

Exclusion Policy

February 2018



European
Investment
Bank

The EU bank 

European Investment Bank Exclusion Policy

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European Investment Bank Exclusion Policy

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ARTICLE I : INTRODUCTION

Section 1.01. Background

- a) The European Investment Bank (“the EIB” or “the Bank”) was founded in 1958 under the Treaty of Rome to be the long-term financing institution of what later became the European Union (“EU”). The Bank provides financing for projects in the EU that fulfil the Union’s objectives. The Bank is also involved in lending to partner countries outside the EU in support of cooperation and development. It is the duty of the EIB to protect the financial interests of the Union and to ensure that its funds are employed as rationally as possible and used only for the purposes for which they were granted. The EIB’s Anti-Fraud Policy states that the Bank will not tolerate prohibited conduct in its activities or operations.
- b) The EIB is issuing the policy set forth in this document to inform EIB officials, parties accused of wrongdoing, project promoters, borrowers, contractors, financial intermediaries and other interested parties, of the process to be followed in addressing Prohibited Conduct in connection with EIB Projects. Respondents who have been found to be engaged in Prohibited Conduct may be excluded from participating in EIB Projects in accordance with the provisions set out below.
- c) This policy is intended to assist in facilitating and regulating the reasonable exercise of discretion by EIB in responding to allegations of prohibited conduct.

ARTICLE II: DEFINITIONS

Section 2.01. Definitions

As of the date of the issuance of this policy, the terms below shall have the following meanings:

“Affiliate”	means any legal or natural person that controls, is controlled by, or is under common control with, the Respondent as determined by the Bank;
“Anti-Fraud Policy”	refers to the Policy on preventing and deterring prohibited conduct in EIB activities dated 17 September 2013 as amended and supplemented from time to time; ¹
“Chair of the Exclusion Committee”	The Chair of the Exclusion Committee is the EIB’s Group Chief Compliance Officer.
“Days”	shall mean calendar days, unless stated otherwise;
“Early Detection and Exclusion System” or “EDES”	refers to the database set up and operated by the Commission pursuant to Regulation (EU, EURATOM) No 2015/1929 of the European Parliament and of the Council of 28 October 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (the “Financial Regulation”), as amended or supplemented from time to time, or any equivalent instrument;
“EIB Project”	means any project or operation, including corporate procurement, financed in whole or in part by the EIB or, insofar as the relevant agreements so provide, managed by the EIB on behalf of third parties. The EIB’s borrowing and treasury activities and any other Bank activity are considered as EIB Project for the purposes of this policy;

¹ EIB’s Anti-Fraud Policy is published on the web at: www.eib.org

“EU Exclusion”	refers to the exclusion of an economic operator from receiving EU funds pursuant to the Financial Regulation provisions;
“Exclusion Committee”	is the committee having the task of making recommendations to the EIB’s Management Committee in respect of the Respondent’s culpability and, where culpability is established, exclusion decisions. The Exclusion Committee shall consist of five members, as well as alternates, including a senior member of the EIB who will preside over the deliberations of the members and who will cast the deciding vote if necessary. Two of the other four members will be EIB employees and two will be external independent members. At least one of the EIB employees and one of the external committee members will have a strong legal background. The external members of the Exclusion Committee will be appointed by the President of the Bank for a period of not more than four (4) years, renewable only once. The operating procedures of the Exclusion Committee shall include provisions regarding the appointment of its internal members;
“Exclusion Decision”	means any decision by the Management Committee made as a result of proceedings instigated under this policy;
“Exclusion Policy” or “Policy”	means the policy set forth in the present document;
“Exclusion Proceedings”	means proceedings instigated under this Policy;
“IG/IN”	means the Fraud Investigations Division of the Inspectorate General of the EIB;
“Inspector General”	is the Inspector General of the EIB who determines, under this Policy, whether there is sufficient evidence in cases investigated by IG/IN to issue Notices of Exclusion Proceedings (“Notice” or “Notices”) to the named Respondent; and recommends an appropriate exclusion decision based on the facts alleged in the Notice;
“Management Committee”	is the EIB body having the authority, under this Policy, to impose Early Temporary Suspensions and/or Exclusion Decisions and to decide on settlement agreements. The Management Committee shall approve the Exclusion Committee’s operating procedures;
“Multilateral Development Banks”	refers to the Asian Development Bank Group, the African Development Bank Group, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group and the World Bank Group;
“Notice of Early Temporary Suspension”	means the document proposed by the Inspector General and issued by the Management Committee to a Respondent in accordance with Article IV below;
“Notice of Exclusion Proceedings” or “Notice”	means the document containing IG/IN’s findings of Prohibited Conduct served by the Inspector General to a named Respondent, which may be an individual, organisation, firm or other such entity, together with the exclusion recommended by the Inspector General in accordance with Section 5.02 below;
“Notice of Recommendation”	means the document produced by the Exclusion Committee and presented to the Management Committee for decision, including the Exclusion Committee’s findings and recommendation in respect of the Respondent’s culpability and exclusion;

