



European Investment Bank

## Anti-Fraud Policy

Policy on preventing and deterring prohibited conduct in  
European Investment Bank activities



# **POLICY ON PREVENTING AND DETERRING PROHIBITED CONDUCT IN EUROPEAN INVESTMENT BANK ACTIVITIES ("EIB ANTI-FRAUD POLICY")**

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- EIB will not tolerate Prohibited Conduct (i.e. corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing) in its activities or operations.
- Allegations may be reported by telephone (to +352 4379 87441), by fax (to +352 4379 64000) or by e-mail to [investigations@eib.org](mailto:investigations@eib.org). Alternatively, allegations can be reported directly to the European Anti-Fraud Office (OLAF).

## **I. PREAMBLE**

1. This document sets forth the policy of the European Investment Bank (EIB or the Bank) in preventing and deterring corruption, fraud, collusion, coercion, obstruction, money laundering and terrorist financing (jointly "Prohibited Conduct") in EIB activities. It updates and replaces EIB's Anti-Fraud Policy dated 8 April 2008.
2. The legal basis for the EIB Anti-Fraud Policy and the authority for EIB to conduct investigations stems from:
  - (i) Article 325 of the Treaty on the Functioning of the European Union (TFEU);
  - (ii) Article 18 of the EIB Statute;
  - (iii) Council Regulation (EC, Euratom) No 966/2012 of 25 October 2012;
  - (iv) EIB Board of Governors' Decision of 27 July 2004 concerning EIB's cooperation with OLAF.
3. Created by the Treaty of Rome, the EIB is the financing body of the European Union. As such, the Bank operates in accordance with the EU legal framework and is bound by the EIB Statute, Article 18 of which states that:

"In its financing operations, the Bank shall [...] ensure that its funds are employed as rationally as possible in the interests of the Union."
4. The Bank shall therefore ensure that its loans are used for the purposes intended. In this context, the Bank shall endeavour to ensure that its activities are free from Prohibited Conduct.
5. Consequently, the Bank will work to prevent and deter Prohibited Conduct from occurring and, where it does occur, will address it in a timely and expeditious manner. To this end, investigation procedures shall also be adopted.
6. In this regard and in seeking to align its policies and procedures with international practice, the Bank is cognisant of the principles enshrined in: (i) the United Nations'

Convention Against Corruption<sup>1</sup>; (ii) the Organisation for Economic Co-operation and Development's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions<sup>2</sup>; (iii) the Council of Europe Criminal Law Convention on Corruption<sup>3</sup>; (iv) the Financial Action Task Force's Recommendations<sup>4</sup>; and (v) the International Financial Institution's (IFIs) Anti-Corruption Task Force's Uniform Framework Agreement<sup>5</sup>.

## II. BASIC PRINCIPLES

7. EIB members of governing bodies and staff, EIB's project related parties, counterparts and partners (both as defined in para. 9 below) shall maintain the highest level of integrity and efficiency in all EIB activities. EIB will not tolerate Prohibited Conduct in its activities.
8. (i) Any Prohibited Conduct that occurs is to be reported promptly and investigated thoroughly and fairly; wrongdoers are to be sanctioned in accordance with applicable policies and procedures; and appropriate legal steps are to be taken to recover misapplied funds.  
(ii) The Bank's Inspectorate General, through its Fraud Investigations Division, investigate allegations of Prohibited Conduct.  
(iii) The Fraud Investigations Division of EIB shall work in close partnership with OLAF.

## III. SCOPE OF THE POLICY

9. This Policy applies to all EIB activities, including projects financed by the EIB using third party resources and procurement for the Bank's own account. It applies to the following persons and entities:
  - a. The members of EIB Board of Directors, the Management Committee, staff and consultants, without regard to their position, rank, or length of service (referred to herein as "EIB members of governing bodies and staff");
  - b. Borrowers, promoters, contractors, sub-contractors, consultants, suppliers, beneficiaries (as the case may be), and in general relevant persons or entities involved in EIB-financed activities (referred to herein as "Project related parties");
  - c. Consultants, suppliers, service providers and other persons or entities procured by EIB for its own account; and
  - d. All counterparties and others through which the EIB deals in its borrowing or treasury activities (c. and d. jointly referred to herein as "EIB other counterparties and partners").

