3. The latter only refers to the fact that the EIB’s Management Committee could decide not to attach the Services Response to the final Conclusions Report of the EIB-CM. This can occur only in cases where the EIB’s Management Committee decides that, despite the disagreement of the services, the EIB’s response to the complaint is outlined in the EIB-CM’s final Conclusions Report. The current setting therefore does not affect the independence of the EIB-CM.

**General Comments**

19. The final Conclusions Report should be shared simultaneously with the complainants and the EIB Services in order to be able to discuss the proposed action plan with Management. In current circumstances, the complainant may never even see the Services response if the Management Committee decide not to attach it.

The EIB’s response to the complainant is identified in the decision of the EIB’s Management Committee. Should the Management Committee decide that the EIB’s reply to the complaint is...
outlined in the EIB-CM’s final Conclusions Report, the Services Response does not provide added value in terms of identification of the EIB’s position on the concerns raised in the complaint.

The disclosure of the Services Response is subject to the ad-hoc assessment of exceptions to the presumption of disclosure established by the EIB Group’s Transparency Policy.

See the EIB Group’s response to issues #17 and 18.

**Article 1.10 - Follow-up/ Monitoring of Implementation**

**General Comments**

20. A case should only be closed based on verifiable evidence that non-compliance has been remedied. This evidence should be obtained by;

- Consulting with parties in the development of monitoring reports. In the case of Environmental and Social impacts of financed projects/operations the consultation could be extended to other affected individuals and groups.
- Conducting site visits, as appropriate (currently only possible if approved by the EIB Management Committee).

The evidence on which the EIB-CM bases its opinions is collected as part of the engagement of the EIB-CM with internal and external stakeholders concerned by the complaints-handling process. Affected individuals and groups are part of the external stakeholders with which the EIB-CM engages as part of the complaints-handling process.

On site visits, see the EIB Group’s response to issue #24.

**Article 1.10.1**

21. EIB management must be required by Board-approved policy to implement corrective action plans as approved by the Board.

The EIB Management Committee decides whether corrective actions recommended by the EIB-CM shall be implemented. Corrective actions are to be implemented by the operational component of the EIB Group (the services) either directly or through requirements to monitor corrective actions to be implemented by the Promoter.

See the Introductory Remarks at the beginning of the Policy Issues Matrix and the EIB Group’s response to Stakeholder Comments in the Policy matrix on the two-tier Governance structure of the EIB (Stakeholder Comment #64) and roles of the non-resident Board and resident Management Committee.

**Article 1.10.2**

22. The EIB-CM should consult with parties in the development of its monitoring reports and conduct visit sites where appropriate and cases should not be closed unless there is verifiable evidence that the non-compliance has been remedied.

- Article 1.10.2 should be modified to allow the EIB-CM to undertake a site visit when it deems it appropriate, without the constraint of EIB Management Committee approval.

Both when operating under its Complaints Investigation function and its Mediation function, the completion of the EIB-CM’s inquiry corresponds to the achievement of a formal document highlighting the roadmap to the solution of the concerns identified as part of the complaints-handling process. The verification of the correct implementation of the corrective actions, be they recommended by the EIB-CM and decided by the Management Committee as part of a compliance
review process or agreed by the parties of the mediation process, does not belong to the complaints-handling process but rather to the monitoring function of the EIB-CM.

Article 1.10.2 has been deleted.

**Article 1.11 - Timeframe**

**Article 1.11.1**

23. **Table 1.1 should reflect the recommendation in point 35 of the draft Policy Issues Matrix and differentiate the Admissibility Check from the Acknowledgment of Receipt.**

The two processes are clearly separated in the structure of the draft Procedures (Articles 1.1 and 1.3).

In the table, these processes are not separated, simply because they have exactly the same timeframe (10 working days from the receipt of the complaint).

**Article 2.2 - Initial Assessment Phase**

**Article 2.2.2**

24. **The EIB-CM should routinely conduct site visits during the eligibility phase and as often as necessary throughout the process.**

- Article 2.2.2 should more explicitly state that the EIB-CM will undertake a site visit or provide a written justification for not doing so.

The EIB-CM can decide not to perform an on-site visit during the Initial Assessment phase when there are already sufficient elements to determine the result of the Initial Assessment phase. It is to be noted that even project-related complaints could be formulated in a way that concerns regard only activities of the EIB Group’s services (for instance the review performed as part of the due diligence/monitoring of the operation) and do not require on-the-spot fact-finding. Upon request, the EIB-CM will provide an explanation of the way the Initial Assessment was carried out.