“Prohibited Conduct”	refers to corrupt, fraudulent, coercive, collusive, obstructive practices, money laundering and financing of terrorism, as defined in the EIB’s Anti-Fraud Policy dated 17 September 2013, as amended or supplemented from time to time;
“OLAF”	means the European Anti-Fraud Office;
“Respondent”	means an individual, organisation, firm or other legal entity alleged to have engaged in Prohibited Conduct and who has been designated as such in a Notice of Exclusion Proceedings or Notice of Early Temporary Suspension;
“Settlement Agreement”	means an agreement between the Bank and one or more Respondents setting out the terms and conditions of a resolution of the case which could otherwise give rise to an exclusion under this Policy;
“Sufficient evidence”	means evidence sufficiently precise, credible and consistent to support a belief, taking into consideration all relevant factors and circumstances, that it is more likely than not that the Respondent has engaged in Prohibited Conduct;
“OCCO”	means the EIB’s Office of the Chief Compliance Officer; and
“Whistleblower”	means any persons reporting irregularities in accordance with the rules and procedures set forth in the “European Investment Bank Whistleblowing Policy” approved by the EIB Management Committee on 21st January 2009, as amended and supplemented.

ARTICLE III: GENERAL PROVISIONS

Section 3.01. General provisions

- a) The EIB may amend, supplement or revise this Policy at any time, with or without prior notice. A revision will not affect any pending cases, save where non-procedural amendments are more favourable to the Respondent, but will be applied only to cases for which a Notice of Early Temporary Suspension or Exclusion Proceedings has not been issued by the Inspector General to the Respondent as of the date of revision.
- b) Nothing in this Policy, and nothing revealed during proceedings under this Policy, shall be considered to alter, abrogate or waive the EIB’s status or any immunities and privileges that it enjoys under national, international or European Union law or otherwise.

ARTICLE IV: EARLY TEMPORARY SUSPENSION PRIOR TO EXCLUSION PROCEEDINGS

Section 4.01. Issuance of a proposed Notice of Early Temporary Suspension

- a) If the Inspector General, in the course of an ongoing IG/IN investigation, believes that there is sufficient evidence to support a finding of Prohibited Conduct against a Respondent and that it is highly likely that the investigation will be successfully concluded and a Notice of Exclusion Proceedings presented to the Respondent and the Exclusion Committee within a maximum period of one (1) year, he/she may propose a Notice of Early Temporary Suspension to the Management Committee.

- b) The proposed Notice of Early Temporary Suspension shall be served by the Inspector General simultaneously to the Respondent.

Section 4.02. Withholding of certain evidence

The Inspector General may, in his/her discretion and without prejudice to the Respondent's rights of defence, withhold from the latter particular materials submitted in evidence when there is a reasonable basis to conclude that (i) the disclosure of such evidence would have a material adverse effect on the investigation, and (ii) the Respondent would retain the ability to mount a meaningful response to the allegations against it notwithstanding the withholding of such evidence. Any decision on Early Temporary Suspension can only be based on the materials that were made available to the Respondent.

Section 4.03. Contents of the proposed Notice of Early Temporary Suspension

- a) The proposed Notice of Early Temporary Suspension shall:
- (i) state IG/IN's specific allegations of Prohibited Conduct and IG/IN's designation of each Respondent alleged to have engaged in such conduct;
 - (ii) include IG/IN's summary of the facts constituting the Prohibited Conduct;
 - (iii) attach or identify the provisional evidence that IG/IN intends to present to the Management Committee in support of any proposed Temporary Suspension; together with any evidence in the Bank's possession or knowledge that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability;
 - (iv) advise the Respondent that if, following issuance of the proposed Notice by the Inspector General, the Respondent desires to contest the allegations and/or the recommended exclusion in the proposed Notice, the Respondent must so notify the Management Committee;
 - (v) state the procedure by which the Respondent may respond to the allegations and/or recommended Temporary Suspension;
 - (vi) append a copy of this Policy, as then in effect; and
 - (vii) set out the grounds for believing that Early Temporary Suspension of the Respondent is both necessary and justified.
- b) The Inspector General shall accompany any such proposed Notice with a description of the current progress of the ongoing investigation, including any evidence that remains to be gathered, together with a good faith estimate of the time required to complete the investigation.
- c) The proposed Notice of Early Temporary Suspension should provide sufficiently clear and precise information to allow the Respondent to present its defence against it.

Section 4.04. Respondent's explanation

Within twenty-five (25) days after receipt of the proposed Notice of Early Temporary Suspension, the Respondent may explain in writing to the Management Committee why it believes that, notwithstanding the evidence set forth in the Notice of Early Temporary Suspension, no such suspension should be imposed ("the Response"). The Inspector General will be notified thereof.

