PUBLIC CONSULTATION ON THE EIB GROUP COMPLAINTS MECHANISM POLICY

Explanatory note – Overview of draft revised Policy

Introduction

The European Investment Bank (EIB) Group has launched a public consultation on the review of the EIB Group Complaints Mechanism Policy.

The current Complaints Mechanism Policy was approved by the Board of Directors on 2 February 2010 following a public consultation that took place in 2009. Art. 5.3 of the Policy stipulates that the EIB endeavours to periodically review its Complaints Mechanism (CM).

The EIB established its Complaints Mechanism (EIB-CM) as its internal and independent accountability mechanism. The Bank’s approach to resolve complaints is a reflection of the EU model of accountability, with a two-tier mechanism: the EIB-CM and the European Ombudsman (EO). The Memorandum of Understanding (MoU) signed between the Bank and the EO in July 2008 established the framework of cooperation between the two institutions. Under the MoU, a prior handling of complaints by the EIB-CM is required before involvement of the EO. The EO has emphasised that one of the key principles of the MoU is that the EIB’s internal complaints mechanism must be effective at helping the EIB to find solutions to complaints and to avoid maladministration. For this to be possible, the EO considers that the EIB-CM must enjoy credibility in the eyes of complainants, civil society and the European Parliament (EP), amongst others by having operational independence; i.e., independence in carrying out its work as part of the Inspectorate General.

The EIB-CM is part of the Independent Accountability Mechanisms (IAM) network, but the two-tier mechanism makes the structure of EIB’s complaints handling structure unique amongst the International Financial Institutions (IFIs).

The contribution of the EIB-CM to improve the accountability and the reputation of the Bank has been acknowledged by key stakeholders, including EU institutions and representatives of civil society. The EO has publicly expressed its appreciation regarding the Bank’s engagement to keep an effective accountability mechanism and has mentioned the Bank as an example of good practice amongst EU institutions and bodies, in particular the establishment and the operation of the EIB Complaints Mechanism as a two-tier mechanism.

The work of the EIB-CM has been recognised by the EP which has called on EU institutions to follow the good practice of other European bodies, such as the European Investment Bank1, in setting up and implementing a complaints mechanism. The EP has also regularly highlighted the importance it attaches to a well-functioning and independent EIB-CM.

The public consultation process on the Policy that has now been launched seeks to solicit views and input from a wide array of interested stakeholders. The Bank will review all the stakeholder comments and prepare final draft documents, including a Conclusions Report and Bank comments to stakeholder contributions. The approval of the revised Policy is foreseen in the first quarter of 2018.

A Procedures document, designed to implement the Policy at the level of the Bank’s internal processes, is available for information on the Bank’s website. These Procedures will be adapted to reflect any additional changes that may be made to the EIB Group Complaints Mechanism Policy following the consultation.

The draft revised EIB Group Complaints Mechanism Policy

The aim of the review of the Complaints Mechanism Policy is to further improve the functioning of the European Investment Bank Group’s Complaints Mechanism by incorporating lessons learned, and to address areas for improvement. In order to improve its readability and clarify content as well as simplify the structure, while also eliminating duplications and inconsistencies, the existing document that regulates the EIB-CM

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1 Resolution of 2 December 2015 on the EO Special Report concerning Frontex.
(Principles, Terms of Reference and Rules of Procedures) has been consolidated into one single Policy document.

Due to this change in structure, it is not possible to present a track changes version of the Policy compared to the current document. However, to facilitate the review of the draft revised Policy, a summary overview of the key updates is presented below.

**Glossary**

The draft revised Policy includes a Glossary with an alphabetic list of abbreviations and terms, including a definition of the term Project’s area of influence. In the case of complaints regarding environmental and social impacts, EIB-CM’s review would focus on projects or project components which are financed by the Bank, or which are within the project’s area of influence included in the overall project’s assessments or due diligence as required under the EIB Statement of Environmental and Social Principles.

**Scope (Art. 1 of the draft revised Policy)**

The section regarding the scope of the has been expanded, and now includes the statement that the EIB Group Complaints Mechanism is a process that entails the interplay of all the actors involved and is led and coordinated by the EIB-CM.

**Maladministration (Art. 3 of the draft revised Policy)**

The definition regarding the concept of maladministration has been reformulated in order to provide more clarity to the concept and how it applies to the Bank (see also the examples of maladministration relating to the EIB context in the preamble).

**Categories of Complaints (Art. 4.2 of the draft revised Policy)**

To facilitate the processing of straightforward cases that may be resolved easily in close cooperation with the services concerned, a new “simplified procedure” will be introduced.

**Admissibility exceptions (Art. 4.3 of the draft revised Policy)**

The draft revised Policy contains the following revised provisions on exceptions to admissibility.