Finally, it is worth recalling that the mandate of the EIB-CM covers also non-project related complaints.

**Article 2.2.7**

25. **The EIB should also identify local communities and additional stakeholders that are relevant to the complaint as part of the assessment. These stakeholders should also be part of the consultation process prior to finalisation of the Initial Assessment report.**

The EIB Group believes that this is already the case.

One of the steps of the Initial Assessment phase is the establishment of a concerned stakeholders’ map in order to identify the parties with which the EIB-CM should engage as part of the Initial Assessment phase.

Article 2.2.7 has been amended as follows:

2.2.7  *A draft version of the Initial Assessment Report will first be submitted to the EIB Group’s relevant services for comments. Any comments shall be provided no later than 5 working days from circulation (10 working days, in case of complexity of the case/report). In case of*
disagreement, the Head of EIB-CM will provide the draft version of the Initial Assessment Report to the Inspector General and to the Director(s) General concerned for comments. The Director(s) General concerned shall provide the Inspector General with a formal Services Response with their position and comments in reaction to the draft Initial Assessment Report by no later than 10 working days from circulation. In case of disagreement, and following the expiration of the deadline for comments, the Initial Assessment Report will be submitted without further delay by the Inspector General to the EIB Management Committee or to the EIF CE/DCE for comments to be normally provided within 15 working days. Whenever appropriate, the draft Initial Assessment Report will be circulated to the external stakeholders involved in the complaint-handling process without further delay. Any comments shall be provided no later than 10 working days after circulation. The timeframe for consultation of the complainants can be extended upon the complainants’ reasoned request. The overall timeframe for the EIB’s response will be extended accordingly. At the end of the consultation process, the Initial Assessment Report will be distributed to the different project stakeholders and published on the EIB-CM’s website.”

26. The responsibility to submit the Initial Assessment Report to the Management Committee in case of disagreement between the EIB-CM and the EIB Group services should be clarified.

In order to clarify this issue, Article 2.2.7 has been amended accordingly.

See the EIB Group’s response to issue #25.

Article 2.3 - Decision on the type of further work to be performed, if necessary

Article 2.3.1

27. Article 5.3.4 in the draft Policy says that problem solving is a “credible alternative to full investigations, in cases where a compliance review can reasonably excluded” combined with the language in Article 5.3.3 stating that the EIB-CM is “predominantly compliance focused” seemingly suggests that a complainant could not request a problem solving if a compliance review is viable, regardless of whether problem solving would better address their needs. That seems consistent with Article 2.3.1 of the draft Procedures, which seem to foreclose the possibility of mediation following a compliance review. However, Article 2.5.6 of the draft Procedures states that if the parties do not reach an agreement through mediation, the EIB-CM could recommend an investigation. But if it was possible to undertake an investigation, the draft Policy would direct the EIB-CM to do so in lieu of problem solving.

- Under one interpretation, complaints would undergo compliance review or mediation, but never both.
- Under a slightly better interpretation, a complaint could go from problem solving to compliance review, but only if problem solving failed.
- Either way, it does not provide the CM with the right tools and discretion to fulfill its mandate of providing a remedy to complainants and holding EIB accountable to its commitments.

The CM should retain its current flexibility.

The EIB Group believes that this has been addressed through the rewording of Article 5.3.4 of the revised Policy (see the EIB Group’s response to Stakeholder comment #83 of the Policy Issues Matrix).
Article 2.3.2

28. The need to consult with the Inspector General and the inability of the EIB-CM to determine which function to use unless EIB Services or the Management Committee agrees greatly undermines the fairness of the process and the independence of the EIB-CM. The provisions found in Article 2.3.2 should hence be revised.

Mediation is a service offered by the EIB Group to third parties and it is natural that the EIB Group takes the decision whether to offer this service or not.

Article 2.3.2 has been amended as follows:

2.3.2 “The decision by the Head of EIB-CM to consider the complaint eligible for an investigation/compliance review, a collaborative process or formal mediation will be taken in agreement with the EIB Inspector General on the basis of the Initial Assessment Report and of the Services Response, if any.”

29. Requiring the endorsement of the Inspector General, EIB Services or the Management Committee prior to initiating a mediation misunderstands the nature of mediation and represents an inappropriate interference by bank management. This provision should be removed.

See the EIB Group’s response to issue #28.

Article 2.4 - Investigation Phase

Article 2.4.1

30. This Article describes the outcome of an investigation as a determination of the “indications of compliance or non-compliance…” The EIB-CM should either find compliance or non-compliance, not indications thereof.