Section 4.05. Inspector General's Reply

Within twenty-five (25) days after receipt of the Response referred to in Section 4.04, the Inspector General may submit to the Management Committee a written reply to the arguments and evidence contained in the Response ("the Reply"). The Inspector General will serve a copy of the Reply to the Respondent.

Section 4.06. Respondent's Additional Response

Within twenty-five (25) days after receipt of the Reply referred to in Section 4.05, the Respondent may submit to the Management Committee an additional response to the arguments and evidence contained in the Reply ("the Additional Response"). The Inspector General will be notified thereof.

Section 4.07. Involvement of the Exclusion Committee

- a) The Inspector General will, in the fastest way possible, consult the Exclusion Committee on the proposed Notice of Early Temporary Suspension, the Response, the Reply and the Additional Response.
- b) After having collected the opinion of the Exclusion Committee, he will forward the proposed Notice, the Response, the Reply, the Additional Response and the opinion of the Exclusion Committee to the Management Committee for decision.
- c) However, if the Inspector General considers that a decision on Early Temporary Exclusion should be taken urgently, he/she can put the case directly to the Management Committee after consultation with the Chair of the Exclusion Committee and without prior consultation of the whole Exclusion Committee. In such cases, the Exclusion Committee will be informed of the decision of the Management Committee.

Section 4.08. Review and issuance of the Notice of Early Temporary Suspension

If, in the Management Committee's reasonable opinion, upon consideration of all the facts and arguments presented in the Proposed Notice of Early Temporary Suspension and the Response, the Reply and the Additional Response, if any, as well as the Exclusion Committee's opinion, whenever available, and assuming the facts alleged therein to be true, (i) the evidence presented to it convincingly supports a finding that the Respondent has engaged in Prohibited Conduct, and (ii) had the allegation been included in a Notice of Exclusion Proceedings, as an appropriate exclusion for such Prohibited Conduct, the Respondent would be excluded for a minimum period of no less than two (2) years, the Management Committee shall issue the Notice of Early Temporary Suspension to the Respondent and notify the Inspector General thereof.

Section 4.09. Effect and duration of Early Temporary Suspension

The Respondent shall be temporarily suspended from participating in EIB projects, including being awarded a contract under any EIB Project, being on-lent the proceeds of any loan made by the Bank or entering into any relationship with the Bank for the period specified in the Notice of Early Temporary Suspension upon issuance by the Management Committee with immediate effect unless otherwise specified in the Notice. The Early Temporary Suspension shall not have a retroactive effect.

Section 4.10. Initial duration and renewal

- a) A Temporary Suspension under this Article IV shall have an initial duration of not more than six (6) months. The Inspector General may, not later than thirty (30) days prior to the expiration of the decision on Early Temporary Suspension, request the Management Committee in writing an extension thereof, for a further period not exceeding twelve (12) months in total including the initial period.
- b) The Inspector General will present evidence to the Management Committee that the investigation of the Respondent is still ongoing and is being pursued with due diligence and dispatch. The Inspector General will inform the Respondent simultaneously about such request. The Respondent will have ten (10) days after the receipt of such request to send its written comments to the Management Committee. The Management Committee shall inform the Respondent of any

such extension no later than the last day of the initial period of suspension. The Inspector General will also be notified thereof.

Section 4.11. Extension pending final outcome of Exclusion Proceedings

Upon issuance of a Notice of Exclusion Proceedings under Section 5.02, an Early Temporary Suspension under this Article IV shall be automatically extended pending the final outcome of Exclusion Proceedings. However in no case may the total duration of the Early Temporary Suspension exceed eighteen (18) months.

Section 4.12. Expiration

If a proposed Notice of Exclusion Proceedings is not submitted to the Management Committee prior to the end of the period of Early Temporary Suspension under Section 4.10, the suspension shall automatically expire.

Section 4.13. Early revocation

The Management Committee may, at any time during the period of suspension, revoke the Early Temporary Suspension based on new information which comes to its attention. To this end, at all times during the period of suspension, the Inspector General shall present to the Management Committee any exculpatory evidence that comes to light in the course of its investigation that bears upon the basis of the suspension. The Management Committee shall promptly notify the Respondent and the Inspector General of such termination and the reasons thereof.

ARTICLE V: COMMENCEMENT OF EXCLUSION PROCEEDINGS

Section 5.01. Inspectorate General, Fraud Investigations Division of the EIB

IG/IN investigates allegations of Prohibited Conduct² in EIB Projects in accordance with policies and practices approved and adopted by the EIB.