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<sup>1</sup> [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)

<sup>2</sup> <http://www.oecd.org/daf/anti-bribery/oecdantibriberyconvention.htm>

<sup>3</sup> <http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>

<sup>4</sup> <http://www.fatf-gafi.org/topics/fatfrecommendations/>

<sup>5</sup> <http://www.eib.org/about/documents/ifi-anti-corruption-task-force-uniform-framework.htm>

## IV. DEFINITIONS

10. In pursuance of this policy, Prohibited Conduct includes corruption, fraud, coercion, collusion, obstruction, money laundering and financing of terrorism defined as follows:<sup>6</sup>
- a. A corrupt practice, which is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party.
  - b. A fraudulent practice, which is any act or omission, including a misrepresentation that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation.<sup>7</sup>
  - c. A coercive practice, which is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
  - d. A collusive practice, which is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
  - e. An obstructive practice is (a) deliberately destroying, falsifying, altering or concealing of evidence material to the investigation; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or (b) acts intended to materially impede the exercise of the EIB's contractual rights of audit or access to information or the rights that any banking, regulatory or examining authority or other equivalent body of the European Union or of its Member States may have in accordance with any law, regulation or treaty or pursuant to any agreement into which the EIB has entered in order to implement such law, regulation or treaty.

Money laundering and financing of terrorism are defined in EC Directives<sup>8</sup> on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as amended and supplemented from time to time (hereafter "AML/CFT Directive"), as follows:

- f. Money laundering is
  - (i) the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
  - (ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;
  - (iii) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

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<sup>6</sup> The definitions of a. to d. are taken from the "Uniform Framework for Preventing and Combating Fraud and Corruption," agreed in September 2006 by the leaders of seven major International Financial Institutions, including the EIB - see footnote 5.

<sup>7</sup> This could include tax fraud.

<sup>8</sup> Currently Directives 2005/60 and 2006/70; other EU legislation relating to aspects of fraud and other illegal acts include, among others, the following legislation as amended and supplemented from time to time:

- . EC Directives 2004/17 and 2004/18 on public procurement;
- . EC Directive 2003/6 on insider dealing and market manipulation; and
- . Reg. n° 881/2002 last amended CE 1685/2006 on black listing with common position of the Council EU 2006/380/PESC of 29 May 2006

(iv) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned in the foregoing points.

- g. Financing of terrorism is the provision or collection of funds, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out any of the offences within the meaning of Articles 1 to 4 of the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism<sup>9</sup>.

## V. MEASURES TO PREVENT AND DETER PROHIBITED CONDUCT

### (A) Generally

11. Article 325 TFEU provides that:

“The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union’s institutions, bodies, offices and agencies.”

12. Furthermore, the Statute of the EIB provides that the Bank shall ensure that its funds are used as rationally as possible in the interests of the Union.
13. Accordingly, the terms and conditions of the Bank's financing operations must ensure an effective protection and deterrence against Prohibited Conduct.
14. In particular, the EIB’s Guide to Procurement contains a number of measures to ensure transparency and integrity in procurement and EIB’s financing documentation shall contain appropriate contractual rights of inspection and access to information for the Bank and other competent EU institutions.

### (B) Project Appraisal and Integrity Due Diligence

15. The EIB performs a “Know Your Customer” (“KYC”) due diligence on all new counterparts and a due diligence of all new operations in order to detect possible compliance or integrity concerns. Such due diligence is performed in accordance with the core requirements of the AML-CFT Directives and peer IFIs standards, pursuant to the terms of the applicable Bank’s procedures.
16. The EIB operational departments are the first line of protection in preventing Prohibited Conduct through the project appraisal process. They are the first line of detection for possible integrity concerns during the project appraisal process given their knowledge of the potential promoters, borrowers and the circumstances in which the project will be undertaken. Integrity concerns arising during the loan appraisal process will be reported on a timely basis to the EIB’s Office of the Chief Compliance Officer.

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<sup>9</sup> OJ L 164, 22.6.2002, p. 3.

These include attacks upon a person’s life which may cause death, kidnapping, causing extensive destruction to a Government or public facility, seizure of aircraft, ships or other means of transport, manufacture, possession, acquisition, transport, supply or use of nuclear, biological or chemical weapons, release of dangerous substances or causing fires, floods or explosions to endanger human life, interfering with or disrupting the water supply (Art 1), offences relating to a terrorist group (Art 2), aggravated theft, extortion or falsifying documents (Art 3) and inciting, aiding, abetting and attempting offences in Arts 1-3 (Art 4).

