

		 <p>Challenging the European Investment Bank</p>
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Prague 22 July 2009

Comments to EIB's Complaint Mechanism Policy under revision
Prepared by CEE Bankwatch Network and Counter Balance
22 July 2009

We welcome the EIB's decision to establish internal Complaint Office and to review the EIB Complaint Mechanism Policy. Taking advantage of the opportunity we are submitting the following comments and recommendations for the EIB's consideration.

Re: Introduction

We propose to add a point

- p. 1.3** *“Financial Contracts and Framework Agreements the EIB is a party to conclude that a person will not be a subject of any kind of discrimination from EIB's counterparts because of conducting its right to complaint to the EIB's Complaint Office”.*

Justification

The EIB should make sure that its counterparts do not discriminate any person (legal or physical) who decided to conduct its right to complaint. The way of ensuring it, is to include in the Finance Contracts and other agreements relevant provisions. EIB's counterparts should be aware of the CO existence and importance and should be instructed about the right to complaint. This is especially important in a countries where EIB operates where the rule of law is not always in place.

The proposal would strengthen the guiding principle as in the point 8.5 of the Complaints Policy: *“The EIB Complaints Mechanism shall be accessible to affected people, their representatives and/or interested organisations or individuals”.*

Re: Overview of the EIB Complaints Mechanism

Point 7.2 Current draft stipulate that *“The mission of the EIB Complaints Office (internal mechanism) is to centrally and objectively deal with all complaints from the public whilst safeguarding the best interest of all the EIB's internal and external stakeholders. The EIB Complaints Office is an operationally independent office. To ensure maximum independence through proper segregation of duties whilst eliminating potential conflicts of interest, the CO has a double reporting line to the Secretary General and to the General Director for Strategy and Corporate Centre of the EIB, under a functional responsibility of a Vice President. ”.*

We propose a following formulation of the **point 7.2:** *“The mission of the EIB Complaints Office (internal mechanism) is to centrally and objectively deal with all*

complaints from the public and to ensure that European Investment Bank adheres to its policies and the obligations applied on the Bank by the European Union.”

Justification:

The best interest of all EIB’s internal and external stakeholders has already been safeguarded in the policies and laws that EIB is subject to, for example EU environmental legislation, EU development policies and strategies, EIB Statute, EIB’s Public Disclosure Policy. Complaints Office when dealing with the case, should refer to these legal obligation, not to undefined “best interest”. Complaint Policy does not define “best interest” the Complaints Office should safeguard or “external and internal stakeholders” CO should refer to. The mission of the Complaint Office should be safeguarding that EIB achieves its mission, the goals of the the safeguards policies EIB is subject to (EIB’s own and EU policies and strategies) and the relevant legislation. Complaints Office’s role should not be judging on case by case basis when dealing with the complaint what the best interest of all the stakeholders is. Moreover the mission of the Complaints Office should not only be dealing with the complaints but also ensuring that EIB’s operations adhere to EIB’s goals and obligations written in EIB’s policies and other documents EIB is subject to. The mission of the Complaint Office should constitute a separate point in a Policy.

Independence of the CO should be dealt with in a separate point. Therefore we propose to add:

p. 7.3 *To ensure maximum independence through proper segregation of duties whilst eliminating potential conflicts of interest, the CO report to the Management Committee of the European Investment Bank”.*

and

p. 7.4 *“Management Committee prepares annual report for the Board of Directors on the decisions undertaken in relation to the Complaints Office recommendations”*

and

p. 7.5 *“The person responsible for CO is a Head of Complaint Office. The Head of the CO is appointed by the Management Committee of the European Investment Bank for a 5 years term.”*

Justification:

In our opinion current draft of the Policy does not ensure EIB Complaints Office is “independent of the services, which are responsible for the activities challenged by the complainant” (Guiding Principles, p.8.2).

The Complaints Office operational independence should be strengthened in order to ensure the impartiality of the Office. Complaints Office should report to the highest executive, governing body of the Bank, which is the Management Committee. Complaints Office assesses the EIB’s staff (including Senior Management) work therefore it should be independent and separate from the staff. Management Committee is the body that oversees the day-to-day running of the EIB therefore it is the most relevant body to hear directly from the Complaints Office and to decide on the follow up on the CO recommendations. Management Committee should report to

the Board of Directors on annual basis on the decisions made in relation to Complaints Office recommendations.

Moreover, in order to strengthen the independence of the Office, the Office should be managed by a person who would ensure that the Office work according to the Complaints Policy. This person should be appointed for a definite period of time by the highest executive, governing body of the Bank.

Re: Scope of the EIB Complaints Mechanism

The Complaints Policy refers to the scope of the Complaints Mechanism/Office in several points: p.2.2; p. 9.1; p.10.1-2; p.11.4

However, there is inconsistency with how the Policy describes the scope or purpose of the Complaints Mechanism/Office. In some points the Policy refers only to maladministration (p.2.2; 10.1; 11.4) while in other (9.1) to the EIB's projects environmental, social or development impact. Therefore we propose that all the points are consistent and contain the same definition of the scope/purpose of the Complaint Mechanism/Office.