Section 5.02. Issuance of Notice of Exclusion Proceedings

If, as a result of investigation the Inspector General believes that there is sufficient evidence to support a finding that the Respondent has engaged in Prohibited Conduct, he/she shall present to the Exclusion Committee a Notice of Exclusion Proceedings in respect of the Respondent in the form prescribed in Section 5.03 below, together with supporting documentation. The Notice of Exclusion Proceedings shall be served by the Inspector General simultaneously to the Respondent.

Section 5.03. Contents of the Notice of Exclusion Proceedings

The Notice shall:

- i) state IG/IN's specific allegations of Prohibited Conduct and IG/IN's designation of each Respondent alleged to have engaged in such conduct;
- ii) include IG/IN's summary of the facts constituting the Prohibited Conduct including mentioning if the Respondent is subject to an EU Exclusion registered in EDES, and/or to

² Investigations related to money laundering and financing of terrorism are investigated by IG/IN in close cooperation with OCCO.

a final judgement or a final administrative decision concerning its professional conduct, and/or to the conclusion of another Multilateral Development Bank pursuant to its own policy that the Respondent engaged in Prohibited Conduct. Registration in EDES on a ground falling within Prohibited Conduct shall be considered as sufficient evidence that the Respondent has engaged in Prohibited Conduct;

- iii) attach or identify the evidence that the Inspector General intends to present to the Exclusion Committee in support of any proposed exclusion, together with any evidence in the Bank's possession or knowledge that would reasonably tend to exculpate the Respondent or mitigate the Respondent's culpability;
- iv) advise the Respondent that if, following issuance of the Notice by the Inspector General, the Respondent desires to contest the allegations and/or the recommended exclusion in the Notice, the Respondent must so notify the Exclusion Committee in the manner described in Article VI;
- v) state the procedure by which the Respondent may respond to the allegations and/or recommended exclusion as described in Article VI; and
- vi) append a copy of this Policy, as then in effect, and a copy of the Exclusion Committee's operating procedures, as then in effect.

Section 5.04. Limitations

- a) The Exclusion Committee shall stop and conclude the Exclusion Proceedings and shall notify the Respondent and the Inspector General accordingly if the Notice relates to Prohibited Conduct that took place more than ten (10) years prior to the date on which the Notice was issued, or, in cases that were subject to criminal prosecution and conviction, if the Notice was issued more than five (5) years after a final judgement in the case.
- b) This Section shall not apply if, at the time of the submission of the Notice to the Exclusion Committee, the Respondent is subject, for the same facts, to an EU Exclusion Decision registered in EDES and/or a sanction pursuant to another Multilateral Development Bank procedure.

Section 5.05. Recommendation of appropriate exclusion

The Inspector General shall include in the Notice under Section 5.03 above a recommendation as to the appropriate exclusion to be imposed on each Respondent. The exclusion shall be selected from the range of possible decisions identified in Section 9.03 of this Policy and with due consideration, to the extent applicable, of the factors in Section 9.07. In the event that the Respondent is subject, for the same facts, to an EU Exclusion Decision registered in EDES and/or a sanction pursuant to another Multilateral Development Bank procedure, the recommendation shall duly reflect such decision, within the limit of Sections 9.03 and 9.07 below.

Section 5.06. Review by the Exclusion Committee

If the Respondent informs the Exclusion Committee pursuant to Section 6.01 below that it desires to contest the allegations and/or the exclusion recommended by the Inspector General in the Notice, the Exclusion Committee shall notify the Inspector General thereof, and the matter shall be referred to the Exclusion Committee for its review and recommendations.

Section 5.07. Exclusion Decisions in uncontested proceedings

- (a) If the Respondent does not inform the Exclusion Committee pursuant to Section 5.06 above of the Respondent's desire to contest the allegations and/or the exclusion recommended by the Inspector General in the Notice within thirty (30) days after receipt of the Notice, the Exclusion

Committee shall recommend the appropriate exclusion to the Management Committee in accordance with the process prescribed in Article IX below.

- (b) If the Respondent does not issue a Response pursuant to Section 6.01 that it wishes to contest the allegations, the Respondent may still submit to the Exclusion Committee written submissions in mitigation of the proposed exclusion to be applied.
- (c) The Exclusion Committee will forward a copy of the written submissions to the Inspector General, who will be allowed thirty (30) days after receipt of these submissions to make written submissions in reply.
- (d) The written submission of the Inspector General shall be served by the Exclusion Committee to the Respondent who will be allowed further thirty (30) days upon receipt of the Inspector General's submission to provide additional comments.
- (e) The Exclusion Committee will consider all these submissions when recommending the appropriate decision to the Management Committee.

Section 5.08. Withdrawal of Notice

- (a) The Exclusion Committee may, at all moments during the procedure, and based on new elements that were brought to its attention, annul the Notice. It shall notify the Inspector General and the Respondent of such annulment and the reasons therefore, and the proceedings shall be closed.
- (b) Such annulment and closure shall be subject to the Inspector General's opportunity to submit a new Notice on the basis of additional information not contained in the original Notice, in which case the matter shall proceed in accordance with the procedures set forth in Section 5.02.