- **Legality of EIB Policies.** Under the draft revised Policy, it has been clarified that complaints challenging the legality of EIB Policies approved by the Governing Bodies are not handled by the EIB-CM but will be addressed by the Secretary General.

- **Project Procurement Complaints.** Under the draft revised Policy, the EIB Group Complaints Mechanism would not deal with project procurement complaints, but these would fall within the mandate of the EIB Project Procurement Complaints System (Art. 4.3.8 of the Policy). Given that project procurement complaints are fundamentally different from other project-related complaints, this system would ensure that procurement complaints are handled effectively and efficiently. For more information, on the Project Procurement Complaints System, please see Annex 1 to this note.

**Disclosure and Publication regime (Art. 4.6 of the draft revised Policy)**

The publication regime for complaints has been changed from a presumption of confidentiality to a presumption of disclosure, in line with the Bank’s Transparency Policy. Confidentiality of complaints will be maintained in specific situations (e.g. to avoid potential retaliation) or when duly motivated by the complainant.

**The role of the EIB-CM (Art. 5.1 of the draft revised Policy)**

The draft revised Policy includes a more consolidated section on the role of the EIB-CM. The EIB-CM is part of the independent EIB Inspectorate General, headed by the Inspector General, and is independent from operational activities in order to ensure that each complaint is dealt with by the highest standards of objectiveness whilst safeguarding the interest of all the internal and external stakeholders of the EIB Group.

The operational independence and effectiveness of the EIB-CM, as part of the Inspectorate General, are ensured by the responsibility of the Head of EIB-CM regarding the admissibility of complaints and the type of
mediation and/or investigation to be performed for a particular complaint. The Head of EIB-CM has the sole
responsibility for the decision on the final version of the EIB-CM Reports.

In light of the experience, where disagreements between the EIB-CM and services regarding the admissibility
of some complaints have hampered the subsequent investigations, it is foreseen that, in exceptional cases
only, the final decision on admissibility can be made by the Inspector General when in the consultation
process between the EIB-CM and services disagreement on admissibility continues to exist. The decision by
the Inspector General will be duly justified. This will be further detailed in the Procedures.

The functions of the EIB-CM (Art. 5.3 of the draft revised Policy)

The draft revised Policy includes a better defined section on the functions of the EIB-CM, with a full and clear
description of the four functions (compliance investigation, mediation, advisory and monitoring).

This section includes a provision regarding compliance reviews which clarifies the scope of such reviews and
improves their handling. It has been clarified that the EIB-CM compliance review is not necessarily limited to
an investigation of compliance with existing policies and procedures, but might also include a substantive
review of compliance with standards, especially in the case of complaints regarding environmental and social
impacts of EIB-financed operations.

The draft revised Policy further clarifies that EIB-CM reviews the Bank’s activities with a view to determining
whether maladministration has taken place which is attributable to the Bank.

To this end, the draft revised Policy also states that the EIB-CM reviews whether the EIB services have
provided a consistent and reasonable explanation of their position, and whether it is based on complete,
accurate, and reliable information identifiable at the time. In addition, the draft revised Policy states that the
EIB-CM reviews the facts in order to establish whether there has been a manifest error in the Bank’s position
or a manifest breach of the rules that applied to the services at the time. A review will not pass judgement on
activities under the sole responsibility of third parties, notably those of the promoter or borrower, or of
authorities at local, regional or national level, of European institutions or international organisations.

In line with the MoU with the EO, the draft revised Policy clarifies that maladministration review by the EIB-CM
is not intended to substitute the services’ professional judgement in areas such as their performance of
economic or technical appraisal, project monitoring or operation management.

The draft revised Policy states that the Mediation Function should be clearly separated from the Investigation
Function in terms of staffing and responsibilities. Under the revised Policy, mediation would be managed by
the EIB-CM as an independent and impartial office with the necessary expertise and resources in terms of
problem solving.

Meeting with the EIB Management Committee (Art. 5.4.2 of the draft revised Policy)

In addition to its regular reporting, the draft revised Policy also includes an annual meeting of the EIB-CM with
the EIB Management Committee to review its work programme and to ensure a common understanding about
the objectives, role, needs and functioning of the Mechanism.

Information to the EIB Board of Directors (Art. 5.4.4 of the draft revised Policy)

In addition to the EIB-CM’s Annual Activity Reports, it is proposed to also inform the Board of Directors of the
status of complaints against the EIB Group which have been submitted to the EO as well as of the outcome of
these procedures.