17. The Office of the Chief Compliance Officer is responsible for: i) the assessment of any material integrity or compliance concern; ii) the identification of possible remedies and risk mitigating measures, if any available; and iii) the timely reporting of any such concerns:

- to the Management of the Bank for their decision on whether to pursue or abandon the relevant business relationship; and, as the case may be,
- to the Fraud Investigations Division for further investigation, pursuant to the applicable Bank's procedures.

The early detection of possible compliance and integrity concerns at appraisal stage allows the Bank to avoid entering into business relationships or the performance of activities which could expose the EIB to serious financial and reputation risks and contributes to the overall integrity and transparency of the economic environment in which the Bank operates.

### **(C) EU Lending Operations**

18. (i) European Union countries to which EIB lends have in place legislation aimed at ensuring transparency and integrity (including in the procurement process, specifically EC Directives 2004/17, 2004/18 and 89/665 and 92/13).

(ii) The procurement process of EU projects financed by EIB must comply with the above-mentioned Directives, as applicable, and other rules as specified in the EIB Guide to Procurement.

(iii) The Bank therefore has the duty, to the extent necessary to verify compliance with applicable EU legislation and, as the case may be, in compliance with Article 325 TFEU, to conduct all investigations and take all necessary measures in order to prevent and deter Prohibited Conduct in relation to EIB activities and, in so doing, ensure rational use of the Bank's funds in the interest of the Union<sup>10</sup>.

### **(D) Non-EU Lending Operations**

19. (i) Outside the European Union where the EU public procurement Directives do not apply, the Bank nevertheless requires that the main mechanism of the Directives be followed, with the necessary procedural adaptations.

(ii) Consequently, the EIB has implemented a number of significant measures to ensure that equivalent standards of protection and measures to prevent and deter Prohibited Conduct exist as within the EU. These are described below.

20. The Guide to Procurement includes, as a general rule for financing operations outside the EU, a requirement that the relevant tenderers/contractors execute a "Covenant of Integrity" to the promoter, including a declaration that, to the best of their knowledge, the tenderer/contractor, as well as joint venture partners, agents or subcontractors, where they exist, acting on their behalf with due authority or with their knowledge or consent, or facilitated by them, have not engaged in or will not engage in any Prohibited Conduct in connection with the tendering process or execution of the contract.

21. The Covenant of Integrity also includes undertakings from the contractor concerning disclosures of Prohibited Conduct, inspections rights and record keeping.

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<sup>10</sup> As stated in the EIB Statute

**(E) Financing agreements**

22. The Bank's financing agreements shall contain appropriate contractual provisions to prevent and deter Prohibited Conduct.

**(F) Monitoring of Project Implementation**

23. Monitoring of the project by EIB operational staff after the signing of the relevant financing agreement(s) aims to ensure that the underlying project financed by EIB is implemented as planned and that any risks that occur are managed appropriately.
24. The Office of the Chief Compliance Officer is regularly involved in the monitoring of the implementation of projects as an essential part of the on-going monitoring of the Bank's activities. Such monitoring is aimed at detecting integrity and compliance concerns which may arise after the project appraisal stage, including but not limited to cases of restructuring and change of ownership.
25. Any such material integrity and compliance concerns are promptly reported to the governing bodies of the Bank for their decision on the appropriate course of action, together with specific recommendations on possible remedies and risk mitigating factors, if any available.
26. In addition to routine monitoring of projects, EIB's Fraud Investigations Division may carry out a Proactive Integrity Review ("PIR"). The objectives of a PIR are to:
- (i) help prevent and detect Prohibited Conduct at an early stage;
  - (ii) determine if contracts were implemented according to their terms;
  - (iii) ensure EIB's funds were used for the intended purpose(s); and
  - (iv) recommend improvements to policies, procedures and controls so as to mitigate the opportunities for Prohibited Conduct in the current and future projects.

The selection of projects for a PIR is done independently by the Fraud Investigations Division through a detailed risk assessment process. Projects selected for a PIR undergo an in-depth review in order to identify possible indicators of Prohibited Conduct.