ARTICLE VI: SUBMISSIONS TO THE EXCLUSION COMMITTEE

Section 6.01. Respondent's Response to Notice of Exclusion Proceedings

Within thirty (30) days after receipt of the Notice, the Respondent may submit to the Exclusion Committee a written response to the allegations and recommended exclusion decision contained in the Notice ("the Response"). The Response may contain written arguments and evidence, and shall contain a certification, signed by an individual Respondent or an authorised officer of a Respondent that is an entity, that the information therein is true, complete and correct to the best of the signatory's knowledge after the exercise of reasonable due diligence in reviewing the matter and the records of the Respondent within its possession or control. The Response should address each of the allegations contained in the Notice. It is open to the Respondent to admit all or part of the allegations contained in the Notice. The Response may also include mitigation as to why the proposed level of exclusion is not appropriate. The Exclusion Committee will forward a copy of the Response to the Inspector General.

Section 6.02. The Inspector General's Reply in support of the Notice of Exclusion Proceedings

Within thirty (30) days after receipt of the Respondent's submission of a Response, the Inspector General may submit to the Exclusion Committee a written reply to the arguments and evidence contained in the Response ("the Reply"). The Exclusion Committee will forward a copy of the Reply to the Respondent.

Section 6.03. Respondent's Additional Response to the Inspector General's Reply

Within thirty (30) days after receipt of the Reply referred to in Section 6.02, the Respondent may submit to the Exclusion Committee an additional response to the arguments and evidence contained in the

Reply (“the Additional Response”). The Exclusion Committee will forward a copy of the Additional Response to the Inspector General.

Section 6.04. Submission of additional materials

In the event that additional material evidence becomes available to the Inspector General or to the Respondent after the applicable deadlines for the submission of written materials have passed, but prior to the conclusion of the Exclusion Committee’s deliberations on the matter, the Chair of the Exclusion Committee may, as a matter of discretion, authorise such additional evidence to be submitted, together with a brief argument predicated upon such evidence. The Exclusion Committee may also authorise either the Inspector General or the Respondent to submit, within a reasonable timeframe, additional arguments and evidence in response to the evidence and arguments contained in the additional materials presented by the other party.

Section 6.05. Language

All written materials submitted to the Exclusion Committee shall be submitted in English or French, except that exhibits shall be in the original language with the pertinent parts translated into English or French. The Exclusion Committee may require, either on its own initiative or at the request of the other party, that the other parts or the entirety of an exhibit be translated into English or French.

Section 6.06. Time period for filing submissions

Time periods for filing submissions shall be those specified in Sections 6.01 to 6.03 of this Policy, subject to any reasonable extension of time granted as a matter of discretion by the Chair of the Exclusion Committee, in particular if translation of documents is required.

Section 6.07. Length

The Chair of the Exclusion Committee shall set reasonable limits for the length of written submissions.

Section 6.08. Admissions of culpability

The Respondent may admit to all or part of any allegation set out in the Notice. The Respondent may also present evidence and arguments of mitigating circumstances, the intervening implementation of programmes to detect or prevent Prohibited Conduct or other facts relevant to the Exclusion Committee’s recommendation concerning an appropriate exclusion.

Section 6.09. Distribution of written materials

- (a) The Exclusion Committee shall provide to the Inspector General and the Respondent, in a timely manner, copies of all written submissions and evidence, records of any related proceedings and any other materials received or issued by the Committee relating to the proceedings.
- (b) With respect to materials submitted to the Exclusion Committee in a Respondent’s Exclusion Proceedings, the Exclusion Committee may at any time, make such materials available to other Respondents in Exclusion Proceedings involving related allegations, facts or matters. This is without prejudice to any confidentiality or data protection requirements which may limit third parties’ access to such materials.

Section 6.10. Contents of record

The record to be considered by the Exclusion Committee shall consist of the Notice of Exclusion Proceedings, the Response, the Reply, the Additional Response, if any, and all other related further written submissions or arguments and evidence and all arguments presented at any hearing before the Exclusion Committee. The record shall be confidential and shall not be available to the public.

ARTICLE VII: HEARINGS

Section 7.01. Hearing procedure

The Exclusion Committee will ordinarily determine the issues of culpability and exclusion based on the written submissions provided to it by the Inspector General and the Respondent. However, should the Exclusion Committee consider it appropriate, it may decide to hold a hearing in a particular case. In such a case the Respondent and the Inspector General shall be provided with reasonable notice of the date, time and location of the hearing, which they may attend either in person and/or through a representative. The procedure applicable to the hearings is defined in the Exclusion Committee's operating procedures.

ARTICLE VIII: EVIDENCE

Section 8.01. Forms of evidence

In accordance with the relevant legal principles, the Exclusion Committee shall have discretion to determine the relevance, materiality, credibility, weight and sufficiency of all evidence offered during the proceedings.

