



European Investment Bank

# Complaints Mechanism Operating Procedures





# **THE EIB COMPLAINTS MECHANISM**

## **Operating Procedures**

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## Background

The EIB Board of Directors approved the Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (CMPTR) on 2 February 2010, following a process of extensive public consultation. This newly revised policy is a tool of horizontal accountability of the EIB Group vis-à-vis its stakeholders<sup>1</sup> as regards the handling of complaints concerning its activities. It aims at providing the public with procedures enabling the alternative and pre-emptive resolution of disputes between the public and the EIB Group. Any member of the public has access to a two-tier procedure, the internal Complaints Office and the external European Ombudsman (EO). To this effect, the EIB and the EO have signed an MOU.

It should be noted that, as part of the EIB horizontal accountability, one of the EIB CM main objectives is to ensure the right to be heard and the right to complain of any EIB stakeholder, thus giving voice to their concerns.

The Terms of Reference lay out the role of the EIB Complaints Office, including its status, authority, responsibilities, rules of conduct, and relationship with the European Ombudsman and the other Bank's services. In addition, the Rules of Procedures have provisions regarding the different steps of the mechanism, such as admissibility, how to and about what to complain, and the methods of inquiry.

Following the adoption of the new Policy, the Complaints Office has been transferred to the Inspectorate General, in line with its operational independence and mandate, and the function has been renamed Complaints Mechanism (EIB-CM).

The present Complaints Mechanism Operating Procedures (CMOP), fully implementing the CMPTR, aim (i) at clarifying, improving and formalising current processes, (ii) to facilitate, streamline and better ensure handling of complaints, and (iii) facilitate a better cooperation among the Bank's services themselves and between the Bank's services and other relevant stakeholders. The CMOP have been submitted for consultation to the European Ombudsman and approved by the Bank's Management Committee in December 2011.

The present CMOP are designed to:

- Be in line with the Memorandum of Understanding signed with the EO;
- Ensure internal and external credibility of the processes;
- Satisfy legitimate expectations of stakeholders, ensuring that they are heard and any legitimate concerns are addressed in an appropriate manner;
- Ensure a best practice approach, as well as some degree of consistency and coordination with the equivalent processes of other IFIs accountability mechanisms.

## 1. Organisation

The Complaints Mechanism Division (EIB-CM) is part of the independent Inspectorate General (IG), headed by the Inspector General, which groups together four Divisions. The Head of Division EIB-CM is the Head of EIB Complaints Mechanism and, under the auspices of the independent Inspector General, responsible for the development, implementation and monitoring of the Complaints Mechanism.

In line with the CMPTR, IG/CM has several functions:

- Complaints Investigation Office – Responsible for investigations / compliance reviews regarding registered complaints.
- Mediation Function – To provide different forms of mediation between, on one side, the Complainants/Requestors and on the other side, the Bank's Management/Services and/or Project Promoter and/or national authorities as appropriate.
- Advisory Function – Within the scope of responsibilities, to provide advice to senior management on broader and systemic issues related to policies, standards, procedures, guidelines, resources, and systems, on the basis of lessons learned from the complaints handling.

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<sup>1</sup> Unless stated otherwise the term project stakeholders refer to the persons and entities with an interest in the project and participating in the complaints handling process: complainants, affected communities, project promoter, national authorities, interested Civil Society Organizations and EIB operational services.

- **Monitoring Function** – In the context of past complaints, to follow-up on further developments and implementation of proposed corrective actions and recommendations, accepted by the EIB (Management Committee).

In line with the CMPTR, the operational independence and effectiveness of the Complaints Mechanism Division, as part of the Inspectorate General, are ensured by its final responsibility regarding (i) the admissibility of complaints, (ii) the type of mediation and/or investigation to be performed for a particular complaint and (iii) the final version of the Conclusions Report.

EIB-CM shall perform its function under the CMPTR and the present CMOP without prejudice to the competences and responsibilities attributed to the other services of the Bank.

The separation of the mediation function from the investigation function (both part of the Complaints Mechanism and previously exercised by the Complaints Office), with separate staffing, provides the Complaints Mechanism with a powerful tool, in terms of problem solving. Such a mediation function is a credible alternative to full investigations in cases where a compliance review can reasonably be excluded.

In order to enhance the operational independence of the EIB Complaints Office all staff working as part of the Complaints Mechanism are expected to apply and uphold specific Rules of Conduct. According to the CMPTR, this Rules of Conduct are an integral part of the Complaints Mechanism and are provided in chapter 11.

## 2. Categories of Complaints

	Type of complaints	Standard procedure (Ch. 5)	Extended procedure (Ch. 6 substitutes § 5.5)
<b>Project related complaints</b>	<b>A</b> – Access to Information	√	
	<b>E</b> – Environmental and Social impacts of financed projects		√
	<b>F</b> – Governance aspects of financed operations		√
	<b>P</b> – Procurement in the context of financed projects	√	

	Type of complaints	Standard procedure (Ch. 5)
<b>Non-project related complaints</b>	<b>A</b> – Access to Information	√
	<b>C</b> – Customer and Investor relation	√
	<b>G</b> – Own governance	√
	<b>H</b> – Human resources	√
	<b>R</b> – Own procurement	√

## 3. Definition of maladministration

*“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”<sup>2</sup>.*

As the EIB CM is the first step of a two-tier procedure (one internal and one external) the definition of maladministration is aligned with the EO definition. In this context, the EIB CM has the objective of resolving complaints, so that complainants do not need to escalate the matter to the EO.

<sup>2</sup> § 1.2 of CM Principles.