The EIB Group trusts that the draft Procedures allow the EIB-CM to express, through its competent opinions, whether an instance of maladministration occurred or not.

Article 2.4.4

31. To avoid conflicts of interest, the CM should be allowed to seek outside legal counsel for advice. Article 2.4.4 of the draft Procedures, which allows for the EIB-CM to use external experts, might provide the EIB-CM with the discretion to seek external legal advice but language should be used to make this more explicit.

The EIB Group believes that this is already the case.

The draft Procedures enable the EIB-CM to use external expertise of different kinds, including legal expertise, as part of its inquiries.

32. The EIB-CM should not use internal experts, as provided for in this Article as there would always be a real or perceived conflict of interest for an expert from EIB Services to provide advice on a complaint. Given that the complaint is associated with activities of EIB Services, having EIB Services’ staff provide technical assistance to the Bank’s independent accountability mechanism would not only be inappropriate, it would also undermine the complainants’ confidence in the process.

- The draft Procedures should be revised to explicitly exclude that possibility.
As the internal accountability mechanism of a constantly growing, multi-skilled institution of the EU, the EIB-CM could rely on expertise of technical excellence with no connection to the matters raised by the complaint. The text of Article 2.4.4, referring to “absence of any potential conflict of interest” obliges the EIB-CM to make a judgment on the appropriateness of the use of internal expertise as part of the inquiry, in conformity with the obligations stemming from the EIB’s Code of Conduct.

33. The draft Procedures also mention that experts shall be selected on the basis of “international recognition” among other criteria. The CM should ensure that this does not unnecessarily foreclose local experts, who may be particularly well versed in the cultural context and other relevant circumstances of the project area.

The practice of the EIB-CM is that of accurately selecting expertise with the required technical background for the assessment demanded by the investigation phase. For instance, in case of legal expertise, the EIB-CM often relies on local counsels.

Article 2.5 - Mediation Phase

Article 2.5.2

34. There is no reason for EIB Services to be consulted on the terms of reference for the mediation. Mediation requires considerable and specific expertise, it is unclear what contribution EIB Services could make to, for example, the mediation approach included in the terms of reference.

Article 2.5.2 outlines the content of the Terms of Reference. Among the items listed, there are some (Project description, Identification of relevant stakeholders, Verification site visits, Tentative timetable) for which the consultation of the EIB services involved in the project appears to be beneficial in order to ensure that the mediation process is launched in the most informed and appropriate way.

Article 2.5.5

35. Article 2.5.5 should be extended to make clear that in the case of an appointment of an external mediator, all parties must be in agreement.

A formal feature of mediation processes is that they are based on formal agreement and the failure to maintain it results in the end of the process. Mediation parties can stop the mediation process at any time.

For the sake of clarity, Articles 2.5.4 and 2.5.5 have been inverted.

36. The draft Procedures also mention that experts shall be selected on the basis of “international recognition” among other criteria. The CM should ensure that this does not unnecessarily foreclose local experts, who may be particularly well versed in the cultural context and other relevant circumstances of the project area. (see also point 27 above)

The EIB Group agrees with the issues raised.

New Article 2.5.4 of the draft Procedures has been amended as follows:

2.5.4 “Use of external mediation experts

One EIB-CM staff (Mediation Officer) is assigned responsibility for managing the mediation process, under the supervision of the Head of EIB-CM. Whenever appropriate, mostly for the formal mediation process, and in the absence of any conflict of interest, external expert mediators will be
used and the Head of EIB-CM will determine the knowledge and skills required to undertake the mediation. External mediation experts are selected on the basis of knowledge and experience, competence and independence.”

37. The mediation function is managed by the EIB-CM but the actual mediation will be carried out by an external mediation expert. The mandate of the external expert is unclear, as is the legislation applicable to the mediation.

This Article does not refer to arbitration on contractual disputes but to mediation processes for the resolution of concerns on the impact of a project. See footnote 4 page 8 of the draft Procedures which provides a definition of formal mediation/conciliation.

Article 2.5.6

38. Clarification is requested on:
- Who are the parties and who are the participants in the mediation. EIB services should be parties, not just participants.
- Who should sign the agreement to mediate and who can interrupt it or call it off.
- Who should recommend a compliance review if the mediation fails.

The mediation process facilitated by the EIB-CM is a tool to resolve a certain type of concerns raised by the complainants (types E and F). As a result, EIB Group services are not parties, as their agreement is not instrumental to the resolution of concerns related to the implementation of the project. For such resolution, the Promoter and the complainants are normally the relevant parties.