Section 8.02. Privileged materials

Communication between a lawyer, or a person acting at the direction of a lawyer, and a client for the purpose of providing or receiving legal advice ("Legal Professional Privilege") and writings reflecting the mental impressions, opinions, conclusions or legal theories of a lawyer in connection with a legal representation ("Legal Work Product") shall be privileged and exempt from disclosure.

ARTICLE IX: RECOMMENDATIONS OF THE EXCLUSION COMMITTEE

Section 9.01. Findings

- a) **Basis for Findings.** The review and deliberation of the Exclusion Committee shall be restricted to the record as defined above.
- b) **Burden of Proof.** IG/IN shall have the burden of proof to present sufficient evidence to establish that it is more likely than not that the Respondent engaged in Prohibited Conduct. Upon such a showing by IG/IN, the burden of proof shall shift to the Respondent to show cause as to why it should not be excluded.
- (c) **Standard of Proof.** The Exclusion Committee shall determine whether, in its reasonable opinion, the evidence presented by the Inspector General, as contested by the Respondent where applicable, convincingly supports the conclusion that the Respondent engaged in Prohibited Conduct.

- (d) **Insufficient Evidence.** If, in the Exclusion Committee's reasonable opinion, the evidence presented to it does not convincingly support the conclusion that the Respondent engaged in Prohibited Conduct, the Exclusion Committee shall notify the Respondent and the Inspector General in writing and the proceedings shall be concluded. A new Notice may be submitted by the Inspector General if evidence not available at the time of filing of the original Notice is subsequently obtained.

Section 9.02. Recommendations

- a) If, in the Exclusion Committee's reasonable opinion, the evidence presented to it convincingly supports the conclusion that the Respondent engaged in Prohibited Conduct, it shall proceed to consider the recommendation of an appropriate exclusion on the Respondent, which shall be selected from the range of possible exclusion decisions identified in Section 9.03 below save where the Respondent is subject, for the same facts, to an EU Exclusion Decision registered in EDES and/or a sanction pursuant to another Multilateral Development Bank procedure, in which case the Exclusion Committee's recommendation shall duly reflect such decision, within the limit of Sections 9.03 and 9.07 below.
- b) In considering the appropriate exclusion, the Exclusion Committee shall not be bound by the recommendation advanced by the Inspector General under Section 5.05 above. In determining questions of culpability and exclusion, the Exclusion Committee will seek to reach a unanimous decision. A Member of the Exclusion Committee may express a dissenting view which shall be recorded with justification. If unanimity cannot be achieved, the Exclusion Committee may reach its decisions on the basis of a simple majority and this fact shall not be disclosed to the parties. The Exclusion Committee shall record as recommendations to the Management Committee its findings in respect of culpability and exclusion in the Notice of Recommendations.

Section 9.03. Range of Possible Exclusion Decisions

- (a) **Reprimand.** The Exclusion Committee may recommend that the Respondent be reprimanded in the form of a formal "Letter of Reprimand" of the Respondent's conduct.
- (b) **Exclusion.** The Exclusion Committee may recommend that the Respondent be declared ineligible, for a stated period of time up to a maximum of five (5) years on any one count of Prohibited Conduct, to participate in EIB projects, including being awarded a contract under any EIB Project, being on-lent the proceeds of any loan made by the Bank or entering into any relationship with the Bank. Exclusion shall not have a retroactive effect. For cases involving multiple instances of Prohibited Conduct, the Exclusion Committee may recommend the imposition of the most severe exclusion for the most serious Prohibited Conduct. However, subject to Section 9.07 below, in certain aggravating circumstances, the Exclusion Committee may recommend cumulative exclusions pertaining to multiple instances of Prohibited Conduct.
- (c) **Conditional Non-Exclusion.** The Exclusion Committee may recommend that the Respondent be required to comply with certain remedial, preventative, curative, restitutive or other measures as a condition to avoid exclusion from EIB Projects. In the event that the Respondent fails to demonstrate compliance with the conditions within the time periods established by the Conditional Non-Exclusion, an exclusion would automatically become effective for a period of time established by the Management Committee.
- (d) **Exclusion with Conditional Release.** The Exclusion Committee may recommend that the Respondent be made subject to exclusion with conditional release, under which the Respondent's period of exclusion would be reduced or terminated if the Respondent demonstrates compliance with the conditions of release set forth in the decision of the Management Committee, such as introduction and/or implementation of corporate compliance or ethics programmes, compliance with procurement requirements, restitution or other measures.