*“Members of the public who feel affected by the activities of the EIB Group but who are not aware of the rules, regulations, policies or procedures applying to the Group may also submit complaints.”<sup>3</sup>* This means that complainants do not need to identify the maladministration nor do they need to directly challenge EIB non-compliance with specific rules, regulations, policies or procedures. Allegations of wrongdoing as well as of direct negative impacts stemming from EIB decisions or omissions may be considered as complaints, as far as they satisfy the admissibility criteria identified below (§ 6.3).

The definition of maladministration includes, but it is not limited to, non compliance with existing rules and regulations, or with EIB Policies, Standards and Guidelines. Decisions, actions or omissions by the Bank which fail to give due consideration to legitimate concerns of stakeholders may also be considered as maladministration.

Complaints regarding negative impacts of a lending operation are admissible as far as the EIB has financed, approved or is at least actively considering financing the operation/project. Where the complainant(s) raises concerns about the non-compliance of a project with international, national or EIB standards, it is clear that the contested actions/omissions, as well as compliance with applicable standards, are the primary responsibility of the project promoter and local authorities. However, the Bank has a due diligence duty to ensure such compliance and may, therefore, be subject to complaints and allegations of maladministration.

Complaints may relate to any aspect of the planning, implementation, or impact of EIB projects, including but not limited to:

- Processes followed in preparation of a project;
- The adequacy of measures for the mitigation of social and environmental impacts of the project;
- Arrangements for involvement of affected communities, minorities, and vulnerable groups in the project;
- The manner in which the project is implemented.

The particular case of a complaint regarding a project under consideration for EIB financing, for which the appraisal process is not yet finalised, requires special treatment and the complaints handling process needs to be modulated (see § 6.3).

#### **4. Procedural steps of Complaints handling**

The Complaints Mechanism Operating Procedures (CMOP) formalises current internal procedures, which derive from the CMPTR, clearly defines the procedural steps in terms of complaints handling, as well as the responsibilities and flows of information. Such procedural steps aim at facilitating problem solving, avoiding misunderstandings and unnecessary delays and allowing for differences of opinion.

The CMOP contains two types of procedures:

1. The so-called “**Standard procedure**” which applies to all complaints, except for complaints regarding environmental and social impacts, or governance aspects of EIB lending operations (types **E** and **F**) as referred in Ch. 3, and is described in the present Chapter.
2. For the complaints of type **E** and **F** the so-called “**Extended procedure**” will apply. The “Extended procedure” will be the same as the standard procedure for all steps with the exception of the complaint Assessment/investigation (described under § 5.5 for the “Standard procedure”), which is replaced by a more extensive and formal process as described in Ch. 6.

Prompt co-operation of operational services throughout the whole complaints handling process is required to ensure effectiveness, efficiency and timeliness: *“In carrying out its responsibilities, the EIB Complaints Mechanism has the right to obtain access to any and all information necessary for the performance of its duties. The EIB Group’s staff has the duty to co-operate with the EIB Complaints Office promptly, fully and efficiently following the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure, especially with a view to respecting the deadlines as well as to adhering to the standards and policies of the EIB Group.”<sup>4</sup>*

<sup>3</sup> § 2.2 of CM Rules of Procedure.

<sup>4</sup> Complaints Mechanism Terms of Reference, § 3

#### 4.1. Reception of complaints

The published information on the complaints procedure provides for complaints to be lodged in written form by one of the following means:

- Letter to the EIB Secretary General
- On line Complaints Form (<http://www.eib.org/infocentre/complaints-form.htm>)
- Email to the EIB Complaints Mechanism ([complaints@eib.org](mailto:complaints@eib.org))

If a different contact point or official of the EIB receives a complaint, the receiver must immediately transfer it to IG/CM.

#### 4.2. Acknowledgement of receipt

An acknowledgement of receipt is sent within 10 working days of the reception of the complaint.

#### 4.3. Admissibility check/ registration

A complaint is considered admissible if the allegations relate to a decision, action or omission by the EIB. In case of projects, the complaint is admissible if the Bank has already decided to consider and appraise the operation. The trigger point is the approval of the Preliminary Information Note (PIN) by the Management Committee, which is the formal decision to consider the project. The fact that the appraisal has not been finished does not by itself induce inadmissibility. Throughout the rest of the project lifecycle, a complaint is admissible.

According to the CMPTR, inadmissible complaints are those:

- Concerning allegations of fraud or corruption;
- Lodged by the EIB Group's staff, regarding the relation with the EIB Group;
- Concerning International organisations, Community institutions and bodies, national, regional or local authorities (e.g. government departments, state agencies and local councils);
- Which have already been lodged with other administrative or judicial review mechanisms or which have already been settled by the latter (with same allegations and same respondent.);
- From anonymous parties;
- With the objective to gain unfair competitive economic advantage;
- That are excessive, repetitive, clearly frivolous or malicious in nature.

The responsibility for checking admissibility lies with the Head of EIB-CM. The admissibility check is performed within the 10 working days and the result is communicated to the complainant(s) at the same time of the acknowledgement of receipt. The admissibility check makes no judgement on the merits of the complaint.

After admissibility check, complaints are registered and admissible complaints follow the internal complaints handling process. Complainants are informed (i) that the complaint has been registered, (ii) that an inquiry/assessment is initiated and (iii) about the date by which they may expect a response (40/140 working days).

If a complaint is inadmissible, the complainants are informed of the reasons of inadmissibility and provided with suggestions as to whom they may address their concerns, if applicable.

#### 4.4. Notification to the Bank's services

After the admissibility check / registration, and before acknowledgement to the complainant, a notification is sent to the Directorates responsible for the activity under complaint (Director-General (DG), Director, Head of Division and Coordination contact person<sup>5</sup>) informing that the CM will initiate an assessment of the merits of the complaint<sup>6</sup>. Such notification will include the full complaint (letter, e-mail or form). In case

<sup>5</sup> In case of P complaints, also copy the Bank's Head of Procurement; in case of E complaints, also copy the Bank's Chief Environmentalist.