As outlined in the sub-sections of Article 2.5, the parties of the mediation shall formally agree to mediate and can withdraw from the process at any time. When the mediation fails, the EIB-CM issues its recommendation on the way forward.

39. The draft Policy and Procedures should make clearer the complainants rights and entitlements and that any resolution reached complies with these entitlements.
- The sentence “Any Mediation Agreement should in principle be compliant with the financing decision of the EIB Group, unless otherwise decided by the EIB Management and the EIF CE/DCE.” should be clarified and explicitly reference compliance with national and international law.

The Article in question aims at ensuring that the outcome of the mediation process is consistent with the financing decision of the EIB Group (or in other words, with the project documentation issued as part of the decision-making process leading to the decision to finance).

Based on the above provision, if this is not the case, the EIB concerned services modify the project documentation accordingly (e.g. as a result of the mediation process, the original project description is significantly modified, thus requiring a decision of the EIB Management Committee on the revised project description to ensure that the EIB’s financial assistance can be maintained to the revised project).
Article 3.1 - “E” and “F” Complaints

General Comments

40. There is inconsistency between the draft Policy and Procedures on the admissibility of complaints prior to project approval. The best time to file a complaint is before it occurs, it is hence imperative that complainants be eligible. The draft Policy and Procedures would not allow complainants to access the mediation or compliance review functions of the EIB-CM until after the non-compliance had occurred. Instead, the majority of complaints filed before approval would be forwarded to the appraisal team and closed. The burden would then lie on the complainant to file a new complaint if they were not satisfied by the response of the appraisal team.

- Article 4.3.10 in the draft Policy suggests E and F complaints are admissible prior to project approval, asserting that they are admissible as long as the EIB is “actively considering financing the operation/project”.
- However, other provisions in the draft Policy and Procedures make clear that the CM will typically not undertake any compliance or mediation processes until the financing is approved, for instance, the wording of section 3.1.1 and 3.1.2 in the draft Procedures suggests that complaints made prior to project approval will be forwarded to the appraisal team and closed.
- That puts the complainant in a difficult and disadvantaged position for a number of reasons.
- There is no justification to treat complaints differently depending on when they were filed.

Prevention procedures feature the handling of the public’s concerns by the EIB Group services involved in the project concerned by the complaint. The reason for this is that, before the EIB Group actively considers the financing of the operation/project, there is normally no possibility that the EIB Group has committed an instance of maladministration (and thus that the activation of the Complaints Mechanism is justified). Instead of closing these cases as inadmissible, the EIB Group deems appropriate to ensure that the concerns raised by the complainants are promptly reviewed and addressed as part of the appraisal process, thus anticipating the assessment at an earlier stage of the project cycle.

Moreover, the EIB Group provides members of the public with the possibility to challenge the response provided by the EIB before the EIB-CM, in case the response is not considered satisfactory.

Article 3.1.2

41. There are inconsistencies in the draft Policy and Procedures with regard to this Procedure. The admissibility phase is not applicable in the Prevention procedure.

- In the general case, an acknowledgment of receipt should be sent according to the same timeframe as the one provided for in the other procedures.
- In an exceptional case when the appraisal team refuses to engage with the complainant, can it be considered as maladministration? If yes, the Standard Procedure should apply and the process documented accordingly.

Modifications made on the revised Policy with regard to the Prevention Procedure (and outlined in the Policy matrix) positively address these issues.

With regard to the general case, this is the practice of the EIB-CM, based on the European Code of Good Administrative Behaviour as well as the EIB corresponding Code. Receipt of the communication is acknowledged with information that the case has been transferred to the EIB concerned services.
With regard to the exception, see the EIB Group’s response to issues #40 and #42.

42. In exceptional cases, and unlike complaints filed after project approval, the EIB-CM may only undertake compliance review or mediation with the approval of the Management Committee, which runs counter to the claims that the EIB-CM is independent. Moreover, it would not allow complainants access to the mediation or compliance review functions until after the project is financed, approved or is at least being actively considered for financing by the EIB.

The rationale behind the approach is linked to the mandate of the EIB-CM to review cases of maladministration, which can normally occur only once the Bank has taken a formal decision to finance the operation.

See the EIB Group’s response to issue #40.

43. The commitment to consult and exchange information with relevant stakeholders is not repeated in the Procedures.

The commitment to consult and exchange information is repeated in the draft Procedures with regard to the procedural provisions governing the Initial Assessment phase as well as the consultation on the Conclusions Report. In addition, the EIB-CM engages with and consults complainants during the admissibility phase, should it require additional information or request the complainants to further substantiate allegations that appear to be excessively vague.