**(G) Sanctions and Remedies Available to the Bank****(a) Contractual Remedies**

27. EIB's financing agreements shall include appropriate remedies for dealing with breaches of the relevant undertakings under such financing agreements. Such remedies may include the ability to suspend disbursements or seek early reimbursement of the loan (or part thereof).
28. The Bank will also take legal steps to recover misapplied funds, whenever appropriate.

**(b) Procurement remedies and sanctions**

29. (i) In addition, if it is established that a Project related party has engaged in Prohibited Conduct in the course of a procurement process or implementation of a project, the Bank:
- a. May seek appropriate remediation of the Prohibited Conduct to its satisfaction;
  - b. May declare ineligible such project related party to be awarded the contract; and/or

- c. May withhold the Bank's no objection to contract award and may apply appropriate contractual remedies, which may include suspension and cancellation, unless the Prohibited Conduct has been dealt with to the satisfaction of the Bank.

(ii) Furthermore, for projects within the EU, pursuant to art. 45.1 of EC Directive 2004/18 and art. 54.4 of Directive 2004/17, any candidate or tenderer who has been convicted by a final judgment for participation in a criminal organization, corruption, fraud, or money laundering of which the promoter is aware (terrorist financing was subsequently added to this list<sup>11</sup>), shall be excluded from participation in a Bank-financed project for a period of time depending on the severity of the offence.

### **(c) EIB's Exclusion Process**

30. An individual or entity that is found to have engaged in Prohibited Conduct may be excluded from participating in EIB-financed projects or operations (including financial operations) in accordance with the provisions and process set out in the EIB Exclusion Procedures.
31. The EIB shall exclude any individual or entity from participating in EIB-financed projects or operations if it is subject to a registration in the Central Exclusion Database operated by the European Commission pursuant to the provisions of the EIB Exclusion Procedures.
32. The EIB Exclusion Procedures include a provision which allows EIB to enter into negotiated settlements with individuals or entities who are alleged to have engaged in Prohibited Conduct. Such negotiations can resolve the case against them (in whole or in part) based on terms and conditions set out in a settlement agreement between the Bank and the party(ies) involved.

### **(H) Measures for EIB's Treasury and Borrowing Operations**

33. EIB has implemented measures, including the following examples, to prevent and deter Prohibited Conduct in its treasury and borrowing operations:
  - a. Due diligence process of counterparts for Treasury and Borrowing Operations in cooperation between the services and the Office of the Chief Compliance Officer, in accordance with the Bank's applicable procedures;
  - b. Integrity and compliance review of all new products by the New Product Committee, which includes representatives of the Office of the Chief Compliance Officer and all other services concerned;
  - c. Treasury operations are carried out in accordance with the principles set out in the International Code ('The Model Code') set up by the ACI-Financial Markets Association;
  - d. Borrowing and Treasury operations are only carried out with reputable counterparties using strict compliance measures. Those counterparties (e.g. lead managers which are duly approved and authorised by Senior Management) are continuously monitored by the Risk Management Directorate and reviewed whenever necessary by the Office of the Chief Compliance Officer;
  - e. The operations (including pricing-related matters) are documented, telephone conversations are recorded, the volume of transactions with each counterparty is closely monitored and regularly audited both internally, within the Internal Control Framework (ICF), and externally;

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<sup>11</sup> See Directives 2005/60 and 2006/70

- f. For Portfolio Investments, which are subject to performance measures, all prices obtained from counterparties consulted in the context of a transaction are recorded and kept for reference purposes;
- g. In the context of repurchases of EIB debt from the market, prices are set in line with an internal transfer price and EIB only operates on the basis of reverse-inquiries and does not actively source existing debt positions to repurchase them; and
- h. EIB ensures a strict segregation of tasks between front and back offices and independent verification of pricing conditions by the Risk Management Directorate.

### **(I) Measures applicable to EIB Members of Governing Bodies and Staff**

34. The Office of the Chief Compliance Officer at the EIB is responsible, inter alia, for the administration of the Staff Code of Conduct<sup>12</sup> and the administration of the Management Committee Code of Conduct for matters which do not fall under the scope of the Ethics and Compliance Committee<sup>13</sup>.
35. **Codes of Conduct for Governing Bodies and Staff:** EIB members of governing bodies and staff must comply with the rules of behaviour and ethical standards set forth in the respective Codes of Conduct<sup>14</sup> applicable to them including those related to Prohibited Conduct. Failure to comply will subject the relevant EIB member of governing body or staff to potential disciplinary, in accordance with the rules applicable respectively to the members of the governing bodies and to the staff, and legal action.
36. **The Integrity Policy and Compliance Charter<sup>15</sup>:** This requires members of governing bodies and staff of the Bank to comply with all applicable EIB rules and regulations, including the observance of applicable national laws and regulations.