- (e) **Instruction of a Compliance Monitor.** In addition to the exclusions set out above, the Exclusion Committee may recommend to instruct the Respondent to appoint a Compliance Monitor. The Compliance Monitor has the task of reporting on the Respondent's compliance with any conditions of Conditional Non-Exclusion and Exclusion with Conditional Release. The Compliance Monitor must be independent of the Respondent and shall report confidentially to the Exclusion Committee at a period to be determined by the Management Committee. The Compliance Monitor will be engaged and paid for by the Respondent and shall advise the Respondent, as and when he considers necessary, on how to improve its procedures.

Section 9.04. Combination of Exclusion Decisions

The Exclusion Committee may recommend the imposition of one or more of the above exclusion decisions in the alternative or in combination.

Section 9.05. Publication

The EIB reserves the right to publish an Exclusion Decision on its website after notification to the excluded Respondent in order to reinforce the deterrent effect of the decision, taking account of the principle of proportionality and the factors outlined under section 9.07 below.

Section 9.06. Affiliates subject to exclusion

When the Exclusion Committee recommends the exclusion of a particular Respondent, the Exclusion Committee may also recommend an appropriate exclusion on any individual or organisation that, directly or indirectly, controls or is controlled by the Respondent insofar as the Prohibited Conduct may be imputed to such individual or organisation. The individual or organisation will be permitted to submit its arguments in writing, in due time before any decision is taken in their regard. The provisions set out in this Exclusion Policy shall apply *mutatis mutandis*.

Section 9.07. Factors affecting the Exclusion Decision

In order to ensure compliance with the principle of proportionality, the Exclusion Committee shall in particular take into account, to the extent applicable, the following factors in considering an appropriate exclusion under Section 9.02 above:

- i. the severity of the Respondent's conduct;
- ii. degree and involvement of the Respondent in the Prohibited Conduct (including where the Respondent played a minor role in the Prohibited Conduct);
- iii. whether the Respondent has cooperated with IG/IN during the investigation;
- iv. whether the Respondent retaliated against a Whistleblower, an informant or a witness;
- v. whether the Respondent continued to engage in Prohibited Conduct after becoming aware of an IG/IN investigation;
- vi. the magnitude of any losses caused by the Respondent and the impact of its conduct to the financial interests' of the European Union;
- vii. past conduct of the Respondent, including but not limited to a previous exclusion imposed by the EIB, another EU institution or body, international financial institution or public authorities;
- viii. mitigating circumstances, including the extent to which the Respondent co-operated in the investigation and whether such cooperation was beneficial to the protection of the EU's

financial interests, and whether the Respondent has put in place internal controls and procedures designed to deter, detect and prevent the type of Prohibited Conduct alleged;

- ix. savings of EIB resources or facilitation of an investigation that was occasioned by the Respondent's admission of culpability or cooperation in the investigation or exclusion process;
- x. the period of Early Temporary Suspension already served by the Respondent; and
- xi. any other factor that the Exclusion Committee reasonably deems relevant to the excluded party's culpability or responsibility in relation to the Prohibited Conduct.

Notwithstanding the provisions in Section 9.03 para (b) on the period of exclusion and subject to the other provisions of this Section 9.07, the period of exclusion may be extended to ten (10) years in the event of a repeated Prohibited Conduct within five (5) years of the issuance of the decision of the Management Committee referred to in Section 10.01 below.

ARTICLE X: MANAGEMENT COMMITTEE

Section 10.01. Role of the Management Committee

The Notice of Recommendations produced by the Exclusion Committee shall be presented to the Management Committee for decision. The Management Committee will decide on the exclusion if, in its reasonable opinion, the evidence presented to it convincingly supports the conclusion that the Respondent has engaged in Prohibited Conduct. The decision of the Management Committee shall take effect immediately, unless otherwise decided.

Section 10.02. Dissemination of Decision

The Management Committee's Notice of Decision shall be promptly transmitted to the Exclusion Committee, the Respondent and the Inspector General. Where so required by European Union law, information shall also be communicated to the competent authorities of the European Union. The Management Committee may examine the possibility of further disseminating the Notice of Decision in accordance with and in full respect of the relevant provisions of EU law and regulations, including in the field of data protection.

ARTICLE XI: DISCLOSURE OF INFORMATION OBTAINED IN THE COURSE OR AS A RESULT OF EXCLUSION PROCEEDINGS

Section 11.01. Information pertaining to illegal activities

If the EIB determines that the law of a State may have been violated by a Respondent, it may, in consultation with or with the assistance of OLAF and in accordance with the provisions of the Bank's Anti-Fraud Policy, refer the matter to the appropriate national and/or EU authorities for further investigation and/or criminal prosecution.

Section 11.02. Information pertaining to a project financed by another organisation, body or agency

If the EIB determines that there is information relating to Prohibited Conduct in connection with a project financed by another international or multinational organisation or body, including another development

bank, or by an agency of a State, the EIB may at any time, in full respect of the legal provisions applicable, make such information available to such organisation, body or agency.