<sup>6</sup> In cases where admissibility is evident, complaints will be immediately forwarded to the Directorates concerned.



the complainant(s) asked for confidentiality, the Bank's services will be reminded of such confidentiality requirement. In very exceptional and sensitive cases, when a risk of retaliation exists, the identity of the complainant(s) will not be disclosed and the complaint will be edited to avoid a possible identification of its origin.

#### **4.5. Assessment/investigation (Standard procedure only)**

The first step is an initial assessment to determine the seriousness of the concerns raised, which will include an initial meeting with the EIB services concerned and review of available information / documentation, followed by meetings with external stakeholders if deemed necessary. If such concerns seem grounded, an investigation, including a compliance review, will always take place. If deemed necessary and useful, this investigation / compliance review may be supplemented by other light-touch problem solving and mediation techniques, with a view to properly address the issues raised. These problem solving and mediation processes will take the form of "Facilitation of information sharing" and/or "Dialogue / negotiation".<sup>7</sup>

The process for handling complaints in terms of assessment / investigation / mediation will be modulated according to (i) the complexity of the complaint, (ii) the existence of "red flags" indicating that the complaint could be grounded and (iii) facts revealed during the assessment / investigation process.

The CM is committed to substantial information flows and consultations with the EIB operational services, in order to ensure constructive collaboration. This is the more important given that possible divergence of opinions can occur, in light of the nature and remit of the CM.

The objective of the assessment/investigation is to allow IG/CM forming an independent and reasoned opinion regarding the issues raised by the complaint. The outcome of such process may be one or more of the following:

- no maladministration found
- problem solved during the complaints handling process
- no further action required
- recommendation in case of maladministration
- suggestion of corrective, mitigation actions

*For complaints regarding environmental and social impacts, or governance aspects of EIB lending operations (types E and F), as referred to in Ch. 3, this step is replaced by a more extensive and formal process, the "Extended procedure" as described in Ch. 6.*

#### **4.6. Draft Conclusions Report**

The draft Conclusions Report as the outcome of the complaint handling process shall be prepared along the following indicative outline:

- Complaint (allegations and claims)
- Background information
- Regulatory Framework
- Investigation/ Mediation Methods
- Work performed
- Findings
- Conclusions
- Recommendations (in relation to the complaints raised)

Whenever appropriate, an Executive Summary will be provided. If the complaints handling process has uncovered other issues that merit being raised, these will be reported internally in a separate report as appropriate and not part of the Conclusions Report.

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<sup>7</sup> These light and less formal forms of Mediation / Facilitation are described in § 6.7

#### 4.7. Consultation

The draft Conclusions Report will first be circulated to the EIB operational services for comments, with an indication of the deadlines. Comments shall be provided within a reasonable time limit (normally 5 working days) taking into account the complexity of the report. Exceptionally such delay can be extended up to 20 working days. If no comments have been provided, the DGs will be notified of the tacit agreement. In case of disagreement by the EIB Operational Services, the draft will also be submitted to the Management Committee, for comments to be given within 5 working days.

The draft Conclusions Report will then be circulated to the stakeholders involved in the complaint process (assessment, investigation/ compliance review or mediation) for comments, which shall be provided within a reasonable time limit (normally 5 to 10 working days), taking into due account complexity of the report. This draft is watermarked as “Confidential Draft – do not disclose – for recipient comments purpose only”.

Comments are sought in order to:

- Eliminate factual errors and/or omissions;
- Clarify issues that have been misunderstood;
- Provide substantial and material new evidence, if any;
- Incorporate decisions taken, if any, based on the findings and conclusions provided;
- Express views on the substance of the findings.

Consultation described in this § and in § 5.9 below means (i) inviting comments and (ii) considering them:

As regards (i), the process cannot be blocked by failure to respond to the consultation. If no comments are received by the deadline, EIB-CM will proceed to the next stage.

As regards (ii), IG/CM must respond to critical comments on its findings and recommendations, but it does not have to obtain the agreement of the parties consulted before the process moves to the next stage.

#### 4.8. Final Conclusions Report

After reception of all comments, and repeated consultations if necessary, the CM will produce a final Conclusions Report which will be sent to the Directors General concerned. The Directors General concerned will have the possibility to provide the Inspector General with a formal Services Response with their position and comments in reaction to the final Conclusions Report, within a reasonable time limit (normally 10 working days) after the communication of the report.

The Head of EIB-CM will send the CM Conclusions Report, with the Services Response if any, to the relevant members of the EIB Management Committee. The members of the Management Committee consulted will react within 10 working days.

If he deems appropriate, and on the basis of the reaction from the members of the Management Committee consulted and of the Services Response, the Inspector General may request EIB-CM to review its Conclusions Report.

The Conclusions Report will then be signed by the Head of EIB-CM and by the officer in charge of the complaint.

#### 4.9. Management Committee

After consultations above, the EIB Inspector will submit the CM Conclusions Report and the Services Response if any, to the Management Committee for decision. This submission will be for information only if there is no disagreement with the services concerned.

The Management Committee will decide whether the Services Response should be attached to the Conclusions Report.<sup>8</sup>

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<sup>8</sup> Without prejudice to the provisions of the Bank's Transparency Policy

#### 4.10. Response to the complainants

The final response to the complainants is provided by letter from the EIB's Secretary General, who will communicate the final EIB decision/position and forward the CM Conclusions Report. The Services Response may be attached in line with the Management Committee decision.