## **VI. OBLIGATIONS TO REPORT SUSPECTED PROHIBITED CONDUCT**

### **(A) Reporting Obligations of EIB Members of Staff**

37. The EIB Whistleblowing Policy<sup>16</sup> provides Staff Members with a comprehensive framework within which to report suspicions of Prohibited Conduct.
38. Under the Whistleblowing Policy and the Staff Code of Conduct, EIB staff members are required to report any suspected incidents of illegal behaviour in the activities of the Bank, serious misconduct or serious infringement of the Bank's rules, policies or guidelines, or any action that is or could be harmful to the mission or reputation of the Bank immediately after becoming aware of the matter.

### **(B) Reporting Obligations of EIB Project Related Parties**

39. Borrowers are required to inform the Bank of any fact or information related to possible Prohibited Conduct.
40. Under the Covenant of Integrity, tenderers, contractors, subcontractors, suppliers and consultants must report to the promoter any Prohibited Conduct that comes to the

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<sup>12</sup> [http://www.eib.org/Attachments/thematic/code\\_conduct\\_staff\\_en.pdf](http://www.eib.org/Attachments/thematic/code_conduct_staff_en.pdf)

<sup>13</sup> The competences of the Ethics and Compliance Committee, as regards the members of EIB Management Committee, are defined in the applicable Code of Conduct:

[http://www.eib.org/attachments/thematic/code\\_conduct\\_MC\\_en.pdf](http://www.eib.org/attachments/thematic/code_conduct_MC_en.pdf)

<sup>14</sup> The provisions of the EIB Staff Code of Conduct apply by extension to contractors and consultants, according to the terms of their contracts.

<sup>15</sup> [http://www.eib.org/Attachments/general/occo\\_charter\\_en.pdf](http://www.eib.org/Attachments/general/occo_charter_en.pdf)

<sup>16</sup> <http://www.eib.org/infocentre/publications/all/eib-s-whistleblowing-policy.htm>

attention of any person in their organisation having responsibility for ensuring compliance with the Covenant.

### **(C) How to Report**

41. All allegations by EIB staff members, EIB's project related parties, other counterparts and partners, or members of the public (including civil society) of suspected Prohibited Conduct should under this policy be reported to the Fraud Investigations Division at the EIB which will acknowledge receipt of the allegation. A report can be made:

- by letter<sup>17</sup>;
- by email to [investigations@eib.org](mailto:investigations@eib.org);
- through the on-line form available on the EIB website<sup>18</sup>;
- by telephone (+352 4379 87441); or
- by fax (+352 4379 64 000).<sup>19</sup>

### **(D) Independent Complaints Mechanism**

42. In addition to allegations of Prohibited Conduct, any person or group who believes there may have been a case of maladministration within the EIB Group can lodge a complaint with the EIB Secretary General under the EIB Complaints Mechanism<sup>20</sup>.

### **(E) Protection of Staff Members and External Complainants**

43. All allegations of Prohibited Conduct will be treated by EIB as strictly confidential (subject to paras. 55 and 56 below), and may be made anonymously.

44. As regards reports made by an EIB Staff Member, the Staff Code of Conduct and the EIB Whistleblowing Policy provide that the Bank will ensure confidential treatment for members of staff who make *bona fide* reports of suspected misconduct, and that such members of staff will enjoy the assistance and protection of the Bank.

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<sup>17</sup> The Head of the Fraud Investigations Division, European Investment Bank, 100 Bd. Konrad Adenauer, L-2950 Luxembourg

<sup>18</sup> <http://www.eib.org/infocentre/anti-fraud-form.htm>

<sup>19</sup> Alternatively, allegations concerning Prohibited Conduct can be reported directly to the European Anti-Fraud Office (OLAF). Details of how to contact OLAF can be found at:

[http://ec.europa.eu/anti\\_fraud/contacts/index\\_en.htm](http://ec.europa.eu/anti_fraud/contacts/index_en.htm). Business partners may also ask their usual EIB contacts to put them in touch with Investigations in appropriate cases.