Section 11.03. Sharing of materials submitted to the Exclusion Committee with other organisations, bodies or agencies

- a) The EIB may at any time, in full respect of the legal provisions applicable, make available materials submitted to the Exclusion Committee to another international or multinational organisation or body, including another development bank, or to an agency of a State.
- b) In determining whether to disclose information under Sections 11.01 to 11.03 above, the EIB shall in particular consider all relevant data protection provisions.

ARTICLE XII: NEGOTIATED SETTLEMENTS

Section 12.01. Launch of the Settlement

- a) At any time before or during an investigation or during Exclusion Proceedings, the Inspector General may, after consultation with the President and the Vice President with oversight of compliance and control initiate negotiations with a Respondent(s) with a view to reaching a Settlement.
- b) The process to be followed for such a negotiated settlement will be pursuant to this Article XII.

Section 12.02. Stay of proceedings

- a) In cases where the Inspector General initiates settlement negotiations with one or more Respondent(s) and exclusion proceedings have already been started, the Chair of the Exclusion Committee will, at the request of the Inspector General and one or more Respondents, acting jointly, grant a stay of the Exclusion Proceedings for no longer than sixty (60) days.
- b) Upon a proposal from the Inspector General, the Chair of the Exclusion Committee may extend the duration of the stay for another thirty (30) days, together with written confirmation by both parties that they continue to be actively engaged in settlement negotiations.
- c) Requests for a stay of proceedings shall be granted as a matter of course.
- d) If the negotiations do not result in an agreed settlement within the time limit provided by the Chair of the Exclusion Committee, and a stay of Exclusion Proceedings had been granted, the case shall re-open and resume at the point at which it had been stayed.
- (e) In the event that a stay is granted, the time taken to pursue negotiations under this Section shall not count in relation to the time limits set forth for the Early Temporary Suspension proceedings and the Exclusion Proceedings.

Section 12.03. Decision on Settlements

- a) The Inspector General shall inform OLAF of a proposed Settlement Agreement with the possibility for OLAF to provide comments and shall present it to the Management Committee for final approval.
- b) Once it is approved by the Management Committee and signed by the EIB and the Respondent(s), the Settlement Agreement shall become effective either immediately or as of the date specified in the agreement.

- c) Upon agreement by both the Respondent(s) and the Management Committee, the approved settlement will be published through a press release.

Section 12.04. Effect of Settlements

- a) If the Settlement Agreement provides for the definitive resolution of the case, in whole or in part, the case (or such part of it as is specified in the Settlement Agreement) shall be deemed closed as of the effective date of the settlement (or the date specified therein) on such terms and conditions as may be specified, including the mutually agreed application of exclusion on the Respondent(s).
- b) Unless otherwise stipulated, compliance by the Respondent(s) with the terms and conditions stated in the Settlement Agreement shall be deemed a condition for release from the exclusion (or condition for non-exclusion, as the case may be).

Section 12.05. Compliance with Settlement Agreements

- a) Unless the Settlement Agreement expressly provides otherwise, all determinations as to the compliance by the Respondent(s) with the terms and conditions of the agreement shall be taken by the Inspector General, in agreement with the President and the Vice President, who may decide to consult the Management Committee, as appropriate.
- b) If it is determined that a Respondent has subsequently violated the Settlement Agreement, the case shall be re-opened and resume at the point at which it had been stayed.
- c) The violation of the Settlement Agreement may be viewed as an aggravating factor by the Exclusion Committee and Management Committee in determining an appropriate period of exclusion or conditions thereto.

ARTICLE XIII: IMPLEMENTATION OF FINANCIAL SANCTIONS

Section 13.01. Financial sanctions

The implementation by the EIB of sanctions or restrictive measures imposed by the European Union pursuant to Chapter 2 of Title V of the Treaty on European Union or Article 215 of the Treaty on the Functioning of the European Union, either autonomously or pursuant to the sanctions decided by the United Nations Security Council on the basis of Article 41 of the UN Charter, shall not require recourse to the Exclusion Proceedings.

ARTICLE XIV: ADDITIONAL PROVISIONS

Section 14.01. Processing of personal data

The processing of personal data in the context of the application by the Bank of this Exclusion Policy shall be carried out in accordance with Regulation (EC) No 45/2001 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 EC institutions and bodies and on the free movement of such data, as amended and supplemented from time to time, and any applicable EU data protection legislation.

Section 14.02. Judicial review

Decisions taken by the Bank against a Respondent under this Policy may be subject to judicial review before the Court of Justice of the EU in accordance with the relevant provisions of the Treaty on the Functioning of the European Union.

Section 14.03. Effective date

This Policy has been approved by the Bank's Board of Directors on 11 December 2017 and becomes effective upon its publication on 19 February 2018. Revisions to this Policy may be approved by the Bank's Management Committee. The Board of Directors shall be notified of any such modifications.

Exclusion Policy

February 2018



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