#### 4.11. Formal deadlines for complainants

Action	Delay	After
Acknowledgment of receipt	10 working days	Reception of complaint by the CM
Response to complainant(s) or Holding letter to complainant(s) in case of complexity or for reasons beyond the sphere of influence of the CM	40 working days	Acknowledgment of receipt
Response to complex complainant(s)	140 working days or 100 working days	Acknowledgment of receipt Holding letter
In cases of problem solving the deadlines may be extended in consultation with the complainants in order to allow for comprehensive stakeholder engagement and to manage legitimate expectations.		

Whenever the EIB-CM is not able to provide a response to the complainant(s) within the prescribed deadlines, the EIB-CM will inform the complainant(s) accordingly, before the expiration of the deadline and providing the reasons for the delay.

#### 4.12. Interim reports

During the handling of the complaint, if deemed necessary, the CM may produce an internal interim report for the attention of the Management Committee, with specific recommendations if applicable. In the event of a disagreement with operational services, the Directors General concerned will have the opportunity to provide their opinion and the Inspector General will address the Management Committee for decision.

### 5. Complaints regarding environmental and social impacts or governance aspects of operations/projects financed by the Bank – Extended procedure

*This Chapter is part of the so-called "Extended procedure" and substitutes § 5.5 above, for the particular case of Complaints regarding environmental and social impacts or governance aspects of operations/projects financed by the Bank (types E and F), as referred to in Ch. 3.*

It is important that the handling of such complaints takes appropriate account of the EIB-promoter relationship. Moreover, the procedures and outcomes must be (i) timely in relation to market needs; anticipated, (ii) clear and firm as to the duration of the investigation / compliance review or mediation; (iii) ensuring cooperation with Bank's services; (iv) consistent over time.

As for the general case, in order to ensure an effective and efficient use of resources, the different phases of the complaint's handling process will be modulated accordingly to (i) the complexity of the complaint, (ii) the existence of "red flags" indicating that the complaint could be grounded and (iii) facts revealed during the assessment / investigation process. To this extent, the different phases – Initial Assessment, Investigation and mediation - will be adapted in terms of tasks performed, depth of analysis performed, extent of stakeholders' engagement and amount of resources allocated.

#### 5.1. Specific complaint handling procedures

Complaints related to environmental and social impacts or governance aspects of financed operations/projects usually raise complex issues. For this reason, and because of the sensitivity of the relations involving project promoter, national authorities, civil society organisations and project affected people, particular attention needs to be given to the specific processes regarding this type of complaints. Therefore the applicable deadlines are always those for complex complaints (total of 140 working days after acknowledgement).

For this type of complaint, the normal inquiry process is formally structured in two phases: one assessment phase and a second one, which could be a mediation phase or an investigation phase. In this context, the procedures below apply exclusively to complaints relating to the environmental, social or governance aspects of EIB lending operations.

## 5.2. The project lifecycle

Pre-appraisal stage (before the PIN) – the complaint is inadmissible regarding the project itself; expressed concerns are forwarded to the operational services; Complaints about Technical Assistance operations, in the context of project that could be considered by the EIB, will be examined on their own merits, on administrative grounds only.

Appraisal stage (after the PIN) - the complaint can be admissible (see admissibility criteria); in general, concerns are communicated to the operational services and followed-up internally (see § 6.3.A); only in particular circumstances, will further active CM involvement take place (see § 6.3.B).

As soon as the proposal for financing (AFS) is approved by the Management Committee, the full complaint handling process (including investigation / compliance review) can apply.

It should be noted that in many cases the AFS is approved with a number of conditions to be fulfilled by the borrower before the Bank will disburse the financing. In such cases, the CM will maximise collaboration with the services to ensure that there is good coordination between the services' on-going work and the CM's activities.

## 5.3. Projects under appraisal

Before a decision to finance is made by the EIB Governing Bodies, technically maladministration regarding the project's environmental and social impacts or governance aspects cannot occur. The key role of the CM at this stage is (i) to ensure that complainants' concerns are given due consideration and (ii) to prevent future grounded complaints. Moreover, parallel appraisals should not occur.

The CM work regarding complaints on projects under appraisal will take one of the forms below

- A. **The general case:** If the complainants have not yet contacted the operational services, or if the appraisal team has not yet had the occasion to meet the complainants, or to consider their concerns, the complaint is transferred to the appraisal team and closed; the complainants are informed that their concerns will be addressed by the appraisal team and that if at the end of the appraisal process, they feel that their concerns have not been given due consideration, they may consider launching a new complaint; the CM will follow-up internally to ensure that concerns have been given due consideration (i.e., as a minimum, that the appraisal team has contacted/met the complainant(s) and analysed their concerns).
- B. **The exception:** In exceptional cases, only when the appraisal team has already refused, or refuses, to engage with the complainants, or the complainants concerns have already been examined and dismissed, the CM may decide, subject to documenting the reasons for the decision, to perform an Initial Assessment (in collaboration with the appraisal team) for the attention/information of the Management Committee at the occasion of, or prior to, the AFS. The objective of such work<sup>9</sup>, which is not of an investigative nature, is to make recommendations to the Management Committee for further CM work, if deemed necessary. For this purpose, the AFS includes a CM box, on which EIB-CM can express its views on any complaint received before the AFS approval. At this stage, CM investigative work and/or mediation may only take place, when agreed or requested by the Management Committee.

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<sup>9</sup> This "fact finding" work will review many of the issues that will form part of a typical post-AFS CM activity, subject to the same rules of engagement, but in a lighter form.