<sup>20</sup> Maladministration means poor or failed administration. This occurs when the EIB Group fails to act in accordance with the applicable legislation and/or established policies, standards and procedures, fails to respect the principles of good administration or violates human rights. Some examples of failure to respect the principles of good administration, as set by the European Ombudsman, are: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay. Maladministration may also relate to the environmental or social impacts of the EIB Group activities and to project cycle related policies and other applicable policies of the EIB. The link to the policy is:

<http://www.eib.org/infocentre/publications/all/complaints-mechanism-policy.htm>

## **VII. PRINCIPLES FOR THE CONDUCT OF INVESTIGATIONS<sup>21</sup>**

### **(A) Authority to conduct investigations**

45. The Inspectorate General, through its Fraud Investigations Division, working in close collaboration and full transparency with OLAF, shall be responsible for:
- a. receiving reports of alleged or suspected Prohibited Conduct involving the EIB's activities or EIB members of governing bodies and staff;
  - b. investigating such matters and cooperating directly with OLAF in order to facilitate the latter's investigations; and
  - c. reporting its findings to the President, OLAF and the Audit Committee which has an oversight function, as well as any other staff member on a need-to-know basis.
46. When conducting internal investigations into allegations relating to EIB members of governing bodies and staff that could result in disciplinary or criminal proceedings, OLAF requests, unless it considers it harmful for the investigation, cooperation from the EIB's Fraud Investigations Division. For situations requiring an urgent response, the Fraud Investigations Division may, in consultation with OLAF, take any necessary measures required for the investigation, notably to preserve evidence.

### **(B) Independence**

47. The Fraud Investigations Division shall enjoy complete independence in the exercise of its responsibilities. Without prejudice to the powers conferred on OLAF, the Head of the Fraud Investigations Division shall have full authority to open, pursue, close and report on any investigation within its remit without prior notice to, the consent of, or interference from any other person or entity.

### **(C) Professional standards**

48. All investigations conducted by the Fraud Investigations Division shall be fair and impartial, with due regard to the rights of all persons or entities involved. The presumption of innocence applies to those alleged to have engaged in misconduct. Those involved in the investigation (be those under investigation or those conducting the investigation) should be aware of their rights and obligations and ensure they are fully respected.
49. In particular, those investigations will be undertaken in conformity with the EIB's "Procedures for the Conduct of Investigations by the Inspectorate General of the EIB" (or "Investigation Procedures").

### **(D) Access to information by the Fraud Investigations Division and OLAF**

50. EIB members of governing bodies and staff are required to cooperate with the Fraud Investigations Division and OLAF promptly, fully, efficiently and in the manner specified

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<sup>21</sup> This section sets out the procedures for investigations of Prohibited Conduct, which are handled by the Inspectorate General through its Fraud Investigations Division in compliance with and without prejudice to Regulation (EC) No 1073/1999 and Regulation (Euratom) No 1074/1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), as interpreted by the European Court of Justice in its judgment of 10 July 2003 (Case C-15/00, European Commission vs EIB) and the Board of Governors' Decision on 27 July 2004 concerning EIB's cooperation with OLAF. Allegations concerning money laundering and financing of terrorism are investigated by the Fraud Investigations Division in close cooperation with the Office of the Chief Compliance Officer.

by the Fraud Investigations Division, including by answering relevant questions and complying with requests for information and records.

51. In order to conduct an investigation, the Fraud Investigations Division and OLAF shall have full access to all relevant personnel, information, documents and data, including electronic data, within the EIB, in accordance with the applicable procedures.
52. The Fraud Investigations Division and OLAF shall have the right to examine and copy the relevant books and records of the relevant Project related parties or EIB other counterparts and partners, as appropriate.
53. The Bank may sign a Memorandum of Understanding with law enforcement agencies or other similar organisations in order to facilitate the exchange of information on cases of mutual interest concerning suspected Prohibited Conduct, subject to the respect of applicable data protection provisions.
54. Likewise, the Bank may apply to become *partie civile* in judicial proceedings related to its investigations when it is considered to be in the Bank's interest to do so, notably to maximise the information and evidence available to the Bank concerning suspected Prohibited Conduct.