In our opinion Complaints Mechanism should also apply to complaints regarding the EIB's financed projects in compliance with the EIB's policies or relevant legislation, for example EIB's projects impact on environment or on development and EIB's compliance with European Union law and policies regarding development cooperation. Complaint Office should have a compliance and a problem solving function.

Re: Dealing with the complaint

The current procedure described between points 11.7.1 and 11.13.4 does not include all the information/steps that are described in the table on page 11.

p. 11.7.8 The Policy says that *“the EIB Complaints Office will endeavour to find and propose appropriate solutions whilst taking into account the interest of all its internal and external stakeholders”*.

We propose this to be changed to: *“the EIB Complaints Office will endeavour to find and propose appropriate solutions whilst taking into account the opinion of its internal and external stakeholders.”*

Justification:

The best interest of all EIB's internal and external stakeholders has already been safeguarded in the policies and laws that EIB is subject to, for example EU environmental legislation, EU development policies and strategies, EIB Statute, EIB's Public Disclosure Policy. Complaints Office when dealing with the case, should refer to these legal obligations, not to undefined “best interest”. Complaint Policy does not define “best interest” the Complaints Office should safeguard or “external and internal stakeholders” CO should refer to. It is therefore not a Complaints Office role to judge what the best interest of stakeholders is in a particular case.

When dealing with the complaint however, the Complaints Office should seek and take into account opinions of all relevant internal and external stakeholders (for

example: complainant, EIB staff, project promoter, authorities, local communities, CSOs, governments, ect). Taking into account the opinion of all relevant stakeholders will enhance CO impartiality and reliability of the investigation.

p. 11.7.10 The policy does not explain who should agree on corrective actions. We propose that it is the Management Committee that takes decisions on whether or not to apply recommendations and corrective actions recommended by the Complaints Office (see proposed point 11.7.14 below)

Additional points should be added:

- 11.7.11 Complaint Office prepares reasoned judgement that include the summary of alleges, findings and send the judgement to the Senior Management for opinion on findings.
- 11.7.12 CO takes the opinion into account and prepares the Conclusions Report that includes the summary of alleges, findings, CO judgement, Senior Management opinion, recommendations and proposed corrective actions
- 11.7.13 CO prepares the response and send to the Complainant together with the Conclusions Report.
- 11.7.14 CO reports to Management Committee who takes decision on whether or not to apply the recommendations and corrective actions.
- 11.7.15 CO informs the Complainant about the Management Committee's decision.

Re: Stakeholders' engagement

We propose to add

11. 9.3 In case the complaint's alleges concern violation of EU legislation in the projects located withing the European Union, CO informs the Secretary General of the European Commission about the complaint and send Conclusions Report.

Justification:

The proposed change will ensure better coordination and information exchange between different accountability mechanisms within EU. Involving European Commission on earlier stage may additionally improve the CO's investigation.

Re: Publication and Reporting

EIB should refer to the practice used by European Ombudsman when dealing with the complaints. All Conclusions Reports should be available to the public on the EIB web site, after all personal data are deleted from the texts (irrespective of the fact that complainant reserved the right to confidentiality or not). This proposal is in compliance with the Guiding Principle point 8.1.

11.13.1 We propose this point in the draft policy be replaced by:

"EIB Complain mechanisms will promote transparent and accountable approach in dealing with the complaints lodged. In order to safeguard the interest of the complainants, complainant may reserve the right to confidentiality".

We propose the point 11.13.2 in the current Policy be replaced by:

11.13.2 *“All Conclusions Reports should be available to the public on a dedicated website. For each admissible complaint wherby complainant did not reserve the right to confidentiality, the complaint is publicly available upon request.*

Re: Data protection

Even if complainant did not reserve the right to confidentiality, EIB should not disclose the complainant personal data without the complainant consent. Waving the right to confidentiality should not be treated as a consent to dealing with personal data publicly. None of the Conclusions Reports as well as publicly available complaints should contain personal data. Th Complaints Office should not release complainants personal data without the case by case consent.

Therefore we propose to delete the **point 11.14.2** from the Policy text. Instead we propose the following formulation:

11.14.2 *“Complaints Office will ensure that personal data are treated confidentially unless the complainant consents to the EIB dealing publicly with any personal data which the complaint may contain”.*

Justification:

The current Policy allows personal data to be disclosed in all cases when the complainant waves its right to confidentiality. The Policy should differentiate between confidentiality of conclusions reports, submitted complaints and personal data they may contain. The Policy should allow for a complaint to be dealt publicly while personal data still kept confidential. Such approach will in our opinion help to implement the guiding Principle point 8.1 *“Subject to any applicable legal constraints, the EIB Complaints Mechanism shall be transparent in its operations and outputs”.*