#### 5.4. Initial Assessment

If post-AFS approval, and also in exceptional cases referred to in § 6.3 B above, the CM work regarding an admissible complaint will start with an Initial Assessment. The objectives of such Initial Assessment are fact finding oriented:

- to clarify the concerns raised by the complainant(s), to better understand the complainants' allegations as well as other project stakeholders (project promoter, national authorities, ...) views, and to have view on the situation on the ground;
- for those projects that raise substantial concerns regarding social or environmental outcomes and or seriously question governance of objects or vehicles of EIB financing, to understand the validity of the concerns raised;
- to assess whether and how the project stakeholders (e.g. Complainants, the Bank's operational services and the project Promoter) could seek resolution of the issues under complaint;
- to determine if further work is necessary and/or possible from the EIB CM (investigation, compliance review or mediation between the parties) to resolve the issues raised by the complainant(s).

Assessments will include meetings with the Bank's services involved in the project under complaint (including the project team) and will be carried out in a flexible manner and may include any combination of the following activities:

- Review of Bank's documentation;
- Review of external information and documentation;
- Meetings with complainants, other affected people and communities, project promoter, national authorities of the country where the project is located, and interested Civil Society Organisations;
- Visits to project location, for fact finding reasons.

When planning a visit, the CM will inform the Bank's services, the project promoter, complainants, and other relevant stakeholders of its plans. Representatives of the operational Directorates will be invited to the meetings with project promoters.

##### Key questions to be addressed:

The opportunities for collaborative problem solving should be assessed:

- Identify the relevant stakeholders who are to be involved in the possible dispute resolution;
- Understand their views and willingness to resolve the issues;
- Identify optimal processes (existing and new), if any, to articulate the issues under complaint and how the CM can help and assist the relevant project stakeholders in providing a forum for discussion and facilitating a possible resolution;
- Assess the possibility of formal agreement on a process for trying to solve the concerns raise by the complainant and any other issues identified thereof.

For those projects that raise substantial concerns regarding social or environmental outcomes and or seriously question governance of objects or vehicles of EIB financing:

- Understand how EIB operational services have ensured (i) compliance with applicable frameworks (Laws, rules and regulation, EIB policies and standards) and (ii) appropriate project performance;
- Assess potential indications that EIB policies, standards and guidelines could have failed to provide an adequate level of protection and safeguard;
- Identify, if any, reasonable indications of non-compliance with applicable frameworks (Laws, rules and regulation, EIB policies and standards);

##### Initial Assessment Report

The assessment phase will be concluded with a decision whether or not to proceed and a clear outline of the course of action proposed. The assessment will be completed within 40 working days after admissibility is communicated to the complainants. Mediation and investigation/ compliance review processes are not mutually exclusive. Any kind of collaborative resolution needs to be agreed by all the parties involved. If a collaborative resolution is not possible or judged unnecessary and an investigation /

compliance review is not justified, the complaint will be closed. In case of projects under appraisal, which have merited an initial assessment, mediation will normally be the privileged option.

A draft version of the Initial Assessment Report will be submitted firstly to the EIB operational services (5 working days), and in case of disagreement also to the Management Committee (5 working days), for comments. Subsequently, the draft will also be submitted to the other relevant project stakeholders, for comments. The Head of EIB-CM will provide the Initial Assessment Report to the project stakeholders, to the Inspector General and to the Directors General concerned. The Report will include concrete proposals to proceed with a collaborative process and/or an investigation / compliance review, as well as outline Terms of Reference.

### **5.5. Decision on the type of further work to be performed, if necessary**

The Director(s) General concerned will have the possibility to provide the Inspector General, within a reasonable time limit (normally 10 working days) after the finalisation of the report, with a formal Services Response with their position and comments in reaction to the Initial Assessment Report.

The decision by the head of EIB-CM to consider the complaint eligible for an investigation / compliance review, or any other action, will only be taken in agreement with the EIB Inspector General, on the basis of the CM Initial Assessment Report (including the clear outline of the action proposed) and of the Services Response.

### **5.6. Investigation / Compliance review function**

In general, the starting point is a compliance review and the outcome of the investigation will determine whether:

- The failure to address the issues raised by the complaint was not compliant with the EIB relevant provisions;
- The current outcomes are not consistent with the desired effect of the EIB relevant provision;
- The EIB relevant provisions are not adequate to handle the issues raised by the complaint.

CM investigation or compliance review will also consider how the EIB has assured itself/themselves of compliance of the promoter with national law, along with other audit criteria. However, it must be noted that the CM is not a legal enforcement mechanism and will not substitute the judgment of competent judicial authorities.

#### **5.6.1 Mission letter**

After the Initial Assessment Report, and if an investigation / compliance reviews mission is decided, the Head of EIB-CM will send a mission letter to the EIB Directors General concerned and to project stakeholders involved in the initial assessment (complainants, affected communities, project promoter, national authorities and EIB operational services) informing them of the start of the mission and communicating its Terms of Reference.

#### **5.6.2 Terms of Reference**

The Terms of Reference for the investigation / compliance reviews mission include:

- Project description
- Objectives and scope
- Audit approach (criteria and methods)
- Indicative description of investigation / audit work to be performed
- Verification site visits
- Deliverables (reporting)
- Timetable

### 5.6.3 Use of experts

One CM staff member (Complaints Officer) is assigned primary responsibility for managing the investigation / compliance review process, under the supervision of the Head of EIB-CM. Whenever appropriate, expertise will be sought and the Head of EIB-CM will determine the knowledge and skills required to undertake the investigation / compliance review. Experts are selected on the basis of knowledge and experience, competence, independence, and international recognition. In the absence of any (**potential**) conflict of interest, internal experts can be used. The Head of EIB-CM has final responsibility for the choice of external or internal experts. The terms of reference of such consultants will be shared with the operational services for comments before finalisation (see also § 6.4 under Initial Assessment report).