#### **(E) Confidentiality**

55. Within the Bank's rules on access to information, all information and documents collected and generated during an investigation, not already in the public domain, shall be kept strictly confidential. The confidentiality of the information collected must be respected both in the interests of those concerned and the integrity of the investigation.
56. In particular, during the investigation the confidentiality of the identity of the subject, witnesses and informants must be respected in so far as it would not be contrary to the interests of the investigation.
57. The Fraud Investigation Division shall disclose in writing such information and documents only to those persons or entities authorized to receive them or otherwise on a need-to-know basis.

#### **(F) Rights of EIB Members of Governing Bodies and Staff**

58. An EIB member of governing bodies or staff who is the subject of an investigation shall be entitled to due process rights, in particular to be notified of that fact as early as possible, unless it is determined that to do so would be harmful to the investigation. The provisions of this Policy, the Investigations Procedures and the appropriate Code of Conduct provide the framework for the rights of members of governing bodies and staff during an investigation.
59. In any event, a member of governing bodies or staff who is the subject of an investigation shall be given notice of the allegations and evidence against him or her, and the opportunity to respond before any adverse action is taken.
60. The investigation of suspected misconduct should commence without delay and should be concluded within a reasonable period of time.

## VIII. DATA PROTECTION

61. The processing of personal data within the framework of this policy shall be managed in keeping with the principles and rules provided for in the regulations applicable to the Bank<sup>22</sup> and the relevant opinions issued by the European Data Protection Supervisor (EDPS).
62. Any involved persons are entitled to access, rectify and (in certain circumstances) block data related to him/her by contacting the data processing controller<sup>23</sup>. They may also at any time contact the EDPS<sup>24</sup> to check that the rights conferred by the relevant provisions have been respected.

## IX. DISCIPLINARY ACTIONS

63. The President of the Bank shall decide the appropriate and proportionate disciplinary actions, in accordance with the provisions of Articles 38-40 of the Staff Regulations, taking into account the severity of the offence and any aggravating and/or mitigating circumstances.
64. If a member of the Bank's governing bodies is implicated, the President, or, as appropriate, the Audit Committee, shall inform the competent decision-making body of the Bank.
65. Any decision on waiving immunity in connection with an internal investigation shall be taken in accordance with the Protocol on Privileges and Immunities of the European Union<sup>25</sup>.

## X. REFERRALS AND ASSISTANCE TO OTHER AGENCIES

### (a) National Authorities

66. The Fraud Investigations Division may refer suspected Prohibited Conduct to national authorities within and/or outside the EU for further investigation and/or criminal prosecution and provide further assistance as may be requested. However, where OLAF conducted an investigation, the Office transmits its final report to the competent authorities, where appropriate.
67. If an investigation into suspected Prohibited Conduct is started by a national authority and may involve EIB financing, the Fraud Investigations Division shall, in consultation with the services, liaise with and provide appropriate assistance to the national authorities.
68. In the event of an investigation by judicial authorities, law enforcement, administrative, legal or tax authorities, the Fraud Investigations Division may decide to await the results of such an investigation and request a copy of their findings before taking further action.

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<sup>22</sup> In particular Regulation (EC) No45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (Official Journal L8/1 of 12 January 2001).

<sup>23</sup> The data processing controller may be contacted at the following address: [investigations@eib.org](mailto:investigations@eib.org)

<sup>24</sup> [www.edps.europa.eu](http://www.edps.europa.eu)

<sup>25</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12006E/PRO/36:EN:HTML> (See Arts 18, 19 and 22)

**(b) International Organisations**

69. Respecting the Bank's rules and procedures governing the disclosure of information and the applicable data protection rules, the Fraud Investigations Division may provide assistance to and share its findings and/or relevant information with other IFI's investigation functions.
70. Similarly, the Fraud Investigations Division may also provide assistance to other international organisations and agencies in respect of suspected Prohibited Conduct.

**XI. MISCELLANEOUS**

71. The Fraud Investigations Division will write and present to the Board of Directors and the Audit Committee, prior to publication on the Bank's website, an Annual Report of Investigations outlining in general terms, its activities in the previous year.
72. Formal reviews of this policy will take place regularly. The EIB maintains a mailbox on its website ([infodesk@eib.org](mailto:infodesk@eib.org)) to which comments can be sent.
73. The policy will be updated based on:
- a. Changes in EU legislation such as directives, etc.;
  - b. Agreement between the IFIs and international best practice;
  - c. Changes to policies and procedures within the EIB; and
  - d. Any other changes that the EIB judges necessary and appropriate.







## Contacts

For general information:

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