

MEMORANDUM OF UNDERSTANDING

between

THE EUROPEAN OMBUDSMAN *and* THE EUROPEAN INVESTMENT BANK

concerning information on the Bank's policies, standards and procedures and the handling of complaints, including complaints from non-citizens and non-residents of the European Union

1. Background and objectives of the present Memorandum of Understanding

The European Ombudsman (the “EO”) and the European Investment Bank (the “EIB”) are part of, and function within, the institutional framework of the European Union.

The EIB is the financing institution of the European Union. The capital of the EIB is subscribed by the Member States of the EU. The EIB has its own legal personality and enjoys financial autonomy within the EU system. The EIB raises substantial volumes of funds on the capital markets which it lends on favourable terms to projects furthering EU policy objectives. Outside the EU, EIB lending (“external lending”) is based on EU external cooperation and development policies.

The EO, who is elected by and reports to the European Parliament, is required to be completely independent in the performance of his duties. The EO has power to conduct inquiries concerning instances of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and Court of First Instance acting in their judicial role. Inquiries may be conducted on the EO's own initiative, or following a complaint. Any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State is entitled to complain to the EO.

The present Memorandum of Understanding builds on the experience of good co-operation between the EIB and the EO in relation to the EO's inquiries into possible maladministration by the EIB.

The common objective of the EO and the EIB is to “raise the bar” in relation to stakeholders' engagement and protection as regards the EIB's activities and, in particular, to extend such protection to physical and legal persons who are not citizens or residents of one of the Member States of the EU, or who do not have a registered office in one of the EU Member States. The present Memorandum provides a basis for constructive co-operation in pursuit of this objective.

2. Points of principle

The EO and the EIB share the same view on the following points of principle:

- I. The EIB should inform the public about the policies, standards and procedures that apply to the environmental, social and developmental aspects of its activities.
- II. The concept of “maladministration” applied by the EO includes failure to comply with human rights, with the applicable law, or with the principles of good administration.
- III. One of the requirements of good administration is that the EIB should comply with its established policies, standards and procedures.
- IV. Before turning to the EO, complainants should have recourse to an effective internal EIB complaints procedure.

On the basis of the above points and the experience gained through their good co-operation so far, the EO and EIB declare the following:

– The EIB declares that:

1. it has in place a Complaints Mechanism Policy which aims at providing members of the public with an institutional procedure, internal to the EIB, for the handling of complaints. The Complaints Mechanism Policy includes the EIB’s commitment to ensure the adequate engagement of stakeholders as well as internal procedures for that purpose;
2. with a view to improving the information available to the public in relation to the relevant standards and policies applying to the EIB’s activities, Annex I of the Complaints Mechanism Policy provides a list of relevant documents which are also accessible through the EIB’s website;
3. it is committed to launching a public consultation on its Complaints Mechanism Policy in early 2009.

– The EO declares that:

1. whenever the only reason not to inquire into a complaint alleging maladministration by the EIB is that the complainant is not a citizen or resident of the EU, the EO is committed to using the own-initiative power to open an inquiry into the matter.
2. the EO does not consider it appropriate to substitute his judgement for that of the EIB as regards substantive environmental, social and developmental questions that may arise during an inquiry into possible maladministration. The EO considers that his role is to review whether the EIB has provided a

consistent and reasonable explanation of its position in relation to such matters;

3. the EO considers that the record of how the EIB has dealt with the matters raised in the complaint through its own internal mechanisms and procedures is the appropriate starting point for his own review. Complaints should therefore include an explanation of why the complainant contests the record, or the EIB's position as set out therein¹.

3. Final provisions

The present Memorandum of Understanding is not intended to establish legal rights or obligations, either in the relationship between the EO and the EIB or *vis-à-vis* third parties.

No provision of this Memorandum of Understanding shall be construed so as to interfere in any way with the decision-making autonomy of the two parties with regard to their respective areas of activity, or to run counter to, or modify, either party's legal obligations.

The EIB and the EO will endeavour to meet regularly, in principle at least once a year, in order to exchange views on the practical implementation of the provisions of the present Memorandum of Understanding and to discuss possible improvements. They intend, in particular, to review the present Memorandum of Understanding to take account of the results of the EIB's public consultation on its Complaints Mechanism Policy.

This Memorandum of Understanding may be reviewed at the request of either party and either party has the right to withdraw from it at any time.

Luxembourg, 9 July 2008

P. Nikiforos Diamandouros
European Ombudsman

Philippe Maystadt
President, European Investment Bank

¹ Article 2.4 of the Statute of the Ombudsman provides that a complaint must be "preceded by the appropriate administrative approaches to the institutions and bodies concerned".