### 5.6.4 Site visits

On-site verification visits will be performed in line with the mission Terms of Reference, by CM staff and external experts. Representatives of the operational Directorates will be invited to the meetings project promoters.

### 5.6.5 Independent opinion and outcome

The objective of the investigation / compliance review is to allow EIB-CM forming an independent and reasoned opinion regarding the issues raised by the complaint, which shall be independent of the management and services responsible for the activities challenged by the complainant. The outcome of such process may be one or more of the following:

- no maladministration found
- problem solved during the complaints handling process
- no further action required
- recommendation in case of maladministration
- suggestion of corrective, mitigation actions

A Conclusions Report will be prepared in line with the applicable Terms of Reference, which will ultimately be submitted by the Inspector general to the Management Committee.

Issues identified during the investigation and not related to the allegations put forward by the complainants will be reported internally in a separate report and not be part of the Conclusions Report.

## 5.7. **Mediation / Facilitation Function**

### 5.7.1. Eligibility requirements

If there is a manifest opportunity for a collaborative resolution process, and before the issuance of Initial Assessment Report, the CM will obtain formal agreement from the relevant project stakeholders (complainants, affected communities, project promoter, national authorities and EIB operational services) to start a mediation process. Typically, the mediation will take place between the Complainants/Requestors, on one side, and the Bank's Management/Services and/or Project Promoter and/or national authorities, on the other side. Any of the parties may interrupt or call off the mediation process at any time.

### 5.7.2. Mission letter

After the Initial Assessment Report, and if a mediation is agreed, the Head of EIB-CM will send a Mission Letter to the EIB Directors General concerned and to the project stakeholders involved in the initial assessment and which have been invited, and accepted to participate in a collaborative resolution process. This letter will inform of the start of the process and propose the next steps of the mediation.

### 5.7.3. Types of mediation

The collaborative resolution process will aim at resolving the dispute by (i) achieving a better and common understanding, (ii) improving the degree of trust between the parties and (iii) seeking to identify a common agreed solution. The process may involve different forms of stakeholders' engagement with specific facilitation roles for the CM:

Facilitation of information sharing – the CM ensures that adequate and relevant information and documentation is provided to the complainants, as well as additional clarifications, in order to facilitate a better understanding of project impacts and effectively address the concerns put forward.

Dialogue / negotiation – the CM facilitates a dialogue between the parties, by which parties commit to negotiate in view of a commonly accepted solution.

Joint fact-finding – the CM facilitates the project stakeholders to agree on the issues to be investigated, the involvement of the parties, the degree of independency required, the method to be used and what to do with the results, and to proceed with the joint investigation / fact-finding.

Formal mediation / conciliation – in cases where distrust and confrontation have led to substantial deterioration of the relationship between parties, the CM can manage and facilitate a more formal and complex process to achieve conciliation with a view of problem solving.

### 5.7.4. Agreement

An agreement by the parties involved (in principle complainants on one side, and project promoter on the other side, the Bank's services being involved as appropriate) shall be obtained at the start of the mediation (e.g. in the form of a Letter of Intention) setting the way forward and defining clear rules of engagement with well defined timelines.

### 5.7.5. Use of external experts

One CM staff (Mediation Officer) is assigned responsibility for managing the mediation process, under the supervision of the Head of EIB-CM. Whenever appropriate, mostly specially for the formal mediation process, external expert mediators will be used and the Head of EIB-CM will determine the knowledge and skills required to undertake the mediation. External experts are selected on the basis of knowledge and experience, competence, independence, and international recognition. The terms of reference of such consultants will be shared with the operational services for comments before finalisation (see also § 6.4 under Initial Assessment report).

### 5.7.6. Conclusion and outcome

If the mediation process brings the parties to mutually accepted and sustainable solutions, within the defined timelines, the process is successfully closed. If not, the process is deemed to have failed and a recommendation for an investigation / compliance review or other specific Bank action may follow. In both cases, a Conclusions Report will be prepared.

## 5.8. **Approval and signatures while a complaint being investigated**

**Approval:** When a complaint has been submitted after approval of the PIN and before approval of the AFS, the CM will provide its opinion in the appropriate box in the AFS.

**Signature:** When a project is under complaint, the services are required to inform the CM when the signature is planned.

## 6. **Follow-up / Monitoring of implementation**

The CM in collaboration with the relevant EIB services will ensure follow-up on further developments and implementation of proposed corrective actions and recommendations, accepted by the EIB, regarding the subject under complaint whenever appropriate and in any case no later than 12 and 24 months after the date of the Conclusions Report.



A full monitoring/audit mission will take place only if specifically proposed by the CM in the Conclusions Report and approved by the Management Committee.

## **7. Specific Management requests and CM own initiative**

An assessment, investigation or mediation process, as described in Ch. 5 and 6, may be initiated:

By a specific request by the President or the Management Committee;

By the Inspector General, either on his own initiative, or on the basis of a reasoned proposal from the head of EIB-CM.

## **8. Complaints Mechanism – reporting and communication**

### **8.1. Web based information**

Taking into account the confidentiality requirements of complainants, as well as third party personal data protection, the following information will be provided on a specific part of the Bank's Web site (<http://www.eib.org/about/accountability/complaints/index.htm>):

- How to use the mechanism,
- Complaints form
- Principles, Terms of Reference and Rules of Procedure,
- Operating Procedures,
- Complaints
  - Registered,
  - Initial Assessment Reports (final versions),
  - Conclusions Reports (final versions),
- Annual Reports,
- Other.

Such information will be updated on a weekly basis.

### **8.2. Information available on the Intranet site**

In addition to the information provided on the EIB Website, the Complaints Mechanism intranet will provide detailed information on the current status of the internal handling process for use by the concerned services.