Publication and awareness (Art. 8 of the draft revised Policy)

The section on publication and awareness has been updated and expanded. It includes external and internal
outreach activities, and more information on the EIB website.
Annex 1

Project Procurement Complaints for projects outside the EU

Project procurement complaints are fundamentally different from other project-related complaints. Unlike social or environmental complainants (typically vulnerable citizens and communities at risk of being harmed by a project decision beyond their control), project procurement complainants are economic operators competing for economic opportunities as part of a time sensitive and structured tendering process. Therefore, project procurement complaints need to be submitted and treated in a different manner.

Unlike other types of complaints, project procurement complaints are to be treated in line with the applicable public procurement principles and procedures. As an example, communications between the Bank, the Promoter and the tenderers are subject to stringent public procurement principles such as transparency, non-discrimination, equal treatment but also confidentiality warranted by the EIB Guide to Procurement;

Project procurement complaints are to be treated with due attention to the time period in order to allow potential redress of a procurement decision prior to the expiration of tender validities or contract signature.

In accordance with best international practice, all other multilateral development banks have a distinct set of policies and procedures to deal with project procurement complaints.

This is why project procurement complaints for projects outside the EU would be subject to a distinct set of policies and procedures within the EIB and would no longer fall under the remit of the EIB-CM. The EIB would set up a Project Procurement Complaints System (PPCS) to ensure that procurement complaints are handled effectively and independently.

Generally speaking, the Bank’s procurement function has been enhanced in recent years with the creation of a dedicated project procurement function, within its Project and Legal Directorates, in charge of its project procurement risk management system including the close monitoring of procurement complaints on contracts (to be) financed by the Bank.

The Bank’s PPCS would have two types of procedures, depending on the phase in the procurement process, similar to the prevention and standard/extended procedures under the EIB-CM.

The first procedure aims to deal rapidly with complaints received before the Bank’s procurement due diligence is completed. The Bank’s procurement function reviews, among others, all procurement processes entailing project procurement complaints before the non-objection is issued by the operational services. Moreover, the reorganisation of the Bank’s procurement function has led to the creation of a Procurement Review Committee which only intervenes in high risk procurement cases as a second line of defence, after the sector departments’ primary review. The setup is designed to warrant a timely multi-disciplinary expert review, independent from the project team, and a traceable collegial decision making process.

The second procedure is intended to deal with complaints that are received after the statement of non-objection to contract award has been issued. Project procurement complaints against a Bank’s procurement due diligence would be treated by the Procurement Complaints Committee (PCC). The PCC would oversee and review the cases where the project procurement complaint questions a Bank decision (i.e. after the Bank has issued its non-objection) and would either confirm or withdraw the non-objection already issued by the Bank and in some cases, exclude the project component from the finance contract of the Bank. The PCC would have a different process according to the timing of receipt of the complaint: if the complaint is received during the standstill period, the process aims to ensure that the complaint is addressed prior to the signature of the contract. If the complaint is received after the expiration of the standstill period, the redress of the procurement process may no longer be possible. In such cases, the PCC would still review to confirm or withdraw its financing of the contract. The final decision would be made by the MC. In case of dissatisfaction with the outcome, complainants could escalate their complaint to the EO.

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2 Mandatory time delay between notification of the award and conclusion of the contract, which: (a) allows time for the examination of the award decision and possible initiation of procedures for revision and reconsideration of the decision before the contract can be signed; and (b) in case procedures for revision and reconsideration of the decision have been initiated, results in the “automatic suspension” of the procurement process until the review body takes its decision.
The PCC would be chaired by the Bank’s Inspector General and composed of the following voting members: Directors General or Directors of the Secretariat General, Corporate Services, Operations Directorate (OPS)/Transaction Management and Restructuring Directorate (TMR) and, as non-voting members, the Project Directorate and Legal Directorate. The EIB-CM would participate as an observer. As the majority of the PCC members are from the Bank’s non-operational services, it can decide independently from those services.

When reviewing a case, the PCC would be provided with background information about the project and the case, including from the Bank’s project procurement function, and with legal and technical information about the project and the case from the staff members in charge of the project. The PCC would also have the possibility to seek external technical or legal expertise through the appointment of external advisors on the basis of a list of experts approved by the PCC.

With regards to complaints against the Bank’s procurement due diligence, all project procurement complaints received by the Bank would be automatically registered and acknowledged through an open access and traceable web portal.

The new PPCS would include a project procurement complaints database. The data gathered would allow the Bank to adjust the new system and report about its effectiveness to the European Ombudsman.

The PCC Secretariat would manage the project procurement complaints web portal and database, manage the PCC’s meetings, and notes to MC for decision and responses to complainants. The PCC Secretariat would also collect data and elaborate statistics, and issue annual reports to the MC. The Secretariat would be lodged in the Inspectorate General and report to the Inspector General. The PCC Secretariat would also interact with the EO with regards to project procurement complaints.

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3 Subject to which Directorate (OPS or TMR) is managing the project.