### **8.3. Reporting to the Management Committee and Audit Committee**

Every two months, the CM will provide the Management Committee and the Chairman of the Audit Committee with a list of:

- New complaints registered
- On-going complaints
- Closed complaints

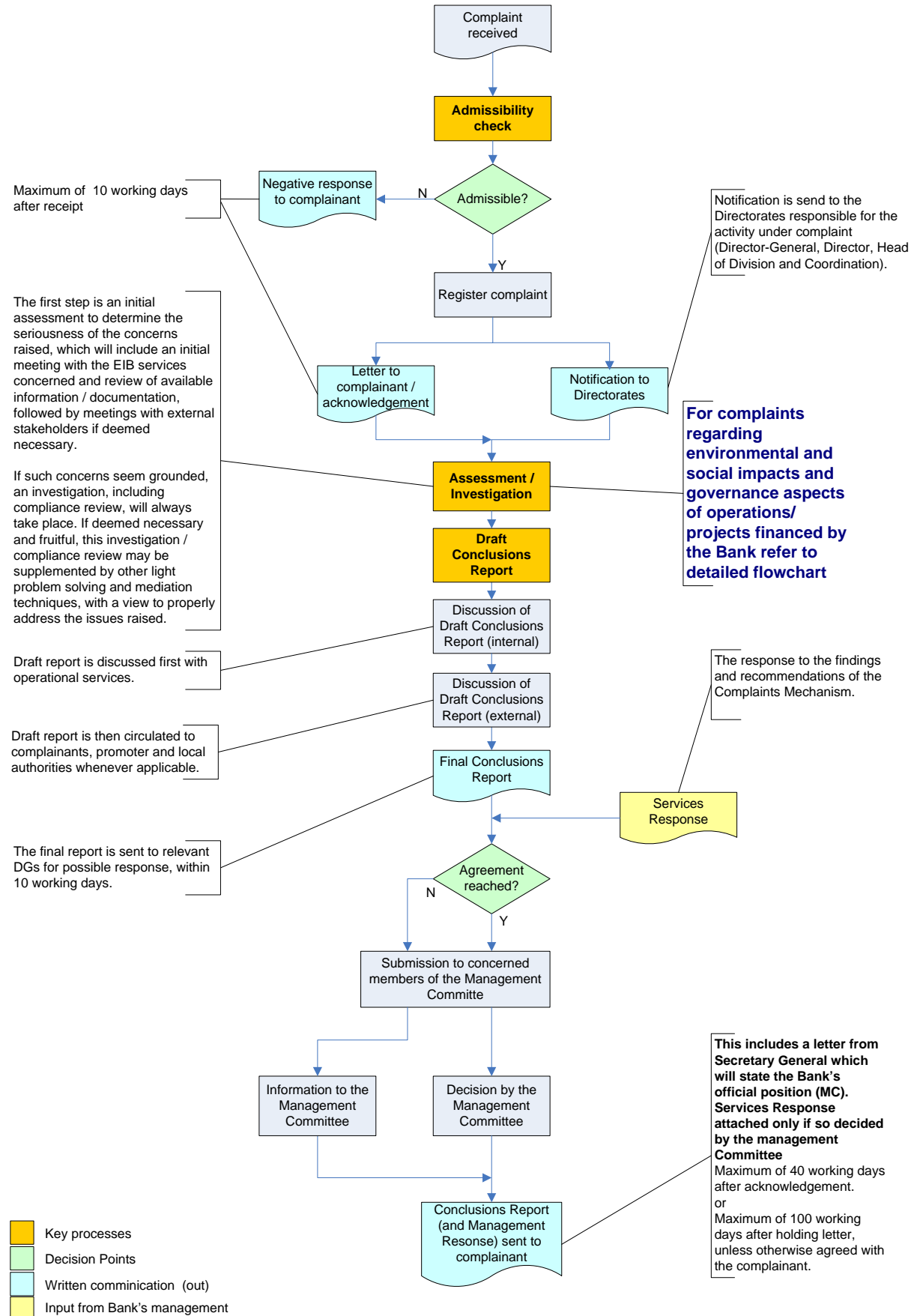
For each complaint, the CM will provide a short description of (i) the concerns raised, (ii) the work performed and (iii) next steps.

### **8.4. Annual reporting to the Board of Directors**

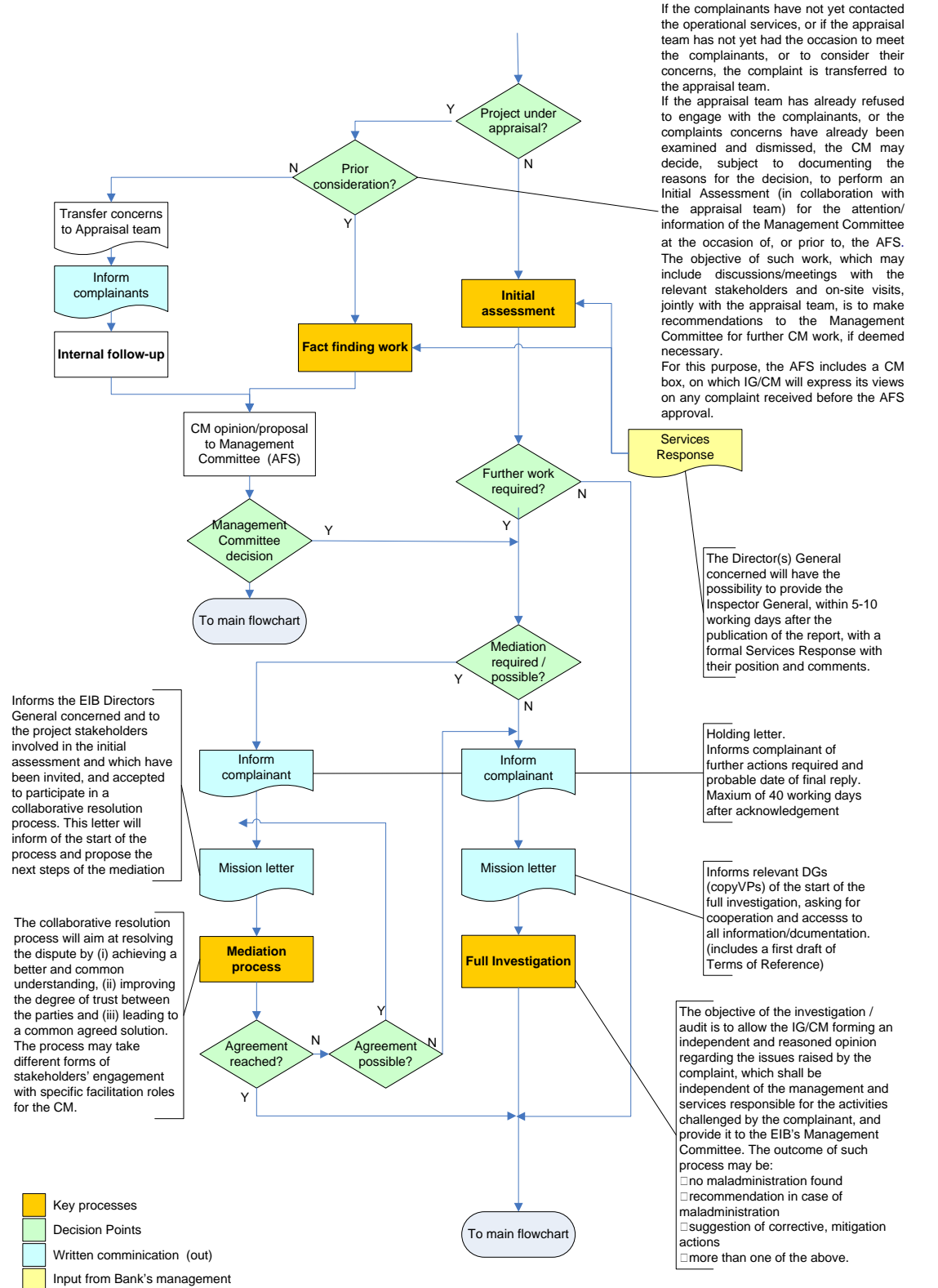
During the first months of a given year, the CM will prepare a report for the previous yearly period for submission to the EIB Management Committee. After approval by the Management Committee, the report will be forwarded to the EIB Board of Directors for information and published on the EIB Website.

### 9. Flowcharts of the complaints handling process

#### GENERAL



### COMPLAINTS RELATING TO ENVIRONMENTAL OR SOCIAL IMPACTS OR GOVERNANCE ASPECTS OF LENDING OPERATIONS



## 10. Rules of Conduct for EIB Complaints Mechanism members

(For members of staff working for, or supervising, the EIB Complaints Mechanism, in line with the CMPTR)

### Preamble

Members of staff working as part of the EIB Complaints Mechanism, hereafter EIB Complaints Mechanism members, are expected to apply and uphold the Rules of Conduct below.

The rights and obligations established for the EIB Complaint Mechanism members by the Principles, Terms of Reference and Rules of Procedure, as well as by the present Rules, must be fulfilled in accordance with the principles, rules and procedures set out in the EIB Staff Code of Conduct and in other policies and regulations applicable to the Bank's staff.

### Rules of Conduct

#### 1. Independence:

In the exercise of their responsibilities, as set forth in the EIB Complaints Mechanism, Principles, Terms of Reference and Rules of Procedure, or in the present Rules, the Complaint Mechanism members shall enjoy complete operational independence from the services which are responsible for the activities that are the subject of a complaint, without prejudice to the competences attributed to the other services of the Bank. They shall have full authority to process any complaints without undue interferences from any other persons or entities.

#### 2. Objectivity:

EIB Complaints Mechanism members exhibit the highest level of professional objectivity in gathering, evaluating and communicating information and in engaging with stakeholders in the execution of their function under the EIB Complaints Mechanism. EIB Complaints Mechanism members make a reasoned judgment and form opinions based on the assessment of all the relevant information, and are not unduly influenced by their own interests or by others in forming judgments.

EIB Complaints Mechanism members shall:

- 2.1. Not participate in any activity or relationship that could reasonably be assumed to impair their unbiased judgment;
- 2.2. Not accept anything that may or could reasonably be assumed to impair their professional judgment;
- 2.3. Disclose all relevant and material facts known to them in order not to distort the reporting of complaints under review.

#### 3. Confidentiality:

EIB Complaints Mechanism members shall:

- 3.1. Be prudent in the use and protection of third part information acquired in the treatment and handling of complaints;
- 3.2. Unless otherwise requested by complainants, or required under any applicable regulatory provisions, ensure full confidentiality of complainants' data in order to protect their privacy rights and to avoid possible retaliation;
- 3.3. Not use information for any personal gain or in any manner that would be contrary to the law or detrimental to the legitimate and ethical objectives of the organization.

4. Professional Competence:

EIB Complaints Mechanism members shall:

- 4.1. Deal with complaints in accordance with the EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure;
- 4.2. Engage only in those services for which they have the necessary knowledge, skills, and experience;
- 4.3. Where adequate expertise is not available within the Complaints Mechanism, identify and use appropriate external expertise for specialized assessments;
- 4.4. Continually seek to improve their proficiency, as well as the effectiveness and quality of their services.









## Contacts

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